**STATE OF MICHIGAN**

**IN THE COURT OF APPEALS**

Coalition Protecting Auto No-Fault (CPAN), et al.

Plaintiff-Appellee/Cross-Appellant,

v.

The Michigan Catastrophic Claims Association (MCCA),

Defendant-Appellant/Cross-Appellee. /

Court Of Appeals Case No. 314310

Ingham County Circuit Court
Case Nos. 12-68-CZ, 12-659-CZ (consolidated)

Brain Injury Association of Michigan (BIAMI),

Plaintiff-Appellee/Cross-Appellant,

v.

The Michigan Catastrophic Claims Association (MCCA),

Defendant-Appellant/Cross-Appellee.

**ORAL ARGUMENT REQUESTED**

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# DEFENDANT-APPELLANT THE MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION'S REPLY BRIEF

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID

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Despite the lengthy briefing this Court has received on the issue of whether the Michigan Catastrophic Claims Association ("MCCA") is a "public body" under the Freedom of Information Act ("FOIA"), the ultimate decision on this issue does not change the end result—the MCCA's records are not required to be disclosed to Plaintiffs. If this Court properly finds that the MCCA is *not* a public body, then FOIA does not apply; there is no constitutional question to review; and the MCCA's records are not required to be disclosed. If this Court finds that the MCCA *is* a public body under FOIA (which it is not), then, as this Court already previously held, all of the MCCA's records are exempt from disclosure under MCL 500.134. The Legislature's decision to exempt the MCCA's records from disclosure in MCL 500.134 does not violate article 4, § 25 because MCL 500.134 does not amend, alter, or revise FOIA in any way. Nothing presented by Plaintiffs in their Supplemental Brief changes these conclusions. The MCCA respectfully requests that this Court find the MCCA is not a "public body" subject to FOIA and there is no violation of article 4, § 25.

## I. PLAINTIFFS ASK THE COURT TO IGNORE THE PLAIN LANGUAGE OF FOIA, MCL 500.3104, AND MCL 500.134, TO REACH THEIR DESIRED RESULT.

Plaintiffs' entire argument that the MCCA is a "public body" under FOIA revolves around a view of MCL 15.232(d)(iv) in complete isolation from other provisions of FOIA and MCL 500.3104. Plaintiffs ignore the fact that FOIA's stated purpose is to ensure transparency in *government* and that, unlike the definition in FOIA of "person", the definition of "public body" does *not* include "associations", which both support the finding that FOIA does not apply to private associations like the MCCA. (*See* MCCA Supp Br, pp. 4-11). Plaintiffs also ignore that the Legislature specifically referred to the MCCA as an "unincorporated, non-profit association" in MCL 500.3104 and intentionally did not make the MCCA a public entity, its employees public employees, its money public money, or its obligations State obligations. (*Id.* at 11-14). In

fact, in MCL 500.3104(1), the Legislature made it perfectly clear that it intended the MCCA to be treated like a private insurance company for all non-insurance laws,[1] which includes not being subject to FOIA. The lone fact that the Legislature enacted MCL 500.3104 does not necessarily make the MCCA a "public body" under FOIA. Looking at MCL 15.232(d)(iv) in context makes that evident.

Plaintiffs also argue that the MCCA is a "public body" for FOIA purposes because it is "funded through governmental authority[.]" (Pl. Supp. Br. at 8). This argument not only suffers from the same deficiencies as noted above (*i.e.*, it is not supported by the plain language of FOIA or MCL 500.3104), it is also factually incorrect. Plaintiffs contend the MCCA receives funding through governmental authority because MCL 500.3104 requires no-fault insurers to be members of, and pay premiums to, the MCCA, to do business in the state. (*Id.* at p 8). The MCCA, however, is not funded by or through state or local authority. All agree that as explained by this Court in *Breighner v Mich High Sch Ath Ass'n*, 255 Mich App 567, 579-80; 662 NW2d 413 (2003), *aff'd*, 471 Mich 217; 683 NW2d 639 (2004), the "by or through" language in MCL 15.232(d)(iv) means "funding 'by' a governmental authority (an *entity*) and funding 'through' governmental decision-making authority (the *power* to regulate)." (Italics in original). What Plaintiffs ignore is that the Supreme Court then held that the term "funded" as used in MCL 15.232(d)(iv) means "the receipt of a governmental grant or subsidy." 471 Mich 217 at 226-27 (emphasis added), citing *State Defender Union Emples v Legal Aid & Defender Ass'n*, 230 Mich

[1] MCL 500.3104(1) states: "Except as expressly provided in this section, the association is not subject to any laws of this state with respect to insurers, but in all other respects the association is subject to the laws of this state to the extent that the association would be if it were an insurer organized and subsisting under chapter 50." In other words, if a private insurer would not be subject to a non-insurance law (*i.e.*, FOIA), then neither is the MCCA. The inescapable conclusion based on the Legislature's plain language in MCL 500.3104 is that the Legislature never intended the MCCA to be a public body subject to FOIA.

