

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:

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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

1 STATES OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY, OR
2 POSSESSION OF THE UNITED STATES.

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

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

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

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

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

24 (H) "CAPTIVE INSURANCE COMPANY" MEANS A PURE CAPTIVE INSURANCE
25 COMPANY, ASSOCIATION CAPTIVE INSURANCE COMPANY, SPONSORED CAPTIVE
26 INSURANCE COMPANY, SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY, OR
27 INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY AUTHORIZED UNDER THIS

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

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

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

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

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

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

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

27 (L) "FOREIGN CAPTIVE INSURER" MEANS AN INSURER FORMED UNDER THE

1 LAWS OF THE DISTRICT OF COLUMBIA, OR SOME STATE, COMMONWEALTH,
2 TERRITORY, OR POSSESSION OF THE UNITED STATES OTHER THAN THE STATE
3 OF MICHIGAN.

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

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

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

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

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

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

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

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

25 (ii) IS A GROUP CREATED UNDER THE PRODUCT LIABILITY RISK
26 RETENTION ACT OF 1981, 15 USC 3901 TO 3906, AND CHAPTER 18, AS A
27 CORPORATION OR OTHER LIMITED LIABILITY ASSOCIATION TAXABLE AS A

1 STOCK INSURANCE COMPANY OR A MUTUAL INSURER UNDER THIS CHAPTER.

2 (Q) "IRREVOCABLE LETTER OF CREDIT" MEANS A CLEAN, IRREVOCABLE,
3 UNCONDITIONAL LETTER OF CREDIT, ISSUED OR CONFIRMED BY A QUALIFIED
4 UNITED STATES FINANCIAL INSTITUTION. LETTERS OF CREDIT MEETING
5 APPLICABLE STANDARDS OF ISSUER ACCEPTABILITY AS OF THE DATES OF
6 THEIR ISSUANCE OR CONFIRMATION SHALL, NOTWITHSTANDING THE ISSUING
7 OR CONFIRMING INSTITUTION'S SUBSEQUENT FAILURE TO MEET APPLICABLE
8 STANDARDS OF ISSUER ACCEPTABILITY, CONTINUE TO BE ACCEPTABLE AS
9 SECURITY UNTIL THEIR EXPIRATION, EXTENSION, RENEWAL, MODIFICATION,
10 OR AMENDMENT, WHICHEVER OCCURS FIRST.

11 (R) "MEMBER ORGANIZATION" MEANS ANY INDIVIDUAL, CORPORATION,
12 LIMITED LIABILITY COMPANY, PARTNERSHIP, OR ASSOCIATION THAT BELONGS
13 TO AN ASSOCIATION.

14 (S) "OFFICE" MEANS THE OFFICE OF FINANCIAL AND INSURANCE
15 REGULATION.

16 (T) "ORGANIZATIONAL DOCUMENT" MEANS THE ARTICLES OF
17 INCORPORATION, ARTICLES OF ORGANIZATION, BYLAWS, OPERATING
18 AGREEMENT, OR OTHER FOUNDATIONAL DOCUMENTS THAT CREATE A LEGAL
19 ENTITY OR PRESCRIBE ITS EXISTENCE.

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

24 (V) "PARTICIPANT" MEANS AN ENTITY AS DESCRIBED IN SECTION
25 4667, AND ANY AFFILIATES OF THAT ENTITY, THAT ARE INSURED BY A
26 SPONSORED CAPTIVE INSURANCE COMPANY, WHERE THE RECOVERY OF THE
27 PARTICIPANT IS LIMITED THROUGH A PARTICIPANT CONTRACT TO THE ASSETS

1 OF A PROTECTED CELL.

2 (W) "PARTICIPANT CONTRACT" MEANS A CONTRACT BY WHICH A
3 SPONSORED CAPTIVE INSURANCE COMPANY INSURES THE RISKS OF A
4 PARTICIPANT AND LIMITS THE RECOVERY OF THE PARTICIPANT TO THE
5 ASSETS OF A PROTECTED CELL.

6 (X) "PROTECTED CELL" MEANS A SEGREGATED ACCOUNT ESTABLISHED
7 AND MAINTAINED BY A SPONSORED CAPTIVE INSURANCE COMPANY FOR 1
8 PARTICIPANT.

9 (Y) "PURE CAPTIVE INSURANCE COMPANY" MEANS A COMPANY THAT
10 INSURES RISKS OF ITS PARENT, AFFILIATED COMPANIES, CONTROLLED
11 UNAFFILIATED BUSINESS, OR A COMBINATION OF ITS PARENT, AFFILIATED
12 COMPANIES, AND CONTROLLED UNAFFILIATED BUSINESS.

13 (Z) "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS AN
14 INSTITUTION THAT MEETS 1 OF THE FOLLOWING:

15 (i) IS ORGANIZED, OR FOR A UNITED STATES OFFICE OF A FOREIGN
16 BANKING ORGANIZATION, IS LICENSED, UNDER FEDERAL OR STATE LAW, IS
17 REGULATED, SUPERVISED, AND EXAMINED BY FEDERAL OR STATE AUTHORITIES
18 HAVING REGULATORY AUTHORITY OVER BANKS AND TRUST COMPANIES, AND HAS
19 BEEN DETERMINED BY THE COMMISSIONER TO MEET SUCH STANDARDS OF
20 FINANCIAL CONDITION AND STANDING AS ARE CONSIDERED NECESSARY AND
21 APPROPRIATE TO REGULATE THE QUALITY OF FINANCIAL INSTITUTIONS WHOSE
22 LETTERS OF CREDIT WILL BE ACCEPTABLE TO THE COMMISSIONER.

23 (ii) FOR THOSE INSTITUTIONS THAT ARE ELIGIBLE TO ACT AS A
24 FIDUCIARY OF A TRUST, IS ORGANIZED, OR FOR A UNITED STATES BRANCH
25 OR AGENCY OFFICE OF A FOREIGN BANKING ORGANIZATION, IS LICENSED,
26 UNDER FEDERAL OR STATE LAW, HAS BEEN GRANTED AUTHORITY TO OPERATE
27 WITH FIDUCIARY POWERS, AND IS REGULATED, SUPERVISED, AND EXAMINED

1 BY FEDERAL OR STATE AUTHORITIES HAVING REGULATORY AUTHORITY OVER
2 BANKS AND TRUST COMPANIES.

3 (AA) "SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY" MEANS A
4 CAPTIVE INSURANCE COMPANY THAT IS AUTHORIZED UNDER THIS CHAPTER AND
5 CHAPTER 47 THAT DOES NOT MEET THE DEFINITION OF ANY OTHER TYPE OF
6 CAPTIVE INSURANCE COMPANY DEFINED IN THIS SECTION.

7 (BB) "SPONSOR" MEANS AN ENTITY THAT MEETS THE REQUIREMENTS OF
8 SECTION 4665 AND IS APPROVED BY THE COMMISSIONER TO PROVIDE ALL OR
9 PART OF THE CAPITAL AND RETAINED EARNINGS REQUIRED BY APPLICABLE
10 LAW AND TO ORGANIZE AND OPERATE A SPONSORED CAPTIVE INSURANCE
11 COMPANY.

12 (CC) "SPONSORED CAPTIVE INSURANCE COMPANY" MEANS A CAPTIVE
13 INSURANCE COMPANY IN WHICH THE MINIMUM CAPITAL AND RETAINED
14 EARNINGS REQUIRED BY APPLICABLE LAW IS PROVIDED BY 1 OR MORE
15 SPONSORS, IS AUTHORIZED UNDER THIS CHAPTER, INSURES THE RISKS OF
16 SEPARATE PARTICIPANTS THROUGH THE PARTICIPANT CONTRACT, AND
17 SEGREGATES EACH PARTICIPANT'S LIABILITY THROUGH 1 OR MORE PROTECTED
18 CELLS.

19 (DD) "SURPLUS" MEANS UNASSIGNED FUNDS FOR AN ENTITY USING
20 STATUTORY ACCOUNTING PRINCIPLES, WITH CAPITAL AND SURPLUS INCLUDING
21 ALL CAPITAL STOCK, PAID IN CAPITAL AND CONTRIBUTED SURPLUS, AND
22 OTHER SURPLUS FUNDS WITH CORRESPONDING ITEMS UNDER GAAP CONSISTING
23 OF RETAINED EARNINGS AND ACCUMULATED OTHER COMPREHENSIVE INCOME,
24 WITH CAPITAL AND RETAINED EARNINGS INCLUDING ALL CAPITAL STOCK,
25 ADDITIONAL PAID IN CAPITAL, AND OTHER EQUITY FUNDS.

26 (EE) "TREASURY RATES" MEANS THE UNITED STATES TREASURY STRIPS
27 ASKED YIELD AS PUBLISHED IN THE WALL STREET JOURNAL AS OF A BALANCE

1 SHEET DATE.

2 (FF) "VOTING SECURITY" INCLUDES ANY SECURITY CONVERTIBLE INTO
3 OR EVIDENCING THE RIGHT TO ACQUIRE A VOTING SECURITY.

4 SEC. 4603. (1) A CAPTIVE INSURANCE COMPANY, IF PERMITTED BY
5 ITS ORGANIZATIONAL DOCUMENTS, MAY APPLY TO THE COMMISSIONER FOR A
6 LIMITED CERTIFICATE OF AUTHORITY TO DO ANY AND ALL INSURANCE
7 AUTHORIZED BY THIS CHAPTER EXCEPT WORKER'S COMPENSATION INSURANCE,
8 PERSONAL AUTOMOBILE INSURANCE, OR HOMEOWNERS INSURANCE, OR ANY
9 COMPONENT OF THESE COVERAGES. A CAPTIVE INSURANCE COMPANY IS
10 SUBJECT TO ALL OF THE FOLLOWING:

11 (A) A PURE CAPTIVE INSURANCE COMPANY SHALL NOT INSURE ANY
12 RISKS OTHER THAN THOSE OF ITS PARENT, AFFILIATED COMPANIES,
13 CONTROLLED UNAFFILIATED BUSINESS, OR A COMBINATION OF ITS PARENT,
14 AFFILIATED COMPANIES, AND CONTROLLED UNAFFILIATED BUSINESS.

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

18 (C) AN INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY SHALL NOT
19 INSURE ANY RISKS OTHER THAN THOSE OF THE INDUSTRIAL INSURED THAT
20 COMPRISE THE INDUSTRIAL INSURED GROUP AND THEIR AFFILIATED
21 COMPANIES.

22 (D) IN GENERAL, A SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY
23 SHALL ONLY INSURE THE RISKS OF ITS PARENT. NOTWITHSTANDING ANY
24 OTHER PROVISIONS OF THIS CHAPTER, A SPECIAL PURPOSE CAPTIVE
25 INSURANCE COMPANY MAY PROVIDE INSURANCE OR REINSURANCE, OR BOTH,
26 FOR RISKS AS APPROVED BY THE COMMISSIONER.

27 (E) A CAPTIVE INSURANCE COMPANY SHALL NOT ACCEPT OR CEDE

1 REINSURANCE EXCEPT AS PROVIDED IN SECTION 4641.

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

4 (A) OBTAIN FROM THE COMMISSIONER A LIMITED CERTIFICATE OF
5 AUTHORITY AUTHORIZING IT TO CONDUCT INSURANCE BUSINESS IN THIS
6 STATE.

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

10 (C) MAINTAIN ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, OR
11 FOR A BRANCH CAPTIVE INSURANCE COMPANY, MAINTAIN THE PRINCIPAL
12 PLACE OF BUSINESS FOR ITS BRANCH OPERATIONS IN THIS STATE.

13 (D) FILE WITH THE COMMISSIONER THE NAME AND ADDRESS OF A
14 RESIDENT REGISTERED AGENT DESIGNATED TO ACCEPT SERVICE OF PROCESS
15 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE. THE DESIGNATION
16 SHALL REMAIN IN FORCE AS LONG AS ANY LIABILITY REMAINS WITHIN THIS
17 STATE.

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

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

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

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

26 (D) THE PURPOSES OF THE CREATION OF THE ENTITY INCLUDING A
27 REFERENCE TO THIS CHAPTER.

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

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

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

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

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

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

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

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

21 (C) A TRANSACTION FROM WHICH THE DIRECTOR DERIVED AN IMPROPER
22 PERSONAL BENEFIT.

23 (5) BEFORE THE ORGANIZATIONAL DOCUMENTS SHALL BE EFFECTIVE FOR
24 THE PURPOSES OF THIS CHAPTER, THE ORGANIZATIONAL DOCUMENTS SHALL BE
25 SUBMITTED TO THE OFFICE OF THE ATTORNEY GENERAL FOR EXAMINATION. IF
26 SUCH DOCUMENTS ARE FOUND TO BE IN COMPLIANCE WITH THIS CHAPTER, THE
27 OFFICE OF THE ATTORNEY GENERAL SHALL SO CERTIFY TO THE

1 COMMISSIONER. EACH APPLICANT FOR A CAPTIVE INSURANCE COMPANY
2 LIMITED CERTIFICATE OF AUTHORITY THAT SUBMITS ITS ORGANIZATIONAL
3 DOCUMENTS TO THE OFFICE OF THE ATTORNEY GENERAL SHALL PAY TO THE
4 ATTORNEY GENERAL THE EXAMINATION FEE PROVIDED IN SECTION 240(2).

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

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

12 (B) A PLAN OF OPERATION, INCLUDING, IF APPLICABLE, A BUSINESS
13 PLAN DEMONSTRATING HOW THE APPLICANT WILL ACCOUNT FOR THE LOSS AND
14 EXPENSE EXPERIENCE OF EACH PROTECTED CELL AT A LEVEL OF DETAIL
15 FOUND TO BE SUFFICIENT BY THE COMMISSIONER AND HOW IT WILL REPORT
16 THE EXPERIENCE TO THE COMMISSIONER.

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

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

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

23 (F) EVIDENCE OF THE CHARACTER, REPUTATION, FINANCIAL
24 RESPONSIBILITY, INSURANCE EXPERIENCE, AND BUSINESS QUALIFICATIONS
25 OF THE OFFICERS AND DIRECTORS OR MANAGERS.

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

1 (H) EVIDENCE OF THE ADEQUACY OF THE LOSS PREVENTION PROGRAMS
2 OF ITS PARENT, MEMBER ORGANIZATION, OR INDUSTRIAL INSUREDS AS
3 APPLICABLE.

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

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

11 (K) SUCH OTHER FACTORS OR DOCUMENTATION CONSIDERED RELEVANT BY
12 THE COMMISSIONER.

13 (7) THE COMMISSIONER SHALL ISSUE A LIMITED CERTIFICATE OF
14 AUTHORITY TO AN APPLICANT IF, AFTER REVIEWING THE DOCUMENTS AND
15 INFORMATION PROVIDED PURSUANT TO THIS CHAPTER, THE COMMISSIONER
16 FINDS THAT THE APPLICANT MEETS THE STANDARDS IN THIS CHAPTER AND
17 WILL PROMOTE THE GENERAL GOOD OF THE STATE.

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

20 (9) AN APPLICANT SHALL PAY TO THE OFFICE A NONREFUNDABLE
21 \$10,000.00 FEE FOR PROCESSING ITS APPLICATION FOR A LIMITED
22 CERTIFICATE OF AUTHORITY. IN ADDITION, THE COMMISSIONER MAY RETAIN
23 LEGAL, FINANCIAL, AND EXAMINATION SERVICES FROM OUTSIDE THE OFFICE
24 TO EXAMINE AND INVESTIGATE THE APPLICATION, THE REASONABLE COST OF
25 WHICH MAY BE CHARGED AGAINST THE APPLICANT, OR THE COMMISSIONER MAY
26 USE INTERNAL RESOURCES TO EXAMINE AND INVESTIGATE THE APPLICATION
27 FOR A \$2,700.00 FEE.

