February 19, 2019, Introduced by Reps. Schroeder, Marino, Mueller, Webber, Crawford, Iden and Yaroch and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956,"
by amending the title and sections 134, 3301, 3330, and 4501 (MCL 500.134, 500.3301, 500.3330, and 500.4501), the title as amended by 2002 PA 304, section 134 as amended by 1990 PA 256, section 3330 as amended by 2012 PA 204, and section 4501 as amended by 2012 PA 39, and by adding chapter 63.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
TITLE

2 An act to revise, consolidate, and classify the laws relating
to the insurance and surety business; to regulate the incorporation
or formation of domestic insurance and surety companies and
associations and the admission of foreign and alien companies and
associations; to provide their rights, powers, and immunities and
to prescribe the conditions on which companies and associations
organized, existing, or authorized under this act may exercise
their powers; to provide the rights, powers, and immunities and to
prescribe the conditions on which other persons, firms,
corporations, associations, risk retention groups, and purchasing
groups engaged in an insurance or surety business may exercise
their powers; to provide for the imposition of a privilege fee on
domestic insurance companies and associations; and the state
accident fund; to provide for the imposition of a tax on the
business of foreign and alien companies and associations; to
provide for the imposition of a tax on risk retention groups and
purchasing groups; to provide for the imposition of a tax on the
business of surplus line agents; to provide for the imposition of
regulatory fees on certain insurers; to provide for assessment fees
on certain health maintenance organizations; to modify tort
liability arising out of certain accidents; to provide for limited
actions with respect to that modified tort liability and to
prescribe certain procedures for maintaining those actions; to
require security for losses arising out of certain accidents; to
provide for the continued availability and affordability of
automobile insurance and homeowners insurance in this state and to
facilitate the purchase of that insurance by all residents of this
state at fair and reasonable rates; to provide for certain
reporting with respect to insurance and with respect to certain
claims against uninsured or self-insured persons; to prescribe
duties for certain state departments and officers with respect to
that reporting; to provide for certain assessments; to establish
and continue certain state insurance funds; to modify and clarify
the status, rights, powers, duties, and operations of the nonprofit
malpractice insurance fund; to provide for the departmental
supervision and regulation of the insurance and surety business
within this state; to provide for regulation of worker's
compensation self-insurers; to provide for the conservation,
rehabilitation, or liquidation of unsound or insolvent insurers; to
provide for the protection of policyholders, claimants, and
creditors of unsound or insolvent insurers; to provide for
associations of insurers to protect policyholders and claimants in
the event of insurer insolvencies; to prescribe educational
requirements for insurance agents and solicitors; to provide for
the regulation of multiple employer welfare arrangements; to create
an automobile theft prevention authority or more authorities to
reduce insurance fraud and the number of automobile thefts in this
state; and to prescribe the powers and duties of the automobile
theft prevention authority or authorities; to provide certain for the
powers and duties of certain officials, departments, and
authorities of this state; to provide for an appropriation; to
repeal acts and parts of acts; and to provide penalties for the
violation of this act.

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

(2) Any plan of operation adopted by an association or
facility, and any premium or assessment levied against an insurer member of that association or facility, is hereby validated retroactively to the date of its original adoption or levy and shall continue in force and effect according to the terms of the plan of operation, premium, or assessment until otherwise changed by the commissioner or the board of directors of the association or facility pursuant to this act.

(3) An association or facility or the board of directors of the association or facility is not a state agency and the money of an association or facility is not state money.

(4) Except as otherwise provided in section 6302, a record of an association or facility shall be exempt from disclosure pursuant to section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws. 1976 PA 442, MCL 15.243.

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

(6) As used in this section, "association or facility" means an association of insurers created under this act and any other association or facility formed under this act as a nonprofit organization of insurer members, including, but not limited to, the following:
(a) The Michigan worker's compensation placement facility created under chapter 23.

(b) The Michigan basic property insurance association created under section chapter 29.

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

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

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

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

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

Sec. 3301. (1) Every insurer authorized to write automobile insurance in this state shall participate in an organization for the purpose of doing all of the following:

(a) Providing the guarantee that automobile insurance coverage will be available to any person who is unable to procure that insurance through ordinary methods.

