

# HOUSE BILL No. 4449

April 13, 1999, Introduced by Rep. Jelinek and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending section 3104 (MCL 500.3104), as amended by 1980 PA  
445.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3104. (1) An unincorporated, nonprofit association to  
2 be known as the catastrophic claims association, hereinafter  
3 referred to as the association, is created. Each insurer engaged  
4 in writing insurance coverages ~~which~~ THAT provide the security  
5 required by section 3101(1) within this state, as a condition of  
6 its authority to transact insurance in this state, shall be a  
7 member of the association and shall be bound by the plan of oper-  
8 ation of the association. Each insurer engaged in writing  
9 insurance coverages ~~which~~ THAT provide the security required by  
10 section 3103(1) within this state, as a condition of its

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

9 (2) The association shall provide and each member shall  
10 accept indemnification for 100% of the amount of ultimate loss  
11 sustained under personal protection insurance coverages in excess  
12 of \$250,000.00 in each loss occurrence. As used in this section,  
13 "ultimate loss" means the actual loss amounts ~~which~~ THAT a  
14 member is obligated to pay and ~~which~~ THAT are paid or payable  
15 by the member, and shall not include claim expenses. An ultimate  
16 loss is incurred by the association on the date ~~which~~ THAT the  
17 loss occurs.

18 (3) An insurer may withdraw from the association only upon  
19 ceasing to write insurance ~~which~~ THAT provides the security  
20 required by section 3101(1) in this state.

21 (4) An insurer whose membership in the association has been  
22 terminated by withdrawal shall continue to be bound by the plan  
23 of operation, and upon withdrawal, all unpaid premiums ~~which~~  
24 THAT have been charged to the withdrawing member shall be payable  
25 as of the effective date of the withdrawal.

26 (5) An unsatisfied net liability to the association of an  
27 insolvent member shall be assumed by and apportioned among the

1 remaining members of the association as provided in the plan of  
2 operation. The association shall have all rights allowed by law  
3 on behalf of the remaining members against the estate or funds of  
4 the insolvent member for sums due the association.

5 (6) ~~When~~ IF a member has been merged or consolidated into  
6 another insurer or another insurer has reinsured a member's  
7 entire business ~~which~~ THAT provides the security required by  
8 section 3101(1) in this state, the member and successors in  
9 interest of the member shall remain liable for the member's  
10 obligations.

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

13 (a) Assume 100% of all liability as provided in subsection  
14 (2).

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

25 (c) Maintain relevant loss and expense data relative to all  
26 liabilities of the association and require each member to furnish  
27 statistics, in connection with liabilities of the association, at

1 the times and in the form and detail as may be required by the  
2 plan of operation.

3 (d) In a manner provided for in the plan of operation, cal-  
4 culate and charge to members of the association a total premium  
5 sufficient to cover the expected losses and expenses of the asso-  
6 ciation ~~which~~ THAT the association will likely incur during the  
7 period for which the premium is applicable. The premium shall  
8 include an amount to cover incurred but not reported losses for  
9 the period and may be adjusted for any excess or deficient premi-  
10 ums from previous periods. Excesses or deficiencies from previ-  
11 ous periods may be fully adjusted in a single period or may be  
12 adjusted over several periods in a manner provided for in the  
13 plan of operation. Each member shall be charged an amount equal  
14 to that member's total earned car years of insurance providing  
15 the security required by section 3101(1) or 3103(1), or both,  
16 written in this state during the period to which the premium  
17 applies, multiplied by the average premium per car. The average  
18 premium per car shall be the total premium calculated divided by  
19 the total earned car years of insurance providing the security  
20 required by section 3101(1) or 3103(1) written in this state of  
21 all members during the period to which the premium applies. A  
22 MEMBER SHALL NOT BE CHARGED A PREMIUM FOR A HISTORIC VEHICLE THAT  
23 IS INSURED WITH THE MEMBER. As used in this subdivision:

24 ~~,"car"~~

25 (i) "CAR" includes a motorcycle BUT DOES NOT INCLUDE A HIS-  
26 TORIC VEHICLE.

1           (ii) "HISTORIC VEHICLE" MEANS A VEHICLE THAT IS A REGISTERED  
2 HISTORIC VEHICLE UNDER SECTION 803A OF THE MICHIGAN VEHICLE CODE,  
3 1949 PA 300, MCL 257.803A.

4           (e) Require and accept the payment of premiums from members  
5 of 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 required by the opera-  
12 tion of the association.

13           (g) Establish procedures for reviewing claims procedures and  
14 practices of members of the association. If the claims proce-  
15 dures or practices of a member are considered inadequate to prop-  
16 erly service the liabilities of the association, the association  
17 may undertake or may contract with another person, including  
18 another member, to adjust or assist in the adjustment of claims  
19 for the member on claims ~~which~~ THAT create a potential liabil-  
20 ity to the association and may charge the cost of the adjustment  
21 to the member.

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

24           (a) Sue and be sued in the name of the association. A judg-  
25 ment against the association shall not create any direct liabil-  
26 ity against the individual members of the association. The  
27 association may provide for the indemnification of its members,

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

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

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

15 (e) Contract for goods and services, including independent  
16 claims management, actuarial, investment, and legal services,  
17 from others within or without this state to assure the efficient  
18 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 ~~which~~ THAT are necessary or proper to accomplish the  
23 purposes of the association and ~~which~~ THAT are not inconsistent  
24 with this section or 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 the

1 association consistent with the plan of operation and this  
2 section.