1 (10) IF THE COMMISSIONER IS SATISFIED THAT THE DOCUMENTS AND
2 STATEMENTS FILED BY THE APPLICANT COMPLY WITH THIS CHAPTER, THE
3 COMMISSIONER MAY GRANT A LIMITED CERTIFICATE OF AUTHORITY
4 AUTHORIZING THE COMPANY TO DO BUSINESS IN THIS STATE UNTIL MARCH 1,
5 AT WHICH TIME THE LIMITED CERTIFICATE OF AUTHORITY MAY BE RENEWED.

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

18 SEC. 4607. A CAPTIVE INSURANCE COMPANY SHALL NOT ADOPT A NAME
19 THAT IS THE SAME AS, DECEPTIVELY SIMILAR TO, OR LIKELY TO BE
20 CONFUSED WITH OR MISTAKEN FOR ANY OTHER EXISTING BUSINESS NAME
21 REGISTERED IN THIS STATE.

22 SEC. 4609. (1) INFORMATION AND TESTIMONY SUBMITTED OR
23 FURNISHED TO THE OFFICE PURSUANT TO THIS CHAPTER, EXAMINATION
24 REPORTS, PRELIMINARY EXAMINATION REPORTS OR RESULTS, AND THE
25 OFFICE'S WORK PAPERS, CORRESPONDENCE, MEMORANDA, REPORTS, RECORDS,
26 AND OTHER WRITTEN OR ORAL INFORMATION RELATED TO AN EXAMINATION
27 REPORT OR AN INVESTIGATION SHALL BE CONFIDENTIAL, SHALL BE WITHHELD

1 FROM PUBLIC INSPECTION, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL
2 NOT BE DIVULGED TO ANY PERSON, EXCEPT AS PROVIDED IN THIS SECTION
3 OR WITH THE WRITTEN CONSENT OF THE COMPANY. IF ASSURANCES ARE
4 PROVIDED THAT THE INFORMATION WILL BE KEPT CONFIDENTIAL, THE
5 COMMISSIONER MAY DISCLOSE CONFIDENTIAL WORK PAPERS, CORRESPONDENCE,
6 MEMORANDA, REPORTS, RECORDS, OR OTHER INFORMATION AS FOLLOWS:

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

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

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

12 (D) TO LAW ENFORCEMENT OFFICIALS.

13 (E) TO PERSONS AUTHORIZED BY THE INGHAM COUNTY CIRCUIT COURT
14 TO RECEIVE THE INFORMATION.

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

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

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

25 (A) FOR A PURE CAPTIVE INSURANCE COMPANY, NOT LESS THAN
26 \$150,000.00.

27 (B) FOR AN ASSOCIATION CAPTIVE INSURANCE COMPANY INCORPORATED

1 AS A STOCK INSURER OR ORGANIZED AS A LIMITED LIABILITY COMPANY, NOT
2 LESS THAN \$400,000.00.

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

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

8 (E) FOR A SPONSORED CAPTIVE INSURANCE COMPANY, NOT LESS THAN
9 \$500,000.00. HOWEVER, IF THE SPONSORED CAPTIVE INSURANCE COMPANY
10 DOES NOT ASSUME ANY RISK, THE RISKS INSURED BY THE PROTECTED CELLS
11 ARE HOMOGENEOUS, AND THERE ARE NO MORE THAN 10 CELLS, THE
12 COMMISSIONER MAY REDUCE THIS AMOUNT TO AN AMOUNT NOT LESS THAN
13 \$150,000.00.

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

18 (2) EXCEPT FOR A SPONSORED CAPTIVE THAT DOES NOT ASSUME ANY
19 RISK, A CAPTIVE INSURANCE COMPANY SHALL POSSESS AND MAINTAIN THE
20 MINIMUM CAPITAL REQUIRED BY SUBSECTION (1) IN THE FORM OF CASH. ALL
21 OTHER FUNDS OF THE CAPTIVE INSURANCE COMPANY IN EXCESS OF ITS
22 MINIMUM CAPITALIZATION SHALL BE IN THE FORMS AS PROVIDED BY THIS
23 CHAPTER.

24 (3) THE COMMISSIONER SHALL NOT ISSUE A LIMITED CERTIFICATE OF
25 AUTHORITY TO A CAPTIVE INSURANCE COMPANY INCORPORATED AS A
26 NONPROFIT CORPORATION UNLESS THE COMPANY POSSESSES AND MAINTAINS
27 UNENCUMBERED EQUITY AS FOLLOWS:

1 (A) FOR A PURE CAPTIVE INSURANCE COMPANY, NOT LESS THAN
2 \$250,000.00.

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

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

11 (5) FOR THE PURPOSES OF SUBSECTIONS (1) THROUGH (4), THE
12 COMMISSIONER MAY ISSUE A LIMITED CERTIFICATE OF AUTHORITY EXPRESSLY
13 CONDITIONED UPON THE CAPTIVE INSURANCE COMPANY PROVIDING TO THE
14 COMMISSIONER SATISFACTORY EVIDENCE OF POSSESSION OF THE MINIMUM
15 REQUIRED UNIMPAIRED PAID IN CAPITAL. UNTIL THIS EVIDENCE IS
16 PROVIDED, THE CAPTIVE INSURANCE COMPANY SHALL NOT ISSUE ANY POLICY,
17 ASSUME ANY LIABILITY, OR OTHERWISE PROVIDE COVERAGE. THE
18 COMMISSIONER SUMMARILY MAY REVOKE THE CONDITIONAL LIMITED
19 CERTIFICATE OF AUTHORITY WITHOUT LEGAL RECOURSE BY THE COMPANY IF
20 SATISFACTORY EVIDENCE OF THE REQUIRED CAPITAL IS NOT PROVIDED
21 WITHIN A MAXIMUM PERIOD OF TIME, NOT TO EXCEED 1 YEAR, TO BE
22 ESTABLISHED BY THE COMMISSIONER AT THE TIME THE LIMITED CONDITIONAL
23 CERTIFICATE OF AUTHORITY IS ISSUED.

24 (6) THE COMMISSIONER MAY PRESCRIBE ADDITIONAL CAPITAL BASED
25 UPON THE TYPE, VOLUME, AND NATURE OF INSURANCE BUSINESS TRANSACTED.
26 THIS ADDITIONAL CAPITAL SHALL BE IN THE FORM OF CASH, CASH
27 EQUIVALENT, AN IRREVOCABLE LETTER OF CREDIT, OR SECURITIES INVESTED

1 AS PROVIDED IN SECTION 4639.

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

21 (8) A CAPTIVE INSURANCE COMPANY SHALL NOT PAY A DIVIDEND OUT
22 OF, OR OTHER DISTRIBUTION WITH RESPECT TO, CAPITAL OR RETAINED
23 EARNINGS, IN EXCESS OF THE LIMITATIONS SET FORTH IN SECTION 1343,
24 WITHOUT THE PRIOR APPROVAL OF THE COMMISSIONER. APPROVAL OF AN
25 ONGOING PLAN FOR THE PAYMENT OF DIVIDENDS OR OTHER DISTRIBUTIONS
26 SHALL BE CONDITIONED UPON RETENTION, AT THE TIME OF EACH PAYMENT,
27 OF CAPITAL OR RETAINED EARNINGS IN EXCESS OF AMOUNTS SPECIFIED BY,

1 OR DETERMINED IN ACCORDANCE WITH FORMULAS APPROVED BY, THE
2 COMMISSIONER. A CAPTIVE INSURANCE COMPANY INCORPORATED AS A
3 NONPROFIT CORPORATION SHALL NOT MAKE ANY DISTRIBUTIONS WITHOUT THE
4 PRIOR APPROVAL OF THE COMMISSIONER.

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

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

9 (B) INCORPORATED AS A PUBLIC BENEFIT, MUTUAL BENEFIT, OR
10 RELIGIOUS NONPROFIT CORPORATION WITH MEMBERS IN ACCORDANCE WITH THE
11 MICHIGAN NONPROFIT CORPORATION ACT OF 1982, 1982 PA 162, MCL
12 450.2101 TO 450.3192.

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

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

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

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

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

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

27 (4) FOR A CAPTIVE INSURANCE COMPANY FORMED AS A CORPORATION OR

1 A NONPROFIT CORPORATION, AT LEAST 1 OF THE MEMBERS OF THE BOARD OF
2 DIRECTORS OF A CAPTIVE INSURANCE COMPANY INCORPORATED IN THIS STATE
3 SHALL BE A RESIDENT OF THIS STATE.

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

7 (6) A CAPTIVE INSURANCE COMPANY FORMED AS A LIMITED LIABILITY
8 COMPANY HAS THE PRIVILEGES AND IS SUBJECT TO THE PROVISIONS OF THE
9 MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4101 TO
10 450.5200, FOR LIMITED LIABILITY COMPANIES, AS WELL AS THE
11 APPLICABLE PROVISIONS CONTAINED IN THIS CHAPTER. IF A CONFLICT
12 OCCURS BETWEEN A PROVISION OF THE MICHIGAN LIMITED LIABILITY
13 COMPANY ACT, 1993 PA 23, MCL 450.4101 TO 450.5200, FOR LIMITED
14 LIABILITY COMPANIES, AND A PROVISION OF THIS CHAPTER, THIS CHAPTER
15 CONTROLS.

16 (7) THIS ACT'S PROVISIONS PERTAINING TO MERGERS,
17 CONSOLIDATIONS, CONVERSIONS, MUTUALIZATIONS, AND REDOMESTICATIONS
18 APPLY IN DETERMINING THE PROCEDURES TO BE FOLLOWED BY A CAPTIVE
19 INSURANCE COMPANY IN CARRYING OUT ANY OF THE TRANSACTIONS DESCRIBED
20 IN THOSE PROVISIONS.

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

24 (2) ANNUALLY, ON OR BEFORE MARCH 1 OF EACH YEAR, A CAPTIVE
25 INSURANCE COMPANY SHALL SUBMIT TO THE COMMISSIONER A REPORT OF ITS
26 FINANCIAL CONDITION, VERIFIED BY OATH OF 2 OF ITS EXECUTIVE
27 OFFICERS. A CAPTIVE INSURANCE COMPANY MAY REPORT USING GENERALLY

1 ACCEPTED ACCOUNTING PRINCIPLES OR, WITH THE APPROVAL OF THE
2 COMMISSIONER, STATUTORY ACCOUNTING PRINCIPLES, WITH USEFUL OR
3 NECESSARY MODIFICATIONS OR ADAPTATIONS REQUIRED OR APPROVED OR
4 ACCEPTED BY THE COMMISSIONER FOR THE TYPE OF INSURANCE AND KINDS OF
5 INSURERS TO BE REPORTED UPON, AND AS SUPPLEMENTED BY ADDITIONAL
6 INFORMATION REQUIRED BY THE COMMISSIONER. THE COMMISSIONER MAY
7 PRESCRIBE THE FORM AND MANNER IN WHICH CAPTIVE INSURANCE COMPANIES
8 SHALL REPORT. INFORMATION SUBMITTED PURSUANT TO THIS SECTION IS
9 CONFIDENTIAL AS PROVIDED IN SECTION 4609.

10 (3) THE COMMISSIONER MAY ADDRESS INQUIRIES TO ANY CAPTIVE
11 INSURER CONCERNING THE INSURER'S ACTIVITIES OR CONDITIONS OR ANY
12 OTHER MATTER CONNECTED WITH THE INSURER'S TRANSACTIONS. AN INSURER
13 SO ADDRESSED SHALL REPLY IN WRITING TO EACH INQUIRY FROM THE
14 COMMISSIONER WITHIN 30 DAYS OF RECEIPT OF THE INQUIRY. A CAPTIVE
15 INSURER THAT FAILS TO RESPOND TO AN INQUIRY WITHIN 30 DAYS IS
16 SUBJECT TO PROCEEDINGS UNDER SECTION 4637.

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

21 (5) A BRANCH CAPTIVE INSURANCE COMPANY SHALL FILE WITH THE
22 COMMISSIONER 60 DAYS AFTER THE FISCAL YEAR END A COPY OF ALL
23 REPORTS AND STATEMENTS REQUIRED TO BE FILED UNDER THE LAWS OF THE
24 JURISDICTION IN WHICH THE ALIEN CAPTIVE INSURANCE COMPANY IS
25 FORMED, VERIFIED BY OATH BY 2 OF ITS EXECUTIVE OFFICERS. IF THE
26 COMMISSIONER IS SATISFIED THAT THE ANNUAL REPORT FILED BY THE ALIEN
27 CAPTIVE INSURANCE COMPANY IN ITS DOMICILIARY JURISDICTION PROVIDES

1 ADEQUATE INFORMATION CONCERNING THE FINANCIAL CONDITION OF THE
2 ALIEN CAPTIVE INSURANCE COMPANY, THE COMMISSIONER MAY WAIVE THE
3 REQUIREMENT FOR COMPLETION OF THE CAPTIVE ANNUAL STATEMENT.

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

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

22 (2) THE COMMISSIONER MAY DISALLOW THE DISCOUNTING OF RESERVES
23 IF A SPONSORED CAPTIVE INSURANCE COMPANY VIOLATES A PROVISION OF
24 THIS ACT.

25 SEC. 4625. (1) NO PROVISIONS OF THIS ACT, OTHER THAN THOSE
26 SPECIFICALLY REFERENCED IN THIS CHAPTER, APPLY TO A CAPTIVE
27 INSURANCE COMPANY, AND THOSE PROVISIONS APPLY ONLY AS MODIFIED BY

1 THIS CHAPTER. IF A CONFLICT OCCURS BETWEEN A PROVISION OF THIS ACT
2 AND A PROVISION OF THIS CHAPTER, THIS CHAPTER CONTROLS.

3 (2) SECTIONS 210 TO 222, 226 TO 238, 244 TO 251, AND 2057 TO
4 2062, AND CHAPTER 45 APPLY TO CAPTIVE INSURANCE COMPANIES.

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

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

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

18 (B) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
19 \$10,000,000.00, BUT LESS THAN \$20,000,000.00, THE RENEWAL FEE SHALL
20 BE \$10,000.00.

21 (C) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
22 \$20,000,000.00, BUT LESS THEN \$40,000,000.00, THE RENEWAL FEE SHALL
23 BE \$15,000.00.

24 (D) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
25 \$40,000,000.00, BUT LESS THAN \$60,000,000.00, THE RENEWAL FEE SHALL
26 BE \$20,000.00.

27 (E) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN

1 \$60,000,000.00, THE RENEWAL FEE SHALL BE \$25,000.00.

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

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

9 (7) THE CONFIDENTIALITY PROVISIONS OF THIS CHAPTER DO NOT
10 EXTEND TO FINAL EXAMINATION REPORTS PRODUCED BY THE COMMISSIONER IN
11 INSPECTING OR EXAMINING A CAPTIVE INSURANCE COMPANY FORMED AS A
12 RISK RETENTION GROUP UNDER THE PRODUCT LIABILITY RISK RETENTION ACT
13 OF 1981, 15 USC 3901 TO 3906.

