(2) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(b) The foreign court did not have personal jurisdiction over the defendant.

(c) The foreign court did not have jurisdiction over the subject matter.

(3) A court of this state need not recognize a foreign-country judgment if any of the following apply:

(a) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(c) The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States.

(d) The judgment conflicts with another final and conclusive judgment.

(e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(f) If jurisdiction was based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) exists.

691.1135 Lack of personal jurisdiction; refusal of recognition prohibited; conditions; bases.

Sec. 5. (1) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following apply:

(a) The defendant was served with process personally in the foreign country.

(b) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(c) The defendant, before the commencement of the proceeding, agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(d) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(e) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country.

(f) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(2) The list of bases for personal jurisdiction in subsection (1) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (1) as sufficient to support a foreign-country judgment.

691.1136 Recognition of foreign-country judgment; raising action as original matter; raising action by counterclaim, cross-claim, or affirmative defense.

Sec. 6. (1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

691.1137 Foreign-country judgment; findings.

Sec. 7. If the court in a proceeding under section 6 finds that the foreign-country judgment is entitled to recognition under this act, then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is both of the following:

(a) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive.

(b) Enforceable in the same manner and to the same extent as a judgment rendered in this state.

691.1138 Appeal; stay of proceedings.

Sec. 8. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

691.1139 Recognition of foreign-country judgment; commencement of action.

Sec. 9. An action to recognize a foreign-country judgment shall be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

691.1140 Applicability and construction of act; promotion of uniformity of law.

Sec. 10. In applying and construing this uniform act, a court shall consider the need to promote uniformity of the law with respect to its subject matter among states that enact it.

691.1141 Recognition of foreign-country judgment under principles of comity.

Sec. 11. This act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment that is not within the scope of this act.

691.1142 Applicability of act.

Sec. 12. This act applies to all actions commenced on or after the effective date of this act in which the issue of recognition of a foreign-country judgment is raised.

691.1143 Repeal of MCL 691.1151 to 691.1159.

Sec. 13. The uniform foreign money-judgments recognition act, 1967 PA 191, MCL 691.1151 to 691.1159, is repealed.

This act is ordered to take immediate effect.
Approved March 6, 2008.
Filed with Secretary of State March 7, 2008.

[No. 21]

(HB 5384)

AN ACT to amend 1976 PA 448, entitled "An act to prescribe the powers and duties of municipalities and governmental units to acquire, finance, maintain, and operate generating, transmission, and distribution facilities of electric power and energy, fuel and energy sources and reserves and all necessary related properties, equipment and facilities; to permit the exercise of those powers in joint venture or joint agency agreements; to provide for the issuance of bonds and notes; to prescribe the powers and duties of the municipal finance commission or its successor agency and of certain other state officers and agencies with respect to municipal electric utility financing; to create certain funds and prescribe their operation; to provide for tax exemptions and other exemptions; and to prescribe penalties and provide remedies," by amending sections 3, 5, 6, 9, 11, 21, 24, 31, 34, 36, 37, 43, and 44 (MCL 460.803, 460.805, 460.806, 460.809, 460.811, 460.821, 460.824, 460.831, 460.834, 460.836, 460.837, 460.843, and 460.844), section 5 as amended by 2002 PA 513 and section 44 as amended by 2002 PA 532, and by adding section 33a.

The People of the State of Michigan enact:

460.803 Definitions; E to J.

Sec. 3. (1) "Electric utility facility" means a facility which a municipality is authorized to acquire as part of a municipal electric utility system under this act or other law.

(2) "Governing body" means the council, commission, or board of trustees of a municipality, or when the charter of a municipality provides that a separate board has general management over the municipal electric utility system, "governing body" means that separate board, subject to review by the legislative body of the municipality as its charter may provide.

(3) "Governmental unit" means a municipality or a joint agency.

(4) "Joint agency" means a public body corporate and politic consisting of a combination of 2 or more municipalities, authorities, or other public bodies organized under article 3.

460.805 Definitions; P.

Sec. 5. (1) "Project" means a system or facility, inside or outside the state, or service related to a system or facility inside or outside the state, for the generation, transmission, or transformation of electricity, in whole or in part, or for sale to or use by a municipal electric utility system or joint agency by any means. Project also means stock, membership units, contractual interests, or any other interest in a system or facility, inside or outside of the state, for the generation, transmission, or transformation of electricity or in a multistate regional transmission system organization approved by the federal government and operating in this state or a transmission-owning entity which is a member of a multistate regional transmission system organization approved by the federal government and operating in this state.

(2) "Project cost" includes, but is not limited to, the cost of acquisition, construction, improvement, or extension of a project, the cost of studies, plans, specifications, surveys, and estimates of related costs and revenues, the cost of land, land rights, rights of way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of any required applications, engineering and inspection expenses, financing costs, working capital, fuel costs, interest on bonds, establishment of reserves, and all other costs of the municipality or joint agency that are incidental, necessary, or convenient to the acquisition, construction, improvement, or extension of a project.

460.806 Definitions; P to R.

Sec. 6. (1) "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.

(2) "Power utility" means any person engaged or that may engage, inside or outside the state, in generating, transmitting, or distributing or furnishing electricity.

(3) "Power utility bond" means electric utility bonds, notes, or other evidences of indebtedness of a municipality, including refunding bonds issued to underwrite projects authorized by this act.

(4) "Revenues" means all fees, charges, moneys, profits, payment of principal of, or interest on, municipal or power utility bonds, or other gifts, grants, contributions and appropriations.

460.809 Facilities for transmission of energy; contracts with other power utilities.

Sec. 9. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the transmission of energy, and may contract for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electrical energy with another power utility for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the agreement.

460.811 Joint venture, joint agency agreement, or other joint endeavor; percentage of common facility to be owned; exception; defraying interest and other payments; operation and maintenance expenses.

Sec. 11. A municipality engaging in a joint venture, joint agency agreement, or other joint endeavor described in section 10 and authorized by article 2 or article 3 shall own a percentage of any common facility equal to the percentage of the money furnished or the value of the property supplied by the municipality for the acquisition and construction of the common facility, except in the case of a facility at least 2/3 of which is owned or to be owned by a state, a political subdivision of this or another state or a Canadian province, an agency of this or another state or of a political subdivision of this state or another state, a federal agency, or a Canadian federal or provincial agency or agency of a political subdivision of a Canadian province, or any corporation or other entity controlled directly or indirectly by 1 or more of the entities listed above, in which case ownership shall be as provided in the contract between the municipality or joint agency and the entity owning or to own at least 2/3 of the facility. Each municipality in a joint endeavor shall defray its own interest and other payments required to be made in connection with a financing undertaken by it to pay its own percentage of the money furnished or the value of the property supplied by it for the planning, acquisition, and construction of a common facility, or an addition or betterment to the common facility. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the joint facility or agency.

460.821 Joint venture agreement; undivided interest in project; determination of future power requirements.

Sec. 21. (1) A governmental unit may join in a joint venture agreement to plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate, or maintain an undivided interest in a project situated within or without the state with 1 or more municipalities, joint agencies, or power utilities; and make plans and enter into contracts in connection with that project, not inconsistent with this act, as are necessary or appropriate.

(2) Before entering a joint venture agreement, the governing body of a municipality shall determine the needs of the municipality for power and energy based on engineering studies and reports. In determining the future power requirements of a municipality, the following shall be considered:

(a) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy.

(b) The municipality's need for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project, and the length of time required in advance to obtain, acquire, or construct additional power supply.

(e) The reliability and availability of existing or alternative power supply sources, and the cost of those existing or alternative power supply sources.

460.824 Sale or exchange of capacity or output; licenses, permits, certificates, or approvals; contracts for electric power and energy; authority, rights, privileges, and immunities of personnel; annual report; operating and financial statement; audit.

Sec. 24. (1) Capacity or output derived by a governmental unit from its ownership share of a project not then required by the governmental unit for its own use and for the use of its customers may be sold or exchanged by the governmental unit for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the sale.

(2) Municipalities proposing to jointly plan, finance, develop, own and operate a project, may either jointly or separately apply to the appropriate agencies of the state, the federal government, another state, or another proper agency, for the necessary licenses, permits, certificates, or approvals; may construct, maintain, and operate the project in accordance with the licenses, permits, certificates, or approvals; and may obtain, hold, and use the licenses, permits, certificates, or approvals in the same manner as the operating unit of any other power utility.

(3) Municipalities participating in a joint project or projects may enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electric power and energy produced by the project or projects with a power utility.

(4) Personnel appointed by a municipality to work on a joint project shall have the same authority, rights, privileges, and immunities that the officers, agents, and employees of the appointing municipality enjoy within the jurisdictional boundaries of the municipality, whether within or without that territory, when the personnel are acting within the scope of their authority or within the course of their employment.

(5) Municipalities party to a joint project authorized by this article shall, following the end of each fiscal year, prepare an annual report of the activities of the project, including a

complete operating and financial statement covering the operations of the project for that year. The municipalities shall conduct an audit of the books of records and accounts of the project to be made not less than annually by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of the project, or as part of the expense of administering the project covered by the audit.

460.831 Joint agency; formation; creation; purpose; determination of best interest.

Sec. 31. A joint agency is formed when the governing bodies of 2 or more municipalities by resolution determine that it is in the best interest of the municipalities in accomplishing the purposes of this act to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation, or maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. In determining whether the creation of a joint agency for this purpose is in the best interest of a municipality, the governing body of each municipality shall consider, but shall not be limited to, the following:

(a) Whether a separate entity may be able to finance the cost of projects in a more economic and efficient manner.

(b) Whether financial market acceptance may be enhanced if 1 entity is responsible for issuing and selling all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating, instead of multiple entities marketing their separate issues of bonds.

(c) Whether savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership, and operation of a project or projects.

(d) Whether the existence of a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be realized from the joint planning and undertaking will serve the interests of the residents of the municipality. The determination made by the governing body of a municipality hereunder shall be conclusive.

460.833a Records, books, documents, and papers; exclusion from public disclosure; exception.

Sec. 33a. (1) Records, books, documents, and papers of a joint agency or a municipal electric utility system, including those maintained electronically, may be exempted from public disclosure by the board of commissioners of the joint agency or the governing body of the municipal electric utility system if any of the following apply:

(a) They contain specific pricing or other confidential or proprietary information.

(b) They pertain to the development, construction, financing, or leasing of a project.

(c) They contain information which was received from a power utility or other person and which is subject to a confidentiality agreement.

(2) Upon a showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court.

460.834 Joint agency as public body politic and corporate; essential public function; articles of incorporation; amendments.

Sec. 34. (1) A joint agency formed for the purposes provided in this article is a public body politic and corporate and the powers conferred by this act are considered to be the performance of an essential public function.

(2) Any combination of 2 or more municipalities described in section 31 may incorporate a joint agency by the adoption of articles of incorporation by resolution of the governing body of each municipality. The fact of adoption shall be endorsed on the articles of incorporation by the chief executive officer and clerk of the municipality, in form substantially as follows:

The foregoing articles of incorporation
were adopted by the _____,
of the_____, of _____ county,
Michigan, at a meeting duly held on the ____ day
of _____, _____.

_____
_____ of said
_____
_____ of said
_____.

(3) The articles of incorporation shall be published at least once in a newspaper or newspapers designated in the articles and generally circulating within the area of each municipality. One printed copy of the articles of incorporation, certified as a true copy by the person or persons designated in the articles, with the date and place of the publication, shall be filed with the county clerk or clerks of the county or counties in which the incorporating municipalities are located and the secretary of state. The incorporation of the joint agency shall become effective at the time provided in the articles of incorporation. The validity of the joint agency incorporation shall be conclusive unless questioned in a court of competent jurisdiction within 60 days after the filing of certified copies with the county clerk or clerks and the secretary of state.

(4) The articles of incorporation shall state the name of the joint agency, the names of the various incorporating municipalities, the purpose or purposes for which it is created, the powers, duties, and limitations of the joint agency and its officers, the method of selecting its governing body, officers, and employees, the person or persons who are charged with the responsibility for causing the articles of incorporation to be published and filed or who are charged with the responsibility in connection with the incorporation of the joint agency, the place of publication, and all other matters which the incorporating municipalities consider advisable, all of which shall be subject to article 3 of this act and of the constitution and laws of the state.

(5) The board of commissioners of a joint agency may, by resolution, authorize the establishment of 1 or more classes of associate membership in the joint agency. A municipality admitted as an associate member shall have participatory and other rights and obligations as provided in the resolution establishing the associate membership class or classes.

