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BILL ANALYSIS

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Senate Bills 1061 and 1062 (as reported without amendment)
Sponsor: Senator Alan Sanborn
Committee: Banking and Financial Institutions

CONTENT

Senate Bill 1061 would add Chapter 46 (Captive Insurance Companies), Chapter 47 (Special Purpose Financial Captives), and Chapter 48 (Protected Cell Insurance Companies) to the Insurance Code, to allow the formation of captive insurers (e.g., companies that would insure only the risks of their parent or affiliated companies, or particular groups), and allow insurers to form protected cells (accounts whose assets and liabilities would be segregated from the general account or other protected cells of a company). The bills would do the following:

- Require captive insurance companies to obtain a certificate of authority from the Commissioner of the Office of Financial and Insurance Services (OFIS) in order to conduct business in this State.
- Allow domestic insurers and captive insurers, upon the Commissioner's approval, to establish protected cells.
- Require protected cell companies to engage in fully funded insurance securitization to support the protected cell exposures attributable to a cell.
- Require the assets and liabilities of a protected cell to be kept separate and separately identifiable from the assets and liabilities of the company's general account and of other protected cells.
- Limit creditors' access to protected cell assets, and provide that those assets could not be charged with liabilities arising out of any other business of the insurer.
- Allow insurers to apply to the Commissioner for a certificate of authority to transact business as a special purpose financial captive (SPFC).
- Authorize an SPFC to insure or reinsure only the risks insured or reinsured by a counterparty (the SPFC's parent or affiliated company or an approved nonaffiliated company).
- Allow an SPFC to establish protected cells for the purpose of isolating and identifying the assets and liabilities attributable to the risk ceded to the SPFC by a counterparty and the assets and liabilities arising from related insurance securitization.
- Permit SPFCs to issue securities.
- Require captive insurers and SPFCs to pay application fees, examination fees and expenses, and annual renewal fees.
- Require captive insurers to have and maintain paid in capital and retained earnings in specified amounts; and establish capitalization requirements for SPFCs.
- Impose a tax on captive insurers' premiums written and reinsurance premiums, and on SPFCs' reinsurance premiums.
- Create the "Captive Insurance Regulatory and Supervision Fund", which would receive 20% of the taxes collected under Chapters 46 and 47, and all fees and assessments received by OFIS and the Department of Treasury under those chapters.
- Provide that captive insurers and protected cell companies would not be required to contribute to a guaranty fund or association.

Chapter 46 would define "captive insurance company" as a pure captive insurance company, sponsored captive insurance company, association captive insurance company, industrial insured captive insurance company, or special purpose captive insurance company. A "pure captive insurance company" would be a company that insured risks of its parent, affiliated companies, controlled unaffiliated companies, or a combination of those entities. A "sponsored captive insurance company" would be a captive insurer in which the minimum capital and retained earnings were provided by one or more sponsors, that insured the risks of separate participants through contract, and segregated each participant's liability through one or more protected cells.

Chapter 47 would define "special purpose financial captive" as a captive insurance company, a captive limited liability company, or a company otherwise qualified as an authorized insurer that had received a certificate of authority from the Commissioner for the limited purposes provided for in that chapter.

Chapter 48 would define "protected cell" as an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of that chapter from the remainder of the company's assets and liabilities.

Senate Bill 1062 would amend the Michigan Business Tax Act to exempt an insurance company authorized under Chapter 46 or 47 of the Insurance Code from the Act and from the tax it imposes on insurance companies. The bill is tie-barred to Senate Bill 1061.

Proposed MCL 500.4601-500.4813 (S.B. 1061)
MCL 208.235 (S.B. 1062)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would increase the responsibilities of the Office of Financial and Insurance Services within the Department of Labor and Economic Growth, the Department of Treasury, and the Attorney General. They also would provide for taxation of captive insurance companies and special purpose financial captives. The impact on State revenue and expenses is discussed below.

Administrative Impact: Senate Bill 1061 would add significant responsibilities to OFIS to regulate captive insurance companies, special purpose financial companies, and protected cell insurance companies, increasing the expenses of the office. Fees that would be established by the bill for application for a certificate of authority, investigation of applicants, and annual renewal would offset these expenses. The amount of expenses and fee revenue would depend on the number of companies seeking to organize under the proposed chapters and is unknown.

The OFIS Commissioner would administer the proposed Captive Insurance Regulatory and Supervision Fund. Permissible uses of the Fund would include administering the proposed regulation of captive insurers and special purpose financial captives, as well as risk retention groups (which are regulated currently). The Fund also could incur reasonable expenses for promoting the captive insurance industry within the State. The Fund would receive 20% of the revenue from the proposed tax on captive insurance company direct premiums and reinsurance premiums, and 20% of the revenue from the proposed tax on SPFC reinsurance premiums. In addition, fees received by the Department of Treasury from certain reinsurers would be deposited into the Fund. Money in the Fund at the end of the fiscal year would carry forward into the subsequent fiscal year. The amount of contributions to the Fund would depend on activity by insurance companies and is unknown.

The Department of Treasury would incur administrative costs for promulgating administrative rules and implementing other provisions of the bill. The extent of these costs

is unknown but could be substantial. The Attorney General would be required to review organizational documents for proposed captive insurance companies and SPFCs and would receive a fee from each applicant.

Fines and administrative penalties levied on captive insurance companies pursuant to the bill would be deposited into the General Fund.

Taxation: As mentioned above, the bills would establish a new tax that would apply to captive insurance companies and special purpose financial captives. The tax rate would be applied to insurance and reinsurance premiums of these companies with maximum and minimum payments established for each tax-paying company. Premiums collected or contracted for by these companies would be exempt from the Michigan Business Tax (MBT) Act. The tax rate that Senate Bill 1061 would establish is less than the rate that applies to insurance premiums under the MBT Act. Under the proposal, General Fund tax collections would be lower than if the premiums were taxed under the MBT Act. To the extent that premiums were taxed pursuant to this proposal instead of under the Act, there would be a significant reduction in the tax rate applied to eligible premiums, resulting in a loss of revenue to the General Fund. The number of eligible companies that would be established and the amount of tax that would be paid under the bills are unknown.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.