(b) Preserving to the public the benefits of price competition by encouraging maximum use of the normal private insurance system.

(c) Providing funding for the Michigan automobile insurance fraud authority.

(2) The organization created under this chapter shall be called the "Michigan automobile insurance placement facility".

Sec. 3330. (1) The board of governors has the power to direct the operation of the facility, including, at a minimum, the power to do all of the following:

(a) To sue and be sued in the name of the facility. A judgment
against the facility shall not create any liabilities in the
individual participating members of the facility.

(b) To delegate ministerial duties, to hire a manager, to hire
legal counsel, and to contract for goods and services from others.

(c) To assess participating members on the basis of
participation ratios pursuant to section 3303 to cover anticipated
costs of operation and administration of the facility, to provide
for equitable servicing fees, and to share losses, profits, and
expenses pursuant to the plan of operation.

(d) To impose limitations on cancellation or nonrenewal by
participating members of facility-placed business, in addition to
the limitations imposed by chapters 21 and 32.

(e) To provide for a limited number of participating members
to receive equitable distribution of applicants; or to provide for
a limited number of participating members to service applicants in
a plan of sharing of losses in accordance with section 3320(1)(c)
and the plan of operation.

(f) To provide for standards of performance of service for the
participating members designated under subdivision (e).

(g) To adopt a plan of operation and any amendments to the
plan, consistent with this chapter, necessary to assure the fair,
reasonable, equitable, and nondiscriminatory manner of
administering the facility, including compliance with chapter 21,
and to provide for any other matters necessary or advisable to
implement this chapter, including matters necessary to comply with
the requirements of chapter 21.

(h) To assess self-insurers and insurers consistent with
chapter 31 and the assigned claims plan approved under section
3171.
Until December 31, 2024, to collect from participating members and self-insurers money paid at the discretion of the members and self-insurers to cover anticipated costs of operation and administration of the Michigan automobile insurance fraud authority. A member or self-insurer that pays money for the costs and administration of the Michigan automobile insurance fraud authority shall not pay the money from premium revenue, but shall pay the money from other earnings or investments. Notwithstanding any other provision of this act to the contrary, an insurer, the director or department, or any other person shall not include or consider the payment of money as described in this subsection with respect to establishing a rate.

(2) The board of governors shall institute or cause to be instituted by the facility or on its behalf an automatic data processing system for recording and compiling data relative to individuals insured through the facility. An automatic data processing system established under this subsection shall, to the greatest extent possible, be made compatible with the automatic data processing system maintained by the secretary of state, to provide for the identification and review of individuals insured through the facility.

(3) Before March 1, 2020, the board of governors shall amend the plan of operation to establish appropriate procedures necessary to collect money and carry out the administrative duties and functions of the Michigan automobile insurance fraud authority.

Sec. 4501. As used in this chapter:

(a) "Authorized agency" means the department of state police; a city, village, or township police department; a county sheriff's department; a United States criminal investigative department or
agency; the prosecuting authority of a city, village, township, county, or state or of the United States; the office of financial and insurance regulation; the Michigan automobile insurance fraud authority; or the department of state.

(b) "Financial loss" includes, but is not limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs, investigative costs, and claims payments.

(c) "Insurance policy" or "policy" means an insurance policy, benefit contract of a self-funded plan, health maintenance organization contract, nonprofit dental care corporation certificate, or health care corporation certificate.

(d) "Insurer" means a property-casualty insurer, life insurer, third party administrator, self-funded plan, health insurer, health maintenance organization, nonprofit dental care corporation, health care corporation, reinsurer, or any other entity regulated by the insurance laws of this state and providing any form of insurance.

(e) "Michigan automobile insurance fraud authority" means the Michigan automobile insurance fraud authority created under section 6302.

(f) "Organization" means an organization or internal department of an insurer established to detect and prevent insurance fraud.

(g) "Person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, and any other legal entity.

(h) "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law, any other licensee of the this state, or an
unlicensed health care provider whose services are compensated,
directly or indirectly, by insurance proceeds, or a licensee
similarly licensed in other states and nations, or the practitioner
of any nonmedical treatment rendered in accordance with a
recognized religious method of healing.

