

HOUSE BILL No. 4560

May 7, 2015, Introduced by Reps. Lucido, Derek Miller and Dianda and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 134 and 3104 (MCL 500.134 and 500.3104), section 134 as amended by 1990 PA 256 and section 3104 as amended by 2002 PA 662.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 134. (1) Every certificate of authority or license in
2 force immediately ~~prior to~~ **BEFORE** January 1, 1957 and existing
3 under any act repealed by this act is valid until its original
4 expiration date, unless earlier terminated in accordance with this
5 act.

6 (2) Any plan of operation adopted by an association or
7 facility, and any premium or assessment levied against an insurer
8 member of that association or facility, is hereby validated
9 retroactively to the date of its original adoption or levy and

1 ~~shall continue~~**CONTINUES** in force and effect according to the terms
2 of the plan of operation, premium, or assessment until otherwise
3 changed by the ~~commissioner~~**DIRECTOR** or the board of directors of
4 the association or facility pursuant to this act.

5 (3) An association or facility or the board of directors of
6 the association or facility is not a state agency and, **EXCEPT AS**
7 **PROVIDED IN SECTION 3104**, the money of an association or facility
8 is not state money.

9 (4) A record of an association or facility ~~shall be exempted~~
10 **IS EXEMPT** from disclosure pursuant to ~~UNDER~~ section 13 of the
11 freedom of information act, ~~Act No. 442 of the Public Acts of 1976,~~
12 ~~being section 15.243 of the Michigan Compiled Laws 1976 PA 442, MCL~~
13 **15.243**.

14 (5) Any premium or assessment levied by an association or
15 facility, or any premium or assessment of a similar association or
16 facility formed under a law in force outside this state, is not a
17 burden or special burden for purposes of a calculation under
18 section 476a, and any premium or assessment paid to an association
19 or facility shall not be included in determining the aggregate
20 amount a foreign insurer pays ~~to the commissioner~~ under section
21 476a.

22 (6) As used in this section, "association or facility" means
23 an association of insurers created under this act and any other
24 association or facility formed under this act as a nonprofit
25 organization of insurer members, including, but not limited to, the
26 following:

27 (a) The Michigan worker's compensation placement facility

1 created under chapter 23.

2 (b) The Michigan basic property insurance association created
3 under ~~section~~**CHAPTER** 29.

4 (c) The catastrophic claims association created under chapter
5 31.

6 (d) The Michigan automobile insurance placement facility
7 created under chapter 33.

8 (e) The Michigan life and health insurance guaranty
9 association created under chapter 77.

10 (f) The property and casualty guaranty association created
11 under chapter 79.

12 (g) The assigned claims facility created under section 3171.

13 Sec. 3104. (1) ~~An~~**THE CATASTROPHIC CLAIMS ASSOCIATION IS**
14 **CREATED AS AN** unincorporated, nonprofit association. ~~to be known as~~
15 ~~the catastrophic claims association, hereinafter referred to as the~~
16 ~~association, is created.~~ Each insurer engaged in writing insurance
17 coverages that provide the security required by section 3101(1)
18 ~~within~~**IN** this state, as a condition of its authority to transact
19 insurance in this state, shall be a member of the association and
20 ~~shall be~~**IS** bound by the plan of operation of the association. ~~Each~~
21 **AN** insurer engaged in writing insurance coverages that provide the
22 security required by section 3103(1) ~~within~~**IN** this state, as a
23 condition of its authority to transact insurance in this state,
24 ~~shall be~~**IS** considered **TO BE** a member of the association, but only
25 for purposes of premiums under subsection (7)(d). Except as
26 expressly provided in this section, the association is not subject
27 to any laws of this state with respect to insurers, but in all

1 other respects the association is subject to the laws of this state
2 to the extent that the association would be if it were an insurer
3 organized and subsisting under chapter 50. **MONEY RECEIVED AND HELD**
4 **BY THE ASSOCIATION, HAVING BEEN PAID INDIRECTLY BY THE CITIZENS OF**
5 **THIS STATE, IS MONEY OF THIS STATE.**

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

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

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

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

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

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

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

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

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

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

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

3 (k) For a motor vehicle accident policy issued or renewed
4 during the period July 1, 2011 to June 30, 2013, \$500,000.00.
5 Beginning July 1, 2013, this \$500,000.00 amount ~~shall~~**MUST** be
6 increased biennially on July 1 of each odd-numbered year, for
7 policies issued or renewed before July 1 of the following odd-
8 numbered year, by the lesser of 6% or the consumer price index, and
9 rounded to the nearest \$5,000.00. ~~This~~**THE ASSOCIATION SHALL**
10 **CALCULATE THE** biennial adjustment ~~shall be calculated by the~~
11 ~~association~~ by January 1 of the year of its July 1 effective date.

