

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1061

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(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

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

1 POSSESSION OF THE UNITED STATES.

2 (C) "ASSOCIATION" MEANS A LEGAL GROUP OF INDIVIDUALS,
3 CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, POLITICAL
4 SUBDIVISIONS, OR GROUPS THAT HAS BEEN IN CONTINUOUS EXISTENCE FOR
5 AT LEAST 1 YEAR AND THE MEMBER ORGANIZATIONS OF WHICH COLLECTIVELY,
6 OR WHICH DOES ITSELF OWN, CONTROL, OR HOLD, WITH POWER TO VOTE, ALL
7 OF THE OUTSTANDING VOTING SECURITIES OF AN ASSOCIATION CAPTIVE
8 INSURANCE COMPANY INCORPORATED AS A STOCK INSURER OR ORGANIZED AS A
9 LIMITED LIABILITY COMPANY; OR HAS COMPLETE VOTING CONTROL OVER AN
10 ASSOCIATION CAPTIVE INSURANCE COMPANY ORGANIZED AS A MUTUAL
11 INSURER.

12 (D) "ASSOCIATION CAPTIVE INSURANCE COMPANY" MEANS A COMPANY
13 THAT INSURES RISKS OF THE MEMBER ORGANIZATIONS OF THE ASSOCIATION
14 AND THEIR AFFILIATED COMPANIES.

15 (E) "BRANCH BUSINESS" MEANS ANY INSURANCE BUSINESS TRANSACTED
16 BY A BRANCH CAPTIVE INSURANCE COMPANY IN THIS STATE.

17 (F) "BRANCH CAPTIVE INSURANCE COMPANY" MEANS AN ALIEN CAPTIVE
18 INSURANCE COMPANY AUTHORIZED BY THE COMMISSIONER TO TRANSACT THE
19 BUSINESS OF INSURANCE IN THIS STATE THROUGH A BUSINESS UNIT WITH A
20 PRINCIPAL PLACE OF BUSINESS IN THIS STATE.

21 (G) "BRANCH OPERATIONS" MEANS ANY BUSINESS OPERATIONS OF A
22 BRANCH CAPTIVE INSURANCE COMPANY IN THIS STATE.

23 (H) "CAPTIVE INSURANCE COMPANY" MEANS A PURE CAPTIVE INSURANCE
24 COMPANY, ASSOCIATION CAPTIVE INSURANCE COMPANY, SPONSORED CAPTIVE
25 INSURANCE COMPANY, SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY, OR
26 INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY AUTHORIZED UNDER THIS
27 CHAPTER. FOR PURPOSES OF THIS CHAPTER, A BRANCH CAPTIVE INSURANCE

1 COMPANY SHALL BE A PURE CAPTIVE INSURANCE COMPANY WITH RESPECT TO
2 OPERATIONS IN THIS STATE, UNLESS OTHERWISE PERMITTED BY THE
3 COMMISSIONER.

4 (I) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF
5 FINANCIAL AND INSURANCE REGULATION OR THE COMMISSIONER'S DESIGNEE.

6 (J) "CONTROL", INCLUDING THE TERMS "CONTROLLING", "CONTROLLED
7 BY", AND "UNDER COMMON CONTROL WITH", MEANS THE POSSESSION, DIRECT
8 OR INDIRECT, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE
9 MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP
10 OF VOTING SECURITIES, BY CONTRACT OTHER THAN A COMMERCIAL CONTRACT
11 FOR GOODS OR NONMANAGEMENT SERVICES, OR OTHERWISE, UNLESS THE POWER
12 IS THE RESULT OF AN OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD
13 BY THE PERSON. CONTROL IS PRESUMED TO EXIST IF A PERSON, DIRECTLY
14 OR INDIRECTLY, OWNS, CONTROLS, HOLDS WITH THE POWER TO VOTE, OR
15 HOLDS PROXIES REPRESENTING 10% OR MORE OF THE VOTING SECURITIES OF
16 ANOTHER PERSON. A SHOWING THAT CONTROL DOES NOT EXIST MAY REBUT
17 THIS PRESUMPTION.

18 (K) "CONTROLLED UNAFFILIATED BUSINESS" MEANS A COMPANY THAT
19 MEETS ALL OF THE FOLLOWING:

20 (i) IS NOT IN THE CORPORATE SYSTEM OF A PARENT AND AFFILIATED
21 COMPANIES.

22 (ii) HAS AN EXISTING CONTRACTUAL RELATIONSHIP WITH A PARENT OR
23 AFFILIATED COMPANY.

24 (iii) HAS RISKS MANAGED BY A CAPTIVE INSURANCE COMPANY IN
25 ACCORDANCE WITH THIS CHAPTER.

26 (l) "FOREIGN CAPTIVE INSURER" MEANS AN INSURER FORMED UNDER THE
27 LAWS OF THE DISTRICT OF COLUMBIA, OR SOME STATE, COMMONWEALTH,

1 TERRITORY, OR POSSESSION OF THE UNITED STATES OTHER THAN THE STATE
2 OF MICHIGAN.

3 (M) "GAAP" MEANS GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

4 (N) "INDUSTRIAL INSURED" MEANS AN INSURED THAT MEETS ALL OF
5 THE FOLLOWING:

6 (i) THAT PROCURES INSURANCE BY USE OF THE SERVICES OF A FULL-
7 TIME EMPLOYEE ACTING AS A RISK MANAGER OR INSURANCE MANAGER OR
8 UTILIZING THE SERVICES OF A REGULARLY AND CONTINUOUSLY QUALIFIED
9 INSURANCE CONSULTANT.

10 (ii) WHOSE AGGREGATE ANNUAL PREMIUMS FOR INSURANCE ON ALL RISKS
11 TOTAL AT LEAST \$25,000.00.

12 (iii) THAT HAS AT LEAST 25 FULL-TIME EMPLOYEES.

13 (O) "INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY" MEANS A
14 COMPANY THAT INSURES RISKS OF THE INDUSTRIAL INSURED THAT COMPRISE
15 THE INDUSTRIAL INSURED GROUP AND THEIR AFFILIATED COMPANIES.

16 (P) "INDUSTRIAL INSURED GROUP" MEANS A GROUP THAT MEETS EITHER
17 OF THE FOLLOWING CRITERIA:

18 (i) IS A GROUP OF INDUSTRIAL INSURED THAT COLLECTIVELY OWN,
19 CONTROL, OR HOLD, WITH POWER TO VOTE, ALL OF THE OUTSTANDING VOTING
20 SECURITIES OF AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY
21 INCORPORATED AS A STOCK INSURER OR LIMITED LIABILITY COMPANY OR
22 HAVE COMPLETE VOTING CONTROL OVER AN INDUSTRIAL INSURED CAPTIVE
23 INSURANCE COMPANY INCORPORATED AS A MUTUAL INSURER.

24 (ii) IS A GROUP CREATED UNDER THE LIABILITY RISK RETENTION ACT
25 OF 1986, 15 USC 3901 TO 3906, AND CHAPTER 18, AS A CORPORATION OR
26 OTHER LIMITED LIABILITY ASSOCIATION TAXABLE AS A STOCK INSURANCE
27 COMPANY OR A MUTUAL INSURER UNDER THIS CHAPTER.

1 (Q) "IRREVOCABLE LETTER OF CREDIT" MEANS A LETTER OF CREDIT
2 THAT MEETS THE DESCRIPTION IN SECTION 1105(C).

3 (R) "MEMBER ORGANIZATION" MEANS ANY INDIVIDUAL, CORPORATION,
4 LIMITED LIABILITY COMPANY, PARTNERSHIP, OR ASSOCIATION THAT BELONGS
5 TO AN ASSOCIATION.

6 (S) "OFFICE" MEANS THE OFFICE OF FINANCIAL AND INSURANCE
7 REGULATION.

8 (T) "ORGANIZATIONAL DOCUMENT" MEANS THE ARTICLES OF
9 INCORPORATION, ARTICLES OF ORGANIZATION, BYLAWS, OPERATING
10 AGREEMENT, OR OTHER FOUNDATIONAL DOCUMENTS THAT CREATE A LEGAL
11 ENTITY OR PRESCRIBE ITS EXISTENCE.

12 (U) "PARENT" MEANS ANY CORPORATION, LIMITED LIABILITY COMPANY,
13 PARTNERSHIP, OR INDIVIDUAL THAT DIRECTLY OR INDIRECTLY OWNS,
14 CONTROLS, OR HOLDS WITH POWER TO VOTE MORE THAN 50% OF THE
15 OUTSTANDING VOTING INTERESTS OF A COMPANY.

16 (V) "PARTICIPANT" MEANS AN ENTITY AS DESCRIBED IN SECTION
17 4667, AND ANY AFFILIATES OF THAT ENTITY, THAT ARE INSURED BY A
18 SPONSORED CAPTIVE INSURANCE COMPANY, WHERE THE RECOVERY OF THE
19 PARTICIPANT IS LIMITED THROUGH A PARTICIPANT CONTRACT TO THE ASSETS
20 OF A PROTECTED CELL.

21 (W) "PARTICIPANT CONTRACT" MEANS A CONTRACT BY WHICH A
22 SPONSORED CAPTIVE INSURANCE COMPANY INSURES THE RISKS OF A
23 PARTICIPANT AND LIMITS THE RECOVERY OF THE PARTICIPANT TO THE
24 ASSETS OF A PROTECTED CELL.

25 (X) "PROTECTED CELL" MEANS A SEGREGATED ACCOUNT ESTABLISHED
26 AND MAINTAINED BY A SPONSORED CAPTIVE INSURANCE COMPANY FOR 1
27 PARTICIPANT.

1 (Y) "PURE CAPTIVE INSURANCE COMPANY" MEANS A COMPANY THAT
2 INSURES RISKS OF ITS PARENT, AFFILIATED COMPANIES, CONTROLLED
3 UNAFFILIATED BUSINESS, OR A COMBINATION OF ITS PARENT, AFFILIATED
4 COMPANIES, AND CONTROLLED UNAFFILIATED BUSINESS.

5 (Z) "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS THAT
6 TERM AS DEFINED IN SECTION 1101.

7 (AA) "SAFE, RELIABLE, AND ENTITLED TO PUBLIC CONFIDENCE" MEANS
8 THAT TERM AS DEFINED IN SECTION 116(D).

9 (BB) "SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY" MEANS A
10 CAPTIVE INSURANCE COMPANY THAT IS AUTHORIZED UNDER THIS CHAPTER AND
11 CHAPTER 47 THAT DOES NOT MEET THE DEFINITION OF ANY OTHER TYPE OF
12 CAPTIVE INSURANCE COMPANY DEFINED IN THIS SECTION.

13 (CC) "SPONSOR" MEANS AN ENTITY THAT MEETS THE REQUIREMENTS OF
14 SECTION 4665 AND IS APPROVED BY THE COMMISSIONER TO PROVIDE ALL OR
15 PART OF THE CAPITAL AND RETAINED EARNINGS REQUIRED BY APPLICABLE
16 LAW AND TO ORGANIZE AND OPERATE A SPONSORED CAPTIVE INSURANCE
17 COMPANY.

18 (DD) "SPONSORED CAPTIVE INSURANCE COMPANY" MEANS A CAPTIVE
19 INSURANCE COMPANY IN WHICH THE MINIMUM CAPITAL AND RETAINED
20 EARNINGS REQUIRED BY APPLICABLE LAW IS PROVIDED BY 1 OR MORE
21 SPONSORS, IS AUTHORIZED UNDER THIS CHAPTER, INSURES THE RISKS OF
22 SEPARATE PARTICIPANTS THROUGH THE PARTICIPANT CONTRACT, AND
23 SEGREGATES EACH PARTICIPANT'S LIABILITY THROUGH 1 OR MORE PROTECTED
24 CELLS.

25 (EE) "SURPLUS" MEANS UNASSIGNED FUNDS FOR AN ENTITY USING
26 STATUTORY ACCOUNTING PRINCIPLES, WITH CAPITAL AND SURPLUS INCLUDING
27 ALL CAPITAL STOCK, PAID IN CAPITAL AND CONTRIBUTED SURPLUS, AND

1 OTHER SURPLUS FUNDS WITH CORRESPONDING ITEMS UNDER GAAP CONSISTING
2 OF RETAINED EARNINGS AND ACCUMULATED OTHER COMPREHENSIVE INCOME,
3 WITH CAPITAL AND RETAINED EARNINGS INCLUDING ALL CAPITAL STOCK,
4 ADDITIONAL PAID IN CAPITAL, AND OTHER EQUITY FUNDS.

5 (FF) "TREASURY RATES" MEANS THE UNITED STATES TREASURY STRIPS
6 ASKED YIELD AS PUBLISHED IN THE WALL STREET JOURNAL AS OF A BALANCE
7 SHEET DATE.

8 (GG) "VOTING SECURITY" INCLUDES ANY SECURITY CONVERTIBLE INTO
9 OR EVIDENCING THE RIGHT TO ACQUIRE A VOTING SECURITY.

10 SEC. 4603. (1) A CAPTIVE INSURANCE COMPANY, IF PERMITTED BY
11 ITS ORGANIZATIONAL DOCUMENTS, MAY APPLY TO THE COMMISSIONER FOR A
12 LIMITED CERTIFICATE OF AUTHORITY TO DO ANY AND ALL INSURANCE
13 AUTHORIZED BY THIS CHAPTER EXCEPT WORKER'S COMPENSATION INSURANCE,
14 LONG-TERM CARE INSURANCE, CRITICAL CARE INSURANCE, PERSONAL
15 AUTOMOBILE INSURANCE, OR HOMEOWNERS INSURANCE, OR ANY COMPONENT OF
16 THESE COVERAGES. A CAPTIVE INSURANCE COMPANY IS SUBJECT TO ALL OF
17 THE FOLLOWING:

18 (A) A PURE CAPTIVE INSURANCE COMPANY SHALL NOT INSURE ANY
19 RISKS OTHER THAN THOSE OF ITS PARENT, AFFILIATED COMPANIES,
20 CONTROLLED UNAFFILIATED BUSINESS, OR A COMBINATION OF ITS PARENT,
21 AFFILIATED COMPANIES, AND CONTROLLED UNAFFILIATED BUSINESS.

22 (B) AN ASSOCIATION CAPTIVE INSURANCE COMPANY SHALL NOT INSURE
23 ANY RISKS OTHER THAN THOSE OF THE MEMBER ORGANIZATIONS OF ITS
24 ASSOCIATION AND THEIR AFFILIATED COMPANIES.

25 (C) AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY SHALL NOT
26 INSURE ANY RISKS OTHER THAN THOSE OF THE INDUSTRIAL INSUREDS THAT
27 COMPRISE THE INDUSTRIAL INSURED GROUP AND THEIR AFFILIATED

1 COMPANIES.

2 (D) IN GENERAL, A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY
3 SHALL ONLY INSURE THE RISKS OF ITS PARENT. NOTWITHSTANDING ANY
4 OTHER PROVISIONS OF THIS CHAPTER, A SPECIAL PURPOSE CAPTIVE
5 INSURANCE COMPANY MAY PROVIDE INSURANCE OR REINSURANCE, OR BOTH,
6 FOR RISKS AS APPROVED BY THE COMMISSIONER.

7 (E) A CAPTIVE INSURANCE COMPANY SHALL NOT ACCEPT OR CEDE
8 REINSURANCE EXCEPT AS PROVIDED IN SECTION 4641.

9 (2) TO CONDUCT INSURANCE BUSINESS IN THIS STATE, A CAPTIVE
10 INSURANCE COMPANY SHALL DO ALL OF THE FOLLOWING:

11 (A) OBTAIN FROM THE COMMISSIONER A LIMITED CERTIFICATE OF
12 AUTHORITY AUTHORIZING IT TO CONDUCT INSURANCE BUSINESS IN THIS
13 STATE.

14 (B) HOLD AT LEAST 1 BOARD OF DIRECTORS MEETING, OR FOR A
15 LIMITED LIABILITY COMPANY, A MEETING OF THE MANAGING BOARD, EACH
16 YEAR IN THIS STATE.

17 (C) MAINTAIN ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, OR
18 FOR A BRANCH CAPTIVE INSURANCE COMPANY, MAINTAIN THE PRINCIPAL
19 PLACE OF BUSINESS FOR ITS BRANCH OPERATIONS IN THIS STATE.

20 (D) FILE WITH THE COMMISSIONER THE NAME AND ADDRESS OF A
21 RESIDENT REGISTERED AGENT DESIGNATED TO ACCEPT SERVICE OF PROCESS
22 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE. THE DESIGNATION
23 SHALL REMAIN IN FORCE AS LONG AS ANY LIABILITY REMAINS WITHIN THIS
24 STATE.

25 (3) BEFORE GRANTING A LIMITED CERTIFICATE OF AUTHORITY, THE
26 COMMISSIONER SHALL REQUIRE THE APPLICANT TO SUBMIT ORGANIZATIONAL
27 DOCUMENTS THAT CONTAIN THE FOLLOWING:

1 (A) THE NAMES AND PLACES OF RESIDENCE OF AT LEAST 3
2 INCORPORATORS OR ORGANIZERS OF WHOM AT LEAST 2 ARE RESIDENTS OF
3 THIS STATE.

4 (B) THE LOCATION OF THE PRINCIPAL OFFICE IN THIS STATE.

5 (C) THE NAME BY WHICH THE LEGAL ENTITY WILL BE KNOWN.

6 (D) THE PURPOSES OF THE CREATION OF THE ENTITY INCLUDING A
7 REFERENCE TO THIS CHAPTER.

8 (E) THE MANNER IN WHICH THE CORPORATE POWERS ARE TO BE
9 EXERCISED.

10 (F) THE NUMBER OF DIRECTORS OR MANAGERS, AS APPLICABLE.

11 (G) THE NUMBER OF DIRECTORS OR MANAGERS, AS APPLICABLE, THAT
12 CONSTITUTE A QUORUM FOR THE PURPOSES OF DOING BUSINESS WHICH SHALL
13 CONSIST OF NO FEWER THAN 1/3 OF THE DIRECTORS OR MANAGERS.

14 (H) THE AMOUNT AND VALUE OF CAPITAL STOCK, IF ANY. EACH SHARE
15 OF AUTHORIZED CAPITAL STOCK SHALL HAVE A VALUE OF NOT LESS THAN
16 \$1.00.

17 (I) THE TERM OF EXISTENCE OF THE ENTITY.

18 (4) THE ORGANIZATIONAL DOCUMENTS OF A PROPOSED CAPTIVE
19 INSURANCE COMPANY MAY CONTAIN A PROVISION PROVIDING THAT A DIRECTOR
20 IS NOT PERSONALLY LIABLE TO THE CORPORATION OR ITS SHAREHOLDERS OR
21 POLICYHOLDERS FOR MONETARY DAMAGES FOR A BREACH OF THE DIRECTOR'S
22 FIDUCIARY DUTY. HOWEVER, THE PROVISION DOES NOT ELIMINATE OR LIMIT
23 THE LIABILITY OF A DIRECTOR FOR ANY OF THE FOLLOWING:

24 (A) A BREACH OF THE DIRECTOR'S DUTY OF LOYALTY TO THE
25 CORPORATION OR ITS SHAREHOLDERS OR POLICYHOLDERS.

26 (B) ACTS OR OMISSIONS NOT IN GOOD FAITH OR THAT INVOLVE
27 INTENTIONAL MISCONDUCT OR KNOWING VIOLATION OF LAW.

1 (C) A TRANSACTION FROM WHICH THE DIRECTOR DERIVED AN IMPROPER
2 PERSONAL BENEFIT.

3 (5) BEFORE THE ORGANIZATIONAL DOCUMENTS SHALL BE EFFECTIVE FOR
4 THE PURPOSES OF THIS CHAPTER, THE ORGANIZATIONAL DOCUMENTS SHALL BE
5 SUBMITTED TO THE OFFICE OF THE ATTORNEY GENERAL FOR EXAMINATION. IF
6 SUCH DOCUMENTS ARE FOUND TO BE IN COMPLIANCE WITH THIS CHAPTER, THE
7 OFFICE OF THE ATTORNEY GENERAL SHALL SO CERTIFY TO THE
8 COMMISSIONER. EACH APPLICANT FOR A CAPTIVE INSURANCE COMPANY
9 LIMITED CERTIFICATE OF AUTHORITY THAT SUBMITS ITS ORGANIZATIONAL
10 DOCUMENTS TO THE OFFICE OF THE ATTORNEY GENERAL SHALL PAY TO THE
11 ATTORNEY GENERAL THE EXAMINATION FEE PROVIDED IN SECTION 240(2).

12 (6) PRIOR TO GRANTING A LIMITED CERTIFICATE OF AUTHORITY TO
13 ANY APPLICANT, THE COMMISSIONER SHALL REQUIRE, CONSIDER, AND REVIEW
14 ALL OF THE FOLLOWING:

15 (A) A STATEMENT ACKNOWLEDGING THAT ALL FINANCIAL RECORDS OF
16 THE CAPTIVE INSURANCE COMPANY, INCLUDING RECORDS PERTAINING TO
17 PROTECTED CELLS, IF APPLICABLE, SHALL BE MADE AVAILABLE FOR
18 INSPECTION OR EXAMINATION BY THE COMMISSIONER.

19 (B) A PLAN OF OPERATION, INCLUDING, IF APPLICABLE, A BUSINESS
20 PLAN DEMONSTRATING HOW THE APPLICANT WILL ACCOUNT FOR THE LOSS AND
21 EXPENSE EXPERIENCE OF EACH PROTECTED CELL AT A LEVEL OF DETAIL
22 FOUND TO BE SUFFICIENT BY THE COMMISSIONER AND HOW IT WILL REPORT
23 THE EXPERIENCE TO THE COMMISSIONER.

24 (C) EVIDENCE OF THE SOURCE AND FORM OF THE MINIMUM
25 CAPITALIZATION TO BE CONTRIBUTED TO THE COMPANY.

26 (D) EVIDENCE OF THE AMOUNT AND LIQUIDITY OF ITS ASSETS
27 RELATIVE TO THE RISKS TO BE ASSUMED.

1 (E) EVIDENCE OF THE CHARACTER, REPUTATION, FINANCIAL STANDING,
2 AND PURPOSES OF THE INCORPORATORS OR ORGANIZERS.

3 (F) EVIDENCE OF THE CHARACTER, REPUTATION, FINANCIAL
4 RESPONSIBILITY, INSURANCE EXPERIENCE, AND BUSINESS QUALIFICATIONS
5 OF THE OFFICERS AND DIRECTORS OR MANAGERS.

6 (G) BIOGRAPHICAL AFFIDAVITS IN THE FORMAT PRESCRIBED BY THE
7 COMMISSIONER FOR ALL OFFICERS AND DIRECTORS.

8 (H) EVIDENCE OF THE ADEQUACY OF THE LOSS PREVENTION PROGRAMS
9 OF ITS PARENT, MEMBER ORGANIZATION, OR INDUSTRIAL INSUREDS AS
10 APPLICABLE.

11 (I) FOR SPONSORED INSURANCE COMPANIES, COPIES OF ALL CONTRACTS
12 OR SAMPLE CONTRACTS WITH PARTICIPANTS AND EVIDENCE THAT EXPENSES
13 WILL BE ALLOCATED TO EACH PROTECTED CELL IN AN EQUITABLE MANNER.

14 (J) FOR LIMITED LIABILITY COMPANY APPLICANTS, A CERTIFICATE OF
15 STATUS DEMONSTRATING THAT THE LIMITED LIABILITY COMPANY HAS BEEN
16 FORMED PURSUANT TO THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993
17 PA 23, MCL 450.4101 TO 450.5200, AND IS IN GOOD STANDING.

18 (K) SUCH OTHER FACTORS OR DOCUMENTATION CONSIDERED RELEVANT BY
19 THE COMMISSIONER.

20 (7) THE COMMISSIONER SHALL ISSUE A LIMITED CERTIFICATE OF
21 AUTHORITY TO AN APPLICANT IF, AFTER REVIEWING THE DOCUMENTS AND
22 INFORMATION PROVIDED PURSUANT TO THIS CHAPTER, THE COMMISSIONER
23 FINDS THAT THE DOCUMENTS AND STATEMENTS FILED BY THE APPLICANT
24 COMPLY WITH THIS CHAPTER, THE APPLICANT MEETS THE STANDARDS IN THIS
25 CHAPTER AND WILL PROMOTE THE GENERAL GOOD OF THE STATE, AND ALL
26 REQUIRED FEES HAVE BEEN PAID. THE LIMITED CERTIFICATE OF AUTHORITY
27 SHALL AUTHORIZE THE APPLICANT TO DO BUSINESS IN THIS STATE UNTIL

1 MARCH 1, AT WHICH TIME THE COMMISSIONER MAY RENEW THE LIMITED
2 CERTIFICATE OF AUTHORITY.

3 (8) INFORMATION SUBMITTED PURSUANT TO THIS SECTION IS
4 CONFIDENTIAL AS PROVIDED IN SECTION 4609.

5 (9) AN APPLICANT SHALL PAY TO THE OFFICE A NONREFUNDABLE
6 \$10,000.00 FEE FOR PROCESSING ITS APPLICATION FOR A LIMITED
7 CERTIFICATE OF AUTHORITY. IN ADDITION, THE COMMISSIONER MAY RETAIN
8 LEGAL, FINANCIAL, AND EXAMINATION SERVICES FROM OUTSIDE THE OFFICE
9 TO EXAMINE AND INVESTIGATE THE APPLICATION, THE REASONABLE COST OF
10 WHICH MAY BE CHARGED AGAINST THE APPLICANT, OR THE COMMISSIONER MAY
11 USE INTERNAL RESOURCES TO EXAMINE AND INVESTIGATE THE APPLICATION
12 FOR A \$2,700.00 FEE.

13 (10) UPON APPROVAL OF THE COMMISSIONER, A FOREIGN CAPTIVE
14 INSURANCE COMPANY MAY BECOME A CAPTIVE INSURANCE COMPANY BY
15 COMPLYING WITH ALL OF THE REQUIREMENTS OF LAW RELATIVE TO THE
16 AUTHORIZATION OF A CAPTIVE INSURANCE COMPANY OF THE SAME OR
17 EQUIVALENT TYPE IN THIS STATE. AFTER THIS IS ACCOMPLISHED, THE
18 FOREIGN CAPTIVE INSURANCE COMPANY IS ENTITLED TO A LIMITED
19 CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN THIS STATE AND IS
20 SUBJECT TO THE AUTHORITY AND JURISDICTION OF THIS STATE. IT IS NOT
21 NECESSARY FOR A FOREIGN CAPTIVE INSURANCE COMPANY REDOMESTICATING
22 INTO THIS STATE TO MERGE, CONSOLIDATE, TRANSFER ASSETS, OR
23 OTHERWISE ENGAGE IN ANY OTHER REORGANIZATION, OTHER THAN AS
24 SPECIFIED IN THIS SECTION.

25 SEC. 4607. A CAPTIVE INSURANCE COMPANY SHALL NOT ADOPT A NAME
26 THAT IS THE SAME AS, DECEPTIVELY SIMILAR TO, OR LIKELY TO BE
27 CONFUSED WITH OR MISTAKEN FOR ANY OTHER EXISTING BUSINESS NAME

1 REGISTERED IN THIS STATE.

2 SEC. 4609. (1) INFORMATION AND TESTIMONY SUBMITTED OR
3 FURNISHED TO THE OFFICE PURSUANT TO THIS CHAPTER, EXAMINATION
4 REPORTS, PRELIMINARY EXAMINATION REPORTS OR RESULTS, AND THE
5 OFFICE'S WORK PAPERS, CORRESPONDENCE, MEMORANDA, REPORTS, RECORDS,
6 AND OTHER WRITTEN OR ORAL INFORMATION RELATED TO AN EXAMINATION
7 REPORT OR AN INVESTIGATION SHALL BE CONFIDENTIAL, SHALL BE WITHHELD
8 FROM PUBLIC INSPECTION, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL
9 NOT BE DIVULGED TO ANY PERSON, EXCEPT AS PROVIDED IN THIS SECTION
10 OR WITH THE WRITTEN CONSENT OF THE COMPANY. IF ASSURANCES ARE
11 PROVIDED THAT THE INFORMATION WILL BE KEPT CONFIDENTIAL, THE
12 COMMISSIONER MAY DISCLOSE CONFIDENTIAL WORK PAPERS, CORRESPONDENCE,
13 MEMORANDA, REPORTS, RECORDS, OR OTHER INFORMATION AS FOLLOWS:

14 (A) TO THE GOVERNOR OR THE ATTORNEY GENERAL.

15 (B) TO ANY RELEVANT REGULATORY AGENCY, INCLUDING REGULATORY
16 AGENCIES OF OTHER STATES OR THE FEDERAL GOVERNMENT.

17 (C) IN CONNECTION WITH AN ENFORCEMENT ACTION BROUGHT PURSUANT
18 TO THIS OR ANOTHER APPLICABLE ACT.

19 (D) TO LAW ENFORCEMENT OFFICIALS.

20 (E) TO PERSONS AUTHORIZED BY THE INGHAM COUNTY CIRCUIT COURT
21 TO RECEIVE THE INFORMATION.

22 (F) TO PERSONS ENTITLED TO RECEIVED SUCH INFORMATION IN ORDER
23 TO DISCHARGE DUTIES SPECIFICALLY PROVIDED FOR IN THIS ACT.

24 (2) THE CONFIDENTIALITY REQUIREMENTS OF SUBSECTION (1) DO NOT
25 APPLY IN ANY PROCEEDING OR ACTION BROUGHT AGAINST OR BY THE CAPTIVE
26 INSURER UNDER THIS ACT OR ANY OTHER APPLICABLE ACT OF THIS STATE,
27 ANY OTHER STATE, OR THE UNITED STATES.