(i) (h) "Runner", "capper", or "steerer" means a person who
receives a pecuniary or other benefit from a practitioner, whether
directly or indirectly, for procuring or attempting to procure a
client, patient, or customer at the direction or request of, or in
cooperation with, a practitioner whose intent is to obtain benefits
under a contract of insurance or to assert a claim against an
insured or an insurer for providing services to the client,
patient, or customer. Runner, capper, or steerer does not include a
practitioner who procures clients, patients, or customers through
the use of public media.

(j) (i) "Statement" includes, but is not limited to, any
notice statement, proof of loss, bill of lading, receipt for
payment, invoice, account, estimate of property damages, bill for
services, claim form, diagnosis, prescription, hospital or doctor
record, X-rays, test result, or other evidence of loss, injury, or
expense.

CHAPTER 63

MICHIGAN AUTOMOBILE INSURANCE FRAUD AUTHORITY

Sec. 6301. As used in this chapter:

(a) "Authority" means the Michigan automobile insurance fraud
authority created in section 6302.

(b) "Automobile insurance fraud" means a fraudulent insurance
act as described in section 4503 that is committed in connection
with automobile insurance, including an application for automobile
insurance.

(c) "Board" means the board of directors of the authority.

(d) "Car years" means net direct private passenger and commercial nonfleet vehicle years of insurance providing the security required by section 3101(1) written in this state for the second previous calendar year as reported to the statistical agent of each insurer.

(e) "Facility" means the Michigan automobile insurance placement facility created under chapter 33.

Sec. 6302. (1) The Michigan automobile insurance fraud authority is created within the facility. The facility shall provide staff for the authority and shall carry out the administrative duties and functions as directed by the board.

(2) The authority is not a state agency, and the money of the authority is not state money. However, the authority shall comply with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, as if the authority were a public body. A record or portion of a record, material, data, or other information received, prepared, used, or retained by the authority in connection with the investment of assets or of an insurer that relates to financial or proprietary information and is considered by the person or insurer providing the authority with the record, material, data, or information as confidential and acknowledged by the authority as confidential is not subject to disclosure by the authority. As used in this subsection:

(a) "Financial or proprietary information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause the person providing the information to the authority significant competitive
harm. Financial or proprietary information includes, but is not limited to, financial performance data and projections, financial statements, and product and market data.

(b) "Public body" means that term as defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232.

(3) The authority shall do all of the following:

(a) Provide financial support to state or local law enforcement agencies for programs designed to reduce the incidence of automobile insurance fraud.

(b) Provide financial support to state or local prosecutorial agencies for programs designed to reduce the incidence of automobile insurance fraud.

(c) Provide financial support to an independent entity, formed by the director, to investigate the claims practices of insurance companies and to evaluate if those claims practices create unnecessary disputes, treat patients or medical providers unfairly, increase litigation, or cause unnecessary delays in the payment of claims.

(4) The authority may provide financial support to law enforcement, prosecutorial, insurance, education, or training associations for programs designed to reduce the incidence of automobile insurance fraud.

(5) The purposes, powers, and duties of the authority are vested in and shall be exercised by a board of directors. The board of directors consists of 25 members as follows:

(a) Eight members who represent automobile insurers in this state, including the following:

(i) At least 2 members who represent insurer groups with 350,000 or more car years.
(ii) At least 2 members who represent insurer groups with fewer than 350,000 but 100,000 or more car years.

(iii) At least 1 member who represents insurer groups with fewer than 100,000 car years.

(b) The director or his or her designee.

(c) The attorney general or his or her designee.

(d) The director of the department of state police or his or her designee.

(e) Two members who represent other law enforcement agencies in this state.

(f) One member who represents prosecuting attorneys in this state.

(g) Two members who represent the general public.

(h) Three members who represent consumer rights and patient advocacy groups.

(i) One member of the medical community who cares primarily for patients with acute medical needs.

(j) Three members of the medical community who care primarily for patients with subacute medical needs.

(k) Two licensed attorneys knowledgeable about chapter 31.

(6) The members of the board representing insurers shall be elected by authorized insurers that provide automobile insurance in this state from a list of nominees proposed by the board of governors of the facility. In preparing the list of nominees for the members, the board of governors of the facility shall solicit nominations from authorized insurers that provide automobile insurance in this state.

