

SENATE BILL No. 1061

January 24, 2008, Introduced by Senators SANBORN and WHITMER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," (MCL 500.100 to 500.8302) by amending the title, as amended by 2002 PA 304, and by adding chapters 46, 47, and 48.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise

1 their powers; to provide the rights, powers, and immunities and to
2 prescribe the conditions on which other persons, firms,
3 corporations, associations, risk retention groups, and purchasing
4 groups engaged in an insurance or surety business may exercise
5 their powers; to provide for the imposition of a privilege fee on
6 domestic insurance companies and associations and the state
7 accident fund; to provide for the imposition of a tax on the
8 business of foreign and alien companies and associations; to
9 provide for the imposition of a tax on risk retention groups and
10 purchasing groups; to provide for the imposition of a tax on the
11 business of surplus line agents; **TO PROVIDE FOR THE IMPOSITION,**
12 **LEVY, COMPUTATION, COLLECTION, ASSESSMENT, REPORTING, PAYMENT, AND**
13 **ENFORCEMENT OF TAXES ON CERTAIN INSURANCE COMPANIES;** to provide for
14 the imposition of regulatory fees on certain insurers; to provide
15 for assessment fees on certain health maintenance organizations; to
16 modify tort liability arising out of certain accidents; to provide
17 for limited actions with respect to that modified tort liability
18 and to prescribe certain procedures for maintaining those actions;
19 to require security for losses arising out of certain accidents; to
20 provide for the continued availability and affordability of
21 automobile insurance and homeowners insurance in this state and to
22 facilitate the purchase of that insurance by all residents of this
23 state at fair and reasonable rates; to provide for certain
24 reporting with respect to insurance and with respect to certain
25 claims against uninsured or self-insured persons; to prescribe
26 duties for certain state departments and officers with respect to
27 that reporting; to provide for certain assessments; to establish

1 and continue certain state insurance funds; to modify and clarify
2 the status, rights, powers, duties, and operations of the nonprofit
3 malpractice insurance fund; to provide for the departmental
4 supervision and regulation of the insurance and surety business
5 within this state; to provide for regulation over worker's
6 compensation self-insurers; to provide for the conservation,
7 rehabilitation, or liquidation of unsound or insolvent insurers; to
8 provide for the protection of policyholders, claimants, and
9 creditors of unsound or insolvent insurers; to provide for
10 associations of insurers to protect policyholders and claimants in
11 the event of insurer insolvencies; to prescribe educational
12 requirements for insurance agents and solicitors; to provide for
13 the regulation of multiple employer welfare arrangements; to create
14 an automobile theft prevention authority to reduce the number of
15 automobile thefts in this state; to prescribe the powers and duties
16 of the automobile theft prevention authority; to provide certain
17 powers and duties upon certain officials, departments, and
18 authorities of this state; to provide for an appropriation; to
19 repeal acts and parts of acts; and to provide penalties for the
20 violation of this act.

21 CHAPTER 46

22 CAPTIVE INSURANCE COMPANIES

23 SEC. 4601. AS USED IN THIS CHAPTER:

24 (A) "AFFILIATED COMPANY" MEANS A COMPANY IN THE SAME CORPORATE
25 SYSTEM AS A PARENT, AN INDUSTRIAL INSURED, OR A MEMBER ORGANIZATION
26 BY VIRTUE OF COMMON OWNERSHIP, CONTROL, OPERATION, OR MANAGEMENT.

27 (B) "ALIEN CAPTIVE INSURANCE COMPANY" MEANS AN INSURER FORMED

1 TO WRITE INSURANCE BUSINESS FOR ITS PARENTS AND AFFILIATES AND
2 LICENSED PURSUANT TO THE LAWS OF A COUNTRY OTHER THAN THE UNITED
3 STATES, OR ANY STATE, DISTRICT, COMMONWEALTH, TERRITORY, OR
4 POSSESSION OF THE UNITED STATES OTHER THAN THE STATE OF MICHIGAN.

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

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

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

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

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

26 (H) "CAPTIVE INSURANCE COMPANY" MEANS A PURE CAPTIVE INSURANCE
27 COMPANY, ASSOCIATION CAPTIVE INSURANCE COMPANY, SPONSORED CAPTIVE

1 INSURANCE COMPANY, SPECIAL PURPOSE CAPTIVE INSURANCE COMPANY, OR
2 INDUSTRIAL INSURED CAPTIVE INSURANCE COMPANY AUTHORIZED UNDER THIS
3 CHAPTER. FOR PURPOSES OF THIS CHAPTER, A BRANCH CAPTIVE INSURANCE
4 COMPANY SHALL BE A PURE CAPTIVE INSURANCE COMPANY WITH RESPECT TO
5 OPERATIONS IN THIS STATE, UNLESS OTHERWISE PERMITTED BY THE
6 COMMISSIONER.

7 (I) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF
8 FINANCIAL AND INSURANCE SERVICES OR THE COMMISSIONER'S DESIGNEE.

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

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

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

25 (ii) HAS AN EXISTING CONTRACTUAL RELATIONSHIP WITH A PARENT OR
26 AFFILIATED COMPANY.

