

# SENATE BILL No. 412

June 18, 2015, Introduced by Senators KNOLLENBERG and MARLEAU and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending section 3104 (MCL 500.3104), as amended by 2002 PA 662.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 3104. (1) ~~An~~ **THE CATASTROPHIC CLAIMS ASSOCIATION IS**  
2 **CREATED AS AN** unincorporated, nonprofit association. ~~to be known as~~  
3 ~~the catastrophic claims association, hereinafter referred to as the~~  
4 ~~association, is created.~~ Each insurer engaged in writing insurance  
5 coverages that provide the security required by section 3101(1)  
6 within this state, as a condition of its authority to transact  
7 insurance in this state, shall be a member of the association and  
8 ~~shall be~~ **IS** bound by the plan of operation of the association. Each  
9 insurer engaged in writing insurance coverages that provide the  
10 security required by section 3103(1) within this state, as a

1 condition of its authority to transact insurance in this state,  
2 ~~shall be~~ **IS** considered **TO BE** a member of the association, but only  
3 for purposes of premiums under subsection (7)(d). Except as  
4 expressly provided in this section, the association is not subject  
5 to any laws of this state with respect to insurers, but in all  
6 other respects the association is subject to the laws of this state  
7 to the extent that the association would be if it were an insurer  
8 organized and subsisting under chapter 50.

9 (2) The association shall provide and each member shall accept  
10 indemnification for 100% of the amount of ultimate loss sustained  
11 under personal protection insurance coverages in excess of the  
12 following amounts in each loss occurrence:

13 (a) For a motor vehicle accident policy issued or renewed  
14 before July 1, 2002, \$250,000.00.

15 (b) For a motor vehicle accident policy issued or renewed  
16 during the period July 1, 2002 to June 30, 2003, \$300,000.00.

17 (c) For a motor vehicle accident policy issued or renewed  
18 during the period July 1, 2003 to June 30, 2004, \$325,000.00.

19 (d) For a motor vehicle accident policy issued or renewed  
20 during the period July 1, 2004 to June 30, 2005, \$350,000.00.

21 (e) For a motor vehicle accident policy issued or renewed  
22 during the period July 1, 2005 to June 30, 2006, \$375,000.00.

23 (f) For a motor vehicle accident policy issued or renewed  
24 during the period July 1, 2006 to June 30, 2007, \$400,000.00.

25 (g) For a motor vehicle accident policy issued or renewed  
26 during the period July 1, 2007 to June 30, 2008, \$420,000.00.

27 (h) For a motor vehicle accident policy issued or renewed

1 during the period July 1, 2008 to June 30, 2009, \$440,000.00.

2 (i) For a motor vehicle accident policy issued or renewed  
3 during the period July 1, 2009 to June 30, 2010, \$460,000.00.

4 (j) For a motor vehicle accident policy issued or renewed  
5 during the period July 1, 2010 to June 30, 2011, \$480,000.00.

6 (k) For a motor vehicle accident policy issued or renewed  
7 during the period July 1, 2011 to June 30, 2013, \$500,000.00.

8 Beginning July 1, 2013, this \$500,000.00 amount shall be increased  
9 biennially on July 1 of each odd-numbered year, for policies issued  
10 or renewed before July 1 of the following odd-numbered year, by the  
11 lesser of 6% or the consumer price index, and rounded to the  
12 nearest \$5,000.00. This biennial adjustment shall be calculated by  
13 the association by January 1 of the year of its July 1 effective  
14 date.

15 (3) An insurer may withdraw from the association only upon  
16 ceasing to write insurance that provides the security required by  
17 section 3101(1) in this state.

18 (4) An insurer whose membership in the association has been  
19 terminated by withdrawal shall continue to be bound by the plan of  
20 operation, and upon withdrawal, all unpaid premiums that have been  
21 charged to the withdrawing member are payable as of the effective  
22 date of the withdrawal.

23 (5) An unsatisfied net liability to the association of an  
24 insolvent member shall be assumed by and apportioned among the  
25 remaining members of the association as provided in the plan of  
26 operation. The association has all rights allowed by law on behalf  
27 of the remaining members against the estate or funds of the

1 insolvent member for ~~sums~~ **MONEY** due the association.

2 (6) If a member has been merged or consolidated into another  
3 insurer or another insurer has reinsured a member's entire business  
4 that provides the security required by section 3101(1) in this  
5 state, the member and successors in interest of the member remain  
6 liable for the member's obligations.

7 (7) The association shall do all of the following on behalf of  
8 the members of the association:

9 (a) Assume 100% of all liability as provided in subsection  
10 (2).