1 SEC. 4611. (1) THE COMMISSIONER SHALL NOT ISSUE A LIMITED
2 CERTIFICATE OF AUTHORITY TO A CAPTIVE INSURANCE COMPANY UNLESS THE
3 COMPANY POSSESSES AND MAINTAINS UNIMPAIRED PAID IN CAPITAL AND
4 RETAINED EARNINGS AS FOLLOWS:

5 (A) FOR A PURE CAPTIVE INSURANCE COMPANY, NOT LESS THAN
6 \$150,000.00.

7 (B) FOR AN ASSOCIATION CAPTIVE INSURANCE COMPANY INCORPORATED
8 AS A STOCK INSURER OR ORGANIZED AS A LIMITED LIABILITY COMPANY, NOT
9 LESS THAN \$400,000.00.

10 (C) FOR AN ASSOCIATION CAPTIVE INSURANCE COMPANY INCORPORATED
11 AS A MUTUAL INSURER, NOT LESS THAN \$750,000.00.

12 (D) FOR AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY
13 INCORPORATED AS A STOCK INSURER OR ORGANIZED AS A LIMITED LIABILITY
14 COMPANY, NOT LESS THAN \$300,000.00.

15 (E) FOR A SPONSORED CAPTIVE INSURANCE COMPANY, NOT LESS THAN
16 \$500,000.00. HOWEVER, IF THE SPONSORED CAPTIVE INSURANCE COMPANY
17 DOES NOT ASSUME ANY RISK, THE RISKS INSURED BY THE PROTECTED CELLS
18 ARE HOMOGENEOUS, AND THERE ARE NO MORE THAN 10 CELLS, THE
19 COMMISSIONER MAY REDUCE THIS AMOUNT TO AN AMOUNT NOT LESS THAN
20 \$150,000.00.

21 (F) FOR A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY, AN AMOUNT
22 DETERMINED BY THE COMMISSIONER AFTER GIVING DUE CONSIDERATION TO
23 THE COMPANY'S BUSINESS PLAN, FEASIBILITY STUDY, AND PRO FORMAS,
24 INCLUDING THE NATURE OF THE RISKS TO BE INSURED.

25 (2) EXCEPT FOR A SPONSORED CAPTIVE THAT DOES NOT ASSUME ANY
26 RISK, A CAPTIVE INSURANCE COMPANY INITIALLY SHALL POSSESS AND AFTER
27 THAT MAINTAIN MINIMUM CAPITALIZATION AS REQUIRED BY SUBSECTION (1).

1 ALL OF THE MINIMUM INITIAL CAPITALIZATION SHALL BE IN CASH. ALL
2 OTHER FUNDS OF THE CAPTIVE INSURER IN EXCESS OF ITS MINIMUM INITIAL
3 CAPITALIZATION SHALL BE IN THE FORMS AS PROVIDED BY THIS CHAPTER.

4 (3) THE COMMISSIONER SHALL NOT ISSUE A LIMITED CERTIFICATE OF
5 AUTHORITY TO A CAPTIVE INSURANCE COMPANY INCORPORATED AS A
6 NONPROFIT CORPORATION UNLESS THE COMPANY POSSESSES AND MAINTAINS
7 UNENCUMBERED EQUITY AS FOLLOWS:

8 (A) FOR A PURE CAPTIVE INSURANCE COMPANY, NOT LESS THAN
9 \$250,000.00.

10 (B) FOR A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY, AN AMOUNT
11 DETERMINED BY THE COMMISSIONER AFTER GIVING DUE CONSIDERATION TO
12 THE COMPANY'S BUSINESS PLAN, FEASIBILITY STUDY, AND PRO FORMAS,
13 INCLUDING THE NATURE OF THE RISKS TO BE INSURED.

14 (4) NET ASSETS REQUIRED BY SUBSECTION (3) OF A CAPTIVE
15 INSURANCE COMPANY INCORPORATED AS A NONPROFIT CORPORATION SHALL BE
16 IN THE FORM OF CASH, CASH EQUIVALENT, OR AN IRREVOCABLE LETTER OF
17 CREDIT.

18 (5) FOR THE PURPOSES OF SUBSECTIONS (1) THROUGH (4), THE
19 COMMISSIONER MAY ISSUE A LIMITED CERTIFICATE OF AUTHORITY EXPRESSLY
20 CONDITIONED UPON THE CAPTIVE INSURANCE COMPANY PROVIDING TO THE
21 COMMISSIONER SATISFACTORY EVIDENCE OF POSSESSION OF THE MINIMUM
22 REQUIRED UNIMPAIRED PAID IN CAPITAL. UNTIL THIS EVIDENCE IS
23 PROVIDED, THE CAPTIVE INSURANCE COMPANY SHALL NOT ISSUE ANY POLICY,
24 ASSUME ANY LIABILITY, OR OTHERWISE PROVIDE COVERAGE. THE
25 COMMISSIONER MAY REVOKE THE CONDITIONAL LIMITED CERTIFICATE OF
26 AUTHORITY WITHOUT LEGAL RECOURSE BY THE COMPANY IF SATISFACTORY
27 EVIDENCE OF THE REQUIRED CAPITAL IS NOT PROVIDED WITHIN A MAXIMUM

1 PERIOD OF TIME, NOT TO EXCEED 1 YEAR, TO BE ESTABLISHED BY THE
2 COMMISSIONER AT THE TIME THE CONDITIONAL LIMITED CERTIFICATE OF
3 AUTHORITY IS ISSUED.

4 (6) THE COMMISSIONER MAY PRESCRIBE ADDITIONAL CAPITAL BASED
5 UPON THE TYPE, VOLUME, AND NATURE OF INSURANCE BUSINESS TRANSACTED.
6 THIS ADDITIONAL CAPITAL SHALL BE IN THE FORM OF CASH, CASH
7 EQUIVALENT, AN IRREVOCABLE LETTER OF CREDIT, OR SECURITIES INVESTED
8 AS PROVIDED IN SECTION 4639.

9 (7) FOR A BRANCH CAPTIVE INSURANCE COMPANY, AS SECURITY FOR
10 THE PAYMENT OF LIABILITIES ATTRIBUTABLE TO BRANCH OPERATIONS, THE
11 COMMISSIONER SHALL REQUIRE THAT A TRUST FUND, FUNDED BY AN
12 IRREVOCABLE LETTER OF CREDIT OR OTHER ACCEPTABLE ASSET, BE
13 ESTABLISHED AND MAINTAINED IN THE UNITED STATES FOR THE BENEFIT OF
14 UNITED STATES POLICYHOLDERS AND UNITED STATES CEDING INSURERS UNDER
15 INSURANCE POLICIES ISSUED OR REINSURANCE CONTRACTS ISSUED OR
16 ASSUMED, BY THE BRANCH CAPTIVE INSURANCE COMPANY THROUGH ITS BRANCH
17 OPERATIONS. THE AMOUNT OF THE SECURITY SHALL BE NO LESS THAN THE
18 CAPITAL AND RETAINED EARNINGS REQUIRED BY THIS CHAPTER AND THE
19 RESERVES ON THESE INSURANCE POLICIES OR REINSURANCE CONTRACTS,
20 INCLUDING RESERVES FOR LOSSES, ALLOCATED LOSS ADJUSTMENT EXPENSES,
21 INCURRED BUT NOT REPORTED LOSSES AND UNEARNED PREMIUMS WITH REGARD
22 TO BUSINESS WRITTEN THROUGH BRANCH OPERATIONS; HOWEVER, THE
23 COMMISSIONER MAY PERMIT A BRANCH CAPTIVE INSURANCE COMPANY THAT IS
24 REQUIRED TO POST SECURITY FOR LOSS RESERVES ON BRANCH BUSINESS BY
25 ITS REINSURER TO REDUCE THE FUNDS IN THE TRUST ACCOUNT REQUIRED BY
26 THIS SECTION BY THE SAME AMOUNT SO LONG AS THE SECURITY REMAINS
27 POSTED WITH THE REINSURER.

1 (8) A CAPTIVE INSURANCE COMPANY SHALL NOT PAY A DIVIDEND OUT
2 OF, OR OTHER DISTRIBUTION WITH RESPECT TO, CAPITAL OR RETAINED
3 EARNINGS, IN EXCESS OF THE LIMITATIONS SET FORTH IN SECTION 1343,
4 WITHOUT THE PRIOR APPROVAL OF THE COMMISSIONER. APPROVAL OF AN
5 ONGOING PLAN FOR THE PAYMENT OF DIVIDENDS OR OTHER DISTRIBUTIONS
6 SHALL BE CONDITIONED UPON RETENTION, AT THE TIME OF EACH PAYMENT,
7 OF CAPITAL OR RETAINED EARNINGS IN EXCESS OF AMOUNTS SPECIFIED BY,
8 OR DETERMINED IN ACCORDANCE WITH FORMULAS APPROVED BY, THE
9 COMMISSIONER. A CAPTIVE INSURANCE COMPANY INCORPORATED AS A
10 NONPROFIT CORPORATION SHALL NOT MAKE ANY DISTRIBUTIONS WITHOUT THE
11 PRIOR APPROVAL OF THE COMMISSIONER.

12 SEC. 4619. (1) A PURE CAPTIVE INSURANCE COMPANY OR A SPONSORED
13 CAPTIVE INSURANCE COMPANY MAY BE ANY OF THE FOLLOWING:

14 (A) INCORPORATED AS A STOCK INSURER WITH ITS CAPITAL DIVIDED
15 INTO SHARES AND HELD BY THE STOCKHOLDERS.

16 (B) INCORPORATED AS A PUBLIC BENEFIT, MUTUAL BENEFIT, OR
17 RELIGIOUS NONPROFIT CORPORATION WITH MEMBERS IN ACCORDANCE WITH THE
18 MICHIGAN NONPROFIT CORPORATION ACT OF 1982, 1982 PA 162, MCL
19 450.2101 TO 450.3192.

20 (C) ORGANIZED AS A LIMITED LIABILITY COMPANY WITH ITS CAPITAL
21 DIVIDED INTO CAPITAL ACCOUNTS AND HELD BY ITS MEMBERS.

22 (2) AN ASSOCIATION CAPTIVE INSURANCE COMPANY OR AN INDUSTRIAL
23 INSURED CAPTIVE INSURANCE COMPANY MAY BE ANY OF THE FOLLOWING:

24 (A) INCORPORATED AS A STOCK INSURER WITH ITS CAPITAL DIVIDED
25 INTO SHARES AND HELD BY THE STOCKHOLDERS.

26 (B) ORGANIZED AS A LIMITED LIABILITY COMPANY WITH ITS CAPITAL
27 DIVIDED INTO CAPITAL ACCOUNTS AND HELD BY ITS MEMBERS.

1 (C) INCORPORATED AS A MUTUAL INSURER WITHOUT CAPITAL STOCK,
2 THE GOVERNING BODY OF WHICH IS ELECTED BY THE MEMBER ORGANIZATIONS
3 OF ITS ASSOCIATION.

4 (3) THE CAPITAL STOCK OR MEMBERSHIP INTERESTS OF A CAPTIVE
5 INSURANCE COMPANY INCORPORATED AS A STOCK INSURER OR LIMITED
6 LIABILITY COMPANY SHALL BE ISSUED AT NOT LESS THAN PAR VALUE.

7 (4) FOR A CAPTIVE INSURANCE COMPANY FORMED AS A CORPORATION OR
8 A NONPROFIT CORPORATION, AT LEAST 1 OF THE MEMBERS OF THE BOARD OF
9 DIRECTORS OF A CAPTIVE INSURANCE COMPANY INCORPORATED IN THIS STATE
10 SHALL BE A RESIDENT OF THIS STATE.

11 (5) FOR A CAPTIVE INSURANCE COMPANY FORMED AS A LIMITED
12 LIABILITY COMPANY, AT LEAST 1 OF THE MANAGERS OF THE CAPTIVE
13 INSURANCE COMPANY SHALL BE A RESIDENT OF THIS STATE.

14 (6) A CAPTIVE INSURANCE COMPANY FORMED AS A LIMITED LIABILITY
15 COMPANY HAS THE PRIVILEGES AND IS SUBJECT TO THE PROVISIONS OF THE
16 MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4101 TO
17 450.5200, FOR LIMITED LIABILITY COMPANIES, AS WELL AS THE
18 APPLICABLE PROVISIONS CONTAINED IN THIS CHAPTER. IF A CONFLICT
19 OCCURS BETWEEN A PROVISION OF THE MICHIGAN LIMITED LIABILITY
20 COMPANY ACT, 1993 PA 23, MCL 450.4101 TO 450.5200, FOR LIMITED
21 LIABILITY COMPANIES, AND A PROVISION OF THIS CHAPTER, THIS CHAPTER
22 CONTROLS.

23 (7) ALL CAPTIVE INSURERS FORMED AS CORPORATIONS UNDER THIS
24 CHAPTER ARE CONSIDERED BODIES CORPORATE AND POLITIC, IN FACT AND IN
25 NAME, ARE SUBJECT TO ALL OF THE PROVISIONS OF LAW IN RELATION TO
26 CORPORATIONS AS FAR AS THEY ARE APPLICABLE, AND HAVE THE CORPORATE
27 POWERS PROVIDED FOR IN CHAPTER 52.

1 (8) THIS ACT'S PROVISIONS PERTAINING TO MERGERS,
2 CONSOLIDATIONS, CONVERSIONS, MUTUALIZATIONS, AND REDOMESTICATIONS
3 APPLY IN DETERMINING THE PROCEDURES TO BE FOLLOWED BY A CAPTIVE
4 INSURANCE COMPANY IN CARRYING OUT ANY OF THE TRANSACTIONS DESCRIBED
5 IN THOSE PROVISIONS.

6 SEC. 4621. (1) A CAPTIVE INSURANCE COMPANY SHALL NOT BE
7 REQUIRED TO MAKE AN ANNUAL REPORT EXCEPT AS PROVIDED IN THIS
8 CHAPTER.

9 (2) ANNUALLY, ON OR BEFORE MARCH 1 OF EACH YEAR, A CAPTIVE
10 INSURANCE COMPANY SHALL SUBMIT TO THE COMMISSIONER A REPORT OF ITS
11 FINANCIAL CONDITION, VERIFIED BY OATH OF 2 OF ITS EXECUTIVE
12 OFFICERS. A CAPTIVE INSURANCE COMPANY MAY REPORT USING GENERALLY
13 ACCEPTED ACCOUNTING PRINCIPLES OR, WITH THE APPROVAL OF THE
14 COMMISSIONER, STATUTORY ACCOUNTING PRINCIPLES, WITH USEFUL OR
15 NECESSARY MODIFICATIONS OR ADAPTATIONS REQUIRED OR APPROVED OR
16 ACCEPTED BY THE COMMISSIONER FOR THE TYPE OF INSURANCE AND KINDS OF
17 INSURERS TO BE REPORTED UPON, AND AS SUPPLEMENTED BY ADDITIONAL
18 INFORMATION REQUIRED BY THE COMMISSIONER. THE COMMISSIONER MAY
19 PRESCRIBE THE FORM AND MANNER IN WHICH CAPTIVE INSURANCE COMPANIES
20 SHALL REPORT. INFORMATION SUBMITTED PURSUANT TO THIS SECTION IS
21 CONFIDENTIAL AS PROVIDED IN SECTION 4609.

22 (3) THE COMMISSIONER MAY ADDRESS INQUIRIES TO ANY CAPTIVE
23 INSURER CONCERNING THE INSURER'S ACTIVITIES OR CONDITIONS OR ANY
24 OTHER MATTER CONNECTED WITH THE INSURER'S TRANSACTIONS. AN INSURER
25 SO ADDRESSED SHALL REPLY IN WRITING TO EACH INQUIRY FROM THE
26 COMMISSIONER WITHIN 30 DAYS OF RECEIPT OF THE INQUIRY.

27 (4) THE COMMISSIONER MAY REQUIRE INTERIM REPORTING ON ANY OR

1 ALL OF THE CAPTIVE INSURER'S BUSINESS, INCLUDING ANY MATTER,
2 CONDITION, OR REQUIREMENT REGULATED BY THIS CHAPTER. THE
3 COMMISSIONER SHALL PRESCRIBE THE FORMAT AND CONTENT OF THE INTERIM
4 REPORT.

5 (5) EACH CAPTIVE INSURER THAT FAILS TO FILE A REPORT REQUIRED
6 BY THIS SECTION, OR FAILS TO REPLY WITHIN 30 DAYS TO AN INQUIRY OF
7 THE COMMISSIONER, IS SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN
8 \$1,000.00 OR MORE THAN \$5,000.00 PER OCCURRENCE, AND AN ADDITIONAL
9 \$50.00 FOR EVERY DAY THAT THE CAPTIVE INSURER FAILS TO FILE THE
10 REPORT OR REPLY TO THE INQUIRY. IN ADDITION, EACH CAPTIVE INSURER
11 THAT FAILS TO FILE A REPORT, OR FAILS TO MAKE A SATISFACTORY REPLY
12 TO AN INQUIRY OF THE COMMISSIONER CONCERNING THE CAPTIVE INSURER'S
13 AFFAIRS, IS SUBJECT TO PROCEEDINGS UNDER SECTION 4637.

14 (6) A PURE CAPTIVE INSURANCE COMPANY MAY MAKE WRITTEN
15 APPLICATION FOR FILING THE ANNUAL REPORT ON A FISCAL YEAR END THAT
16 IS CONSISTENT WITH THE PARENT COMPANY'S FISCAL YEAR. THE ANNUAL
17 REPORT SHALL BE ON A FORM PRESCRIBED BY THE COMMISSIONER.

18 (7) A BRANCH CAPTIVE INSURANCE COMPANY SHALL FILE WITH THE
19 COMMISSIONER 60 DAYS AFTER THE FISCAL YEAR END A COPY OF ALL
20 REPORTS AND STATEMENTS REQUIRED TO BE FILED UNDER THE LAWS OF THE
21 JURISDICTION IN WHICH THE ALIEN CAPTIVE INSURANCE COMPANY IS
22 FORMED, VERIFIED BY OATH BY 2 OF ITS EXECUTIVE OFFICERS. IF THE
23 COMMISSIONER IS SATISFIED THAT THE ANNUAL REPORT FILED BY THE ALIEN
24 CAPTIVE INSURANCE COMPANY IN ITS DOMICILIARY JURISDICTION PROVIDES
25 ADEQUATE INFORMATION CONCERNING THE FINANCIAL CONDITION OF THE
26 ALIEN CAPTIVE INSURANCE COMPANY, THE COMMISSIONER MAY WAIVE THE
27 REQUIREMENT FOR COMPLETION OF THE CAPTIVE ANNUAL STATEMENT.

1 (8) A CAPTIVE INSURANCE COMPANY SHALL ANNUALLY SUBMIT TO THE
2 COMMISSIONER THE OPINION OF A QUALIFIED ACTUARY AS TO WHETHER THE
3 RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE
4 RESERVES ARE COMPUTED APPROPRIATELY, ARE BASED ON ASSUMPTIONS THAT
5 SATISFY CONTRACTUAL PROVISIONS, ARE CONSISTENT WITH PRIOR REPORTED
6 AMOUNTS, AND COMPLY WITH APPLICABLE LAWS OF THIS STATE. THE
7 ACTUARIAL OPINION REQUIRED BY THIS SECTION SHALL BE SUBMITTED IN A
8 FORM PRESCRIBED BY THE COMMISSIONER. FOR PURPOSES OF THIS SECTION,
9 "QUALIFIED ACTUARY" MEANS A MEMBER OF EITHER THE AMERICAN ACADEMY
10 OF ACTUARIES OR THE SOCIETY OF ACTUARIES WHO ALSO MEETS ANY OTHER
11 CRITERIA THAT THE COMMISSIONER MAY ESTABLISH BY RULE, REGULATION,
12 OR ORDER.

13 SEC. 4623. (1) A SPONSORED CAPTIVE INSURANCE COMPANY MAY
14 DISCOUNT ITS LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES AT THE
15 LESSER OF TREASURY RATES OR THE CAPTIVE INSURANCE COMPANY'S ACTUAL
16 RATE OF RETURN APPLIED TO THE APPLICABLE PAYMENTS PROJECTED THROUGH
17 THE USE OF THE EXPECTED PAYMENT PATTERN ASSOCIATED WITH THE
18 RESERVES.

19 (2) THE COMMISSIONER MAY DISALLOW THE DISCOUNTING OF RESERVES
20 IF A SPONSORED CAPTIVE INSURANCE COMPANY VIOLATES A PROVISION OF
21 THIS ACT.

22 SEC. 4625. (1) NO PROVISIONS OF THIS ACT, OTHER THAN THOSE
23 SPECIFICALLY REFERENCED IN THIS CHAPTER, APPLY TO A CAPTIVE
24 INSURANCE COMPANY, AND THOSE PROVISIONS APPLY ONLY AS MODIFIED BY
25 THIS CHAPTER. IF A CONFLICT OCCURS BETWEEN A PROVISION OF THIS ACT
26 AND A PROVISION OF THIS CHAPTER, THIS CHAPTER CONTROLS.

27 (2) THE COMMISSIONER BY RULE, REGULATION, OR ORDER MAY EXEMPT

1 SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES, ON A CASE-BY-CASE
2 BASIS, FROM PROVISIONS OF THIS CHAPTER THAT THE COMMISSIONER
3 DETERMINES TO BE INAPPROPRIATE GIVEN THE NATURE OF THE RISKS TO BE
4 INSURED.

5 (3) SECTIONS 210 TO 222, 226 TO 238, 244 TO 251, AND 2057 TO
6 2062, AND CHAPTER 45 APPLY TO CAPTIVE INSURANCE COMPANIES.

7 (4) THE EXPENSES AND CHARGES OF A CAPTIVE INSURANCE COMPANY
8 EXAMINATION SHALL BE PAID TO THE STATE BY THE CAPTIVE INSURANCE
9 COMPANY OR COMPANIES EXAMINED, AND THE OFFICE SHALL ISSUE WARRANTS
10 FOR THE PROPER CHARGES INCURRED IN ALL EXAMINATIONS. THE PAYMENTS
11 RECEIVED BY THE STATE SHALL BE DEPOSITED INTO THE CAPTIVE INSURANCE
12 REGULATORY AND SUPERVISION FUND.

13 (5) A CAPTIVE INSURANCE COMPANY SHALL PAY AN ANNUAL RENEWAL
14 FEE BY MARCH 1 OF EACH CALENDAR YEAR. THE ANNUAL RENEWAL FEE SHALL
15 BE CALCULATED BASED UPON THE ANNUAL VOLUME OF INSURANCE OR
16 REINSURANCE PREMIUMS RECEIVED BY THE CAPTIVE INSURANCE COMPANY AS
17 FOLLOWS:

18 (A) FOR ANNUAL PREMIUMS LESS THAN \$5,000,000.00, THE RENEWAL
19 FEE SHALL BE \$5,000.00.

20 (B) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
21 \$5,000,000.00, BUT LESS THAN \$10,000,000.00, THE RENEWAL FEE SHALL
22 BE \$10,000.00.

23 (C) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
24 \$10,000,000.00, BUT LESS THEN \$15,000,000.00, THE RENEWAL FEE SHALL
25 BE \$15,000.00.

26 (D) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
27 \$15,000,000.00, BUT LESS THAN \$25,000,000.00, THE RENEWAL FEE SHALL

1 BE \$25,000.00.

2 (E) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
3 \$25,000,000.00, BUT LESS THAN \$40,000,000.00, THE RENEWAL FEE SHALL
4 BE \$40,000.00.

5 (F) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
6 \$40,000,000.00, BUT LESS THAN \$55,000,000.00, THE RENEWAL FEE SHALL
7 BE \$50,000.00.

8 (G) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
9 \$55,000,000.00, BUT LESS THAN \$75,000,000.00, THE RENEWAL FEE SHALL
10 BE \$75,000.00.

11 (H) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
12 \$75,000,000.00, THE RENEWAL FEE SHALL BE \$100,000.00.

13 (6) THE OFFICE MAY CHARGE A \$15.00 FEE FOR ANY DOCUMENT
14 REQUIRING CERTIFICATION OF AUTHENTICITY OR THE SIGNATURE OF THE
15 COMMISSIONER. THE PAYMENTS RECEIVED SHALL BE DEPOSITED INTO THE
16 CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND.

17 (7) THE OFFICE MAY CHARGE A FEE OF \$25.00 PAYABLE TO THE
18 ATTORNEY GENERAL FOR THE EXAMINATION OF ANY AMENDMENT TO THE
19 ORGANIZATIONAL DOCUMENTS.

20 (8) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
21 COMMISSIONER MAY EMPLOY LEGAL COUNSEL AS HE OR SHE CONSIDERS
22 NECESSARY TO ASSIST IN HIS OR HER RESPONSIBILITIES UNDER THIS
23 CHAPTER.

24 (9) THE CONFIDENTIALITY PROVISIONS OF THIS CHAPTER DO NOT
25 EXTEND TO FINAL EXAMINATION REPORTS PRODUCED BY THE COMMISSIONER IN
26 INSPECTING OR EXAMINING A CAPTIVE INSURANCE COMPANY FORMED AS A
27 RISK RETENTION GROUP UNDER THE LIABILITY RISK RETENTION ACT OF

1 1986, 15 USC 3901 TO 3906.

2 (10) SECTION 222 APPLIES TO ALL BUSINESS WRITTEN BY A CAPTIVE
3 INSURANCE COMPANY EXCEPT THAT THE EXAMINATION FOR A BRANCH CAPTIVE
4 INSURANCE COMPANY SHALL BE OF BRANCH BUSINESS AND BRANCH OPERATIONS
5 ONLY, AS LONG AS THE BRANCH CAPTIVE INSURANCE COMPANY PROVIDES
6 ANNUALLY TO THE COMMISSIONER, A CERTIFICATE OF COMPLIANCE, OR ITS
7 EQUIVALENT, ISSUED BY OR FILED WITH THE LICENSING AUTHORITY OF THE
8 JURISDICTION IN WHICH THE BRANCH CAPTIVE INSURANCE COMPANY IS
9 FORMED AND DEMONSTRATES TO THE COMMISSIONER'S SATISFACTION THAT IT
10 IS OPERATING IN SOUND FINANCIAL CONDITION IN ACCORDANCE WITH ALL
11 APPLICABLE LAWS AND REGULATIONS OF THAT JURISDICTION.

12 SEC. 4637. (1) THE LIMITED CERTIFICATE OF AUTHORITY OF A
13 CAPTIVE INSURANCE COMPANY TO CONDUCT AN INSURANCE BUSINESS IN THIS
14 STATE MAY BE SUSPENDED OR REVOKED BY THE COMMISSIONER FOR ANY OF
15 THE FOLLOWING:

16 (A) INSOLVENCY OR IMPAIRMENT OF CAPITAL OR RETAINED EARNINGS.

17 (B) FAILURE TO MEET THE REQUIREMENTS OF SECTION 4611.

18 (C) REFUSAL OR FAILURE TO SUBMIT AN ANNUAL REPORT, AS REQUIRED
19 BY SECTION 4621, OR ANY OTHER REPORT OR STATEMENT REQUIRED BY LAW
20 OR BY ORDER OF THE COMMISSIONER.

21 (D) FAILURE TO COMPLY WITH ITS OWN CHARTER, BYLAWS, OR OTHER
22 ORGANIZATIONAL DOCUMENT.

23 (E) FAILURE TO SUBMIT TO EXAMINATION OR ANY LEGAL OBLIGATION
24 RELATIVE TO AN EXAMINATION, AS REQUIRED BY SECTION 4625.

25 (F) REFUSAL OR FAILURE TO PAY THE COST OF EXAMINATION AS
26 REQUIRED BY SECTION 4625.

27 (G) THE COMPANY IS NO LONGER SAFE, RELIABLE, OR ENTITLED TO

1 PUBLIC CONFIDENCE OR IS UNSOUND, OR IS USING FINANCIAL METHODS AND
2 PRACTICES IN THE CONDUCT OF ITS BUSINESS THAT RENDER FURTHER
3 TRANSACTION OF INSURANCE BY THE COMPANY IN THIS STATE HAZARDOUS TO
4 POLICYHOLDERS, CREDITORS, OR THE PUBLIC.

5 (H) THE CERTIFICATE OF AUTHORITY OR EQUIVALENT AUTHORIZATION
6 OF A BRANCH CAPTIVE INSURANCE COMPANY HAS BEEN SUSPENDED OR REVOKED
7 IN THE JURISDICTION IN WHICH THE COMPANY WAS FORMED.

8 (I) FOR A CAPTIVE INSURER FORMED AS A LIMITED LIABILITY
9 COMPANY, THE CAPTIVE INSURER IS NO LONGER IN GOOD STANDING UNDER
10 THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL
11 450.4101 TO 450.5200.

12 (J) THE COMPANY HAS FAILED, AFTER WRITTEN REQUEST BY THE
13 COMMISSIONER, TO REMOVE OR DISCHARGE AN OFFICER OR DIRECTOR WHOSE
14 RECORD OF BUSINESS CONDUCT DOES NOT SATISFY THE REQUIREMENTS OF
15 SECTION 4603 OR WHO HAS BEEN CONVICTED OF ANY CRIME INVOLVING
16 FRAUD, DISHONESTY, OR LIKE MORAL TURPITUDE.

17 (K) THE COMPANY HAS FAILED, WITHIN 30 DAYS AFTER NOTICE OF
18 DELINQUENCY FROM THE COMMISSIONER, TO CURE ITS FAILURE TO PAY
19 TAXES, FEES, ASSESSMENTS, OR EXPENSES REQUIRED BY THIS ACT.