27 (iii) HAS RISKS MANAGED BY A CAPTIVE INSURANCE COMPANY IN

1 ACCORDANCE WITH THIS CHAPTER.

2 (l) "GAAP" MEANS GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

3 (M) "INDUSTRIAL INSURED" MEANS AN INSURED THAT MEETS ALL OF
4 THE FOLLOWING:

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

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

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

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

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

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

23 (ii) IS A GROUP CREATED UNDER THE PRODUCT LIABILITY RISK
24 RETENTION ACT OF 1981, 15 USC 3901 TO 3906, AND CHAPTER 18, AS A
25 CORPORATION OR OTHER LIMITED LIABILITY ASSOCIATION TAXABLE AS A
26 STOCK INSURANCE COMPANY OR A MUTUAL INSURER UNDER THIS CHAPTER.

27 (P) "IRREVOCABLE LETTER OF CREDIT" MEANS A CLEAN, IRREVOCABLE,

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

9 (Q) "MEMBER ORGANIZATION" MEANS ANY INDIVIDUAL, CORPORATION,
10 LIMITED LIABILITY COMPANY, PARTNERSHIP, OR ASSOCIATION THAT BELONGS
11 TO AN ASSOCIATION.

12 (R) "OFFICE" MEANS THE OFFICE OF FINANCIAL AND INSURANCE
13 SERVICES.

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

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

22 (U) "PARTICIPANT" MEANS AN ENTITY AS DESCRIBED IN SECTION
23 4667, AND ANY AFFILIATES OF THAT ENTITY, THAT ARE INSURED BY A
24 SPONSORED CAPTIVE INSURANCE COMPANY, WHERE THE RECOVERY OF THE
25 PARTICIPANT IS LIMITED THROUGH A PARTICIPANT CONTRACT TO THE ASSETS
26 OF A PROTECTED CELL.

27 (V) "PARTICIPANT CONTRACT" MEANS A CONTRACT BY WHICH A

1 SPONSORED CAPTIVE INSURANCE COMPANY INSURES THE RISKS OF A
2 PARTICIPANT AND LIMITS THE RECOVERY OF THE PARTICIPANT TO THE
3 ASSETS OF A PROTECTED CELL.

4 (W) "PROTECTED CELL" MEANS A SEGREGATED ACCOUNT ESTABLISHED
5 AND MAINTAINED BY A SPONSORED CAPTIVE INSURANCE COMPANY FOR 1
6 PARTICIPANT.

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

11 (Y) "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS AN
12 INSTITUTION THAT MEETS 1 OF THE FOLLOWING:

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

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

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

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

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

16 (CC) "SURPLUS" MEANS UNASSIGNED FUNDS FOR AN ENTITY USING
17 STATUTORY ACCOUNTING PRINCIPLES, WITH CAPITAL AND SURPLUS INCLUDING
18 ALL CAPITAL STOCK, PAID IN CAPITAL AND CONTRIBUTED SURPLUS, AND
19 OTHER SURPLUS FUNDS, AND IS EQUIVALENT TO RETAINED EARNINGS AND
20 ACCUMULATED OTHER COMPREHENSIVE INCOME, WITH CAPITAL AND RETAINED
21 EARNINGS INCLUDING ALL CAPITAL STOCK, ADDITIONAL PAID IN CAPITAL,
22 AND OTHER EQUITY FUNDS FOR AN ENTITY USING GAAP.

23 (DD) "TREASURY RATES" MEANS THE UNITED STATES TREASURY STRIPS
24 ASKED YIELD AS PUBLISHED IN THE WALL STREET JOURNAL AS OF A BALANCE
25 SHEET DATE.

26 (EЕ) "VOTING SECURITY" INCLUDES ANY SECURITY CONVERTIBLE INTO
27 OR EVIDENCING THE RIGHT TO ACQUIRE A VOTING SECURITY.

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

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

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

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

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

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

27 (2) TO CONDUCT INSURANCE BUSINESS IN THIS STATE, A CAPTIVE

1 INSURANCE COMPANY SHALL DO ALL OF THE FOLLOWING:

2 (A) OBTAIN FROM THE COMMISSIONER A CERTIFICATE OF AUTHORITY
3 AUTHORIZING IT TO CONDUCT INSURANCE BUSINESS IN THIS STATE.

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

7 (C) MAINTAIN ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE, OR
8 FOR A BRANCH CAPTIVE INSURANCE COMPANY, MAINTAIN THE PRINCIPAL
9 PLACE OF BUSINESS FOR ITS BRANCH OPERATIONS IN THIS STATE.

10 (D) FILE WITH THE COMMISSIONER THE NAME AND ADDRESS OF A
11 RESIDENT REGISTERED AGENT DESIGNATED TO ACCEPT SERVICE OF PROCESS
12 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE. THE DESIGNATION
13 SHALL REMAIN IN FORCE AS LONG AS ANY LIABILITY REMAINS WITHIN THIS
14 STATE. WHENEVER THE REGISTERED AGENT CANNOT WITH REASONABLE
15 DILIGENCE BE FOUND AT THE REGISTERED OFFICE OF THE CAPTIVE
16 INSURANCE COMPANY, THE COMMISSIONER SHALL BE AN AGENT OF THE
17 CAPTIVE INSURANCE COMPANY UPON WHOM ANY PROCESS, NOTICE, OR DEMAND
18 MAY BE SERVED.

