

SENATE BILL No. 865

March 24, 2016, Introduced by Senator BIEDA 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 January 1, 1957 and existing under any
3 act repealed by this act is valid until its original expiration
4 date, unless earlier terminated in accordance with this act.

5 (2) Any plan of operation adopted by an association or
6 facility, and any premium or assessment levied against an insurer
7 member of that association or facility, is ~~hereby validated~~ **VALID**
8 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 the money of
7 an association or facility is not state money.

8 (4) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 3104, A** record
9 of an association or facility ~~shall be exempted~~ **IS EXEMPT** from
10 disclosure ~~pursuant to~~ **UNDER** section 13 of the freedom of
11 information act, ~~Act No. 442 of the Public Acts of 1976, being~~
12 ~~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~~ **DIRECTOR** under
21 section 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 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 insurer engaged in writing insurance coverages that provide the
22 security required by section 3103(1) within this state, as a
23 condition of its authority to transact insurance in this state,
24 ~~shall be~~**IS** considered a member of the association, but only for
25 purposes of premiums under subsection (7)(d). Except as expressly
26 provided in this section, the association is not subject to any
27 laws of this state with respect to insurers, but in all other

1 respects the association is subject to the laws of this state to
2 the extent that the association would be if it were an insurer
3 organized and subsisting under chapter 50.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (6) If a member has been merged or consolidated into another
25 insurer or another insurer has reinsured a member's entire business
26 that provides the security required by section 3101(1) in this
27 state, the member and successors in interest of the member remain

1 liable for the member's obligations.

2 (7) The association shall do all of the following on behalf of
3 the members of the association:

4 (a) Assume 100% of all liability as provided in subsection
5 (2).

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

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

20 (d) In a manner provided for in the plan of operation, **AND**
21 **SUBJECT TO THE DIRECTOR OF THE DEPARTMENT'S APPROVAL**, calculate and
22 charge to members of the association a total premium sufficient to
23 cover the expected losses and expenses of the association that the
24 association will likely incur during the period for which the
25 premium is applicable. **THE DIRECTOR OF THE DEPARTMENT MAY**
26 **DISAPPROVE ANY TOTAL PREMIUM AMOUNT THAT THE DIRECTOR OF THE**
27 **DEPARTMENT CONSIDERS TO BE EXCESSIVE.** The premium ~~shall~~**MUST**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (10) The plan of operation shall provide for all of the
21 following:

22 (a) The establishment of necessary facilities.

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

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

26 (d) Procedures governing the actual payment of premiums to the
27 association.

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

4 (f) The investment policy of the association.

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

7 (11) ~~Each~~ **THE** board ~~shall~~ **MUST** include members that would
 8 contribute a total of not less than 40% of the total premium
 9 calculated pursuant to subsection (7) (d) **AND 1 MEMBER REPRESENTING**
 10 **THE GENERAL PUBLIC, APPOINTED AS PROVIDED IN SUBSECTION (13)**. Each
 11 director ~~shall be~~ **IS** entitled to 1 vote. The initial term of office
 12 of a director ~~shall be~~ **IS** 2 years.

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

20 (13) The board ~~shall~~ **MUST** consist of ~~5-6~~ directors, ~~and the~~
 21 ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT, WHO** shall ~~be an ex-officio~~
 22 **ACT AS A VOTING** member of the board. ~~without vote.~~

23 (14) ~~Each director~~ **THE DIRECTOR OF THE DEPARTMENT** shall ~~be~~
 24 ~~appointed by the commissioner and~~ **APPOINT THE DIRECTORS. THE**
 25 **DIRECTOR OF THE DEPARTMENT SHALL APPOINT THE FIRST PUBLIC MEMBER TO**
 26 **THE BOARD WITHIN 3 MONTHS AFTER THE EFFECTIVE DATE OF THE**
 27 **AMENDATORY ACT THAT ADDED THIS SENTENCE. A DIRECTOR** shall serve

1 until ~~that member's~~ **HIS OR HER** successor is selected and qualified.
2 The **BOARD SHALL ELECT THE** chairperson of the board. ~~shall be~~
3 ~~elected by the board. A~~ **THE DIRECTOR OF THE DEPARTMENT SHALL FILL**
4 **ANY** vacancy on the board ~~shall be filled by the commissioner~~
5 consistent with the plan of operation.

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

12 (16) ~~An~~ **THE BOARD SHALL FURNISH TO EACH MEMBER AN** annual
13 report of the operations of the association in a form and detail as
14 ~~may be determined by the board. shall be furnished to each member.~~

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

25 ~~—— (18) The plan of operation, unless approved sooner in writing,~~
26 ~~shall be considered to meet the requirements of this section if it~~
27 ~~is not disapproved by written order of the commissioner within 30~~

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

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

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

24 (19) ~~(21) The association is subject to all the reporting,~~
 25 ~~loss reserve, and investment requirements of the commissioner~~
 26 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
 27 **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) **THE BOARD SHALL CONDUCT ITS BUSINESS AT A PUBLIC MEETING**
12 **OF THE BOARD HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA**
13 **267, MCL 15.261 TO 15.275.**

14 (24) **A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR**
15 **RETAINED BY THE BOARD IN THE PERFORMANCE OF AN OFFICIAL FUNCTION IS**
16 **SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA**
17 **442, MCL 15.231 TO 15.246, AS IF THE BOARD WERE A PUBLIC BODY**
18 **SUBJECT TO THAT ACT.**

19 (25) **AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT APPOINTED BY**
20 **THE DIRECTOR OF THE DEPARTMENT SHALL ANNUALLY CONDUCT AND DELIVER**
21 **TO THE DIRECTOR OF THE DEPARTMENT AND THE SENATE AND HOUSE OF**
22 **REPRESENTATIVES STANDING COMMITTEES ON INSURANCE ISSUES AN AUDIT OF**
23 **THE ASSOCIATION. IN CONDUCTING THE AUDIT, THE APPOINTED CERTIFIED**
24 **PUBLIC ACCOUNTANT MUST BE GIVEN ACCESS TO ALL RECORDS OF THE**
25 **ASSOCIATION. EACH AUDIT REQUIRED BY THIS SUBSECTION MUST INCLUDE A**
26 **DETERMINATION OF WHETHER THE ASSOCIATION IS LIKELY TO BE ABLE TO**
27 **CONTINUE TO MEET ITS OBLIGATIONS.**

1 (26) ~~(25)~~ As used in this section:

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

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

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

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

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

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. 864

21 of the 98th Legislature is enacted into law.