11 (b) Establish procedures by which members shall promptly  
12 report to the association each claim that, on the basis of the  
13 injuries or damages sustained, may reasonably be anticipated to  
14 involve the association if the member is ultimately held legally  
15 liable for the injuries or damages. Solely for the purpose of  
16 reporting claims, the member shall in all instances consider itself  
17 legally liable for the injuries or damages. The member shall also  
18 advise the association of subsequent developments likely to  
19 materially affect the interest of the association in the claim.

20 (c) Maintain relevant loss and expense data relative to all  
21 liabilities of the association and require each member to furnish  
22 statistics, in connection with liabilities of the association, at  
23 the times and in the form and detail as may be required by the plan  
24 of operation.

25 (d) In a manner provided for in the plan of operation,  
26 calculate ~~and charge to members of the association~~ a total ~~premium~~  
27 **AMOUNT** sufficient to cover the expected losses and expenses of the

1 association that the association will likely incur during the  
2 **CALCULATION** period. ~~for which the premium is applicable. The~~  
3 ~~premium~~ **CALCULATED AMOUNT** shall include an amount to cover incurred  
4 but not reported losses for the period and may be adjusted ~~for any~~  
5 **IF PREMIUMS PAID FOR OR ANY AMOUNT CALCULATED FOR A PREVIOUS PERIOD**  
6 **RESULTED IN AN** excess or deficient ~~premiums from previous periods.~~  
7 **DEFICIENCY**. Excesses or deficiencies from previous periods may be  
8 fully adjusted in a single period or may be adjusted over several  
9 periods in a manner provided for in the plan of operation. ~~Each~~  
10 ~~member shall be charged an~~ **THE ASSOCIATION SHALL THEN DIVIDE THE**  
11 **TOTAL** amount ~~equal to that member's~~ **BY THE** total written car years  
12 of insurance providing the security required by ~~section~~ **SECTIONS**  
13 3101(1) ~~or~~ **AND** 3103(1) ~~, or both,~~ written in this state during the  
14 **CALCULATED** period to which the ~~premium~~ **TOTAL AMOUNT** applies,  
15 ~~multiplied by~~ **TO DETERMINE** the **STATE** average premium per car. The  
16 average premium per car shall be the total premium calculated  
17 divided by the total written car years of insurance providing the  
18 security required by ~~section 3101(1) or 3103(1)~~ written in this  
19 state of all members during the period to which the premium  
20 applies. ~~A member shall be charged a~~ **THE ASSOCIATION SHALL ALSO**  
21 **CALCULATE A STATE AVERAGE** premium for a ~~historic vehicle that is~~  
22 ~~insured with the member of~~ **VEHICLES THAT IS** 20% of the **STATE**  
23 **AVERAGE** premium charged for a ~~car insured with the member.~~ **CARS**. As  
24 used in this subdivision:  
25 (i) "Car" includes a motorcycle but does not include a  
26 historic vehicle.  
27 (ii) "Historic vehicle" means a vehicle that is a registered

1 historic vehicle under section 803a or 803p of the Michigan vehicle  
 2 code, 1949 PA 300, MCL 257.803a and 257.803p.

3 ~~—— (e) Require and accept the payment of premiums from members of~~  
 4 ~~the association as provided for in the plan of operation. The~~  
 5 ~~association shall do either of the following:~~

6 ~~—— (i) Require payment of the premium in full within 45 days~~  
 7 ~~after the premium charge.~~

8 ~~—— (ii) Require payment of the premiums to be made periodically~~  
 9 ~~to cover the actual cash obligations of the association.~~

10 **(E) ANNUALLY, ADVISE THE SECRETARY OF STATE OF THE STATE**  
 11 **AVERAGE PREMIUM AND STATE AVERAGE PREMIUM FOR HISTORIC VEHICLES**  
 12 **CALCULATED UNDER SUBDIVISION (D) AND ACCEPT PAYMENT OF THE PREMIUMS**  
 13 **COLLECTED BY THE SECRETARY OF STATE.**

14 (f) Receive and distribute all ~~sums~~ **MONEY** required by the  
 15 operation of the association.

16 (g) Establish procedures for reviewing claims procedures and  
 17 practices of members of the association. If the claims procedures  
 18 or practices of a member are considered inadequate to properly  
 19 service the liabilities of the association, the association may  
 20 undertake or may contract with another person, including another  
 21 member, to adjust or assist in the adjustment of claims for the  
 22 member on claims that create a potential liability to the  
 23 association and may charge the cost of the adjustment to the  
 24 member.