(6) A municipality described in section 31 which did not join in the original incorporation of a joint agency may become a member or an associate member of the joint agency by the adoption of a resolution by the governing body of the municipality and by a resolution unanimously adopted by all members of the board of commissioners of the joint agency. The resolution of the board of commissioners may provide that a municipality shall become a member or an associate member at a future date or upon the occurrence of a future event and may provide further that the decision of the board of commissioners may not be revoked without the consent of the governing body of the municipality being added as a member or associate member. Upon the addition of a new member or associate member,

the articles of incorporation shall be conformed by the board of commissioners to show the addition of the new member or associate member and, if the municipality is being added as an associate member, the rights and obligations of the municipality as an associate member. Other amendments may be made to the articles of incorporation if adopted by the governing body of each municipality of which the joint agency is composed. An amendment shall be endorsed, published and certified and printed copies filed in the same manner as the original articles of incorporation, except an amendment showing only the addition of a new member or associate member and the rights and obligations of a new associate member need not be published.

460.836 Other municipality as member of joint agency; application; resolution; withdrawal.

Sec. 36. After the creation of a joint agency, another municipality may become a member of the joint agency upon application to the joint agency after the adoption of a resolution of the governing body of the municipality as prescribed in section 31 of this article authorizing the municipality to participate, and with the unanimous consent of the members of the joint agency as provided in section 34(6). A municipality may withdraw from a joint agency, except that all contractual rights acquired and obligations incurred while a member municipality remain in full force and effect.

460.837 Joint agency; rights and powers generally.

Sec. 37. A joint agency shall have the rights and powers necessary and convenient to effectuate this article, including, but not limited to, 1 or more of the following:

(a) To adopt bylaws for the regulation of the affairs and conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.

(b) To adopt and alter an official seal.

(c) To maintain 1 or more offices.

(d) To sue and be sued.

(e) To receive, administer, and comply with the conditions and requirements respecting a gift, grant, or donation of property or money.

(f) To acquire by purchase, lease, gift, or otherwise or to obtain options for the acquisition of real or personal property, or any interest in real property.

(g) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for the disposal of any real or personal property or an interest in such property.

(h) To pledge or assign money, rents, charges, or other revenues or the proceeds derived by the joint agency from the sales of real or personal property, insurance, or condemnation awards.

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes.

(j) To study, plan, finance, construct, reconstruct, acquire, participate in by contract or otherwise, improve, enlarge, extend, better, own, operate, or maintain, 1 or more projects, and to pay all or a part of the costs of the projects from the proceeds of bonds of the joint agency or from other funds made available to the joint agency.

(k) To authorize the construction, operation, or maintenance of a project or projects by a person, firm, or corporation, including a political subdivision or agency of another state.

(*l*) To acquire by lease, purchase, or otherwise an existing project or a project under construction.

(m) To sell or otherwise dispose of a project or projects.

(n) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy or other services, facilities, or commodities sold, furnished, or supplied through a project.

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale electric power or energy.

(p) To negotiate and to enter into contracts for the generation, production, purchase, sale, exchange, interchange, wheeling, pooling, transmission, delivery, or use of electric power and energy with a power utility.

(q) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this article.

(r) To apply to and obtain from the appropriate state or federal agency the necessary permits, licenses, certificates, or approvals to construct, maintain, and operate projects.

(s) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other persons as may be required by the joint agency.

(t) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to execute the powers granted to the joint agency under this act.

460.843 Contract for purchase of capacity and output; payments; default; furnishing money, personnel, equipment, and property; advances or contributions; repayment.

Sec. 43. (1) A municipality which is a member of a joint agency may contract to buy power and energy and transmission or other related rights from the joint agency, and separately, or through the joint agency, from any other power utility, required for the municipality's present or future requirements, including the capacity and output of 1 or more specified projects. The contract may provide that the member municipality or the joint agency, or both, shall be obligated to make the payments required by the contract whether or not a project is completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments under the contract shall not be subject to a reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or power utility or another member of the joint agency, or any other participant in a project within or outside the state, under the contract or other instrument. A contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities, or between a joint agency or 1 or more of its members and another power utility, may also provide that if 1 or more of the members of the joint agency or other participants in a project of a power utility default in the payment of its or their obligations with respect to the purchase of the capacity or output, then the remaining member municipalities and other participants which are purchasing capacity and output under the contract are, subject to such conditions and limitations, if any, as the contract may provide, required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality or other participant.

(2) Payments by a municipality under a contract for the purchase of capacity and output from a joint agency or other power utility shall be made solely from the revenues derived from the ownership and operation of the electric system of the municipality, and an obligation under the contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon property of the municipality or upon the municipality's income, receipts, or revenues, except the revenues of its electric system. Subject to any debt or debt-related

contracts or indentures of a municipality or joint agency, payments described in this subsection shall be made as part of the operating and maintenance costs of the municipality's or agency's system. A municipality is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities, sold, furnished, or supplied through its electric systems sufficient to provide revenues adequate to meet its obligations under the contract, and to pay other amounts payable from or constituting a charge and lien upon those revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds issued by the municipality for purposes related to its electric system.

(3) A municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment, and property, both real and personal. A member municipality may also provide services to a joint agency.

(4) A member municipality of a joint agency may contract for, advance, or contribute funds derived solely from ownership of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and member municipality, and the joint agency shall repay the advance or contribution from the proceeds of bonds, from operating revenues, or from other funds of the joint agency, together with interest thereon as may be agreed upon by the member municipality and the joint agency.

460.844 Sale or exchange of excess capacity or output.

Sec. 44. (1) A joint agency may sell or exchange the excess capacity or output of a project not required by any of its members for consideration upon terms and conditions as determined by the parties.

(2) A joint agency may do 1 or more of the following:

(a) Transfer all or part of its interest in or functional control of transmission facilities to a multistate regional transmission system organization approved by the federal government and operating in this state or to 1 or more of its transmission-owning members.

(b) Purchase, acquire, sell, or otherwise transfer stock, membership units, or any other interest in a multistate regional transmission system organization approved by the federal government and operating in this state or in 1 or more of its transmission-owning members.

This act is ordered to take immediate effect.
Approved March 6, 2008.
Filed with Secretary of State March 7, 2008.

[No. 22]

(HB 4220)

AN ACT to amend 1978 PA 566, entitled "An act to encourage the faithful performance of official duties by certain public officers and public employees; to prescribe standards of conduct for certain public officers and public employees; to prohibit the holding of incompatible public offices; and to provide certain judicial remedies," by amending section 3 (MCL 15.183), as amended by 2004 PA 110.

The People of the State of Michigan enact:

15.183 Public officer or employee as member of governing board of institution of higher education; member of school board as superintendent of schools; public officer or employee as member of board of tax increment finance authority, downtown development authority, or a local development finance authority; applicability; eligibility; conflict of interest; breach of duty; public officer or employee of community mental health services program; volunteer coach or supervisor of student extracurricular activity.

Sec. 3. (1) Section 2 does not prohibit a public officer's or public employee's appointment or election to, or membership on, a governing board of an institution of higher education. However, a public officer or public employee shall not be a member of governing boards of more than 1 institution of higher education simultaneously, and a public officer or public employee shall not be an employee and member of a governing board of an institution of higher education simultaneously.

(2) Section 2 does not prohibit a member of a school board of 1 school district from being a superintendent of schools of another school district.

(3) Section 2 does not prohibit a public officer or public employee of a city, village, township, school district, community college district, or county from being appointed to and serving as a member of the board of a tax increment finance authority under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, a downtown development authority under 1975 PA 197, MCL 125.1651 to 125.1681, a local development finance authority under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174, or a brownfield redevelopment authority under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672.

(4) Section 2 does not do any of the following:

(a) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 25,000 from serving, with or without compensation, as emergency medical services personnel as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(b) Prohibit public officers or public employees of a city, village, township, or county having a population of less than 25,000 from serving, with or without compensation, as a firefighter in that city, village, township, or county if that firefighter is not any of the following:

(*i*) A full-time firefighter.

(*ii*) A fire chief.

(*iii*) A person who negotiates with the city, village, township, or county on behalf of the firefighters.

(c) Limit the authority of the governing body of a city, village, township, or county having a population of less than 25,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government.

(5) This section does not relieve a person from otherwise meeting statutory or constitutional qualifications for eligibility to, or the continued holding of, a public office.

(6) This section does not allow or sanction activity constituting conflict of interest prohibited by the constitution or laws of this state.

(7) This section does not allow or sanction specific actions taken in the course of performance of duties as a public official or as a member of a governing body of an institution of higher education that would result in a breach of duty as a public officer or board member.

(8) Section 2 does not prohibit a public officer or public employee of a community mental health services program as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, from serving as a public officer or public employee of a separate legal or administrative entity created by 2 or more community mental health services programs under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, a joint board or commission created under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, or a regional entity created under section 204b of the mental health code, 1974 PA 258, MCL 330.1204b, whether or not the separate legal or administrative entity, joint board or commission, or regional entity may enter into contracts or agreements with 1 or more of the community mental health services programs.

(9) Section 2 does not prohibit a member of a school board from being appointed to or serving as a volunteer coach or supervisor of a student extracurricular activity if all of the following conditions are present:

(a) The school board member receives no compensation for service as a volunteer coach or supervisor.

(b) During the period he or she serves as a volunteer, the school board member abstains from voting on issues before the school board concerning that program.

(c) There is no qualified applicant available to fill a vacant position if the school board member is excluded.

(d) The appointing authority has received the results of a criminal history check and a criminal records check from the department of state police or the federal bureau of investigation for the school board member.

This act is ordered to take immediate effect.
Approved March 12, 2008.
Filed with Secretary of State March 12, 2008.

[No. 23]

(HB 5535)

AN ACT to authorize the secretary of state to issue enhanced driver licenses and state personal identification cards to United States citizens who reside in Michigan to facilitate travel between the United States and Canada; to establish certain funds and prescribe duties for certain officials; and to prohibit certain conduct and prescribe penalties.

The People of the State of Michigan enact:

28.301 Short title.

Sec. 1. This act shall be known and may be cited as the "enhanced driver license and enhanced official state personal identification card act".

28.302 Definitions.

Sec. 2. As used in this act:

(a) "Enhanced driver license" means an operator's or chauffeur's license issued to an individual under this act for the following purposes:

(*i*) Use in entering the United States at land and sea ports.

(*ii*) Use in the same manner as a standard driver license.

(b) "Enhanced official state personal identification card" means an official state personal identification card issued under this act to an individual who is a United States citizen who resides in this state for the following purposes:

(*i*) Use in entering the United States at land and sea ports.

(*ii*) Use in the same manner as a standard official state personal identification card.

(c) "Local government agency" means a county, city, village, or township in this state.

(d) "Resident" means every person who resides in this state and establishes that he or she is legally present in the United States. This definition applies to the provisions of this act only.

(e) "Resident address" means the place that is a person's legal residence as that term is defined in section 11 of the Michigan election law, 1954 PA 116, MCL 168.11.

(f) "Standard driver license" means an operator's license or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(g) "Standard official state personal identification card" means an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300.

28.303 Memorandum of understanding with federal agency; agreement to implement border-crossing initiative.

Sec. 3. (1) The secretary of state with the approval of the state administrative board created under 1921 PA 2, MCL 17.1 to 17.3, may enter into a memorandum of understanding with any federal agency for the purpose of obtaining approval of an enhanced driver license or enhanced official state personal identification card as proof of identity and citizenship for persons entering the United States at land and sea ports.

(2) In conjunction with a federal agency and with the approval of the state administrative board created under 1921 PA 2, MCL 17.1 to 17.3, the secretary of state may enter into an agreement with the United Mexican States, Canada, or a Canadian province for the purpose of implementing a border-crossing initiative.

28.304 Enhanced driver's license or enhanced official state personal identification card; issuance; security measures; radio frequency identification technology; requirements in addition to requirements for standard driver license or official state personal identification card; sanction; "sanction" defined.

Sec. 4. (1) The secretary of state may issue an enhanced driver's license or enhanced official state personal identification card to an applicant who provides satisfactory proof of his or her full legal name, United States citizenship, identity, date of birth, social security number, residence address, and a photographic identity document. An applicant may choose to apply for a standard driver license or standard official state personal identification card or an enhanced driver license or enhanced state personal identification card.

(2) An enhanced driver license or enhanced official state personal identification card shall include reasonable security measures to protect against unauthorized disclosure of personal information regarding residents of this state that is contained in the enhanced driver license or enhanced official state personal identification card.