20 (L) THE CAPTIVE INSURANCE COMPANY HAS FAILED FOR AN
21 UNREASONABLE PERIOD TO PAY ANY FINAL JUDGMENT RENDERED AGAINST IT
22 IN THIS STATE ON ANY POLICY, BOND, RECOGNIZANCE, OR UNDERTAKING
23 ISSUED OR GUARANTEED BY IT.

24 (M) FAILURE OTHERWISE TO COMPLY WITH THE LAWS OF THIS STATE.

25 (2) IF THE COMMISSIONER FINDS, UPON EXAMINATION, HEARING, OR
26 OTHER EVIDENCE, THAT A CAPTIVE INSURANCE COMPANY HAS COMMITTED ANY
27 OF THE ACTS SPECIFIED IN SUBSECTION (1), THE COMMISSIONER MAY

1 SUSPEND OR REVOKE THE CAPTIVE INSURANCE COMPANY'S LIMITED
2 CERTIFICATE OF AUTHORITY IF THE COMMISSIONER CONSIDERS IT IN THE
3 BEST INTEREST OF THE PUBLIC AND THE POLICYHOLDERS OF THE CAPTIVE
4 INSURANCE COMPANY, NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT.

5 SEC. 4639. (1) AN ASSOCIATION CAPTIVE INSURANCE COMPANY AND AN
6 INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY INSURING THE RISKS OF
7 AN INDUSTRIAL INSURED GROUP SHALL COMPLY WITH THE INVESTMENT
8 REQUIREMENTS CONTAINED IN SECTIONS 910 TO 947. NOTWITHSTANDING ANY
9 OTHER PROVISION OF THIS CHAPTER OR IN CHAPTER 9, THE COMMISSIONER
10 MAY APPROVE THE USE OF ALTERNATIVE RELIABLE METHODS OF VALUATION
11 AND RATING.

12 (2) A PURE CAPTIVE INSURANCE COMPANY AND A SPECIAL PURPOSE
13 CAPTIVE INSURANCE COMPANY ARE NOT SUBJECT TO ANY RESTRICTIONS ON
14 ALLOWABLE INVESTMENTS CONTAINED IN CHAPTER 9 EXCEPT THAT THE
15 COMMISSIONER MAY REQUEST A WRITTEN INVESTMENT PLAN AND MAY PROHIBIT
16 OR LIMIT AN INVESTMENT THAT THREATENS THE SOLVENCY OR LIQUIDITY OF
17 THE COMPANY.

18 (3) ONLY A PURE CAPTIVE INSURANCE COMPANY MAY MAKE LOANS TO
19 ITS PARENT COMPANY OR AFFILIATES AND ONLY UPON THE PRIOR WRITTEN
20 APPROVAL OF THE COMMISSIONER EVIDENCED BY A NOTE IN A FORM APPROVED
21 BY THE COMMISSIONER. LOANS OF MINIMUM CAPITAL AND RETAINED EARNINGS
22 REQUIRED TO BE HELD BY SECTION 4611(1) ARE PROHIBITED.

23 (4) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 4663 AND 4665,
24 THE ASSETS OF 2 OR MORE PROTECTED CELLS MAY BE COMBINED FOR
25 PURPOSES OF INVESTMENT UPON WRITTEN AGREEMENT OF THE PARTICIPANTS,
26 AND THIS COMBINATION SHALL NOT BE CONSTRUED AS DEFEATING THE
27 SEGREGATION OF THOSE ASSETS FOR ACCOUNTING OR OTHER PURPOSES.

1 (5) SPONSORED CAPTIVE INSURANCE COMPANIES SHALL COMPLY WITH
2 THE INVESTMENT REQUIREMENTS CONTAINED IN CHAPTER 9, AS APPLICABLE;
3 PROVIDED, HOWEVER, THAT COMPLIANCE WITH SUCH INVESTMENT
4 REQUIREMENTS SHALL BE WAIVED FOR SPONSORED CAPTIVE INSURANCE
5 COMPANIES TO THE EXTENT THAT CREDIT FOR REINSURANCE CEDED TO
6 REINSURERS IS ALLOWED PURSUANT TO SECTION 4641(2) OR TO THE EXTENT
7 OTHERWISE CONSIDERED REASONABLE AND APPROPRIATE BY THE
8 COMMISSIONER. SECTIONS 841 AND 842 SHALL APPLY TO SPONSORED CAPTIVE
9 INSURANCE COMPANIES EXCEPT TO THE EXTENT IT IS INCONSISTENT WITH
10 APPROVED ACCOUNTING STANDARDS IN USE BY THE COMPANY.
11 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE COMMISSIONER
12 MAY APPROVE THE USE OF ALTERNATIVE RELIABLE METHODS OF VALUATION
13 AND RATING.

14 SEC. 4641. (1) A CAPTIVE INSURANCE COMPANY MAY PROVIDE
15 REINSURANCE, AS AUTHORIZED BY THIS ACT AND WITH THE PRIOR APPROVAL
16 OF THE COMMISSIONER, ON RISKS CEDED BY ANY OTHER INSURER.

17 (2) A CAPTIVE INSURANCE COMPANY MAY TAKE CREDIT FOR RESERVES
18 ON RISKS OR PORTIONS OF RISKS CEDED TO REINSURERS COMPLYING WITH
19 THE PROVISIONS OF SECTIONS 1103 AND 1105. A CAPTIVE INSURER SHALL
20 NOT TAKE CREDIT FOR RESERVES ON RISKS OR PORTIONS OF RISKS CEDED TO
21 A REINSURER IF THE REINSURER IS NOT IN COMPLIANCE WITH SECTIONS
22 1103 AND 1105.

23 SEC. 4643. A CAPTIVE INSURANCE COMPANY SHALL NOT BE REQUIRED
24 TO JOIN A RATING ORGANIZATION.

25 SEC. 4645. A CAPTIVE INSURANCE COMPANY SHALL NOT JOIN OR
26 CONTRIBUTE FINANCIALLY TO A PLAN, POOL, ASSOCIATION, OR GUARANTY OR
27 INSOLVENCY FUND IN THIS STATE. A CAPTIVE INSURANCE COMPANY, ITS

1 INSURED, ITS PARENT, OR ANY AFFILIATED COMPANY OR ANY MEMBER
2 ORGANIZATION OF ITS ASSOCIATION, SHALL NOT RECEIVE A BENEFIT FROM A
3 PLAN, POOL, ASSOCIATION, OR GUARANTY OR INSOLVENCY FUND FOR CLAIMS
4 ARISING OUT OF THE OPERATIONS OF THE CAPTIVE INSURANCE COMPANY.

5 SEC. 4651. THE COMMISSIONER MAY PROMULGATE PURSUANT TO THE
6 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
7 24.328, RULES, AND MAY ISSUE REGULATIONS AND ORDERS RELATING TO
8 CAPTIVE INSURANCE COMPANIES AS ARE NECESSARY TO ENABLE THE
9 COMMISSIONER TO CARRY OUT THE PROVISIONS OF THIS CHAPTER.

10 SEC. 4655. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
11 THE TERMS AND CONDITIONS UNDER CHAPTER 81 PERTAINING TO
12 ADMINISTRATIVE SUPERVISION, CONSERVATION, REHABILITATION,
13 RECEIVERSHIP, AND LIQUIDATION OF INSURERS APPLY IN FULL TO CAPTIVE
14 INSURERS AUTHORIZED UNDER THIS CHAPTER.

15 (2) FOR A SPONSORED CAPTIVE INSURANCE COMPANY, BOTH OF THE
16 FOLLOWING APPLY:

17 (A) THE ASSETS OF THE PROTECTED CELL SHALL NOT BE USED TO PAY
18 EXPENSES OR CLAIMS OTHER THAN THOSE ATTRIBUTABLE TO THE PROTECTED
19 CELL.

20 (B) THE CAPITAL AND SURPLUS OF THE SPONSORED CAPTIVE INSURANCE
21 COMPANY SHALL AT ALL TIMES BE AVAILABLE TO PAY EXPENSES OF OR
22 CLAIMS AGAINST THE SPONSORED CAPTIVE INSURANCE COMPANY AND SHALL
23 NOT BE USED TO PAY EXPENSES OR CLAIMS ATTRIBUTABLE TO A PROTECTED
24 CELL.

25 SEC. 4659. THE COMMISSIONER BY RULE, REGULATION, OR ORDER MAY
26 ESTABLISH STANDARDS TO ENSURE THAT A PARENT OR AFFILIATED COMPANY
27 IS ABLE TO EXERCISE CONTROL OF THE RISK MANAGEMENT FUNCTION OF ANY

1 CONTROLLED UNAFFILIATED BUSINESS TO BE INSURED BY THE PURE CAPTIVE
2 INSURANCE COMPANY. UNTIL SUCH TIME AS THE STANDARDS ARE
3 ESTABLISHED, THE COMMISSIONER MAY BY TEMPORARY ORDER GRANT
4 AUTHORITY TO A PURE CAPTIVE INSURANCE COMPANY TO INSURE RISKS.

5 SEC. 4663. (1) ONE OR MORE SPONSORS MAY FORM A SPONSORED
6 CAPTIVE INSURANCE COMPANY UNDER THIS CHAPTER.

7 (2) A SPONSORED CAPTIVE INSURANCE COMPANY AUTHORIZED UNDER
8 THIS CHAPTER MAY ESTABLISH AND MAINTAIN 1 OR MORE PROTECTED CELLS
9 TO INSURE RISKS OF 1 OR MORE PARTICIPANTS, SUBJECT TO ALL OF THE
10 FOLLOWING:

11 (A) THE SHAREHOLDERS OF A SPONSORED CAPTIVE INSURANCE COMPANY
12 SHALL BE LIMITED TO ITS PARTICIPANTS AND SPONSORS, PROVIDED THAT A
13 SPONSORED CAPTIVE INSURANCE COMPANY MAY ISSUE NONVOTING SECURITIES
14 TO OTHER PERSONS ON TERMS APPROVED BY THE COMMISSIONER.

15 (B) EACH PROTECTED CELL SHALL BE ACCOUNTED FOR SEPARATELY ON
16 THE BOOKS AND RECORDS OF THE SPONSORED CAPTIVE INSURANCE COMPANY TO
17 REFLECT THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE
18 PROTECTED CELL, NET INCOME OR LOSS, DIVIDENDS OR OTHER
19 DISTRIBUTIONS TO PARTICIPANTS, AND OTHER FACTORS MAY BE PROVIDED IN
20 THE PARTICIPANT CONTRACT OR REQUIRED BY THE COMMISSIONER.

21 (C) THE ASSETS OF A PROTECTED CELL SHALL NOT BE CHARGEABLE
22 WITH LIABILITIES ARISING OUT OF ANY OTHER INSURANCE BUSINESS THE
23 SPONSORED CAPTIVE INSURANCE COMPANY MAY CONDUCT.

24 (D) NO SALE, EXCHANGE, OR OTHER TRANSFER OF ASSETS SHALL BE
25 MADE BY THE SPONSORED CAPTIVE INSURANCE COMPANY BETWEEN OR AMONG
26 ANY OF ITS PROTECTED CELLS WITHOUT THE CONSENT OF THE PROTECTED
27 CELLS.

1 (E) NO SALE, EXCHANGE, OR OTHER TRANSFER OF ASSETS SHALL BE
2 MADE FROM A PROTECTED CELL TO A SPONSOR OR PARTICIPANT UNLESS THE
3 CAPTIVE INSURER HAS NOTIFIED THE COMMISSIONER IN WRITING AT LEAST
4 30 DAYS, OR A SHORTER PERIOD AS THE COMMISSIONER ALLOWS, PRIOR TO
5 SUCH TRANSACTION AND THE COMMISSIONER HAS NOT DISAPPROVED THE
6 TRANSACTION DURING THAT PERIOD.

7 (F) NO DIVIDEND OR DISTRIBUTION SHALL BE MADE FROM A PROTECTED
8 CELL TO A SPONSOR OR PARTICIPANT WITHOUT THE COMMISSIONER'S
9 APPROVAL AND IN NO EVENT SHALL THE APPROVAL BE GIVEN IF THE
10 DIVIDEND OR DISTRIBUTION WOULD RESULT IN INSOLVENCY OR IMPAIRMENT
11 WITH RESPECT TO A PROTECTED CELL.

12 (G) A SPONSORED CAPTIVE INSURANCE COMPANY SHALL FILE ANNUALLY
13 WITH THE COMMISSIONER FINANCIAL REPORTS THE COMMISSIONER REQUIRES,
14 WHICH SHALL INCLUDE, BUT ARE NOT LIMITED TO, ACCOUNTING STATEMENTS
15 DETAILING THE FINANCIAL EXPERIENCE OF EACH PROTECTED CELL.

16 (H) A SPONSORED CAPTIVE INSURANCE COMPANY SHALL NOTIFY THE
17 COMMISSIONER IN WRITING WITHIN 10 BUSINESS DAYS OF A PROTECTED CELL
18 THAT IS INSOLVENT OR OTHERWISE UNABLE TO MEET ITS CLAIM OR EXPENSE
19 OBLIGATIONS.

20 (I) NO PARTICIPANT CONTRACT SHALL TAKE EFFECT WITHOUT THE
21 COMMISSIONER'S PRIOR WRITTEN APPROVAL, AND THE ADDITION OF EACH NEW
22 PROTECTED CELL AND WITHDRAWAL OF ANY PARTICIPANT OF ANY EXISTING
23 PROTECTED CELL REQUIRES THE COMMISSIONER'S PRIOR WRITTEN APPROVAL.

24 SEC. 4665. A SPONSOR OF A SPONSORED CAPTIVE INSURANCE COMPANY
25 SHALL BE AN INSURER AUTHORIZED PURSUANT TO THE LAWS OF A STATE OR
26 THE DISTRICT OF COLUMBIA, AN INSURANCE HOLDING COMPANY THAT
27 CONTROLS AN INSURER AUTHORIZED PURSUANT TO THE LAWS OF A STATE OR

1 THE DISTRICT OF COLUMBIA AND SUBJECT TO REGISTRATION PURSUANT TO
2 THE INSURANCE HOLDING COMPANY SYSTEM LAWS OF THE STATE OF DOMICILE
3 OF THE INSURER, A REINSURER AUTHORIZED OR APPROVED PURSUANT TO THE
4 LAWS OF A STATE OR THE DISTRICT OF COLUMBIA, OR A CAPTIVE INSURANCE
5 COMPANY AUTHORIZED PURSUANT TO THIS CHAPTER. A RISK RETENTION GROUP
6 SHALL NOT BE EITHER A SPONSOR OR A PARTICIPANT OF A SPONSORED
7 CAPTIVE INSURANCE COMPANY. THE BUSINESS WRITTEN BY A SPONSORED
8 CAPTIVE INSURANCE COMPANY WITH RESPECT TO EACH PROTECTED CELL SHALL
9 MEET AT LEAST 1 OF THE FOLLOWING:

10 (A) BE FRONTED BY AN INSURANCE COMPANY AUTHORIZED PURSUANT TO
11 THE LAWS OF ANY STATE OR ANY JURISDICTION IF THE INSURANCE COMPANY
12 IS A WHOLLY OWNED SUBSIDIARY OF AN INSURANCE COMPANY AUTHORIZED
13 PURSUANT TO THE LAWS OF ANY STATE OR ANY JURISDICTION.

14 (B) BE REINSURED BY A REINSURER AUTHORIZED OR APPROVED BY THIS
15 STATE.

16 (C) BE SECURED BY A TRUST FUND IN THE UNITED STATES FOR THE
17 BENEFIT OF POLICYHOLDERS AND CLAIMANTS FUNDED BY AN IRREVOCABLE
18 LETTER OF CREDIT OR OTHER ASSET ACCEPTABLE TO THE COMMISSIONER. THE
19 AMOUNT OF SECURITY PROVIDED BY THE TRUST FUND SHALL NOT BE LESS
20 THAN THE RESERVES ASSOCIATED WITH THOSE LIABILITIES, INCLUDING
21 RESERVES FOR LOSSES, ALLOCATED LOSS ADJUSTMENT EXPENSES, INCURRED
22 BUT NOT REPORTED LOSSES, AND UNEARNED PREMIUMS FOR BUSINESS WRITTEN
23 THROUGH THE PARTICIPANT'S PROTECTED CELL. THE COMMISSIONER MAY
24 REQUIRE THE SPONSORED CAPTIVE TO INCREASE THE FUNDING OF A TRUST
25 ESTABLISHED PURSUANT TO THIS SUBDIVISION. A TRUST AND TRUST
26 INSTRUMENT MAINTAINED PURSUANT TO THIS SUBDIVISION SHALL BE IN A
27 FORM AND UPON TERMS APPROVED BY THE COMMISSIONER.

1 SEC. 4667. (1) AN ASSOCIATION, A CORPORATION, A LIMITED
2 LIABILITY COMPANY, A PARTNERSHIP, A TRUST, OR OTHER BUSINESS ENTITY
3 MAY BE A PARTICIPANT IN A SPONSORED CAPTIVE INSURANCE COMPANY
4 AUTHORIZED PURSUANT TO THIS CHAPTER.

5 (2) A SPONSOR MAY BE A PARTICIPANT IN A SPONSORED CAPTIVE
6 INSURANCE COMPANY.

7 (3) A PARTICIPANT NEED NOT BE A SHAREHOLDER OF THE SPONSORED
8 CAPTIVE INSURANCE COMPANY OR AN AFFILIATE OF THE COMPANY.

9 (4) A PARTICIPANT SHALL INSURE ONLY ITS OWN RISKS THROUGH A
10 SPONSORED CAPTIVE INSURANCE COMPANY, UNLESS OTHERWISE APPROVED BY
11 THE COMMISSIONER.

12 SEC. 4669. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER,
13 THE TERMS AND CONDITIONS PROVIDED IN CHAPTER 48 RELATING TO A
14 PROTECTED CELL INSURANCE COMPANY APPLY IN FULL TO A SPONSORED
15 CAPTIVE INSURANCE COMPANY.

16 (2) EXCEPT AS OTHERWISE PROVIDED, ALL OF THE FOLLOWING APPLY
17 TO A SPONSORED CAPTIVE INSURANCE COMPANY:

18 (A) A PROTECTED CELL NEED NOT BE ESTABLISHED SOLELY FOR THE
19 PURPOSE OF EFFECTING INSURANCE SECURITIZATIONS, BUT MAY BE
20 ESTABLISHED FOR THE PURPOSE OF ISOLATING THE EXPENSES AND CLAIMS OF
21 A SPONSORED CAPTIVE INSURANCE COMPANY PARTICIPANT.

22 (B) THE SPONSORED CAPTIVE INSURANCE COMPANY SHALL ATTRIBUTE
23 ALL INSURANCE OBLIGATIONS, ASSETS, AND LIABILITIES RELATING TO A
24 PARTICIPANT'S RISKS TO THE PARTICIPANT'S PROTECTED CELL.

25 (C) SECTION 4805 DOES NOT APPLY.

26 SEC. 4673. (1) THE CAPTIVE INSURANCE REGULATORY AND
27 SUPERVISION FUND IS CREATED WITHIN THE STATE TREASURY.

1 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
2 ANY SOURCE FOR DEPOSIT INTO THE CAPTIVE INSURANCE REGULATORY AND
3 SUPERVISION FUND. ALL FEES AND ASSESSMENTS RECEIVED BY THE
4 DEPARTMENT OF TREASURY OR THE OFFICE PURSUANT TO THE ADMINISTRATION
5 OF THIS CHAPTER AND CHAPTER 47 SHALL BE CREDITED TO THE CAPTIVE
6 INSURANCE REGULATORY AND SUPERVISION FUND. ALL FEES RECEIVED BY THE
7 DEPARTMENT OF TREASURY FROM REINSURERS WHO ASSUME RISK ONLY FROM
8 CAPTIVE INSURANCE COMPANIES SHALL BE DEPOSITED INTO THE CAPTIVE
9 INSURANCE REGULATORY AND SUPERVISION FUND. ALL FINES AND
10 ADMINISTRATIVE PENALTIES ORDERED UNDER THIS CHAPTER OR CHAPTER 47
11 SHALL BE DEPOSITED DIRECTLY INTO THE CAPTIVE INSURANCE REGULATORY
12 AND SUPERVISION FUND. THE STATE TREASURER SHALL DIRECT THE
13 INVESTMENT OF THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION
14 FUND. THE STATE TREASURER SHALL CREDIT TO THE CAPTIVE INSURANCE
15 REGULATORY AND SUPERVISION FUND INTEREST AND EARNINGS FROM FUND
16 INVESTMENTS.

17 (3) MONEY IN THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION
18 FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE CAPTIVE
19 INSURANCE REGULATORY AND SUPERVISION FUND AND SHALL NOT LAPSE TO
20 THE GENERAL FUND.

21 (4) THE COMMISSIONER SHALL BE THE ADMINISTRATOR OF THE CAPTIVE
22 INSURANCE REGULATORY AND SUPERVISION FUND FOR AUDITING PURPOSES.
23 MONEY IN THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND
24 SHALL BE EXPENDED BY THE COMMISSIONER, UPON APPROPRIATION, FOR THE
25 PURPOSE OF ADMINISTERING CHAPTERS 18 AND 47 AND THIS CHAPTER AND
26 FOR REASONABLE EXPENSES INCURRED IN PROMOTING THE CAPTIVE INSURANCE
27 INDUSTRY IN THIS STATE.

CHAPTER 47

SPECIAL PURPOSE FINANCIAL CAPTIVES

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

1 BY THE PERSON. CONTROL SHALL BE PRESUMED TO EXIST IF A PERSON,
2 DIRECTLY OR INDIRECTLY, OWNS, CONTROLS, HOLDS WITH THE POWER TO
3 VOTE, OR HOLDS PROXIES REPRESENTING 10% OR MORE OF THE VOTING
4 SECURITIES OF ANOTHER PERSON. THIS PRESUMPTION MAY BE REBUTTED BY A
5 SHOWING THAT CONTROL DOES NOT EXIST. HOWEVER, FOR PURPOSES OF THIS
6 CHAPTER, THE FACT THAT AN SPFC EXCLUSIVELY PROVIDES REINSURANCE TO
7 A CEDING INSURER UNDER AN SPFC CONTRACT IS NOT BY ITSELF SUFFICIENT
8 GROUNDS FOR A FINDING THAT THE SPFC AND CEDING INSURER ARE UNDER
9 COMMON CONTROL.

10 (F) "COUNTERPARTY" MEANS AN SPFC'S PARENT OR AFFILIATED
11 COMPANY, OR, SUBJECT TO THE PRIOR APPROVAL OF THE COMMISSIONER, A
12 NONAFFILIATED COMPANY AS CEDING INSURER TO THE SPFC CONTRACT.

13 (G) "FAIR VALUE" MEANS THE FOLLOWING:

14 (i) FOR CASH, THE AMOUNT OF THE CASH.

15 (ii) FOR ASSETS OTHER THAN CASH, THE AMOUNT AT WHICH THAT ASSET
16 COULD BE BOUGHT OR SOLD IN A CURRENT TRANSACTION BETWEEN ARM'S
17 LENGTH, WILLING PARTIES. IF AVAILABLE, THE QUOTED MID-MARKET PRICE
18 FOR THE ASSET IN ACTIVE MARKETS SHALL BE USED; AND IF QUOTED MID-
19 MARKET PRICES ARE NOT AVAILABLE, A VALUE SHALL BE DETERMINED USING
20 THE BEST INFORMATION AVAILABLE CONSIDERING VALUES OF SIMILAR ASSETS
21 AND OTHER VALUATION METHODS, SUCH AS PRESENT VALUE OF FUTURE CASH
22 FLOWS, HISTORICAL VALUE OF THE SAME OR SIMILAR ASSETS, OR
23 COMPARISON TO VALUES OF OTHER ASSET CLASSES, THE VALUE OF WHICH
24 HAVE BEEN HISTORICALLY RELATED TO THE SUBJECT ASSET.

25 (H) "FOREIGN CAPTIVE" MEANS A CAPTIVE INSURER FORMED UNDER THE
26 LAWS OF THE DISTRICT OF COLUMBIA OR SOME STATE, COMMONWEALTH,
27 TERRITORY, OR POSSESSION OF THE UNITED STATES OTHER THAN THE STATE

1 OF MICHIGAN.

2 (I) "INSOLVENCY" OR "INSOLVENT" MEANS 1 OR MORE OF THE
3 FOLLOWING:

4 (i) THAT THE SPFC IS UNABLE TO PAY ITS OBLIGATIONS WITHIN 30
5 DAYS AFTER THEY ARE DUE, UNLESS THOSE OBLIGATIONS ARE THE SUBJECT
6 OF A BONA FIDE DISPUTE.

7 (ii) THAT THE ADMITTED ASSETS OF THE SPFC DO NOT EXCEED
8 LIABILITIES PLUS MINIMUM CAPITAL AND SURPLUS FOR A PERIOD OF TIME
9 IN EXCESS OF 30 DAYS.

10 (iii) THAT THE INGHAM COUNTY CIRCUIT COURT HAS ISSUED AN ORDER
11 AS PROVIDED FOR IN SECTION 8113, 8117, OR 8120 IN CONNECTION WITH A
12 DELINQUENCY PROCEEDING UNDER CHAPTER 81 INSTITUTED AGAINST THE
13 SPFC.

14 (J) "INSURANCE SECURITIZATION" MEANS A PACKAGE OF RELATED RISK
15 TRANSFER INSTRUMENTS, CAPITAL MARKET OFFERINGS, AND FACILITATING
16 ADMINISTRATIVE AGREEMENTS BY WHICH ALL OF THE FOLLOWING APPLY:

17 (i) THE PROCEEDS OF THE SALE OF SPFC SECURITIES ARE OBTAINED,
18 IN A TRANSACTION THAT COMPLIES WITH APPLICABLE SECURITIES LAWS, BY
19 AN SPFC DIRECTLY THROUGH THE ISSUANCE OF THE SPFC SECURITIES BY THE
20 SPFC OR INDIRECTLY THROUGH THE ISSUANCE OF PREFERRED SECURITIES BY
21 THE SPFC IN EXCHANGE FOR SOME OR ALL OF THE PROCEEDS OF THE SALE OF
22 SPFC SECURITIES BY THE SPFC'S PARENT, AN AFFILIATED COMPANY OF THE
23 SPFC, A COUNTERPARTY, OR A CAPTIVE LLC.

24 (ii) THE PROCEEDS OF THE ISSUANCE OF THE SPFC SECURITIES SECURE
25 THE OBLIGATIONS OF THE SPFC UNDER 1 OR MORE SPFC CONTRACTS WITH A
26 COUNTERPARTY.

27 (iii) THE OBLIGATION TO THE HOLDERS OF THE SPFC SECURITIES IS

1 SECURED BY ASSETS OBTAINED WITH PROCEEDS OF THE SPFC SECURITIES IN
2 ACCORDANCE WITH THE TRANSACTION TERMS.

3 (K) "IRREVOCABLE LETTER OF CREDIT" MEANS A LETTER OF CREDIT
4 THAT MEETS THE DESCRIPTION IN SECTION 1105(C).

5 (L) "MANAGEMENT" MEANS THE BOARD OF DIRECTORS, MANAGING BOARD,
6 OR OTHER INDIVIDUAL OR INDIVIDUALS VESTED WITH OVERALL
7 RESPONSIBILITY FOR THE MANAGEMENT OF THE AFFAIRS OF THE SPFC,
8 INCLUDING THE ELECTION AND APPOINTMENT OF OFFICERS OR OTHER AGENTS
9 TO ACT ON BEHALF OF THE SPFC.

10 (M) "OFFICE" MEANS THE OFFICE OF FINANCIAL AND INSURANCE
11 REGULATION.

12 (N) "ORGANIZATIONAL DOCUMENT" MEANS THE SPFC'S ARTICLES OF
13 INCORPORATION, ARTICLES OF ORGANIZATION, BYLAWS, OPERATING
14 AGREEMENT, OR OTHER FOUNDATIONAL DOCUMENTS THAT ESTABLISH THE SPFC
15 AS A LEGAL ENTITY OR PRESCRIBES ITS EXISTENCE.

16 (O) "PARENT" MEANS ANY CORPORATION, LIMITED LIABILITY COMPANY,
17 PARTNERSHIP, OR INDIVIDUAL THAT DIRECTLY OR INDIRECTLY OWNS,
18 CONTROLS, OR HOLDS WITH POWER TO VOTE MORE THAN 50% OF THE
19 OUTSTANDING VOTING SECURITIES OF AN SPFC.

20 (P) "PERMITTED INVESTMENTS" MEANS THOSE INVESTMENTS THAT MEET
21 THE QUALIFICATIONS IN SECTION 4727(1).

22 (Q) "PREFERRED SECURITIES" MEANS SECURITIES, WHETHER STOCK OR
23 DEBT, ISSUED BY AN SPFC TO THE ISSUER OF THE SPFC SECURITIES IN
24 EXCHANGE FOR SOME OR ALL OF THE PROCEEDS OF THE ISSUANCE OF THE
25 SPFC SECURITIES.

26 (R) "PROTECTED CELL" MEANS A SEGREGATED ACCOUNT ESTABLISHED
27 AND MAINTAINED BY AN SPFC FOR 1 OR MORE SPFC CONTRACTS THAT ARE

1 PART OF A SINGLE SECURITIZATION TRANSACTION AS FURTHER PROVIDED FOR
2 IN CHAPTER 48.

3 (S) "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS THAT
4 TERM AS DEFINED IN SECTION 1101.