25 (8) In addition to other powers granted to it by this section,  
 26 the association may do all of the following:

27 (a) Sue and be sued in the name of the association. A judgment

1 against the association shall not create any direct liability  
2 against the individual members of the association. The association  
3 may provide for the indemnification of its members, members of the  
4 board of directors of the association, and officers, employees, and  
5 other persons lawfully acting on behalf of the association.

6 (b) Reinsure all or any portion of its potential liability  
7 with reinsurers licensed to transact insurance in this state or  
8 approved by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT**.

9 (c) Provide for appropriate housing, equipment, and personnel  
10 as may be necessary to assure the efficient operation of the  
11 association.

12 (d) Pursuant to the plan of operation, adopt reasonable rules  
13 for the administration of the association, enforce those rules, and  
14 delegate authority, as the board considers necessary to assure the  
15 proper administration and operation of the association consistent  
16 with the plan of operation.

17 (e) Contract for goods and services, including independent  
18 claims management, actuarial, investment, and legal services, from  
19 others within or without this state to assure the efficient  
20 operation of the association.

21 (f) Hear and determine complaints of a company or other  
22 interested party concerning the operation of the association.

23 (g) Perform other acts not specifically enumerated in this  
24 section that are necessary or proper to accomplish the purposes of  
25 the association and that are not inconsistent with this section or  
26 the plan of operation.

27 (9) A board of directors is created ~~, hereinafter referred to~~

1 ~~as the board, which shall be responsible for the operation of~~ **AND**  
2 **SHALL OPERATE** the association consistent with the plan of operation  
3 and this section.

4 (10) The plan of operation shall provide for all of the  
5 following:

6 (a) The establishment of necessary facilities.

7 (b) The management and operation of the association.

8 (c) ~~Procedures to be utilized in charging premiums, including~~  
9 ~~adjustments from excess or deficient premiums from prior~~  
10 ~~periods.~~ **FOR MAKING THE CALCULATIONS UNDER SUBSECTION (7) (D) .**

11 (d) ~~Procedures governing the actual payment of~~ **FOR RECEIVING**  
12 ~~premiums to the association.~~ **FROM THE SECRETARY OF STATE.**

13 (e) Reimbursement of each member of the board by the  
14 association for actual and necessary expenses incurred on  
15 association business.

16 (f) The investment policy of the association.

17 (g) Any other matters required by or necessary to effectively  
18 implement this section.

19 (11) ~~Each~~ **THE** board shall include members that ~~would~~  
20 ~~contribute~~ **INSURE A NUMBER OF VEHICLES FOR WHICH** a total of not  
21 less than 40% of the total ~~premium~~ **AMOUNT** calculated ~~pursuant to~~  
22 **UNDER** subsection (7) (d) **WOULD BE PAID**. Each director ~~shall be~~ **IS**  
23 entitled to 1 vote. The initial term of office of a director ~~shall~~  
24 ~~be~~ **IS** 2 years.

25 (12) As part of the plan of operation, the board shall adopt  
26 rules providing for the composition and term of successor boards to  
27 the initial board, consistent with the membership composition

1 requirements in subsections (11) and (13). Terms of the directors  
2 shall be staggered so that the terms of all the directors do not  
3 expire at the same time and so that a director does not serve a  
4 term of more than 4 years.

5 (13) The board shall consist of 5 directors, and the  
6 ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** shall be an ex officio  
7 member of the board without vote.

8 (14) Each director shall be appointed by the ~~commissioner~~  
9 **DIRECTOR OF THE DEPARTMENT** and shall serve until that member's  
10 successor is selected and qualified. The chairperson of the board  
11 shall be elected by the board. A vacancy on the board shall be  
12 filled by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** consistent  
13 with the plan of operation.

14 (15) ~~After the board is appointed, the~~**THE** board shall meet as  
15 often as the chairperson, the ~~commissioner,~~**DIRECTOR OF THE**  
16 **DEPARTMENT**, or the plan of operation ~~shall require,~~**REQUIRES**, or at  
17 the request of any 3 members of the board. The chairperson ~~shall~~  
18 ~~retain the right to~~**MAY** vote on all issues. Four members of the  
19 board constitute a quorum.

20 (16) An annual report of the operations of the association in  
21 a form and detail as ~~may be~~ determined by the board shall be  
22 furnished to each member.