(3) An enhanced driver license or enhanced official state personal identification card may include radio frequency identification technology that is limited to a randomly assigned number which shall be encrypted if agreed to by the department of homeland security, and does not include biometric data. The secretary of state shall ensure that the radio frequency identification technology is secure from unauthorized data access and includes reasonable security measures to protect against unauthorized disclosure of personal information. An

applicant shall be required to sign a declaration acknowledging his or her understanding of the radio frequency identification technology before he or she is issued an enhanced driver license or enhanced official state personal identification card.

(4) The requirements of this act are in addition to the requirements otherwise imposed on individuals who apply for a standard driver license or standard official state personal identification card.

(5) The holder of an enhanced driver license issued under this act is subject to every licensing sanction provided under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923. As used in this subsection, "licensing sanction" means the restriction, suspension, revocation, or denial of a driver license; the addition of points to a driving record; the assessment of a driver responsibility fee; the assessment of a civil fine or criminal penalty resulting from a conviction; a civil infraction determination; the imposition of probationary terms and conditions; or any other penalty provided under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

28.305 Items to be provided to secretary of state; facial image or signature; display of social security number prohibited; examination and verification of application and other documentation; rejection of application; retention of copies or digital images of documents or facial image; disclosure of digital images of documents; compilation or maintenance of database limited.

Sec. 5. (1) An applicant who chooses to apply for an enhanced driver license or enhanced official state personal identification card shall provide all of the following items to the secretary of state in the manner prescribed by the secretary of state:

(a) A completed application indicating the applicant's full legal name, any legal name change resulting from the applicant's adoption, marriage, divorce, or a court order, date of birth, residence address, height, gender, eye color, social security number, signature, and, if applicable, the applicant's intention to be an organ donor as provided under section 307 of the Michigan vehicle code, 1949 PA 300, MCL 257.307, or section 2 of 1972 PA 222, MCL 28.292.

(b) Documentation demonstrating the applicant's United States citizenship, full legal name, any legal name change resulting from the applicant's adoption, marriage, divorce, or a court order, date of birth, residence address, and social security number.

(c) The applicant's signed certification that the information presented by the applicant is true and correct to the best of the applicant's knowledge.

(d) The fee prescribed under section 6.

(2) An applicant who applies for an enhanced driver license or enhanced official state personal identification card shall have his or her facial image and signature captured or reproduced by the secretary of state at the time of application. A person's facial image or signature may be made available by this state and used as follows:

(a) By a federal, state, or local government agency for any law enforcement purpose authorized by law.

(b) By another state to the extent required by federal law.

(c) By the secretary of state for any purpose specifically authorized by law.

(d) For any other purpose as determined by the secretary of state, if a person provides his or her written authorization for the release of his or her own facial image or signature.

(e) As otherwise required by law.

(3) Except as otherwise provided under subsection (2), the secretary of state shall not disclose a person's facial image, signature, social security number, or copies or digital images of documents retained under this act.

(4) An enhanced driver license or enhanced official state personal identification card issued under this act shall not display a person's social security number on the face of the card.

(5) The secretary of state shall examine and verify the genuineness, regularity, and legality of every application and other documentation submitted to the secretary of state for an enhanced driver license or enhanced official state personal identification card, and may in all cases investigate as the secretary of state considers necessary or require additional information, and shall reject any application if not satisfied of the genuineness, regularity, and legality of the application or supporting documentation or the truth of any statement contained in the application or supporting documentation, or for any other reason authorized by law. A decision by the secretary of state to reject an application under this subsection may be appealed under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(6) The secretary of state shall retain copies or digital images of documents provided by the applicant to the secretary of state under this act.

(7) The facial image of an applicant for a license or card under this act who was not issued an enhanced driver license or enhanced official state personal identification card shall be retained for not less than 1 year, unless fraud is suspected, in which case a record containing the applicant's facial image and the reason for denial shall be retained for not less than 10 years.

(8) The secretary of state may disclose digital images of documents retained under this act to a federal, state, or local government agency for any law enforcement purpose authorized by law. Except as otherwise provided in this act, copies or digital images of documents retained under this act are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) The secretary of state shall not compile or maintain a database under this act that may be shared with a country other than the United States.

28.306 Fees.

Sec. 6. (1) An application for an original enhanced driver license or enhanced official state personal identification card shall be accompanied by payment of a fee of not more than $50.00.

(2) The renewal fee for an enhanced driver license or enhanced official state personal identification card renewed under this act shall be not more than $50.00. However, if an enhanced driver license or enhanced official state personal identification card is expired at the time of renewal, the fee shall be the same as the fee provided under subsection (1).

(3) Money from fees collected under subsections (1) and (2) shall be deposited into the enhanced driver license and enhanced official state personal identification card fund created in section 7 after distribution as follows:

(a) The secretary of state shall refund to each county or municipality acting as an examining officer or examining bureau $2.50 for each applicant examined for an original enhanced driver license, if the application is not denied and the money refunded is paid to the county or local treasurer and is appropriated to the county, municipality, or officer or bureau receiving the money for the purpose of carrying out this act.

(b) The state treasurer shall deposit the sum of $4.00 to the traffic law enforcement and safety fund created in section 819a of the Michigan vehicle code, 1949 PA 300, MCL 257.819a, for each person examined for an original enhanced driver license.

(c) Except as otherwise provided in subdivision (d), $4.50 of an original enhanced driver license and $6.00 of a renewal enhanced driver license shall be appropriated to the transportation economic development fund established in section 2 of 1987 PA 231, MCL 247.902, and shall not be appropriated for any other purpose in any act making appropriations of state funds.

(d) Notwithstanding subdivision (c), $2,500,000.00 shall be deposited in the state treasury and credited to the general fund, except not more than $1,000,000.00 shall be credited to the gasoline inspection and testing fund created under section 8 of the motor fuels quality act, 1984 PA 44, MCL 290.648.

(e) The money remaining after distributions are made under subdivisions (a) through (d) shall remain in the enhanced driver license and enhanced official state personal identification card fund created under section 7.

(4) A fee paid under this section is nonrefundable, except for administrative error.

28.307 Enhanced driver license and enhanced official state personal identification card fund; creation; disposition of money and assets; investment; money remaining at close of fiscal year; secretary of state as administrator; expenditure.

Sec. 7. (1) The enhanced driver license and enhanced official state personal identification card fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The secretary of state shall be the administrator of the fund for auditing purposes.

(5) The secretary of state shall expend money from the fund, upon appropriation, to pay the necessary expenses incurred by the secretary of state in the administration and enforcement of this act.

28.308 Conduct as felony; penalty.

Sec. 8. A person who makes a false certification or statement in applying for an enhanced driver license or enhanced official state personal identification card is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

This act is ordered to take immediate effect.
Approved March 13, 2008.
Filed with Secretary of State March 13, 2008.

[No. 24]

(HB 5536)

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses

and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 11b of chapter XVII (MCL 777.11b), as amended by 2005 PA 207.

The People of the State of Michigan enact:

CHAPTER XVII

777.11b Chapter 28 of Michigan Compiled Laws; felonies to which chapter applicable.

Sec. 11b. This chapter applies to the following felonies enumerated in chapter 28 of the Michigan Compiled Laws:

M.C.L.	Category	Class	Description	Stat Max
28.214	Pub trst	F	Unauthorized disclosure of information from LEIN — subsequent offense	4
28.293(1)	Pub ord	E	False information when applying for state ID	5
28.293(2)	Pub ord	D	False information when applying for state ID — second offense	7
28.293(3)	Pub ord	C	False information when applying for state ID — third or subsequent offense	15
28.295(1)(a)	Pub ord	D	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for 10 years or more	10
28.295(1)(b)	Pub ord	E	Counterfeiting or forging state ID card or using counterfeited or forged state ID card to commit felony punishable by imprisonment for less than 10 years or a misdemeanor punishable by more than 6 months	5

28.295(2)	Pub ord	E	Selling counterfeited or forged state ID card or possessing counterfeited or forged state ID card with intent to deliver to another person or possessing 2 or more counterfeited or forged state ID cards	5
28.295(5)	Property	H	Using stolen state ID card to commit felony	Variable
28.295a(1)	Pub ord	H	False representation to obtain or misuse personal information	4
28.295a(2)	Pub ord	G	False representation to obtain or misuse personal information — second offense	7
28.295a(3)	Pub ord	C	False representation to obtain or misuse personal information — third or subsequent offense	15
28.308	Pub saf	E	False certification or statement in application for enhanced driver license or enhanced official state personal identification card	5
28.422	Pub saf	F	Pistols — license application forgery	4
28.422a(4)	Pub saf	F	False statement on pistol sales record	4
28.425b(3)	Pub saf	F	False statement on concealed pistol permit application	4
28.425j(2)	Pub saf	F	Unlawful granting or presenting of pistol training certificate	4
28.425o(5)(c)	Pub saf	F	Carrying concealed pistol in prohibited place — third or subsequent offense	4
28.435(14)(c)	Pub saf	G	Firearm sale without trigger lock, gun case, or storage container — third or subsequent offense	2
28.729(1)(a)	Pub ord	F	Failure to register as a sex offender, first offense	4
28.729(1)(b)	Pub ord	D	Failure to register as a sex offender, second offense	7
28.729(1)(c)	Pub ord	D	Failure to register as a sex offender, third or subsequent offense	10
28.729(2)(c)	Pub ord	F	Failure to update sex offender registration information — third or subsequent offense	4
28.734(2)(b)	Pub trst	G	Student safety zone violation involving work or loitering — second or subsequent offense	2
28.735(2)(b)	Pub trst	G	Student safety zone violation involving residency — second or subsequent violation	2
28.754	Pub ord	F	False report of a child abduction	4

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5535 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 13, 2008.
Filed with Secretary of State March 13, 2008.

Compiler's note: House Bill No. 5535, referred to in enacting section 1, was filed with the Secretary of State March 13, 2008, and became 2008 PA 23, Imd. Eff. Mar. 13, 2008.

[No. 25]

(HB 5582)

AN ACT to amend 1945 PA 327, entitled "An act relating to aeronautics in this state; providing for the development and regulation thereof; creating a state aeronautics commission; prescribing powers and duties; providing for the licensing, or registration, or supervision and control of all aircraft, airports and landing fields, schools of aviation, flying clubs, airmen, aviation instructors, airport managers, manufacturers, dealers, and commercial operation in intrastate commerce; providing for rules pertaining thereto; prescribing a privilege tax for the use of the aeronautical facilities on the lands and waters of this state; providing for the acquisition, development, and operation of airports, landing fields, and other aeronautical facilities by the state, by political subdivisions, or by public airport authorities; providing for the incorporation of public airport authorities and providing for the powers, duties, and obligations of public airport authorities; providing for the transfer of airport management to public airport authorities, including the transfer of airport liabilities, employees, and operational jurisdiction; providing jurisdiction of crimes, torts, and contracts; providing police powers for those entrusted to enforce this act; providing for civil liability of owners, operators, and others; making hunting from aircraft unlawful; providing for repair station operators lien; providing for appeals from rules or orders issued by the commission; providing for the transfer from the Michigan board of aeronautics to the aeronautics commission all properties and funds held by the board of aeronautics; providing for a state aeronautics fund and making an appropriation therefor; prescribing penalties; and making uniform the law with reference to state development and regulation of aeronautics," by amending section 203 (MCL 259.203), as amended by 2000 PA 404.

The People of the State of Michigan enact:

259.203 Gasoline privilege tax; imposition; collection and remittance; refund; purchase of fuel by unregistered person; imposition of tax on aviation fuel.

Sec. 203. (1) There is hereby imposed a privilege tax of 3 cents per gallon on all fuel sold or used in producing or generating power for propelling aircraft using the aeronautical facilities on the lands and waters of this state. The tax shall be collected and remitted in the same manner and method and at the same time as prescribed by law for the collection of the gasoline tax imposed on all gasoline used in producing or generating power for propelling motor vehicles used upon the public highways of this state under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170. A refund of 1-1/2 cents per gallon shall be made to airline operators who show proof within 6 months after purchase that they are operating interstate on scheduled operations.

(2) If a person required to register with the department of treasury under section 94 of the motor fuel tax act, 2000 PA 403, MCL 207.1094, is not registered, the person shall not purchase fuel under this act at the rate imposed by subsection (1), but shall pay the applicable rate imposed on motor fuel by section 8 of the motor fuel tax act, 2000 PA 403, MCL 207.1008.