5 (T) "RESERVES" MEANS THAT TERM AS USED IN CHAPTER 8.

6 (U) "SAFE, RELIABLE, AND ENTITLED TO PUBLIC CONFIDENCE" MEANS
7 THAT TERM AS DEFINED IN SECTION 116(D).

8 (V) "SECURITIES" MEANS THOSE DIFFERENT TYPES OF DEBT
9 OBLIGATIONS, EQUITY, SURPLUS CERTIFICATES, SURPLUS NOTES, FUNDING
10 AGREEMENTS, DERIVATIVES, AND OTHER LEGAL FORMS OF FINANCIAL
11 INSTRUMENTS.

12 (W) "SECURITIES COMMISSIONER" MEANS THE COMMISSIONER.

13 (X) "SPFC" OR "SPECIAL PURPOSE FINANCIAL CAPTIVE" MEANS A
14 CAPTIVE INSURANCE COMPANY, A CAPTIVE LLC, OR A COMPANY OTHERWISE
15 QUALIFIED AS AN AUTHORIZED INSURER THAT HAS RECEIVED A LIMITED
16 CERTIFICATE OF AUTHORITY FROM THE COMMISSIONER FOR THE PURPOSES
17 PROVIDED FOR IN THIS CHAPTER.

18 (Y) "SPFC CONTRACT" MEANS A CONTRACT BETWEEN THE SPFC AND THE
19 COUNTERPARTY PURSUANT TO WHICH THE SPFC AGREES TO PROVIDE INSURANCE
20 OR REINSURANCE PROTECTION TO THE COUNTERPARTY FOR RISKS ASSOCIATED
21 WITH THE COUNTERPARTY'S INSURANCE OR REINSURANCE BUSINESS.

22 (Z) "SPFC SECURITIES" MEANS THE SECURITIES ISSUED PURSUANT TO
23 AN INSURANCE SECURITIZATION, THE PROCEEDS OF WHICH ARE USED IN THE
24 MANNER DESCRIBED IN SUBDIVISION (J).

25 (AA) "SURPLUS NOTE" MEANS AN UNSECURED SUBORDINATED DEBT
26 OBLIGATION POSSESSING CHARACTERISTICS CONSISTENT WITH ACCOUNTING
27 PRACTICES AND PROCEDURES DESIGNATED BY THE COMMISSIONER.

1 (BB) "THIRD PARTY" MEANS A PERSON UNRELATED TO AN SPFC OR ITS
2 COUNTERPARTY, OR BOTH, THAT HAS BEEN AGGRIEVED BY A DECISION OF A
3 COMMISSIONER REGARDING THAT SPFC OR ITS ACTIVITIES.

4 SEC. 4703. (1) NO PROVISIONS OF THIS ACT, OTHER THAN THOSE
5 SPECIFICALLY REFERENCED IN THIS CHAPTER, APPLY TO AN SPFC, AND
6 THOSE PROVISIONS APPLY ONLY AS MODIFIED BY THIS CHAPTER. IF A
7 CONFLICT OCCURS BETWEEN A PROVISION OF THIS ACT AND A PROVISION OF
8 THIS CHAPTER, THIS CHAPTER CONTROLS.

9 (2) SECTIONS 210 TO 222, 226 TO 238, 244 TO 251, 2057 TO 2062,
10 AND 4673 AND CHAPTER 45 APPLY TO SPFCs.

11 (3) THE COMMISSIONER, BY RULE, REGULATION, OR ORDER, MAY
12 EXEMPT AN SPFC OR ITS PROTECTED CELLS, ON A CASE-BY-CASE BASIS,
13 FROM PROVISIONS OF THIS CHAPTER THAT THE COMMISSIONER DETERMINES TO
14 BE INAPPROPRIATE GIVEN THE NATURE OF THE RISKS TO BE INSURED.

15 SEC. 4705. (1) A CAPTIVE INSURANCE COMPANY, A CAPTIVE LLC, OR
16 A COMPANY OTHERWISE QUALIFIED AS AN AUTHORIZED INSURER MAY APPLY TO
17 THE COMMISSIONER FOR A LIMITED CERTIFICATE OF AUTHORITY TO TRANSACT
18 INSURANCE OR REINSURANCE BUSINESS AS AUTHORIZED BY THIS CHAPTER. AN
19 SPFC ONLY MAY INSURE OR REINSURE THE RISKS OF ITS COUNTERPARTY.
20 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, AN SPFC MAY
21 PURCHASE REINSURANCE TO CEDE THE RISKS ASSUMED UNDER THE SPFC
22 CONTRACT AS APPROVED BY THE COMMISSIONER.

23 (2) TO TRANSACT BUSINESS IN THIS STATE, AN SPFC SHALL DO ALL
24 OF THE FOLLOWING:

25 (A) OBTAIN FROM THE COMMISSIONER A LIMITED CERTIFICATE OF
26 AUTHORITY AUTHORIZING IT TO CONDUCT INSURANCE OR REINSURANCE
27 BUSINESS, OR BOTH, IN THIS STATE.

1 (B) HOLD AT LEAST 1 MANAGEMENT MEETING EACH YEAR IN THIS
2 STATE.

3 (C) MAINTAIN ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE.

4 (D) FILE WITH THE COMMISSIONER THE NAME AND ADDRESS OF A
5 RESIDENT REGISTERED AGENT DESIGNATED TO ACCEPT SERVICE OF PROCESS
6 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE. THE DESIGNATION
7 SHALL REMAIN IN FORCE AS LONG AS ANY LIABILITY REMAINS WITHIN THE
8 STATE.

9 (E) PROVIDE SUCH DOCUMENTATION OF THE INSURANCE SECURITIZATION
10 AS REQUESTED BY THE COMMISSIONER IMMEDIATELY UPON THE CLOSING OF
11 THE INSURANCE SECURITIZATION TRANSACTION, INCLUDING AN OPINION OF
12 LEGAL COUNSEL WITH RESPECT TO COMPLIANCE WITH THIS CHAPTER AND ANY
13 OTHER APPLICABLE LAWS AS OF THE EFFECTIVE DATE OF THE INSURANCE
14 SECURITIZATION TRANSACTION AND A STATEMENT UNDER OATH OF ITS
15 PRESIDENT AND SECRETARY SHOWING ITS FINANCIAL CONDITION.

16 (F) PROVIDE A COMPLETE SET OF DOCUMENTATION OF THE INSURANCE
17 SECURITIZATION TO THE COMMISSIONER SHORTLY FOLLOWING CLOSING OF THE
18 INSURANCE SECURITIZATION TRANSACTION.

19 (3) BEFORE GRANTING A LIMITED CERTIFICATE OF AUTHORITY FOR AN
20 SPFC, THE COMMISSIONER SHALL REQUIRE THE APPLICANT TO SUBMIT
21 ORGANIZATIONAL DOCUMENTS THAT CONTAIN ALL OF THE FOLLOWING:

22 (A) THE NAMES AND PLACES OF RESIDENCE OF AT LEAST 3
23 INCORPORATORS OR ORGANIZERS OF WHOM AT LEAST 2 ARE RESIDENTS OF
24 THIS STATE.

25 (B) THE LOCATION OF THE PRINCIPAL OFFICE IN THIS STATE.

26 (C) THE NAME BY WHICH THE LEGAL ENTITY WILL BE KNOWN.

27 (D) THE PURPOSES OF THE CREATION OF THE ENTITY INCLUDING A

1 REFERENCE TO THIS CHAPTER.

2 (E) THE MANNER IN WHICH THE CORPORATE POWERS ARE TO BE
3 EXERCISED.

4 (F) THE NUMBER OF DIRECTORS OR MANAGERS, AS APPLICABLE.

5 (G) THE NUMBER OF DIRECTORS OR MANAGERS, AS APPLICABLE, THAT
6 CONSTITUTE A QUORUM FOR THE PURPOSES OF DOING BUSINESS WHICH
7 CONSISTS OF NO FEWER THAN 1/3 OF THE MANAGERS REQUIRED BY THE
8 ORGANIZATIONAL DOCUMENT.

9 (H) THE AMOUNT AND VALUE OF CAPITAL STOCK, IF ANY. EACH SHARE
10 OF AUTHORIZED CAPITAL STOCK SHALL HAVE A VALUE OF NOT LESS THAN
11 \$1.00.

12 (I) THE TERM OF EXISTENCE OF THE ENTITY.

13 (4) THE ORGANIZATIONAL DOCUMENTS OF AN SPFC MAY CONTAIN A
14 PROVISION PROVIDING THAT A DIRECTOR IS NOT PERSONALLY LIABLE TO THE
15 CORPORATION OR ITS SHAREHOLDERS OR POLICYHOLDERS FOR MONETARY
16 DAMAGES FOR A BREACH OF THE DIRECTOR'S FIDUCIARY DUTY. HOWEVER, THE
17 PROVISION DOES NOT ELIMINATE OR LIMIT THE LIABILITY OF A DIRECTOR
18 FOR ANY OF THE FOLLOWING:

19 (A) A BREACH OF THE DIRECTOR'S DUTY OF LOYALTY TO THE
20 CORPORATION OR ITS SHAREHOLDERS OR POLICYHOLDERS.

21 (B) ACTS OR OMISSIONS NOT IN GOOD FAITH OR THAT INVOLVE
22 INTENTIONAL MISCONDUCT OR KNOWING VIOLATION OF LAW.

23 (C) A TRANSACTION FROM WHICH THE DIRECTOR DERIVED AN IMPROPER
24 PERSONAL BENEFIT.

25 (5) BEFORE THE ORGANIZATIONAL DOCUMENTS SHALL BE EFFECTIVE FOR
26 THE PURPOSES OF THIS CHAPTER, THE ORGANIZATIONAL DOCUMENTS SHALL BE
27 SUBMITTED TO THE OFFICE OF THE ATTORNEY GENERAL FOR EXAMINATION. IF

1 SUCH DOCUMENTS ARE FOUND TO BE IN COMPLIANCE WITH THIS CHAPTER, THE
2 OFFICE OF THE ATTORNEY GENERAL SHALL SO CERTIFY TO THE
3 COMMISSIONER. EACH APPLICANT FOR AN SPFC LIMITED CERTIFICATE OF
4 AUTHORITY THAT SUBMITS ITS ORGANIZATIONAL DOCUMENTS TO THE OFFICE
5 OF THE ATTORNEY GENERAL SHALL PAY TO THE ATTORNEY GENERAL THE
6 EXAMINATION FEE PROVIDED IN SECTION 240(2).

7 (6) PRIOR TO GRANTING A LIMITED CERTIFICATE OF AUTHORITY TO
8 ANY SPFC, THE COMMISSIONER SHALL REQUIRE, CONSIDER, AND REVIEW ALL
9 OF THE FOLLOWING:

10 (A) EVIDENCE OF ALL OF THE FOLLOWING:

11 (i) THE AMOUNT AND LIQUIDITY OF ITS ASSETS RELATIVE TO THE
12 RISKS TO BE ASSUMED.

13 (ii) THE ADEQUACY OF THE EXPERTISE, EXPERIENCE, AND CHARACTER
14 OF THE PERSON OR PERSONS WHO MANAGE IT.

15 (iii) THE OVERALL SOUNDNESS OF ITS PLAN OF OPERATION.

16 (iv) OTHER FACTORS CONSIDERED RELEVANT BY THE COMMISSIONER IN
17 ASCERTAINING WHETHER THE PROPOSED SPFC IS ABLE TO MEET ITS POLICY
18 OBLIGATIONS.

19 (v) THE APPLICANT SPFC'S FINANCIAL CONDITION, INCLUDING THE
20 SOURCE AND FORM OF THE MINIMUM CAPITALIZATION TO BE CONTRIBUTED TO
21 THE SPFC.

22 (B) A PLAN OF OPERATION, CONSISTING OF A DESCRIPTION OF OR
23 STATEMENT OF INTENT WITH RESPECT TO THE CONTEMPLATED INSURANCE
24 SECURITIZATION, THE SPFC CONTRACT, AND RELATED TRANSACTIONS, WHICH
25 SHALL INCLUDE ALL OF THE FOLLOWING:

26 (i) DRAFT DOCUMENTATION OR, AT THE COMMISSIONER'S DISCRETION, A
27 WRITTEN SUMMARY OF ALL MATERIAL AGREEMENTS THAT ARE ENTERED INTO IN

1 CONNECTION WITH THE SPFC CONTRACTS AND THE INSURANCE
2 SECURITIZATION, INCLUDING THE NAMES OF THE COUNTERPARTY, THE NATURE
3 OF THE RISKS TO BE ASSUMED, AND THE PROPOSED USE OF PROTECTED
4 CELLS, IF ANY. THE DOCUMENTATION OR WRITTEN SUMMARY SHALL ALSO
5 INCLUDE THE MAXIMUM AMOUNTS, PURPOSE, NATURE, AND THE RELATIONSHIP
6 BETWEEN THE VARIOUS TRANSACTIONS EFFECTUATING THE INSURANCE
7 SECURITIZATION.

8 (ii) A DESCRIPTION OF ANY PARTY, OTHER THAN THE SPFC OR THE
9 COUNTERPARTY, THAT WILL ISSUE SPFC SECURITIES IN AN INSURANCE
10 SECURITIZATION, INCLUDING A DESCRIPTION OF ITS CONTEMPLATED
11 OPERATION.

12 (iii) THE SOURCE AND FORM OF ADDITIONAL CAPITALIZATION TO BE
13 CONTRIBUTED TO THE SPFC.

14 (iv) THE PROPOSED INVESTMENT STRATEGY OF THE SPFC.

15 (v) A DESCRIPTION OF THE UNDERWRITING, REPORTING, AND CLAIMS
16 PAYMENT METHODS BY WHICH RESERVES COVERED BY THE SPFC CONTRACT ARE
17 REPORTED, ACCOUNTED FOR, AND SETTLED.

18 (vi) A PRO FORMA BALANCE SHEET AND INCOME STATEMENT
19 ILLUSTRATING VARIOUS STRESS CASE SCENARIOS FOR THE PERFORMANCE OF
20 THE SPFC UNDER THE SPFC CONTRACT.

21 (C) BIOGRAPHICAL AFFIDAVITS IN A FORM PRESCRIBED BY THE
22 COMMISSIONER OF ALL OF THE PROSPECTIVE SPFC'S OFFICERS AND
23 DIRECTORS, PROVIDING THEIR LEGAL NAMES, ANY NAMES UNDER WHICH THEY
24 HAVE OR ARE CONDUCTING THEIR AFFAIRS, AND ANY AFFILIATIONS WITH
25 OTHER PERSONS, TOGETHER WITH OTHER BIOGRAPHICAL INFORMATION AS THE
26 COMMISSIONER MAY REQUEST.

27 (D) AN AFFIDAVIT FROM THE APPLICANT SPFC VERIFYING ALL OF THE

1 FOLLOWING:

2 (i) THE APPLICANT SPFC MEETS THE PROVISIONS OF THIS CHAPTER.

3 (ii) THE APPLICANT SPFC OPERATES ONLY PURSUANT TO THE
4 PROVISIONS IN THIS CHAPTER.

5 (iii) THE APPLICANT SPFC'S INVESTMENT STRATEGY REFLECTS AND
6 TAKES INTO ACCOUNT THE LIQUIDITY OF ASSETS AND THE REASONABLE
7 PRESERVATION, ADMINISTRATION, AND ASSET MANAGEMENT OF SUCH ASSETS
8 RELATIVE TO THE RISKS ASSOCIATED WITH THE SPFC CONTRACT AND THE
9 INSURANCE SECURITIZATION TRANSACTION.

10 (iv) THE SPFC SECURITIES PROPOSED TO BE ISSUED ARE VALID LEGAL
11 OBLIGATIONS THAT ARE EITHER PROPERLY REGISTERED WITH THE SECURITIES
12 COMMISSIONER OR CONSTITUTE AN EXEMPT SECURITY OR FORM PART OF AN
13 EXEMPT TRANSACTION UNDER SECTION 402 OF THE UNIFORM SECURITIES ACT,
14 1964 PA 265, MCL 451.802. IF THE ISSUER OF THE SPFC SECURITIES IS
15 NOT THE SPFC, THE SPFC SHALL OBTAIN AND SUBMIT AN AFFIDAVIT FROM
16 THE ISSUER THAT THE SECURITIES PROPOSED TO BE ISSUED SATISFY THIS
17 SUBPARAGRAPH.

18 (v) UNLESS OTHERWISE EXEMPTED BY THE COMMISSIONER, THE TRUST
19 AGREEMENT, THE TRUSTS HOLDING ASSETS THAT SECURE THE OBLIGATIONS OF
20 THE SPFC UNDER THE SPFC CONTRACT, AND THE SPFC CONTRACT WITH THE
21 COUNTERPARTY IN CONNECTION WITH THE CONTEMPLATED INSURANCE
22 SECURITIZATION ARE STRUCTURED PURSUANT TO THE PROVISIONS IN THIS
23 CHAPTER.

24 (E) ANY OTHER STATEMENTS OR DOCUMENTS REQUIRED BY THE
25 COMMISSIONER TO EVALUATE AND AUTHORIZE THE SPFC.

26 (7) IN ADDITION TO THE REQUIREMENTS OF THIS SECTION AND
27 SECTION 4713, IF A PROTECTED CELL IS USED, AN APPLICANT SPFC SHALL

1 FILE WITH THE COMMISSIONER ALL OF THE FOLLOWING:

2 (A) A BUSINESS PLAN DEMONSTRATING HOW THE APPLICANT ACCOUNTS
3 FOR THE PAID LOSSES, RESERVES, AND EXPENSES OF EACH PROTECTED CELL
4 AT A LEVEL OF DETAIL FOUND TO BE SUFFICIENT BY THE COMMISSIONER,
5 AND HOW IT REPORTS THOSE PAID LOSSES, RESERVES, AND EXPENSES TO THE
6 COMMISSIONER.

7 (B) A STATEMENT ACKNOWLEDGING THAT ALL FINANCIAL RECORDS OF
8 THE SPFC, INCLUDING REPORTS PERTAINING TO ANY PROTECTED CELLS,
9 SHALL BE MADE AVAILABLE FOR INSPECTION OR EXAMINATION BY THE
10 COMMISSIONER.

11 (C) ALL CONTRACTS OR SAMPLE CONTRACTS BETWEEN THE SPFC AND ANY
12 COUNTERPARTY OR CAPTIVE LLC RELATED TO EACH PROTECTED CELL.

13 (D) A DESCRIPTION OF THE EXPENSES ALLOCATED TO EACH PROTECTED
14 CELL.

15 (8) INFORMATION SUBMITTED PURSUANT TO THIS SECTION IS
16 CONFIDENTIAL AND IS SUBJECT TO SECTIONS 4734 AND 4743.

17 (9) TO TRANSACT INSURANCE OR REINSURANCE BUSINESS IN THIS
18 STATE, AN SPFC IS SUBJECT TO ALL OF THE FOLLOWING:

19 (A) FOR AN APPLICANT NOT AUTHORIZED UNDER CHAPTER 46 AND NOT
20 FILING A CONCURRENT APPLICATION UNDER CHAPTER 46, A NONREFUNDABLE
21 FEE OF \$10,000.00 FOR PROCESSING ITS APPLICATION FOR A LIMITED
22 CERTIFICATE OF AUTHORITY. IN ADDITION, THE COMMISSIONER MAY RETAIN
23 LEGAL, FINANCIAL, ACTUARIAL, AND EXAMINATION SERVICES FROM OUTSIDE
24 THE OFFICE TO EXAMINE AND INVESTIGATE THE APPLICATION, THE
25 REASONABLE COST OF WHICH MAY BE CHARGED AGAINST THE APPLICANT, OR
26 THE COMMISSIONER MAY USE INTERNAL RESOURCES TO EXAMINE AND
27 INVESTIGATE THE APPLICATION FOR A FEE OF \$2,700.00, WHICH IS

1 PAYABLE UPON THE FILING OF THE APPLICATION.

2 (B) AN SPFC SHALL PAY AN ANNUAL RENEWAL FEE BY MARCH 1 OF EACH
3 CALENDAR YEAR. HOWEVER, AN SPFC THAT IS AUTHORIZED UNDER BOTH
4 CHAPTER 46 AND THIS CHAPTER AND THAT PAYS THE RENEWAL FEE PROVIDED
5 IN SECTION 4625(5) IS EXEMPT FROM PAYING THIS RENEWAL FEE. THE
6 ANNUAL RENEWAL FEE SHALL BE CALCULATED BASED UPON THE ANNUAL VOLUME
7 OF INSURANCE OR REINSURANCE PREMIUMS RECEIVED BY THE SPFC AS
8 FOLLOWS:

9 (i) FOR ANNUAL PREMIUMS LESS THAN \$5,000,000.00, THE RENEWAL
10 FEE SHALL BE \$5,000.00.

11 (ii) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
12 \$5,000,000.00, BUT LESS THAN \$10,000,000.00, THE RENEWAL FEE SHALL
13 BE \$10,000.00.

14 (iii) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
15 \$10,000,000.00, BUT LESS THAN \$15,000,000.00, THE RENEWAL FEE SHALL
16 BE \$15,000.00.

17 (iv) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
18 \$15,000,000.00, BUT LESS THAN \$25,000,000.00, THE RENEWAL FEE SHALL
19 BE \$25,000.00.

20 (v) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
21 \$25,000,000.00, BUT LESS THAN \$40,000,000.00, THE RENEWAL FEE SHALL
22 BE \$40,000.00.

23 (vi) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
24 \$40,000,000.00, BUT LESS THAN \$55,000,000.00, THE RENEWAL FEE SHALL
25 BE \$50,000.00.

26 (vii) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
27 \$55,000,000.00, BUT LESS THAN \$75,000,000.00, THE RENEWAL FEE SHALL

1 BE \$75,000.00.

2 (viii) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
3 \$75,000,000.00, THE RENEWAL FEE SHALL BE \$100,000.00.

4 (10) THE COMMISSIONER MAY GRANT A LIMITED CERTIFICATE OF
5 AUTHORITY AUTHORIZING THE APPLICANT TO TRANSACT INSURANCE OR
6 REINSURANCE BUSINESS AS AN SPFC IN THIS STATE UPON FINDING BY THE
7 COMMISSIONER OF ALL OF THE FOLLOWING:

8 (A) THE PROPOSED PLAN OF OPERATION PROVIDES A REASONABLE AND
9 EXPECTED SUCCESSFUL OPERATION.

10 (B) THE TERMS OF THE SPFC CONTRACT AND RELATED TRANSACTIONS
11 COMPLY WITH THIS CHAPTER.

12 (C) ALL REQUIRED FEES HAVE BEEN PAID.

13 (D) THE COMMISSIONER OF THE STATE OF DOMICILE OF EACH
14 COUNTERPARTY HAS NOTIFIED THE COMMISSIONER IN WRITING OR OTHERWISE
15 PROVIDED ASSURANCE SATISFACTORY TO THE COMMISSIONER THAT IT HAS
16 APPROVED OR NOT DISAPPROVED THE TRANSACTION.

17 (E) THE LIMITED CERTIFICATE OF AUTHORITY AUTHORIZING THE SPFC
18 TO TRANSACT BUSINESS IS LIMITED TO THE INSURANCE OR REINSURANCE
19 ACTIVITIES THAT THE SPFC IS ALLOWED TO CONDUCT PURSUANT TO THIS
20 CHAPTER.

21 (11) THE LIMITED CERTIFICATE OF AUTHORITY SHALL BE RENEWED
22 ANNUALLY UPON PAYMENT OF THE RENEWAL FEE PROVIDED FOR BY THIS
23 SECTION.

24 (12) A FOREIGN CAPTIVE, UPON APPROVAL OF THE COMMISSIONER, MAY
25 BECOME AN SPFC BY COMPLYING WITH ALL OF THE PROVISIONS OF THIS
26 CHAPTER. AFTER THIS IS ACCOMPLISHED, THE FOREIGN CAPTIVE IS
27 ENTITLED TO A LIMITED CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS

1 AS AN SPFC IN THIS STATE AND IS SUBJECT TO THE AUTHORITY AND
2 JURISDICTION OF THIS STATE. IT IS NOT NECESSARY FOR A FOREIGN
3 CAPTIVE REDOMESTICATING INTO THIS STATE TO MERGE, CONSOLIDATE,
4 TRANSFER ASSETS, OR OTHERWISE ENGAGE IN ANOTHER REORGANIZATION,
5 OTHER THAN AS SPECIFIED IN THIS SECTION.

6 SEC. 4707. (1) AN SPFC MAY BE ESTABLISHED AS A STOCK
7 CORPORATION, LIMITED LIABILITY COMPANY, MUTUAL, PARTNERSHIP, OR
8 OTHER FORM OF ORGANIZATION APPROVED BY THE COMMISSIONER.

9 (2) THE SPFC'S ORGANIZATIONAL DOCUMENTS SHALL LIMIT THE SPFC'S
10 AUTHORITY TO TRANSACT THE BUSINESS OF INSURANCE OR REINSURANCE TO
11 THOSE ACTIVITIES THE SPFC CONDUCTS TO ACCOMPLISH ITS PURPOSE AS
12 EXPRESSED IN THIS CHAPTER AND ACTIVITIES IT CONDUCTS PURSUANT TO
13 ANY OTHER CHAPTER IN THIS ACT.

14 (3) THE SPFC SHALL NOT ADOPT A NAME THAT IS THE SAME AS,
15 DECEPTIVELY SIMILAR TO, OR LIKELY TO BE CONFUSED WITH OR MISTAKEN
16 FOR ANOTHER EXISTING BUSINESS NAME REGISTERED IN THIS STATE.

17 (4) THE PROVISIONS OF THIS ACT PERTAINING TO MERGERS,
18 CONSOLIDATIONS, CONVERSIONS, MUTUALIZATIONS, AND REDOMESTICATIONS
19 APPLY IN DETERMINING THE PROCEDURES TO BE FOLLOWED BY AN SPFC IN
20 CARRYING OUT ANY OF THE TRANSACTIONS DESCRIBED IN THOSE PROVISIONS.

21 (5) AT LEAST 1 OF THE MEMBERS OF THE MANAGEMENT OF THE SPFC
22 SHALL BE A RESIDENT OF THIS STATE.

23 (6) AN SPFC OR CAPTIVE LLC FORMED AS A LIMITED LIABILITY
24 COMPANY HAS THE PRIVILEGES AND IS SUBJECT TO THE PROVISIONS OF THE
25 MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4101 TO
26 450.5200, FOR LIMITED LIABILITY COMPANIES, AS WELL AS THE
27 APPLICABLE PROVISIONS CONTAINED IN THIS CHAPTER. NOTHING CONTAINED

1 IN THIS PROVISION WITH RESPECT TO AN SPFC SHALL ABROGATE, LIMIT, OR
2 RESCIND IN ANY WAY THE AUTHORITY OF THE COMMISSIONER.

3 (7) ALL SPFCS FORMED AS CORPORATIONS UNDER THIS CHAPTER ARE
4 CONSIDERED BODIES CORPORATE AND POLITIC, IN FACT AND IN NAME, ARE
5 SUBJECT TO ALL OF THE PROVISIONS OF LAW IN RELATION TO CORPORATIONS
6 AS FAR AS THEY ARE APPLICABLE, AND HAVE THE CORPORATE POWERS
7 PROVIDED FOR IN CHAPTER 52.

8 SEC. 4709. (1) AN SPFC INITIALLY SHALL POSSESS AND AFTER THAT
9 MAINTAIN MINIMUM CAPITALIZATION OF NOT LESS THAN \$250,000.00. ALL
10 OF THE MINIMUM INITIAL CAPITALIZATION SHALL BE IN CASH. ALL OTHER
11 FUNDS OF THE SPFC IN EXCESS OF ITS MINIMUM INITIAL CAPITALIZATION
12 SHALL BE IN THE FORMS AS PROVIDED IN SECTION 4727.

13 (2) ADDITIONAL CAPITALIZATION FOR THE SPFC SHALL BE
14 DETERMINED, IF SO REQUIRED, BY THE COMMISSIONER AFTER GIVING DUE
15 CONSIDERATION TO THE SPFC'S BUSINESS PLAN, FEASIBILITY STUDY, PRO
16 FORMAS, AND THE NATURE OF THE RISKS BEING INSURED OR REINSURED,
17 WHICH MAY BE PRESCRIBED IN FORMULAS APPROVED BY THE COMMISSIONER.

18 (3) AN SPFC THAT IS AUTHORIZED AS AN INSURER OTHER THAN SOLELY
19 PURSUANT TO THIS CHAPTER AND CHAPTER 46 INITIALLY SHALL POSSESS,
20 AND AFTER THAT MAINTAIN, MINIMUM CAPITAL AND SURPLUS IN COMPLIANCE
21 WITH SECTIONS 408 TO 410A.

22 (4) AN SPFC THAT IS AUTHORIZED AS AN INSURER OTHER THAN SOLELY
23 PURSUANT TO THIS CHAPTER AND CHAPTER 46 SHALL MAINTAIN DEPOSITS AS
24 SPECIFIED IN SECTION 411.

25 SEC. 4711. (1) AN SPFC MAY INSURE OR REINSURE ONLY THE RISKS
26 INSURED OR REINSURED BY A COUNTERPARTY.

27 (2) AN SPFC SHALL NOT ISSUE A CONTRACT FOR ASSUMPTION OF RISK

1 OR INDEMNIFICATION OF LOSS OTHER THAN AN SPFC CONTRACT. HOWEVER,
2 THE SPFC MAY CEDE RISKS ASSUMED THROUGH AN SPFC CONTRACT TO THIRD
3 PARTY REINSURERS THROUGH THE PURCHASE OF REINSURANCE OR
4 RETROCESSION PROTECTION.

