

HOUSE BILL No. 5951

October 19, 2016, Introduced by Reps. Sheppard, Aaron Miller, McBroom, Glenn, Barrett and Santana and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3104, 3107, and 3109a (MCL 500.3104, 500.3107, and 500.3109a), section 3104 as amended by 2002 PA 662, section 3107 as amended by 2012 PA 542, and section 3109a as amended by 2012 PA 454.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3104. (1) ~~An~~ **THE CATASTROPHIC CLAIMS ASSOCIATION IS**
2 **CREATED AS AN** unincorporated, nonprofit association. ~~to be known as~~
3 ~~the catastrophic claims association, hereinafter referred to as the~~
4 ~~association, is created.~~ Each insurer engaged in writing insurance
5 coverages that provide the security required by section 3101(1)
6 within this state, as a condition of its authority to transact
7 insurance in this state, shall be a member of the association and
8 ~~shall be~~ **IS** bound by the plan of operation of the association. Each

1 insurer engaged in writing insurance coverages that provide the
2 security required by section 3103(1) within this state, as a
3 condition of its authority to transact insurance in this state,
4 ~~shall be~~ **IS** considered a member of the association, but only for
5 purposes of premiums under subsection ~~(7)(d)~~ **(8) (D)**. Except as
6 expressly provided in this section, the association is not subject
7 to any laws of this state with respect to insurers, but in all
8 other respects the association is subject to the laws of this state
9 to the extent that the association would be if it were an insurer
10 organized and subsisting under chapter 50.

11 (2) ~~The~~ **SUBJECT TO SUBSECTION (3), THE** association shall
12 provide and each member shall accept indemnification for 100% of
13 the amount of ultimate loss sustained under personal protection
14 insurance coverages in excess of the following amounts in each loss
15 occurrence:

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

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

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

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

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

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

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

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

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

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

(k) For a motor vehicle accident policy issued or renewed during the period July 1, 2011 to June 30, 2013, \$500,000.00.

(l) FOR A MOTOR VEHICLE ACCIDENT POLICY ISSUED OR RENEWED DURING THE PERIOD JULY 1, 2013 TO JUNE 30, 2015, \$530,000.00.

(M) FOR A MOTOR VEHICLE ACCIDENT POLICY ISSUED OR RENEWED DURING THE PERIOD JULY 1, 2015 TO JUNE 30 2017, \$545,000.00.

Beginning July 1, 2013, ~~2017~~, this ~~\$500,000.00~~ **\$545,000.00** amount ~~shall~~ **MUST** be increased biennially on July 1 of each odd-numbered year, for policies issued or renewed before July 1 of the following odd-numbered year, by the lesser of 6% or the consumer price index, and rounded to the nearest \$5,000.00. ~~This~~ **THE ASSOCIATION SHALL CALCULATE THIS** biennial adjustment ~~shall be calculated by the association~~ by January 1 of the year of its July 1 effective date.

(3) THE ASSOCIATION DOES NOT HAVE LIABILITY FOR ANY AMOUNT OF ULTIMATE LOSS THAT EXCEEDS AN APPLICABLE MAXIMUM LIMIT SELECTED UNDER SECTION 3109A(2) .

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

1 (5) ~~(4)~~—An insurer whose membership in the association has
 2 been terminated by withdrawal ~~shall continue~~ **CONTINUES** to be bound
 3 by the plan of operation, and upon withdrawal, all unpaid premiums
 4 that have been charged to the withdrawing member are payable as of
 5 the effective date of the withdrawal.

6 (6) ~~(5)~~—An unsatisfied net liability to the association of an
 7 insolvent member ~~shall~~ **MUST** be assumed by and apportioned among the
 8 remaining members of the association as provided in the plan of
 9 operation. The association has all rights allowed by law on behalf
 10 of the remaining members against the estate or funds of the
 11 insolvent member for ~~sums~~ **MONEY** due the association.

12 (7) ~~(6)~~—If a member has been merged or consolidated into
 13 another insurer or another insurer has reinsured a member's entire
 14 business that provides the security required by section 3101(1) in
 15 this state, the member and successors in interest of the member
 16 remain liable for the member's obligations.

17 (8) ~~(7)~~—The association shall do all of the following on
 18 behalf of the members of the association:

19 (a) Assume 100% of all liability as provided in subsection
 20 (2).

21 (b) Establish procedures by which members ~~shall~~ **MUST** promptly
 22 report to the association each claim that, on the basis of the
 23 injuries or damages sustained, may reasonably be anticipated to
 24 involve the association if the member is ultimately held legally
 25 liable for the injuries or damages. Solely for the purpose of
 26 reporting claims, the member shall in all instances consider itself
 27 legally liable for the injuries or damages. The member shall also

1 advise the association of subsequent developments likely to
2 materially affect the interest of the association in the claim.