(3) The tax imposed under subsection (1) is not imposed on aviation fuel if the purchaser has certified in writing to the seller that the aviation fuel is being purchased solely for the purpose of formulating leaded racing fuel as that term is defined in section 4 of the motor fuel tax act, 2000 PA 403, MCL 207.1004. Aviation fuel qualifying under this subsection shall be identified on shipping papers and invoices as "aviation fuel exempt for LRF".

Effective date.

Enacting section 1. This amendatory act takes effect 60 days after the date it is enacted into law.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5583 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 13, 2008.
Filed with Secretary of State March 13, 2008.

Compiler's note: House Bill No. 5583, referred to in enacting section 2, was filed with the Secretary of State March 13, 2008, and became 2008 PA 26, Eff. May 12, 2008.

[No. 26]

(HB 5583)

AN ACT to amend 2000 PA 403, entitled "An act to prescribe a tax on the sale and use of certain types of fuel in motor vehicles on the public roads or highways of this state and on certain other types of gas; to prescribe the manner and the time of collection and payment of this tax and the duties of officials and others pertaining to the payment and collection of this tax; to provide for the licensing of persons involved in the sale, use, or transportation of motor fuel and the collection and payment of the tax imposed by this act; to prescribe fees; to prescribe certain other powers and duties of certain state agencies and other persons; to provide for exemptions and refunds and for the disposition of the proceeds of this tax; to provide for appropriations from the proceeds of this tax; to prescribe remedies and penalties for the violation of this act; and to repeal acts and parts of acts," by amending sections 30 and 94 (MCL 207.1030 and 207.1094), section 30 as amended by 2002 PA 668.

The People of the State of Michigan enact:

207.1030 Tax exemption.

Sec. 30. (1) Motor fuel is exempt from the tax imposed by section 8 and the tax shall not be collected by the supplier if the motor fuel:

(a) Is dyed diesel fuel or dyed kerosene.

(b) Is gasoline or diesel fuel that is sold directly by the supplier to the federal government, the state government, or a political subdivision of the state for use in a motor vehicle

owned and operated or leased and operated by the federal or state government or a political subdivision of the state.

(c) Is sold directly by the supplier to a nonprofit, private, parochial, or denominational school, college, or university and is used in a school bus owned and operated or leased and operated by the educational institution that is used in the transportation of students to and from the institution or to and from school functions authorized by the administration of the institution.

(d) Is fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper under any of the following circumstances:

(*i*) The motor fuel is exported by a supplier who is licensed in the destination state.

(*ii*) Until December 31, 2000, the motor fuel is sold by a supplier to a licensed exporter for immediate export.

(*iii*) The motor fuel is sold by a supplier to another person for immediate export to a state for which the destination state fuel tax has been paid to the supplier who is licensed to remit tax to that destination state.

(e) Is gasoline removed from a pipeline or marine vessel by a taxable fuel registrant with the internal revenue service as a fuel feedstock user.

(f) Is motor fuel that is sold for use in aircraft but only if the purchaser paid the tax imposed on that fuel under the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208, and the purchaser is registered under section 94 if required to be registered under that section.

(g) Is aviation fuel upon which tax is not due under section 203 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.203, and the purchaser has certified in writing to the seller that the aviation fuel is being purchased solely for the purpose of formulating leaded racing fuel as that term is defined in section 4. Aviation fuel qualifying under this subsection shall be identified on shipping papers and invoices as "aviation fuel exempt for LRF".

(2) Motor fuel is exempt from the tax imposed by section 8 if it is acquired by an end user outside of this state and brought into this state in the fuel supply tank of a motor vehicle that is not a commercial motor vehicle, but only if the fuel is retained within and consumed from that same fuel supply tank.

(3) A person who uses motor fuel for a taxable purpose where the tax imposed by this act was not collected shall pay to the department the tax imposed by section 8 and any applicable penalties or interest. The payment shall be made on a form or in a format prescribed by the department.

207.1094 Aviation fuel.

Sec. 94. (1) A person shall not purchase for resale motor fuel identified on a shipping paper or invoice as aviation fuel unless the person is registered with the department on a form or in a format prescribed by the department.

(2) Motor fuel upon which the tax imposed under section 203 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.203, has been paid shall be identified on the shipping paper or invoice as aviation fuel and shall be sold only for aviation purposes. A seller shall obtain from the purchaser a statement that the fuel will only be sold or used as aviation fuel.

(3) A person shall not sell, use, or label motor fuel that is exempt from tax under section 30(1)(f) or that has been identified on a shipping paper or invoice as aviation fuel for use other than as aviation fuel, except that a person may sell or use motor fuel identified

on a shipping paper or invoice as "aviation fuel exempt for LRF" under this act for the sole purpose of producing leaded racing fuel as that term is defined in section 4.

(4) A person shall not sell, use, or label for aviation purposes motor fuel identified on a shipping paper or invoice as diesel fuel.

(5) A person who knowingly violates this section is guilty of a felony.

Effective date.

Enacting section 1. This amendatory act takes effect 60 days after the date it is enacted into law.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5582 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 13, 2008.
Filed with Secretary of State March 13, 2008.

Compiler's note: House Bill No. 5582, referred to in enacting section 2, was filed with the Secretary of State March 13, 2008, and became 2008 PA 25, Eff. May 12, 2008.

[No. 27]

(SB 530)

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 82126 (MCL 324.82126), as amended by 2003 PA 2.

The People of the State of Michigan enact:

324.82126 Operation of snowmobile; prohibitions; exemption; construction, operation, and maintenance of snowmobile trail; conditions; demarcation of trail by signing; "operate" defined; prohibited conduct; assumption of risk; violation of section as civil infraction; fine.

Sec. 82126. (1) A person shall not operate a snowmobile under any of the following circumstances:

(a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing.

(b) In a forest nursery, planting area, or on public lands posted or reasonably identifiable as an area of forest reproduction when growing stock may be damaged or posted or reasonably identifiable as a natural dedicated area that is in zone 2 or zone 3.

(c) On the frozen surface of public waters as follows:

(*i*) Within 100 feet of a person, including a skater, who is not in or upon a snowmobile.

(*ii*) Within 100 feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the snowmobile.

(*iii*) On an area that has been cleared of snow for skating purposes unless the area is necessary for access to the public water.

(d) Within 100 feet of a dwelling between 12 midnight and 6 a.m., at a speed greater than the minimum required to maintain forward movement of the snowmobile.

(e) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except under 1 or more of the following circumstances:

(*i*) During an emergency.

(*ii*) For law enforcement purposes.

(*iii*) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(*iv*) For the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations.

(*v*) On the person's own property or property under the person's control or as an invited guest.

(f) While transporting on the snowmobile a bow, unless unstrung or encased, or a firearm, unless unloaded in both barrel and magazine and securely encased.

(g) On or across a cemetery or burial ground.

(h) Within 100 feet of a slide, ski, or skating area except when traveling on a county road right-of-way pursuant to section 82119 or a snowmobile trail that is designated and funded by the department. A snowmobile may enter such an area for the purpose of servicing the area or for medical emergencies.

(i) On a railroad or railroad right-of-way. This prohibition does not apply to railroad personnel, public utility personnel, law enforcement personnel while in the performance of their duties, and persons using a snowmobile trail located on or along a railroad right-of-way, or an at-grade snowmobile trail crossing of a railroad right-of-way, that has been expressly approved in writing by the owner of the right-of-way and each railroad company using the tracks and that meets the conditions imposed in subsections (3) and (4). A snowmobile trail or an at-grade snowmobile trail crossing shall not be constructed on a right-of-way designated by the federal government as a high-speed rail corridor.

(2) Except as provided under subsection (3), a person shall not operate a snowmobile unless the snowmobile is equipped with a muffler in good working order and in constant operation from which noise emission does not exceed either of the following:

(a) For a snowmobile manufactured after July 1, 1977 and sold or offered for sale in this state, 78 decibels at 50 feet, as measured using the 2003 society of automotive engineers standard J192.

(b) For a stationary snowmobile manufactured after July 1, 1980 and sold or offered for sale in this state, 88 decibels, as measured using the 2004 society of automotive engineers standard J2567.

(3) A person is exempt from the requirement of subsection (2) under either of the following circumstances:

(a) While operating a snowmobile during an organized race on a course that is used solely for racing.

(b) While operating a snowmobile on private property, with the permission of the private property owner, in preparation for an organized race, if the operation of the snowmobile is in compliance with applicable local noise ordinances.

(4) A snowmobile trail located on or along a railroad right-of-way shall be constructed, operated, and maintained by a person other than the person owning the railroad right-of-way and the person operating the railroad, except that an at-grade snowmobile trail crossing of a railroad right-of-way shall be constructed and maintained by the person operating the railroad at the sole cost and expense of the person operating the trail connected by the crossing, pursuant to terms of a lease agreement under which the person operating the trail agrees to do all of the following:

(a) Indemnify the person owning the railroad right-of-way and the person operating the railroad against any claims associated with, arising from, or incidental to the construction, maintenance, operation, and use of the trail or at-grade snowmobile trail crossing.

(b) Provide liability insurance in the amount of $2,000,000.00 naming the person owning the railroad right-of-way and the person operating the railroad as named insureds.

(c) Meet any other obligations or provisions considered appropriate by the person owning the railroad right-of-way or the person operating the railroad including, but not limited to, the payment of rent that the person owning the railroad right-of-way or the person operating the railroad is authorized to charge under this part and the meeting of all construction, operating, and maintenance conditions imposed by the person owning the railroad right-of-way and the person operating the railroad regarding the snowmobile trail.

(5) A snowmobile trail shall be clearly demarcated by signing constructed and maintained at the sole cost and expense of the grant program sponsor. The signing shall be placed at the outer edge of the railroad right-of-way, as far from the edge of the railroad tracks as possible, and not closer than 20 feet from the edge of the railroad tracks unless topography or other natural or manmade features require the trail to lie within 20 feet of the edge of the railroad tracks. The at-grade snowmobile trail crossing of a railroad right-of-way shall be aligned at 90 degrees or as close to 90 degrees as possible to the railroad track being crossed, and shall be located where approach grades to the crossing are minimal and where the vision of a person operating a snowmobile will be unobstructed as he or she approaches the railroad tracks. The design of the snowmobile trail, including the location of signing, shall be included upon plan sheets by the person constructing, operating, and maintaining the trail, and shall be approved in writing by the person owning the right-of-way and the person operating the railroad. Signing shall conform to specifications issued by the department to its snowmobile trail grant program sponsors.

(6) Notwithstanding section 82101, as used in this section, "operate" means to cause to function, run, or manage.

(7) A person shall not alter, deface, damage, or remove a snowmobile trail sign or control device.

(8) Each person who participates in the sport of snowmobiling accepts the risks associated with that sport insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; or collisions with signs, fences, or other snowmobiles or snow-grooming equipment. Those risks do not include injuries to persons or property that can result from the use of a snowmobile by another person in a careless or negligent manner likely to endanger person or property. When a snowmobile is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of snowmobiling additionally assumes risks including, but not limited to, entanglement with tracks, switches, and ties and collisions with trains and other equipment and facilities.

(9) A person who violates this section is responsible for a state civil infraction and shall be ordered to pay a civil fine of not less than $100.00 or more than $250.00.

This act is ordered to take immediate effect.
Approved March 13, 2008.
Filed with Secretary of State March 13, 2008.

[No. 28]

(SB 750)

AN ACT to amend 1897 PA 205, entitled "An act to prefer honorably discharged members of the armed forces of the United States for public employments," by amending section 1 (MCL 35.401).

The People of the State of Michigan enact:

35.401 Veterans; preference for public employment; effect of physical impairment; vacancy in elective office; qualifications; conflict with county civil service provisions.

Sec. 1. In every public department and upon the public works of the state and of every county and municipal corporation of this state, an honorably discharged veteran, as defined by 1965 PA 190, MCL 35.61 to 35.62, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment that does not, in fact, incapacitate, does not disqualify them. If it is necessary to fill by appointment a vacancy occurring in an elective office, the appointment is within this act. The applicant shall be of good moral character and shall have been a resident of the state for at least 2 years and possess other requisite qualifications, after credit allowed by the provisions of any civil service laws. If there is a conflict between the provisions of this act and 1941 PA 370, MCL 38.401 to 38.428, the provisions of 1941 PA 370, MCL 38.401 to 38.428, shall prevail.

This act is ordered to take immediate effect.
Approved March 13, 2008.
Filed with Secretary of State March 13, 2008.

