

# HOUSE BILL NO. 4210

February 19, 2019, Introduced by Reps. Yaroch, Maddock, Webber and Chirkun 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- 3 under any act repealed by this act is valid until its original



1 expiration date, unless earlier terminated in accordance with this  
2 act.

3 (2) Any plan of operation adopted by an association or  
4 facility, and any premium or assessment levied against an insurer  
5 member of that association or facility, is ~~hereby validated~~ **valid**  
6 retroactively to the date of its original adoption or levy and  
7 ~~shall continue~~ **continues** in force and effect according to the terms  
8 of the plan of operation, premium, or assessment until otherwise  
9 changed by the ~~commissioner~~ **director** or the board of directors of  
10 the association or facility pursuant to this act.

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

14 (4) ~~A~~ **Except as otherwise provided in section 3104, a** record  
15 of an association or facility ~~shall be exempted~~ **is exempt** from  
16 disclosure ~~pursuant to~~ **under** section 13 of the freedom of  
17 information act, ~~Act No. 442 of the Public Acts of 1976, being~~  
18 ~~section 15.243 of the Michigan Compiled Laws~~ **1976 PA 442, MCL**  
19 **15.243.**

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

28 (6) As used in this section, "association or facility" means  
29 an association of insurers created under this act and any other



1 association or facility formed under this act as a nonprofit  
 2 organization of insurer members, including, but not limited to, the  
 3 following:

4 (a) The Michigan worker's compensation placement facility  
 5 created under chapter 23.

6 (b) The Michigan basic property insurance association created  
 7 under ~~section~~**chapter** 29.

8 (c) The catastrophic claims association created under chapter  
 9 31.

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

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

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

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

17 Sec. 3104. (1) ~~An~~**The catastrophic claims association is**  
 18 **created as an** unincorporated, nonprofit association. ~~to be known as~~  
 19 ~~the catastrophic claims association, hereinafter referred to as the~~  
 20 ~~association, is created.~~ Each insurer engaged in writing insurance  
 21 coverages that provide the security required by section 3101(1)  
 22 ~~within~~**in** this state, as a condition of its authority to transact  
 23 insurance in this state, shall be a member of the association and  
 24 ~~shall be~~**is** bound by the plan of operation of the association. ~~Each~~  
 25 **An** insurer engaged in writing insurance coverages that provide the  
 26 security required by section 3103(1) ~~within~~**in** this state, as a  
 27 condition of its authority to transact insurance in this state,  
 28 ~~shall be~~**is** considered **to be** a member of the association, but only  
 29 for purposes of premiums under subsection (7) (d). Except as



1 expressly provided in this section, the association is not subject  
2 to any laws of this state with respect to insurers, but in all  
3 other respects the association is subject to the laws of this state  
4 to the extent that the association would be if it were an insurer  
5 organized and subsisting under chapter 50.

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.

28 (j) For a motor vehicle accident policy issued or renewed  
29 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 (l) For a motor vehicle accident policy issued or renewed  
4 during the period July 1, 2013 to June 30, 2015, \$530,000.00.

5 (m) For a motor vehicle accident policy issued or renewed  
6 during the period July 1, 2015 to June 30, 2017, \$545,000.00.

7 (n) For a motor vehicle accident policy issued or renewed  
8 during the period July 1, 2017 to June 30, 2019, \$555,000.00.  
9 Beginning July 1, 2013, ~~2019~~, this ~~\$500,000.00~~ **\$555,000.00** amount  
10 ~~shall must~~ be increased biennially on July 1 of each odd-numbered  
11 year, for policies issued or renewed before July 1 of the following  
12 odd-numbered year, by the lesser of 6% or the ~~consumer price index,~~  
13 **Consumer Price Index**, and rounded to the nearest \$5,000.00. ~~This~~  
14 **The association shall calculate the** biennial adjustment ~~shall be~~  
15 ~~calculated by the association by~~ January 1 of the year of its July  
16 1 effective date.

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

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

25 (5) An unsatisfied net liability to the association of an  
26 insolvent member ~~shall must~~ be assumed by and apportioned among the  
27 remaining members of the association as provided in the plan of  
28 operation. The association has all rights allowed by law on behalf  
29 of the remaining members against the estate or funds of the



1 insolvent member for ~~sums~~**money** due the association.

