

HOUSE BILL NO. 4080

January 24, 2019, Introduced by Reps. Webber, Crawford, Chirkun, Paquette, Griffin, Koleszar, Cynthia Johnson, Robinson and Yaroch 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)

1 ~~within-in~~ this state, as a condition of its authority to transact
 2 insurance in this state, shall be a member of the association and
 3 ~~shall be-is~~ bound by the plan of operation of the association. ~~Each~~
 4 **An** insurer engaged in writing insurance coverages that provide the
 5 security required by section 3103(1) ~~within-in~~ this state, as a
 6 condition of its authority to transact insurance in this state,
 7 ~~shall be-is~~ considered **to be** a member of the association, but only
 8 for purposes of premiums under subsection (7)(d). Except as
 9 expressly provided in this section, the association is not subject
 10 to any laws of this state with respect to insurers, but in all
 11 other respects the association is subject to the laws of this state
 12 to the extent that the association would be if it were an insurer
 13 organized and subsisting under chapter 50.

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

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

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

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

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

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

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

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

3 (h) For a motor vehicle accident policy issued or renewed
4 during the period July 1, 2008 to June 30, 2009, \$440,000.00.

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

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

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

11 **(l) For a motor vehicle accident policy issued or renewed**
12 **during the period July 1, 2013 to June 30, 2015, \$530,000.00.**

13 **(m) For a motor vehicle accident policy issued or renewed**
14 **during the period July 1, 2015 to June 30, 2017, \$545,000.00.**

15 **(n) For a motor vehicle accident policy issued or renewed**
16 **during the period July 1, 2017 to June 30, 2019, \$555,000.00.**

17 Beginning July 1, ~~2013, 2019~~, this ~~\$500,000.00~~ **\$555,000.00** amount
18 ~~shall must~~ be increased biennially on July 1 of each odd-numbered
19 year, for policies issued or renewed before July 1 of the following
20 odd-numbered year, by the lesser of 6% or the ~~consumer price index,~~
21 **Consumer Price Index**, and rounded to the nearest \$5,000.00. ~~This~~
22 **The association shall calculate this** biennial adjustment ~~shall be~~
23 ~~calculated by the association by~~ January 1 of the year of its July
24 1 effective date.

25 (3) An insurer may withdraw from the association only ~~upon on~~
26 ceasing to write insurance that provides the security required by
27 section 3101(1) in this state.

28 (4) An insurer whose membership in the association has been
29 terminated by withdrawal ~~shall continue~~ **continues** to be bound by

1 the plan of operation, and ~~upon~~**on** withdrawal, all unpaid premiums
2 that have been charged to the withdrawing member are payable as of
3 the effective date of the withdrawal.

4 (5) An unsatisfied net liability to the association of an
5 insolvent member ~~shall~~**must** be assumed by and apportioned among the
6 remaining members of the association as provided in the plan of
7 operation. The association has all rights allowed by law on behalf
8 of the remaining members against the estate or funds of the
9 insolvent member for ~~sums~~**money** due the association.

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

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

17 (a) Assume 100% of all liability as provided in subsection
18 (2).

19 (b) Establish procedures by which members ~~shall~~**must** promptly
20 report to the association each claim that, on the basis of the
21 injuries or damages sustained, may reasonably be anticipated to
22 involve the association if the member is ultimately held legally
23 liable for the injuries or damages. Solely for the purpose of
24 reporting claims, the member shall in all instances consider itself
25 legally liable for the injuries or damages. The member shall also
26 advise the association of subsequent developments likely to
27 materially affect the interest of the association in the claim.

28 (c) Maintain relevant loss and expense data relative to all
29 liabilities of the association and require each member to furnish

1 statistics, in connection with liabilities of the association, at
 2 the times and in the form and detail as ~~may be~~ required by the plan
 3 of operation.