5 (3) AN SPFC MAY ENTER INTO CONTRACTS AND CONDUCT OTHER
6 COMMERCIAL ACTIVITIES RELATED OR INCIDENTAL TO AND NECESSARY TO
7 FULFILL THE PURPOSES OF THE SPFC CONTRACT, INSURANCE
8 SECURITIZATION, AND THIS CHAPTER. THOSE ACTIVITIES MAY INCLUDE, BUT
9 ARE NOT LIMITED TO: ENTERING INTO SPFC CONTRACTS; ISSUING
10 SECURITIES OF THE SPFC IN ACCORDANCE WITH APPLICABLE SECURITIES
11 LAW; COMPLYING WITH THE TERMS OF THESE CONTRACTS OR SECURITIES;
12 ENTERING INTO TRUST, SWAP, TAX, ADMINISTRATION, REIMBURSEMENT, OR
13 FISCAL AGENT TRANSACTIONS; OR COMPLYING WITH TRUST INDENTURE,
14 REINSURANCE, OR RETROCESSION, AND OTHER AGREEMENTS NECESSARY OR
15 INCIDENTAL TO EFFECTUATE AN INSURANCE SECURITIZATION IN COMPLIANCE
16 WITH THIS CHAPTER OR THE PLAN OF OPERATION SUBMITTED TO THE
17 COMMISSIONER.

18 (4) AN SPFC SHALL ANNUALLY SUBMIT TO THE COMMISSIONER THE
19 OPINION OF A QUALIFIED ACTUARY AS TO WHETHER THE RESERVES AND
20 RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE RESERVES ARE
21 COMPUTED APPROPRIATELY, ARE BASED ON ASSUMPTIONS THAT SATISFY
22 CONTRACTUAL PROVISIONS, ARE CONSISTENT WITH PRIOR REPORTED AMOUNTS,
23 AND COMPLY WITH APPLICABLE LAWS OF THIS STATE. THE ACTUARIAL
24 OPINION REQUIRED BY THIS SECTION SHALL BE SUBMITTED IN A FORM
25 PRESCRIBED BY THE COMMISSIONER. FOR PURPOSES OF THIS SECTION,
26 "QUALIFIED ACTUARY" MEANS A MEMBER OF EITHER THE AMERICAN ACADEMY
27 OF ACTUARIES OR THE SOCIETY OF ACTUARIES WHO ALSO MEETS ANY OTHER

1 CRITERIA THAT THE COMMISSIONER MAY ESTABLISH BY RULE, REGULATION,
2 OR ORDER.

3 SEC. 4713. (1) THIS SECTION AND SECTION 4715 PROVIDE A BASIS
4 FOR THE CREATION AND USE OF PROTECTED CELLS BY AN SPFC. IF A
5 CONFLICT OCCURS BETWEEN A PROVISION OF CHAPTER 46 OR CHAPTER 48 AND
6 EITHER THIS SECTION OR SECTION 4715, THIS SECTION AND SECTION 4715
7 CONTROL.

8 (2) AN SPFC MAY ESTABLISH AND MAINTAIN 1 OR MORE PROTECTED
9 CELLS WITH PRIOR WRITTEN APPROVAL OF THE COMMISSIONER AND SUBJECT
10 TO COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THIS CHAPTER AND
11 THE FOLLOWING CONDITIONS:

12 (A) A PROTECTED CELL SHALL BE ESTABLISHED ONLY FOR THE PURPOSE
13 OF ISOLATING AND IDENTIFYING THE ASSETS AND LIABILITIES
14 ATTRIBUTABLE TO THE RISK CEDED TO THE SPFC BY THE COUNTERPARTY
15 PURSUANT TO 1 OR MORE SPFC CONTRACTS AND THE ASSETS AND LIABILITIES
16 OF THE SPFC ARISING OUT OF THE RELATED INSURANCE SECURITIZATION.

17 (B) EACH PROTECTED CELL SHALL BE ACCOUNTED FOR SEPARATELY ON
18 THE BOOKS AND RECORDS OF THE SPFC TO REFLECT THE FINANCIAL
19 CONDITION AND RESULTS OF OPERATIONS OF THE PROTECTED CELL,
20 INCLUDING INCOME, GAIN, EXPENSE, OR LOSS; DIVIDENDS; OTHER
21 DISTRIBUTIONS TO THE COUNTERPARTY FOR THE SPFC CONTRACT WITH EACH
22 CELL; AND OTHER ITEMS AS MAY BE PROVIDED IN THE SPFC CONTRACT,
23 INSURANCE SECURITIZATION TRANSACTION DOCUMENTS, PLAN OF OPERATION,
24 OR BUSINESS PLAN, OR AS REQUIRED BY THE COMMISSIONER.

25 (C) AMOUNTS ATTRIBUTED TO A PROTECTED CELL UNDER THIS CHAPTER,
26 INCLUDING ASSETS TRANSFERRED TO A PROTECTED CELL ACCOUNT, ARE OWNED
27 BY THE SPFC, AND THE SPFC SHALL NOT BE, OR SHALL NOT HOLD ITSELF

1 OUT TO BE, A TRUSTEE WITH RESPECT TO THOSE PROTECTED CELL ASSETS OF
2 THAT PROTECTED CELL ACCOUNT.

3 (D) ALL ATTRIBUTIONS OF ASSETS AND LIABILITIES BETWEEN A
4 PROTECTED CELL AND THE GENERAL ACCOUNT SHALL BE IN ACCORDANCE WITH
5 THE PLAN OF OPERATION SUBMITTED TO THE COMMISSIONER. NO OTHER
6 ATTRIBUTION OF ASSETS OR LIABILITIES SHALL BE MADE BY AN SPFC
7 BETWEEN THE SPFC'S GENERAL ACCOUNT AND ITS PROTECTED CELL OR CELLS.
8 THE SPFC SHALL ATTRIBUTE ALL INSURANCE OBLIGATIONS, ASSETS, AND
9 LIABILITIES RELATING TO AN SPFC CONTRACT AND ALL OBLIGATIONS,
10 ASSETS, AND LIABILITIES OF THE SPFC ARISING OUT OF THE RELATED
11 INSURANCE SECURITIZATION TRANSACTION TO A PARTICULAR PROTECTED
12 CELL. THE RIGHTS, BENEFITS, OBLIGATIONS, AND LIABILITIES OF ANY
13 SECURITIES ATTRIBUTABLE TO THAT PROTECTED CELL, THE PERFORMANCE
14 UNDER AN SPFC CONTRACT AND THE RELATED SECURITIZATION TRANSACTION,
15 AND ANY TAX BENEFITS, LOSSES, REFUNDS, OR CREDITS ALLOCATED AT ANY
16 POINT IN TIME PURSUANT TO A TAX ALLOCATION AGREEMENT BETWEEN THE
17 SPFC AND THE SPFC'S COUNTERPARTY, PARENT, OR AFFILIATED COMPANY, AS
18 THE CASE MAY BE, INCLUDING ANY PAYMENTS MADE BY OR DUE TO BE MADE
19 TO THE SPFC PURSUANT TO THE TERMS OF THE TAX ALLOCATION AGREEMENT,
20 SHALL REFLECT THE INSURANCE OBLIGATIONS, ASSETS, AND LIABILITIES
21 RELATING TO THE SPFC CONTRACT AND PROCEEDS OF THE INSURANCE
22 SECURITIZATION TRANSACTION THAT ARE ATTRIBUTED TO A PARTICULAR
23 PROTECTED CELL.

24 (E) THE ASSETS OF A PROTECTED CELL SHALL NOT BE CHARGEABLE
25 WITH LIABILITIES ARISING OUT OF AN SPFC CONTRACT RELATED TO OR
26 ASSOCIATED WITH ANOTHER PROTECTED CELL. HOWEVER, 1 OR MORE SPFC
27 CONTRACTS MAY BE ATTRIBUTED TO A PROTECTED CELL SO LONG AS THOSE

1 SPFC CONTRACTS ARE INTENDED TO BE, AND ULTIMATELY ARE, PART OF A
2 SINGLE SECURITIZATION TRANSACTION.

3 (F) A SALE, AN EXCHANGE, OR ANOTHER TRANSFER OF ASSETS SHALL
4 NOT BE MADE BY THE SPFC BETWEEN OR AMONG ANY OF ITS PROTECTED CELLS
5 WITHOUT THE CONSENT OF THE COUNTERPARTY AND EACH PROTECTED CELL.

6 (G) EXCEPT AS OTHERWISE CONTEMPLATED IN THE SPFC CONTRACT OR
7 RELATED INSURANCE SECURITIZATION TRANSACTION DOCUMENTS, OR BOTH, A
8 DIVIDEND OR A DISTRIBUTION SHALL NOT BE MADE FROM A PROTECTED CELL
9 TO A COUNTERPARTY, CAPTIVE LLC, OR PARENT OR AFFILIATED COMPANY OF
10 THE SPFC WITHOUT THE COMMISSIONER'S APPROVAL AND SHALL NOT BE
11 APPROVED IF THE DIVIDEND OR DISTRIBUTION WOULD RESULT IN INSOLVENCY
12 OR IMPAIRMENT WITH RESPECT TO A PROTECTED CELL.

13 (H) EXCEPT AS OTHERWISE CONTEMPLATED IN THE SPFC CONTRACT OR
14 RELATED INSURANCE SECURITIZATION TRANSACTION DOCUMENTS, OR BOTH, A
15 SALE, AN EXCHANGE, OR A TRANSFER OF ASSETS SHALL NOT BE MADE FROM A
16 PROTECTED CELL TO A COUNTERPARTY, CAPTIVE LLC, OR PARENT OR
17 AFFILIATED COMPANY OF THE SPFC IF THE SALE, EXCHANGE, OR TRANSFER
18 WOULD RESULT IN INSOLVENCY OR IMPAIRMENT WITH RESPECT TO THE
19 PROTECTED CELL.

20 (I) AN SPFC SHALL PAY INTEREST OR REPAY PRINCIPAL OR BOTH OR
21 MAKE DISTRIBUTIONS OR REPAYMENTS OF ANY SPFC SECURITIES ISSUED BY
22 THE SPFC OR MAKE PAYMENTS OF PREFERRED SECURITIES ISSUED TO A
23 PARTICULAR PROTECTED CELL FROM ASSETS OR CASH FLOWS RELATING TO OR
24 EMERGING FROM THE SPFC CONTRACT AND THE INSURANCE SECURITIZATION
25 TRANSACTIONS THAT ARE ATTRIBUTABLE TO THAT PARTICULAR PROTECTED
26 CELL AS PROVIDED IN THIS CHAPTER OR AS OTHERWISE APPROVED BY THE
27 COMMISSIONER.

1 (3) AN SPFC CONTRACT WITH OR ATTRIBUTABLE TO A PROTECTED CELL
2 DOES NOT TAKE EFFECT WITHOUT THE COMMISSIONER'S PRIOR WRITTEN
3 APPROVAL. THE COMMISSIONER MAY RETAIN LEGAL, FINANCIAL, AND
4 EXAMINATION SERVICES FROM OUTSIDE THE OFFICE TO EXAMINE AND
5 INVESTIGATE THE APPLICATION FOR A PROTECTED CELL, THE REASONABLE
6 COST OF WHICH MAY BE CHARGED AGAINST THE APPLICANT, OR THE
7 COMMISSIONER MAY USE INTERNAL RESOURCES TO EXAMINE AND INVESTIGATE
8 THE APPLICATION THE REASONABLE COST OF WHICH MAY BE CHARGED AGAINST
9 THE APPLICANT UP TO A MAXIMUM OF \$1,200.00, OR MAY USE BOTH
10 RETAINED SERVICES AND INTERNAL RESOURCES.

11 (4) AN SPFC UTILIZING PROTECTED CELLS SHALL POSSESS MINIMUM
12 CAPITALIZATION FOR EACH PROTECTED CELL SEPARATE AND APART FROM THE
13 CAPITALIZATION REQUIRED BY SECTION 4709. FOR PURPOSES OF
14 DETERMINING THE CAPITALIZATION OF EACH PROTECTED CELL, AN SPFC
15 INITIALLY SHALL CAPITALIZE AND AFTER THAT TIME MAINTAIN
16 CAPITALIZATION IN EACH PROTECTED CELL IN THE AMOUNT AND MANNER
17 REQUIRED FOR AN SPFC IN SECTION 4709.

18 (5) THE ESTABLISHMENT OF 1 OR MORE PROTECTED CELLS ALONE DOES
19 NOT CONSTITUTE, AND SHALL NOT BE CONSIDERED TO BE, A FRAUDULENT
20 CONVEYANCE, AN INTENT BY THE SPFC TO DEFRAUD CREDITORS, OR THE
21 CARRYING OUT OF BUSINESS BY THE SPFC FOR ANY OTHER FRAUDULENT
22 PURPOSE.

23 SEC. 4715. (1) THE CREATION OF A PROTECTED CELL DOES NOT
24 CREATE, WITH RESPECT TO THAT PROTECTED CELL, A LEGAL PERSON
25 SEPARATE FROM THE SPFC.

26 (2) NOTWITHSTANDING SUBSECTION (1), IF AN ORDER OF
27 CONSERVATION, REHABILITATION, OR LIQUIDATION IS ENTERED FOR A

1 COUNTERPARTY, THE SPFC AND EACH PROTECTED CELL OF THE SPFC SHALL BE
2 CONSIDERED SEPARATE PERSONS FOR PURPOSES OF ANY OFFSET UNDERTAKEN
3 AS PART OF THE CONSERVATION, REHABILITATION, OR LIQUIDATION, SUCH
4 THAT ANY OFFSET OF MUTUAL DEBTS AND CREDITS BETWEEN THE
5 COUNTERPARTY AND EITHER THE SPFC OR ANY PROTECTED CELL SHALL NOT
6 INVOLVE THE DEBTS AND CREDITS OF ANY OTHER PROTECTED CELL OR, IF
7 THE OFFSET INVOLVES A PROTECTED CELL, THE SPFC.

8 (3) NOTWITHSTANDING SUBSECTION (1), A PROTECTED CELL SHALL
9 HAVE ITS OWN DISTINCT NAME OR DESIGNATION THAT INCLUDES THE WORDS
10 "PROTECTED CELL". THE SPFC SHALL TRANSFER ALL ASSETS ATTRIBUTABLE
11 TO THE PROTECTED CELL TO 1 OR MORE SEPARATELY ESTABLISHED AND
12 IDENTIFIED PROTECTED CELL ACCOUNTS BEARING THE NAME OR DESIGNATION
13 OF THAT PROTECTED CELL.

14 (4) ALTHOUGH THE PROTECTED CELL IS NOT A SEPARATE LEGAL
15 PERSON, THE PROPERTY OF AN SPFC IN A PROTECTED CELL IS SUBJECT TO
16 ORDERS OF A COURT BY NAME AS IT WOULD HAVE BEEN IF THE PROTECTED
17 CELL WERE A SEPARATE LEGAL PERSON.

18 (5) THE PROPERTY OF AN SPFC IN A PROTECTED CELL SHALL BE
19 SERVED IN ITS OWN NAME WITH PROCESS IN ALL CIVIL ACTIONS OR
20 PROCEEDINGS INVOLVING OR RELATING TO THE ACTIVITIES OF THAT
21 PROTECTED CELL OR A BREACH BY THE SPFC OF A DUTY TO THE PROTECTED
22 CELL OR TO A COUNTERPARTY TO A TRANSACTION LINKED OR ATTRIBUTED TO
23 IT BY SERVING THE SPFC IN THE MANNER DESCRIBED IN SECTION 1920 OF
24 THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.1920.

25 (6) A PROTECTED CELL EXISTS ONLY AT THE PLEASURE OF THE SPFC.
26 AT THE CESSATION OF BUSINESS OF A PROTECTED CELL IN ACCORDANCE WITH
27 THE PLAN OF OPERATION SUBMITTED TO THE COMMISSIONER, THE SPFC

1 VOLUNTARILY SHALL CLOSE OUT THE PROTECTED CELL ACCOUNT.

2 (7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN
3 SPFC FROM CONTRACTING WITH, OR ARRANGING FOR, AN INVESTMENT
4 ADVISOR, COMMODITY TRADING ADVISOR, OR OTHER THIRD PARTY TO MANAGE
5 THE ASSETS OF A PROTECTED CELL, IF ALL REMUNERATION, EXPENSES, AND
6 OTHER COMPENSATION OF THE THIRD PARTY ADVISOR OR MANAGER ARE
7 PAYABLE FROM THE ASSETS OF THAT PROTECTED CELL AND NOT FROM THE
8 ASSETS OF OTHER PROTECTED CELLS OR THE ASSETS OF THE SPFC'S GENERAL
9 ACCOUNT.

10 (8) CREDITORS TO A PROTECTED CELL ARE NOT ENTITLED TO HAVE
11 RECOURSE AGAINST THE PROTECTED CELL ASSETS OF OTHER PROTECTED CELLS
12 OR THE ASSETS OF THE SPFC'S GENERAL ACCOUNT. IF AN OBLIGATION OF AN
13 SPFC RELATES ONLY TO THE GENERAL ACCOUNT, THE OBLIGATION OF THE
14 SPFC EXTENDS ONLY TO THAT CREDITOR FOR THAT OBLIGATION AND THAT
15 CREDITOR IS ENTITLED TO HAVE RECOURSE ONLY TO THE ASSETS OF THE
16 SPFC'S GENERAL ACCOUNT.

17 (9) THE ASSETS OF THE PROTECTED CELL SHALL NOT BE USED TO PAY
18 EXPENSES OR CLAIMS OTHER THAN THOSE ATTRIBUTABLE TO THE PROTECTED
19 CELL. PROTECTED CELL ASSETS ARE AVAILABLE ONLY TO THE SPFC
20 COUNTERPARTY AND OTHER CREDITORS OF THE SPFC THAT ARE CREDITORS
21 ONLY TO THAT PROTECTED CELL AND, ACCORDINGLY, ARE ENTITLED, IN
22 CONFORMITY WITH THIS CHAPTER, TO HAVE RECOURSE TO THE PROTECTED
23 CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL. PROTECTED CELL
24 ASSETS ARE ABSOLUTELY PROTECTED FROM THE CREDITORS OF THE SPFC THAT
25 ARE NOT CREDITORS WITH RESPECT TO THAT PROTECTED CELL AND WHO,
26 ACCORDINGLY, ARE NOT ENTITLED TO HAVE RECOURSE TO THE PROTECTED
27 CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL. IF AN OBLIGATION

1 OF AN SPFC TO A PERSON OR COUNTERPARTY ARISES FROM AN SPFC CONTRACT
2 OR RELATED INSURANCE SECURITIZATION TRANSACTION OR IS OTHERWISE
3 INCURRED FOR A PROTECTED CELL, BOTH OF THE FOLLOWING APPLY:

4 (A) THAT OBLIGATION OF THE SPFC EXTENDS ONLY TO THE PROTECTED
5 CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL, AND THE PERSON OR
6 COUNTERPARTY, FOR THAT OBLIGATION, IS ENTITLED TO HAVE RECOURSE
7 ONLY TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED
8 CELL.

9 (B) THAT OBLIGATION OF THE SPFC DOES NOT EXTEND TO THE
10 PROTECTED CELL ASSETS OF ANOTHER PROTECTED CELL OR THE ASSETS OF
11 THE SPFC'S GENERAL ACCOUNT, AND THAT PERSON, FOR THAT OBLIGATION,
12 IS NOT ENTITLED TO HAVE RECOURSE TO THE PROTECTED CELL ASSETS OF
13 ANOTHER PROTECTED CELL OR THE ASSETS OF THE SPFC'S GENERAL ACCOUNT.
14 THE SPFC'S CAPITALIZATION OF ITS PROTECTED CELL OR CELLS AS
15 REQUIRED BY SECTION 4713(4) SHALL BE AVAILABLE AT ALL TIMES TO PAY
16 EXPENSES OF OR CLAIMS AGAINST THE SPFC AND SHALL NOT BE USED TO PAY
17 EXPENSES OR CLAIMS ATTRIBUTABLE TO ANY PROTECTED CELL.

18 (10) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN SPFC MAY
19 ALLOW FOR A SECURITY INTEREST IN ACCORDANCE WITH APPLICABLE LAW TO
20 ATTACH TO PROTECTED CELL ASSETS OR A PROTECTED CELL ACCOUNT WHEN IN
21 FAVOR OF A CREDITOR OF THE PROTECTED CELL OR TO FACILITATE THE
22 INSURANCE SECURITIZATION, INCLUDING, WITHOUT LIMITATION, THE
23 ISSUANCE OF THE SPFC CONTRACT, TO THE EXTENT THOSE PROTECTED CELL
24 ASSETS ARE NOT REQUIRED AT ALL TIMES TO SUPPORT THE RISK, BUT
25 WITHOUT OTHERWISE AFFECTING THE DISCHARGE OF LIABILITIES UNDER THE
26 SPFC CONTRACT, OR AS OTHERWISE APPROVED BY THE COMMISSIONER.

27 (11) AN SPFC SHALL ESTABLISH ADMINISTRATIVE AND ACCOUNTING

1 PROCEDURES NECESSARY TO PROPERLY IDENTIFY THE 1 OR MORE PROTECTED
2 CELLS OF THE SPFC AND THE ASSETS AND LIABILITIES OF EACH PROTECTED
3 CELL. THE DIRECTORS OF AN SPFC SHALL KEEP PROTECTED CELL ASSETS AND
4 LIABILITIES SEPARATE AND SEPARATELY IDENTIFIABLE FROM THE ASSETS
5 AND LIABILITIES OF THE SPFC'S GENERAL ACCOUNT. THE ASSETS AND
6 LIABILITIES ATTRIBUTABLE TO 1 PROTECTED CELL SHALL BE KEPT SEPARATE
7 AND SEPARATELY IDENTIFIABLE FROM THE ASSETS AND LIABILITIES
8 ATTRIBUTABLE TO OTHER PROTECTED CELLS.

9 (12) ALL CONTRACTS OR OTHER DOCUMENTATION REFLECTING PROTECTED
10 CELL LIABILITIES SHALL INDICATE CLEARLY THAT ONLY THE PROTECTED
11 CELL ASSETS ARE AVAILABLE FOR THE SATISFACTION OF THOSE PROTECTED
12 CELL LIABILITIES. IN ALL SPFC INSURANCE SECURITIZATIONS INVOLVING A
13 PROTECTED CELL, INCLUDING THE ISSUANCE OF PREFERRED SECURITIES, THE
14 CONTRACTS OR OTHER DOCUMENTATION EFFECTING THE TRANSACTION SHALL
15 CONTAIN PROVISIONS IDENTIFYING THE PROTECTED CELL TO WHICH THE
16 TRANSACTION IS ATTRIBUTED. IN ADDITION, THE CONTRACTS OR OTHER
17 DOCUMENTATION SHALL DISCLOSE CLEARLY THAT THE ASSETS OF THAT
18 PROTECTED CELL, AND ONLY THOSE ASSETS, ARE AVAILABLE TO PAY THE
19 OBLIGATIONS OF THAT PROTECTED CELL. NOTWITHSTANDING THE PROVISIONS
20 OF THIS SUBSECTION AND SUBJECT TO THE PROVISIONS OF THIS CHAPTER
21 AND ANY OTHER APPLICABLE LAW OR REGULATION, THE FAILURE TO INCLUDE
22 THIS LANGUAGE IN THE CONTRACTS OR OTHER DOCUMENTATION SHALL NOT BE
23 USED AS THE SOLE BASIS BY CREDITORS, INSUREDS OR REINSUREDS,
24 INSURERS OR REINSURERS, OR OTHER CLAIMANTS TO CIRCUMVENT THIS
25 SECTION.

26 (13) THE INCOME, AND GAINS AND LOSSES, WHETHER REALIZED OR
27 UNREALIZED, FROM PROTECTED CELL ASSETS AND PROTECTED CELL

1 LIABILITIES SHALL BE CREDITED TO OR CHARGED AGAINST THE PROTECTED
2 CELL WITHOUT REGARD TO OTHER INCOME AND GAINS OR LOSSES OF THE
3 SPFC, INCLUDING INCOME AND GAINS OR LOSSES OF OTHER PROTECTED
4 CELLS. AMOUNTS ATTRIBUTED TO ANY PROTECTED CELL AND ACCUMULATIONS
5 ON THE ATTRIBUTED AMOUNTS MAY BE INVESTED AND REINVESTED. THE
6 INVESTMENTS IN A PROTECTED CELL OR CELLS SHALL NOT BE TAKEN INTO
7 ACCOUNT IN APPLYING THE INVESTMENT LIMITATIONS OTHERWISE APPLICABLE
8 TO THE INVESTMENTS OF THE SPFC.

9 (14) AN SPFC WITH PROTECTED CELLS SHALL FILE ANNUALLY WITH THE
10 OFFICE ACCOUNTING STATEMENTS AND FINANCIAL REPORTS REQUIRED BY THIS
11 CHAPTER THAT, AMONG OTHER THINGS, SHALL DO ALL OF THE FOLLOWING:

12 (A) DETAIL THE FINANCIAL EXPERIENCE OF EACH PROTECTED CELL AND
13 THE SPFC SEPARATELY.

14 (B) PROVIDE THE COMBINED FINANCIAL EXPERIENCE OF THE SPFC AND
15 ALL PROTECTED CELLS.

16 (C) ACCOUNT FOR THE FINANCIAL EXPERIENCE OF EACH PROTECTED
17 CELL AND THE SPFC, BOTH SEPARATELY AND ON A COMBINED BASIS, IN
18 SATISFACTION OF SECTION 4731(4).

19 (15) AN SPFC WITH PROTECTED CELLS SHALL NOTIFY THE
20 COMMISSIONER IN WRITING WITHIN 10 BUSINESS DAYS OF A PROTECTED CELL
21 BECOMING INSOLVENT.

22 SEC. 4717. (1) AN SPFC MAY ISSUE SECURITIES, INCLUDING SPFC
23 SECURITIES AND PREFERRED SECURITIES, SURPLUS NOTES, AND OTHER FORMS
24 OF FINANCIAL INSTRUMENTS, SUBJECT TO AND IN ACCORDANCE WITH
25 APPLICABLE LAW, THE SPFC'S APPROVED PLAN OF OPERATION, AND ITS
26 ORGANIZATIONAL DOCUMENTS.

27 (2) AN SPFC, ITS PARENT OR AN AFFILIATED COMPANY, ITS

1 COUNTERPARTY, OR A CAPTIVE LLC MAY ISSUE SPFC SECURITIES AND ANY
2 OTHER SECURITIES NECESSARY TO IMPLEMENT THE INSURANCE
3 SECURITIZATION.

4 (3) PREFERRED SECURITIES MAY BE ISSUED BY THE SPFC TO THE
5 ISSUER OF THE SPFC SECURITIES IN CONNECTION WITH THE INSURANCE
6 SECURITIZATION IN ORDER TO FACILITATE DISTRIBUTIONS TO SERVICE SPFC
7 SECURITIES AND THESE PREFERRED SECURITIES SHALL IDENTIFY THE
8 ASSOCIATED PROTECTED CELL. THE SPFC MAY LAWFULLY ACCOUNT FOR
9 PREFERRED SECURITIES AS SURPLUS AND NOT AS DEBT FOR PURPOSES OF
10 STATUTORY ACCOUNTING.

11 (4) AN SPFC, IN CONNECTION WITH THE ISSUANCE OF SECURITIES,
12 MAY ENTER INTO AND PERFORM ALL OF ITS OBLIGATIONS UNDER ANY
13 REQUIRED CONTRACTS TO FACILITATE THE ISSUANCE OF THESE SECURITIES.

14 (5) SUBJECT TO THE COMMISSIONER'S APPROVAL, THE ISSUER OF THE
15 SPFC SECURITIES OR, IF THE ISSUER IS A CAPTIVE LLC, THE PARTY
16 CONTROLLING THE CAPTIVE LLC, MAY LAWFULLY ACCOUNT FOR THE SPFC
17 SECURITIES AS SURPLUS AND NOT AS DEBT FOR PURPOSES OF STATUTORY
18 ACCOUNTING AND SUBMIT FOR THE COMMISSIONER'S PRIOR APPROVAL
19 PERIODIC WRITTEN REQUESTS FOR PAYMENTS OF INTEREST ON AND
20 REPAYMENTS OF PRINCIPAL OF SURPLUS NOTES.

21 (6) SURPLUS NOTES ISSUED PURSUANT TO THIS SECTION CONSTITUTE
22 SURPLUS OR CONTRIBUTION NOTES OF THE TYPE DESCRIBED IN SECTION
23 8142(1)(H).

24 (7) THE COMMISSIONER, WITHOUT OTHERWISE PREJUDICING THE
25 COMMISSIONER'S AUTHORITY, MAY APPROVE FORMULAS FOR AN ONGOING PLAN
26 OF INTEREST PAYMENTS, PRINCIPAL REPAYMENTS, OR BOTH INTEREST
27 PAYMENTS AND PRINCIPAL REPAYMENTS, TO PROVIDE GUIDANCE IN

1 CONNECTION WITH HIS OR HER ONGOING REVIEWS OF REQUESTS TO APPROVE
2 THE PAYMENTS ON AND PRINCIPAL REPAYMENTS OF THE SURPLUS NOTES.

3 (8) THE OBLIGATION TO REPAY PRINCIPAL OR INTEREST, OR BOTH, ON
4 THE SPFC SECURITIES SHALL REFLECT, IN WHOLE OR IN PART, THE RISK
5 ASSOCIATED WITH THE OBLIGATIONS OF THE SPFC TO THE COUNTERPARTY
6 UNDER THE SPFC CONTRACT, EITHER DIRECTLY OR BY BEING SECURED BY
7 ASSETS, INCLUDING THE PREFERRED SECURITIES, OBTAINED WITH THE
8 PROCEEDS OF THE SALE OF THE SPFC SECURITIES.