14 (8) SECTION 222 APPLIES TO ALL BUSINESS WRITTEN BY A CAPTIVE
15 INSURANCE COMPANY EXCEPT THAT THE EXAMINATION FOR A BRANCH CAPTIVE
16 INSURANCE COMPANY SHALL BE OF BRANCH BUSINESS AND BRANCH OPERATIONS
17 ONLY, AS LONG AS THE BRANCH CAPTIVE INSURANCE COMPANY PROVIDES
18 ANNUALLY TO THE COMMISSIONER, A CERTIFICATE OF COMPLIANCE, OR ITS
19 EQUIVALENT, ISSUED BY OR FILED WITH THE LICENSING AUTHORITY OF THE
20 JURISDICTION IN WHICH THE BRANCH CAPTIVE INSURANCE COMPANY IS
21 FORMED AND DEMONSTRATES TO THE COMMISSIONER'S SATISFACTION THAT IT
22 IS OPERATING IN SOUND FINANCIAL CONDITION IN ACCORDANCE WITH ALL
23 APPLICABLE LAWS AND REGULATIONS OF THAT JURISDICTION.

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

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

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

3 (C) REFUSAL OR FAILURE TO SUBMIT AN ANNUAL REPORT, AS REQUIRED
4 BY SECTION 4621, OR ANY OTHER REPORT OR STATEMENT REQUIRED BY LAW
5 OR BY LAWFUL ORDER OF THE COMMISSIONER.

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

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

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

12 (G) THE COMPANY IS NO LONGER SAFE, RELIABLE, OR ENTITLED TO
13 PUBLIC CONFIDENCE OR IS UNSOUND, OR IS USING FINANCIAL METHODS AND
14 PRACTICES IN THE CONDUCT OF ITS BUSINESS THAT RENDER FURTHER
15 TRANSACTION OF INSURANCE BY THE COMPANY IN THIS STATE HAZARDOUS TO
16 POLICYHOLDERS, CREDITORS, OR THE PUBLIC.

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

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

25 (J) THE COMPANY HAS FAILED, WITHIN 30 DAYS AFTER NOTICE OF
26 DELINQUENCY FROM THE COMMISSIONER, TO CURE ITS FAILURE TO PAY
27 TAXES, FEES, ASSESSMENTS, OR EXPENSES REQUIRED BY THIS ACT.

1 (K) THE CAPTIVE INSURANCE COMPANY HAS FAILED FOR AN
2 UNREASONABLE PERIOD TO PAY ANY FINAL JUDGMENT RENDERED AGAINST IT
3 IN THIS STATE ON ANY POLICY, BOND, RECOGNIZANCE, OR UNDERTAKING
4 ISSUED OR GUARANTEED BY IT.

5 (1) FAILURE OTHERWISE TO COMPLY WITH THE LAWS OF THIS STATE.

6 (2) IF THE COMMISSIONER FINDS, UPON EXAMINATION, HEARING, OR
7 OTHER EVIDENCE, THAT A CAPTIVE INSURANCE COMPANY HAS COMMITTED ANY
8 OF THE ACTS SPECIFIED IN SUBSECTION (1), THE COMMISSIONER MAY
9 SUSPEND OR REVOKE THE CAPTIVE INSURANCE COMPANY'S LIMITED
10 CERTIFICATE OF AUTHORITY IF THE COMMISSIONER CONSIDERS IT IN THE
11 BEST INTEREST OF THE PUBLIC AND THE POLICYHOLDERS OF THE CAPTIVE
12 INSURANCE COMPANY, NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT.

13 SEC. 4639. (1) AN ASSOCIATION CAPTIVE INSURANCE COMPANY AND AN
14 INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY INSURING THE RISKS OF
15 AN INDUSTRIAL INSURED GROUP SHALL COMPLY WITH THE INVESTMENT
16 REQUIREMENTS CONTAINED IN SECTIONS 910 TO 947. NOTWITHSTANDING ANY
17 OTHER PROVISION OF THIS CHAPTER OR IN CHAPTER 9, THE COMMISSIONER
18 MAY APPROVE THE USE OF ALTERNATIVE RELIABLE METHODS OF VALUATION
19 AND RATING.

20 (2) A PURE CAPTIVE INSURANCE COMPANY AND A SPECIAL PURPOSE
21 CAPTIVE INSURANCE COMPANY ARE NOT SUBJECT TO ANY RESTRICTIONS ON
22 ALLOWABLE INVESTMENTS CONTAINED IN CHAPTER 9 EXCEPT THAT THE
23 COMMISSIONER MAY REQUEST A WRITTEN INVESTMENT PLAN AND MAY PROHIBIT
24 OR LIMIT AN INVESTMENT THAT THREATENS THE SOLVENCY OR LIQUIDITY OF
25 THE COMPANY.

26 (3) ONLY A PURE CAPTIVE INSURANCE COMPANY MAY MAKE LOANS TO
27 ITS PARENT COMPANY OR AFFILIATES AND ONLY UPON THE PRIOR WRITTEN

1 APPROVAL OF THE COMMISSIONER EVIDENCED BY A NOTE IN A FORM APPROVED
2 BY THE COMMISSIONER. LOANS OF MINIMUM CAPITAL AND RETAINED EARNINGS
3 REQUIRED TO BE HELD BY SECTION 4611(1) ARE PROHIBITED.

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

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

22 SEC. 4641. (1) A CAPTIVE INSURANCE COMPANY MAY PROVIDE
23 REINSURANCE, AS AUTHORIZED BY THIS ACT, ON RISKS CEDED BY ANY OTHER
24 INSURER.

25 (2) A CAPTIVE INSURANCE COMPANY MAY TAKE CREDIT FOR RESERVES
26 ON RISKS OR PORTIONS OF RISKS CEDED TO REINSURERS COMPLYING WITH
27 THE PROVISIONS OF SECTIONS 1103 AND 1105. A CAPTIVE INSURER SHALL

1 NOT TAKE CREDIT FOR RESERVES ON RISKS OR PORTIONS OF RISKS CEDED TO
2 A REINSURER IF THE REINSURER IS NOT IN COMPLIANCE WITH SECTIONS
3 1103 AND 1105.

4 SEC. 4643. A CAPTIVE INSURANCE COMPANY SHALL NOT BE REQUIRED
5 TO JOIN A RATING ORGANIZATION.

6 SEC. 4645. A CAPTIVE INSURANCE COMPANY SHALL NOT JOIN OR
7 CONTRIBUTE FINANCIALLY TO A PLAN, POOL, ASSOCIATION, OR GUARANTY OR
8 INSOLVENCY FUND IN THIS STATE. A CAPTIVE INSURANCE COMPANY, ITS
9 INSURED, ITS PARENT, OR ANY AFFILIATED COMPANY OR ANY MEMBER
10 ORGANIZATION OF ITS ASSOCIATION, SHALL NOT RECEIVE A BENEFIT FROM A
11 PLAN, POOL, ASSOCIATION, OR GUARANTY OR INSOLVENCY FUND FOR CLAIMS
12 ARISING OUT OF THE OPERATIONS OF THE CAPTIVE INSURANCE COMPANY.

13 SEC. 4651. THE COMMISSIONER MAY PROMULGATE PURSUANT TO THE
14 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
15 24.328, RULES, AND MAY ISSUE REGULATIONS AND ORDERS RELATING TO
16 CAPTIVE INSURANCE COMPANIES AS ARE NECESSARY TO ENABLE THE
17 COMMISSIONER TO CARRY OUT THE PROVISIONS OF THIS CHAPTER.

18 SEC. 4653. (1) NO PROVISIONS OF THIS ACT, OTHER THAN THOSE
19 SPECIFICALLY REFERENCED IN THIS CHAPTER OR CONTAINED IN SPECIFIC
20 REFERENCES CONTAINED IN THIS CHAPTER, APPLY TO CAPTIVE INSURANCE
21 COMPANIES. IF A CONFLICT OCCURS BETWEEN A PROVISION OF THIS ACT AND
22 A PROVISION OF THIS CHAPTER, THIS CHAPTER CONTROLS.

23 (2) THE COMMISSIONER BY RULE, REGULATION, OR ORDER MAY EXEMPT
24 SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES, ON A CASE-BY-CASE
25 BASIS, FROM PROVISIONS OF THIS CHAPTER THAT THE COMMISSIONER
26 DETERMINES TO BE INAPPROPRIATE GIVEN THE NATURE OF THE RISKS TO BE
27 INSURED.

1 SEC. 4655. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
2 THE TERMS AND CONDITIONS SET FORTH IN THIS ACT PERTAINING TO
3 INSURANCE REORGANIZATIONS, RECEIVERSHIPS, AND INJUNCTIONS APPLY IN
4 FULL TO CAPTIVE INSURANCE COMPANIES AUTHORIZED UNDER THIS CHAPTER.

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

7 (A) THE ASSETS OF THE PROTECTED CELL SHALL NOT BE USED TO PAY
8 EXPENSES OR CLAIMS OTHER THAN THOSE ATTRIBUTABLE TO THE PROTECTED
9 CELL.

10 (B) THE CAPITAL AND SURPLUS OF THE SPONSORED CAPTIVE INSURANCE
11 COMPANY SHALL AT ALL TIMES BE AVAILABLE TO PAY EXPENSES OF OR
12 CLAIMS AGAINST THE SPONSORED CAPTIVE INSURANCE COMPANY AND SHALL
13 NOT BE USED TO PAY EXPENSES OR CLAIMS ATTRIBUTABLE TO A PROTECTED
14 CELL.

15 SEC. 4659. THE COMMISSIONER BY RULE, REGULATION, OR ORDER
16 SHALL ESTABLISH STANDARDS TO ENSURE THAT A PARENT OR AFFILIATED
17 COMPANY IS ABLE TO EXERCISE CONTROL OF THE RISK MANAGEMENT FUNCTION
18 OF ANY CONTROLLED UNAFFILIATED BUSINESS TO BE INSURED BY THE PURE
19 CAPTIVE INSURANCE COMPANY. UNTIL SUCH TIME AS THE STANDARDS ARE
20 ESTABLISHED, THE COMMISSIONER MAY BY TEMPORARY ORDER GRANT
21 AUTHORITY TO A PURE CAPTIVE INSURANCE COMPANY TO INSURE RISKS.

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

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

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

5 (B) EACH PROTECTED CELL SHALL BE ACCOUNTED FOR SEPARATELY ON
6 THE BOOKS AND RECORDS OF THE SPONSORED CAPTIVE INSURANCE COMPANY TO
7 REFLECT THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE
8 PROTECTED CELL, NET INCOME OR LOSS, DIVIDENDS OR OTHER
9 DISTRIBUTIONS TO PARTICIPANTS, AND OTHER FACTORS MAY BE PROVIDED IN
10 THE PARTICIPANT CONTRACT OR REQUIRED BY THE COMMISSIONER.

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

14 (D) NO SALE, EXCHANGE, OR OTHER TRANSFER OF ASSETS SHALL BE
15 MADE BY THE SPONSORED CAPTIVE INSURANCE COMPANY BETWEEN OR AMONG
16 ANY OF ITS PROTECTED CELLS WITHOUT THE CONSENT OF THE PROTECTED
17 CELLS.

18 (E) NO SALE, EXCHANGE, TRANSFER OF ASSETS, DIVIDEND, OR
19 DISTRIBUTION SHALL BE MADE FROM A PROTECTED CELL TO A SPONSOR OR
20 PARTICIPANT WITHOUT THE COMMISSIONER'S APPROVAL AND IN NO EVENT
21 SHALL THE APPROVAL BE GIVEN IF THE SALE, EXCHANGE, TRANSFER,
22 DIVIDEND, OR DISTRIBUTION WOULD RESULT IN INSOLVENCY OR IMPAIRMENT
23 WITH RESPECT TO A PROTECTED CELL.

24 (F) A SPONSORED CAPTIVE INSURANCE COMPANY SHALL FILE ANNUALLY
25 WITH THE COMMISSIONER FINANCIAL REPORTS THE COMMISSIONER REQUIRES,
26 WHICH SHALL INCLUDE, BUT ARE NOT LIMITED TO, ACCOUNTING STATEMENTS
27 DETAILING THE FINANCIAL EXPERIENCE OF EACH PROTECTED CELL.

1 (G) A SPONSORED CAPTIVE INSURANCE COMPANY SHALL NOTIFY THE
2 COMMISSIONER IN WRITING WITHIN 10 BUSINESS DAYS OF A PROTECTED CELL
3 THAT IS INSOLVENT OR OTHERWISE UNABLE TO MEET ITS CLAIM OR EXPENSE
4 OBLIGATIONS.

5 (H) NO PARTICIPANT CONTRACT SHALL TAKE EFFECT WITHOUT THE
6 COMMISSIONER'S PRIOR WRITTEN APPROVAL, AND THE ADDITION OF EACH NEW
7 PROTECTED CELL AND WITHDRAWAL OF ANY PARTICIPANT OF ANY EXISTING
8 PROTECTED CELL CONSTITUTES A CHANGE IN THE BUSINESS PLAN REQUIRING
9 THE COMMISSIONER'S PRIOR WRITTEN APPROVAL.

10 SEC. 4665. A SPONSOR OF A SPONSORED CAPTIVE INSURANCE COMPANY
11 SHALL BE AN INSURER AUTHORIZED PURSUANT TO THE LAWS OF A STATE OR
12 THE DISTRICT OF COLUMBIA, AN INSURANCE HOLDING COMPANY THAT
13 CONTROLS AN INSURER AUTHORIZED PURSUANT TO THE LAWS OF A STATE OR
14 THE DISTRICT OF COLUMBIA AND SUBJECT TO REGISTRATION PURSUANT TO
15 THE INSURANCE HOLDING COMPANY SYSTEM LAWS OF THE STATE OF DOMICILE
16 OF THE INSURER, A REINSURER AUTHORIZED OR APPROVED PURSUANT TO THE
17 LAWS OF A STATE OR THE DISTRICT OF COLUMBIA, OR A CAPTIVE INSURANCE
18 COMPANY AUTHORIZED PURSUANT TO THIS CHAPTER. A RISK RETENTION GROUP
19 SHALL NOT BE EITHER A SPONSOR OR A PARTICIPANT OF A SPONSORED
20 CAPTIVE INSURANCE COMPANY. THE BUSINESS WRITTEN BY A SPONSORED
21 CAPTIVE INSURANCE COMPANY WITH RESPECT TO EACH PROTECTED CELL SHALL
22 MEET AT LEAST 1 OF THE FOLLOWING:

23 (A) BE FRONTED BY AN INSURANCE COMPANY AUTHORIZED PURSUANT TO
24 THE LAWS OF ANY STATE OR ANY JURISDICTION IF THE INSURANCE COMPANY
25 IS A WHOLLY OWNED SUBSIDIARY OF AN INSURANCE COMPANY AUTHORIZED
26 PURSUANT TO THE LAWS OF ANY STATE OR ANY JURISDICTION.

27 (B) BE REINSURED BY A REINSURER AUTHORIZED OR APPROVED BY THIS

1 STATE.

2 (C) BE SECURED BY A TRUST FUND IN THE UNITED STATES FOR THE
3 BENEFIT OF POLICYHOLDERS AND CLAIMANTS FUNDED BY AN IRREVOCABLE
4 LETTER OF CREDIT OR OTHER ASSET ACCEPTABLE TO THE COMMISSIONER. THE
5 AMOUNT OF SECURITY PROVIDED BY THE TRUST FUND SHALL NOT BE LESS
6 THAN THE RESERVES ASSOCIATED WITH THOSE LIABILITIES, INCLUDING
7 RESERVES FOR LOSSES, ALLOCATED LOSS ADJUSTMENT EXPENSES, INCURRED
8 BUT NOT REPORTED LOSSES, AND UNEARNED PREMIUMS FOR BUSINESS WRITTEN
9 THROUGH THE PARTICIPANT'S PROTECTED CELL. THE COMMISSIONER MAY
10 REQUIRE THE SPONSORED CAPTIVE TO INCREASE THE FUNDING OF A TRUST
11 ESTABLISHED PURSUANT TO THIS SUBDIVISION. A TRUST AND TRUST
12 INSTRUMENT MAINTAINED PURSUANT TO THIS SUBDIVISION SHALL BE IN A
13 FORM AND UPON TERMS APPROVED BY THE COMMISSIONER.