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

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

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

26 (6) If a member has been merged or consolidated into another
27 insurer or another insurer has reinsured a member's entire business

1 that provides the security required by section 3101(1) in this
2 state, the member and successors in interest of the member remain
3 liable for the member's obligations.

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

6 (a) Assume 100% of all liability as provided in subsection
7 (2).

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

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

22 (d) In a manner provided for in the plan of operation,
23 calculate and charge to members of the association a total premium
24 sufficient to cover the expected losses and expenses of the
25 association that the association will likely incur during the
26 period for which the premium is applicable. The premium ~~shall~~ **MUST**
27 include an amount to cover incurred but not reported losses for the

1 period and may be adjusted for any excess or deficient premiums
2 from previous periods. Excesses or deficiencies from previous
3 periods may be fully adjusted in a single period or may be adjusted
4 over several periods in a manner provided for in the plan of
5 operation. Each member ~~shall~~**MUST** be charged an amount equal to
6 that member's total written car years of insurance providing the
7 security required by section 3101(1) or 3103(1), or both, written
8 in this state during the period to which the premium applies,
9 multiplied by the average premium per car. The average premium per
10 car ~~shall be~~**IS** the total premium calculated divided by the total
11 written car years of insurance providing the security required by
12 section 3101(1) or 3103(1) written in this state of all members
13 during the period to which the premium applies. A member ~~shall~~**MUST**
14 be charged a premium for a historic vehicle that is insured with
15 the member of 20% of the premium charged for a car insured with the
16 member. As used in this subdivision:

17 (i) "Car" includes a motorcycle but does not include a
18 historic vehicle.

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

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

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

27 (ii) Require payment of the premiums to be made periodically

1 to cover the actual cash obligations of the association.

2 (f) Receive and distribute all ~~sums~~-**MONEY** required by the
3 operation of the association.

4 (g) Establish procedures for reviewing claims procedures and
5 practices of members of the association. If the claims procedures
6 or practices of a member are considered inadequate to properly
7 service the liabilities of the association, the association may
8 undertake or may contract with another person, including another
9 member, to adjust or assist in the adjustment of claims for the
10 member on claims that create a potential liability to the
11 association and may charge the cost of the adjustment to the
12 member.

13 **(H) DISBURSE MONEY HELD BY THE ASSOCIATION AS PROVIDED IN**
14 **SUBSECTION (23) AND REIMBURSE THE ASSOCIATION FOR THE MONEY**
15 **DISBURSED AS PROVIDED IN SUBSECTION (24).**

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

18 (a) Sue and be sued in the name of the association. A judgment
19 against the association ~~shall~~-**DOES** not create any direct liability
20 against the individual members of the association. The association
21 may provide for the indemnification of its members, members of the
22 board of directors of the association, and officers, employees, and
23 other persons lawfully acting on behalf of the association.

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

27 (c) Provide for appropriate housing, equipment, and personnel

1 as ~~may be necessary~~ to assure the efficient operation of the
2 association.

3 (d) Pursuant to the plan of operation, adopt reasonable rules
4 for the administration of the association, enforce those rules, and
5 delegate authority, as the board considers necessary to assure the
6 proper administration and operation of the association consistent
7 with the plan of operation.

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

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

14 (g) Perform other acts not specifically enumerated in this
15 section that are necessary or proper to accomplish the purposes of
16 the association and that are not inconsistent with this section or
17 the plan of operation.

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

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

24 (a) The establishment of necessary facilities.

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

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

1 (d) Procedures governing the actual payment of premiums to the
2 association.

3 (e) Reimbursement of each member of the board by the
4 association for actual and necessary expenses incurred on
5 association business.

6 (f) The investment policy of the association.

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

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

14 (12) As part of the plan of operation, the board shall adopt
15 rules providing for the composition and term of successor boards to
16 the initial board, consistent with the membership composition
17 requirements in subsections (11) and (13). Terms of the directors
18 ~~shall~~ **MUST** be staggered so that the terms of all the directors do
19 not expire at the same time and so that a director does not serve a
20 term of more than 4 years.