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

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

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

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

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

1 REFERENCE TO THIS CHAPTER.

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

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

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

8 (H) THE AMOUNT AND VALUE OF CAPITAL STOCK, IF ANY.

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

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

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

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

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

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

1 CERTIFICATE OF AUTHORITY THAT SUBMITS ITS ORGANIZATIONAL DOCUMENTS
2 TO THE OFFICE OF THE ATTORNEY GENERAL SHALL PAY TO THE ATTORNEY
3 GENERAL THE EXAMINATION FEE PROVIDED IN SECTION 240(2).

4 (6) PRIOR TO GRANTING A CERTIFICATE OF AUTHORITY TO ANY
5 CAPTIVE INSURANCE COMPANY, THE COMMISSIONER SHALL REQUIRE,
6 CONSIDER, AND REVIEW ALL OF THE FOLLOWING:

7 (A) A STATEMENT ACKNOWLEDGING THAT ALL FINANCIAL RECORDS OF
8 THE CAPTIVE INSURANCE COMPANY, INCLUDING RECORDS PERTAINING TO
9 PROTECTED CELLS, IF APPLICABLE, SHALL BE MADE AVAILABLE FOR
10 INSPECTION OR EXAMINATION BY THE COMMISSIONER AND, IF APPLICABLE, A
11 BUSINESS PLAN DEMONSTRATING HOW THE APPLICANT WILL ACCOUNT FOR THE
12 LOSS AND EXPENSE EXPERIENCE OF EACH PROTECTED CELL AT A LEVEL OF
13 DETAIL FOUND TO BE SUFFICIENT BY THE COMMISSIONER AND HOW IT WILL
14 REPORT THE EXPERIENCE TO THE COMMISSIONER.

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

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

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

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

26 (F) EVIDENCE OF THE CHARACTER, REPUTATION, FINANCIAL
27 RESPONSIBILITY, INSURANCE EXPERIENCE, AND BUSINESS QUALIFICATIONS

1 OF THE OFFICERS AND DIRECTORS OR MANAGERS.

2 (G) BIOGRAPHICAL AFFIDAVITS IN THE FORMAT PRESCRIBED BY THE
3 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS FOR ALL OFFICERS
4 AND DIRECTORS.

5 (H) EVIDENCE OF THE ADEQUACY OF THE LOSS PREVENTION PROGRAMS
6 OF ITS PARENT, MEMBER ORGANIZATION, OR INDUSTRIAL INSUREDS AS
7 APPLICABLE.

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

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

13 (7) THE COMMISSIONER SHALL ISSUE A CERTIFICATE OF AUTHORITY TO
14 A CAPTIVE INSURANCE COMPANY IF, AFTER REVIEWING THE DOCUMENTS AND
15 INFORMATION PROVIDED PURSUANT TO THIS CHAPTER, THE COMMISSIONER
16 FINDS THAT THE CAPTIVE INSURANCE COMPANY MEETS THE STANDARDS IN
17 THIS CHAPTER AND 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) A CAPTIVE INSURANCE COMPANY SHALL PAY TO THE OFFICE A
21 NONREFUNDABLE \$200.00 FEE FOR PROCESSING ITS APPLICATION FOR A
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. IN ADDITION, A CAPTIVE INSURANCE COMPANY SHALL

1 PAY A \$500.00 ANNUAL RENEWAL FEE.

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

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

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

24 SEC. 4609. (1) INFORMATION AND TESTIMONY SUBMITTED OR
25 FURNISHED TO THE OFFICE PURSUANT TO THIS CHAPTER, EXAMINATION
26 REPORTS, PRELIMINARY EXAMINATION REPORTS OR RESULTS, AND THE
27 OFFICE'S WORK PAPERS, CORRESPONDENCE, MEMORANDA, REPORTS, RECORDS,

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

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

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

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

14 (D) TO LAW ENFORCEMENT OFFICIALS.

15 (E) TO PERSONS AUTHORIZED BY THE INGHAM COUNTY CIRCUIT COURT
16 TO RECEIVE THE INFORMATION.

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

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

23 (3) THE INFORMATION LISTED IN SUBSECTION (1) MAY BE
24 DISCOVERABLE BY A PARTY IN A CIVIL ACTION OR CONTESTED CASE TO
25 WHICH THE SUBMITTING CAPTIVE INSURANCE COMPANY IS A PARTY, UPON
26 SHOWING BY THE PARTY SEEKING TO DISCOVER THE INFORMATION THAT ALL
27 OF THE FOLLOWING APPLY:

1 (A) THE INFORMATION SOUGHT IS RELEVANT TO AND NECESSARY FOR
2 THE FURTHERANCE OF THE ACTION OR CASE.

3 (B) THE INFORMATION SOUGHT IS UNAVAILABLE FROM OTHER
4 NONCONFIDENTIAL SOURCES.

5 (C) A SUBPOENA ISSUED BY A JUDICIAL OR ADMINISTRATIVE LAW
6 OFFICER OF COMPETENT JURISDICTION HAS BEEN SUBMITTED TO THE
7 COMMISSIONER.