3 (c) Maintain relevant loss and expense data relative to all
4 liabilities of the association and require each member to furnish
5 statistics, in connection with liabilities of the association, at
6 the times and in the form and detail as ~~may be~~ required by the plan
7 of operation.

8 (d) In a manner provided for in the plan of operation,
9 calculate and charge to members of the association a total premium
10 sufficient to cover the expected losses and expenses of the
11 association that the association will likely incur during the
12 period for which the premium is applicable. The **TOTAL** premium ~~shall~~
13 **MUST** include an amount to cover incurred but not reported losses
14 for the period and may be adjusted for any excess or deficient
15 premiums from previous periods. Excesses or deficiencies from
16 previous periods may be fully adjusted in a single period or may be
17 adjusted over several periods in a manner provided for in the plan
18 of operation. Each member ~~shall~~ **MUST** be charged an amount equal to
19 that member's total written car years of insurance providing the
20 security required by section 3101(1) or 3103(1), or both, written
21 in this state during the period to which the premium applies, **WITH**
22 **THE TOTAL CAR YEARS OF INSURANCE** multiplied by the **APPLICABLE**
23 average premium per car. The average premium per car ~~shall be~~ **IS**
24 the total premium ~~calculated~~ divided by the total written car years
25 of insurance providing the security required by section 3101(1) or
26 3103(1) written in this state of all members during the period to
27 which the premium applies. A member ~~shall~~ **MUST** be charged a premium

1 for a historic vehicle that is insured with the member of 20% of
2 the premium charged for a car insured with the member. As used in
3 this subdivision:

4 (i) "Car" includes a motorcycle but does not include a
5 historic vehicle.

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

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

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

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

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

18 (g) Establish procedures for reviewing claims procedures and
19 practices of members of the association. If the claims procedures
20 or practices of a member are considered inadequate to properly
21 service the liabilities of the association, the association may
22 undertake or may contract with another person, including another
23 member, to adjust or assist in the adjustment of claims for the
24 member on claims that create a potential liability to the
25 association and may charge the cost of the adjustment to the
26 member.

27 (9) ~~(8)~~—In addition to other powers granted to it by this

1 section, the association may do all of the following:

2 (a) Sue and be sued in the name of the association. A judgment
3 against the association ~~shall~~**DOES** not create any direct liability
4 against the individual members of the association. The association
5 may provide for the indemnification of its members, members of the
6 board of directors of the association, and officers, employees, and
7 other persons lawfully acting on behalf of the association.

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

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

14 (d) Pursuant to the plan of operation, adopt reasonable rules
15 for the administration of the association, enforce those rules, and
16 delegate authority, as the board considers necessary to assure the
17 proper administration and operation of the association consistent
18 with the plan of operation.

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

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

25 (g) Perform other acts not specifically enumerated in this
26 section that are necessary or proper to accomplish the purposes of
27 the association and that are not inconsistent with this section or

1 the plan of operation.

2 (10) ~~(9)~~ A board of directors is created ~~, hereinafter~~
 3 ~~referred to as the board, which shall be responsible for the~~
 4 ~~operation of~~ **AND SHALL OPERATE** the association consistent with the
 5 plan of operation and this section.

6 (11) ~~(10)~~ The plan of operation shall provide for all of the
 7 following:

8 (a) The establishment of necessary facilities.

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

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

12 (d) Procedures governing the actual payment of premiums to the
 13 association.

14 (e) Reimbursement of each member of the board by the
 15 association for actual and necessary expenses incurred on
 16 association business.

17 (f) The investment policy of the association.

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

20 (12) ~~(11)~~ ~~Each~~ **THE** board ~~shall~~ **MUST** include members that would
 21 contribute a total of not less than 40% of the total premium
 22 calculated pursuant to subsection ~~(7) (d)~~. **(8) (D)**. Each director
 23 ~~shall be~~ **IS** entitled to 1 vote. The initial term of office of a
 24 director ~~shall be~~ **IS** 2 years.

25 (13) ~~(12)~~ As part of the plan of operation, the board shall
 26 adopt rules providing for the composition ~~and term of successor~~
 27 ~~boards to the initial board~~ **AND THE TERMS OF BOARD MEMBERS,**

1 consistent with the membership composition requirements in
 2 subsections ~~(11) and (13)~~. **(12) AND (14)**. Terms of the directors
 3 ~~shall~~ **MUST** be staggered so that the terms of all the directors do
 4 not expire at the same time and so that a director does not serve a
 5 term of more than 4 years.