23 ~~—— (17) Not more than 60 days after the initial organizational~~  
24 ~~meeting of the board, the board shall submit to the commissioner~~  
25 ~~for approval a proposed plan of operation consistent with the~~  
26 ~~objectives and provisions of this section, which shall provide for~~  
27 ~~the economical, fair, and nondiscriminatory administration of the~~

1 ~~association and for the prompt and efficient provision of~~  
2 ~~indemnity. If a plan is not submitted within this 60 day period,~~  
3 ~~then the commissioner, after consultation with the board, shall~~  
4 ~~formulate and place into effect a plan consistent with this~~  
5 ~~section.~~

6 ~~—— (18) The plan of operation, unless approved sooner in writing,~~  
7 ~~shall be considered to meet the requirements of this section if it~~  
8 ~~is not disapproved by written order of the commissioner within 30~~  
9 ~~days after the date of its submission. Before disapproval of all or~~  
10 ~~any part of the proposed plan of operation, the commissioner shall~~  
11 ~~notify the board in what respect the plan of operation fails to~~  
12 ~~meet the requirements and objectives of this section. If the board~~  
13 ~~fails to submit a revised plan of operation that meets the~~  
14 ~~requirements and objectives of this section within the 30 day~~  
15 ~~period, the commissioner shall enter an order accordingly and shall~~  
16 ~~immediately formulate and place into effect a plan consistent with~~  
17 ~~the requirements and objectives of this section.~~

18 (17) ~~(19) The proposed plan of operation or ANY~~ amendments to  
19 the plan of operation **OF THE ASSOCIATION** are subject to majority  
20 approval by the board, ~~ratified~~ **AND RATIFICATION** by a majority of  
21 the membership having a vote, with voting rights being apportioned  
22 according to the ~~premiums charged in~~ **TOTAL WRITTEN CAR YEARS OF**  
23 **INSURANCE BY EACH MEMBER DETERMINED IN ACCORDANCE WITH** subsection  
24 (7) (d) and are subject to approval by the ~~commissioner.~~ **DIRECTOR OF**  
25 **THE DEPARTMENT.**

26 (18) ~~(20) Upon approval by the commissioner and ratification~~  
27 ~~by the members of the plan submitted, or upon the promulgation of a~~

1 ~~plan by the commissioner, each~~ **AN** insurer authorized to write  
 2 insurance providing the security required by section 3101(1) in  
 3 this state, as provided in this section, is bound by and shall  
 4 formally subscribe to and participate in the plan ~~approved~~ **OF**  
 5 **OPERATION** as a condition of maintaining its authority to transact  
 6 insurance in this state.

7 (19) ~~(21)~~ The association is subject to all the reporting,  
 8 loss reserve, and investment requirements of the ~~commissioner~~  
 9 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**  
 10 **THE MEMBERS** of the association.

11 (20) ~~(22)~~ Premiums charged **TO** members ~~by the association shall~~  
 12 ~~be recognized in the rate making procedures for insurance rates in~~  
 13 ~~the same manner that expenses and premium taxes are~~  
 14 ~~recognized.~~ **UNDER THIS SECTION AND DUE ON THE EFFECTIVE DATE OF THE**  
 15 **AMENDATORY ACT THAT REMOVED THE REQUIREMENT THAT MEMBERS PAY**  
 16 **PREMIUMS TO THE ASSOCIATION MUST BE PAID IMMEDIATELY.**

17 (21) ~~(23)~~ The ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT** or an  
 18 authorized representative of the ~~commissioner~~ **DIRECTOR OF THE**  
 19 **DEPARTMENT** may visit the association at any time and examine any  
 20 and all **OF** the association's affairs.

21 (22) ~~(24)~~ The association does not have liability for losses  
 22 occurring before July 1, 1978.

23 (23) ~~(25)~~ As used in this section:

24 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION  
 25 CREATED IN SUBSECTION (1).

26 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION  
 27 CREATED IN SUBSECTION (9).

1           (C) ~~(a)~~—"Consumer price index" means the percentage of change  
2 in the consumer price index for all urban consumers in the United  
3 States city average for all items for the 24 months ~~prior to~~**BEFORE**  
4 October 1 of the year ~~prior to~~**BEFORE** the July 1 effective date of  
5 the biennial adjustment under subsection (2)(k), as reported by the  
6 United States ~~department of labor, bureau of labor statistics,~~  
7 **DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS**, and as certified  
8 by the ~~commissioner~~**DIRECTOR OF THE DEPARTMENT**.

9           (D) ~~(b)~~—"Motor vehicle accident policy" means a policy  
10 providing the coverages required under section 3101(1).

11           (E) ~~(c)~~—"Ultimate loss" means the actual loss amounts that a  
12 member is obligated to pay and that are paid or payable by the  
13 member, and do not include claim expenses. An ultimate loss is  
14 incurred by the association on the date that the loss occurs.

15           Enacting section 1. This amendatory act takes effect 90 days  
16 after the date it is enacted into law.

17           Enacting section 2. This amendatory act does not take effect  
18 unless Senate Bill No. 413

19                           of the 98th Legislature is enacted into law.