8 SEC. 4611. (1) THE COMMISSIONER SHALL NOT ISSUE OR RENEW A
9 CERTIFICATE OF AUTHORITY TO A CAPTIVE INSURANCE COMPANY UNLESS THE
10 COMPANY POSSESSES AND MAINTAINS PAID IN CAPITAL AND RETAINED
11 EARNINGS AS FOLLOWS:

12 (A) FOR A PURE CAPTIVE INSURANCE COMPANY, NOT LESS THAN
13 \$150,000.00.

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

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

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

22 (E) FOR A SPONSORED CAPTIVE INSURANCE COMPANY, NOT LESS THAN
23 \$500,000.00. HOWEVER, IF THE SPONSORED CAPTIVE INSURANCE COMPANY
24 DOES NOT ASSUME ANY RISK, THE RISKS INSURED BY THE PROTECTED CELLS
25 ARE HOMOGENEOUS, AND THERE ARE NO MORE THAN 10 CELLS, THE
26 COMMISSIONER MAY REDUCE THIS AMOUNT TO AN AMOUNT NOT LESS THAN
27 \$150,000.00.

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

5 (2) EXCEPT FOR A SPONSORED CAPTIVE INSURANCE COMPANY THAT DOES
6 NOT ASSUME ANY RISK, THE CAPITAL REQUIRED BY SUBSECTION (1) SHALL
7 BE IN THE FORM OF CASH, CASH EQUIVALENT, OR AN IRREVOCABLE LETTER
8 OF CREDIT. FOR A SPONSORED CAPTIVE INSURANCE COMPANY THAT DOES NOT
9 ASSUME ANY RISK, THE CAPITAL ALSO MAY BE IN THE FORM OF OTHER HIGH
10 QUALITY SECURITIES AS APPROVED BY THE COMMISSIONER.

11 (3) THE COMMISSIONER SHALL NOT ISSUE A CERTIFICATE OF
12 AUTHORITY TO A CAPTIVE INSURANCE COMPANY INCORPORATED AS A
13 NONPROFIT CORPORATION UNLESS THE COMPANY POSSESSES AND MAINTAINS
14 UNENCUMBERED EQUITY AS FOLLOWS:

15 (A) FOR A PURE CAPTIVE INSURANCE COMPANY, NOT LESS THAN
16 \$250,000.00.

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

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

25 (5) FOR THE PURPOSES OF SUBSECTIONS (1) THROUGH (4), THE
26 COMMISSIONER MAY ISSUE A CERTIFICATE OF AUTHORITY EXPRESSLY
27 CONDITIONED UPON THE CAPTIVE INSURANCE COMPANY PROVIDING TO THE

1 COMMISSIONER SATISFACTORY EVIDENCE OF POSSESSION OF THE MINIMUM
2 REQUIRED UNIMPAIRED PAID IN CAPITAL. UNTIL THIS EVIDENCE IS
3 PROVIDED, THE CAPTIVE INSURANCE COMPANY SHALL NOT ISSUE ANY POLICY,
4 ASSUME ANY LIABILITY, OR OTHERWISE PROVIDE COVERAGE. THE
5 COMMISSIONER SUMMARILY MAY REVOKE THE CONDITIONAL CERTIFICATE OF
6 AUTHORITY WITHOUT LEGAL RECOURSE BY THE COMPANY IF SATISFACTORY
7 EVIDENCE OF THE REQUIRED CAPITAL IS NOT PROVIDED WITHIN A MAXIMUM
8 PERIOD OF TIME, NOT TO EXCEED 1 YEAR, TO BE ESTABLISHED BY THE
9 COMMISSIONER AT THE TIME THE CONDITIONAL CERTIFICATE OF AUTHORITY
10 IS ISSUED.

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

16 (7) FOR A BRANCH CAPTIVE INSURANCE COMPANY, AS SECURITY FOR
17 THE PAYMENT OF LIABILITIES ATTRIBUTABLE TO BRANCH OPERATIONS, THE
18 COMMISSIONER SHALL REQUIRE THAT A TRUST FUND, FUNDED BY AN
19 IRREVOCABLE LETTER OF CREDIT OR OTHER ACCEPTABLE ASSET, BE
20 ESTABLISHED AND MAINTAINED IN THE UNITED STATES FOR THE BENEFIT OF
21 UNITED STATES POLICYHOLDERS AND UNITED STATES CEDING INSURERS UNDER
22 INSURANCE POLICIES ISSUED OR REINSURANCE CONTRACTS ISSUED OR
23 ASSUMED, BY THE BRANCH CAPTIVE INSURANCE COMPANY THROUGH ITS BRANCH
24 OPERATIONS. THE AMOUNT OF THE SECURITY SHALL BE NO LESS THAN THE
25 CAPITAL AND RETAINED EARNINGS REQUIRED BY THIS CHAPTER AND THE
26 RESERVES ON THESE INSURANCE POLICIES OR REINSURANCE CONTRACTS,
27 INCLUDING RESERVES FOR LOSSES, ALLOCATED LOSS ADJUSTMENT EXPENSES,

1 INCURRED BUT NOT REPORTED LOSSES AND UNEARNED PREMIUMS WITH REGARD
2 TO BUSINESS WRITTEN THROUGH BRANCH OPERATIONS; HOWEVER, THE
3 COMMISSIONER MAY PERMIT A BRANCH CAPTIVE INSURANCE COMPANY THAT IS
4 REQUIRED TO POST SECURITY FOR LOSS RESERVES ON BRANCH BUSINESS BY
5 ITS REINSURER TO REDUCE THE FUNDS IN THE TRUST ACCOUNT REQUIRED BY
6 THIS SECTION BY THE SAME AMOUNT SO LONG AS THE SECURITY REMAINS
7 POSTED WITH THE REINSURER.