App 426, 432; 584 NW2d 359 (1998) ("Thus, we conclude and hold that, as used in the statute, 'funded' should be construed to mean the receipt of a governmental grant or subsidy."). Based on these definitions, the Supreme Court found that the Michigan High School Athletic Association ("MHSAA") was not a public body for FOIA purposes. Like the MHSAA, the MCCA does *not* receive any governmental grant or subsidy, directly or indirectly. The MCCA is *not* supported by any public monies, despite Plaintiffs' contention to the contrary. The fact that, like other expenses, MCCA assessments *may* be reflected in the rates and premiums charged by member insurers to their Michigan policyholders[2] does not mean that public monies are supporting the MCCA. The MCCA is entirely funded by premiums paid by its member-insurers (and investments based on those premiums).

Plaintiffs' example of *Sclafani v Domestic Violence Escape*, 255 Mich App 260; 660 NW2d 97 (2003), highlights this distinction. (Pl. Supp. Br. at 14). The corporation in *Sclafani* received more than 60% of its funding from government grants, and even then the Court of Appeals remanded the case to the trial court to determine whether the organization's funding was for services rendered (and therefore not within FOIA's reach).[3] Again, the MCCA receives *no*

[2] Plaintiffs' suggestion that MCL 500.3104 requires the assessment to be charged to Michigan citizens again asks this Court to look at only a portion of the relevant statutory language. MCL 500.3104 states, "[p]remiums charged members by the association shall be recognized in the rate-making procedures for insurance rates *in the same manner that expenses and premium taxes are recognized*." MCL 500.3104(22) (emphasis added). MCL 500.2110, which addresses how expenses and premium taxes may be recognized, only requires that "due consideration" be given to expenses, not that they *must* be passed along in the rates. The Department of Insurance and Financial Services made this point clear years ago in a Bulletin on the MCCA. (*See* Bulletin 2007-04-INS, Exhibit 8 to MCCA's Application for Leave to Appeal).

[3] *Sclafani* stated it construed MCL 15.232(d)(iv)'s reference to "primarily funded by or through state of local authority" as evidence that the Legislature believed "taxpayers should be able to monitor the use of public money by private organizations." 255 Mich App at 269. As stated in the MCCA's Supplemental Brief, the plain language of FOIA does not support extending FOIA to private associations (MCCA Supp. Br. at 4-11), and it certainly cannot be extended to private associations that do not use public money and are not "funded" by public

funds from the State or any other governmental unit. It is simply not "primarily funded by or through state or local authority."

As evidenced by is plain language, FOIA is not intended to apply to private associations that receive no government funding, like the MCCA, which is why the Legislature acted so quickly and expressly to correct what it perceived to be a threat on the MCCA's (and like organizations) private nature created by this Court's decision in *League General Ins Co v Michigan Catastrophic Claims Assoc,*165 Mich App 278; 418 NW2d 708 (1987). The Legislature wanted to ensure that the MCCA's records were not subject to disclosure, which is exactly what MCL 500.134 did.

## II. PLAINTIFFS IGNORE THE IMPORTANT CONTEXT OF THE *LEAGUE GENERAL* DECISIONS AND SECTION 2 OF 1988 PA 349.

Plaintiffs contend that the enactment of MCL 500.134 "confirms" that the MCCA is a public body under FOIA and that it would be "entirely unnecessary to exempt the MCCA's records from FOIA if the MCCA was not a public body subject to FOIA in the first place." (Pl. Supp. Br. at 10). This statement, however, completely ignores the context in which MCL 500.134 was passed.