4 (d) In a manner provided for in the plan of operation,
 5 calculate and charge to members of the association a total premium
 6 sufficient to cover the expected losses and expenses of the
 7 association that the association will likely incur during the
 8 period for which the premium is applicable. The premium ~~shall~~**must**
 9 include an amount to cover incurred but not reported losses for the
 10 period and may be adjusted for any excess or deficient premiums
 11 from previous periods. Excesses or deficiencies from previous
 12 periods may be fully adjusted in a single period or may be adjusted
 13 over several periods in a manner provided for in the plan of
 14 operation. Each member ~~shall~~**must** be charged an amount equal to
 15 that member's total written car years of insurance providing the
 16 security required by section 3101(1) or 3103(1), or both, written
 17 in this state during the period to which the premium applies,
 18 multiplied by the average premium per car. The average premium per
 19 car ~~shall be~~**is** the total premium calculated divided by the total
 20 written car years of insurance providing the security required by
 21 section 3101(1) or 3103(1) written in this state of all members
 22 during the period to which the premium applies. A member ~~shall~~**must**
 23 be charged a premium for a historic vehicle that is insured with
 24 the member of 20% of the premium charged for a car insured with the
 25 member. ~~As used in this subdivision:~~

26 ~~(i) "Car" includes a motorcycle but does not include a historic~~
 27 ~~vehicle.~~

28 ~~(ii) "Historic vehicle" means a vehicle that is a registered~~
 29 ~~historic vehicle under section 803a or 803p of the Michigan vehicle~~

1 ~~code, 1949 PA 300, MCL 257.803a and 257.803p.~~

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

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

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

9 (f) Receive and distribute all ~~sums~~**money** required by the
10 operation of the association.

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

20 (h) **Provide all information required, and as requested by the**
21 **director of the department, for purposes of the examination**
22 **required under subsection (23).**

23 (i) **Return any money to members of the association as ordered**
24 **by the director of the department under subsection (24).**

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
28 against the association ~~shall~~**does** not create any direct liability
29 against the individual members of the association. The association

1 may provide for the indemnification of its members, members of the
2 board of directors of the association, and officers, employees, and
3 other persons lawfully acting on behalf of the association.

4 (b) Reinsure all or any portion of its potential liability
5 with reinsurers licensed to transact insurance in this state or
6 approved by the ~~commissioner~~**director of the department**.

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

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

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

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

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

25 (9) A board of directors is created ~~, hereinafter referred to~~
26 ~~as the board, which shall be responsible for the operation of~~ **and**
27 **shall operate** the association consistent with the plan of operation
28 and this section.

29 (10) The plan of operation ~~shall~~**must** provide for all of the

1 following:

2 (a) The establishment of necessary facilities.

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

4 (c) Procedures to be utilized in charging premiums, including
5 adjustments from excess or deficient premiums from prior periods.

6 (d) Procedures governing the actual payment of premiums to the
7 association.

8 (e) Reimbursement of each member of the board by the
9 association for actual and necessary expenses incurred on
10 association business.

11 (f) The investment policy of the association.

12 **(g) Providing information to the department for purposes of**
13 **subsection (23) and returns and refunds of any surpluses as**
14 **required under subsections (24) and (25).**

15 **(h) ~~(g)~~** Any other matters required by or necessary to
16 effectively implement this section.

17 (11) ~~Each~~ **The** board ~~shall~~ **must** include members that would
18 contribute a total of not less than 40% of the total premium
19 calculated ~~pursuant to~~ **under** subsection (7) (d). Each director ~~shall~~
20 ~~be~~ **is** entitled to 1 vote. The initial term of office of a director
21 ~~shall be~~ **is** 2 years.

22 (12) As part of the plan of operation, the board shall adopt
23 rules providing for the composition ~~and term of successor boards to~~
24 the ~~initial~~ board **and the terms of board members**, consistent with
25 the membership composition requirements in subsections (11) and
26 (13). Terms of the directors ~~shall~~ **must** be staggered so that the
27 terms of all the directors do not expire at the same time and so
28 that a director does not serve a term of more than 4 years.

