

# HOUSE BILL No. 5103

October 12, 2017, Introduced by Reps. Marino, Canfield, Lasinski, Frederick, Chirkun, LaGrand, Moss, Brinks, Camilleri, Wittenberg, Chang, Ellison, Green, Sabo, Liberati, Webber, Sneller, Sowerby, Pagan, Howrylak, Faris, Love, Byrd, Yaroch, Hammoud, Scott, Geiss, Greimel, Hertel, Yanez, Jones, Zemke, Rabhi, Robinson and Gay-Dagnogo 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~~ **IN** this state, as a condition of its authority to transact  
7 insurance in this state, shall be a member of the association and

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

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

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

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

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

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

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

26 (f) For a motor vehicle accident policy issued or renewed  
27 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 and rounded to the nearest \$5,000.00. ~~This~~ **THE ASSOCIATION SHALL**  
22 **CALCULATE THE** biennial adjustment ~~shall be calculated by the~~  
23 ~~association~~ by January 1 of the year of its July 1 effective date.

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

27 (4) An insurer whose membership in the association has been

1 terminated by withdrawal ~~shall continue~~ **CONTINUES** to be bound by  
2 the plan of operation, and ~~upon~~ **ON** withdrawal, all unpaid premiums  
3 that have been charged to the withdrawing member are payable as of  
4 the effective date of the withdrawal.

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

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

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

18 (a) Assume 100% of all liability as provided in subsection  
19 (2).

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

1 materially affect the interest of the association in the claim.

2 (c) Maintain relevant loss and expense data relative to all  
3 liabilities of the association and require each member to furnish  
4 statistics, in connection with liabilities of the association, at  
5 the times and in the form and detail as ~~may be~~ required by the plan  
6 of operation.

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

1 member. As used in this subdivision:

2 (i) "Car" includes a motorcycle but does not include a  
3 historic vehicle.

4 (ii) "Historic vehicle" means a vehicle that is a registered  
5 historic vehicle under section 803a or 803p of the Michigan vehicle  
6 code, 1949 PA 300, MCL 257.803a and 257.803p.

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

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

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

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~~**DOES** 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 **SERVICES, SUBJECT TO SUBSECTION (23), AND**  
19 actuarial, investment, and legal services, from others ~~within~~**IN** or  
20 ~~without~~**OUTSIDE OF** this state to assure the efficient operation of  
21 the association.

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

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

1 (9) A board of directors is created ~~, hereinafter referred to~~  
2 ~~as the board, which shall be responsible for the operation of~~ **AND**  
3 **SHALL OPERATE** the association consistent with the plan of operation  
4 and this section.

5 (10) The plan of operation ~~shall~~ **MUST** provide for all of the  
6 following:

7 (a) The establishment of necessary facilities.

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

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

11 (d) Procedures governing the actual payment of premiums to the  
12 association.

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~~ **MUST** include members that would  
20 contribute a total of not less than 40% of the total premium  
21 calculated ~~pursuant to~~ **UNDER** subsection (7) (d). Each director ~~shall~~  
22 ~~be~~ **IS** entitled to 1 vote. The initial term of office of a director  
23 ~~shall be~~ **IS** 2 years.

24 (12) As part of the plan of operation, the board shall adopt  
25 rules providing for the composition ~~and term of successor boards to~~  
26 the ~~initial~~ board **AND THE TERMS OF BOARD MEMBERS**, consistent with  
27 the membership composition requirements in subsections (11) and



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

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

7 (14) ~~Each director~~**THE DIRECTOR OF THE DEPARTMENT** shall ~~be~~  
8 ~~appointed by the commissioner and~~**APPOINT THE DIRECTORS. A DIRECTOR**  
9 shall serve until ~~that member's~~**HIS OR HER** successor is selected  
10 and qualified. The **BOARD SHALL ELECT THE** chairperson of the board.  
11 ~~shall be elected by the board. A~~**THE DIRECTOR OF THE DEPARTMENT**  
12 **SHALL FILL ANY** vacancy on the board ~~shall be filled by the~~  
13 ~~commissioner consistent with~~**AS PROVIDED IN** 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~~**THE BOARD SHALL FURNISH TO EACH MEMBER AN** annual  
21 report of the operations of the association in a form and detail as  
22 ~~may be determined by the board. shall be 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~~ **RATIFICATION** by a majority of the~~  
 21 ~~membership having a vote, with voting rights being apportioned~~  
 22 ~~according to the premiums charged in subsection (7) (d), and ~~are~~~~  
 23 ~~subject to approval by the commissioner. **DIRECTOR OF THE DEPARTMENT.**~~