The Court of Appeals issued its decision in *League General*, finding that the MCCA's character and function made it a state agency, on December 21, 1987. *Id.* at 285. 1988 PA 349 was signed into law (with immediate effect) on November 14, 1988. The Supreme Court did not issue its opinion reversing the Court of Appeals and clarifying the MCCA's private status until July 16, 1990. *League General Ins Co v Michigan Catastrophic Claims Ass'n*, 435 Mich 338; 458 NW2d 632 (1990). In other words, the Legislature did not want to wait for a decision from the Supreme Court, and acted to clarify the status of the MCCA and other similar organizations

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money.

and protect those organizations from being treated like state agencies/public bodies, and gave that act immediate effect. After the Supreme Court's decision came down in July 1990, the need for 1988 PA 349 was essentially eliminated because it recognized what was already true—that the MCCA was a private association that should not be subject to governmental restrictions/obligations, but the legislation remains in place.

This Court's decision in *League General* raised concerns over the general treatment of the MCCA (as well as other identified organizations) as a public body/state agency. There, this Court analyzed the character and function of the MCCA in reviewing whether if the MCCA was a "state agency" under the Administrative Procedures Act ("APA"). 165 Mich App at 285. The fact that this Court specifically addressed: 1) the APA, and 2) the MCCA, in *League General* did not calm any fears on the part of the Legislature. The Legislature quickly acted to clarify the status of not only the MCCA but other similar types of organizations (e.g., the Michigan's Worker's Compensation Placement Facility, the Michigan Basic Property Insurance Association, etc.), not only under the APA but also under FOIA, the Open Meetings Act, and other statutes. The plain language of MCL 500.134 evidences this intent, but the Legislature then went even further and expressly articulated its concern and the intent behind 1988 PA 349 in Section 2 of that same act.[4]



[4] Plaintiffs refer to Section 2 of 1988 PA 349 as a "Drafter's Note" and therefore ask the Court to disregard it as unreliable legislative history. (Pl. Supp. Br. at 4, 15-22). Plaintiffs' obvious intent is to dismiss the content of Section 2 as nothing more than one person's explanation of MCL 500.134's enactment. Section 2 of 1988 PA 349, however, is not simply a "drafter's note" or compiler's note. Section 2 of 1988 PA 349 was an enacting section of that public act (as evidenced by the use of the full term "Section" rather than the abbreviated "Sec."), which was passed by the Legislature and included in the final public act signed by the Governor. The difference between such a section and a compiler's note is evidenced in the preceding public act (1988 PA 348, which is attached hereto as Exhibit A), which included an enacting section that gave a conditional effective date of that act as well a "compiler's note" that explained the condition precedent was satisfied. As explained in the MCCA's Supplemental Brief and herein,

Plaintiffs make much of the fact that *League General* involved the APA and not FOIA (Pl. Br. at 11-15), but, as shown above, the Legislature was clearly concerned that the logic of that decision would be applied in other contexts to subject the MCCA—and the other identified organizations—to all sorts of obligations and restrictions of public bodies and/or state agencies, including FOIA. Section 2 of 1988 PA 349 states as much. To argue that *League General* "has nothing whatsoever to do with" (Pl. Supp. Br. at 11) this case is wholly without merit and is akin to arguing that because *League General* involved the MCCA, its holding had no impact on clarifying the status of the other listed entities in MCL 500.134.

Moreover, Section 2 of 1988 PA 349 is not "inconsistent" with MCL 500.134. (Pl. Supp. Br. at 20). In light of this Court's decision in *League General*, the Legislature wanted to ensure the MCCA was not treated like a public body (because it never intended for the MCCA to be treated as one), so it took precautions to ensure that the MCCA's records (and those of the other listed organizations) would not be subject to disclosure under FOIA, which the Legislature is permitted to do under MCL 15.243(1)(d). The fact that Legislature *could* have amended the FOIA definition of "public body" as another way to accomplish its goal does not diminish the effect of the manner in which it chose to address its concerns. The Legislature did not need to amend Section 2 or Section 13 of FOIA to accomplish its goal; MCL 500.134(4) was entirely permissible under FOIA and the Constitution and ensured that the MCCA's records would not be subject to disclosure under FOIA.

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the plain language of FOIA, MCL 500.3104, and MCL 500.134 make clear that the MCCA is not a public body under FOIA. That conclusion is buttressed by, but not dependent upon, the Legislature's expressed intent in Section 2 of 1988 PA 349.

## III. THE COURT DOES NOT NEED TO REACH THE CONSTITUTIONAL QUESTION, BUT EVEN IF IT DOES, THERE IS NO VIOLATION OF ARTICLE 4, § 25.