29 (13) The board ~~shall consist~~ **consists** of 5 directors ~~7~~ and the

1 ~~commissioner~~ **director of the department**, who shall ~~be~~ **serve as** an
 2 ex officio, **nonvoting** member of the board. ~~without vote.~~

3 (14) ~~Each director~~ **The director of the department** shall be
 4 appointed by ~~the commissioner and~~ **appoint the directors. A director**
 5 shall serve until ~~that member's~~ **his or her** successor is selected
 6 and qualified. The **board shall elect the** chairperson of the board.
 7 ~~shall be elected by the board. A~~ **The director of the department**
 8 **shall fill any** vacancy on the board ~~shall be filled by the~~
 9 ~~commissioner consistent with~~ **as provided in** the plan of operation.

10 (15) ~~After the board is appointed, the~~ **The** board shall meet as
 11 often as the chairperson, the ~~commissioner,~~ **director of the**
 12 **department**, or the plan of operation ~~shall require,~~ **requires**, or at
 13 the request of any 3 members of the board. The chairperson ~~shall~~
 14 ~~retain the right to~~ **may** vote on all issues. Four members of the
 15 board constitute a quorum.

16 (16) ~~An~~ **The board shall furnish to each member an** annual
 17 report of the operations of the association in a form and detail as
 18 ~~may be determined by the board. shall be furnished to each member.~~

19 (17) ~~Not more than 60 days after the initial organizational~~
 20 ~~meeting of the board, the board shall submit to the commissioner~~
 21 ~~for approval a proposed plan of operation consistent with the~~
 22 ~~objectives and provisions of this section, which shall provide for~~
 23 ~~the economical, fair, and nondiscriminatory administration of the~~
 24 ~~association and for the prompt and efficient provision of~~
 25 ~~indemnity. If a plan is not submitted within this 60-day period,~~
 26 ~~then the commissioner, after consultation with the board, shall~~
 27 ~~formulate and place into effect a plan consistent with this~~
 28 ~~section.~~

29 (18) ~~The plan of operation, unless approved sooner in writing,~~

1 ~~shall be considered to meet the requirements of this section if it~~
 2 ~~is not disapproved by written order of the commissioner within 30~~
 3 ~~days after the date of its submission. Before disapproval of all or~~
 4 ~~any part of the proposed plan of operation, the commissioner shall~~
 5 ~~notify the board in what respect the plan of operation fails to~~
 6 ~~meet the requirements and objectives of this section. If the board~~
 7 ~~fails to submit a revised plan of operation that meets the~~
 8 ~~requirements and objectives of this section within the 30-day~~
 9 ~~period, the commissioner shall enter an order accordingly and shall~~
 10 ~~immediately formulate and place into effect a plan consistent with~~
 11 ~~the requirements and objectives of this section.~~

12 (17) ~~(19) The proposed plan of operation or~~ **Any** amendments to
 13 the plan of operation **of the association** are subject to majority
 14 approval by the board, ~~ratified~~ **ratification** by a majority of the
 15 membership having a vote, with voting rights being apportioned
 16 according to the premiums charged in subsection (7) (d), and ~~are~~
 17 ~~subject to approval by the commissioner.~~ **director of the department.**

18 (18) ~~(20) Upon approval by the commissioner and ratification~~
 19 ~~by the members of the plan submitted, or upon the promulgation of a~~
 20 ~~plan by the commissioner, each~~ **An** insurer authorized to write
 21 insurance providing the security required by section 3101(1) in
 22 this state, as provided in this section, is bound by and shall
 23 formally subscribe to and participate in the plan ~~approved of~~
 24 **operation** as a condition of maintaining its authority to transact
 25 insurance in this state.

26 (19) ~~(21) The association is subject to all the reporting,~~
 27 ~~loss reserve, and investment requirements of the commissioner~~
 28 **director of the department** to the same extent as ~~would a member~~ **are**
 29 **the members** of the association.

