

HOUSE BILL No. 5878

April 25, 2018, Introduced by Rep. Lucido 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
 8 ~~shall be~~ **IS** bound by the plan of operation of the association. ~~Each~~
 9 **AN** insurer engaged in writing insurance coverages that provide the
 10 security required by section 3103(1) ~~within~~ **IN** 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 **(l) FOR A MOTOR VEHICLE ACCIDENT POLICY ISSUED OR RENEWED**
9 **DURING THE PERIOD JULY 1, 2013 TO JUNE 30, 2015, \$530,000.00.**

10 **(M) FOR A MOTOR VEHICLE ACCIDENT POLICY ISSUED OR RENEWED**
11 **DURING THE PERIOD JULY 1, 2015 TO JUNE 30, 2017, \$545,000.00.**

12 **(N) FOR A MOTOR VEHICLE ACCIDENT POLICY ISSUED OR RENEWED**
13 **DURING THE PERIOD JULY 1, 2017 TO JUNE 30, 2019, \$555,000.00.**

14 Beginning July 1, ~~2013, 2019~~, this ~~\$500,000.00~~ **\$555,000.00** amount
15 ~~shall~~ **MUST** be increased biennially on July 1 of each odd-numbered
16 year, for policies issued or renewed before July 1 of the following
17 odd-numbered year, by the lesser of 6% or the consumer price index,
18 and rounded to the nearest \$5,000.00. ~~This~~ **THE ASSOCIATION SHALL**
19 **CALCULATE THIS** biennial adjustment ~~shall be calculated by the~~
20 ~~association~~ by January 1 of the year of its July 1 effective date.

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

24 (4) An insurer whose membership in the association has been
25 terminated by withdrawal ~~shall continue~~ **CONTINUES** to be bound by
26 the plan of operation, and ~~upon~~ **ON** withdrawal, all unpaid premiums
27 that have been charged to the withdrawing member are payable as of

1 the effective date of the withdrawal.

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

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

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

15 (a) Assume 100% of all liability as provided in subsection
16 (2).

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

26 (c) Maintain relevant loss and expense data relative to all
27 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
27 historic vehicle.

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

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

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

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

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

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

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

24 (a) Sue and be sued in the name of the association. A judgment
25 against the association ~~shall~~**DOES** not create any direct liability
26 against the individual members of the association. The association
27 may provide for the indemnification of its members, members of the

1 board of directors of the association, and officers, employees, and
2 other persons lawfully acting on behalf of the association.

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

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

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

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

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

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

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

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

3 (a) The establishment of necessary facilities.

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

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

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

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

12 (f) The investment policy of the association.

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

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

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

27 (13) The board ~~shall~~**MUST** consist 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~~

1 section.

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

14 (17) ~~(19) The proposed plan of operation or~~ **ANY** amendments to
15 the plan of operation **OF THE ASSOCIATION** are subject to majority
16 approval by the board, ~~ratified~~ **RATIFICATION** by a majority of the
17 membership having a vote, with voting rights being apportioned
18 according to the premiums charged in subsection (7) (d), and ~~are~~
19 ~~subject to approval by the commissioner.~~ **DIRECTOR OF THE DEPARTMENT.**

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

1 (19) ~~(21)~~—The association is subject to all the reporting,
2 loss reserve, and investment requirements of the ~~commissioner~~
3 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
4 **THE MEMBERS** of the association.

5 (20) ~~(22)~~—Premiums charged members by the association ~~shall~~
6 **MUST** be recognized in the rate-making procedures for insurance
7 rates in the same manner that expenses and premium taxes are
8 recognized.

9 (21) ~~(23)~~—The ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT** or an
10 authorized representative of the ~~commissioner~~ **DIRECTOR OF THE**
11 **DEPARTMENT** may visit the association at any time and examine any
12 and all **OF** the association's affairs.

13 (22) ~~(24)~~—The association does not have liability for losses
14 occurring before July 1, 1978.