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

18 (2) A SPONSOR MAY BE A PARTICIPANT IN A SPONSORED CAPTIVE
19 INSURANCE COMPANY.

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

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

25 SEC. 4669. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER,
26 THE TERMS AND CONDITIONS PROVIDED IN CHAPTER 48 RELATING TO A
27 PROTECTED CELL INSURANCE COMPANY APPLY IN FULL TO A SPONSORED

1 CAPTIVE INSURANCE COMPANY.

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

4 (A) A PROTECTED CELL NEED NOT BE ESTABLISHED SOLELY FOR THE
5 PURPOSE OF EFFECTING INSURANCE SECURITIZATIONS, BUT MAY BE
6 ESTABLISHED FOR THE PURPOSE OF ISOLATING THE EXPENSES AND CLAIMS OF
7 A SPONSORED CAPTIVE INSURANCE COMPANY PARTICIPANT.

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

11 (C) SECTION 4805 DOES NOT APPLY.

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

14 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
15 ANY SOURCE FOR DEPOSIT INTO THE FUND. ALL FEES AND ASSESSMENTS
16 RECEIVED BY THE DEPARTMENT OF TREASURY OR THE OFFICE PURSUANT TO
17 THE ADMINISTRATION OF THIS CHAPTER AND CHAPTER 47 SHALL BE CREDITED
18 TO THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND. ALL FEES
19 RECEIVED BY THE DEPARTMENT OF TREASURY FROM REINSURERS WHO ASSUME
20 RISK ONLY FROM CAPTIVE INSURANCE COMPANIES SHALL BE DEPOSITED INTO
21 THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND. ALL FINES
22 AND ADMINISTRATIVE PENALTIES SHALL BE DEPOSITED DIRECTLY INTO THE
23 GENERAL FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF
24 THE FUND. THE STATE TREASURER SHALL CREDIT TO THE FUND INTEREST AND
25 EARNINGS FROM FUND INVESTMENTS.

26 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
27 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

1 (4) THE COMMISSIONER SHALL BE THE ADMINISTRATOR OF THE FUND
2 FOR AUDITING PURPOSES. MONEY IN THE FUND SHALL BE EXPENDED BY THE
3 COMMISSIONER, UPON APPROPRIATION, FOR THE PURPOSE OF ADMINISTERING
4 CHAPTERS 18 AND 47 AND THIS CHAPTER AND FOR REASONABLE EXPENSES
5 INCURRED IN PROMOTING THE CAPTIVE INSURANCE INDUSTRY IN THIS STATE.

6 CHAPTER 47

7 SPECIAL PURPOSE FINANCIAL CAPTIVES

8 SEC. 4701. AS USED IN THIS CHAPTER:

9 (A) "AFFILIATED COMPANY" MEANS A COMPANY IN THE SAME CORPORATE
10 SYSTEM AS A PARENT, BY VIRTUE OF COMMON OWNERSHIP, CONTROL,
11 OPERATION, OR MANAGEMENT.

12 (B) "CAPTIVE LLC" MEANS A LIMITED LIABILITY COMPANY
13 ESTABLISHED UNDER THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993
14 PA 23, MCL 450.4101 TO 450.5200, OR COMPARABLE PROVISIONS OF ANY
15 OTHER STATE LAW, INCLUDING THE DISTRICT OF COLUMBIA BY A PARENT,
16 COUNTERPARTY, AFFILIATED COMPANY, OR SPFC FOR THE PURPOSE OF
17 ISSUING SPFC SECURITIES, ENTERING AN SPFC CONTRACT WITH A
18 COUNTERPARTY, OR OTHERWISE FACILITATING AN INSURANCE
19 SECURITIZATION.

20 (C) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF
21 FINANCIAL AND INSURANCE REGULATION OR THE COMMISSIONER'S DESIGNEE.

22 (D) "CONTESTED CASE" MEANS A PROCEEDING IN WHICH THE LEGAL
23 RIGHTS, DUTIES, OBLIGATIONS, OR PRIVILEGES OF A PARTY ARE REQUIRED
24 BY LAW TO BE DETERMINED BY THE CIRCUIT COURT AFTER AN OPPORTUNITY
25 FOR HEARING.

26 (E) "CONTROL" INCLUDING THE TERMS "CONTROLLING", "CONTROLLED
27 BY", AND "UNDER COMMON CONTROL WITH" MEANS THE POSSESSION, DIRECT

1 OR INDIRECT, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE
2 MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP
3 OF VOTING SECURITIES, BY CONTRACT OTHER THAN A COMMERCIAL CONTRACT
4 FOR GOODS OR NONMANAGEMENT SERVICES, OR OTHERWISE, UNLESS THE POWER
5 IS THE RESULT OF AN OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD
6 BY THE PERSON. CONTROL SHALL BE PRESUMED TO EXIST IF A PERSON,
7 DIRECTLY OR INDIRECTLY, OWNS, CONTROLS, HOLDS WITH THE POWER TO
8 VOTE, OR HOLDS PROXIES REPRESENTING 10% OR MORE OF THE VOTING
9 SECURITIES OF ANOTHER PERSON. THIS PRESUMPTION MAY BE REBUTTED BY A
10 SHOWING THAT CONTROL DOES NOT EXIST. HOWEVER, FOR PURPOSES OF THIS
11 CHAPTER, THE FACT THAT AN SPFC EXCLUSIVELY PROVIDES REINSURANCE TO
12 A CEDING INSURER UNDER AN SPFC CONTRACT IS NOT BY ITSELF SUFFICIENT
13 GROUNDS FOR A FINDING THAT THE SPFC AND CEDING INSURER ARE UNDER
14 COMMON CONTROL.

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

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

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

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

1 COMPARISON TO VALUES OF OTHER ASSET CLASSES, THE VALUE OF WHICH
2 HAVE BEEN HISTORICALLY RELATED TO THE SUBJECT ASSET.

3 (H) "FOREIGN CAPTIVE" MEANS A CAPTIVE INSURER FORMED UNDER THE
4 LAWS OF THE DISTRICT OF COLUMBIA OR SOME STATE, COMMONWEALTH,
5 TERRITORY, OR POSSESSION OF THE UNITED STATES OTHER THAN THE STATE
6 OF MICHIGAN.

7 (I) "INSOLVENCY" OR "INSOLVENT" MEANS THAT THE SPFC OR 1 OR
8 MORE OF ITS PROTECTED CELLS IS UNABLE TO PAY ITS OBLIGATIONS WHEN
9 THEY ARE DUE, UNLESS THOSE OBLIGATIONS ARE THE SUBJECT OF A BONA
10 FIDE DISPUTE, OR THE COMMISSIONER PREVIOUSLY HAS ESTABLISHED BY
11 ORDER OTHER CRITERIA FOR DETERMINING THE SOLVENCY OF THE SPFC OR 1
12 OR MORE OF ITS PROTECTED CELLS, IN WHICH CASE THE SPFC IS INSOLVENT
13 IF IT FAILS TO MEET THAT CRITERIA.

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 CLEAN, IRREVOCABLE,
4 UNCONDITIONAL LETTER OF CREDIT, ISSUED OR CONFIRMED BY A QUALIFIED
5 UNITED STATES FINANCIAL INSTITUTION. LETTERS OF CREDIT MEETING
6 APPLICABLE STANDARDS OF ISSUER ACCEPTABILITY AS OF THE DATES OF
7 THEIR ISSUANCE OR CONFIRMATION SHALL, NOTWITHSTANDING THE ISSUING
8 OR CONFIRMING INSTITUTION'S SUBSEQUENT FAILURE TO MEET APPLICABLE
9 STANDARDS OF ISSUER ACCEPTABILITY, CONTINUE TO BE ACCEPTABLE AS
10 SECURITY UNTIL THEIR EXPIRATION, EXTENSION, RENEWAL, MODIFICATION,
11 OR AMENDMENT, WHICHEVER OCCURS FIRST.

12 (L) "MANAGEMENT" MEANS THE BOARD OF DIRECTORS, MANAGING BOARD,
13 OR OTHER INDIVIDUAL OR INDIVIDUALS VESTED WITH OVERALL
14 RESPONSIBILITY FOR THE MANAGEMENT OF THE AFFAIRS OF THE SPFC,
15 INCLUDING THE ELECTION AND APPOINTMENT OF OFFICERS OR OTHER AGENTS
16 TO ACT ON BEHALF OF THE SPFC.

17 (M) "OFFICE" MEANS THE OFFICE OF FINANCIAL AND INSURANCE
18 REGULATION.

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

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

27 (P) "PERMITTED INVESTMENTS" MEANS THOSE INVESTMENTS THAT MEET

1 THE QUALIFICATIONS IN SECTION 4727(1).

2 (Q) "PREFERRED SECURITIES" MEANS SECURITIES, WHETHER STOCK OR
3 DEBT, ISSUED BY AN SPFC TO THE ISSUER OF THE SPFC SECURITIES IN
4 EXCHANGE FOR SOME OR ALL OF THE PROCEEDS OF THE ISSUANCE OF THE
5 SPFC SECURITIES.

6 (R) "PROTECTED CELL" MEANS A SEGREGATED ACCOUNT ESTABLISHED
7 AND MAINTAINED BY AN SPFC FOR 1 OR MORE SPFC CONTRACTS THAT ARE
8 PART OF A SINGLE SECURITIZATION TRANSACTION AS FURTHER PROVIDED FOR
9 IN CHAPTER 48.

10 (S) "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS, FOR
11 PURPOSES OF MEETING THE REQUIREMENTS OF A TRUSTEE AS SPECIFIED IN
12 SECTION 4727, A FINANCIAL INSTITUTION THAT IS ELIGIBLE TO ACT AS A
13 FIDUCIARY OF A TRUST, AND MEETS ALL OF THE FOLLOWING:

14 (i) ORGANIZED, OR FOR A UNITED STATES BRANCH OR AGENCY OFFICE
15 OF A FOREIGN BANKING ORGANIZATION, IS LICENSED UNDER, THE LAWS OF
16 THE UNITED STATES OR ANY STATE OF THE UNITED STATES.

17 (ii) REGULATED, SUPERVISED, AND EXAMINED BY FEDERAL OR STATE
18 AUTHORITIES HAVING REGULATORY AUTHORITY OVER BANKS AND TRUST
19 COMPANIES.

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

21 (U) "SECURITIES" MEANS THOSE DIFFERENT TYPES OF DEBT
22 OBLIGATIONS, EQUITY, SURPLUS CERTIFICATES, SURPLUS NOTES, FUNDING
23 AGREEMENTS, DERIVATIVES, AND OTHER LEGAL FORMS OF FINANCIAL
24 INSTRUMENTS.

25 (V) "SECURITIES COMMISSIONER" MEANS THE COMMISSIONER.

26 (W) "SPFC" OR "SPECIAL PURPOSE FINANCIAL CAPTIVE" MEANS A
27 CAPTIVE INSURANCE COMPANY, A CAPTIVE LLC, OR A COMPANY OTHERWISE

1 QUALIFIED AS AN AUTHORIZED INSURER THAT HAS RECEIVED A LIMITED
2 CERTIFICATE OF AUTHORITY FROM THE COMMISSIONER FOR THE PURPOSES
3 PROVIDED FOR IN THIS CHAPTER.

4 (X) "SPFC CONTRACT" MEANS A CONTRACT BETWEEN THE SPFC AND THE
5 COUNTERPARTY PURSUANT TO WHICH THE SPFC AGREES TO PROVIDE INSURANCE
6 OR REINSURANCE PROTECTION TO THE COUNTERPARTY FOR RISKS ASSOCIATED
7 WITH THE COUNTERPARTY'S INSURANCE OR REINSURANCE BUSINESS.

8 (Y) "SPFC SECURITIES" MEANS THE SECURITIES ISSUED PURSUANT TO
9 AN INSURANCE SECURITIZATION, THE PROCEEDS OF WHICH ARE USED IN THE
10 MANNER DESCRIBED IN SUBDIVISION (J).

11 (Z) "SURPLUS NOTE" MEANS AN UNSECURED SUBORDINATED DEBT
12 OBLIGATION POSSESSING CHARACTERISTICS CONSISTENT WITH ACCOUNTING
13 PRACTICES AND PROCEDURES DESIGNATED BY THE COMMISSIONER.

14 (AA) "THIRD PARTY" MEANS A PERSON UNRELATED TO AN SPFC OR ITS
15 COUNTERPARTY, OR BOTH, THAT HAS BEEN AGGRIEVED BY A DECISION OF A
16 COMMISSIONER REGARDING THAT SPFC OR ITS ACTIVITIES.

17 SEC. 4703. (1) NO PROVISIONS OF THIS ACT, OTHER THAN THOSE
18 SPECIFICALLY REFERENCED IN THIS CHAPTER, APPLY TO AN SPFC, AND
19 THOSE PROVISIONS APPLY ONLY AS MODIFIED BY THIS CHAPTER. IF A
20 CONFLICT OCCURS BETWEEN A PROVISION OF THIS ACT AND A PROVISION OF
21 THIS CHAPTER, THIS CHAPTER CONTROLS.

22 (2) SECTIONS 210 TO 222, 226 TO 238, 244 TO 251, 2057 TO 2062,
23 AND 4673 AND CHAPTER 45 APPLY TO SPFCS.

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

1 SEC. 4705. (1) A CAPTIVE INSURANCE COMPANY, A CAPTIVE LLC, OR
2 A COMPANY OTHERWISE QUALIFIED AS AN AUTHORIZED INSURER MAY APPLY TO
3 THE COMMISSIONER FOR A LIMITED CERTIFICATE OF AUTHORITY TO TRANSACT
4 INSURANCE OR REINSURANCE BUSINESS AS AUTHORIZED BY THIS CHAPTER. AN
5 SPFC ONLY MAY INSURE OR REINSURE THE RISKS OF ITS COUNTERPARTY.
6 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, AN SPFC MAY
7 PURCHASE REINSURANCE TO CEDE THE RISKS ASSUMED UNDER THE SPFC
8 CONTRACT AS APPROVED BY THE COMMISSIONER.

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

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

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

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

17 (D) FILE WITH THE COMMISSIONER THE NAME AND ADDRESS OF A
18 RESIDENT REGISTERED AGENT DESIGNATED TO ACCEPT SERVICE OF PROCESS
19 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE. THE DESIGNATION
20 SHALL REMAIN IN FORCE AS LONG AS ANY LIABILITY REMAINS WITHIN THE
21 STATE. WHENEVER THE REGISTERED AGENT CANNOT WITH REASONABLE
22 DILIGENCE BE FOUND AT THE REGISTERED OFFICE OF THE SPFC, THE
23 COMMISSIONER SHALL BE AN AGENT OF THE SPFC UPON WHOM ANY PROCESS,
24 NOTICE, OR DEMAND MAY BE SERVED.