[No. 29]

(SB 1061)

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax

on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," (MCL 500.100 to 500.8302) by adding chapters 46, 47, and 48.

The People of the State of Michigan enact:

CHAPTER 46

CAPTIVE INSURANCE COMPANIES

500.4601 Definitions.

Sec. 4601. As used in this chapter:

(a) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(b) "Alien captive insurance company" means an insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a country other than the United States or any state, district, commonwealth, territory, or possession of the United States.

(c) "Association" means a legal group of individuals, corporations, limited liability companies, partnerships, political subdivisions, or groups that has been in continuous existence for at least 1 year and the member organizations of which collectively, or which does itself own, control, or hold, with power to vote, all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer or organized as a limited liability company; or has complete voting control over an association captive insurance company organized as a mutual insurer.

(d) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies.

(e) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(f) "Branch captive insurance company" means an alien captive insurance company authorized by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(g) "Branch operations" means any business operations of a branch captive insurance company in this state.

(h) "Captive insurance company" means a pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company authorized under this chapter. For purposes of this chapter, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner.

(i) "Commissioner" means the commissioner of the office of financial and insurance regulation or the commissioner's designee.

(j) "Control", including the terms "controlling", "controlled by", and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person. A showing that control does not exist may rebut this presumption.

(k) "Controlled unaffiliated business" means a company that meets all of the following:

(*i*) Is not in the corporate system of a parent and affiliated companies.

(*ii*) Has an existing contractual relationship with a parent or affiliated company.

(*iii*) Has risks managed by a captive insurance company in accordance with this chapter.

(*l*) "Foreign captive insurer" means an insurer formed under the laws of the District of Columbia, or some state, commonwealth, territory, or possession of the United States other than the state of Michigan.

(m) "GAAP" means generally accepted accounting principles.

(n) "Industrial insured" means an insured that meets all of the following:

(*i*) That procures insurance by use of the services of a full-time employee acting as a risk manager or insurance manager or utilizing the services of a regularly and continuously qualified insurance consultant.

(*ii*) Whose aggregate annual premiums for insurance on all risks total at least $25,000.00.

(*iii*) That has at least 25 full-time employees.

(o) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(p) "Industrial insured group" means a group that meets either of the following criteria:

(*i*) Is a group of industrial insureds that collectively own, control, or hold, with power to vote, all of the outstanding voting securities of an industrial insured captive insurance

company incorporated as a stock insurer or limited liability company or have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

(*ii*) Is a group created under the liability risk retention act of 1986, 15 USC 3901 to 3906, and chapter 18, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under this chapter.

(q) "Irrevocable letter of credit" means a letter of credit that meets the description in section 1105(c).

(r) "Member organization" means any individual, corporation, limited liability company, partnership, or association that belongs to an association.

(s) "Office" means the office of financial and insurance regulation.

(t) "Organizational document" means the articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that create a legal entity or prescribe its existence.

(u) "Parent" means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting interests of a company.

(v) "Participant" means an entity as described in section 4667, and any affiliates of that entity, that are insured by a sponsored captive insurance company, where the recovery of the participant is limited through a participant contract to the assets of a protected cell.

(w) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the recovery of the participant to the assets of a protected cell.

(x) "Protected cell" means a segregated account established and maintained by a sponsored captive insurance company for 1 participant.

(y) "Pure captive insurance company" means a company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination of its parent, affiliated companies, and controlled unaffiliated business.

(z) "Qualified United States financial institution" means that term as defined in section 1101.

(aa) "Safe, reliable, and entitled to public confidence" means that term as defined in section 116(d).

(bb) "Special purpose captive insurance company" means a captive insurance company that is authorized under this chapter and chapter 47 that does not meet the definition of any other type of captive insurance company defined in this section.

(cc) "Sponsor" means an entity that meets the requirements of section 4665 and is approved by the commissioner to provide all or part of the capital and retained earnings required by applicable law and to organize and operate a sponsored captive insurance company.

(dd) "Sponsored captive insurance company" means a captive insurance company in which the minimum capital and retained earnings required by applicable law is provided by 1 or more sponsors, is authorized under this chapter, insures the risks of separate participants through the participant contract, and segregates each participant's liability through 1 or more protected cells.

(ee) "Surplus" means unassigned funds for an entity using statutory accounting principles, with capital and surplus including all capital stock, paid in capital and contributed surplus, and other surplus funds with corresponding items under GAAP consisting of retained earnings and accumulated other comprehensive income, with capital and retained earnings including all capital stock, additional paid in capital, and other equity funds.

(ff) "Treasury rates" means the United States treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.

(gg) "Voting security" includes any security convertible into or evidencing the right to acquire a voting security.

500.4603 Limited certificate of authority; application; conditions; organizational documents; submission; contents; liability of director; submission of documents to attorney general for examination; duty of commissioner to require, consider, and review certain documents and factors; issuance of certificate; confidentiality; fee; foreign captive insurance company as captive insurance company.

Sec. 4603. (1) A captive insurance company, if permitted by its organizational documents, may apply to the commissioner for a limited certificate of authority to do any and all insurance authorized by this chapter except worker's compensation insurance, long-term care insurance, critical care insurance, personal automobile insurance, or homeowners insurance, or any component of these coverages. A captive insurance company is subject to all of the following:

(a) A pure captive insurance company shall not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated business, or a combination of its parent, affiliated companies, and controlled unaffiliated business.

(b) An association captive insurance company shall not insure any risks other than those of the member organizations of its association and their affiliated companies.

(c) An industrial insured captive insurance company shall not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(d) In general, a special purpose captive insurance company shall only insure the risks of its parent. Notwithstanding any other provisions of this chapter, a special purpose captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the commissioner.

(e) A captive insurance company shall not accept or cede reinsurance except as provided in section 4641.

(2) To conduct insurance business in this state, a captive insurance company shall do all of the following:

(a) Obtain from the commissioner a limited certificate of authority authorizing it to conduct insurance business in this state.

(b) Hold at least 1 board of directors meeting, or for a limited liability company, a meeting of the managing board, each year in this state.

(c) Maintain its principal place of business in this state, or for a branch captive insurance company, maintain the principal place of business for its branch operations in this state.

(d) File with the commissioner the name and address of a resident registered agent designated to accept service of process and to otherwise act on its behalf in this state. The designation shall remain in force as long as any liability remains within this state.

(3) Before granting a limited certificate of authority, the commissioner shall require the applicant to submit organizational documents that contain the following:

(a) The names and places of residence of at least 3 incorporators or organizers of whom at least 2 are residents of this state.

(b) The location of the principal office in this state.

(c) The name by which the legal entity will be known.

(d) The purposes of the creation of the entity including a reference to this chapter.

(e) The manner in which the corporate powers are to be exercised.

(f) The number of directors or managers, as applicable.

(g) The number of directors or managers, as applicable, that constitute a quorum for the purposes of doing business which shall consist of no fewer than 1/3 of the directors or managers.

(h) The amount and value of capital stock, if any. Each share of authorized capital stock shall have a value of not less than $1.00.

(i) The term of existence of the entity.

(4) The organizational documents of a proposed captive insurance company may contain a provision providing that a director is not personally liable to the corporation or its shareholders or policyholders for monetary damages for a breach of the director's fiduciary duty. However, the provision does not eliminate or limit the liability of a director for any of the following:

(a) A breach of the director's duty of loyalty to the corporation or its shareholders or policyholders.

(b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.

(c) A transaction from which the director derived an improper personal benefit.

(5) Before the organizational documents shall be effective for the purposes of this chapter, the organizational documents shall be submitted to the office of the attorney general for examination. If such documents are found to be in compliance with this chapter, the office of the attorney general shall so certify to the commissioner. Each applicant for a captive insurance company limited certificate of authority that submits its organizational documents to the office of the attorney general shall pay to the attorney general the examination fee provided in section 240(2).

(6) Prior to granting a limited certificate of authority to any applicant, the commissioner shall require, consider, and review all of the following:

(a) A statement acknowledging that all financial records of the captive insurance company, including records pertaining to protected cells, if applicable, shall be made available for inspection or examination by the commissioner.

(b) A plan of operation, including, if applicable, a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner.

(c) Evidence of the source and form of the minimum capitalization to be contributed to the company.

(d) Evidence of the amount and liquidity of its assets relative to the risks to be assumed.

(e) Evidence of the character, reputation, financial standing, and purposes of the incorporators or organizers.

(f) Evidence of the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers.

(g) Biographical affidavits in the format prescribed by the commissioner for all officers and directors.

(h) Evidence of the adequacy of the loss prevention programs of its parent, member organization, or industrial insureds as applicable.

(i) For sponsored insurance companies, copies of all contracts or sample contracts with participants and evidence that expenses will be allocated to each protected cell in an equitable manner.

(j) For limited liability company applicants, a certificate of status demonstrating that the limited liability company has been formed pursuant to the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, and is in good standing.

(k) Such other factors or documentation considered relevant by the commissioner.

(7) The commissioner shall issue a limited certificate of authority to an applicant if, after reviewing the documents and information provided pursuant to this chapter, the commissioner finds that the documents and statements filed by the applicant comply with this chapter, the applicant meets the standards in this chapter and will promote the general good of the state, and all required fees have been paid. The limited certificate of authority shall authorize the applicant to do business in this state until March 1, at which time the commissioner may renew the limited certificate of authority.

(8) Information submitted pursuant to this section is confidential as provided in section 4609.

(9) An applicant shall pay to the office a nonrefundable $10,000.00 fee for processing its application for a limited certificate of authority. In addition, the commissioner may retain legal, financial, and examination services from outside the office to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application for a $2,700.00 fee.

(10) Upon approval of the commissioner, a foreign captive insurance company may become a captive insurance company by complying with all of the requirements of law relative to the authorization of a captive insurance company of the same or equivalent type in this state. After this is accomplished, the foreign captive insurance company is entitled to a limited certificate of authority to transact business in this state and is subject to the authority and jurisdiction of this state. It is not necessary for a foreign captive insurance company redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

500.4607 Adoption of name by captive insurance company.

Sec. 4607. A captive insurance company shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this state.

500.4609 Confidentiality requirements.

Sec. 4609. (1) Information and testimony submitted or furnished to the office pursuant to this chapter, examination reports, preliminary examination reports or results, and the office's work papers, correspondence, memoranda, reports, records, and other written or oral information related to an examination report or an investigation shall be confidential, shall be withheld from public inspection, shall not be subject to subpoena, and shall not be divulged to any person, except as provided in this section or with the written consent of the company. If assurances are provided that the information will be kept confidential, the commissioner may disclose confidential work papers, correspondence, memoranda, reports, records, or other information as follows:

(a) To the governor or the attorney general.

(b) To any relevant regulatory agency, including regulatory agencies of other states or the federal government.

(c) In connection with an enforcement action brought pursuant to this or another applicable act.

(d) To law enforcement officials.

(e) To persons authorized by the Ingham county circuit court to receive the information.

(f) To persons entitled to receive such information in order to discharge duties specifically provided for in this act.

(2) The confidentiality requirements of subsection (1) do not apply in any proceeding or action brought against or by the captive insurer under this act or any other applicable act of this state, any other state, or the United States.

500.4611 Issuance of limited certificate of authority; possession and maintenance of unimpaired paid-in capital and retained earnings; form of minimum capitalization; incorporation as nonprofit; unencumbered equity; assets; evidence to be submitted to commissioner; additional capital; branch captive insurance company; security for payment of liabilities; trust fund; payment of dividends; limitation; distributions.

Sec. 4611. (1) The commissioner shall not issue a limited certificate of authority to a captive insurance company unless the company possesses and maintains unimpaired paid in capital and retained earnings as follows:

(a) For a pure captive insurance company, not less than $150,000.00.

(b) For an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than $400,000.00.

(c) For an association captive insurance company incorporated as a mutual insurer, not less than $750,000.00.

(d) For an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than $300,000.00.

(e) For a sponsored captive insurance company, not less than $500,000.00. However, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous, and there are no more than 10 cells, the commissioner may reduce this amount to an amount not less than $150,000.00.

(f) For a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured.

(2) Except for a sponsored captive that does not assume any risk, a captive insurance company initially shall possess and after that maintain minimum capitalization as required by subsection (1). All of the minimum initial capitalization shall be in cash. All other funds of the captive insurer in excess of its minimum initial capitalization shall be in the forms as provided by this chapter.

(3) The commissioner shall not issue a limited certificate of authority to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unencumbered equity as follows:

(a) For a pure captive insurance company, not less than $250,000.00.