Because the MCCA is not a public body under FOIA, this Court need not reach the constitutional question in this case. (MCCA Supp. Br. at 18). If, however, this Court disagrees on the former question, it can and should find that there is no violation of article 4, § 25 and that the MCCA's records are exempt from disclosure under FOIA. Plaintiffs provide a great deal of unnecessary background on article 4, § 25, but the simple truth is that there can be no violation of article 4, § 25 if Statute Y does not amend, alter, or revise Statute X. Without repeating *ad nauseam* what this Court has already decided, MCL 500.134 does not amend, alter or revise Section 13 of FOIA in any way. (See Exhibit A to MCCA Supplemental Brief, p 7). There is no further examination needed.

Plaintiffs regurgitate some of the same arguments they already presented to this Court, which were properly rejected. They contend that MCL 500.134 cannot exempt the MCCA's records because it immunizes the records of the MCCA from FOIA without "openly amending a single word in FOIA," (Pl. Supp. Br. at 39), and that the Legislature cannot give itself permission to avoid article 4, § 25 by providing that exemptions to FOIA may exist outside of FOIA through MCL 15.243(1)(d). (*Id.* at 41). As already determined by this Court, the enactment of MCL 500.134 did not violate article 4, § 25 because it did not amend, alter, or revise FOIA. FOIA permits exemptions to exist outside of that Act (MCL 15.243(1)(d)), which is entitled to do under the Constitution.[5] The Legislature simply provided for the MCCA's records to be exempt

[5] If the Legislature violated the Constitution by enacting MCL 15.243(1)(d), then it has also done so in countless other statutes. There are, for example, over 130 statutes that use the phrase "except as otherwise provided by law", which certainly includes allowing exceptions to be found in separate statutes. And in addition to MCL 500.134, there are many other statutes that use the phrase "as exempted by law" or "except as otherwise provided by statute" or "as established by law." (*See* Exhibit A and notes 9-11 in Exhibit F of MCCA Supp. Br.).

in MCL 500.134 rather than amending MCL 15.243. It could have placed the exemption in either location—doing so directly in FOIA would require republishing under article 4, § 25 (because FOIA would be amended), but doing so in MCL 500.134 did not require republishing because no part of FOIA was amended, altered or revised.[6] Plaintiffs contend that MCL 500.134 is "a clear deviation" from the way the Legislature enacts amendments to FOIA (Pl. Supp Br. at 45). Plaintiffs are correct in the sense that when the Legislature *actually amends* FOIA, it must republish the affected section under article 4, § 25, but here MCL 500.134 did not amend FOIA.

Plaintiffs further argue that a Michigan citizen wishing to serve a FOIA request on the MCCA would "not know from a perusal of FOIA" that the MCCA's records are exempt. (Pl. Supp. Br. at 47). This is not true. There is nothing misleading or deceptive by providing in MCL 500.134 that the MCCA's records are exempt from FOIA. The public is put on notice that exceptions to FOIA may exist in other statutes—not once, not twice, but three times, in FOIA itself (see MCL 15.235(5)(a), MCL 15.243(1)(d),and MCL 15.243(1)(h)) and nothing in FOIA itself is altered by such enactments.

The same analysis of Section 13 of FOIA applies to Section 2 of FOIA. MCL 500.134 in no way amends, alters, or revises Section 2 of FOIA. Even Plaintiffs acknowledge that "there is

[6] Plaintiffs' proferred examples of correctly amending FOIA highlight this distinction. (Pl. Supp. Br. at 46). 2000 PA 88, 2002 PA 130 and 2014 PA 563 all amended sections of FOIA; MCL 500.134 did not. Rather than directly amend FOIA, the Legislature exempted the MCCA's records from disclosure in MCL 500.134, which it is permitted to do under FOIA itself, namely, MCL 15.243(1)(d), and which it has done in countless other instances. *See, e.g.*, MCL 18.355a (exempting information that identifies victims of sexual abuse); MCL 28.292(8) (exempting organ donor information), MCL 29.5p (exempting information obtained regarding hazardous chemicals in the workplace); MCL 52.202(4) (exempting medical records and other documents obtained during a medical examiner's investigation); MCL 125.1954 (exempting certain proprietary information related to the Michigan Strategic Fund); MCL 125.2088c(8) (exempting investment fiduciaries working with the Michigan Strategic Fund); MCL 168.759a(11) (exempting electronic mail addresses by an absent uniformed or overseas voter); MCL 205.747(7) (exempting certain mediation information); and MCL 780.830 (exempting victim's address and telephone numbers maintained by courts or sheriffs).