9 SEC. 4719. AN SPFC MAY ENTER INTO SWAP AGREEMENTS, OR OTHER
10 FORMS OF ASSET MANAGEMENT AGREEMENTS, INCLUDING GUARANTEED
11 INVESTMENT CONTRACTS, OR OTHER TRANSACTIONS THAT HAVE THE OBJECTIVE
12 OF LEVELING TIMING DIFFERENCES IN FUNDING OF UP FRONT OR ONGOING
13 TRANSACTION EXPENSES OR MANAGING ASSET, CREDIT, OR INTEREST RATE
14 RISK OF THE INVESTMENTS IN THE TRUST TO ENSURE THAT THE INVESTMENTS
15 ARE SUFFICIENT TO ASSURE PAYMENT OR REPAYMENT OF THE SECURITIES,
16 AND RELATED INTEREST OR PRINCIPAL PAYMENTS, ISSUED PURSUANT TO AN
17 SPFC INSURANCE SECURITIZATION TRANSACTION OR THE OBLIGATIONS OF THE
18 SPFC UNDER THE SPFC CONTRACT.

19 SEC. 4721. (1) AN SPFC, AT ANY GIVEN TIME, MAY ENTER INTO AND
20 EFFECTUATE AN SPFC CONTRACT WITH A COUNTERPARTY, PROVIDED THAT THE
21 SPFC CONTRACT MEETS ALL OF THE FOLLOWING:

22 (A) COMPLIES WITH THE PLAN OF OPERATION SUBMITTED TO THE
23 COMMISSIONER.

24 (B) OBLIGATES THE SPFC TO INDEMNIFY THE COUNTERPARTY FOR
25 LOSSES.

26 (C) PROVIDES THAT CONTINGENT OBLIGATIONS OF THE SPFC UNDER THE
27 SPFC CONTRACT ARE SECURITIZED THROUGH AN SPFC INSURANCE

1 SECURITIZATION AND ARE FUNDED AND SECURED WITH ASSETS HELD IN TRUST
2 FOR THE BENEFIT OF THE COUNTERPARTY PURSUANT TO THIS CHAPTER AND
3 UNDER AGREEMENTS CONTEMPLATED BY THIS CHAPTER AND THAT ARE INVESTED
4 IN A MANNER THAT MEET THE CRITERIA UNDER SECTION 4727.

5 (2) AN SPFC MAY ENTER INTO AGREEMENTS WITH AFFILIATED
6 COMPANIES AND THIRD PARTIES AND CONDUCT BUSINESS NECESSARY TO
7 FULFILL ITS OBLIGATIONS AND ADMINISTRATIVE DUTIES INCIDENTAL TO THE
8 INSURANCE SECURITIZATION AND THE SPFC CONTRACT. THE AGREEMENTS MAY
9 INCLUDE MANAGEMENT AND ADMINISTRATIVE SERVICES AGREEMENTS AND OTHER
10 ALLOCATION AND COST SHARING AGREEMENTS, OR SWAP AND ASSET
11 MANAGEMENT AGREEMENTS, OR BOTH, OR AGREEMENTS FOR OTHER
12 CONTEMPLATED TYPES OF TRANSACTIONS PROVIDED IN SECTION 4719.

13 (3) AN SPFC CONTRACT SHALL CONTAIN ALL OF THE FOLLOWING:

14 (A) A REQUIREMENT FOR THE SPFC TO ENTER INTO A TRUST AGREEMENT
15 SPECIFYING WHAT RECOVERABLES OR RESERVES, OR BOTH, THE AGREEMENT IS
16 TO COVER AND TO ESTABLISH A TRUST ACCOUNT FOR THE BENEFIT OF THE
17 COUNTERPARTY.

18 (B) A STIPULATION THAT ASSETS DEPOSITED IN THE TRUST ACCOUNT
19 SHALL BE VALUED ACCORDING TO THEIR CURRENT FAIR VALUE AND SHALL
20 CONSIST ONLY OF PERMITTED INVESTMENTS.

21 (C) A REQUIREMENT FOR THE SPFC, BEFORE DEPOSITING ASSETS WITH
22 THE TRUSTEE, TO EXECUTE ASSIGNMENTS, ENDORSEMENTS IN BLANK, OR TO
23 TRANSFER LEGAL TITLE TO THE TRUSTEE OF ALL SHARES, OBLIGATIONS, OR
24 ANY OTHER ASSETS REQUIRING ASSIGNMENTS, IN ORDER THAT THE
25 COUNTERPARTY, OR THE TRUSTEE UPON THE DIRECTION OF THE
26 COUNTERPARTY, MAY NEGOTIATE WHENEVER NECESSARY THE ASSETS WITHOUT
27 CONSENT OR SIGNATURE FROM THE SPFC OR ANOTHER ENTITY.

1 (D) A REQUIREMENT THAT ALL SETTLEMENTS OF ACCOUNT BETWEEN THE
2 COUNTERPARTY AND THE SPFC BE MADE IN CASH OR ITS EQUIVALENT.

3 (E) A STIPULATION THAT THE SPFC AND THE COUNTERPARTY AGREE
4 THAT THE ASSETS IN THE TRUST ACCOUNT, ESTABLISHED PURSUANT TO THE
5 SPFC CONTRACT, ARE UNDER THE CONTROL OF THE COUNTERPARTY AND MAY BE
6 WITHDRAWN BY THE COUNTERPARTY AT ANY TIME, NOTWITHSTANDING ANY
7 OTHER PROVISIONS IN THE SPFC CONTRACT, AND SHALL BE UTILIZED AND
8 APPLIED BY THE COUNTERPARTY OR ANY SUCCESSOR BY OPERATION OF LAW OF
9 THE COUNTERPARTY, INCLUDING, SUBJECT TO THE PROVISIONS OF SECTION
10 4741, BUT WITHOUT FURTHER LIMITATION, ANY LIQUIDATOR,
11 REHABILITATOR, RECEIVER, OR CONSERVATOR OF THE COUNTERPARTY,
12 WITHOUT DIMINUTION BECAUSE OF INSOLVENCY ON THE PART OF THE
13 COUNTERPARTY OR THE SPFC, ONLY FOR THE FOLLOWING PURPOSES:

14 (i) TO TRANSFER ALL OF THE ASSETS INTO 1 OR MORE TRUST ACCOUNTS
15 FOR THE BENEFIT OF THE COUNTERPARTY PURSUANT TO THE TERMS OF THE
16 SPFC CONTRACT AND IN COMPLIANCE WITH THIS CHAPTER.

17 (ii) TO PAY ANY OTHER INCURRED AND PAID AMOUNTS THAT THE
18 COUNTERPARTY CLAIMS ARE DUE PURSUANT TO THE TERMS OF THE SPFC
19 CONTRACT AND IN COMPLIANCE WITH THIS CHAPTER.

20 (4) THE SPFC CONTRACT MAY CONTAIN PROVISIONS THAT GIVE THE
21 SPFC THE RIGHT TO SEEK APPROVAL FROM THE COUNTERPARTY TO WITHDRAW
22 FROM THE TRUST ALL OR PART OF THE ASSETS, OR INCOME FROM THEM,
23 CONTAINED IN THE TRUST AND TO TRANSFER THE ASSETS TO THE SPFC,
24 PROVIDED THAT AT THE TIME OF THE WITHDRAWAL, THE SPFC SHALL REPLACE
25 THE WITHDRAWN ASSETS, EXCLUDING ANY INCOME WITHDRAWN, WITH OTHER
26 ASSETS HAVING A FAIR VALUE EQUAL TO THE FAIR VALUE OF THE ASSETS
27 WITHDRAWN AND THAT MEET THE PROVISIONS OF SECTION 4727; AND AFTER

1 THE WITHDRAWALS AND TRANSFER, THE FAIR VALUE OF THE ASSETS IN TRUST
2 SECURING THE OBLIGATIONS OF THE SPFC UNDER THE SPFC CONTRACT IS NO
3 LESS THAN AN AMOUNT NEEDED TO SATISFY THE FUNDED REQUIREMENT OF THE
4 SPFC CONTRACT. THE COUNTERPARTY SHALL BE THE SOLE JUDGE AS TO THE
5 APPLICATION OF THESE PROVISIONS BUT SHALL NOT UNREASONABLY NOR
6 ARBITRARILY WITHHOLD ITS APPROVAL.

7 SEC. 4723. SPFC SECURITIES AND PREFERRED SECURITIES ISSUED
8 PURSUANT TO AN INSURANCE SECURITIZATION ARE NOT, AND SHALL NOT BE
9 CONSIDERED TO BE, INSURANCE OR REINSURANCE CONTRACTS. AN INVESTOR
10 IN THESE SECURITIES OR A HOLDER OR ISSUER OF THESE SECURITIES, BY
11 SOLE MEANS OF THIS INVESTMENT, HOLDING, OR ISSUANCE, IS NOT, AND
12 SHALL NOT BE CONSIDERED TO BE, TRANSACTING THE BUSINESS OF
13 INSURANCE IN THIS STATE. THE UNDERWRITER'S PLACEMENT AGENT OR
14 SELLING AGENT AND THEIR PARTNERS, DIRECTORS, OFFICERS, MEMBERS,
15 MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND ADVISORS INVOLVED
16 IN AN INSURANCE SECURITIZATION PURSUANT TO THIS CHAPTER SHALL NOT
17 BE CONSIDERED TO BE INSURANCE PRODUCERS OR BROKERS OR CONDUCTING
18 BUSINESS AS AN INSURANCE OR REINSURANCE COMPANY OR AGENCY,
19 BROKERAGE, INTERMEDIARY, ADVISORY, OR CONSULTING BUSINESS ONLY BY
20 VIRTUE OF THEIR ACTIVITIES IN CONNECTION WITH THEM.

21 SEC. 4725. IN FULFILLING ITS FUNCTION, THE SPFC SHALL ADHERE
22 TO THE FOLLOWING AND, TO THE EXTENT OF ITS POWERS, SHALL ENSURE
23 THAT CONTRACTS OBLIGATING OTHER PARTIES TO PERFORM CERTAIN
24 FUNCTIONS INCIDENT TO ITS OPERATIONS ARE SUBSTANTIVELY AND
25 MATERIALLY CONSISTENT WITH ALL OF THE FOLLOWING:

26 (A) THE ASSETS OF AN SPFC SHALL BE PRESERVED AND ADMINISTERED
27 BY OR ON BEHALF OF THE SPFC TO SATISFY THE LIABILITIES AND

1 OBLIGATIONS OF THE SPFC INCIDENT TO THE SPFC CONTRACT WITH THE
2 COUNTERPARTY, THE ISSUANCE OF PREFERRED SECURITIES, OR THE
3 INSURANCE SECURITIZATION AND OTHER RELATED AGREEMENTS.

4 (B) ASSETS HELD BY AN SPFC IN TRUST SHALL BE VALUED AT THEIR
5 FAIR VALUE.

6 (C) THE PROCEEDS FROM THE SALE OF SPFC SECURITIES PURSUANT TO
7 THE INSURANCE SECURITIZATION SHALL BE DEPOSITED WITH THE TRUSTEE TO
8 THE EXTENT REQUIRED TO SECURE THE OBLIGATIONS OF THE SPFC UNDER THE
9 SPFC CONTRACT AS PROVIDED BY THIS CHAPTER AND SHALL BE HELD OR
10 INVESTED BY THE TRUSTEE PURSUANT TO SECTION 4727 AND AN ASSET
11 MANAGEMENT AGREEMENT, IF ANY.

12 (D) ASSETS OF THE SPFC, OTHER THAN THOSE HELD IN TRUST FOR THE
13 COUNTERPARTY, AND INCOME ON TRUST ASSETS RECEIVED BY THE SPFC MAY
14 BE USED TO PAY INTEREST OR OTHER CONSIDERATION ON ANY SPFC
15 SECURITIES OR OTHER SECURITIES OR OUTSTANDING DEBT OR PAYMENTS ON
16 PREFERRED SECURITIES OR OTHER OBLIGATION OF THE SPFC. NOTHING IN
17 THIS CHAPTER SHALL BE CONSTRUED OR INTERPRETED TO PREVENT AN SPFC
18 FROM ENTERING INTO A SWAP AGREEMENT OR OTHER ASSET MANAGEMENT
19 TRANSACTION THAT HAS THE EFFECT OF HEDGING OR GUARANTEEING THE
20 FIXED OR FLOATING INTEREST RATE RETURNS PAID ON THE ASSETS IN TRUST
21 OR REQUIRED FOR THE SECURITIES ISSUED BY THE SPFC GENERATED FROM OR
22 OTHER CONSIDERATION OR PAYMENT FLOWS IN THE TRANSACTION.

23 (E) IN THE SPFC INSURANCE SECURITIZATION, THE CONTRACTS OR
24 OTHER RELATING DOCUMENTATION SHALL CONTAIN PROVISIONS IDENTIFYING
25 THE SPFC.

26 (F) UNLESS OTHERWISE APPROVED BY THE COMMISSIONER, AN SPFC
27 SHALL NOT DO ANY OF THE FOLLOWING:

1 (i) ISSUE OR OTHERWISE ADMINISTER PRIMARY INSURANCE POLICIES.

2 (ii) ENTER INTO AN SPFC CONTRACT WITH A PERSON THAT IS NOT
3 LICENSED OR OTHERWISE AUTHORIZED TO TRANSACT THE BUSINESS OF
4 INSURANCE OR REINSURANCE IN AT LEAST ITS STATE OR COUNTRY OF
5 DOMICILE.

6 (iii) ASSUME OR RETAIN EXPOSURE TO INSURANCE OR REINSURANCE
7 LOSSES FOR ITS OWN ACCOUNT THAT IS NOT FUNDED BY PROCEEDS FROM AN
8 SPFC INSURANCE SECURITIZATION THAT MEETS THE PROVISIONS OF THIS
9 CHAPTER. HOWEVER, THE SPFC MAY WHOLLY OR PARTIALLY REINSURE OR
10 RETROCEDE THE RISKS ASSUMED TO A THIRD PARTY REINSURER.

11 (G) AN SPFC SHALL NOT DO ANY OF THE FOLLOWING:

12 (i) HAVE ANY DIRECT OBLIGATION TO THE POLICYHOLDERS OR
13 REINSUREDS OF THE COUNTERPARTY.

14 (ii) LEND OR OTHERWISE INVEST, OR PLACE IN CUSTODY, TRUST, OR
15 UNDER MANAGEMENT ANY OF ITS ASSETS WITH, OR TO BORROW MONEY OR
16 RECEIVE A LOAN FROM, OTHER THAN BY ISSUANCE OF THE SECURITIES
17 PURSUANT TO AN INSURANCE SECURITIZATION, OR ADVANCE FROM, ANYONE
18 CONVICTED OF A FELONY, ANYONE WHO IS UNTRUSTWORTHY OR OF KNOWN BAD
19 CHARACTER, OR ANYONE CONVICTED OF A CRIMINAL OFFENSE INVOLVING THE
20 CONVERSION OR MISAPPROPRIATION OF FIDUCIARY FUNDS OR INSURANCE
21 ACCOUNTS, THEFT, DECEIT, FRAUD, MISREPRESENTATION, OR CORRUPTION.

22 SEC. 4727. (1) ASSETS OF THE SPFC HELD IN TRUST TO SECURE
23 OBLIGATIONS UNDER THE SPFC CONTRACT SHALL AT ALL TIMES BE HELD IN
24 CASH AND CASH EQUIVALENTS, SECURITIES LISTED BY THE SECURITIES
25 VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE
26 COMMISSIONERS, OR ANOTHER FORM OF SECURITY ACCEPTABLE TO THE
27 COMMISSIONER.

1 (2) ASSETS OF THE SPFC THAT ARE PLEDGED TO SECURE OBLIGATIONS
2 OF THE SPFC TO A COUNTERPARTY UNDER AN SPFC CONTRACT SHALL BE HELD
3 IN TRUST AND ADMINISTERED BY A QUALIFIED UNITED STATES FINANCIAL
4 INSTITUTION THAT DOES NOT CONTROL, IS NOT CONTROLLED BY, OR IS NOT
5 UNDER COMMON CONTROL WITH, THE SPFC OR THE COUNTERPARTY.

6 (3) THE AGREEMENT GOVERNING A TRUST DESCRIBED IN THIS SECTION
7 SHALL CREATE 1 OR MORE TRUST ACCOUNTS INTO WHICH ALL PLEDGED ASSETS
8 SHALL BE DEPOSITED AND HELD UNTIL DISTRIBUTED IN ACCORDANCE WITH
9 THE TRUST AGREEMENT. THE PLEDGED ASSETS SHALL BE HELD BY THE
10 TRUSTEE AT 1 OF THE TRUSTEE'S OFFICES OR BRANCH OFFICES IN THE
11 UNITED STATES AND MAY BE HELD IN CERTIFICATED OR ELECTRONIC FORM.

12 (4) THE PROVISIONS FOR WITHDRAWAL BY THE COUNTERPARTY OF
13 ASSETS FROM THE TRUST SHALL BE CLEAN AND UNCONDITIONAL, SUBJECT
14 ONLY TO THE FOLLOWING:

15 (A) THE COUNTERPARTY HAS THE RIGHT TO WITHDRAW ASSETS FROM THE
16 TRUST ACCOUNT AT ANY TIME, WITHOUT NOTICE TO THE SPFC, SUBJECT ONLY
17 TO WRITTEN NOTICE TO THE TRUSTEE AND THE COMMISSIONER FROM THE
18 COUNTERPARTY THAT FUNDS IN THE AMOUNT REQUESTED ARE DUE AND PAYABLE
19 BY THE SPFC, PURSUANT TO THE SPFC CONTRACT.

20 (B) A STATEMENT OR DOCUMENT DOES NOT NEED TO BE PRESENTED IN
21 ORDER TO WITHDRAW ASSETS, EXCEPT THE COUNTERPARTY MAY BE REQUIRED
22 TO ACKNOWLEDGE RECEIPT OF WITHDRAWN ASSETS.

23 (C) THE TRUST AGREEMENT SHALL INDICATE THAT IT IS NOT SUBJECT
24 TO ANY CONDITIONS OR QUALIFICATIONS OUTSIDE OF THE TRUST AGREEMENT.

25 (D) THE TRUST AGREEMENT SHALL NOT CONTAIN REFERENCES TO ANY
26 OTHER AGREEMENTS OR DOCUMENTS.

27 (5) THE TRUST AGREEMENT SHALL BE ESTABLISHED FOR THE SOLE USE

1 AND BENEFIT OF THE COUNTERPARTY AT LEAST TO THE FULL EXTENT OF THE
2 OBLIGATIONS OF THE SPFC TO THE COUNTERPARTY UNDER THE SPFC
3 CONTRACT. IF THERE IS MORE THAN 1 COUNTERPARTY, OR MORE THAN 1 SPFC
4 CONTRACT WITH THE SAME COUNTERPARTY, A SEPARATE TRUST AGREEMENT
5 SHALL BE ENTERED INTO WITH THE COUNTERPARTY AND A SEPARATE TRUST
6 ACCOUNT SHALL BE MAINTAINED FOR EACH SPFC CONTRACT WITH THE
7 COUNTERPARTY, UNLESS OTHERWISE APPROVED BY THE COMMISSIONER.

8 (6) THE TRUST AGREEMENT SHALL PROVIDE FOR THE TRUSTEE TO DO
9 ALL OF THE FOLLOWING:

10 (A) RECEIVE ASSETS AND HOLD ALL ASSETS IN A SAFE PLACE.

11 (B) DETERMINE THAT ALL ASSETS ARE IN A FORM THAT THE
12 COUNTERPARTY OR THE TRUSTEE, UPON DIRECTION BY THE COUNTERPARTY,
13 MAY NEGOTIATE, WHENEVER NECESSARY, WITHOUT CONSENT OR SIGNATURE
14 FROM THE SPFC OR ANOTHER PERSON OR ENTITY.

15 (C) FURNISH TO THE SPFC, THE COMMISSIONER, AND THE
16 COUNTERPARTY A STATEMENT OF ALL ASSETS IN THE TRUST ACCOUNT
17 REPORTED AT FAIR VALUE UPON ITS INCEPTION AND AT INTERVALS NO LESS
18 FREQUENT THAN 45 DAYS AFTER THE END OF EACH CALENDAR QUARTER.

19 (D) NOTIFY THE SPFC AND THE COUNTERPARTY, WITHIN 10 DAYS, OF
20 ANY DEPOSITS TO OR WITHDRAWALS FROM THE TRUST ACCOUNT.

21 (E) UPON WRITTEN DEMAND OF THE COUNTERPARTY, IMMEDIATELY TAKE
22 THE NECESSARY STEPS TO TRANSFER ABSOLUTELY AND UNEQUIVOCALLY ALL
23 RIGHT, TITLE, AND INTEREST IN THE ASSETS HELD IN THE TRUST ACCOUNT
24 TO THE COUNTERPARTY AND DELIVER PHYSICAL CUSTODY OF THE ASSETS TO
25 THE COUNTERPARTY.

26 (F) ALLOW NO SUBSTITUTIONS OR WITHDRAWALS OF ASSETS FROM THE
27 TRUST ACCOUNT, EXCEPT PURSUANT TO THE TRUST AGREEMENT OR SPFC

1 CONTRACT, OR AS OTHERWISE PERMITTED BY THE COUNTERPARTY.

2 (7) THE TRUST AGREEMENT SHALL PROVIDE THAT AT LEAST 30 DAYS,
3 BUT NOT MORE THAN 45 DAYS, BEFORE TERMINATION OF THE TRUST ACCOUNT,
4 WRITTEN NOTIFICATION OF TERMINATION SHALL BE DELIVERED BY THE
5 TRUSTEE TO THE COUNTERPARTY WITH A COPY OF THE NOTICE PROVIDED TO
6 THE COMMISSIONER.

7 (8) IN ADDITION TO THE REQUIREMENT FOR THE TRUST AS PROVIDED
8 IN THIS CHAPTER, THE TRUST AGREEMENT MAY BE MADE SUBJECT TO AND
9 GOVERNED BY THE LAWS OF ANY STATE. THE STATE SHALL BE DISCLOSED IN
10 THE PLAN OF OPERATION SUBMITTED TO THE COMMISSIONER.

11 (9) THE TRUST AGREEMENT SHALL PROHIBIT INVASION OF THE TRUST
12 CORPUS FOR THE PURPOSE OF PAYING COMPENSATION TO, OR REIMBURSING
13 THE EXPENSES OF, THE TRUSTEE.

14 (10) THE TRUST AGREEMENT SHALL PROVIDE THAT THE TRUSTEE IS
15 LIABLE FOR ITS OWN NEGLIGENCE, WILLFUL MISCONDUCT, OR LACK OF GOOD
16 FAITH.

17 (11) NOTWITHSTANDING SUBSECTION (4) (C) AND (D), WHEN A TRUST
18 AGREEMENT IS ESTABLISHED IN CONJUNCTION WITH AN SPFC CONTRACT, THEN
19 THE TRUST AGREEMENT OR SPFC CONTRACT, OR BOTH, MAY PROVIDE THAT THE
20 COUNTERPARTY SHALL UNDERTAKE TO USE AND APPLY ANY AMOUNTS DRAWN
21 UPON THE TRUST ACCOUNT, WITHOUT DIMINUTION BECAUSE OF THE
22 INSOLVENCY OF THE COUNTERPARTY OR THE SPFC, ONLY FOR 1 OR MORE OF
23 THE FOLLOWING PURPOSES:

24 (A) TO PAY OR REIMBURSE THE COUNTERPARTY FOR PAYMENT OF THE
25 SPFC'S SHARE OF PREMIUMS TO BE RETURNED TO OWNERS OF COUNTERPARTY'S
26 POLICIES COVERED UNDER THE SPFC CONTRACT ON ACCOUNT OF
27 CANCELLATIONS OF THE POLICIES UNDER THE COUNTERPARTIES POLICIES.

1 (B) TO PAY OR REIMBURSE THE COUNTERPARTY FOR PAYMENT OF THE
2 SPFC'S SHARE OF SURRENDERS, BENEFITS, LOSSES, OR OTHER BENEFITS
3 COVERED AND PAYABLE PURSUANT TO THE SPFC CONTRACT.

4 (C) TO FUND AN ACCOUNT WITH THE COUNTERPARTY IN AN AMOUNT TO
5 SECURE THE CREDIT OR REDUCTION FROM LIABILITY FOR REINSURANCE
6 COVERAGE PROVIDED UNDER THE SPFC CONTRACT.

7 (D) TO PAY ANY OTHER AMOUNTS THE COUNTERPARTY CLAIMS ARE
8 LEGALLY AND PROPERLY DUE UNDER THE SPFC CONTRACT.

9 (12) ANY ASSETS DEPOSITED INTO AN ACCOUNT OF THE COUNTERPARTY
10 PURSUANT TO SUBSECTION (11) (C) OR WITHDRAWN BY THE COUNTERPARTY
11 PURSUANT TO SUBSECTION (11) (D) AND ANY INTEREST OR OTHER EARNINGS
12 ON THEM, SHALL BE HELD BY THE COUNTERPARTY IN TRUST AND SEPARATE
13 AND APART FROM ANY GENERAL ASSETS OF THE COUNTERPARTY, FOR THE SOLE
14 PURPOSE OF FUNDING THE PAYMENTS AND REIMBURSEMENTS OF THE SPFC
15 CONTRACT DESCRIBED IN SUBSECTION (11).

16 (13) THE COUNTERPARTY SHALL RETURN TO THE SPFC AMOUNTS
17 WITHDRAWN UNDER SUBSECTION (11) IN EXCESS OF ACTUAL AMOUNTS
18 REQUIRED UNDER SUBSECTION (11) (A) TO (C), AND IN EXCESS OF THE
19 AMOUNTS SUBSEQUENTLY DETERMINED TO BE DUE UNDER SUBSECTION (11) (D),
20 PLUS INTEREST AT A RATE NOT IN EXCESS OF THE PRIME RATE FOR THE
21 AMOUNTS HELD PURSUANT TO SUBSECTION (11) (C) UNLESS A HIGHER RATE OF
22 INTEREST HAS BEEN AWARDED BY AN ARBITRATION PANEL, AND ANY NET
23 COSTS OR EXPENSES, INCLUDING ATTORNEY FEES, AWARDED BY AN
24 ARBITRATION PANEL.

25 (14) IF THE COUNTERPARTY HAS RECEIVED NOTIFICATION OF
26 TERMINATION OF THE TRUST ACCOUNT WHILE ANY OF THE SPFC'S
27 OBLIGATIONS OR LIABILITIES UNDER THE SPFC CONTRACT THAT ARE SECURED

1 BY THE TRUST ACCOUNT REMAIN UNLIQUIDATED AS OF 10 DAYS PRIOR TO THE
2 TERMINATION DATE OF THE TRUST ACCOUNT, THEN THE COUNTERPARTY MAY
3 WITHDRAW AMOUNTS FROM THE TRUST ACCOUNT EQUAL TO THE UNLIQUIDATED
4 OBLIGATIONS AND SHALL DEPOSIT SUCH AMOUNTS IN AN ACCOUNT
5 ESTABLISHED BY THE COUNTERPARTY, WHICH ACCOUNT IS SEPARATE AND
6 APART FROM THE COUNTERPARTY'S GENERAL ASSETS AND IS WITH A
7 QUALIFIED UNITED STATES FINANCIAL INSTITUTION, BUT ONLY TO THE
8 EXTENT THE OBLIGATIONS OR LIABILITIES HAVE NOT BEEN FUNDED BY THE
9 SPFC AND ONLY FOR THOSE USES AND PURPOSES SPECIFIED IN SUBSECTION
10 (11) (A) THAT MAY REMAIN EXECUTORY AFTER THE WITHDRAWAL AND
11 TERMINATION UNTIL SUCH OBLIGATIONS OR LIABILITIES ARE DISCHARGED.

12 SEC. 4729. (1) AN SPFC SHALL NOT DECLARE OR PAY DIVIDENDS IN
13 ANY FORM TO ITS OWNERS OTHER THAN IN ACCORDANCE WITH THE INSURANCE
14 SECURITIZATION TRANSACTION AGREEMENTS, AND IN NO EVENT SHALL THE
15 DIVIDENDS DECREASE THE CAPITAL OF THE SPFC BELOW \$250,000.00, AND,
16 AFTER GIVING EFFECT TO THE DIVIDENDS, THE ASSETS OF THE SPFC,
17 INCLUDING ASSETS HELD IN TRUST PURSUANT TO THE TERMS OF THE
18 INSURANCE SECURITIZATION, SHALL BE SUFFICIENT TO SATISFY THE
19 COMMISSIONER THAT IT CAN MEET ITS OBLIGATIONS. APPROVAL BY THE
20 COMMISSIONER OF AN ONGOING PLAN FOR THE PAYMENT OF DIVIDENDS OR
21 OTHER DISTRIBUTION BY AN SPFC WITH RESPECT TO SECURITIES SHALL BE
22 CONDITIONED UPON THE RETENTION, AT THE TIME OF EACH PAYMENT, OF
23 CAPITAL OR SURPLUS EQUAL TO OR IN EXCESS OF AMOUNTS SPECIFIED BY,
24 OR DETERMINED IN ACCORDANCE WITH FORMULAS APPROVED FOR THE SPFC BY
25 THE COMMISSIONER.