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

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

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

23 (B) INCORPORATED AS A PUBLIC BENEFIT, MUTUAL BENEFIT, OR
24 RELIGIOUS NONPROFIT CORPORATION WITH MEMBERS IN ACCORDANCE WITH THE
25 MICHIGAN NONPROFIT CORPORATION ACT OF 1982, 1982 PA 162, MCL
26 450.2101 TO 450.3192.

27 (C) ORGANIZED AS A LIMITED LIABILITY COMPANY WITH ITS CAPITAL

1 DIVIDED INTO CAPITAL ACCOUNTS AND HELD BY ITS MEMBERS.

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

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

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

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

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

14 (4) FOR A CAPTIVE INSURANCE COMPANY FORMED AS A CORPORATION OR
15 A NONPROFIT CORPORATION, AT LEAST 1 OF THE MEMBERS OF THE BOARD OF
16 DIRECTORS OF A CAPTIVE INSURANCE COMPANY INCORPORATED IN THIS STATE
17 SHALL BE A RESIDENT OF THIS STATE.

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

21 (6) A CAPTIVE INSURANCE COMPANY FORMED AS A LIMITED LIABILITY
22 COMPANY PURSUANT TO THIS CHAPTER HAS THE PRIVILEGES AND IS SUBJECT
23 TO THE PROVISIONS OF THE MICHIGAN LIMITED LIABILITY COMPANY ACT,
24 1993 PA 23, MCL 450.4101 TO 450.5200, FOR LIMITED LIABILITY
25 COMPANIES, AS WELL AS THE APPLICABLE PROVISIONS CONTAINED IN THIS
26 CHAPTER. IF A CONFLICT OCCURS BETWEEN A PROVISION OF THE MICHIGAN
27 LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4101 TO

1 450.5200, FOR LIMITED LIABILITY COMPANIES, AND A PROVISION OF THIS
2 CHAPTER, THIS CHAPTER CONTROLS.

3 (7) THIS ACT'S PROVISIONS PERTAINING TO MERGERS,
4 CONSOLIDATIONS, CONVERSIONS, MUTUALIZATIONS, AND REDOMESTICATIONS
5 APPLY IN DETERMINING THE PROCEDURES TO BE FOLLOWED BY A CAPTIVE
6 INSURANCE COMPANY IN CARRYING OUT ANY OF THE TRANSACTIONS DESCRIBED
7 IN THOSE PROVISIONS, EXCEPT THE COMMISSIONER MAY WAIVE OR MODIFY
8 THE REQUIREMENTS FOR PUBLIC NOTICE AND HEARING IN ACCORDANCE WITH
9 REGULATIONS THAT THE COMMISSIONER MAY ISSUE ADDRESSING CATEGORIES
10 OF TRANSACTIONS. IF A NOTICE OF PUBLIC HEARING IS REQUIRED, BUT NO
11 ONE REQUESTS A HEARING, THE COMMISSIONER MAY CANCEL THE HEARING.

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

15 (2) ANNUALLY, ON OR BEFORE MARCH 1 OF EACH YEAR, A CAPTIVE
16 INSURANCE COMPANY SHALL SUBMIT TO THE COMMISSIONER A REPORT OF ITS
17 FINANCIAL CONDITION, VERIFIED BY OATH OF 2 OF ITS EXECUTIVE
18 OFFICERS. A CAPTIVE INSURANCE COMPANY MAY REPORT USING GENERALLY
19 ACCEPTED ACCOUNTING PRINCIPLES OR STATUTORY ACCOUNTING PRINCIPLES,
20 WITH USEFUL OR NECESSARY MODIFICATIONS OR ADAPTATIONS REQUIRED OR
21 APPROVED OR ACCEPTED BY THE COMMISSIONER FOR THE TYPE OF INSURANCE
22 AND KINDS OF INSURERS TO BE REPORTED UPON, AND AS SUPPLEMENTED BY
23 ADDITIONAL INFORMATION REQUIRED BY THE COMMISSIONER. THE
24 COMMISSIONER BY REGULATION SHALL PRESCRIBE THE FORMS IN WHICH
25 CAPTIVE INSURANCE COMPANIES SHALL REPORT. INFORMATION SUBMITTED
26 PURSUANT TO THIS SECTION IS CONFIDENTIAL AS PROVIDED IN SECTION
27 4609.