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

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

9 (a) Assume 100% of all liability as provided in subsection  
10 (2).

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

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

25 (d) In a manner provided for in the plan of operation,  
26 calculate and charge to members of the association a total premium  
27 sufficient to cover the expected losses and expenses of the  
28 association that the association will likely incur during the  
29 period for which the premium is applicable. 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.

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



1 (f) Receive and distribute all ~~sums~~**money** required by the  
2 operation of the association.

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

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

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

20 (b) Reinsure all or any portion of its potential liability  
21 with reinsurers licensed to transact insurance in this state or  
22 approved by the ~~commissioner~~**director of the department**.

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

26 (d) Pursuant to the plan of operation, adopt reasonable rules  
27 for the administration of the association, enforce those rules, and  
28 delegate authority, as the board considers necessary to assure the  
29 proper administration and operation of the association consistent





1 with the plan of operation.

2 (e) Contract for goods and services, including independent  
3 claims management, actuarial, investment, and legal services, from  
4 others ~~within in~~ or ~~without outside of~~ this state to assure the  
5 efficient operation of the association.

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

8 (g) Perform other acts not specifically enumerated in this  
9 section that are necessary or proper to accomplish the purposes of  
10 the association and that are not inconsistent with this section or  
11 the plan of operation.

12 (9) A board of directors is created ~~, hereinafter referred to~~  
13 ~~as the board, which shall be responsible for the operation of and~~  
14 **shall operate** the association consistent with the plan of operation  
15 and this section.

16 (10) The plan of operation ~~shall~~**must** provide for all of the  
17 following:

18 (a) The establishment of necessary facilities.

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

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

22 (d) Procedures governing the actual payment of premiums to the  
23 association.

24 (e) Reimbursement of each member of the board by the  
25 association for actual and necessary expenses incurred on  
26 association business.

27 (f) The investment policy of the association.

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



1           (11) ~~Each~~**The** board ~~shall~~**must** include members that would  
 2 contribute a total of not less than 40% of the total premium  
 3 calculated ~~pursuant to~~**under** subsection (7) (d). Each director ~~shall~~  
 4 ~~be~~**is** entitled to 1 vote. The initial term of office of a director  
 5 ~~shall be~~**is** 2 years.

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

13           (13) The board ~~shall~~**must** consist of 5 directors ~~and the~~  
 14 ~~commissioner~~**director of the department, who** shall ~~be~~**serve as** an  
 15 ex officio member of the board without vote.

16           (14) ~~Each director~~**The director of the department** shall ~~be~~  
 17 ~~appointed by the commissioner and~~**appoint the directors. A director**  
 18 shall serve until ~~that member's~~**his or her** successor is selected  
 19 and qualified. The **board shall elect the** chairperson of the board.  
 20 ~~shall be elected by the board. A~~**The director of the department**  
 21 **shall fill any** vacancy on the board ~~shall be filled by the~~  
 22 ~~commissioner consistent with~~**as provided in** the plan of operation.

23           (15) ~~After the board is appointed, the~~**The** board shall meet as  
 24 often as the chairperson, the ~~commissioner,~~**director of the**  
 25 **department,** or the plan of operation ~~shall require,~~**requires,** or at  
 26 the request of any 3 members of the board. The chairperson ~~shall~~  
 27 ~~retain the right to~~**may** vote on all issues. Four members of the  
 28 board constitute a quorum.

29           (16) ~~An~~**The board shall furnish to each member an** annual



1 report of the operations of the association in a form and detail as  
2 may be determined by the board. ~~shall be furnished to each member.~~

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

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

25 ~~(17) (19) The proposed plan of operation or~~ **Any** amendments to  
26 the plan of operation **of the association** are subject to majority  
27 approval by the board, ~~ratified~~ **ratification** by a majority of the  
28 membership having a vote, with voting rights being apportioned  
29 according to the premiums charged in subsection (7) (d), and ~~are~~



1 ~~subject to approval by the commissioner.~~**director of the department.**

2       (18) ~~(20) Upon approval by the commissioner and ratification~~  
3 ~~by the members of the plan submitted, or upon the promulgation of a~~  
4 ~~plan by the commissioner, each~~**An** insurer authorized to write  
5 insurance providing the security required by section 3101(1) in  
6 this state, as provided in this section, is bound by and shall  
7 formally subscribe to and participate in the plan ~~approved of~~  
8 **operation** as a condition of maintaining its authority to transact  
9 insurance in this state.