nothing in the statutory language of MCL 500.134 that actually states that the MCCA is not a "public body" and that MCL 500.134 "did not alter the definition of 'public body'" under FOIA. (Pl. Supp. Br. at 20, 22). MCL 500.134(4) acts only to exempts the MCCA's records and information from disclosure. There is nothing in FOIA that prohibits the Legislature from taking such action. Under MCL 15.243(1)(d), an exemption outside of FOIA (like MCL 500.134) must only specifically describe the "records and information" exempt from disclosure. There is no limitation one way or the other on the number of records that may be exempted. If the Legislature sees fit to exempt all of the records of an entity, like the MCCA, it may do so; and if it sees fit to exempt only one record of an entity, it may do so. In the case of MCL 500.134(4), the Legislature chose to exempt every record belonging to the MCCA and like associations from disclosure (which aligns with the Legislature's explicit intent to make sure that the MCCA was not treated like a public body).

This Court gives deference to a deliberate act of the Legislature and does not inquire into the wisdom of its legislation. *Dearborn Twp v Dearborn Twp Clerk*, 334 Mich 673, 690; 55 NW2d 201 (1952). Accordingly, this Court has recognized that the "power to declare a law unconstitutional should be exercised with extreme caution and never where serious doubt exists with regard to the conflict." *Council of Orgs & Others for Educ About Parochiaid v Governor*, 455 Mich 557, 570; 566 NW2d 208 (1997), citing *Thayer v Dep't of Agriculture*, 323 Mich 403, 413; 35 NW2d 360 (1949). "Every reasonable presumption or intendment must be indulged in favor of the validity of the act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity." *Id.*, citing *Cady v Detroit*, 289 Mich 499, 505; 286 NW 805

(1939).[7] Plaintiffs essentially ask this Court to find that the Legislature chose to ignore (or, worse yet, intentionally violate) the Constitution when it enacted MCL 15.243(1)(d) and then again when it enacted MCL 500.134. Plaintiffs fail to provide *any* reason to overcome the strong presumption of constitutionality, let alone the requisite "clearly apparent" reasons. *Cady*, 289 Mich at 505.

The Legislature must comply with article 4, § 25's requirement when it revises, alters, or amends a statutory provision; but it did not do so in this case (or in the myriad other exemptions contained in statutes outside of FOIA). The Legislature's enactment of MCL 15.243(1)(d) and MCL 500.134 were proper, entirely constitutional, and entitled to deference from this Court.

## CONCLUSION

For all of these reasons, the MCCA requests that this Court hold that the MCCA is not a public body subject to FOIA and that there is no violation of article 4, § 25.

Respectfully submitted,

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Dated: February 1, 2016

[7] Moreover, the Constitution, including art 4, § 25, must be construed in a reasonable manner. *Alan v County of Wayne*, 388 Mich 210; 200 NW2d 628 (1972), citing *People v Mahaney*, 13 Mich 481 (1865).

# EXHIBIT A

er by the commission. For each truck
of household goods as defined by the
tor carrier licensed in this state shall
erated by the motor carrier which is
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2-hour permit for the operation of a
mission at a fee of $10.00, which is in
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Public Acts of 1951, being section



**Effective date.**

Section 2. This amendatory act shall take effect January 1, 1989.

**Conditional effective date.**

Section 3. This amendatory act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

(a) Senate Bill No. 700.

(b) Senate Bill No. 703.

This act is ordered to take immediate effect.
Approved October 24, 1988.
Filed with Secretary of State October 25, 1988.

**Compiler's note:** Senate Bill No. 700, referred to in Section 3, was filed with the Secretary of State October 25, 1988, and became P.A. 1988, No. 346, Eff. Oct. 1, 1989.
Senate Bill No. 703, also referred to in Section 3, was filed with the Secretary of State October 25, 1988, and became P.A. 1988, No. 348, Imd. Eff. Oct. 25, 1988.

## [No. 348]

### (SB 703)

AN ACT to amend the title and section 10 of Act No. 51 of the Public Acts of 1951, entitled as amended "An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, critical bridge fund, and comprehensive transportation fund; to provide for the deposits in the state trunk line fund, critical bridge fund, and comprehensive transportation fund of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal

certain acts and parts of acts," as amended by Act No. 234 of the Public Acts of 1987, being section 247.660 of the Michigan Compiled Laws; and to add section 25.