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

5 (4) A BRANCH CAPTIVE INSURANCE COMPANY SHALL FILE WITH THE
6 COMMISSIONER 60 DAYS AFTER THE FISCAL YEAR END A COPY OF ALL
7 REPORTS AND STATEMENTS REQUIRED TO BE FILED UNDER THE LAWS OF THE
8 JURISDICTION IN WHICH THE ALIEN CAPTIVE INSURANCE COMPANY IS
9 FORMED, VERIFIED BY OATH BY 2 OF ITS EXECUTIVE OFFICERS. IF THE
10 COMMISSIONER IS SATISFIED THAT THE ANNUAL REPORT FILED BY THE ALIEN
11 CAPTIVE INSURANCE COMPANY IN ITS DOMICILIARY JURISDICTION PROVIDES
12 ADEQUATE INFORMATION CONCERNING THE FINANCIAL CONDITION OF THE
13 ALIEN CAPTIVE INSURANCE COMPANY, THE COMMISSIONER MAY WAIVE THE
14 REQUIREMENT FOR COMPLETION OF THE CAPTIVE ANNUAL STATEMENT.

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

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

1 ACADEMY OF ACTUARIES OR THE SOCIETY OF ACTUARIES WHO ALSO MEETS ANY
2 OTHER CRITERIA THAT THE COMMISSIONER MAY ESTABLISH BY RULE PURSUANT
3 TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
4 24.201 TO 24.328.

5 (3) THE COMMISSIONER MAY DISALLOW THE DISCOUNTING OF RESERVES
6 IF A SPONSORED CAPTIVE INSURANCE COMPANY VIOLATES A PROVISION OF
7 THIS ACT.

8 SEC. 4625. (1) TO THE EXTENT THAT THE PROVISIONS OF CHAPTER 2
9 DO NOT CONTRADICT THE PROVISIONS OF THIS CHAPTER, CHAPTER 2 APPLIES
10 TO CAPTIVE INSURANCE COMPANIES AUTHORIZED UNDER THIS CHAPTER.

11 (2) THE EXPENSES AND CHARGES OF A CAPTIVE INSURANCE COMPANY
12 EXAMINATION SHALL BE PAID TO THE STATE BY THE CAPTIVE INSURANCE
13 COMPANY OR COMPANIES EXAMINED, AND THE OFFICE SHALL ISSUE THE
14 WARRANTS FOR THE PROPER CHARGES INCURRED IN ALL EXAMINATIONS.

15 (3) THE CONFIDENTIALITY PROVISIONS OF THIS CHAPTER DO NOT
16 EXTEND TO FINAL EXAMINATION REPORTS PRODUCED BY THE COMMISSIONER IN
17 INSPECTING OR EXAMINING A CAPTIVE INSURANCE COMPANY FORMED AS A
18 RISK RETENTION GROUP UNDER THE PRODUCT LIABILITY RISK RETENTION ACT
19 OF 1981, 15 USC 3901 TO 3906.

20 (4) SECTION 222 APPLIES TO ALL BUSINESS WRITTEN BY A CAPTIVE
21 INSURANCE COMPANY EXCEPT THAT THE EXAMINATION FOR A BRANCH CAPTIVE
22 INSURANCE COMPANY SHALL BE OF BRANCH BUSINESS AND BRANCH OPERATIONS
23 ONLY, AS LONG AS THE BRANCH CAPTIVE INSURANCE COMPANY PROVIDES
24 ANNUALLY TO THE COMMISSIONER, A CERTIFICATE OF COMPLIANCE, OR ITS
25 EQUIVALENT, ISSUED BY OR FILED WITH THE LICENSING AUTHORITY OF THE
26 JURISDICTION IN WHICH THE BRANCH CAPTIVE INSURANCE COMPANY IS
27 FORMED AND DEMONSTRATES TO THE COMMISSIONER'S SATISFACTION THAT IT

1 IS OPERATING IN SOUND FINANCIAL CONDITION IN ACCORDANCE WITH ALL
2 APPLICABLE LAWS AND REGULATIONS OF THAT JURISDICTION.

3 SEC. 4637. (1) THE CERTIFICATE OF AUTHORITY OF A CAPTIVE
4 INSURANCE COMPANY TO CONDUCT AN INSURANCE BUSINESS IN THIS STATE
5 MAY BE SUSPENDED OR REVOKED BY THE COMMISSIONER FOR ANY OF THE
6 FOLLOWING:

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

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

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

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

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

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

18 (G) THE COMPANY IS NO LONGER SAFE, RELIABLE, OR ENTITLED TO
19 PUBLIC CONFIDENCE OR IS UNSOUND, OR IS USING FINANCIAL METHODS AND
20 PRACTICES IN THE CONDUCT OF ITS BUSINESS THAT RENDER FURTHER
21 TRANSACTION OF INSURANCE BY THE COMPANY IN THIS STATE HAZARDOUS TO
22 POLICYHOLDERS, CREDITORS, OR THE PUBLIC.

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

26 (I) THE COMPANY HAS FAILED, AFTER WRITTEN REQUEST BY THE
27 COMMISSIONER, TO REMOVE OR DISCHARGE AN OFFICER OR DIRECTOR WHOSE

1 RECORD OF BUSINESS CONDUCT DOES NOT SATISFY THE REQUIREMENTS OF
2 SECTION 4603 OR WHO HAS BEEN CONVICTED OF ANY CRIME INVOLVING
3 FRAUD, DISHONESTY, OR LIKE MORAL TURPITUDE.