6 **(14)** ~~(13)~~ The board ~~shall~~ **MUST** consist of 5 directors ~~and~~
 7 the ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT, WHO** shall ~~be~~ **SERVE AS**
 8 an ex officio member of the board without vote.

9 **(15)** ~~(14)~~ Each director ~~THE DIRECTOR OF THE DEPARTMENT~~ shall
 10 ~~be appointed by the commissioner and~~ **APPOINT THE DIRECTORS. A**
 11 **DIRECTOR** shall serve until ~~that member's~~ **HIS OR HER** successor is
 12 selected and qualified. The **BOARD SHALL ELECT THE** chairperson of
 13 the board. ~~shall be elected by the board. A~~ **THE DIRECTOR OF THE**
 14 **DEPARTMENT SHALL FILL ANY** vacancy on the board ~~shall be filled by~~
 15 ~~the commissioner~~ consistent with the plan of operation.

16 **(16)** ~~(15)~~ After the board is appointed, the ~~THE~~ board shall
 17 meet as often as the chairperson, the ~~commissioner,~~ **DIRECTOR OF THE**
 18 **DEPARTMENT,** or the plan of operation ~~shall require,~~ **REQUIRES,** or at
 19 the request of any 3 members of the board. The chairperson ~~shall~~
 20 ~~retain the right to~~ **MAY** vote on all issues. Four members of the
 21 board constitute a quorum.

22 **(17)** ~~(16)~~ ~~An~~ **THE BOARD SHALL FURNISH TO EACH MEMBER AN** annual
 23 report of the operations of the association in a form and detail as
 24 may be determined by the board. ~~shall be furnished to each member.~~

25 ~~—— (17) Not more than 60 days after the initial organizational~~
 26 ~~meeting of the board, the board shall submit to the commissioner~~
 27 ~~for approval a proposed plan of operation consistent with the~~

1 ~~objectives and provisions of this section, which shall provide for~~
2 ~~the economical, fair, and nondiscriminatory administration of the~~
3 ~~association and for the prompt and efficient provision of~~
4 ~~indemnity. If a plan is not submitted within this 60-day period,~~
5 ~~then the commissioner, after consultation with the board, shall~~
6 ~~formulate and place into effect a plan consistent with this~~
7 ~~section.~~

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

20 ~~(18) (19) The proposed plan of operation or~~ **ANY** ~~amendments to~~
21 ~~the plan of operation~~ **OF THE ASSOCIATION** ~~are subject to majority~~
22 ~~approval by the board, ratified~~ **RATIFICATION** ~~by a majority of the~~
23 ~~membership having a vote, with voting rights being apportioned~~
24 ~~according to the premiums charged in subsection (7)(d)~~ **(8) (D)**, ~~and~~
25 ~~are subject to approval by the commissioner.~~ **DIRECTOR OF THE**
26 **DEPARTMENT.**

27 ~~(19) (20) Upon approval by the commissioner and ratification~~

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

8 (20) ~~(21)~~ The association is subject to all the reporting,
 9 loss reserve, and investment requirements of the ~~commissioner~~
 10 **DIRECTOR OF THE DEPARTMENT** to the same extent as ~~would a member~~ **ARE**
 11 **THE MEMBERS** of the association.

12 (21) ~~(22)~~ Premiums charged members by the association ~~shall~~
 13 **MUST** be recognized in the rate-making procedures for insurance
 14 rates in the same manner that expenses and premium taxes are
 15 recognized.

16 (22) ~~(23)~~ The ~~commissioner~~ **DIRECTOR OF THE DEPARTMENT** or an
 17 authorized representative of the ~~commissioner~~ **DIRECTOR OF THE**
 18 **DEPARTMENT** may visit the association at any time and examine any
 19 and all **OF** the association's affairs.

20 (23) ~~(24)~~ The association does not have liability for losses
 21 occurring before July 1, 1978.

22 (24) ~~(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 (10) .**

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)~~ **(2) (M)** as reported
 5 by the United States ~~department of labor, bureau of labor~~
 6 ~~statistics,~~ **DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS,** and as
 7 certified by the ~~commissioner,~~ **DIRECTOR OF THE DEPARTMENT.**

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

10 **(E) (c)** "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.

14 Sec. 3107. (1) Except as provided in subsection (2), personal
 15 protection insurance benefits are payable for the following:

16 (a) Allowable expenses consisting of all reasonable charges
 17 incurred, **UP TO ANY APPLICABLE MAXIMUM LIMIT SELECTED UNDER SECTION**
 18 **3109A,** for reasonably necessary products, services and
 19 accommodations for an injured person's care, recovery, or
 20 rehabilitation. Allowable expenses within personal protection
 21 insurance coverage ~~shall~~ **DO** not include either of the following:

22 (i) Charges for a hospital room in excess of a reasonable and
 23 customary charge for semiprivate accommodations, ~~except if~~ **UNLESS**
 24 the injured person requires special or intensive care.