*The People of the State of Michigan enact:*

**Title and sections amended and added; state trunk line highway system; motor vehicle highway fund.**

Section 1. The title and section 10 of Act No. 51 of the Public Acts of 1951, as amended by Act No. 234 of the Public Acts of 1987, being section 247.660 of the Michigan Compiled Laws, are amended and section 25 is added to read as follows:

TITLE

An act to provide for the classification of all public roads, streets, and highways in this state, and for the revision of that classification and for additions to and deletions from each classification; to set up and establish the Michigan transportation fund; to provide for the deposits in the Michigan transportation fund of specific taxes on motor vehicles and motor vehicle fuels; to provide for the allocation of funds from the Michigan transportation fund and the use and administration of the fund for transportation purposes; to set up and establish the truck safety fund; to provide for the allocation of funds from the truck safety fund and administration of the fund for truck safety purposes; to set up and establish the Michigan truck safety commission; to provide for the continuing review of transportation needs within the state; to authorize the state transportation commission, counties, cities, and villages to borrow money, issue bonds, and make pledges of funds for transportation purposes; to authorize counties to advance funds for the payment of deficiencies necessary for the payment of bonds issued under this act; to provide for the limitations, payment, retirement, and security of the bonds and pledges; to provide for appropriations and tax levies by counties and townships for county roads; to authorize contributions by townships for county roads; to provide for the establishment and administration of the state trunk line fund, critical bridge fund, and comprehensive transportation fund; to provide for the deposits in the state trunk line fund, critical bridge fund, and comprehensive transportation fund of money raised by specific taxes and fees; to provide for definitions of public transportation functions and criteria; to define the purposes for which Michigan transportation funds may be allocated; to provide for Michigan transportation fund grants; to provide for review and approval of transportation programs; to provide for submission of annual legislative requests and reports; to provide for the establishment and functions of certain advisory entities; to provide for conditions for grants; to provide for the issuance of bonds and notes for transportation purposes; to provide for the powers and duties of certain state and local agencies and officials; to provide for the making of loans for transportation purposes by the state transportation department and for the receipt and repayment by local units and agencies of those loans from certain specified sources; and to repeal certain acts and parts of acts.

**247.660 Michigan transportation fund; establishment; separate fund; deposits; expenses; deductions; apportionment and appropriation of money; use of money appropriated; programs; distribution formula; allocation to transportation economic development fund; division of funds. [M.S.A. 9.1097(10)]**

Sec. 10. (1) A fund to be known as the Michigan transportation fund is established and shall be set up and maintained in the state treasury as a separate fund. Money

234 of the Public Acts of 1987,
; and to add section 25.

*in enact:*

**state trunk line highway**

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portation fund is established
y as a separate fund. Money



received and collected under Act No. 150 of the Public Acts of 1927, as amended, being sections 207.101 to 207.202 of the Michigan Compiled Laws, except a license fee provided in that act, and a tax, fee, license, and other money received and collected under sections 801 to 810 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being sections 257.801 to 257.810 of the Michigan Compiled Laws, except a truck safety fund fee provided in section 801(1)(k) of Act No. 300 of the Public Acts of 1949, being section 257.801 of the Michigan Compiled Laws, and money received under the motor carrier act, Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.20 of the Michigan Compiled Laws, shall be deposited in the state treasury to the credit of the Michigan transportation fund. In addition, income or profit derived from the investment of money in the Michigan transportation fund shall be deposited in the Michigan transportation fund. Except as provided in this act, no other money, whether appropriated from the general fund of this state or any other source, shall be deposited in the Michigan transportation fund. The legislature shall appropriate funds for the necessary expenses incurred in the administration and enforcement of Act No. 150 of the Public Acts of 1927, as amended, Act No. 254 of the Public Acts of 1933, as amended, and sections 801 to 810 of Act No. 300 of the Public Acts of 1949, as amended. After deduction of the amount as appropriated pursuant to section 91 of Act No. 150 of the Public Acts of 1927, being section 207.191 of the Michigan Compiled Laws, all money in the Michigan transportation fund is apportioned and appropriated in the following manner:

(a) For the fiscal years ending September 30, 1985, through September 30, 1987, and for the period from October 1, 1987 to October 30, 1987:

(*i*) 10.0% to the comprehensive transportation fund for the purposes described in section 10e.

(*ii*) The balance of the Michigan transportation fund as follows, after the deduction of the amounts appropriated in subdivision (a) and section 11b:

(A) 39.1% to the state trunk line fund for the purposes described in section 11.

(B) 39.1% to the county road commissions of the state.

(C) 21.8% to the cities and villages of the state.