26 (2) THE DIVIDENDS MAY BE DECLARED BY THE MANAGEMENT OF THE
27 SPFC IF THE DIVIDENDS DO NOT VIOLATE THE PROVISIONS OF THIS CHAPTER

1 OR JEOPARDIZE THE FULFILLMENT OF THE OBLIGATIONS OF THE SPFC OR THE
2 TRUSTEE PURSUANT TO THE SPFC INSURANCE SECURITIZATION AGREEMENTS,
3 THE SPFC CONTRACT, OR ANY RELATED TRANSACTION AND OTHER PROVISIONS
4 OF THIS CHAPTER.

5 SEC. 4731. (1) AN SPFC MAY MAKE THE FOLLOWING MATERIAL CHANGES
6 TO ITS PLAN OF OPERATION PURSUANT TO SECTION 4705(6)(B), WHETHER OR
7 NOT THROUGH AN SPFC PROTECTED CELL:

8 (A) IF INCLUDED IN THE INITIAL PLAN OF OPERATION, SECURITIES
9 SUBSEQUENTLY ISSUED TO CONTINUE THE SECURITIZATION ACTIVITIES OF
10 THE SPFC EITHER DURING OR AFTER EXPIRATION, REDEMPTION, OR
11 SATISFACTION, OF PART OR ALL OF THE SECURITIES ISSUED PURSUANT TO
12 INITIAL INSURANCE SECURITIZATION TRANSACTIONS, SHALL NOT BE
13 CONSIDERED A MATERIAL CHANGE.

14 (B) A CHANGE AND SUBSTITUTION IN A COUNTERPARTY TO A SWAP
15 TRANSACTION FOR AN EXISTING INSURANCE SECURITIZATION AS ALLOWED
16 PURSUANT TO THIS CHAPTER SHALL NOT BE CONSIDERED A MATERIAL CHANGE
17 IF THE REPLACEMENT SWAP COUNTERPARTY CARRIES A SIMILAR OR HIGHER
18 RATING TO ITS PREDECESSOR WITH 2 OR MORE NATIONALLY RECOGNIZED
19 RATING AGENCIES.

20 (2) NO LATER THAN 5 MONTHS AFTER THE FISCAL YEAR END OF THE
21 SPFC, THE SPFC SHALL FILE WITH THE COMMISSIONER AUDITED FINANCIAL
22 STATEMENTS OF THE SPFC AND THE TRUST ACCOUNTS PREPARED BY AN
23 INDEPENDENT PUBLIC ACCOUNTANT. THE INDEPENDENT PUBLIC ACCOUNTANT
24 SHALL BE AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR ACCOUNTING
25 FIRM IN GOOD STANDING WITH THE AMERICAN INSTITUTE OF CERTIFIED
26 PUBLIC ACCOUNTANTS AND IN GOOD STANDING IN ALL STATES IN WHICH THE
27 INDEPENDENT PUBLIC ACCOUNTANT IS LICENSED TO PRACTICE.

1 (3) THE COMMISSIONER MAY ADDRESS INQUIRIES TO ANY CAPTIVE
2 INSURER CONCERNING THE INSURER'S ACTIVITIES OR CONDITIONS OR ANY
3 MATTER CONNECTED WITH THE INSURER'S TRANSACTIONS. AN INSURER SO
4 ADDRESSED SHALL REPLY IN WRITING TO EACH INQUIRY FROM THE
5 COMMISSIONER WITHIN 30 DAYS OF RECEIPT OF THE INQUIRY.

6 (4) EACH SPFC SHALL FILE BY MARCH 1 OF EACH YEAR A STATEMENT
7 OF OPERATIONS. AN SPFC WITH A COUNTERPARTY THAT IS AUTHORIZED AS AN
8 INSURANCE COMPANY SHALL REPORT USING STATUTORY ACCOUNTING
9 PRINCIPLES AND SHALL VALUE ITS ASSETS AND LIABILITIES PURSUANT TO
10 THIS ACT AND IN A MANNER CONSISTENT WITH THE COUNTERPARTY. AN SPFC
11 WITH A COUNTERPARTY THAT USES GAAP MAY REPORT USING EITHER GAAP OR,
12 WITH THE APPROVAL OF THE COMMISSIONER, STATUTORY ACCOUNTING
13 PRINCIPLES, WITH USEFUL OR NECESSARY MODIFICATIONS OR ADAPTATIONS
14 REQUIRED OR APPROVED OR ACCEPTED BY THE COMMISSIONER FOR THE TYPE
15 OF INSURANCE AND KINDS OF INSURERS TO BE REPORTED UPON, AND AS
16 SUPPLEMENTED BY ADDITIONAL INFORMATION REQUIRED BY THE
17 COMMISSIONER. THE STATEMENT OF OPERATIONS SHALL INCLUDE A STATEMENT
18 OF INCOME AND A BALANCE SHEET AND MAY INCLUDE A DETAILED LISTING OF
19 INVESTED ASSETS, INCLUDING IDENTIFICATION OF ASSETS HELD IN TRUST
20 TO SECURE THE OBLIGATIONS OF THE SPFC UNDER THE SPFC CONTRACT AND
21 ADDITIONAL DESCRIPTIONS AND ACCOUNTING OF THE RESERVES REQUIRED OR
22 MAINTAINED BY THE SPFC. THE SPFC ALSO MAY INCLUDE WITH THE FILING
23 RISK BASED CAPITAL CALCULATIONS AND OTHER ADJUSTED CAPITAL
24 CALCULATIONS TO ASSIST THE COMMISSIONER WITH EVALUATING THE LEVELS
25 OF THE SURPLUS OF THE SPFC FOR THE YEAR ENDING ON DECEMBER 31 OF
26 THE PREVIOUS YEAR. THE STATEMENTS SHALL BE PREPARED ON FORMS
27 REQUIRED BY THE COMMISSIONER. IN ADDITION, THE COMMISSIONER MAY

1 REQUIRE THE FILING OF PERFORMANCE ASSESSMENTS OF THE SPFC CONTRACT.

2 (5) AN SPFC THAT IS AUTHORIZED AS AN INSURER OTHER THAN SOLELY
3 PURSUANT TO THIS CHAPTER AND CHAPTER 46 OR THAT IS REINSURING RISK
4 OF A COUNTERPARTY THAT IS AUTHORIZED AS AN INSURER UNDER THIS ACT
5 SHALL FILE ANNUAL REPORTS PURSUANT TO SECTIONS 438 AND 438A AND
6 CHAPTER 10. AN SPFC SHALL MAINTAIN ITS RECORDS IN THIS STATE, OR IN
7 1 OR MORE LOCATIONS OUTSIDE THE STATE WITH THE APPROVAL OF THE
8 COMMISSIONER, AND SHALL MAKE ITS RECORDS AVAILABLE FOR EXAMINATION
9 BY THE COMMISSIONER AT ANY TIME. THE SPFC SHALL KEEP ITS BOOKS AND
10 RECORDS IN SUCH MANNER THAT ITS FINANCIAL CONDITION, AFFAIRS, AND
11 OPERATIONS CAN BE ASCERTAINED AND SO THAT THE COMMISSIONER MAY
12 READILY VERIFY ITS FINANCIAL STATEMENTS AND DETERMINE ITS
13 COMPLIANCE WITH THIS CHAPTER.

14 (6) THE COMMISSIONER MAY REQUIRE INTERIM REPORTING ON ANY OR
15 ALL OF THE SPFC'S BUSINESS, INCLUDING ANY MATTER, CONDITION, OR
16 REQUIREMENT REGULATED BY THIS CHAPTER. THE COMMISSIONER SHALL
17 PRESCRIBE THE FORMAT AND CONTENT OF THE INTERIM REPORT.

18 (7) EACH SPFC THAT FAILS TO FILE A REPORT REQUIRED BY THIS
19 SECTION, OR FAILS TO REPLY WITHIN 30 DAYS TO AN INQUIRY OF THE
20 COMMISSIONER, IS SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN
21 \$1,000.00 OR MORE THAN \$5,000.00 PER OCCURRENCE, AND AN ADDITIONAL
22 \$50.00 FOR EVERY DAY THAT THE SPFC FAILS TO FILE A REPORT OR REPLY
23 TO THE INQUIRY. IN ADDITION, EACH SPFC THAT FAILS TO FILE A REPORT,
24 OR FAILS TO MAKE A SATISFACTORY REPLY TO AN INQUIRY OF THE
25 COMMISSIONER CONCERNING THE SPFC'S AFFAIRS, IS SUBJECT TO
26 PROCEEDINGS UNDER SECTION 4735(2).

27 (8) ALL ORIGINAL BOOKS, RECORDS, DOCUMENTS, ACCOUNTS, AND

1 VOUCHERS SHALL BE PRESERVED AND KEPT AVAILABLE IN THIS STATE FOR
2 THE PURPOSE OF EXAMINATION. THE ORIGINAL RECORDS, HOWEVER, MAY BE
3 KEPT AND MAINTAINED OUTSIDE THIS STATE IF, ACCORDING TO A PLAN
4 ADOPTED BY THE MANAGEMENT OF THE SPFC AND APPROVED BY THE
5 COMMISSIONER, IT MAINTAINS SUITABLE RECORDS. THE BOOKS OR RECORDS
6 MAY BE PHOTOGRAPHED, REPRODUCED ON FILM, OR STORED AND REPRODUCED
7 ELECTRONICALLY.

8 (9) NOTHING CONTAINED IN THIS SECTION WITH RESPECT TO AN SPFC
9 SHALL ABROGATE, LIMIT, OR RESCIND IN ANY WAY THE AUTHORITY OF THE
10 SECURITIES COMMISSIONER PURSUANT TO 1935 PA 13, MCL 451.1 TO 451.4.

11 SEC. 4732. AN SPFC SHALL NOT ENTER INTO ANY OF THE FOLLOWING
12 TRANSACTIONS OR ENGAGE IN ANY OF THE FOLLOWING ACTIVITIES UNLESS
13 THE SPFC HAS NOTIFIED THE COMMISSIONER IN WRITING OF ITS INTENTION
14 TO ENTER INTO THE TRANSACTION OR ACTIVITY AT LEAST 30 DAYS, OR A
15 SHORTER PERIOD AS THE COMMISSIONER ALLOWS, PRIOR TO ENTERING INTO
16 THE TRANSACTION OR ACTIVITY AND THE COMMISSIONER HAS NOT
17 DISAPPROVED OF IT WITHIN THAT PERIOD:

18 (A) A SALE, AN EXCHANGE, OR ANOTHER TRANSFER OF ASSETS MADE BY
19 THE SPFC BETWEEN OR AMONG ANY OF ITS PROTECTED CELLS.

20 (B) ANY THIRD PARTY MANAGEMENT CONTRACT OR ARRANGEMENT THAT
21 DOES NOT MEET THE REQUIREMENTS OF SECTION 4715(7).

22 (C) ANY MATERIAL CHANGE TO THE SPFC'S PLAN OF OPERATION
23 SUBMITTED PURSUANT TO SECTION 4705(6)(B) EXCEPT THOSE CHANGES
24 LISTED IN SECTION 4731(1).

25 (D) EXCEPT AS OTHERWISE CONTEMPLATED IN THE SPFC CONTRACT OR
26 RELATED INSURANCE SECURITIZATION DOCUMENTS, OR BOTH, A SALE, AN
27 EXCHANGE, OR A TRANSFER OF ASSETS FROM A PROTECTED CELL TO A

1 COUNTERPARTY, CAPTIVE LLC, OR PARENT OR AFFILIATED COMPANY OF THE
2 SPFC.

3 SEC. 4733. (1) THE EXPENSES AND CHARGES OF A CAPTIVE INSURANCE
4 COMPANY EXAMINATION SHALL BE PAID TO THE STATE BY THE CAPTIVE
5 INSURANCE COMPANY OR COMPANIES EXAMINED, AND THE OFFICE SHALL ISSUE
6 WARRANTS FOR THE PROPER CHARGES INCURRED IN ALL EXAMINATIONS. THE
7 PAYMENTS RECEIVED BY THE STATE SHALL BE DEPOSITED INTO THE CAPTIVE
8 INSURANCE REGULATORY AND SUPERVISION FUND.

9 (2) THE OFFICE MAY CHARGE A \$15.00 FEE FOR ANY DOCUMENT
10 REQUIRING CERTIFICATION OF AUTHENTICITY OR THE SIGNATURE OF THE
11 COMMISSIONER. THE PAYMENTS RECEIVED SHALL BE DEPOSITED INTO THE
12 CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND.

13 (3) THE OFFICE MAY CHARGE A FEE OF \$25.00 PAYABLE TO THE
14 ATTORNEY GENERAL FOR THE EXAMINATION OF ANY AMENDMENT TO THE
15 ORGANIZATIONAL DOCUMENTS.

16 SEC. 4734. (1) INFORMATION AND TESTIMONY SUBMITTED OR
17 FURNISHED TO THE OFFICE PURSUANT TO THIS CHAPTER, EXAMINATION
18 REPORTS, PRELIMINARY EXAMINATION REPORTS OR RESULTS, AND THE
19 OFFICE'S WORK PAPERS, CORRESPONDENCE, MEMORANDA, REPORTS, RECORDS,
20 AND OTHER WRITTEN OR ORAL INFORMATION RELATED TO AN EXAMINATION
21 REPORT OR AN INVESTIGATION SHALL BE CONFIDENTIAL, SHALL BE WITHHELD
22 FROM PUBLIC INSPECTION, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL
23 NOT BE DIVULGED TO ANY PERSON, EXCEPT AS PROVIDED IN THIS SECTION
24 OR WITH THE WRITTEN CONSENT OF THE COMPANY. IF ASSURANCES ARE
25 PROVIDED THAT THE INFORMATION WILL BE KEPT CONFIDENTIAL, THE
26 COMMISSIONER MAY DISCLOSE CONFIDENTIAL WORK PAPERS, CORRESPONDENCE,
27 MEMORANDA, REPORTS, RECORDS, OR OTHER INFORMATION AS FOLLOWS:

1 (A) TO THE GOVERNOR OR THE ATTORNEY GENERAL.

2 (B) TO ANY RELEVANT REGULATORY AGENCY, INCLUDING REGULATORY
3 AGENCIES OF OTHER STATES OR THE FEDERAL GOVERNMENT.

4 (C) IN CONNECTION WITH AN ENFORCEMENT ACTION BROUGHT PURSUANT
5 TO THIS OR ANOTHER APPLICABLE ACT.

6 (D) TO LAW ENFORCEMENT OFFICIALS.

7 (E) TO PERSONS AUTHORIZED BY THE INGHAM COUNTY CIRCUIT COURT
8 TO RECEIVE THE INFORMATION.

9 (F) TO PERSONS ENTITLED TO RECEIVE SUCH INFORMATION IN ORDER
10 TO DISCHARGE DUTIES SPECIFICALLY PROVIDED FOR IN THIS ACT.

11 (2) THE CONFIDENTIALITY REQUIREMENTS OF SUBSECTION (1) DO NOT
12 APPLY IN ANY PROCEEDING OR ACTION BROUGHT AGAINST OR BY THE INSURER
13 UNDER THIS ACT OR ANY OTHER APPLICABLE ACT OF THIS STATE, ANY OTHER
14 STATE, OR THE UNITED STATES.

15 SEC. 4735. (1) AT THE CESSATION OF BUSINESS OF AN SPFC
16 FOLLOWING TERMINATION OR CANCELLATION OF AN SPFC CONTRACT AND THE
17 REDEMPTION OF ANY RELATED SPFC SECURITIES ISSUED IN CONNECTION WITH
18 IT, THE AUTHORITY GRANTED BY THE COMMISSIONER EXPIRES OR, FOR
19 RETIRING AND SURVIVING PROTECTED CELLS, IS MODIFIED. THE SPFC IS NO
20 LONGER AUTHORIZED TO CONDUCT ACTIVITIES UNLESS AND UNTIL A NEW OR
21 MODIFIED LIMITED CERTIFICATE OF AUTHORITY IS ISSUED PURSUANT TO A
22 NEW FILING UNDER SECTION 4705 OR AS AGREED BY THE COMMISSIONER.

23 (2) THE COMMISSIONER MAY SUSPEND OR REVOKE THE LIMITED
24 CERTIFICATE OF AUTHORITY OF AN SPFC IN THIS STATE FOR ANY OF THE
25 FOLLOWING:

26 (A) INSOLVENCY.

27 (B) FAILURE TO MEET THE PROVISIONS OF SECTION 4709 OR 4713(4).

1 (C) THE SPFC IS NO LONGER SAFE, RELIABLE, OR ENTITLED TO
2 PUBLIC CONFIDENCE OR IS UNSOUND, OR THE SPFC IS USING FINANCIAL
3 METHODS AND PRACTICES IN THE CONDUCT OF ITS BUSINESS THAT RENDER
4 FURTHER TRANSACTION OF INSURANCE BY THE SPFC IN THIS STATE
5 HAZARDOUS TO THE PUBLIC, THE HOLDERS OF THE SECURITIES, OR
6 COUNTERPARTIES IN THE SPFC.

7 (D) FAILURE TO RESPOND WITHIN 30 DAYS TO AN INQUIRY FROM THE
8 COMMISSIONER UNDER SECTION 4731(3).

9 (E) FAILURE TO SUBMIT TO EXAMINATION OR ANY LEGAL OBLIGATION
10 RELATIVE TO AN EXAMINATION UNDER SECTION 4703.

11 (F) REFUSAL OR FAILURE TO PAY THE COSTS OF EXAMINATION UNDER
12 SECTION 4733.

13 (G) FOR A CAPTIVE INSURER FORMED AS A LIMITED LIABILITY
14 COMPANY, THE CAPTIVE INSURER IS NO LONGER IN GOOD STANDING UNDER
15 THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL
16 450.4101 TO 450.5200.

17 (H) THE SPFC HAS FAILED, AFTER WRITTEN REQUEST BY THE
18 COMMISSIONER, TO REMOVE OR DISCHARGE AN OFFICER OR DIRECTOR WHOSE
19 RECORD OF BUSINESS CONDUCT DOES NOT SATISFY THE REQUIREMENTS OF
20 SECTION 4603 OR WHO HAS BEEN CONVICTED OF ANY CRIME INVOLVING
21 FRAUD, DISHONESTY, OR LIKE MORAL TURPITUDE.

22 (I) THE CAPTIVE INSURANCE COMPANY HAS FAILED FOR AN
23 UNREASONABLE PERIOD TO PAY ANY FINAL JUDGMENT RENDERED AGAINST IT
24 IN THIS STATE ON ANY POLICY, BOND, RECOGNIZANCE, OR UNDERTAKING
25 ISSUED OR GUARANTEED BY IT.

26 (J) FAILURE TO OTHERWISE COMPLY IN ANY MATERIAL RESPECT WITH
27 APPLICABLE LAWS OF THIS STATE.

1 (3) IF THE COMMISSIONER FINDS, UPON EXAMINATION OR OTHER
2 EVIDENCE, THAT AN SPFC HAS COMMITTED ANY OF THE ACTS SPECIFIED IN
3 SUBSECTION (2) (B), (C), OR (D), THE COMMISSIONER MAY IMPOSE THE
4 PENALTIES PROVIDED IN SECTION 150 IF THE COMMISSIONER CONSIDERS IT
5 IN THE BEST INTEREST OF THE PUBLIC, THE HOLDERS OF THE SECURITIES,
6 AND THE POLICYHOLDERS OF THE SPFC.

7 (4) UNLESS THE GROUNDS FOR SUSPENSION OR REVOCATION RELATE
8 ONLY TO THE FINANCIAL CONDITION OR SOUNDNESS OF THE SPFC OR TO A
9 DEFICIENCY IN ITS ASSETS, THE COMMISSIONER SHALL NOTIFY THE SPFC
10 NOT LESS THAN 30 DAYS BEFORE REVOKING ITS AUTHORITY TO DO BUSINESS
11 IN THIS STATE AND SHALL SPECIFY IN THE NOTICE THE PARTICULARS OF
12 THE ALLEGED VIOLATION OF THE LAW OR ITS ORGANIZATIONAL DOCUMENTS OR
13 GROUNDS FOR REVOCATION AND THE SPFC SHALL BE OFFERED THE
14 OPPORTUNITY TO BE HEARD PURSUANT TO SECTION 437.

15 SEC. 4741. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
16 THE TERMS AND CONDITIONS UNDER CHAPTER 81 PERTAINING TO
17 ADMINISTRATIVE SUPERVISION, CONSERVATION, REHABILITATION,
18 RECEIVERSHIP, AND LIQUIDATION OF INSURERS APPLY IN FULL TO SPFCs OR
19 EACH OF THE SPFC'S PROTECTED CELLS, INDIVIDUALLY OR IN COMBINATION,
20 WITHOUT CAUSING OR OTHERWISE EFFECTING AN ADMINISTRATIVE
21 SUPERVISION, CONSERVATION, REHABILITATION, RECEIVERSHIP, OR
22 LIQUIDATION OF THE SPFC OR ANOTHER PROTECTED CELL.

23 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT AND
24 WITHOUT CAUSING OR OTHERWISE AFFECTING THE CONSERVATION OR
25 REHABILITATION OF AN OTHERWISE SOLVENT PROTECTED CELL OF AN SPFC
26 AND SUBJECT TO SUBSECTION (7) (E), THE COMMISSIONER MAY PETITION THE
27 CIRCUIT COURT FOR AN ORDER AUTHORIZING THE COMMISSIONER TO

1 CONSERVE, REHABILITATE, OR LIQUIDATE AN SPFC DOMICILED IN THIS
2 STATE ON 1 OR MORE OF THE FOLLOWING GROUNDS:

3 (A) THERE HAS BEEN EMBEZZLEMENT, WRONGFUL SEQUESTRATION,
4 DISSIPATION, OR DIVERSION OF THE ASSETS OF THE SPFC INTENDED TO BE
5 USED TO PAY AMOUNTS OWED TO THE COUNTERPARTY OR THE HOLDERS OF SPFC
6 SECURITIES.

7 (B) THE SPFC IS INSOLVENT AND THE HOLDERS OF A MAJORITY IN
8 OUTSTANDING PRINCIPAL AMOUNT OF EACH CLASS OF SPFC SECURITIES
9 REQUEST OR CONSENT TO CONSERVATION, REHABILITATION, OR LIQUIDATION
10 PURSUANT TO THIS CHAPTER.

11 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
12 COMMISSIONER MAY PETITION THE CIRCUIT COURT FOR AN ORDER
13 AUTHORIZING THE COMMISSIONER TO CONSERVE, REHABILITATE, OR
14 LIQUIDATE 1 OR MORE OF AN SPFC'S PROTECTED CELLS, INDEPENDENTLY,
15 WITHOUT CAUSING OR OTHERWISE EFFECTING A CONSERVATION,
16 REHABILITATION, RECEIVERSHIP, OR LIQUIDATION OF THE SPFC GENERALLY
17 OR ANOTHER OF ITS PROTECTED CELLS, ON 1 OR MORE OF THE FOLLOWING
18 GROUNDS:

19 (A) THERE HAS BEEN EMBEZZLEMENT, WRONGFUL SEQUESTRATION,
20 DISSIPATION, OR DIVERSION OF THE ASSETS OF THE SPFC ATTRIBUTABLE TO
21 THE AFFECTED PROTECTED CELL OR CELLS INTENDED TO BE USED TO PAY
22 AMOUNTS OWED TO THE COUNTERPARTY OR THE HOLDERS OF SPFC SECURITIES
23 OF THE AFFECTED CELL OR CELLS.

24 (B) THE AFFECTED PROTECTED CELL IS INSOLVENT AND THE HOLDERS
25 OF A MAJORITY IN OUTSTANDING PRINCIPAL AMOUNT OF EACH CLASS OF SPFC
26 SECURITIES ATTRIBUTABLE TO THAT PARTICULAR PROTECTED CELL REQUEST
27 OR CONSENT TO CONSERVATION, REHABILITATION, OR LIQUIDATION PURSUANT

1 TO THIS CHAPTER.

2 (4) THE COURT MAY NOT GRANT RELIEF PROVIDED BY SUBSECTION
3 (2) (A) OR SUBSECTION (3) (A) UNLESS, AFTER NOTICE AND A HEARING, THE
4 COMMISSIONER, WHO SHALL HAVE THE BURDEN OF PROOF, ESTABLISHES BY
5 THE APPLICABLE RULES OF EVIDENCE THAT RELIEF MUST BE GRANTED. THE
6 COURT'S ORDER MAY BE MADE IN RESPECT OF 1 OR MORE PROTECTED CELLS
7 BY NAME, RATHER THAN THE SPFC GENERALLY.

8 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, RULES
9 PROMULGATED OR REGULATIONS ENTERED UNDER THIS ACT, OR OTHER
10 APPLICABLE LAW, RULE, OR REGULATION, A RECEIVER APPOINTED PURSUANT
11 TO ANY ORDER OR CONSERVATION, REHABILITATION, OR LIQUIDATION SHALL
12 DO ALL OF THE FOLLOWING:

13 (A) FOR AN SPFC SUBJECT TO AN ORDER OF CONSERVATION,
14 REHABILITATION, OR LIQUIDATION, MANAGE THE ASSETS AND LIABILITIES
15 OF THE SPFC PURSUANT TO THIS CHAPTER.

16 (B) FOR A PROTECTED CELL OR CELLS SUBJECT TO AN ORDER OF
17 CONSERVATION, REHABILITATION, OR LIQUIDATION, MANAGE THE ASSETS AND
18 LIABILITIES OF THE PROTECTED CELL OR CELLS PURSUANT TO THIS CHAPTER
19 AND THE SPFC CONTRACT.

20 (C) ENSURE THAT THE ASSETS OF 1 PROTECTED CELL ARE NOT
21 UTILIZED TO SATISFY THE LIABILITIES OF ANOTHER PROTECTED CELL OR OF
22 THE SPFC GENERALLY.

23 (6) WITH RESPECT TO AMOUNTS RECOVERABLE UNDER AN SPFC
24 CONTRACT, THE AMOUNT RECOVERABLE BY THE RECEIVER, INCLUDING ALL
25 EXPENSES OF TAKING POSSESSION OF THE SPFC OR 1 OR MORE OF THE
26 SPFC'S PROTECTED CELLS, SHALL NOT BE REDUCED OR DIMINISHED AS A
27 RESULT OF THE ENTRY OF AN ORDER OF CONSERVATION, REHABILITATION, OR

1 LIQUIDATION WITH RESPECT TO THE COUNTERPARTY, NOTWITHSTANDING ANY
2 OTHER PROVISION IN THE CONTRACTS OR OTHER DOCUMENTATION GOVERNING
3 THE SPFC INSURANCE SECURITIZATION.

4 (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR OTHER
5 LAWS OF THIS STATE:

6 (A) AN APPLICATION OR PETITION, OR A TEMPORARY RESTRAINING
7 ORDER OR INJUNCTION ISSUED PURSUANT TO THIS ACT, WITH RESPECT TO A
8 COUNTERPARTY DOES NOT PROHIBIT THE TRANSACTION OF A BUSINESS BY AN
9 SPFC, INCLUDING ANY PAYMENT BY AN SPFC MADE PURSUANT TO AN SPFC
10 SECURITY, OR ANY ACTION OR PROCEEDING AGAINST AN SPFC OR ITS
11 ASSETS.

12 (B) THE COMMENCEMENT OF A SUMMARY PROCEEDING OR OTHER INTERIM
13 PROCEEDING COMMENCED BEFORE A FORMAL DELINQUENCY PROCEEDING WITH
14 RESPECT TO AN SPFC, AND ANY ORDER ISSUED BY THE COURT DOES NOT
15 PROHIBIT THE PAYMENT BY AN SPFC MADE PURSUANT TO AN SPFC SECURITY
16 OR SPFC CONTRACT OR THE SPFC FROM TAKING ANY ACTION REQUIRED TO
17 MAKE THE PAYMENT.

18 (C) A RECEIVER OF A COUNTERPARTY SHALL NOT VOID A
19 NONFRAUDULENT TRANSFER BY A COUNTERPARTY TO AN SPFC OF MONEY OR
20 OTHER PROPERTY MADE PURSUANT TO AN SPFC CONTRACT.

21 (D) A RECEIVER OF AN SPFC SHALL NOT VOID A NONFRAUDULENT
22 TRANSFER BY THE SPFC OF MONEY OR OTHER PROPERTY MADE TO A
23 COUNTERPARTY PURSUANT TO AN SPFC CONTRACT OR MADE TO OR FOR THE
24 BENEFIT OF ANY HOLDER OF AN SPFC SECURITY ON ACCOUNT OF THE SPFC
25 SECURITY.

26 (E) THE COMMISSIONER SHALL NOT SEEK TO HAVE AN SPFC WITH
27 PROTECTED CELLS DECLARED INSOLVENT AS LONG AS AT LEAST 1 OF THE

1 SPFC'S PROTECTED CELLS REMAINS SOLVENT, AND IN THE CASE OF SUCH AN
2 INSOLVENCY, THE RECEIVER SHALL HANDLE SPFC'S ASSETS IN COMPLIANCE
3 WITH SUBSECTION (5) AND OTHER LAWS OF THIS STATE.