25 (ii) Funeral and burial expenses in excess of the amount set
 26 forth in the policy which ~~shall~~ **MUST** not be less than \$1,750.00 or
 27 more than \$5,000.00.

1 (b) Work loss consisting of loss of income from work an
2 injured person would have performed during the first 3 years after
3 the date of the accident if he or she had not been injured. Work
4 loss does not include any loss after the date on which the injured
5 person dies. Because the benefits received from personal protection
6 insurance for loss of income are not taxable income, the benefits
7 payable for ~~such~~ loss of income ~~shall~~ **MUST** be reduced 15% unless
8 the claimant presents to the insurer in support of his or her claim
9 reasonable proof of a lower value of the income tax advantage in
10 his or her case, in which case the lower value ~~shall apply~~. **MUST BE**
11 **APPLIED**. For the period beginning October 1, 2012 through September
12 30, 2013, the benefits payable for work loss sustained in a single
13 30-day period and the income earned by an injured person for work
14 during the same period together ~~shall~~ **MUST** not exceed \$5,189.00,
15 which maximum ~~shall apply~~ **MUST BE APPLIED** pro rata to any lesser
16 period of work loss. Beginning October 1, 2013, the maximum ~~shall~~
17 **MUST** be adjusted annually to reflect changes in the cost of living
18 under rules prescribed by the ~~commissioner~~ **DIRECTOR**, but any change
19 in the maximum ~~shall apply~~ **APPLIES** only to benefits arising out of
20 ~~accidents occurring subsequent to~~ **AN ACCIDENT THAT OCCURS AFTER** the
21 date of change in the maximum.

22 (c) Expenses not exceeding \$20.00 per day, reasonably incurred
23 in obtaining ordinary and necessary services in lieu of those that,
24 if he or she had not been injured, an injured person would have
25 performed during the first 3 years after the date of the accident,
26 not for income but for the benefit of himself or herself or of his
27 or her dependent.

(2) Both of the following apply to personal protection insurance benefits payable under subsection (1):

(a) A person who is 60 years of age or older and in the event of an accidental bodily injury would not be eligible to receive work loss benefits under subsection (1)(b) may waive coverage for work loss benefits by signing a waiver on a form provided by the insurer. An insurer shall offer a reduced premium rate to a person who waives coverage under this subsection for work loss benefits. Waiver of coverage for work loss benefits applies only to work loss benefits payable to the person or persons who have signed the waiver form.

(b) An insurer ~~shall~~**IS** not be required to provide coverage for the medical use of marihuana or for expenses related to the medical use of marihuana.

Sec. 3109a. **(1)** An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. Any deductibles and exclusions offered under this section are subject to prior approval by the ~~commissioner~~**DIRECTOR** and ~~shall~~**MUST** apply only to benefits payable to the ~~person~~**INDIVIDUAL** named in the policy, the spouse of the insured **INDIVIDUAL**, and any relative of either domiciled in the same household.

(2) WHEN AN INDIVIDUAL APPLIES FOR OR RENEWS AN INSURANCE POLICY THAT PROVIDES BENEFITS UNDER THIS CHAPTER, THE INDIVIDUAL SHALL SELECT 1 OF THE FOLLOWING LEVELS OF MAXIMUM PERSONAL PROTECTION INSURANCE BENEFITS:

1 (A) A \$250,000.00 LIMIT.

2 (B) A \$500,000.00 LIMIT.

3 (C) A \$1,000,000.00 LIMIT.

4 (D) NO MAXIMUM LIMIT.

5 (3) A MAXIMUM LIMIT SELECTED UNDER SUBSECTION (2) APPLIES TO
6 ALLOWABLE EXPENSES AS DESCRIBED UNDER SECTION 3107(1) (A) . THE
7 MAXIMUM LIMIT SELECTED APPLIES ONLY TO BENEFITS PAYABLE BECAUSE OF
8 AN ACCIDENTAL BODILY INJURY TO THE INSURED NAMED IN THE POLICY, THE
9 INSURED'S SPOUSE, AND ANY RELATIVE OF EITHER DOMICILED IN THE SAME
10 HOUSEHOLD. THE MAXIMUM LIMIT AVAILABLE BECAUSE OF ACCIDENTAL BODILY
11 INJURY TO 1 PERSON ARISING FROM 1 MOTOR VEHICLE ACCIDENT IS
12 DETERMINED WITHOUT REGARD TO THE NUMBER OF POLICIES APPLICABLE TO
13 THE ACCIDENT.

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.