(b) Beginning October 31, 1987 and for the fiscal years ending September 30, 1988 through September 30, 1993:

(*i*) Not more than $3,000,000.00 as may be annually appropriated each fiscal year to the state trunk line fund for subsequent deposit in the rail grade crossing account.

(*ii*) 10% to the comprehensive transportation fund for the purposes described in section 10e.

(*iii*) $21,550,000.00 to the state trunk line fund for subsequent deposit in the transportation economic development fund, or allocation to debt service on bonds issued to fund transportation economic development fund projects for the fiscal year ending September 30, 1988, and $36,775,000.00 for each fiscal year thereafter through the fiscal year ending September 30, 1993.

(*iv*) The balance of the Michigan transportation fund as follows, after deduction of the amounts appropriated in subparagraphs (*i*), (*ii*), and (*iii*) and section 11b:

(A) 39.1% to the state trunk line fund for the purposes described in section 11.

(B) 39.1% to the county road commissions of the state.

(C) 21.8% to the cities and villages of the state.

(2) If a distribution formula is not enacted into law for any time period beginning after September 30, 1993, the following amounts are appropriated each fiscal year thereafter with the balance reverting to the Michigan transportation fund until a distribution formula is enacted:

(a) An amount is apportioned and appropriated to the comprehensive transportation fund sufficient to pay the principal and interest payments due on bonds and notes issued for comprehensive transportation purposes under section 18b.

(b) An amount is apportioned and appropriated to the state trunk line fund sufficient to pay the principal and interest payments due on bonds and notes issued for those purposes for which the state transportation commission may issue bonds and notes under section 18b, except for those bonds and notes issued for comprehensive transportation purposes, and sufficient to pay the obligations of the state trunk line fund pursuant to contracts entered into under section 18d, which contributions are pledged for the payment of principal and interest on bonds issued under section 18d.

(c) An amount is apportioned and appropriated to county road commissions sufficient to pay the principal and interest payments due on bonds and notes described in section 12(8).

(d) An amount is apportioned and appropriated to cities and villages sufficient to pay the principal and interest payments due on bonds and notes described in section 13(3)(a).

(3) The money appropriated pursuant to this section shall be used for the purposes as provided in this act and any other applicable act. The department shall develop programs to assist small businesses as defined by law in becoming qualified to bid.

(4) The distribution formula enacted into law after September 30, 1993 shall not adversely affect the ability of the state or a city, village, county, or county road commission which has issued bonds or notes payable from the Michigan transportation fund or the motor vehicle highway fund to pay the debt service on those bonds or notes.

(5) Thirty percent of the funds appropriated to this state from the federal government pursuant to 23 U.S.C. 157, commonly known as 85% minimum floor funds, shall be allocated to the transportation economic development fund, if such an allocation is consistent with federal law. These funds shall be divided equally between development projects for rural counties as defined by law and for capacity improvement in urban counties as defined by law.

**247.675 Truck safety fund and Michigan truck safety commission; establishment; administration of fund; duty of commission; appointment, qualifications, and terms of commission members; election of chairperson; vacancy; meetings; notice; quorum; expenditure of fund; annual report. [M.S.A. 9.1097(25)]**

Sec. 25. (1) The truck safety fund is established and shall be maintained in the state treasury. The truck safety fund shall be administered by the office of highway safety planning within the department of state police.

(2) The Michigan truck safety commission is established in the office of highway safety planning within the department of state police. The commission shall control the expenditures of the truck safety fund. The commission shall consist of the following members:



(a) A member of the state tr
representative who is a member

(b) The director of the office o
state police.

(c) The secretary of state.

(d) The commanding officer
of state police.

(e) Seven individuals appointe
senate as follows:

(*i*) One individual representir

(*ii*) One individual representi

(*iii*) One individual represent

(*iv*) One individual representi

(*v*) One individual representir

(*vi*) Two individuals represen

(3) The appointed members
appointed for 2-year terms.
commission shall be elected by a
truck safety commission. A vaca
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Michigan truck safety commissi
meeting held in compliance witl
Acts of 1976, being sections 15.2(
notice of the meeting shall be giv
Public Acts of 1976. A majority o
to constitute a quorum.

(4) The truck safety fund shal
in the following manner:

(a) Not more than 5% but not
truck safety fund shall be expe
office of highway safety planning
administration of the fund.