4 (8) SUBSECTION (7) DOES NOT PROHIBIT THE COMMISSIONER FROM
5 TAKING ANY ACTION PERMITTED UNDER CHAPTER 81 WITH RESPECT ONLY TO
6 THE CONSERVATION OR REHABILITATION OF AN SPFC WITH PROTECTED CELL
7 OR CELLS, PROVIDED THE COMMISSIONER WOULD HAVE HAD SUFFICIENT
8 GROUNDS TO SEEK TO DECLARE THE SPFC INSOLVENT, SUBJECT TO AND
9 WITHOUT OTHERWISE AFFECTING SUBSECTION (7)(E). IN THIS CASE, WITH
10 RESPECT TO THE SOLVENT PROTECTED CELL OR CELLS, THE COMMISSIONER
11 SHALL NOT PROHIBIT PAYMENTS MADE BY THE SPFC PURSUANT TO AN SPFC
12 SECURITY, AN SPFC CONTRACT, OR OTHERWISE MADE UNDER THE INSURANCE
13 SECURITIZATION TRANSACTION THAT ARE ATTRIBUTABLE TO THESE PROTECTED
14 CELL OR CELLS OR PROHIBIT THE SPFC FROM TAKING ANY ACTION REQUIRED
15 TO MAKE THESE PAYMENTS.

16 (9) WITH THE EXCEPTION OF THE FULFILLMENT OF THE OBLIGATIONS
17 UNDER AN SPFC CONTRACT, AND NOTWITHSTANDING ANY OTHER PROVISION OF
18 THIS CHAPTER OR OTHER LAWS OF THIS STATE, THE ASSETS OF AN SPFC,
19 INCLUDING ASSETS HELD IN TRUST, SHALL NOT BE CONSOLIDATED WITH OR
20 INCLUDED IN THE ESTATE OF A COUNTERPARTY IN ANY DELINQUENCY
21 PROCEEDING AGAINST THE COUNTERPARTY PURSUANT TO THIS CHAPTER FOR
22 ANY PURPOSE INCLUDING, WITHOUT LIMITATION, DISTRIBUTION TO
23 CREDITORS OF THE COUNTERPARTY.

24 SEC. 4745. (1) A CONTESTED CASE BROUGHT BY A THIRD PARTY BASED
25 ON A DECISION OF THE COMMISSIONER PURSUANT TO THIS CHAPTER IS
26 GOVERNED BY APPLICABLE LAW OF THIS STATE EXCEPT THAT THE THIRD
27 PARTY SHALL DO ALL OF THE FOLLOWING:

1 (A) PROVE ITS CASE IN ACCORDANCE WITH THE APPLICABLE RULES OF
2 EVIDENCE.

3 (B) DEMONSTRATE IRREPARABLE HARM TO THE SPFC OR ITS
4 COUNTERPARTY, OR BOTH.

5 (C) SHOW THAT THERE IS NO OTHER ADEQUATE REMEDY AT LAW.

6 (D) POST A BOND OF SUFFICIENT SURETY TO PROTECT THE INTERESTS
7 OF THE HOLDERS OF THE SPFC SECURITIES AND POLICYHOLDERS SO LONG AS
8 IT IS NOT LESS THAN 15% OF THE TOTAL AMOUNT OF THE SECURITIZED
9 TRANSACTION.

10 (2) THE COMMISSIONER MAY SUSPEND, REVOKE, OR MODIFY A LIMITED
11 CERTIFICATE OF AUTHORITY ISSUED TO AN SPFC OR AN ORDER MADE IN
12 CONNECTION WITH A LIMITED CERTIFICATE OF AUTHORITY ISSUED TO AN
13 SPFC IN COMPLIANCE WITH THE STANDARDS AND CRITERIA PROVIDED IN
14 SUBSECTION (1) OR IN CONFORMANCE WITH SECTION 4735(2).

15 SEC. 4747. (1) THE COMMISSIONER MAY ISSUE REGULATIONS
16 NECESSARY TO EFFECTUATE THE PURPOSES OF THIS CHAPTER. REGULATIONS
17 ISSUED PURSUANT TO THIS SECTION DO NOT AFFECT AN SPFC INSURANCE
18 SECURITIZATION IN EFFECT AT THE TIME OF THE ISSUANCE OF THE
19 REGULATION.

20 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
21 COMMISSIONER MAY EMPLOY LEGAL COUNSEL AS HE OR SHE CONSIDERS
22 NECESSARY TO ASSIST IN HIS OR HER RESPONSIBILITIES UNDER THIS
23 CHAPTER.

24 CHAPTER 48

25 PROTECTED CELL INSURANCE COMPANIES

26 SEC. 4801. AS USED IN THIS CHAPTER:

27 (A) "DOMESTIC INSURER" MEANS AN INSURER DOMICILED IN THIS

1 STATE.

2 (B) "FAIR VALUE" MEANS THE FOLLOWING:

3 (i) FOR CASH, THE AMOUNT OF THE CASH.

4 (ii) FOR ASSETS OTHER THAN CASH, THE AMOUNT AT WHICH THAT ASSET
5 COULD BE BOUGHT OR SOLD IN THE CURRENT TRANSACTION BETWEEN ARM'S
6 LENGTH, WILLING PARTIES. IF AVAILABLE, THE QUOTED MID-MARKET PRICE
7 FOR THE ASSET IN ACTIVE MARKETS SHALL BE USED; AND IF QUOTED MID-
8 MARKET PRICES ARE NOT AVAILABLE, A VALUE SHALL BE DETERMINED USING
9 THE BEST INFORMATION AVAILABLE CONSIDERING VALUES OF SIMILAR ASSETS
10 AND OTHER VALUATION METHODS, SUCH AS PRESENT VALUE OF FUTURE CASH
11 FLOWS, HISTORICAL VALUE OF THE SAME AND SIMILAR ASSETS, OR
12 COMPARISON TO VALUES OF OTHER ASSET CLASSES, THE VALUE OF WHICH
13 HAVE BEEN HISTORICALLY RELATED TO THE SUBJECT ASSET.

14 (C) "FULLY FUNDED" MEANS THAT, WITH RESPECT TO ANY EXPOSURE
15 ATTRIBUTED TO A PROTECTED CELL, THE FAIR VALUE OF THE PROTECTED
16 CELL ASSETS, ON THE DATE ON WHICH THE INSURANCE SECURITIZATION IS
17 EFFECTED, EQUALS OR EXCEEDS THE MAXIMUM POSSIBLE EXPOSURE
18 ATTRIBUTABLE TO THE PROTECTED CELL WITH RESPECT TO SUCH EXPOSURES.

19 (D) "GENERAL ACCOUNT" MEANS THE ASSETS AND LIABILITIES OF A
20 PROTECTED CELL COMPANY OTHER THAN PROTECTED CELL ASSETS AND
21 PROTECTED CELL LIABILITIES.

22 (E) "INDEMNITY TRIGGER" MEANS A TRANSACTION TERM BY WHICH
23 RELIEF OF THE ISSUER'S OBLIGATION TO REPAY INVESTORS IS TRIGGERED
24 BY ITS INCURRING A SPECIFIED LEVEL OF LOSSES UNDER ITS INSURANCE OR
25 REINSURANCE CONTRACTS.

26 (F) "NONINDEMNITY TRIGGER" MEANS A TRANSACTION TERM BY WHICH
27 RELIEF OF THE ISSUER'S OBLIGATION TO REPAY INVESTORS IS TRIGGERED

1 SOLELY BY SOME EVENT OR CONDITION OTHER THAN THE INDIVIDUAL
2 PROTECTED CELL COMPANY INCURRING A SPECIFIED LEVEL OF LOSSES UNDER
3 ITS INSURANCE OR REINSURANCE CONTRACTS.

4 (G) "PROTECTED CELL" MEANS AN IDENTIFIED POOL OF ASSETS AND
5 LIABILITIES OF A PROTECTED CELL COMPANY SEGREGATED AND INSULATED BY
6 MEANS OF THIS CHAPTER FROM THE REMAINDER OF THE PROTECTED CELL
7 COMPANY'S ASSETS AND LIABILITIES.

8 (H) "PROTECTED CELL ACCOUNT" MEANS A SPECIFICALLY IDENTIFIED
9 BANK OR CUSTODIAL ACCOUNT ESTABLISHED BY A PROTECTED CELL COMPANY
10 FOR THE PURPOSE OF SEGREGATING THE PROTECTED CELL ASSETS OF 1
11 PROTECTED CELL FROM THE PROTECTED CELL ASSETS OF OTHER PROTECTED
12 CELLS AND FROM THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL
13 ACCOUNT.

14 (I) "PROTECTED CELL ASSETS" MEANS ALL ASSETS, CONTRACT RIGHTS,
15 AND GENERAL INTANGIBLES, IDENTIFIED WITH AND ATTRIBUTABLE TO A
16 SPECIFIC PROTECTED CELL OF A PROTECTED CELL COMPANY.

17 (J) "PROTECTED CELL COMPANY" MEANS A DOMESTIC INSURER OR
18 CAPTIVE INSURER THAT HAS 1 OR MORE PROTECTED CELLS.

19 (K) "PROTECTED CELL COMPANY INSURANCE SECURITIZATION" MEANS
20 THE ISSUANCE OF DEBT INSTRUMENTS, THE PROCEEDS FROM WHICH SUPPORT
21 THE EXPOSURES ATTRIBUTED TO THE PROTECTED CELL, BY A PROTECTED CELL
22 COMPANY WHERE REPAYMENT OF PRINCIPAL OR INTEREST, OR BOTH, TO
23 INVESTORS PURSUANT TO THE TRANSACTION TERMS IS CONTINGENT UPON THE
24 OCCURRENCE OR NONOCCURRENCE OF AN EVENT WITH RESPECT TO WHICH THE
25 PROTECTED CELL COMPANY IS EXPOSED TO LOSS UNDER INSURANCE OR
26 REINSURANCE CONTRACTS IT HAS ISSUED.

27 (L) "PROTECTED CELL LIABILITIES" MEANS ALL LIABILITIES AND

1 OTHER OBLIGATIONS IDENTIFIED WITH AND ATTRIBUTABLE TO A SPECIFIC
2 PROTECTED CELL OF A PROTECTED CELL COMPANY.

3 SEC. 4803. (1) A PROTECTED CELL COMPANY MAY ESTABLISH 1 OR
4 MORE PROTECTED CELLS WITH THE PRIOR WRITTEN APPROVAL OF THE
5 COMMISSIONER OF A PLAN OF OPERATION OR AMENDMENTS SUBMITTED BY THE
6 PROTECTED CELL COMPANY WITH RESPECT TO EACH PROTECTED CELL IN
7 CONNECTION WITH AN INSURANCE SECURITIZATION. UPON THE WRITTEN
8 APPROVAL OF THE COMMISSIONER OF THE PLAN OF OPERATION, WHICH SHALL
9 INCLUDE, BUT IS NOT LIMITED TO, THE SPECIFIC BUSINESS OBJECTIVES
10 AND INVESTMENT GUIDELINES OF THE PROTECTED CELL, THE PROTECTED CELL
11 COMPANY, IN ACCORDANCE WITH THE APPROVED PLAN OF OPERATION, MAY
12 ATTRIBUTE TO THE PROTECTED CELL INSURANCE OBLIGATIONS FOR ITS
13 INSURANCE BUSINESS AND OBLIGATIONS RELATING TO THE INSURANCE
14 SECURITIZATION AND ASSETS TO FUND THE OBLIGATIONS. A PROTECTED CELL
15 SHALL HAVE ITS OWN DISTINCT NAME OR DESIGNATION, WHICH SHALL
16 INCLUDE THE WORDS "PROTECTED CELL". THE PROTECTED CELL COMPANY
17 SHALL TRANSFER ALL ASSETS ATTRIBUTABLE TO A PROTECTED CELL TO 1 OR
18 MORE SEPARATELY ESTABLISHED AND IDENTIFIED PROTECTED CELL ACCOUNTS
19 BEARING THE NAME OR DESIGNATION OF THAT PROTECTED CELL. PROTECTED
20 CELL ASSETS SHALL BE HELD IN THE PROTECTED CELL ACCOUNTS FOR THE
21 PURPOSE OF SATISFYING THE OBLIGATIONS OF THAT PROTECTED CELL.

22 (2) ALL ATTRIBUTIONS OF ASSETS AND LIABILITIES BETWEEN A
23 PROTECTED CELL AND THE GENERAL ACCOUNT SHALL BE IN ACCORDANCE WITH
24 THE PLAN OF OPERATION APPROVED BY THE COMMISSIONER. NO OTHER
25 ATTRIBUTION OF ASSETS OR LIABILITIES SHALL BE MADE BY A PROTECTED
26 CELL COMPANY BETWEEN THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT
27 AND ITS PROTECTED CELLS. ANY ATTRIBUTION OF ASSETS AND LIABILITIES

1 BETWEEN THE GENERAL ACCOUNT AND A PROTECTED CELL, OR FROM INVESTORS
2 IN THE FORM OF PRINCIPAL ON A DEBT INSTRUMENT ISSUED BY A PROTECTED
3 CELL COMPANY IN CONNECTION WITH A PROTECTED CELL COMPANY
4 SECURITIZATION, SHALL BE IN CASH OR IN READILY MARKETABLE
5 SECURITIES WITH ESTABLISHED FAIR VALUES.

6 (3) THE CREATION OF A PROTECTED CELL DOES NOT CREATE, WITH
7 RESPECT TO THAT PROTECTED CELL, A LEGAL PERSON SEPARATE FROM THE
8 PROTECTED CELL COMPANY. AMOUNTS ATTRIBUTED TO A PROTECTED CELL
9 UNDER THIS CHAPTER, INCLUDING ASSETS TRANSFERRED TO A PROTECTED
10 CELL ACCOUNT, ARE OWNED BY THE PROTECTED CELL COMPANY, AND THE
11 PROTECTED CELL COMPANY SHALL NOT BE, AND SHALL NOT HOLD ITSELF OUT
12 TO BE, A TRUSTEE WITH RESPECT TO THOSE PROTECTED CELL ASSETS OF
13 THAT PROTECTED CELL ACCOUNT. NOTWITHSTANDING THIS SUBSECTION, THE
14 PROTECTED CELL COMPANY MAY ALLOW FOR A SECURITY INTEREST TO ATTACH
15 TO PROTECTED CELL ASSETS OR A PROTECTED CELL ACCOUNT IF IN FAVOR OF
16 A CREDITOR OF THE PROTECTED CELL AND AS OTHERWISE ALLOWED UNDER
17 APPLICABLE LAW.

18 (4) THIS CHAPTER SHALL NOT BE CONSTRUED TO PROHIBIT THE
19 PROTECTED CELL COMPANY FROM CONTRACTING WITH OR ARRANGING FOR AN
20 INVESTMENT ADVISOR, COMMODITY TRADING ADVISOR, OR OTHER THIRD PARTY
21 TO MANAGE THE PROTECTED CELL ASSETS OF A PROTECTED CELL, IF ALL
22 REMUNERATION, EXPENSES, AND OTHER COMPENSATION OF THE THIRD PARTY
23 ADVISOR OR MANAGER ARE PAYABLE FROM THE PROTECTED CELL ASSETS OF
24 THAT PROTECTED CELL AND NOT FROM THE PROTECTED CELL ASSETS OF OTHER
25 PROTECTED CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S
26 GENERAL ACCOUNT.

27 (5) A PROTECTED CELL COMPANY SHALL ESTABLISH ADMINISTRATIVE

1 AND ACCOUNTING PROCEDURES NECESSARY TO PROPERLY IDENTIFY THE 1 OR
2 MORE PROTECTED CELLS OF THE PROTECTED CELL COMPANY AND THE
3 PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES ATTRIBUTABLE
4 TO THE PROTECTED CELLS. THE DIRECTORS OF A PROTECTED CELL COMPANY
5 SHALL KEEP PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES
6 SEPARATE AND SEPARATELY IDENTIFIABLE FROM THE ASSETS AND
7 LIABILITIES OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT AND
8 ATTRIBUTABLE TO 1 PROTECTED CELL SEPARATE AND SEPARATELY
9 IDENTIFIABLE FROM PROTECTED CELL ASSETS AND PROTECTED CELL
10 LIABILITIES ATTRIBUTABLE TO OTHER PROTECTED CELLS. IF THIS
11 SUBSECTION IS VIOLATED, THE REMEDY OF TRACING IS APPLICABLE TO
12 PROTECTED CELL ASSETS WHEN COMMINGLED WITH PROTECTED CELL ASSETS OF
13 OTHER PROTECTED CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S
14 GENERAL ACCOUNT. THE REMEDY OF TRACING IS NOT AN EXCLUSIVE REMEDY.

15 (6) WHEN ESTABLISHING A PROTECTED CELL, THE PROTECTED CELL
16 COMPANY SHALL ATTRIBUTE TO THE PROTECTED CELL ASSETS WITH A VALUE
17 AT LEAST EQUAL TO THE RESERVES AND OTHER INSURANCE LIABILITIES
18 ATTRIBUTED TO THAT PROTECTED CELL.

19 SEC. 4805. (1) THE PROTECTED CELL ASSETS OF A PROTECTED CELL
20 SHALL NOT BE CHARGED WITH LIABILITIES ARISING OUT OF ANY OTHER
21 BUSINESS THE PROTECTED CELL COMPANY MAY CONDUCT. ALL CONTRACTS OR
22 OTHER DOCUMENTATION REFLECTING PROTECTED CELL LIABILITIES SHALL
23 CLEARLY INDICATE THAT ONLY THE PROTECTED CELL ASSETS ARE AVAILABLE
24 FOR THE SATISFACTION OF THOSE PROTECTED CELL LIABILITIES.

25 (2) THE INCOME, AND GAINS AND LOSSES, WHETHER REALIZED OR
26 UNREALIZED, FROM PROTECTED CELL ASSETS AND PROTECTED CELL
27 LIABILITIES SHALL BE CREDITED TO OR CHARGED AGAINST THE PROTECTED

1 CELL WITHOUT REGARD TO OTHER INCOME AND GAINS OR LOSSES OF THE
2 PROTECTED CELL COMPANY, INCLUDING INCOME AND GAINS OR LOSSES OF
3 OTHER PROTECTED CELLS. AMOUNTS ATTRIBUTED TO ANY PROTECTED CELL AND
4 ACCUMULATIONS ON THE ATTRIBUTED AMOUNTS MAY BE INVESTED AND
5 REINVESTED. THE INVESTMENTS IN A PROTECTED CELL OR CELLS SHALL NOT
6 BE TAKEN INTO ACCOUNT IN APPLYING THE INVESTMENT LIMITATIONS
7 OTHERWISE APPLICABLE TO THE INVESTMENTS OF THE PROTECTED CELL
8 COMPANY.

9 (3) ASSETS ATTRIBUTED TO A PROTECTED CELL SHALL BE VALUED AT
10 THEIR FAIR VALUE ON THE DATE OF VALUATION OR IF THERE IS NO READILY
11 AVAILABLE MARKET, AS PROVIDED IN THE CONTRACT OR THE RULES OR OTHER
12 WRITTEN DOCUMENTATION APPLICABLE TO THE PROTECTED CELL.

13 (4) A PROTECTED CELL COMPANY WITH RESPECT TO ANY OF ITS
14 PROTECTED CELLS SHALL ENGAGE IN FULLY FUNDED INDEMNITY TRIGGERED
15 INSURANCE SECURITIZATION TO SUPPORT IN FULL THE PROTECTED CELL
16 EXPOSURES ATTRIBUTABLE TO THAT PROTECTED CELL. A PROTECTED CELL
17 COMPANY INSURANCE SECURITIZATION THAT IS NONINDEMNITY TRIGGERED
18 SHALL QUALIFY AS AN INSURANCE SECURITIZATION UNDER THE TERMS OF
19 THIS CHAPTER ONLY AFTER THE COMMISSIONER BY RULE, REGULATION, OR
20 ORDER ADDRESSES THE METHODS OF FUNDING OF THE PORTION OF THIS RISK
21 THAT IS NOT INDEMNITY BASED AND ADDRESSING ACCOUNTING, DISCLOSURE,
22 RISK BASED CAPITAL TREATMENT, AND RISKS ASSOCIATED WITH SUCH
23 SECURITIZATIONS. A PROTECTED CELL COMPANY INSURANCE SECURITIZATION
24 THAT IS NOT FULLY FUNDED, WHETHER INDEMNITY TRIGGERED OR
25 NONINDEMNITY TRIGGERED, IS PROHIBITED. PROTECTED CELL ASSETS MAY BE
26 USED TO PAY INTEREST OR OTHER CONSIDERATION ON ANY OUTSTANDING DEBT
27 OR OTHER OBLIGATION ATTRIBUTABLE TO THAT PROTECTED CELL. NOTHING IN

1 THIS SUBSECTION SHALL BE CONSTRUED OR INTERPRETED TO PREVENT A
2 PROTECTED CELL COMPANY FROM ENTERING INTO A SWAP AGREEMENT OR OTHER
3 TRANSACTION FOR THE ACCOUNT OF THE PROTECTED CELL THAT HAS THE
4 EFFECT OF GUARANTEEING INTEREST OR OTHER CONSIDERATION.

5 (5) IN ALL PROTECTED CELL COMPANY INSURANCE SECURITIZATIONS,
6 THE CONTRACTS OR OTHER DOCUMENTATION EFFECTING THE TRANSACTION
7 SHALL CONTAIN PROVISIONS IDENTIFYING THE PROTECTED CELL TO WHICH
8 THE TRANSACTION WILL BE ATTRIBUTED. IN ADDITION, THE CONTRACTS OR
9 OTHER DOCUMENTATION SHALL CLEARLY DISCLOSE THAT THE ASSETS OF THAT
10 PROTECTED CELL, AND ONLY THOSE ASSETS, ARE AVAILABLE TO PAY THE
11 OBLIGATIONS OF THAT PROTECTED CELL. NOTWITHSTANDING THIS SUBSECTION
12 AND SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND ANY OTHER
13 APPLICABLE LAW, RULE, OR REGULATION, THE FAILURE TO INCLUDE SUCH
14 LANGUAGE IN THE CONTRACTS OR OTHER DOCUMENTATION SHALL NOT BE USED
15 AS THE SOLE BASIS BY CREDITORS, REINSURERS, OR OTHER CLAIMANTS TO
16 CIRCUMVENT THIS CHAPTER.

17 (6) A PROTECTED CELL COMPANY MAY ATTRIBUTE TO A PROTECTED CELL
18 ACCOUNT ONLY THE INSURANCE OBLIGATIONS RELATING TO THE PROTECTED
19 CELL COMPANY'S GENERAL ACCOUNT. UNDER NO CIRCUMSTANCES SHALL A
20 PROTECTED CELL BE AUTHORIZED TO ISSUE INSURANCE OR REINSURANCE
21 CONTRACTS DIRECTLY TO POLICYHOLDERS OR REINSURED OR HAVE ANY
22 OBLIGATION TO THE POLICYHOLDERS OR REINSURED OF THE PROTECTED CELL
23 COMPANY'S GENERAL ACCOUNT.

24 (7) AT THE CESSATION OF BUSINESS OF A PROTECTED CELL IN
25 ACCORDANCE WITH THE PLAN APPROVED BY THE COMMISSIONER, THE
26 PROTECTED CELL COMPANY VOLUNTARILY SHALL CLOSE OUT THE PROTECTED
27 CELL ACCOUNT.

1 SEC. 4807. (1) PROTECTED CELL ASSETS ARE ONLY AVAILABLE TO THE
2 CREDITORS OF THE PROTECTED CELL COMPANY THAT ARE CREDITORS FOR THAT
3 PROTECTED CELL AND ARE ENTITLED, IN CONFORMITY WITH THIS CHAPTER,
4 TO HAVE RECOURSE TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT
5 PROTECTED CELL. PROTECTED CELL ASSETS ARE ABSOLUTELY PROTECTED FROM
6 THE CREDITORS OF THE PROTECTED CELL COMPANY THAT ARE NOT CREDITORS
7 FOR THAT PROTECTED CELL AND WHO, ACCORDINGLY, ARE NOT ENTITLED TO
8 HAVE RECOURSE TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT
9 PROTECTED CELL. CREDITORS FOR A PROTECTED CELL ARE NOT ENTITLED TO
10 HAVE RECOURSE AGAINST THE PROTECTED CELL ASSETS OF OTHER PROTECTED
11 CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL
12 ACCOUNT. PROTECTED CELL ASSETS ARE ONLY AVAILABLE TO CREDITORS OF A
13 PROTECTED CELL COMPANY AFTER ALL PROTECTED CELL LIABILITIES HAVE
14 BEEN EXTINGUISHED OR OTHERWISE PROVIDED FOR IN ACCORDANCE WITH THE
15 PLAN OF OPERATION RELATING TO THAT PROTECTED CELL.

16 (2) WHEN AN OBLIGATION OF A PROTECTED CELL COMPANY TO A PERSON
17 ARISES FROM A TRANSACTION, OR IS OTHERWISE IMPOSED, WITH RESPECT TO
18 A PROTECTED CELL, BOTH OF THE FOLLOWING APPLY:

19 (A) THAT OBLIGATION OF THE PROTECTED CELL COMPANY EXTENDS ONLY
20 TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL,
21 AND THE PERSON, WITH RESPECT TO THAT OBLIGATION, IS ENTITLED TO
22 HAVE RECOURSE ONLY TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO
23 THAT PROTECTED CELL.

24 (B) THAT OBLIGATION OF THE PROTECTED CELL COMPANY DOES NOT
25 EXTEND TO THE PROTECTED CELL ASSETS OF ANY OTHER PROTECTED CELL OR
26 THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT, AND
27 THAT PERSON, WITH RESPECT TO THAT OBLIGATION, IS NOT ENTITLED TO

1 HAVE RECOURSE TO THE PROTECTED CELL ASSETS OF ANY OTHER PROTECTED
2 CELL OR THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT.

3 (3) WHEN AN OBLIGATION OF A PROTECTED CELL COMPANY RELATES
4 SOLELY TO THE GENERAL ACCOUNT, THE OBLIGATION OF THE PROTECTED CELL
5 COMPANY EXTENDS ONLY TO, AND THAT CREDITOR, WITH RESPECT TO THAT
6 OBLIGATION, IS ENTITLED TO HAVE RECOURSE ONLY TO, THE ASSETS OF THE
7 PROTECTED CELL COMPANY'S GENERAL ACCOUNT.

8 (4) THE ACTIVITIES, ASSETS, AND OBLIGATIONS RELATING TO A
9 PROTECTED CELL ARE NOT SUBJECT TO THE PROVISIONS OF CHAPTERS 77 AND
10 79, AND NEITHER A PROTECTED CELL NOR A PROTECTED CELL COMPANY SHALL
11 BE ASSESSED BY, OR OTHERWISE BE REQUIRED TO CONTRIBUTE TO, ANY
12 GUARANTY FUND OR GUARANTY ASSOCIATION IN THIS STATE WITH RESPECT TO
13 THE ACTIVITIES, ASSETS, OR OBLIGATIONS OF A PROTECTED CELL. NOTHING
14 IN THIS SUBSECTION AFFECTS THE ACTIVITIES OR OBLIGATIONS OF AN
15 INSURER'S GENERAL ACCOUNT.

16 (5) THE ESTABLISHMENT OF 1 OR MORE PROTECTED CELLS ALONE DOES
17 NOT CONSTITUTE, AND SHALL NOT BE CONSIDERED TO BE, A FRAUDULENT
18 CONVEYANCE, AN INTENT BY THE PROTECTED CELL COMPANY TO DEFRAUD
19 CREDITORS, OR THE CARRYING OUT OF BUSINESS BY THE PROTECTED CELL
20 COMPANY FOR ANY OTHER FRAUDULENT PURPOSE.

21 SEC. 4809. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
22 RULE, OR REGULATION, UPON AN ORDER OF CONSERVATION, REHABILITATION,
23 OR LIQUIDATION OF A PROTECTED CELL COMPANY, THE RECEIVER SHALL DEAL
24 WITH THE PROTECTED CELL COMPANY'S ASSETS AND LIABILITIES, INCLUDING
25 PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES, IN ACCORDANCE
26 WITH THIS CHAPTER.

27 (2) FOR AMOUNTS RECOVERABLE UNDER A PROTECTED CELL COMPANY

1 INSURANCE SECURITIZATION, THE AMOUNT RECOVERABLE BY THE RECEIVER
2 SHALL NOT BE REDUCED OR DIMINISHED AS A RESULT OF THE ENTRY OF AN
3 ORDER OF CONSERVATION, REHABILITATION, OR LIQUIDATION WITH RESPECT
4 TO THE PROTECTED CELL COMPANY, NOTWITHSTANDING ANY OTHER PROVISION
5 TO THE CONTRARY IN THE CONTRACTS OR OTHER DOCUMENTATION GOVERNING
6 THE PROTECTED CELL COMPANY INSURANCE SECURITIZATION.

7 SEC. 4811. A PROTECTED CELL COMPANY INSURANCE SECURITIZATION
8 IS NOT, AND SHALL NOT BE CONSIDERED TO BE, AN INSURANCE OR
9 REINSURANCE CONTRACT. AN INVESTOR IN A PROTECTED CELL COMPANY
10 INSURANCE SECURITIZATION, BY SOLE MEANS OF THIS INVESTMENT, IS NOT,
11 AND SHALL NOT BE CONSIDERED TO BE, CONDUCTING AN INSURANCE BUSINESS
12 IN THIS STATE. THE UNDERWRITERS OR SELLING AGENTS AND THEIR
13 PARTNERS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES,
14 AGENTS, REPRESENTATIVES, AND ADVISORS INVOLVED IN A PROTECTED CELL
15 COMPANY INSURANCE SECURITIZATION ARE NOT, AND SHALL NOT BE
16 CONSIDERED TO BE, CONDUCTING AN INSURANCE OR REINSURANCE AGENCY,
17 BROKERAGE, INTERMEDIARY, ADVISORY, OR CONSULTING BUSINESS BY VIRTUE
18 OF THEIR ACTIVITIES IN CONNECTION WITH THAT BUSINESS.

19 SEC. 4813. THE COMMISSIONER MAY ISSUE RULES, REGULATIONS, OR
20 ORDERS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS CHAPTER.