1 (20) ~~(22)~~—Premiums charged members by the association ~~shall~~
2 **must** be recognized in the rate-making procedures for insurance
3 rates in the same manner that expenses and premium taxes are
4 recognized.

5 (21) ~~(23)~~—The ~~commissioner~~ **director of the department** or an
6 authorized representative of the ~~commissioner~~ **director of the**
7 **department** may visit the association at any time and examine any
8 and all **of** the association's affairs.

9 (22) ~~(24)~~—The association does not have liability for losses
10 occurring before July 1, 1978.

11 (23) **By July 1 of 2020 and every fifth year after 2020, the**
12 **department shall engage 1 or more independent actuaries to examine**
13 **the affairs and records of the association relating to the**
14 **association's actuarial assumptions, investment strategy, expenses,**
15 **and real liability during the preceding 5 years. The actuarial**
16 **examination must be conducted using sound actuarial principles**
17 **consistent with the applicable statements of principles and the**
18 **code of professional conduct adopted by the Casualty Actuarial**
19 **Society. By December 31 of 2020 and every fifth year after 2020, an**
20 **actuary conducting an examination under this subsection shall**
21 **report its findings to the director of the department, specifically**
22 **including a determination of whether the association is operating**
23 **with a surplus and the amount of the surplus.**

24 (24) **If an actuary determines under subsection (23) that the**
25 **association is operating with a surplus, the director of the**
26 **department shall order the association to return the amount of the**
27 **surplus to the members of the association, in proportion to the**
28 **premiums paid by each member under subsection (7) (d), to be**
29 **refunded under subsection (25).**

1 (25) Within 30 days after a member of the association receives
 2 a return of an amount under subsection (24), the member shall
 3 refund the full amount received to the persons insured by the
 4 member under policies that provide the security required under
 5 section 3101(1) or 3103(1), or both. The amount refunded must be
 6 calculated on an equal basis per car and per historic vehicle. A
 7 rebate attributable to a historic vehicle must be equal to 20% of
 8 the rebate for a car.

9 (26) ~~(25)~~ As used in this section:

10 (a) "Association" means the catastrophic claims association
 11 created in subsection (1).

12 (b) "Board" means the board of directors of the association
 13 created in subsection (9).

14 (c) "Car" includes a motorcycle but does not include a
 15 historic vehicle.

16 (d) ~~(a)~~ "Consumer ~~price index~~ **Price Index**" means the
 17 percentage of change in the ~~consumer price index~~ **Consumer Price**
 18 **Index** for all urban consumers in the United States city average for
 19 all items for the 24 months ~~prior to~~ **before** October 1 of the year
 20 ~~prior to~~ **before** the July 1 effective date of the biennial
 21 adjustment under subsection ~~(2)(k)~~ **(2)(n)** as reported by the United
 22 States ~~department~~ **Department** of labor, ~~bureau~~ **Labor, Bureau** of
 23 ~~labor statistics,~~ **Labor Statistics**, and as certified by the
 24 ~~commissioner.~~ **director of the department.**

25 (e) "Historic vehicle" means a vehicle that is a registered
 26 historic vehicle under section 803a or 803p of the Michigan vehicle
 27 code, 1949 PA 300, MCL 257.803a and 257.803p.

28 (f) ~~(b)~~ "Motor vehicle accident policy" means a policy
 29 providing the coverages required under section 3101(1).

1 (g) "Surplus" means any excesses from previous periods not
2 required to cover the expected losses, expenses, or other
3 liabilities of the association. Surplus does not include excesses
4 from previous periods adjusted under subsection (7) (d) over 5 or
5 more years in the manner provided in the plan of operation.

6 (h) ~~(e)~~—"Ultimate loss" means the actual loss amounts that a
7 member is obligated to pay and that are paid or payable by the
8 member, and do not include claim expenses. An ultimate loss is
9 incurred by the association on the date that the loss occurs.

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