25 (E) PROVIDE SUCH DOCUMENTATION OF THE INSURANCE SECURITIZATION
26 AS REQUESTED BY THE COMMISSIONER IMMEDIATELY UPON THE CLOSING OF
27 THE INSURANCE SECURITIZATION TRANSACTION, INCLUDING AN OPINION OF

1 LEGAL COUNSEL WITH RESPECT TO COMPLIANCE WITH THIS CHAPTER AND ANY
2 OTHER APPLICABLE LAWS AS OF THE EFFECTIVE DATE OF THE INSURANCE
3 SECURITIZATION TRANSACTION AND A STATEMENT UNDER OATH OF ITS
4 PRESIDENT AND SECRETARY SHOWING ITS FINANCIAL CONDITION.

5 (F) PROVIDE A COMPLETE SET OF DOCUMENTATION OF THE INSURANCE
6 SECURITIZATION TO THE COMMISSIONER SHORTLY FOLLOWING CLOSING OF THE
7 INSURANCE SECURITIZATION TRANSACTION.

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

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

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

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

16 (D) THE PURPOSES OF THE CREATION OF THE ENTITY INCLUDING A
17 REFERENCE TO THIS CHAPTER.

18 (E) THE MANNER IN WHICH THE CORPORATE POWERS ARE TO BE
19 EXERCISED.

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

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

25 (H) THE AMOUNT AND VALUE OF CAPITAL STOCK, IF ANY. EACH SHARE
26 OF AUTHORIZED CAPITAL STOCK SHALL HAVE A VALUE OF NOT LESS THAN
27 \$1.00.

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

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

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

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

12 (C) A TRANSACTION FROM WHICH THE DIRECTOR DERIVED AN IMPROPER
13 PERSONAL BENEFIT.

14 (5) BEFORE THE ORGANIZATIONAL DOCUMENTS SHALL BE EFFECTIVE FOR
15 THE PURPOSES OF THIS CHAPTER, THE ORGANIZATIONAL DOCUMENTS SHALL BE
16 SUBMITTED TO THE OFFICE OF THE ATTORNEY GENERAL FOR EXAMINATION. IF
17 SUCH DOCUMENTS ARE FOUND TO BE IN COMPLIANCE WITH THIS CHAPTER, THE
18 OFFICE OF THE ATTORNEY GENERAL SHALL SO CERTIFY TO THE
19 COMMISSIONER. EACH APPLICANT FOR AN SPFC LIMITED CERTIFICATE OF
20 AUTHORITY THAT SUBMITS ITS ORGANIZATIONAL DOCUMENTS TO THE OFFICE
21 OF THE ATTORNEY GENERAL SHALL PAY TO THE ATTORNEY GENERAL THE
22 EXAMINATION FEE PROVIDED IN SECTION 240(2).

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

26 (A) EVIDENCE OF ALL OF THE FOLLOWING:

27 (i) THE AMOUNT AND LIQUIDITY OF ITS ASSETS RELATIVE TO THE

1 RISKS TO BE ASSUMED.

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

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

5 (iv) OTHER FACTORS CONSIDERED RELEVANT BY THE COMMISSIONER IN
6 ASCERTAINING WHETHER THE PROPOSED SPFC IS ABLE TO MEET ITS POLICY
7 OBLIGATIONS.

8 (v) THE APPLICANT SPFC'S FINANCIAL CONDITION, INCLUDING THE
9 SOURCE AND FORM OF THE MINIMUM CAPITALIZATION TO BE CONTRIBUTED TO
10 THE SPFC.

11 (B) A PLAN OF OPERATION, CONSISTING OF A DESCRIPTION OF OR
12 STATEMENT OF INTENT WITH RESPECT TO THE CONTEMPLATED INSURANCE
13 SECURITIZATION, THE SPFC CONTRACT, AND RELATED TRANSACTIONS, WHICH
14 SHALL INCLUDE ALL OF THE FOLLOWING:

15 (i) DRAFT DOCUMENTATION OR, AT THE COMMISSIONER'S DISCRETION, A
16 WRITTEN SUMMARY OF ALL MATERIAL AGREEMENTS THAT ARE ENTERED INTO IN
17 CONNECTION WITH THE SPFC CONTRACTS AND THE INSURANCE
18 SECURITIZATION, INCLUDING THE NAMES OF THE COUNTERPARTY, THE NATURE
19 OF THE RISKS TO BE ASSUMED, AND THE PROPOSED USE OF PROTECTED
20 CELLS, IF ANY. THE DOCUMENTATION OR WRITTEN SUMMARY SHALL ALSO
21 INCLUDE THE MAXIMUM AMOUNTS, PURPOSE, NATURE, AND THE RELATIONSHIP
22 BETWEEN THE VARIOUS TRANSACTIONS EFFECTUATING THE INSURANCE
23 SECURITIZATION.

24 (ii) A DESCRIPTION OF ANY PARTY, OTHER THAN THE SPFC OR THE
25 COUNTERPARTY, THAT WILL ISSUE SPFC SECURITIES IN AN INSURANCE
26 SECURITIZATION, INCLUDING A DESCRIPTION OF ITS CONTEMPLATED
27 OPERATION.

1 (iii) THE SOURCE AND FORM OF ADDITIONAL CAPITALIZATION TO BE
2 CONTRIBUTED TO THE SPFC.

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

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

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

10 (c) BIOGRAPHICAL AFFIDAVITS IN A FORM PRESCRIBED BY THE
11 COMMISSIONER OF ALL OF THE PROSPECTIVE SPFC'S OFFICERS AND
12 DIRECTORS, PROVIDING THEIR LEGAL NAMES, ANY NAMES UNDER WHICH THEY
13 HAVE OR ARE CONDUCTING THEIR AFFAIRS, AND ANY AFFILIATIONS WITH
14 OTHER PERSONS, TOGETHER WITH OTHER BIOGRAPHICAL INFORMATION AS THE
15 COMMISSIONER MAY REQUEST.

16 (d) AN AFFIDAVIT FROM THE APPLICANT SPFC VERIFYING ALL OF THE
17 FOLLOWING:

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

19 (ii) THE APPLICANT SPFC OPERATES ONLY PURSUANT TO THE
20 PROVISIONS IN THIS CHAPTER.

21 (iii) THE APPLICANT SPFC'S INVESTMENT STRATEGY REFLECTS AND
22 TAKES INTO ACCOUNT THE LIQUIDITY OF ASSETS AND THE REASONABLE
23 PRESERVATION, ADMINISTRATION, AND ASSET MANAGEMENT OF SUCH ASSETS
24 RELATIVE TO THE RISKS ASSOCIATED WITH THE SPFC CONTRACT AND THE
25 INSURANCE SECURITIZATION TRANSACTION.

26 (iv) THE SPFC SECURITIES PROPOSED TO BE ISSUED ARE VALID LEGAL
27 OBLIGATIONS THAT ARE EITHER PROPERLY REGISTERED WITH THE SECURITIES

1 COMMISSIONER OR CONSTITUTE AN EXEMPT SECURITY OR FORM PART OF AN
2 EXEMPT TRANSACTION UNDER SECTION 402 OF THE UNIFORM SECURITIES ACT,
3 1964 PA 265, MCL 451.802. IF THE ISSUER OF THE SPFC SECURITIES IS
4 NOT THE SPFC, THE SPFC SHALL OBTAIN AND SUBMIT AN AFFIDAVIT FROM
5 THE ISSUER THAT THE SECURITIES PROPOSED TO BE ISSUED SATISFY THIS
6 SUBPARAGRAPH.

7 (v) UNLESS OTHERWISE EXEMPTED BY THE COMMISSIONER, THE TRUST
8 AGREEMENT, THE TRUSTS HOLDING ASSETS THAT SECURE THE OBLIGATIONS OF
9 THE SPFC UNDER THE SPFC CONTRACT, AND THE SPFC CONTRACT WITH THE
10 COUNTERPARTY IN CONNECTION WITH THE CONTEMPLATED INSURANCE
11 SECURITIZATION ARE STRUCTURED PURSUANT TO THE PROVISIONS IN THIS
12 CHAPTER.

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

15 (7) IN ADDITION TO THE REQUIREMENTS OF THIS SECTION AND
16 SECTION 4713, IF A PROTECTED CELL IS USED, AN APPLICANT SPFC SHALL
17 FILE WITH THE COMMISSIONER ALL OF THE FOLLOWING:

18 (A) A BUSINESS PLAN DEMONSTRATING HOW THE APPLICANT ACCOUNTS
19 FOR THE PAID LOSSES, RESERVES, AND EXPENSES OF EACH PROTECTED CELL
20 AT A LEVEL OF DETAIL FOUND TO BE SUFFICIENT BY THE COMMISSIONER,
21 AND HOW IT REPORTS THOSE PAID LOSSES, RESERVES, AND EXPENSES TO THE
22 COMMISSIONER.

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

27 (C) ALL CONTRACTS OR SAMPLE CONTRACTS BETWEEN THE SPFC AND ANY

1 COUNTERPARTY OR CAPTIVE LLC RELATED TO EACH PROTECTED CELL.

2 (D) A DESCRIPTION OF THE EXPENSES ALLOCATED TO EACH PROTECTED
3 CELL.

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

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

8 (A) FOR AN APPLICANT NOT AUTHORIZED UNDER CHAPTER 46 AND NOT
9 FILING A CONCURRENT APPLICATION UNDER CHAPTER 46, A NONREFUNDABLE
10 FEE OF \$10,000.00 FOR PROCESSING ITS APPLICATION FOR A LIMITED
11 CERTIFICATE OF AUTHORITY. IN ADDITION, THE COMMISSIONER MAY RETAIN
12 LEGAL, FINANCIAL, ACTUARIAL, AND EXAMINATION SERVICES FROM OUTSIDE
13 THE OFFICE TO EXAMINE AND INVESTIGATE THE APPLICATION, THE
14 REASONABLE COST OF WHICH MAY BE CHARGED AGAINST THE APPLICANT, OR
15 THE COMMISSIONER MAY USE INTERNAL RESOURCES TO EXAMINE AND
16 INVESTIGATE THE APPLICATION FOR A FEE OF \$2,700.00, WHICH IS
17 PAYABLE UPON THE FILING OF THE APPLICATION.

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

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

27 (ii) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN

1 \$10,000,000.00, BUT LESS THAN \$20,000,000.00, THE RENEWAL FEE SHALL
2 BE \$10,000.00.

3 (iii) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
4 \$20,000,000.00, BUT LESS THAN \$40,000,000.00, THE RENEWAL FEE SHALL
5 BE \$15,000.00.

6 (iv) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
7 \$40,000,000.00, BUT LESS THAN \$60,000,000.00, THE RENEWAL FEE SHALL
8 BE \$20,000.00.

9 (v) FOR ANNUAL PREMIUMS EQUAL TO OR GREATER THAN
10 \$60,000,000.00, THE RENEWAL FEE SHALL BE \$25,000.00.

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

15 (A) THE PROPOSED PLAN OF OPERATION PROVIDES A REASONABLE AND
16 EXPECTED SUCCESSFUL OPERATION.

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

19 (C) THE COMMISSIONER OF THE STATE OF DOMICILE OF EACH
20 COUNTERPARTY HAS NOTIFIED THE COMMISSIONER IN WRITING OR OTHERWISE
21 PROVIDED ASSURANCE SATISFACTORY TO THE COMMISSIONER THAT IT HAS
22 APPROVED OR NOT DISAPPROVED THE TRANSACTION.

23 (D) THE LIMITED CERTIFICATE OF AUTHORITY AUTHORIZING THE SPFC
24 TO TRANSACT BUSINESS IS LIMITED TO THE INSURANCE OR REINSURANCE
25 ACTIVITIES THAT THE SPFC IS ALLOWED TO CONDUCT PURSUANT TO THIS
26 CHAPTER.

27 (11) THE LIMITED CERTIFICATE OF AUTHORITY SHALL BE RENEWED

1 ANNUALLY UPON PAYMENT OF THE RENEWAL FEE PROVIDED FOR BY THIS
2 SECTION.

3 (12) A FOREIGN CAPTIVE, UPON APPROVAL OF THE COMMISSIONER, MAY
4 BECOME AN SPFC BY COMPLYING WITH ALL OF THE PROVISIONS OF THIS
5 CHAPTER. AFTER THIS IS ACCOMPLISHED, THE FOREIGN CAPTIVE IS
6 ENTITLED TO A LIMITED CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS
7 AS AN SPFC IN THIS STATE AND IS SUBJECT TO THE AUTHORITY AND
8 JURISDICTION OF THIS STATE. IT IS NOT NECESSARY FOR A FOREIGN
9 CAPTIVE REDOMESTICATING INTO THIS STATE TO MERGE, CONSOLIDATE,
10 TRANSFER ASSETS, OR OTHERWISE ENGAGE IN ANOTHER REORGANIZATION,
11 OTHER THAN AS SPECIFIED IN THIS SECTION.

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

15 (2) THE SPFC'S ORGANIZATIONAL DOCUMENTS SHALL LIMIT THE SPFC'S
16 AUTHORITY TO TRANSACT THE BUSINESS OF INSURANCE OR REINSURANCE TO
17 THOSE ACTIVITIES THE SPFC CONDUCTS TO ACCOMPLISH ITS PURPOSE AS
18 EXPRESSED IN THIS CHAPTER AND ACTIVITIES IT CONDUCTS PURSUANT TO
19 ANY OTHER CHAPTER IN THIS ACT.

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

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

27 (5) AT LEAST 1 OF THE MEMBERS OF THE MANAGEMENT OF THE SPFC

1 SHALL BE A RESIDENT OF THIS STATE.

2 (6) AN SPFC OR CAPTIVE LLC FORMED AS A LIMITED LIABILITY
3 COMPANY HAS THE PRIVILEGES AND IS SUBJECT TO THE PROVISIONS OF THE
4 MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4101 TO
5 450.5200, FOR LIMITED LIABILITY COMPANIES, AS WELL AS THE
6 APPLICABLE PROVISIONS CONTAINED IN THIS CHAPTER. NOTHING CONTAINED
7 IN THIS PROVISION WITH RESPECT TO AN SPFC SHALL ABROGATE, LIMIT, OR
8 RESCIND IN ANY WAY THE AUTHORITY OF THE COMMISSIONER.

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

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

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

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

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

1 (2) AN SPFC SHALL NOT ISSUE A CONTRACT FOR ASSUMPTION OF RISK
2 OR INDEMNIFICATION OF LOSS OTHER THAN AN SPFC CONTRACT. HOWEVER,
3 THE SPFC MAY CEDE RISKS ASSUMED THROUGH AN SPFC CONTRACT TO THIRD
4 PARTY REINSURERS THROUGH THE PURCHASE OF REINSURANCE OR
5 RETROCESSION PROTECTION.

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

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

1 OF ACTUARIES OR THE SOCIETY OF ACTUARIES WHO ALSO MEETS ANY OTHER
2 CRITERIA THAT THE COMMISSIONER MAY ESTABLISH BY RULE, REGULATION,
3 OR ORDER.

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

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

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

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

26 (C) AMOUNTS ATTRIBUTED TO A PROTECTED CELL UNDER THIS CHAPTER,
27 INCLUDING ASSETS TRANSFERRED TO A PROTECTED CELL ACCOUNT, ARE OWNED

1 BY THE SPFC, AND THE SPFC SHALL NOT BE, OR SHALL NOT HOLD ITSELF
2 OUT TO BE, A TRUSTEE WITH RESPECT TO THOSE PROTECTED CELL ASSETS OF
3 THAT PROTECTED CELL ACCOUNT.