(b) For a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured.

(4) Net assets required by subsection (3) of a captive insurance company incorporated as a nonprofit corporation shall be in the form of cash, cash equivalent, or an irrevocable letter of credit.

(5) For the purposes of subsections (1) through (4), the commissioner may issue a limited certificate of authority expressly conditioned upon the captive insurance company providing to the commissioner satisfactory evidence of possession of the minimum required unimpaired paid in capital. Until this evidence is provided, the captive insurance company shall not issue any policy, assume any liability, or otherwise provide coverage. The commissioner may revoke the conditional limited certificate of authority without legal recourse by the company if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed 1 year, to be established by the commissioner at the time the conditional limited certificate of authority is issued.

(6) The commissioner may prescribe additional capital based upon the type, volume, and nature of insurance business transacted. This additional capital shall be in the form of cash, cash equivalent, an irrevocable letter of credit, or securities invested as provided in section 4639.

(7) For a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security shall be no less than the capital and retained earnings required by this chapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations; however, the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer.

(8) A captive insurance company shall not pay a dividend out of, or other distribution with respect to, capital or retained earnings, in excess of the limitations set forth in section 1343, without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon retention, at the time of each payment, of capital or retained earnings in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner. A captive insurance company incorporated as a nonprofit corporation shall not make any distributions without the prior approval of the commissioner.

500.4619 Pure captive insurance company or sponsored captive insurance company; association captive insurance company or industrial insured captive insurance company; incorporation as stock insurer or limited liability company; issuance of capital stock or membership interests; formation of captive insurance company as corporation or nonprofit corporation or as limited liability company; state residency; chapter as controlling provision of law.

Sec. 4619. (1) A pure captive insurance company or a sponsored captive insurance company may be any of the following:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) Incorporated as a public benefit, mutual benefit, or religious nonprofit corporation with members in accordance with the Michigan nonprofit corporation act of 1982, 1982 PA 162, MCL 450.2101 to 450.3192.

(c) Organized as a limited liability company with its capital divided into capital accounts and held by its members.

(2) An association captive insurance company or an industrial insured captive insurance company may be any of the following:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) Organized as a limited liability company with its capital divided into capital accounts and held by its members.

(c) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(3) The capital stock or membership interests of a captive insurance company incorporated as a stock insurer or limited liability company shall be issued at not less than par value.

(4) For a captive insurance company formed as a corporation or a nonprofit corporation, at least 1 of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(5) For a captive insurance company formed as a limited liability company, at least 1 of the managers of the captive insurance company shall be a resident of this state.

(6) A captive insurance company formed as a limited liability company has the privileges and is subject to the provisions of the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, for limited liability companies, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, for limited liability companies, and a provision of this chapter, this chapter controls.

(7) All captive insurers formed as corporations under this chapter are considered bodies corporate and politic, in fact and in name, are subject to all of the provisions of law in relation to corporations as far as they are applicable, and have the corporate powers provided for in chapter 52.

(8) This act's provisions pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions.

500.4621 Reports and inquiries.

Sec. 4621. (1) A captive insurance company shall not be required to make an annual report except as provided in this chapter.

(2) Annually, on or before March 1 of each year, a captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of 2 of its executive officers. A captive insurance company may report using generally accepted accounting principles or, with the approval of the commissioner, statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The commissioner may prescribe the form and manner in which captive insurance companies shall report. Information submitted pursuant to this section is confidential as provided in section 4609.

(3) The commissioner may address inquiries to any captive insurer concerning the insurer's activities or conditions or any other matter connected with the insurer's transactions. An insurer so addressed shall reply in writing to each inquiry from the commissioner within 30 days of receipt of the inquiry.

(4) The commissioner may require interim reporting on any or all of the captive insurer's business, including any matter, condition, or requirement regulated by this chapter. The commissioner shall prescribe the format and content of the interim report.

(5) Each captive insurer that fails to file a report required by this section, or fails to reply within 30 days to an inquiry of the commissioner, is subject to a civil penalty of not less than $1,000.00 or more than $5,000.00 per occurrence, and an additional $50.00 for every day that the captive insurer fails to file the report or reply to the inquiry. In addition, each captive insurer that fails to file a report, or fails to make a satisfactory reply to an inquiry of the commissioner concerning the captive insurer's affairs, is subject to proceedings under section 4637.

(6) A pure captive insurance company may make written application for filing the annual report on a fiscal year end that is consistent with the parent company's fiscal year. The annual report shall be on a form prescribed by the commissioner.

(7) A branch captive insurance company shall file with the commissioner 60 days after the fiscal year end a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by 2 of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement.

(8) A captive insurance company shall annually submit to the commissioner the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the reserves are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The actuarial opinion required by this section shall be submitted in a form prescribed by the commissioner. For purposes of this section, "qualified actuary" means a member of either the American academy of actuaries or the society of actuaries who also meets any other criteria that the commissioner may establish by rule, regulation, or order.

500.4623 Sponsored captive insurance company; discount of reserves.

Sec. 4623. (1) A sponsored captive insurance company may discount its loss and loss adjustment expense reserves at the lesser of treasury rates or the captive insurance company's actual rate of return applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

(2) The commissioner may disallow the discounting of reserves if a sponsored captive insurance company violates a provision of this act.

500.4625 Conflict between act and chapter; exemption; applicability of certain sections; expenses and charges of examination; annual renewal fee; other fees; employment of legal counsel; confidentiality.

Sec. 4625. (1) No provisions of this act, other than those specifically referenced in this chapter, apply to a captive insurance company, and those provisions apply only as modified by this chapter. If a conflict occurs between a provision of this act and a provision of this chapter, this chapter controls.

(2) The commissioner by rule, regulation, or order may exempt special purpose captive insurance companies, on a case-by-case basis, from provisions of this chapter that the commissioner determines to be inappropriate given the nature of the risks to be insured.

(3) Sections 210 to 222, 226 to 238, 244 to 251, and 2057 to 2062, and chapter 45 apply to captive insurance companies.

(4) The expenses and charges of a captive insurance company examination shall be paid to the state by the captive insurance company or companies examined, and the office shall issue warrants for the proper charges incurred in all examinations. The payments received by the state shall be deposited into the captive insurance regulatory and supervision fund.

(5) A captive insurance company shall pay an annual renewal fee by March 1 of each calendar year. The annual renewal fee shall be calculated based upon the annual volume of insurance or reinsurance premiums received by the captive insurance company as follows:

(a) For annual premiums less than $5,000,000.00, the renewal fee shall be $5,000.00.

(b) For annual premiums equal to or greater than $5,000,000.00, but less than $10,000,000.00, the renewal fee shall be $10,000.00.

(c) For annual premiums equal to or greater than $10,000,000.00, but less then $15,000,000.00, the renewal fee shall be $15,000.00.

(d) For annual premiums equal to or greater than $15,000,000.00, but less than $25,000,000.00, the renewal fee shall be $25,000.00.

(e) For annual premiums equal to or greater than $25,000,000.00, but less than $40,000,000.00, the renewal fee shall be $40,000.00.

(f) For annual premiums equal to or greater than $40,000,000.00, but less than $55,000,000.00, the renewal fee shall be $50,000.00.

(g) For annual premiums equal to or greater than $55,000,000.00, but less than $75,000,000.00, the renewal fee shall be $75,000.00.

(h) For annual premiums equal to or greater than $75,000,000.00, the renewal fee shall be $100,000.00.

(6) The office may charge a $15.00 fee for any document requiring certification of authenticity or the signature of the commissioner. The payments received shall be deposited into the captive insurance regulatory and supervision fund.

(7) The office may charge a fee of $25.00 payable to the attorney general for the examination of any amendment to the organizational documents.

(8) Notwithstanding any other provision of law, the commissioner may employ legal counsel as he or she considers necessary to assist in his or her responsibilities under this chapter.

(9) The confidentiality provisions of this chapter do not extend to final examination reports produced by the commissioner in inspecting or examining a captive insurance company formed as a risk retention group under the liability risk retention act of 1986, 15 USC 3901 to 3906.

(10) Section 222 applies to all business written by a captive insurance company except that the examination for a branch captive insurance company shall be of branch business and branch operations only, as long as the branch captive insurance company provides annually to the commissioner, a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

500.4637 Limited certificate of authority; suspension or revocation; findings; best interest of public and policyholders.

Sec. 4637. (1) The limited certificate of authority of a captive insurance company to conduct an insurance business in this state may be suspended or revoked by the commissioner for any of the following:

(a) Insolvency or impairment of capital or retained earnings.

(b) Failure to meet the requirements of section 4611.

(c) Refusal or failure to submit an annual report, as required by section 4621, or any other report or statement required by law or by order of the commissioner.

(d) Failure to comply with its own charter, bylaws, or other organizational document.

(e) Failure to submit to examination or any legal obligation relative to an examination, as required by section 4625.

(f) Refusal or failure to pay the cost of examination as required by section 4625.

(g) The company is no longer safe, reliable, or entitled to public confidence or is unsound, or is using financial methods and practices in the conduct of its business that render further transaction of insurance by the company in this state hazardous to policyholders, creditors, or the public.

(h) The certificate of authority or equivalent authorization of a branch captive insurance company has been suspended or revoked in the jurisdiction in which the company was formed.

(i) For a captive insurer formed as a limited liability company, the captive insurer is no longer in good standing under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.

(j) The company has failed, after written request by the commissioner, to remove or discharge an officer or director whose record of business conduct does not satisfy the requirements of section 4603 or who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(k) The company has failed, within 30 days after notice of delinquency from the commissioner, to cure its failure to pay taxes, fees, assessments, or expenses required by this act.

(*l*) The captive insurance company has failed for an unreasonable period to pay any final judgment rendered against it in this state on any policy, bond, recognizance, or undertaking issued or guaranteed by it.

(m) Failure otherwise to comply with the laws of this state.

(2) If the commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in subsection (1), the commissioner may suspend or revoke the captive insurance company's limited certificate of authority if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company, notwithstanding any other provision of this act.

500.4639 Association captive insurance company and industrial insured captive insurance company; compliance with investment requirements; pure captive insurance company and special purpose captive insurance company not subject to restrictions on allowable investments; exception; loans; combining of assets for purposes of investment; sponsored captive insurance companies to be in compliance with chapter 9; waiver of investment requirements.

Sec. 4639. (1) An association captive insurance company and an industrial insured captive insurance company insuring the risks of an industrial insured group shall comply with the investment requirements contained in sections 910 to 947. Notwithstanding any other provision of this chapter or in chapter 9, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure captive insurance company and a special purpose captive insurance company are not subject to any restrictions on allowable investments contained in chapter 9 except that the commissioner may request a written investment plan and may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates and only upon the prior written approval of the commissioner evidenced by a note in a form approved by the commissioner. Loans of minimum capital and retained earnings required to be held by section 4611(1) are prohibited.

(4) Notwithstanding the provisions of sections 4663 and 4665, the assets of 2 or more protected cells may be combined for purposes of investment upon written agreement of the participants, and this combination shall not be construed as defeating the segregation of those assets for accounting or other purposes.

(5) Sponsored captive insurance companies shall comply with the investment requirements contained in chapter 9, as applicable; provided, however, that compliance with such investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section 4641(2) or to the extent otherwise considered reasonable and appropriate by the commissioner. Sections 841 and 842 shall apply to sponsored captive insurance companies except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this act, the commissioner may approve the use of alternative reliable methods of valuation and rating.

500.4641 Reinsurance on risks ceded by other insurer.

Sec. 4641. (1) A captive insurance company may provide reinsurance, as authorized by this act and with the prior approval of the commissioner, on risks ceded by any other insurer.

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of sections 1103 and 1105. A captive insurer shall not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with sections 1103 and 1105.

500.4643 Rating organization; joining not required.

Sec. 4643. A captive insurance company shall not be required to join a rating organization.

500.4645 Plan, pool, association, or guaranty or insolvency fund; joining, contributing to, or receiving benefit from prohibited.

Sec. 4645. A captive insurance company shall not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state. A captive insurance company, its insured, its parent, or any affiliated company or any member organization of its association, shall not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.

500.4651 Rules.

Sec. 4651. The commissioner may promulgate pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, rules, and may issue regulations and orders relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this chapter.

500.4655 Applicability of terms and conditions in chapter 81 pertaining to administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers; payment of expenses or claims from assets of protected cell or from capital and surplus of sponsored captive insurance company.