10       (19) ~~(21) The association is subject to all the reporting,~~  
11 ~~loss reserve, and investment requirements of the commissioner~~  
12 **director of the department** to the same extent as ~~would a member~~**are**  
13 **the members** of the association.

14       (20) ~~(22) Premiums charged members by the association shall~~  
15 **must** be recognized in the rate-making procedures for insurance  
16 rates in the same manner that expenses and premium taxes are  
17 recognized.

18       (21) ~~(23) The commissioner~~**director of the department** or an  
19 authorized representative of the ~~commissioner~~**director of the**  
20 **department** may visit the association at any time and examine any  
21 and all **of** the association's affairs.

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

24       (23) **A writing prepared, owned, used, in the possession of, or**  
25 **retained by the board in the performance of an official function is**  
26 **subject to disclosure under the freedom of information act, 1976 PA**  
27 **442, MCL 15.231 to 15.246, as if the board were a public body**  
28 **subject to that act.**

29       (24) **Annually, within 15 days after the association charges**



1 members the total premium under subsection (7) (d), the association  
2 shall disclose to the public on its website all data used in  
3 computing the premium and expected losses and expenses, including  
4 the amount that covers incurred but not reported losses for the  
5 period and any adjustment for any excess or deficient premiums from  
6 previous periods and the actuarial computation used in making these  
7 determinations, including estimates and assumptions. The disclosure  
8 must include, but not be limited to, all of the following:

9 (a) The actuarial computation used in making determinations of  
10 unpaid losses and loss adjustment expenses.

11 (b) All documents used in establishing the following:

12 (i) The calculation of the present value of disbursements  
13 expected to be made in the ultimate settlement of the claims  
14 reported.

15 (ii) The actuarial tables used to reflect the probabilities of  
16 each claimant surviving to incur the costs projected.

17 (iii) The calculation of incurred but not reported losses.

18 (iv) The actuarial assumptions and calculations used in  
19 producing the short-term discount rate and the long-term discount  
20 rate.

21 (v) The forecasts producing the economic assumptions for claim  
22 cost inflation and investment returns used.

23 (vi) The current economic data and historical long-term  
24 Consumer Price Index data for any cost component categories used in  
25 producing inflation assumptions.

26 (vii) The loss development analysis undertaken in connection  
27 with the provision for unpaid losses and loss adjustment expenses.

28 (viii) The trend analysis for both frequency and severity  
29 undertaken in connection with the provision for unpaid losses and



1 loss adjustment expenses.

2 (c) The annual actuarial evaluation used in establishing the  
3 premium.

4 (d) The annual assessment reports of members used in  
5 establishing the premium.

6 (e) The annuity model used by the opining actuary in his or  
7 her actuarial opinion projecting future payment streams at the  
8 claimant level and the mortality adjustment applied.

9 (f) Any explanatory memorandum explaining the various  
10 components of the premium and the judgments made to produce the  
11 premium.

12 (25) As used in this section:

13 (a) "Association" means the catastrophic claims association  
14 created in subsection (1).

15 (b) "Board" means the board of directors of the association  
16 created in subsection (9).

17 (c) ~~(a)~~ "Consumer ~~price index~~ **Price Index**" means the  
18 percentage of change in the ~~consumer price index~~ **Consumer Price**  
19 **Index** for all urban consumers in the United States city average for  
20 all items for the 24 months ~~prior to~~ **before** October 1 of the year  
21 ~~prior to~~ **before** the July 1 effective date of the biennial  
22 adjustment under subsection ~~(2)(k)~~ **(2)(n)** as reported by the United  
23 States department of labor, bureau of labor statistics, ~~Department~~  
24 **of Labor, Bureau of Labor Statistics**, and as certified by the  
25 ~~commissioner~~ **director of the department**.

26 (d) ~~(b)~~ "Motor vehicle accident policy" means a policy  
27 providing the coverages required under section 3101(1).

28 (e) ~~(c)~~ "Ultimate loss" means the actual loss amounts that a  
29 member is obligated to pay and that are paid or payable by the



- 1 member, and do not include claim expenses. An ultimate loss is
- 2 incurred by the association on the date that the loss occurs.