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

7 (K) FAILURE OTHERWISE TO COMPLY WITH THE LAWS OF THIS STATE.

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

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

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

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

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

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

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

27 (2) A CAPTIVE INSURANCE COMPANY MAY TAKE CREDIT FOR RESERVES

1 ON RISKS OR PORTIONS OF RISKS CEDED TO REINSURERS COMPLYING WITH
2 THE PROVISIONS OF SECTIONS 1103 AND 1105. A CAPTIVE INSURER SHALL
3 NOT TAKE CREDIT FOR RESERVES ON RISKS OR PORTIONS OF RISKS CEDED TO
4 A REINSURER IF THE REINSURER IS NOT IN COMPLIANCE WITH SECTIONS
5 1103 AND 1105.

6 SEC. 4643. A CAPTIVE INSURANCE COMPANY SHALL NOT BE REQUIRED
7 TO JOIN A RATING ORGANIZATION.

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

15 SEC. 4647. (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS
16 SECTION, EACH CAPTIVE INSURANCE COMPANY SHALL PAY A TAX ON THE
17 DIRECT PREMIUMS WRITTEN OR CONTRACTED FOR ON POLICIES OR CONTRACTS
18 OF INSURANCE WRITTEN BY A CAPTIVE INSURANCE COMPANY DURING THE TAX
19 YEAR LESS THE AMOUNTS PAID TO POLICYHOLDERS AS RETURN PREMIUMS,
20 WHICH SHALL INCLUDE DIVIDENDS ON UNABSORBED PREMIUMS, AND PREMIUM
21 DEPOSITS RETURNED OR CREDITED TO POLICYHOLDERS. THE TAX IMPOSED
22 UNDER THIS SUBSECTION SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT
23 OF THE DIRECT PREMIUMS WRITTEN OR CONTRACTED FOR ON POLICIES OR
24 CONTRACTS OF INSURANCE WRITTEN BY A CAPTIVE INSURANCE COMPANY
25 DURING THE TAX YEAR AFTER DEDUCTING THE AMOUNTS PAID TO
26 POLICYHOLDERS AS RETURN PREMIUMS, WHICH SHALL INCLUDE DIVIDENDS ON
27 UNABSORBED PREMIUMS, AND PREMIUM DEPOSITS RETURNED OR CREDITED TO

1 POLICYHOLDERS BY THE FOLLOWING RATES:

2 (A) FOR THE FIRST \$20,000,000.00, 0.4%.

3 (B) FOR EVERY DOLLAR GREATER THAN \$20,000,000.00, 0.3%.

4 (2) IN ADDITION TO THE TAX IMPOSED UNDER SUBSECTION (1),
5 EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION, EACH CAPTIVE
6 INSURANCE COMPANY SHALL ALSO PAY A TAX ON REINSURANCE PREMIUMS. FOR
7 PURPOSES OF THIS SUBSECTION, REINSURANCE PREMIUMS DO NOT INCLUDE
8 PREMIUMS FOR RISKS OR PORTIONS OF RISKS THAT ARE SUBJECT TO THE TAX
9 IMPOSED UNDER SUBSECTION (1) OR RECEIPT OF ASSETS IN EXCHANGE FOR
10 THE ASSUMPTION OF LOSS RESERVES AND OTHER LIABILITIES OF ANOTHER
11 INSURER OR OTHER FUNDING MECHANISM UNDER COMMON OWNERSHIP AND
12 CONTROL IF THE TRANSACTION IS PART OF A PLAN TO DISCONTINUE THE
13 OPERATIONS RELATED TO THE LOSS RESERVES AND OTHER LIABILITIES BEING
14 ASSUMED OF THE OTHER INSURER OR FUNDING MECHANISM AND IF THE INTENT
15 OF THE PARTIES TO THE TRANSACTION IS TO RENEW OR MAINTAIN BUSINESS
16 WITH THE CAPTIVE INSURANCE COMPANY. THE TAX IMPOSED UNDER THIS
17 SUBSECTION SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT OF
18 REINSURANCE PREMIUMS BY THE FOLLOWING RATES:

19 (A) FOR THE FIRST \$20,000,000.00, 0.225%.

20 (B) FOR THE NEXT \$20,000,000.00, 0.15%.

21 (C) FOR THE NEXT \$20,000,000.00, 0.05%.

22 (D) FOR EVERY DOLLAR GREATER THAN \$60,000,000.00, 0.025%.