(b) Not less than 30%, but not
deposited in the truck safety fun

(*i*) Establishing truck driver s

(*ii*) Encouraging, coordinati
demonstration projects to develo
driver safety education as applie

(*iii*) Applying for, receiving, a
other assistance in the form of n
public or private source for th
including matching funds and ot
the United States and doing ea
administer that assistance in acc

(c) Not less than $750,000.00
safety fund shall be expended

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**S.A. 9.1097(25)]**

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ablished in the office of highway
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(a) A member of the state transportation commission, or his or her authorized representative who is a member of the state transportation commission.

(b) The director of the office of highway safety planning, within the department of state police.

(c) The secretary of state.

(d) The commanding officer of the motor carrier division within the department of state police.

(e) Seven individuals appointed by the governor with the advice and consent of the senate as follows:

(*i*) One individual representing Michigan community colleges.

(*ii*) One individual representing 4-year colleges or universities.

(*iii*) One individual representing the Michigan trucking association.

(*iv*) One individual representing private motor carriers.

(*v*) One individual representing organized labor.

(*vi*) Two individuals representing the general public.

(3) The appointed members of the Michigan truck safety commission shall be appointed for 2-year terms. The chairperson of the Michigan truck safety commission shall be elected by a majority of the members serving on the Michigan truck safety commission. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The business which the Michigan truck safety commission shall perform shall be conducted at a quarterly meeting held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the meeting shall be given in the manner required under Act No. 267 of the Public Acts of 1976. A majority of the commission members serving shall be required to constitute a quorum.

(4) The truck safety fund shall be expended in the following order of priority and in the following manner:

(a) Not more than 5% but not more than $100,000.00 of the money deposited in the truck safety fund shall be expended for the fund's administrative expenses. The office of highway safety planning may employ not more than 2 persons to assist in the administration of the fund.

(b) Not less than 30%, but not less than $1,000,000.00 of the balance of the money deposited in the truck safety fund shall be expended for the following purposes:

(*i*) Establishing truck driver safety education programs.

(*ii*) Encouraging, coordinating, and administering grants for research and demonstration projects to develop the application of new ideas and concepts in truck driver safety education as applied to state, as opposed to nationwide, problems.

(*iii*) Applying for, receiving, and accepting any grant, gift, contribution, loan, or other assistance in the form of money, property, labor, and any other form from a public or private source for the enhancement of truck driver safety education, including matching funds and other assistance from an agency or instrumentality of the United States and doing each thing as is necessary to apply for, receive, and administer that assistance in accordance with the laws of this state.

(c) Not less than $750,000.00 of the balance of the money deposited in the truck safety fund shall be expended for the establishment of special transportation

enforcement team operations within the motor carrier division of the department of state police and any expenses incurred by the special transportation enforcement team including, but not limited to, required equipment. The motor carrier division of the department of state police shall submit an annual report of the activities of the special transportation enforcement team operations and expenditures of the fund for those operations provided by this subdivision.

(d) The balance of the money deposited in the truck safety fund, if any, shall be expended for the following purposes:

(*i*) Investigating, performing data collection and analysis, and making recommendations on truck accidents within this state.

(*ii*) Investigating and making recommendations on the truck safety enforcement procedures of local law enforcement agencies.

(*iii*) Performing other functions considered necessary by the Michigan truck safety commission for the enhancement of truck and truck driver safety within this state.

(5) The commission shall make an annual report to the chairpersons of the house transportation and senate state affairs, tourism, and transportation committees on the status of the fund. The report shall be submitted within 45 days after the end of the fiscal year and shall include the year and balance of the fund and the disbursements made from the fund during the previous fiscal year.

**Conditional effective date.**

Section 2. This amendatory act shall not take effect unless Senate Bill No. 700 of the 84th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved October 24, 1988.
Filed with Secretary of State October 25, 1988.

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**Compiler's note:** Senate Bill No. 700, referred to in Section 2, was filed with the Secretary of State October 25, 1988, and became P.A. 1988, No. 346, Eff. Oct. 1, 1989.

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## [No. 349]

### (SB 707)

AN ACT to amend section 134 of Act No. 218 of the Public Acts of 1956, entitled as amended "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, and associations 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 the business of surplus line agents; to modify

**STATE OF MICHIGAN**
MI Court of Appeals

## Proof of Service

| **Case Title:** | **Case Number:** |
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| COALITION PROTECTING AUTO NO-FAULT V MCCA | 314310 |

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| Filing Type | Document Title |
|---|---|
| Brief | MCCA's Reply Brief |
| Exhibit | Exhibit A |

2. On 2-1-2016, I served the document(s) described above on:

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/s/ Lori McAllister

Signature

Dykema