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

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

1 CONTRACTS MAY BE ATTRIBUTED TO A PROTECTED CELL SO LONG AS THOSE
2 SPFC CONTRACTS ARE INTENDED TO BE, AND ULTIMATELY ARE, PART OF A
3 SINGLE SECURITIZATION TRANSACTION.

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

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

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

25 (3) AN SPFC CONTRACT WITH OR ATTRIBUTABLE TO A PROTECTED CELL
26 DOES NOT TAKE EFFECT WITHOUT THE COMMISSIONER'S PRIOR WRITTEN
27 APPROVAL, AND THE ADDITION OF EACH NEW PROTECTED CELL CONSTITUTES A

1 CHANGE IN THE BUSINESS PLAN REQUIRING THE COMMISSIONER'S PRIOR
2 WRITTEN APPROVAL. THE COMMISSIONER MAY RETAIN LEGAL, FINANCIAL, AND
3 EXAMINATION SERVICES FROM OUTSIDE THE OFFICE TO EXAMINE AND
4 INVESTIGATE THE APPLICATION FOR A PROTECTED CELL, THE REASONABLE
5 COST OF WHICH MAY BE CHARGED AGAINST THE APPLICANT, OR THE
6 COMMISSIONER MAY USE INTERNAL RESOURCES TO EXAMINE AND INVESTIGATE
7 THE APPLICATION THE REASONABLE COST OF WHICH MAY BE CHARGED AGAINST
8 THE APPLICANT UP TO A MAXIMUM OF \$1,200.00, OR MAY USE BOTH
9 RETAINED SERVICES AND INTERNAL RESOURCES.

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

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

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

25 (2) NOTWITHSTANDING SUBSECTION (1), IF AN ORDER OF
26 CONSERVATION, REHABILITATION, OR LIQUIDATION IS ENTERED FOR A
27 COUNTERPARTY, THE SPFC AND EACH PROTECTED CELL OF THE SPFC SHALL BE

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

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

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

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

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

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

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

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

1 OR RELATED INSURANCE SECURITIZATION TRANSACTION OR IS OTHERWISE
2 INCURRED FOR A PROTECTED CELL, BOTH OF THE FOLLOWING APPLY:

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

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

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

26 (11) AN SPFC SHALL ESTABLISH ADMINISTRATIVE AND ACCOUNTING
27 PROCEDURES NECESSARY TO PROPERLY IDENTIFY THE 1 OR MORE PROTECTED

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

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

25 (13) 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 SPFC, INCLUDING INCOME AND GAINS OR LOSSES OF OTHER PROTECTED
3 CELLS. AMOUNTS ATTRIBUTED TO ANY PROTECTED CELL AND ACCUMULATIONS
4 ON THE ATTRIBUTED AMOUNTS MAY BE INVESTED AND REINVESTED. THE
5 INVESTMENTS IN A PROTECTED CELL OR CELLS SHALL NOT BE TAKEN INTO
6 ACCOUNT IN APPLYING THE INVESTMENT LIMITATIONS OTHERWISE APPLICABLE
7 TO THE INVESTMENTS OF THE SPFC.

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

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

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

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

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

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

26 (2) AN SPFC, ITS PARENT OR AN AFFILIATED COMPANY, ITS
27 COUNTERPARTY, OR A CAPTIVE LLC MAY ISSUE SPFC SECURITIES AND ANY

1 OTHER SECURITIES NECESSARY TO IMPLEMENT THE INSURANCE
2 SECURITIZATION.

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

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

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

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

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

1 THE PAYMENTS ON AND PRINCIPAL REPAYMENTS OF THE SURPLUS NOTES.

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

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

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

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

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

25 (C) PROVIDES THAT CONTINGENT OBLIGATIONS OF THE SPFC UNDER THE
26 SPFC CONTRACT ARE SECURITIZED THROUGH AN SPFC INSURANCE
27 SECURITIZATION AND ARE FUNDED AND SECURED WITH ASSETS HELD IN TRUST

1 FOR THE BENEFIT OF THE COUNTERPARTY PURSUANT TO THIS CHAPTER AND
2 UNDER AGREEMENTS CONTEMPLATED BY THIS CHAPTER AND THAT ARE INVESTED
3 IN A MANNER THAT MEET THE CRITERIA UNDER SECTION 4727.

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

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

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

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

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

27 (D) A REQUIREMENT THAT ALL SETTLEMENTS OF ACCOUNT BETWEEN THE

1 COUNTERPARTY AND THE SPFC BE MADE IN CASH OR ITS EQUIVALENT.

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

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

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

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

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

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

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

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

1 COUNTERPARTY, THE ISSUANCE OF PREFERRED SECURITIES, OR THE
2 INSURANCE SECURITIZATION AND OTHER RELATED AGREEMENTS.

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) ASSETS OF THE SPFC THAT ARE PLEDGED TO SECURE OBLIGATIONS

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

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

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

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

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

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

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

26 (5) THE TRUST AGREEMENT SHALL BE ESTABLISHED FOR THE SOLE USE
27 AND BENEFIT OF THE COUNTERPARTY AT LEAST TO THE FULL EXTENT OF THE

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

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

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

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

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

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

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

25 (F) ALLOW NO SUBSTITUTIONS OR WITHDRAWALS OF ASSETS FROM THE
26 TRUST ACCOUNT, EXCEPT PURSUANT TO THE TRUST AGREEMENT OR SPFC
27 CONTRACT, OR AS OTHERWISE PERMITTED BY THE COUNTERPARTY.

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

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

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

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

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

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

27 (B) TO PAY OR REIMBURSE THE COUNTERPARTY FOR PAYMENT OF THE

1 SPFC'S SHARE OF SURRENDERS, BENEFITS, LOSSES, OR OTHER BENEFITS
2 COVERED AND PAYABLE PURSUANT TO THE SPFC CONTRACT.

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

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

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

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

24 (14) IF THE COUNTERPARTY HAS RECEIVED NOTIFICATION OF
25 TERMINATION OF THE TRUST ACCOUNT WHILE ANY OF THE SPFC'S
26 OBLIGATIONS OR LIABILITIES UNDER THE SPFC CONTRACT THAT ARE SECURED
27 BY THE TRUST ACCOUNT REMAIN UNLIQUIDATED AS OF 10 DAYS PRIOR TO THE

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

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

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

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

4 SEC. 4731. (1) ANY MATERIAL CHANGE OF THE SPFC'S PLAN OF
5 OPERATION PURSUANT TO SECTION 4705(6)(B), WHETHER OR NOT THROUGH AN
6 SPFC PROTECTED CELL, SHALL REQUIRE PRIOR APPROVAL OF THE
7 COMMISSIONER, EXCEPT AS FOLLOWS:

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. A CAPTIVE
6 INSURER THAT FAILS TO RESPOND TO AN INQUIRY WITHIN 30 DAYS IS
7 SUBJECT TO PROCEEDINGS UNDER SECTION 4735(2).

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

1 THE PREVIOUS YEAR. THE STATEMENTS SHALL BE PREPARED ON FORMS
2 REQUIRED BY THE COMMISSIONER. IN ADDITION, THE COMMISSIONER MAY
3 REQUIRE THE FILING OF PERFORMANCE ASSESSMENTS OF THE SPFC CONTRACT.

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

16 (6) ALL ORIGINAL BOOKS, RECORDS, DOCUMENTS, ACCOUNTS, AND
17 VOUCHERS SHALL BE PRESERVED AND KEPT AVAILABLE IN THIS STATE FOR
18 THE PURPOSE OF EXAMINATION. THE ORIGINAL RECORDS, HOWEVER, MAY BE
19 KEPT AND MAINTAINED OUTSIDE THIS STATE IF, ACCORDING TO A PLAN
20 ADOPTED BY THE MANAGEMENT OF THE SPFC AND APPROVED BY THE
21 COMMISSIONER, IT MAINTAINS SUITABLE RECORDS. THE BOOKS OR RECORDS
22 MAY BE PHOTOGRAPHED, REPRODUCED ON FILM, OR STORED AND REPRODUCED
23 ELECTRONICALLY.

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

27 SEC. 4733. (1) THE EXPENSES AND CHARGES OF A CAPTIVE INSURANCE

1 COMPANY EXAMINATION SHALL BE PAID TO THE STATE BY THE CAPTIVE
2 INSURANCE COMPANY OR COMPANIES EXAMINED, AND THE OFFICE SHALL ISSUE
3 WARRANTS FOR THE PROPER CHARGES INCURRED IN ALL EXAMINATIONS. THE
4 PAYMENTS RECEIVED BY THE STATE SHALL BE DEPOSITED INTO THE CAPTIVE
5 INSURANCE REGULATORY AND SUPERVISION FUND.

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

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

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

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

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

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

3 (D) TO LAW ENFORCEMENT OFFICIALS.

4 (E) TO PERSONS AUTHORIZED BY THE INGHAM COUNTY CIRCUIT COURT
5 TO RECEIVE THE INFORMATION.

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

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

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

20 (2) THE COMMISSIONER MAY SUSPEND OR REVOKE THE LIMITED
21 CERTIFICATE OF AUTHORITY OF AN SPFC IN THIS STATE FOR ANY OF THE
22 FOLLOWING:

23 (A) INSOLVENCY.

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

25 (C) THE SPFC IS NO LONGER SAFE, RELIABLE, OR ENTITLED TO
26 PUBLIC CONFIDENCE OR IS UNSOUND, OR THE SPFC IS USING FINANCIAL
27 METHODS AND PRACTICES IN THE CONDUCT OF ITS BUSINESS THAT RENDER

1 FURTHER TRANSACTION OF INSURANCE BY THE SPFC IN THIS STATE
2 HAZARDOUS TO THE PUBLIC, THE HOLDERS OF THE SECURITIES, OR
3 COUNTERPARTIES IN THE SPFC.

4 (D) THE SPFC HAS FAILED, AFTER WRITTEN REQUEST BY THE
5 COMMISSIONER, TO REMOVE OR DISCHARGE AN OFFICER OR DIRECTOR WHOSE
6 RECORD OF BUSINESS CONDUCT DOES NOT SATISFY THE REQUIREMENTS OF
7 SECTION 4603 OR WHO HAS BEEN CONVICTED OF ANY CRIME INVOLVING
8 FRAUD, DISHONESTY, OR LIKE MORAL TURPITUDE.

9 (E) THE CAPTIVE INSURANCE COMPANY HAS FAILED FOR AN
10 UNREASONABLE PERIOD TO PAY ANY FINAL JUDGMENT RENDERED AGAINST IT
11 IN THIS STATE ON ANY POLICY, BOND, RECOGNIZANCE, OR UNDERTAKING
12 ISSUED OR GUARANTEED BY IT.

13 (F) FAILURE TO OTHERWISE COMPLY IN ANY MATERIAL RESPECT WITH
14 APPLICABLE LAWS OF THIS STATE.

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

21 (4) UNLESS THE GROUNDS FOR SUSPENSION OR REVOCATION RELATE
22 ONLY TO THE FINANCIAL CONDITION OR SOUNDNESS OF THE SPFC OR TO A
23 DEFICIENCY IN ITS ASSETS, THE COMMISSIONER SHALL NOTIFY THE SPFC
24 NOT LESS THAN 30 DAYS BEFORE REVOKING ITS AUTHORITY TO DO BUSINESS
25 IN THIS STATE AND SHALL SPECIFY IN THE NOTICE THE PARTICULARS OF
26 THE ALLEGED VIOLATION OF THE LAW OR ITS ORGANIZATIONAL DOCUMENTS OR
27 GROUNDS FOR REVOCATION AND THE SPFC SHALL BE OFFERED THE

1 OPPORTUNITY TO BE HEARD PURSUANT TO SECTION 437.

2 SEC. 4741. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
3 THE TERMS AND CONDITIONS UNDER CHAPTER 81 PERTAINING TO
4 ADMINISTRATIVE SUPERVISION, CONSERVATION, REHABILITATION,
5 RECEIVERSHIP, AND LIQUIDATION OF INSURERS APPLY IN FULL TO SPFC'S OR
6 EACH OF THE SPFC'S PROTECTED CELLS, INDIVIDUALLY OR IN COMBINATION,
7 WITHOUT CAUSING OR OTHERWISE EFFECTING AN ADMINISTRATIVE
8 SUPERVISION, CONSERVATION, REHABILITATION, RECEIVERSHIP, OR
9 LIQUIDATION OF THE SPFC OR ANOTHER PROTECTED CELL.

10 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT AND
11 WITHOUT CAUSING OR OTHERWISE AFFECTING THE CONSERVATION OR
12 REHABILITATION OF AN OTHERWISE SOLVENT PROTECTED CELL OF AN SPFC
13 AND SUBJECT TO SUBSECTION (7) (E), THE COMMISSIONER MAY PETITION THE
14 CIRCUIT COURT FOR AN ORDER AUTHORIZING THE COMMISSIONER TO
15 CONSERVE, REHABILITATE, OR LIQUIDATE AN SPFC DOMICILED IN THIS
16 STATE ON 1 OR MORE OF THE FOLLOWING GROUNDS:

17 (A) THERE HAS BEEN EMBEZZLEMENT, WRONGFUL SEQUESTRATION,
18 DISSIPATION, OR DIVERSION OF THE ASSETS OF THE SPFC INTENDED TO BE
19 USED TO PAY AMOUNTS OWED TO THE COUNTERPARTY OR THE HOLDERS OF SPFC
20 SECURITIES.

21 (B) THE SPFC IS INSOLVENT AND THE HOLDERS OF A MAJORITY IN
22 OUTSTANDING PRINCIPAL AMOUNT OF EACH CLASS OF SPFC SECURITIES
23 REQUEST OR CONSENT TO CONSERVATION, REHABILITATION, OR LIQUIDATION
24 PURSUANT TO THIS CHAPTER.

25 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
26 COMMISSIONER MAY PETITION THE CIRCUIT COURT FOR AN ORDER
27 AUTHORIZING THE COMMISSIONER TO CONSERVE, REHABILITATE, OR

1 LIQUIDATE 1 OR MORE OF AN SPFC'S PROTECTED CELLS, INDEPENDENTLY,
2 WITHOUT CAUSING OR OTHERWISE EFFECTING A CONSERVATION,
3 REHABILITATION, RECEIVERSHIP, OR LIQUIDATION OF THE SPFC GENERALLY
4 OR ANOTHER OF ITS PROTECTED CELLS, ON 1 OR MORE OF THE FOLLOWING
5 GROUNDS:

6 (A) THERE HAS BEEN EMBEZZLEMENT, WRONGFUL SEQUESTRATION,
7 DISSIPATION, OR DIVERSION OF THE ASSETS OF THE SPFC ATTRIBUTABLE TO
8 THE AFFECTED PROTECTED CELL OR CELLS INTENDED TO BE USED TO PAY
9 AMOUNTS OWED TO THE COUNTERPARTY OR THE HOLDERS OF SPFC SECURITIES
10 OF THE AFFECTED CELL OR CELLS.

11 (B) THE AFFECTED PROTECTED CELL IS INSOLVENT AND THE HOLDERS
12 OF A MAJORITY IN OUTSTANDING PRINCIPAL AMOUNT OF EACH CLASS OF SPFC
13 SECURITIES ATTRIBUTABLE TO THAT PARTICULAR PROTECTED CELL REQUEST
14 OR CONSENT TO CONSERVATION, REHABILITATION, OR LIQUIDATION PURSUANT
15 TO THIS CHAPTER.