(7) The governor shall appoint the members of the board representing law enforcement agencies other than the department of
state police. In appointing the members, the governor shall solicit
input from various law enforcement associations in this state.

(8) The governor shall appoint the member of the board
representing prosecuting attorneys. In appointing the member, the
governor shall solicit input from the Prosecuting Attorneys
Association of Michigan.

(9) The governor shall appoint the members of the board
representing the general public. The governor shall appoint
individuals who are residents of this state and not employed by or
under contract with a state or local unit of government or an
insurer.

(10) The governor shall appoint the 4 medical community
members of the board. In appointing these members, the governor
shall solicit input from the medical community in this state. The
governor shall appoint individuals who are residents of this state
and are not employed by or under contract with a state or local
unit of government or an insurer.

(11) The governor shall appoint the 3 consumer rights and
patient advocacy members of the board. In appointing these members,
the governor shall solicit input from consumer rights and patient
advocacy groups in this state. The governor shall appoint
individuals who are residents of this state and are not employed by
or under contract with a state or local unit of government or an
insurer.

(12) The State Bar of Michigan shall elect the 2 attorney
members of the board.

(13) Except as otherwise provided in this subsection, a member
of the board shall serve for a term of 4 years or until his or her
successor is elected, designated, or appointed, whichever occurs
later. Of the members first elected or appointed under this section, 2 members representing insurers, 1 member representing law enforcement agencies, and 1 member who represents the general public shall serve for a term of 2 years, 3 members representing insurers, the member representing prosecuting attorneys, 1 member who represents the general public, 2 members who represent consumer rights and patient advocacy groups, 2 members of the medical community, and 1 of the attorneys elected by the State Bar of Michigan shall serve for a term of 3 years, and 3 members representing insurers, 1 member representing law enforcement agencies, 1 member who represents consumer rights and patient advocacy groups, 2 members of the medical community, and 1 of the attorneys elected by the State Bar of Michigan shall serve for a term of 4 years.

(14) The board is dissolved on January 1, 2025.

Sec. 6303. (1) A member of the board shall serve without compensation, except that the board shall reimburse a member in a reasonable amount for necessary travel and expenses.

(2) A majority of the members of the board constitute a quorum for the transaction of business at a meeting or the exercise of a power or function of the authority, notwithstanding the existence of 1 or more vacancies. Notwithstanding any other provision of law to the contrary, action may be taken by the authority at a meeting on a vote of the majority of its members present in person or through the use of amplified telephonic equipment, if authorized by the bylaws or plan of operation of the board. The authority shall meet at the call of the chair or as may be provided in the bylaws of the authority. Meetings of the authority may be held anywhere in this state.
(3) The board shall adopt a plan of operation by a majority vote of the board. Vacancies on the board shall be filled in accordance with the plan of operation.

(4) The board shall conduct its business at meetings that are held in this state, open to the public, and held in a place that is available to the general public. However, the board may establish reasonable rules to minimize disruption of a meeting of the board. At least 10 days but not more than 60 days before a meeting, the board shall provide public notice of the meeting at the board's principal office and on a publicly accessible internet website. The board shall include in the public notice of its meeting the address where minutes of the board may be inspected by the public. The board may meet in a closed session for any of the following purposes:

(a) To consider the hiring, dismissal, suspension, disciplining, or evaluation of officers or employees of the authority.

(b) To consult with its attorney.

(c) To comply with state or federal law, rules, or regulations regarding privacy or confidentiality.

(5) The board shall display information concerning the authority's operations and activities, including, but not limited to, the annual financial report required under section 6310, on a publicly accessible internet website.

(6) The board shall keep minutes of each board meeting. The board shall make the minutes open to public inspection and available at the address designated on the public notice of its meetings. The board shall make copies of the minutes available to the public at the reasonable estimated cost for printing and
copying. The board shall include all of the following in the minutes:

(a) The date, time, and place of the meeting.
(b) The names of board members who are present and board members who are absent.
(c) Board decisions made during any portion of the meeting that was open to the public.
(d) All roll call votes taken at the meeting.