Sec. 4655. (1) Except as otherwise provided in this section, the terms and conditions under chapter 81 pertaining to administrative supervision, conservation, rehabilitation,

receivership, and liquidation of insurers apply in full to captive insurers authorized under this chapter.

(2) For a sponsored captive insurance company, both of the following apply:

(a) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell.

(b) The capital and surplus of the sponsored captive insurance company shall at all times be available to pay expenses of or claims against the sponsored captive insurance company and shall not be used to pay expenses or claims attributable to a protected cell.

500.4659 Exercise of control of risk management function by parent or affiliated company; standards.

Sec. 4659. The commissioner by rule, regulation, or order may establish standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. Until such time as the standards are established, the commissioner may by temporary order grant authority to a pure captive insurance company to insure risks.

500.4663 Sponsored captive insurance company; formation; establishment and maintenance of protected cell to insure risks; conditions.

Sec. 4663. (1) One or more sponsors may form a sponsored captive insurance company under this chapter.

(2) A sponsored captive insurance company authorized under this chapter may establish and maintain 1 or more protected cells to insure risks of 1 or more participants, subject to all of the following:

(a) The shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner.

(b) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the commissioner.

(c) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct.

(d) No sale, exchange, or other transfer of assets shall be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells.

(e) No sale, exchange, or other transfer of assets shall be made from a protected cell to a sponsor or participant unless the captive insurer has notified the commissioner in writing at least 30 days, or a shorter period as the commissioner allows, prior to such transaction and the commissioner has not disapproved the transaction during that period.

(f) No dividend or distribution shall be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall the approval be given if the dividend or distribution would result in insolvency or impairment with respect to a protected cell.

(g) A sponsored captive insurance company shall file annually with the commissioner financial reports the commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell.

(h) A sponsored captive insurance company shall notify the commissioner in writing within 10 business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations.

(i) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell requires the commissioner's prior written approval.

500.4665 Sponsor of sponsored captive insurance company; authorized insurer; risk retention group as sponsor or participant prohibited; business written by sponsored captive insurance company with respect to protected cell; requirements.

Sec. 4665. A sponsor of a sponsored captive insurance company shall be an insurer authorized pursuant to the laws of a state or the District of Columbia, an insurance holding company that controls an insurer authorized pursuant to the laws of a state or the District of Columbia and subject to registration pursuant to the insurance holding company system laws of the state of domicile of the insurer, a reinsurer authorized or approved pursuant to the laws of a state or the District of Columbia, or a captive insurance company authorized pursuant to this chapter. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurance company. The business written by a sponsored captive insurance company with respect to each protected cell shall meet at least 1 of the following:

(a) Be fronted by an insurance company authorized pursuant to the laws of any state or any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company authorized pursuant to the laws of any state or any jurisdiction.

(b) Be reinsured by a reinsurer authorized or approved by this state.

(c) Be secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset acceptable to the commissioner. The amount of security provided by the trust fund shall not be less than the reserves associated with those liabilities, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell. The commissioner may require the sponsored captive to increase the funding of a trust established pursuant to this subdivision. A trust and trust instrument maintained pursuant to this subdivision shall be in a form and upon terms approved by the commissioner.

500.4667 Sponsored captive insurance companies; business entities as participants.

Sec. 4667. (1) An association, a corporation, a limited liability company, a partnership, a trust, or other business entity may be a participant in a sponsored captive insurance company authorized pursuant to this chapter.

(2) A sponsor may be a participant in a sponsored captive insurance company.

(3) A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.

(4) A participant shall insure only its own risks through a sponsored captive insurance company, unless otherwise approved by the commissioner.

500.4669 Sponsored captive insurance companies; applicability of terms and conditions in chapter 48 pertaining to protected cell insurance company.

Sec. 4669. (1) Except as otherwise provided in this chapter, the terms and conditions provided in chapter 48 relating to a protected cell insurance company apply in full to a sponsored captive insurance company.

(2) Except as otherwise provided, all of the following apply to a sponsored captive insurance company:

(a) A protected cell need not be established solely for the purpose of effecting insurance securitizations, but may be established for the purpose of isolating the expenses and claims of a sponsored captive insurance company participant.

(b) The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a participant's risks to the participant's protected cell.

(c) Section 4805 does not apply.

500.4673 Captive insurance regulatory and supervision fund; creation; deposit of certain money, assets, fees, and assessments; money remaining in fund at close of fiscal year; commissioner as administrator for auditing purposes.

Sec. 4673. (1) The captive insurance regulatory and supervision fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the captive insurance regulatory and supervision fund. All fees and assessments received by the department of treasury or the office pursuant to the administration of this chapter and chapter 47 shall be credited to the captive insurance regulatory and supervision fund. All fees received by the department of treasury from reinsurers who assume risk only from captive insurance companies shall be deposited into the captive insurance regulatory and supervision fund. All fines and administrative penalties ordered under this chapter or chapter 47 shall be deposited directly into the captive insurance regulatory and supervision fund. The state treasurer shall direct the investment of the captive insurance regulatory and supervision fund. The state treasurer shall credit to the captive insurance regulatory and supervision fund interest and earnings from fund investments.

(3) Money in the captive insurance regulatory and supervision fund at the close of the fiscal year shall remain in the captive insurance regulatory and supervision fund and shall not lapse to the general fund.

(4) The commissioner shall be the administrator of the captive insurance regulatory and supervision fund for auditing purposes. Money in the captive insurance regulatory and supervision fund shall be expended by the commissioner, upon appropriation, for the purpose of administering chapters 18 and 47 and this chapter and for reasonable expenses incurred in promoting the captive insurance industry in this state.

CHAPTER 47

SPECIAL PURPOSE FINANCIAL CAPTIVES

500.4701 Definitions.

Sec. 4701. As used in this chapter:

(a) "Affiliated company" means a company in the same corporate system as a parent, by virtue of common ownership, control, operation, or management.

(b) "Captive LLC" means a limited liability company established under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, or comparable provisions of any other state law, including the District of Columbia by a parent, counterparty, affiliated company, or SPFC for the purpose of issuing SPFC securities, entering an SPFC contract with a counterparty, or otherwise facilitating an insurance securitization.

(c) "Commissioner" means the commissioner of the office of financial and insurance regulation or the commissioner's designee.

(d) "Contested case" means a proceeding in which the legal rights, duties, obligations, or privileges of a party are required by law to be determined by the circuit court after an opportunity for hearing.

(e) "Control" including the terms "controlling", "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. However, for purposes of this chapter, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.

(f) "Counterparty" means an SPFC's parent or affiliated company, or, subject to the prior approval of the commissioner, a nonaffiliated company as ceding insurer to the SPFC contract.

(g) "Fair value" means the following:

(*i*) For cash, the amount of the cash.

(*ii*) For assets other than cash, the amount at which that asset could be bought or sold in a current transaction between arm's length, willing parties. If available, the quoted mid-market price for the asset in active markets shall be used; and if quoted mid-market prices are not available, a value shall be determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

(h) "Foreign captive" means a captive insurer formed under the laws of the District of Columbia or some state, commonwealth, territory, or possession of the United States other than the state of Michigan.

(i) "Insolvency" or "insolvent" means 1 or more of the following:

(*i*) That the SPFC is unable to pay its obligations within 30 days after they are due, unless those obligations are the subject of a bona fide dispute.

(*ii*) That the admitted assets of the SPFC do not exceed liabilities plus minimum capital and surplus for a period of time in excess of 30 days.

(*iii*) That the Ingham county circuit court has issued an order as provided for in section 8113, 8117, or 8120 in connection with a delinquency proceeding under chapter 81 instituted against the SPFC.

(j) "Insurance securitization" means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements by which all of the following apply:

(*i*) The proceeds of the sale of SPFC securities are obtained, in a transaction that complies with applicable securities laws, by an SPFC directly through the issuance of the SPFC securities by the SPFC or indirectly through the issuance of preferred securities by the SPFC in exchange for some or all of the proceeds of the sale of SPFC securities by the SPFC's parent, an affiliated company of the SPFC, a counterparty, or a captive LLC.

(*ii*) The proceeds of the issuance of the SPFC securities secure the obligations of the SPFC under 1 or more SPFC contracts with a counterparty.

(*iii*) The obligation to the holders of the SPFC securities is secured by assets obtained with proceeds of the SPFC securities in accordance with the transaction terms.

(k) "Irrevocable letter of credit" means a letter of credit that meets the description in section 1105(c).

(*l*) "Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other agents to act on behalf of the SPFC.

(m) "Office" means the office of financial and insurance regulation.

(n) "Organizational document" means the SPFC's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the SPFC as a legal entity or prescribes its existence.

(o) "Parent" means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of an SPFC.

(p) "Permitted investments" means those investments that meet the qualifications in section 4727(1).

(q) "Preferred securities" means securities, whether stock or debt, issued by an SPFC to the issuer of the SPFC securities in exchange for some or all of the proceeds of the issuance of the SPFC securities.

(r) "Protected cell" means a segregated account established and maintained by an SPFC for 1 or more SPFC contracts that are part of a single securitization transaction as further provided for in chapter 48.

(s) "Qualified United States financial institution" means that term as defined in section 1101.

(t) "Reserves" means that term as used in chapter 8.

(u) "Safe, reliable, and entitled to public confidence" means that term as defined in section 116(d).

(v) "Securities" means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

(w) "Securities commissioner" means the commissioner.

(x) "SPFC" or "special purpose financial captive" means a captive insurance company, a captive LLC, or a company otherwise qualified as an authorized insurer that has received a limited certificate of authority from the commissioner for the purposes provided for in this chapter.

(y) "SPFC contract" means a contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.

(z) "SPFC securities" means the securities issued pursuant to an insurance securitization, the proceeds of which are used in the manner described in subdivision (j).

(aa) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with accounting practices and procedures designated by the commissioner.

(bb) "Third party" means a person unrelated to an SPFC or its counterparty, or both, that has been aggrieved by a decision of a commissioner regarding that SPFC or its activities.

500.4703 Conflict between provision of act and provision of chapter; chapter as controlling; sections applicable to SPFCs; exemption.

Sec. 4703. (1) No provisions of this act, other than those specifically referenced in this chapter, apply to an SPFC, and those provisions apply only as modified by this chapter. If a conflict occurs between a provision of this act and a provision of this chapter, this chapter controls.

(2) Sections 210 to 222, 226 to 238, 244 to 251, 2057 to 2062, and 4673 and chapter 45 apply to SPFCs.

(3) The commissioner, by rule, regulation, or order, may exempt an SPFC or its protected cells, on a case-by-case basis, from provisions of this chapter that the commissioner determines to be inappropriate given the nature of the risks to be insured.

500.4705 Limited certificate of authority to transact insurance or reinsurance; transaction of business by SPFC; limitation; requirements; submission of documents to commissioner; contents; liability of director; submission of documents to office of attorney general; evidence and documents required, considered, and reviewed by commissioner; additional filings; confidentiality; transaction of business; fees; limited certificate of authority granted after certain findings; renewal; foreign captive as SPFC.

Sec. 4705. (1) A captive insurance company, a captive LLC, or a company otherwise qualified as an authorized insurer may apply to the commissioner for a limited certificate of authority to transact insurance or reinsurance business as authorized by this chapter. An SPFC only may insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this chapter, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the commissioner.

(2) To transact business in this state, an SPFC shall do all of the following:

(a) Obtain from the commissioner a limited certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this state.

(b) Hold at least 1 management meeting each year in this state.

(c) Maintain its principal place of business in this state.

(d) File with the commissioner the name and address of a resident registered agent designated to accept service of process and to otherwise act on its behalf in this state. The designation shall remain in force as long as any liability remains within the state.

(e) Provide such documentation of the insurance securitization as requested by the commissioner immediately upon the closing of the insurance securitization transaction, including an opinion of legal counsel with respect to compliance with this chapter and any other applicable laws as of the effective date of the insurance securitization transaction and a statement under oath of its president and secretary showing its financial condition.

(f) Provide a complete set of documentation of the insurance securitization to the commissioner shortly following closing of the insurance securitization transaction.

(3) Before granting a limited certificate of authority for an SPFC, the commissioner shall require the applicant to submit organizational documents that contain all of the following:

(a) The names and places of residence of at least 3 incorporators or organizers of whom at least 2 are residents of this state.

(b) The location of the principal office in this state.

(c) The name by which the legal entity will be known.

(d) The purposes of the creation of the entity including a reference to this chapter.

(e) The manner in which the corporate powers are to be exercised.

(f) The number of directors or managers, as applicable.