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

5 (a) The establishment of necessary facilities.

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

7 (c) A preliminary premium, payable by each member in propor-  
8 tion to its total first-year premium, for initial expenses neces-  
9 sary to commence operation of the association.

10 (d) Procedures to be utilized in charging premiums, includ-  
11 ing adjustments from excess or deficient premiums from prior  
12 periods.

13 (e) Procedures governing the actual payment of premiums to  
14 the association.

15 (f) Reimbursement of each member of the board by the associ-  
16 ation for actual and necessary expenses incurred on association  
17 business.

18 (g) The investment policy of the association.

19 (h) Any other matters required by or necessary to effec-  
20 tively implement this section.

21 ~~(11) Not more than 30 days after the effective date of this~~  
22 ~~section, the commissioner shall convene an organizational meeting~~  
23 ~~of the board. The board shall be initially composed of 5 members~~  
24 ~~of the association appointed by the commissioner to serve as~~  
25 ~~directors, and the commissioner or a designated representative of~~  
26 ~~the commissioner serving as an ex officio member of the board~~  
27 ~~without vote. The initial board and each successor~~ THE board

1 shall include members ~~which~~ THAT would contribute a total of  
2 not less than 40% of the total premium calculated pursuant to  
3 subsection (7)(d). Each director shall be entitled to 1 vote.  
4 The initial term of office of a director shall be 2 years.

5 (12) As part of the plan of operation, the board shall adopt  
6 rules providing for the composition and term of successor boards  
7 to the initial board, consistent with the membership composition  
8 requirements in subsections (11) and (13). Terms of the direc-  
9 tors shall be staggered so that the terms of all the directors do  
10 not expire at the same time and so that a director does not serve  
11 a term of more than 4 years.

12 (13) The board shall consist of 5 directors and the commis-  
13 sioner shall be an ex officio member of the board without vote.

14 (14) Each director shall be appointed by the commissioner  
15 and shall serve until that member's successor is selected and  
16 qualified. The chairperson of the board shall be elected by the  
17 board. A vacancy on the board shall be filled by the commis-  
18 sioner consistent with the plan of operation.

19 (15) After the board is appointed, the board shall meet as  
20 often as the chairperson, the commissioner, or the plan of opera-  
21 tion shall require, or at the request of any 3 members of the  
22 board. The chairperson shall retain the right to vote on all  
23 issues. Four members of the board shall constitute a quorum.

24 (16) An annual report of the operations of the association  
25 in a form and detail as may be determined by the board shall be  
26 furnished to each member.



1 (17) Not more than 60 days after the initial organizational  
2 meeting of the board, the board shall submit to the commissioner  
3 for approval a proposed plan of operation consistent with the  
4 objectives and provisions of this section, which shall provide  
5 for the economical, fair, and nondiscriminatory administration of  
6 the association and for the prompt and efficient provision of  
7 indemnity. If a plan is not submitted within this 60-day period,  
8 then the commissioner, after consultation with the board, shall  
9 formulate and place into effect a plan consistent with this  
10 section.

11 (18) The plan of operation, unless approved sooner in writ-  
12 ing, shall be considered to meet the requirements of this section  
13 if it is not disapproved by written order of the commissioner  
14 within 30 days after the date of its submission. Before disap-  
15 proval of all or any part of the proposed plan of operation, the  
16 commissioner shall notify the board in what respect the plan of  
17 operation fails to meet the requirements and objectives of this  
18 section. If the board fails to submit a revised plan of opera-  
19 tion ~~which~~ THAT meets the requirements and objectives of this  
20 section within the 30-day period, the commissioner shall enter an  
21 order accordingly and shall immediately formulate and place into  
22 effect a plan consistent with the requirements and objectives of  
23 this section.

24 (19) The proposed plan of operation or amendments to the  
25 plan of operation shall be subject to majority approval by the  
26 board, ratified by a majority of the membership having a vote,  
27 with voting rights being apportioned according to the premiums

1 charged in subsection (7)(d) and shall be subject to approval by  
2 the commissioner.

3 (20) Upon approval by the commissioner and ratification by  
4 the members of the plan submitted, or upon the promulgation of a  
5 plan by the commissioner, each insurer authorized to write insur-  
6 ance providing the security required by section 3101(1) in this  
7 state, as defined in this section, shall be bound by and shall  
8 formally subscribe to and participate in the plan approved as a  
9 condition of maintaining its authority to transact insurance in  
10 this state.

11 (21) The association shall be subject to all the reporting,  
12 loss reserve, and investment requirements of the commissioner to  
13 the same extent as would a member of the association.

14 (22) Premiums charged members by the association shall be  
15 recognized in the rate-making procedures for insurance rates in  
16 the same manner that expenses and premium taxes are recognized.

17 (23) The commissioner or an authorized representative of the  
18 commissioner may visit the association at any time and examine  
19 any and all the association's affairs.

20 (24) ~~This section shall take effect on July 1, 1978.~~ The  
21 association shall not have liability for losses occurring before  
22 ~~the effective date of this section~~ JULY 1, 1978.