Sec. 6304. On January 1, 2025, the authority is dissolved.

Sec. 6305. The board has the powers necessary to carry out its duties under this act, including, but not limited to, the power to do the following:

(a) Sue and be sued in the name of the authority.
(b) Solicit and accept gifts, grants, loans, and other aid from any person, the federal government, this state, a local unit of government, or an agency of the federal government, this state, or a local unit of government.
(c) Make grants and investments.
(d) Procure insurance against any loss in connection with its property, assets, or activities.
(e) Invest at its discretion any money held in reserve or sinking funds or any money not required for immediate use or disbursement and to select and use depositories for its money.
(f) Contract for goods and services and engage personnel as necessary.
(g) Indemnify and procure insurance indemnifying any member of the board for personal loss or accountability resulting from the member's action or inaction as a member of the board.
(h) Perform other acts not specifically enumerated in this
section that are necessary or proper to accomplish the purposes of
the authority and that are not inconsistent with this section or
the plan of operation.

Sec. 6307. (1) An insurer or self-insurer engaged in writing
insurance coverages that provide the security required by section
3101(1) in this state may pay to the facility, for deposit into the
account of the authority, money to be used by the authority to
carry out its duties under this chapter.

(2) The facility shall segregate all money received under
subsection (1), and all other money received by the authority for
the purpose, from other money of the facility, if applicable. The
facility shall only expend the money received under subsection (1)
as directed by the board.

Sec. 6308. (1) An insurer authorized to transact automobile
insurance in this state, as a condition of its authority to
transact insurance in this state, shall report automobile insurance
fraud data and claims practices information to the authority using
the format and procedures adopted by the board.

(2) The department of state police shall cooperate with the
authority and shall provide available motor vehicle fraud and theft
statistics to the authority on request.

(3) The board shall develop performance metrics that are
consistent, controllable, measurable, and attainable. The board
shall use the metrics each year to evaluate new applications
submitted for funding consideration and to renew funding for
existing programs.

Sec. 6310. (1) Beginning January 1 of the year after the
effective date of the amendatory act that added this section, the
authority shall prepare and publish an annual financial report, and
beginning July 1 of the year after the effective date of the amendatory act that added this section, the authority shall prepare and publish an annual report to the legislature on the authority's efforts to prevent automobile insurance fraud, unfair claims practices of insurance companies, and cost savings that have resulted from those efforts.

(2) The annual report to the legislature required by this section must detail the automobile insurance fraud and unfair claims practices of insurance companies occurring in this state for the previous year, assess the impact of the fraud and unfair claims practices of insurance companies on rates charged for automobile insurance, summarize prevention programs, and outline allocations made by the authority. The members of the board, insurers, and the director shall cooperate in developing the report as requested by the authority and shall make available to the authority records and statistics concerning automobile insurance fraud and unfair claims practices of insurance companies, including the number of instances of suspected and confirmed insurance fraud, number of prosecutions and convictions involving automobile insurance fraud, automobile insurance fraud recidivism, unfair settlement practices and claims practices, including the claims practices of the catastrophic claims association under section 3104, reimbursement rate practices, timeliness of claims practices, and the use of independent medical examiners and special investigation units. The authority shall evaluate the impact automobile insurance fraud has on the citizens of this state and the costs incurred by the citizens through insurance, police enforcement, prosecution, and incarceration because of automobile insurance fraud. The authority shall evaluate the impact unfair claims practices by insurers have
on the citizens of this state and shall determine the costs incurred by the citizens through unnecessary litigation and bad-faith practices that delay, withhold, or deny policyholder benefits that are based on legitimate claims, including special investigation units that report suspected fraud and abuse cases that are not based on independent, appropriate, and good-faith investigation. The authority shall also report on all of the following:

(a) Processing, submission, and billing practices, and shall recommend appropriate standardization practices.

(b) The costs of unnecessary litigation and bad-faith practices that delay, withhold, or deny policyholder benefits, and shall recommend any changes to existing laws to reduce these costs.

(3) The authority shall submit the annual report to the legislature required by this section to the senate and house of representatives standing committees with primary jurisdiction over insurance issues and the director.

Enacting section 1. This amendatory act takes effect January 1, 2020.