(g) The number of directors or managers, as applicable, that constitute a quorum for the purposes of doing business which consists of no fewer than 1/3 of the managers required by the organizational document.

(h) The amount and value of capital stock, if any. Each share of authorized capital stock shall have a value of not less than $1.00.

(i) The term of existence of the entity.

(4) The organizational documents of an SPFC may contain a provision providing that a director is not personally liable to the corporation or its shareholders or policyholders for monetary damages for a breach of the director's fiduciary duty. However, the provision does not eliminate or limit the liability of a director for any of the following:

(a) A breach of the director's duty of loyalty to the corporation or its shareholders or policyholders.

(b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.

(c) A transaction from which the director derived an improper personal benefit.

(5) Before the organizational documents shall be effective for the purposes of this chapter, the organizational documents shall be submitted to the office of the attorney general for examination. If such documents are found to be in compliance with this chapter, the office of the attorney general shall so certify to the commissioner. Each applicant for an SPFC limited certificate of authority that submits its organizational documents to the office of the attorney general shall pay to the attorney general the examination fee provided in section 240(2).

(6) Prior to granting a limited certificate of authority to any SPFC, the commissioner shall require, consider, and review all of the following:

(a) Evidence of all of the following:

(*i*) The amount and liquidity of its assets relative to the risks to be assumed.

(*ii*) The adequacy of the expertise, experience, and character of the person or persons who manage it.

(*iii*) The overall soundness of its plan of operation.

(*iv*) Other factors considered relevant by the commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations.

(*v*) The applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to the SPFC.

(b) A plan of operation, consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include all of the following:

(*i*) Draft documentation or, at the commissioner's discretion, a written summary of all material agreements that are entered into in connection with the SPFC contracts and the insurance securitization, including the names of the counterparty, the nature of the risks to be assumed, and the proposed use of protected cells, if any. The documentation or written summary shall also include the maximum amounts, purpose, nature, and the relationship between the various transactions effectuating the insurance securitization.

(*ii*) A description of any party, other than the SPFC or the counterparty, that will issue SPFC securities in an insurance securitization, including a description of its contemplated operation.

(*iii*) The source and form of additional capitalization to be contributed to the SPFC.

(*iv*) The proposed investment strategy of the SPFC.

(*v*) A description of the underwriting, reporting, and claims payment methods by which reserves covered by the SPFC contract are reported, accounted for, and settled.

(*vi*) A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.

(c) Biographical affidavits in a form prescribed by the commissioner of all of the prospective SPFC's officers and directors, providing their legal names, any names under which they have or are conducting their affairs, and any affiliations with other persons, together with other biographical information as the commissioner may request.

(d) An affidavit from the applicant SPFC verifying all of the following:

(*i*) The applicant SPFC meets the provisions of this chapter.

(*ii*) The applicant SPFC operates only pursuant to the provisions in this chapter.

(*iii*) The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction.

(*iv*) The SPFC securities proposed to be issued are valid legal obligations that are either properly registered with the securities commissioner or constitute an exempt security or form part of an exempt transaction under section 402 of the uniform securities act, 1964 PA 265, MCL 451.802. If the issuer of the SPFC securities is not the SPFC, the SPFC shall obtain and submit an affidavit from the issuer that the securities proposed to be issued satisfy this subparagraph.

(*v*) Unless otherwise exempted by the commissioner, the trust agreement, the trusts holding assets that secure the obligations of the SPFC under the SPFC contract, and the SPFC contract with the counterparty in connection with the contemplated insurance securitization are structured pursuant to the provisions in this chapter.

(e) Any other statements or documents required by the commissioner to evaluate and authorize the SPFC.

(7) In addition to the requirements of this section and section 4713, if a protected cell is used, an applicant SPFC shall file with the commissioner all of the following:

(a) A business plan demonstrating how the applicant accounts for the paid losses, reserves, and expenses of each protected cell at a level of detail found to be sufficient by the commissioner, and how it reports those paid losses, reserves, and expenses to the commissioner.

(b) A statement acknowledging that all financial records of the SPFC, including reports pertaining to any protected cells, shall be made available for inspection or examination by the commissioner.

(c) All contracts or sample contracts between the SPFC and any counterparty or captive LLC related to each protected cell.

(d) A description of the expenses allocated to each protected cell.

(8) Information submitted pursuant to this section is confidential and is subject to sections 4734 and 4743.

(9) To transact insurance or reinsurance business in this state, an SPFC is subject to all of the following:

(a) For an applicant not authorized under chapter 46 and not filing a concurrent application under chapter 46, a nonrefundable fee of $10,000.00 for processing its application for

a limited certificate of authority. In addition, the commissioner may retain legal, financial, actuarial, and examination services from outside the office to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application for a fee of $2,700.00, which is payable upon the filing of the application.

(b) An SPFC shall pay an annual renewal fee by March 1 of each calendar year. However, an SPFC that is authorized under both chapter 46 and this chapter and that pays the renewal fee provided in section 4625(5) is exempt from paying this renewal fee. The annual renewal fee shall be calculated based upon the annual volume of insurance or reinsurance premiums received by the SPFC as follows:

(*i*) For annual premiums less than $5,000,000.00, the renewal fee shall be $5,000.00.

(*ii*) For annual premiums equal to or greater than $5,000,000.00, but less than $10,000,000.00, the renewal fee shall be $10,000.00.

(*iii*) For annual premiums equal to or greater than $10,000,000.00, but less than $15,000,000.00, the renewal fee shall be $15,000.00.

(*iv*) For annual premiums equal to or greater than $15,000,000.00, but less than $25,000,000.00, the renewal fee shall be $25,000.00.

(*v*) For annual premiums equal to or greater than $25,000,000.00, but less than $40,000,000.00, the renewal fee shall be $40,000.00.

(*vi*) For annual premiums equal to or greater than $40,000,000.00, but less than $55,000,000.00, the renewal fee shall be $50,000.00.

(*vii*) For annual premiums equal to or greater than $55,000,000.00, but less than $75,000,000.00, the renewal fee shall be $75,000.00.

(*viii*) For annual premiums equal to or greater than $75,000,000.00, the renewal fee shall be $100,000.00.

(10) The commissioner may grant a limited certificate of authority authorizing the applicant to transact insurance or reinsurance business as an SPFC in this state upon finding by the commissioner of all of the following:

(a) The proposed plan of operation provides a reasonable and expected successful operation.

(b) The terms of the SPFC contract and related transactions comply with this chapter.

(c) All required fees have been paid.

(d) The commissioner of the state of domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or not disapproved the transaction.

(e) The limited certificate of authority authorizing the SPFC to transact business is limited to the insurance or reinsurance activities that the SPFC is allowed to conduct pursuant to this chapter.

(11) The limited certificate of authority shall be renewed annually upon payment of the renewal fee provided for by this section.

(12) A foreign captive, upon approval of the commissioner, may become an SPFC by complying with all of the provisions of this chapter. After this is accomplished, the foreign captive is entitled to a limited certificate of authority to transact business as an SPFC in this state and is subject to the authority and jurisdiction of this state. It is not necessary for a foreign captive redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

500.4707 SPFC; establishment; form of organization; documents; limitation; adoption of name; applicability of certain provisions in carrying out transactions; state residency; privileges and provisions applicable to limited liability company; corporate powers.

Sec. 4707. (1) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the commissioner.

(2) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this chapter and activities it conducts pursuant to any other chapter in this act.

(3) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this state.

(4) The provisions of this act pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by an SPFC in carrying out any of the transactions described in those provisions.

(5) At least 1 of the members of the management of the SPFC shall be a resident of this state.

(6) An SPFC or captive LLC formed as a limited liability company has the privileges and is subject to the provisions of the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, for limited liability companies, as well as the applicable provisions contained in this chapter. Nothing contained in this provision with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the commissioner.

(7) All SPFCs formed as corporations under this chapter are considered bodies corporate and politic, in fact and in name, are subject to all of the provisions of law in relation to corporations as far as they are applicable, and have the corporate powers provided for in chapter 52.

500.4709 Minimum initial capitalization; additional capitalization; maintenance of deposits.

Sec. 4709. (1) An SPFC initially shall possess and after that maintain minimum capitalization of not less than $250,000.00. All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the forms as provided in section 4727.

(2) Additional capitalization for the SPFC shall be determined, if so required, by the commissioner after giving due consideration to the SPFC's business plan, feasibility study, pro formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the commissioner.

(3) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 initially shall possess, and after that maintain, minimum capital and surplus in compliance with sections 408 to 410a.

(4) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 shall maintain deposits as specified in section 411.

500.4711 SPFC; insuring or reinsuring risks insured or reinsured by counterparty; contract for assumption of risk or indemnification of loss; related and incidental contracts; submission of actuarial opinion.

Sec. 4711. (1) An SPFC may insure or reinsure only the risks insured or reinsured by a counterparty.

(2) An SPFC shall not issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection.

(3) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this chapter. Those activities may include, but are not limited to: entering into SPFC contracts; issuing securities of the SPFC in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, or retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this chapter or the plan of operation submitted to the commissioner.

(4) An SPFC shall annually submit to the commissioner the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the reserves are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The actuarial opinion required by this section shall be submitted in a form prescribed by the commissioner. For purposes of this section, "qualified actuary" means a member of either the American academy of actuaries or the society of actuaries who also meets any other criteria that the commissioner may establish by rule, regulation, or order.

500.4713 Protected cells; creation and use by SPFC; written approval of commissioner; possession of minimum capitalization; fraudulent purpose not inferred.

Sec. 4713. (1) This section and section 4715 provide a basis for the creation and use of protected cells by an SPFC. If a conflict occurs between a provision of chapter 46 or chapter 48 and either this section or section 4715, this section and section 4715 control.

(2) An SPFC may establish and maintain 1 or more protected cells with prior written approval of the commissioner and subject to compliance with the applicable provisions of this chapter and the following conditions:

(a) A protected cell shall be established only for the purpose of isolating and identifying the assets and liabilities attributable to the risk ceded to the SPFC by the counterparty pursuant to 1 or more SPFC contracts and the assets and liabilities of the SPFC arising out of the related insurance securitization.

(b) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, including income, gain, expense, or loss; dividends; other distributions to the counterparty for the SPFC contract with each cell; and other items as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the commissioner.

(c) Amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the SPFC, and the SPFC shall not be, or shall not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account.

(d) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation submitted to the commissioner. No other attribution of assets or liabilities shall be made by an SPFC between the SPFC's general account and its protected cell or cells. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and all obligations, assets, and

liabilities of the SPFC arising out of the related insurance securitization transaction to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell, the performance under an SPFC contract and the related securitization transaction, and any tax benefits, losses, refunds, or credits allocated at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or affiliated company, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the tax allocation agreement, shall reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and proceeds of the insurance securitization transaction that are attributed to a particular protected cell.

(e) The assets of a protected cell shall not be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, 1 or more SPFC contracts may be attributed to a protected cell so long as those SPFC contracts are intended to be, and ultimately are, part of a single securitization transaction.

(f) A sale, an exchange, or another transfer of assets shall not be made by the SPFC between or among any of its protected cells without the consent of the counterparty and each protected cell.

(g) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, a dividend or a distribution shall not be made from a protected cell to a counterparty, captive LLC, or parent or affiliated company of the SPFC without the commissioner's approval and shall not be approved if the dividend or distribution would result in insolvency or impairment with respect to a protected cell.

(h) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, a sale, an exchange, or a transfer of assets shall not be made from a protected cell to a counterparty, captive LLC, or parent or affiliated company of the SPFC if the sale, exchange, or transfer would result in insolvency or impairment with respect to the protected cell.

(i) An SPFC shall pay interest or repay principal or both or make distributions or repayments of any SPFC securities issued by the SPFC or make payments of preferred securities issued to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell as provided in this chapter or as otherwise approved by the commissioner.

(3) An SPFC contract with or attributable to a protected cell does not take effect without the commissioner's prior written approval. The commissioner may retain legal, financial, and examination services from outside the office to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application the reasonable cost of which may be charged against the applicant up to a maximum of $1,200.00, or may use both retained services and internal resources.

(4) An SPFC utilizing protected cells shall possess minimum capitalization for each protected cell separate and apart from the capitalization required by section 4709. For purposes of determining the capitalization of each protected cell, an SPFC initially shall capitalize and after that time maintain capitalization in each protected cell in the amount and manner required for an SPFC in section 4709.

(5) The establishment of 1 or more protected cells alone does not constitute, and shall not be considered to be, a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.