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

24 (14) ~~Each director shall be appointed by the commissioner and~~
25 **THE DIRECTOR OF THE DEPARTMENT SHALL APPOINT THE DIRECTORS. A**
26 **DIRECTOR** shall serve until ~~that member's~~ **HIS OR HER** successor is
27 selected and qualified. The ~~chairperson of the board shall be~~

1 ~~elect~~ by the board. ~~A~~ **ELECT A CHAIRPERSON. THE DIRECTOR OF THE**
2 **DEPARTMENT SHALL FILL ANY** vacancy on the board ~~shall be filled by~~
3 ~~the commissioner consistent with~~ **AS PROVIDED IN** the plan of
4 operation.

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

11 (16) An annual report of the operations of the association in
12 a form and detail as ~~may be determined by the board shall~~ **MUST** be
13 furnished to each member.

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

24 ~~—— (18) The plan of operation, unless approved sooner in writing,~~
25 ~~shall be considered to meet the requirements of this section if it~~
26 ~~is not disapproved by written order of the commissioner within 30~~
27 ~~days after the date of its submission. Before disapproval of all or~~

1 ~~any part of the proposed plan of operation, the commissioner shall~~
 2 ~~notify the board in what respect the plan of operation fails to~~
 3 ~~meet the requirements and objectives of this section. If the board~~
 4 ~~fails to submit a revised plan of operation that meets the~~
 5 ~~requirements and objectives of this section within the 30-day~~
 6 ~~period, the commissioner shall enter an order accordingly and shall~~
 7 ~~immediately formulate and place into effect a plan consistent with~~
 8 ~~the requirements and objectives of this section.~~

9 (17) ~~(19) The proposed plan of operation or ANY~~ amendments to
 10 the plan of operation **OF THE ASSOCIATION** are subject to majority
 11 approval by the board, ~~ratified~~ **RATIFICATION** by a majority of the
 12 membership having a vote, with voting rights being apportioned
 13 according to the premiums charged in subsection (7)(d), and ~~are~~
 14 ~~subject to approval by the commissioner.~~ **DIRECTOR OF THE DEPARTMENT.**

15 (18) ~~(20) Upon approval by the commissioner and ratification~~
 16 ~~by the members of the plan submitted, or upon the promulgation of a~~
 17 ~~plan by the commissioner, each AN~~ insurer authorized to write
 18 insurance providing the security required by section 3101(1) in
 19 this state, as provided in this section, is bound by and shall
 20 formally subscribe to and participate in the plan ~~approved~~ **OF**
 21 **OPERATION** as a condition of maintaining its authority to transact
 22 insurance in this state.

23 (19) ~~(21) The association is subject to all the reporting,~~
 24 ~~loss reserve, and investment requirements of the commissioner~~
 25 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
 26 **THE MEMBERS** of the association.

27 (20) ~~(22) Premiums charged members by the association shall~~

1 **MUST** be recognized in the rate-making procedures for insurance
2 rates in the same manner that expenses and premium taxes are
3 recognized.

4 (21) ~~(23)~~—The ~~commissioner~~**DIRECTOR OF THE DEPARTMENT** or an
5 authorized representative of the ~~commissioner~~**DIRECTOR OF THE**
6 **DEPARTMENT** may visit the association at any time and examine any
7 and all **OF** the association's affairs.

8 (22) ~~(24)~~—The association does not have liability for losses
9 occurring before July 1, 1978.

10 (23) **FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2015, THERE IS**
11 **APPROPRIATED FROM MONEY HELD BY THE ASSOCIATION \$1,000,000,000.00**
12 **TO BE DEPOSITED IN THE MICHIGAN TRANSPORTATION FUND CREATED UNDER**
13 **SECTION 10 OF 1951 PA 51, MCL 247.660, TO BE USED FOR PURPOSES FOR**
14 **WHICH MONEY IN THAT FUND MAY BE USED UNDER 1951 PA 51, MCL 247.651**
15 **TO 247.675. THE ASSOCIATION SHALL DISBURSE THE MONEY AS REQUIRED BY**
16 **THIS SUBSECTION.**

17 (24) **THE ASSOCIATION SHALL REIMBURSE THE MONEY APPROPRIATED**
18 **UNDER SUBSECTION (23) FROM INTEREST OR OTHER INCOME EARNED BY MONEY**
19 **REMAINING IN THE ASSOCIATION AFTER THE DISBURSEMENT UNDER**
20 **SUBSECTION (23) AND FUTURE ASSESSMENTS PAID TO THE ASSOCIATION**
21 **UNDER THIS SECTION.**

22 (25) As used in this section:

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

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

27 (C) ~~(a)~~—"Consumer price index" means the percentage of change

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

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

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