24 ~~(18) (20) Upon approval by the commissioner and ratification~~  
 25 ~~by the members of the plan submitted, or upon the promulgation of a~~  
 26 ~~plan by the commissioner, each **AN** insurer authorized to write~~  
 27 ~~insurance providing the security required by section 3101(1) in~~

1 this state, as provided in this section, is bound by and shall  
2 formally subscribe to and participate in the plan ~~approved~~ **OF**  
3 **OPERATION** as a condition of maintaining its authority to transact  
4 insurance in this state.

5 (19) ~~(21)~~ The association is subject to all the reporting,  
6 loss reserve, and investment requirements of the ~~commissioner~~  
7 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**  
8 **THE MEMBERS** of the association.

9 (20) ~~(22)~~ Premiums charged members by the association ~~shall~~  
10 **MUST** be recognized in the rate-making procedures for insurance  
11 rates in the same manner that expenses and premium taxes are  
12 recognized.

13 (21) ~~(23)~~ The ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT** or an  
14 authorized representative of the ~~commissioner~~ **DIRECTOR OF THE**  
15 **DEPARTMENT** may visit the association at any time and examine any  
16 and all **OF** the association's affairs.

17 (22) ~~(24)~~ The association does not have liability for losses  
18 occurring before July 1, 1978.

19 (23) **THE ASSOCIATION SHALL NOT, DIRECTLY OR INDIRECTLY,**  
20 **PARTICIPATE IN, INTERFERE WITH, OR OTHERWISE ATTEMPT TO INFLUENCE**  
21 **THE ADJUSTMENT OR SETTLEMENT OF ANY ASPECT OF A CLAIM FOR ALLOWABLE**  
22 **EXPENSE BENEFITS UNDER SECTION 3107(1) (A), UNLESS THE ASSOCIATION**  
23 **FIRST OBTAINS A COURT ORDER ALLOWING THE ASSOCIATION TO DO SO,**  
24 **BASED ON A FINDING BY THE COURT THAT THE MEMBER RESPONSIBLE FOR**  
25 **PAYING THE CLAIM IS HANDLING THE CLAIM IN A MANNER THAT IS CLEARLY**  
26 **IRRESPONSIBLE, INCOMPETENT, OR ILLEGAL. IF THERE IS NO SUCH ORDER,**  
27 **THE ASSOCIATION SHALL FULLY DISCHARGE ITS DUTY TO PROMPTLY AND**

1 COMPLETELY REIMBURSE THE MEMBER PAYING THE CLAIM AS REQUIRED BY  
2 THIS SECTION.

3 (24) A MEMBER SHALL NOT ADJUST OR DENY A CLAIM OR A PORTION OF  
4 A CLAIM BASED ON WHETHER OR TO WHAT EXTENT THE ASSOCIATION WILL  
5 REIMBURSE THE MEMBER. A VIOLATION OF THIS SUBSECTION IS AN  
6 UNREASONABLE REFUSAL TO PAY THE CLAIM UNDER SECTION 3148.

7 (25) As used in this section:

8 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION  
9 CREATED IN SUBSECTION (1).

10 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION  
11 CREATED IN SUBSECTION (9).

12 (C) ~~(a)~~-"Consumer price index" means the percentage of change  
13 in the consumer price index for all urban consumers in the United  
14 States city average for all items for the 24 months ~~prior to~~**BEFORE**  
15 October 1 of the year ~~prior to~~**BEFORE** the July 1 effective date of  
16 the biennial adjustment under subsection ~~(2) (k)~~**(2) (N)** as reported  
17 by the United States ~~department of labor, bureau of labor~~  
18 ~~statistics,~~**DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS,** and as  
19 certified by the ~~commissioner.~~**DIRECTOR OF THE DEPARTMENT.**

20 (D) ~~(b)~~-"Motor vehicle accident policy" means a policy  
21 providing the coverages required under section 3101(1).

22 (E) ~~(e)~~-"Ultimate loss" means the actual loss amounts that a  
23 member is obligated to pay and that are paid or payable by the  
24 member, and do not include claim expenses. An ultimate loss is  
25 incurred by the association on the date that the loss occurs.