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

22 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, RULES
23 PROMULGATED OR REGULATIONS ENTERED UNDER THIS ACT, OR OTHER
24 APPLICABLE LAW, RULE, OR REGULATION, A RECEIVER APPOINTED PURSUANT
25 TO ANY ORDER OR CONSERVATION, REHABILITATION, OR LIQUIDATION SHALL
26 DO ALL OF THE FOLLOWING:

27 (A) FOR AN SPFC SUBJECT TO AN ORDER OF CONSERVATION,

1 REHABILITATION, OR LIQUIDATION, MANAGE THE ASSETS AND LIABILITIES
2 OF THE SPFC PURSUANT TO THIS CHAPTER.

3 (B) FOR A PROTECTED CELL OR CELLS SUBJECT TO AN ORDER OF
4 CONSERVATION, REHABILITATION, OR LIQUIDATION, MANAGE THE ASSETS AND
5 LIABILITIES OF THE PROTECTED CELL OR CELLS PURSUANT TO THIS
6 CHAPTER.

7 (C) ENSURE THAT THE ASSETS OF 1 PROTECTED CELL ARE NOT
8 UTILIZED TO SATISFY THE LIABILITIES OF ANOTHER PROTECTED CELL OR OF
9 THE SPFC GENERALLY.

10 (6) WITH RESPECT TO AMOUNTS RECOVERABLE UNDER AN SPFC
11 CONTRACT, THE AMOUNT RECOVERABLE BY THE RECEIVER, INCLUDING ALL
12 EXPENSES OF TAKING POSSESSION OF THE SPFC OR 1 OR MORE OF THE
13 SPFC'S PROTECTED CELLS, SHALL NOT BE REDUCED OR DIMINISHED AS A
14 RESULT OF THE ENTRY OF AN ORDER OF CONSERVATION, REHABILITATION, OR
15 LIQUIDATION WITH RESPECT TO THE COUNTERPARTY, NOTWITHSTANDING ANY
16 OTHER PROVISION IN THE CONTRACTS OR OTHER DOCUMENTATION GOVERNING
17 THE SPFC INSURANCE SECURITIZATION.

18 (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR OTHER
19 LAWS OF THIS STATE:

20 (A) AN APPLICATION OR PETITION, OR A TEMPORARY RESTRAINING
21 ORDER OR INJUNCTION ISSUED PURSUANT TO THIS ACT, WITH RESPECT TO A
22 COUNTERPARTY DOES NOT PROHIBIT THE TRANSACTION OF A BUSINESS BY AN
23 SPFC, INCLUDING ANY PAYMENT BY AN SPFC MADE PURSUANT TO AN SPFC
24 SECURITY, OR ANY ACTION OR PROCEEDING AGAINST AN SPFC OR ITS
25 ASSETS.

26 (B) THE COMMENCEMENT OF A SUMMARY PROCEEDING OR OTHER INTERIM
27 PROCEEDING COMMENCED BEFORE A FORMAL DELINQUENCY PROCEEDING WITH

1 RESPECT TO AN SPFC, AND ANY ORDER ISSUED BY THE COURT DOES NOT
2 PROHIBIT THE PAYMENT BY AN SPFC MADE PURSUANT TO AN SPFC SECURITY
3 OR SPFC CONTRACT OR THE SPFC FROM TAKING ANY ACTION REQUIRED TO
4 MAKE THE PAYMENT.

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

8 (D) A RECEIVER OF AN SPFC SHALL NOT VOID A NONFRAUDULENT
9 TRANSFER BY THE SPFC OF MONEY OR OTHER PROPERTY MADE TO A
10 COUNTERPARTY PURSUANT TO AN SPFC CONTRACT OR MADE TO OR FOR THE
11 BENEFIT OF ANY HOLDER OF AN SPFC SECURITY ON ACCOUNT OF THE SPFC
12 SECURITY.

13 (E) THE COMMISSIONER SHALL NOT SEEK TO HAVE AN SPFC WITH
14 PROTECTED CELLS DECLARED INSOLVENT AS LONG AS AT LEAST 1 OF THE
15 SPFC'S PROTECTED CELLS REMAINS SOLVENT, AND IN THE CASE OF SUCH AN
16 INSOLVENCY, THE RECEIVER SHALL HANDLE SPFC'S ASSETS IN COMPLIANCE
17 WITH SUBSECTION (5) AND OTHER LAWS OF THIS STATE.

18 (8) SUBSECTION (7) DOES NOT PROHIBIT THE COMMISSIONER FROM
19 TAKING ANY ACTION PERMITTED UNDER CHAPTER 81 WITH RESPECT ONLY TO
20 THE CONSERVATION OR REHABILITATION OF AN SPFC WITH PROTECTED CELL
21 OR CELLS, PROVIDED THE COMMISSIONER WOULD HAVE HAD SUFFICIENT
22 GROUNDS TO SEEK TO DECLARE THE SPFC INSOLVENT, SUBJECT TO AND
23 WITHOUT OTHERWISE AFFECTING SUBSECTION (7) (E). IN THIS CASE, WITH
24 RESPECT TO THE SOLVENT PROTECTED CELL OR CELLS, THE COMMISSIONER
25 SHALL NOT PROHIBIT PAYMENTS MADE BY THE SPFC PURSUANT TO AN SPFC
26 SECURITY, AN SPFC CONTRACT, OR OTHERWISE MADE UNDER THE INSURANCE
27 SECURITIZATION TRANSACTION THAT ARE ATTRIBUTABLE TO THESE PROTECTED

1 CELL OR CELLS OR PROHIBIT THE SPFC FROM TAKING ANY ACTION REQUIRED
2 TO MAKE THESE PAYMENTS.

3 (9) WITH THE EXCEPTION OF THE FULFILLMENT OF THE OBLIGATIONS
4 UNDER AN SPFC CONTRACT, AND NOTWITHSTANDING ANY OTHER PROVISION OF
5 THIS CHAPTER OR OTHER LAWS OF THIS STATE, THE ASSETS OF AN SPFC,
6 INCLUDING ASSETS HELD IN TRUST, SHALL NOT BE CONSOLIDATED WITH OR
7 INCLUDED IN THE ESTATE OF A COUNTERPARTY IN ANY DELINQUENCY
8 PROCEEDING AGAINST THE COUNTERPARTY PURSUANT TO THIS CHAPTER FOR
9 ANY PURPOSE INCLUDING, WITHOUT LIMITATION, DISTRIBUTION TO
10 CREDITORS OF THE COUNTERPARTY.

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

15 (A) PROVE ITS CASE IN ACCORDANCE WITH THE APPLICABLE RULES OF
16 EVIDENCE.

17 (B) DEMONSTRATE IRREPARABLE HARM TO THE SPFC OR ITS
18 COUNTERPARTY, OR BOTH.

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

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

24 (2) THE COMMISSIONER MAY SUSPEND, REVOKE, OR MODIFY A LIMITED
25 CERTIFICATE OF AUTHORITY ISSUED TO AN SPFC OR AN ORDER MADE IN
26 CONNECTION WITH A LIMITED CERTIFICATE OF AUTHORITY ISSUED TO AN
27 SPFC IN COMPLIANCE WITH THE STANDARDS AND CRITERIA PROVIDED IN

1 SUBSECTION (1) OR IN CONFORMANCE WITH SECTION 4735(2).

2 SEC. 4747. THE COMMISSIONER MAY ISSUE REGULATIONS NECESSARY TO
3 EFFECTUATE THE PURPOSES OF THIS CHAPTER. REGULATIONS ISSUED
4 PURSUANT TO THIS SECTION DO NOT AFFECT AN SPFC INSURANCE
5 SECURITIZATION IN EFFECT AT THE TIME OF THE ISSUANCE OF THE
6 REGULATION.

7 CHAPTER 48

8 PROTECTED CELL INSURANCE COMPANIES

9 SEC. 4801. AS USED IN THIS CHAPTER:

10 (A) "DOMESTIC INSURER" MEANS AN INSURER DOMICILED IN THIS
11 STATE.

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

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

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

24 (C) "FULLY FUNDED" MEANS THAT, WITH RESPECT TO ANY EXPOSURE
25 ATTRIBUTED TO A PROTECTED CELL, THE FAIR VALUE OF THE PROTECTED
26 CELL ASSETS, ON THE DATE ON WHICH THE INSURANCE SECURITIZATION IS
27 EFFECTED, EQUALS OR EXCEEDS THE MAXIMUM POSSIBLE EXPOSURE

1 ATTRIBUTABLE TO THE PROTECTED CELL WITH RESPECT TO SUCH EXPOSURES.

2 (D) "GENERAL ACCOUNT" MEANS THE ASSETS AND LIABILITIES OF A
3 PROTECTED CELL COMPANY OTHER THAN PROTECTED CELL ASSETS AND
4 PROTECTED CELL LIABILITIES.

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

9 (F) "NONINDEMNITY TRIGGER" MEANS A TRANSACTION TERM BY WHICH
10 RELIEF OF THE ISSUER'S OBLIGATION TO REPAY INVESTORS IS TRIGGERED
11 SOLELY BY SOME EVENT OR CONDITION OTHER THAN THE INDIVIDUAL
12 PROTECTED CELL COMPANY INCURRING A SPECIFIED LEVEL OF LOSSES UNDER
13 ITS INSURANCE OR REINSURANCE CONTRACTS.

14 (G) "PROTECTED CELL" MEANS AN IDENTIFIED POOL OF ASSETS AND
15 LIABILITIES OF A PROTECTED CELL COMPANY SEGREGATED AND INSULATED BY
16 MEANS OF THIS CHAPTER FROM THE REMAINDER OF THE PROTECTED CELL
17 COMPANY'S ASSETS AND LIABILITIES.

18 (H) "PROTECTED CELL ACCOUNT" MEANS A SPECIFICALLY IDENTIFIED
19 BANK OR CUSTODIAL ACCOUNT ESTABLISHED BY A PROTECTED CELL COMPANY
20 FOR THE PURPOSE OF SEGREGATING THE PROTECTED CELL ASSETS OF 1
21 PROTECTED CELL FROM THE PROTECTED CELL ASSETS OF OTHER PROTECTED
22 CELLS AND FROM THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL
23 ACCOUNT.

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

27 (J) "PROTECTED CELL COMPANY" MEANS A DOMESTIC INSURER OR

1 CAPTIVE INSURER THAT HAS 1 OR MORE PROTECTED CELLS.

2 (K) "PROTECTED CELL COMPANY INSURANCE SECURITIZATION" MEANS
3 THE ISSUANCE OF DEBT INSTRUMENTS, THE PROCEEDS FROM WHICH SUPPORT
4 THE EXPOSURES ATTRIBUTED TO THE PROTECTED CELL, BY A PROTECTED CELL
5 COMPANY WHERE REPAYMENT OF PRINCIPAL OR INTEREST, OR BOTH, TO
6 INVESTORS PURSUANT TO THE TRANSACTION TERMS IS CONTINGENT UPON THE
7 OCCURRENCE OR NONOCCURRENCE OF AN EVENT WITH RESPECT TO WHICH THE
8 PROTECTED CELL COMPANY IS EXPOSED TO LOSS UNDER INSURANCE OR
9 REINSURANCE CONTRACTS IT HAS ISSUED.

10 (l) "PROTECTED CELL LIABILITIES" MEANS ALL LIABILITIES AND
11 OTHER OBLIGATIONS IDENTIFIED WITH AND ATTRIBUTABLE TO A SPECIFIC
12 PROTECTED CELL OF A PROTECTED CELL COMPANY.

13 SEC. 4803. (1) A PROTECTED CELL COMPANY MAY ESTABLISH 1 OR
14 MORE PROTECTED CELLS WITH THE PRIOR WRITTEN APPROVAL OF THE
15 COMMISSIONER OF A PLAN OF OPERATION OR AMENDMENTS SUBMITTED BY THE
16 PROTECTED CELL COMPANY WITH RESPECT TO EACH PROTECTED CELL IN
17 CONNECTION WITH AN INSURANCE SECURITIZATION. UPON THE WRITTEN
18 APPROVAL OF THE COMMISSIONER OF THE PLAN OF OPERATION, WHICH SHALL
19 INCLUDE, BUT IS NOT LIMITED TO, THE SPECIFIC BUSINESS OBJECTIVES
20 AND INVESTMENT GUIDELINES OF THE PROTECTED CELL, THE PROTECTED CELL
21 COMPANY, IN ACCORDANCE WITH THE APPROVED PLAN OF OPERATION, MAY
22 ATTRIBUTE TO THE PROTECTED CELL INSURANCE OBLIGATIONS FOR ITS
23 INSURANCE BUSINESS AND OBLIGATIONS RELATING TO THE INSURANCE
24 SECURITIZATION AND ASSETS TO FUND THE OBLIGATIONS. A PROTECTED CELL
25 SHALL HAVE ITS OWN DISTINCT NAME OR DESIGNATION, WHICH SHALL
26 INCLUDE THE WORDS "PROTECTED CELL". THE PROTECTED CELL COMPANY
27 SHALL TRANSFER ALL ASSETS ATTRIBUTABLE TO A PROTECTED CELL TO 1 OR

1 MORE SEPARATELY ESTABLISHED AND IDENTIFIED PROTECTED CELL ACCOUNTS
2 BEARING THE NAME OR DESIGNATION OF THAT PROTECTED CELL. PROTECTED
3 CELL ASSETS SHALL BE HELD IN THE PROTECTED CELL ACCOUNTS FOR THE
4 PURPOSE OF SATISFYING THE OBLIGATIONS OF THAT PROTECTED CELL.

5 (2) ALL ATTRIBUTIONS OF ASSETS AND LIABILITIES BETWEEN A
6 PROTECTED CELL AND THE GENERAL ACCOUNT SHALL BE IN ACCORDANCE WITH
7 THE PLAN OF OPERATION APPROVED BY THE COMMISSIONER. NO OTHER
8 ATTRIBUTION OF ASSETS OR LIABILITIES SHALL BE MADE BY A PROTECTED
9 CELL COMPANY BETWEEN THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT
10 AND ITS PROTECTED CELLS. ANY ATTRIBUTION OF ASSETS AND LIABILITIES
11 BETWEEN THE GENERAL ACCOUNT AND A PROTECTED CELL, OR FROM INVESTORS
12 IN THE FORM OF PRINCIPAL ON A DEBT INSTRUMENT ISSUED BY A PROTECTED
13 CELL COMPANY IN CONNECTION WITH A PROTECTED CELL COMPANY
14 SECURITIZATION, SHALL BE IN CASH OR IN READILY MARKETABLE
15 SECURITIES WITH ESTABLISHED FAIR VALUES.

16 (3) THE CREATION OF A PROTECTED CELL DOES NOT CREATE, WITH
17 RESPECT TO THAT PROTECTED CELL, A LEGAL PERSON SEPARATE FROM THE
18 PROTECTED CELL COMPANY. AMOUNTS ATTRIBUTED TO A PROTECTED CELL
19 UNDER THIS CHAPTER, INCLUDING ASSETS TRANSFERRED TO A PROTECTED
20 CELL ACCOUNT, ARE OWNED BY THE PROTECTED CELL COMPANY, AND THE
21 PROTECTED CELL COMPANY SHALL NOT BE, AND SHALL NOT HOLD ITSELF OUT
22 TO BE, A TRUSTEE WITH RESPECT TO THOSE PROTECTED CELL ASSETS OF
23 THAT PROTECTED CELL ACCOUNT. NOTWITHSTANDING THIS SUBSECTION, THE
24 PROTECTED CELL COMPANY MAY ALLOW FOR A SECURITY INTEREST TO ATTACH
25 TO PROTECTED CELL ASSETS OR A PROTECTED CELL ACCOUNT IF IN FAVOR OF
26 A CREDITOR OF THE PROTECTED CELL AND AS OTHERWISE ALLOWED UNDER
27 APPLICABLE LAW.