15 (23) **ANNUALLY, WITHIN 15 DAYS AFTER THE ASSOCIATION CHARGES**
16 **MEMBERS THE TOTAL PREMIUM UNDER SUBSECTION (7) (D), THE ASSOCIATION**
17 **SHALL DISCLOSE TO THE PUBLIC ON ITS WEBSITE ALL DATA USED IN**
18 **COMPUTING THE PREMIUM AND EXPECTED LOSSES AND EXPENSES, INCLUDING**
19 **THE AMOUNT THAT COVERS INCURRED BUT NOT REPORTED LOSSES FOR THE**
20 **PERIOD AND ANY ADJUSTMENT FOR ANY EXCESS OR DEFICIENT PREMIUMS FROM**
21 **PREVIOUS PERIODS AND THE ACTUARIAL COMPUTATION USED IN MAKING THESE**
22 **DETERMINATIONS, INCLUDING ESTIMATES AND ASSUMPTIONS. THE DISCLOSURE**
23 **MUST INCLUDE, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:**

24 (A) **THE ACTUARIAL COMPUTATION USED IN MAKING DETERMINATIONS OF**
25 **UNPAID LOSSES AND LOSS ADJUSTMENT EXPENSES.**

26 (B) **ALL DOCUMENTS USED IN ESTABLISHING THE FOLLOWING:**

27 (i) **THE CALCULATION OF THE PRESENT VALUE OF DISBURSEMENTS**

1 EXPECTED TO BE MADE IN THE ULTIMATE SETTLEMENT OF THE CLAIMS
2 REPORTED.

3 (ii) THE ACTUARIAL TABLES USED TO REFLECT THE PROBABILITIES OF
4 EACH CLAIMANT SURVIVING TO INCUR THE COSTS PROJECTED.

5 (iii) THE CALCULATION OF INCURRED BUT NOT REPORTED LOSSES.

6 (iv) THE ACTUARIAL ASSUMPTIONS AND CALCULATIONS USED IN
7 PRODUCING THE SHORT-TERM DISCOUNT RATE AND THE LONG-TERM DISCOUNT
8 RATE.

9 (v) THE FORECASTS PRODUCING THE ECONOMIC ASSUMPTIONS FOR CLAIM
10 COST INFLATION AND INVESTMENT RETURNS USED.

11 (vi) THE CURRENT ECONOMIC DATA AND HISTORICAL LONG-TERM
12 CONSUMER PRICE INDEX DATA FOR ANY COST COMPONENT CATEGORIES USED IN
13 PRODUCING INFLATION ASSUMPTIONS.

14 (vii) THE LOSS DEVELOPMENT ANALYSIS UNDERTAKEN IN CONNECTION
15 WITH THE PROVISION FOR UNPAID LOSSES AND LOSS ADJUSTMENT EXPENSES.

16 (viii) THE TREND ANALYSIS FOR BOTH FREQUENCY AND SEVERITY
17 UNDERTAKEN IN CONNECTION WITH THE PROVISION FOR UNPAID LOSSES AND
18 LOSS ADJUSTMENT EXPENSES.

19 (C) THE ANNUAL ACTUARIAL EVALUATION USED IN ESTABLISHING THE
20 PREMIUM.

21 (D) THE ANNUAL ASSESSMENT REPORTS OF MEMBERS USED IN
22 ESTABLISHING THE PREMIUM.

23 (E) THE ANNUITY MODEL USED BY THE OPINING ACTUARY IN HIS OR
24 HER ACTUARIAL OPINION PROJECTING FUTURE PAYMENT STREAMS AT THE
25 CLAIMANT LEVEL AND THE MORTALITY ADJUSTMENT APPLIED.

26 (F) ANY EXPLANATORY MEMORANDUM EXPLAINING THE VARIOUS
27 COMPONENTS OF THE PREMIUM AND THE JUDGMENTS MADE TO PRODUCE THE

1 **PREMIUM.**

2 (24) ~~(25)~~—As used in this section:

3 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION
4 CREATED IN SUBSECTION (1).

5 (B) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE ASSOCIATION
6 CREATED IN SUBSECTION (9).

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

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

17 (E) ~~(e)~~—"Ultimate loss" means the actual loss amounts that a
18 member is obligated to pay and that are paid or payable by the
19 member, and do not include claim expenses. An ultimate loss is
20 incurred by the association on the date that the loss occurs.

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