1 (4) THIS CHAPTER SHALL NOT BE CONSTRUED TO PROHIBIT THE
2 PROTECTED CELL COMPANY FROM CONTRACTING WITH OR ARRANGING FOR AN
3 INVESTMENT ADVISOR, COMMODITY TRADING ADVISOR, OR OTHER THIRD PARTY
4 TO MANAGE THE PROTECTED CELL ASSETS OF A PROTECTED CELL, IF ALL
5 REMUNERATION, EXPENSES, AND OTHER COMPENSATION OF THE THIRD PARTY
6 ADVISOR OR MANAGER ARE PAYABLE FROM THE PROTECTED CELL ASSETS OF
7 THAT PROTECTED CELL AND NOT FROM THE PROTECTED CELL ASSETS OF OTHER
8 PROTECTED CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S
9 GENERAL ACCOUNT.

10 (5) A PROTECTED CELL COMPANY SHALL ESTABLISH ADMINISTRATIVE
11 AND ACCOUNTING PROCEDURES NECESSARY TO PROPERLY IDENTIFY THE 1 OR
12 MORE PROTECTED CELLS OF THE PROTECTED CELL COMPANY AND THE
13 PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES ATTRIBUTABLE
14 TO THE PROTECTED CELLS. THE DIRECTORS OF A PROTECTED CELL COMPANY
15 SHALL KEEP PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES
16 SEPARATE AND SEPARATELY IDENTIFIABLE FROM THE ASSETS AND
17 LIABILITIES OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT AND
18 ATTRIBUTABLE TO 1 PROTECTED CELL SEPARATE AND SEPARATELY
19 IDENTIFIABLE FROM PROTECTED CELL ASSETS AND PROTECTED CELL
20 LIABILITIES ATTRIBUTABLE TO OTHER PROTECTED CELLS. IF THIS
21 SUBSECTION IS VIOLATED, THE REMEDY OF TRACING IS APPLICABLE TO
22 PROTECTED CELL ASSETS WHEN COMMINGLED WITH PROTECTED CELL ASSETS OF
23 OTHER PROTECTED CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S
24 GENERAL ACCOUNT. THE REMEDY OF TRACING IS NOT AN EXCLUSIVE REMEDY.

25 (6) WHEN ESTABLISHING A PROTECTED CELL, THE PROTECTED CELL
26 COMPANY SHALL ATTRIBUTE TO THE PROTECTED CELL ASSETS WITH A VALUE
27 AT LEAST EQUAL TO THE RESERVES AND OTHER INSURANCE LIABILITIES

1 ATTRIBUTED TO THAT PROTECTED CELL.

2 SEC. 4805. (1) THE PROTECTED CELL ASSETS OF A PROTECTED CELL
3 SHALL NOT BE CHARGED WITH LIABILITIES ARISING OUT OF ANY OTHER
4 BUSINESS THE PROTECTED CELL COMPANY MAY CONDUCT. ALL CONTRACTS OR
5 OTHER DOCUMENTATION REFLECTING PROTECTED CELL LIABILITIES SHALL
6 CLEARLY INDICATE THAT ONLY THE PROTECTED CELL ASSETS ARE AVAILABLE
7 FOR THE SATISFACTION OF THOSE PROTECTED CELL LIABILITIES.

8 (2) THE INCOME, AND GAINS AND LOSSES, WHETHER REALIZED OR
9 UNREALIZED, FROM PROTECTED CELL ASSETS AND PROTECTED CELL
10 LIABILITIES SHALL BE CREDITED TO OR CHARGED AGAINST THE PROTECTED
11 CELL WITHOUT REGARD TO OTHER INCOME AND GAINS OR LOSSES OF THE
12 PROTECTED CELL COMPANY, INCLUDING INCOME AND GAINS OR LOSSES OF
13 OTHER PROTECTED CELLS. AMOUNTS ATTRIBUTED TO ANY PROTECTED CELL AND
14 ACCUMULATIONS ON THE ATTRIBUTED AMOUNTS MAY BE INVESTED AND
15 REINVESTED. THE INVESTMENTS IN A PROTECTED CELL OR CELLS SHALL NOT
16 BE TAKEN INTO ACCOUNT IN APPLYING THE INVESTMENT LIMITATIONS
17 OTHERWISE APPLICABLE TO THE INVESTMENTS OF THE PROTECTED CELL
18 COMPANY.

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

23 (4) A PROTECTED CELL COMPANY WITH RESPECT TO ANY OF ITS
24 PROTECTED CELLS SHALL ENGAGE IN FULLY FUNDED INDEMNITY TRIGGERED
25 INSURANCE SECURITIZATION TO SUPPORT IN FULL THE PROTECTED CELL
26 EXPOSURES ATTRIBUTABLE TO THAT PROTECTED CELL. A PROTECTED CELL
27 COMPANY INSURANCE SECURITIZATION THAT IS NONINDEMNITY TRIGGERED

1 SHALL QUALIFY AS AN INSURANCE SECURITIZATION UNDER THE TERMS OF
2 THIS CHAPTER ONLY AFTER THE COMMISSIONER BY RULE, REGULATION, OR
3 ORDER ADDRESSES THE METHODS OF FUNDING OF THE PORTION OF THIS RISK
4 THAT IS NOT INDEMNITY BASED AND ADDRESSING ACCOUNTING, DISCLOSURE,
5 RISK BASED CAPITAL TREATMENT, AND RISKS ASSOCIATED WITH SUCH
6 SECURITIZATIONS. A PROTECTED CELL COMPANY INSURANCE SECURITIZATION
7 THAT IS NOT FULLY FUNDED, WHETHER INDEMNITY TRIGGERED OR
8 NONINDEMNITY TRIGGERED, IS PROHIBITED. PROTECTED CELL ASSETS MAY BE
9 USED TO PAY INTEREST OR OTHER CONSIDERATION ON ANY OUTSTANDING DEBT
10 OR OTHER OBLIGATION ATTRIBUTABLE TO THAT PROTECTED CELL. NOTHING IN
11 THIS SUBSECTION SHALL BE CONSTRUED OR INTERPRETED TO PREVENT A
12 PROTECTED CELL COMPANY FROM ENTERING INTO A SWAP AGREEMENT OR OTHER
13 TRANSACTION FOR THE ACCOUNT OF THE PROTECTED CELL THAT HAS THE
14 EFFECT OF GUARANTEEING INTEREST OR OTHER CONSIDERATION.

15 (5) IN ALL PROTECTED CELL COMPANY INSURANCE SECURITIZATIONS,
16 THE CONTRACTS OR OTHER DOCUMENTATION EFFECTING THE TRANSACTION
17 SHALL CONTAIN PROVISIONS IDENTIFYING THE PROTECTED CELL TO WHICH
18 THE TRANSACTION WILL BE ATTRIBUTED. IN ADDITION, THE CONTRACTS OR
19 OTHER DOCUMENTATION SHALL CLEARLY DISCLOSE THAT THE ASSETS OF THAT
20 PROTECTED CELL, AND ONLY THOSE ASSETS, ARE AVAILABLE TO PAY THE
21 OBLIGATIONS OF THAT PROTECTED CELL. NOTWITHSTANDING THIS SUBSECTION
22 AND SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND ANY OTHER
23 APPLICABLE LAW, RULE, OR REGULATION, THE FAILURE TO INCLUDE SUCH
24 LANGUAGE IN THE CONTRACTS OR OTHER DOCUMENTATION SHALL NOT BE USED
25 AS THE SOLE BASIS BY CREDITORS, REINSURERS, OR OTHER CLAIMANTS TO
26 CIRCUMVENT THIS CHAPTER.

27 (6) A PROTECTED CELL COMPANY MAY ATTRIBUTE TO A PROTECTED CELL

1 ACCOUNT ONLY THE INSURANCE OBLIGATIONS RELATING TO THE PROTECTED
2 CELL COMPANY'S GENERAL ACCOUNT. UNDER NO CIRCUMSTANCES SHALL A
3 PROTECTED CELL BE AUTHORIZED TO ISSUE INSURANCE OR REINSURANCE
4 CONTRACTS DIRECTLY TO POLICYHOLDERS OR REINSUREDS OR HAVE ANY
5 OBLIGATION TO THE POLICYHOLDERS OR REINSUREDS OF THE PROTECTED CELL
6 COMPANY'S GENERAL ACCOUNT.

7 (7) AT THE CESSATION OF BUSINESS OF A PROTECTED CELL IN
8 ACCORDANCE WITH THE PLAN APPROVED BY THE COMMISSIONER, THE
9 PROTECTED CELL COMPANY VOLUNTARILY SHALL CLOSE OUT THE PROTECTED
10 CELL ACCOUNT.

11 SEC. 4807. (1) PROTECTED CELL ASSETS ARE ONLY AVAILABLE TO THE
12 CREDITORS OF THE PROTECTED CELL COMPANY THAT ARE CREDITORS FOR THAT
13 PROTECTED CELL AND ARE ENTITLED, IN CONFORMITY WITH THIS CHAPTER,
14 TO HAVE RECOURSE TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT
15 PROTECTED CELL. PROTECTED CELL ASSETS ARE ABSOLUTELY PROTECTED FROM
16 THE CREDITORS OF THE PROTECTED CELL COMPANY THAT ARE NOT CREDITORS
17 FOR THAT PROTECTED CELL AND WHO, ACCORDINGLY, ARE NOT ENTITLED TO
18 HAVE RECOURSE TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT
19 PROTECTED CELL. CREDITORS FOR A PROTECTED CELL ARE NOT ENTITLED TO
20 HAVE RECOURSE AGAINST THE PROTECTED CELL ASSETS OF OTHER PROTECTED
21 CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL
22 ACCOUNT. PROTECTED CELL ASSETS ARE ONLY AVAILABLE TO CREDITORS OF A
23 PROTECTED CELL COMPANY AFTER ALL PROTECTED CELL LIABILITIES HAVE
24 BEEN EXTINGUISHED OR OTHERWISE PROVIDED FOR IN ACCORDANCE WITH THE
25 PLAN OF OPERATION RELATING TO THAT PROTECTED CELL.

26 (2) WHEN AN OBLIGATION OF A PROTECTED CELL COMPANY TO A PERSON
27 ARISES FROM A TRANSACTION, OR IS OTHERWISE IMPOSED, WITH RESPECT TO

1 A PROTECTED CELL, BOTH OF THE FOLLOWING APPLY:

2 (A) THAT OBLIGATION OF THE PROTECTED CELL COMPANY EXTENDS ONLY
3 TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL,
4 AND THE PERSON, WITH RESPECT TO THAT OBLIGATION, IS ENTITLED TO
5 HAVE RECOURSE ONLY TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO
6 THAT PROTECTED CELL.

7 (B) THAT OBLIGATION OF THE PROTECTED CELL COMPANY DOES NOT
8 EXTEND TO THE PROTECTED CELL ASSETS OF ANY OTHER PROTECTED CELL OR
9 THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT, AND
10 THAT PERSON, WITH RESPECT TO THAT OBLIGATION, IS NOT ENTITLED TO
11 HAVE RECOURSE TO THE PROTECTED CELL ASSETS OF ANY OTHER PROTECTED
12 CELL OR THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT.

13 (3) WHEN AN OBLIGATION OF A PROTECTED CELL COMPANY RELATES
14 SOLELY TO THE GENERAL ACCOUNT, THE OBLIGATION OF THE PROTECTED CELL
15 COMPANY EXTENDS ONLY TO, AND THAT CREDITOR, WITH RESPECT TO THAT
16 OBLIGATION, IS ENTITLED TO HAVE RECOURSE ONLY TO, THE ASSETS OF THE
17 PROTECTED CELL COMPANY'S GENERAL ACCOUNT.

18 (4) THE ACTIVITIES, ASSETS, AND OBLIGATIONS RELATING TO A
19 PROTECTED CELL ARE NOT SUBJECT TO THE PROVISIONS OF CHAPTERS 77 AND
20 79, AND NEITHER A PROTECTED CELL NOR A PROTECTED CELL COMPANY SHALL
21 BE ASSESSED BY, OR OTHERWISE BE REQUIRED TO CONTRIBUTE TO, ANY
22 GUARANTY FUND OR GUARANTY ASSOCIATION IN THIS STATE WITH RESPECT TO
23 THE ACTIVITIES, ASSETS, OR OBLIGATIONS OF A PROTECTED CELL. NOTHING
24 IN THIS SUBSECTION AFFECTS THE ACTIVITIES OR OBLIGATIONS OF AN
25 INSURER'S GENERAL ACCOUNT.

26 (5) THE ESTABLISHMENT OF 1 OR MORE PROTECTED CELLS ALONE DOES
27 NOT CONSTITUTE, AND SHALL NOT BE CONSIDERED TO BE, A FRAUDULENT

1 CONVEYANCE, AN INTENT BY THE PROTECTED CELL COMPANY TO DEFRAUD
2 CREDITORS, OR THE CARRYING OUT OF BUSINESS BY THE PROTECTED CELL
3 COMPANY FOR ANY OTHER FRAUDULENT PURPOSE.

4 SEC. 4809. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
5 RULE, OR REGULATION, UPON AN ORDER OF CONSERVATION, REHABILITATION,
6 OR LIQUIDATION OF A PROTECTED CELL COMPANY, THE RECEIVER SHALL DEAL
7 WITH THE PROTECTED CELL COMPANY'S ASSETS AND LIABILITIES, INCLUDING
8 PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES, IN ACCORDANCE
9 WITH THIS CHAPTER.

10 (2) FOR AMOUNTS RECOVERABLE UNDER A PROTECTED CELL COMPANY
11 INSURANCE SECURITIZATION, THE AMOUNT RECOVERABLE BY THE RECEIVER
12 SHALL NOT BE REDUCED OR DIMINISHED AS A RESULT OF THE ENTRY OF AN
13 ORDER OF CONSERVATION, REHABILITATION, OR LIQUIDATION WITH RESPECT
14 TO THE PROTECTED CELL COMPANY, NOTWITHSTANDING ANY OTHER PROVISION
15 TO THE CONTRARY IN THE CONTRACTS OR OTHER DOCUMENTATION GOVERNING
16 THE PROTECTED CELL COMPANY INSURANCE SECURITIZATION.

17 SEC. 4811. A PROTECTED CELL COMPANY INSURANCE SECURITIZATION
18 IS NOT, AND SHALL NOT BE CONSIDERED TO BE, AN INSURANCE OR
19 REINSURANCE CONTRACT. AN INVESTOR IN A PROTECTED CELL COMPANY
20 INSURANCE SECURITIZATION, BY SOLE MEANS OF THIS INVESTMENT, IS NOT,
21 AND SHALL NOT BE CONSIDERED TO BE, CONDUCTING AN INSURANCE BUSINESS
22 IN THIS STATE. THE UNDERWRITERS OR SELLING AGENTS AND THEIR
23 PARTNERS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES,
24 AGENTS, REPRESENTATIVES, AND ADVISORS INVOLVED IN A PROTECTED CELL
25 COMPANY INSURANCE SECURITIZATION ARE NOT, AND SHALL NOT BE
26 CONSIDERED TO BE, CONDUCTING AN INSURANCE OR REINSURANCE AGENCY,
27 BROKERAGE, INTERMEDIARY, ADVISORY, OR CONSULTING BUSINESS BY VIRTUE

1 OF THEIR ACTIVITIES IN CONNECTION WITH THAT BUSINESS.

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