23 (3) THE AGGREGATE AMOUNT OF THE TAX IMPOSED AND LEVIED ON ANY
24 CAPTIVE INSURANCE COMPANY UNDER SUBSECTIONS (1) AND (2) SHALL NOT
25 EXCEED \$100,000.00 FOR ANY SINGLE TAX YEAR. HOWEVER, IF THE
26 AGGREGATE AMOUNT OF TAXES IMPOSED ON A CAPTIVE INSURANCE COMPANY
27 UNDER SUBSECTIONS (1) AND (2) IS LESS THAN \$5,000.00 FOR THAT TAX

1 YEAR, A CAPTIVE INSURANCE COMPANY SHALL PAY A MINIMUM TAX OF
2 \$5,000.00 UNLESS IT IS THE FIRST YEAR IN WHICH THE CAPTIVE
3 INSURANCE COMPANY WAS ISSUED A CERTIFICATE OF AUTHORITY. FOR A
4 CAPTIVE INSURANCE COMPANY THAT HAS BEEN ISSUED A CERTIFICATE OF
5 AUTHORITY FOR A YEAR OR LESS DURING THE TAX YEAR FOR WHICH THE
6 MINIMUM TAX IS TO BE IMPOSED, THE MINIMUM TAX SHALL BE PRORATED ON
7 A QUARTERLY BASIS AS FOLLOWS:

8 (A) FOR A CAPTIVE INSURANCE COMPANY ISSUED A CERTIFICATE OF
9 AUTHORITY IN THE FIRST QUARTER, \$5,000.00.

10 (B) FOR A CAPTIVE INSURANCE COMPANY ISSUED A CERTIFICATE OF
11 AUTHORITY IN THE SECOND QUARTER, \$3,750.00.

12 (C) FOR A CAPTIVE INSURANCE COMPANY ISSUED A CERTIFICATE OF
13 AUTHORITY IN THE THIRD QUARTER, \$2,500.00.

14 (D) FOR A CAPTIVE INSURANCE COMPANY ISSUED A CERTIFICATE OF
15 AUTHORITY IN THE FOURTH QUARTER, \$1,250.00.

16 (4) REGARDLESS OF WHETHER 2 OR MORE CAPTIVE INSURANCE
17 COMPANIES ARE UNDER COMMON OWNERSHIP AND CONTROL, EACH CAPTIVE
18 INSURANCE COMPANY IS SUBJECT TO THE TAX IMPOSED UNDER SUBSECTIONS
19 (1) AND (2). THE TAX IMPOSED UNDER SUBSECTIONS (1) AND (2) ONLY
20 APPLIES TO THAT BRANCH OF BUSINESS THAT IS UNDER COMMON OWNERSHIP
21 AND CONTROL THAT IS A CAPTIVE INSURANCE COMPANY.

22 (5) THE TAX IMPOSED UNDER THIS SECTION SHALL BE ADMINISTERED
23 BY THE DEPARTMENT OF TREASURY PURSUANT TO 1941 PA 122, MCL 205.1 TO
24 205.31. IF A CONFLICT EXISTS BETWEEN 1941 PA 122, MCL 205.1 TO
25 205.31, AND THIS SECTION, THE PROVISIONS OF THIS SECTION APPLY. THE
26 DEPARTMENT OF TREASURY SHALL PROMULGATE RULES TO IMPLEMENT THIS
27 SECTION PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969

1 PA 306, MCL 24.201 TO 24.328. THE DEPARTMENT OF TREASURY SHALL
2 PRESCRIBE FORMS FOR USE BY TAXPAYERS AND MAY PROMULGATE RULES IN
3 CONFORMITY WITH THIS ACT FOR THE MAINTENANCE BY TAXPAYERS OF
4 RECORDS, BOOKS, AND ACCOUNTS, AND FOR THE COMPUTATION OF THE TAX,
5 THE MAKING OF RETURNS, AND THE ASCERTAINMENT, ASSESSMENT, AND
6 COLLECTION OF THE TAX IMPOSED UNDER THIS SECTION.

7 (6) AN ANNUAL RETURN SHALL BE FILED WITH THE DEPARTMENT OF
8 TREASURY IN THE FORM AND CONTENT PRESCRIBED BY THE DEPARTMENT OF
9 TREASURY BY THE FIRST DAY OF THE THIRD MONTH AFTER THE END OF THE
10 CAPTIVE INSURANCE COMPANY'S TAX YEAR. ANY LIABILITY SHALL BE
11 REMITTED WITH THIS RETURN.

12 (7) FOR EACH FISCAL YEAR AFTER THE EFFECTIVE DATE OF THE
13 AMENDATORY ACT THAT ADDED THIS CHAPTER, 20% OF THE REVENUE
14 COLLECTED UNDER THIS SECTION AND SECTION 4737 SHALL BE DISTRIBUTED
15 TO THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND CREATED
16 UNDER SECTION 4673.

17 (8) AS USED IN THIS SECTION, "COMMON OWNERSHIP AND CONTROL"
18 SHALL BE DETERMINED AS FOLLOWS:

19 (A) FOR STOCK CORPORATIONS OR LIMITED LIABILITY COMPANIES,
20 MEANS THE DIRECT OR INDIRECT OWNERSHIP OF 80% OR MORE OF THE
21 OUTSTANDING VOTING STOCK OR MEMBERSHIP INTERESTS OF 2 OR MORE
22 CORPORATIONS OR LIMITED LIABILITY COMPANIES BY THE SAME PERSON OR
23 ENTITY.

24 (B) FOR NONPROFIT CORPORATIONS, MEANS THE DIRECT OR INDIRECT
25 OWNERSHIP OF 80% OR MORE OF THE VOTING POWER OF 2 OR MORE NONPROFIT
26 CORPORATIONS BY THE SAME MEMBER OR MEMBERS.

27 (C) FOR MUTUAL CORPORATIONS, MEANS THE DIRECT OR INDIRECT

1 OWNERSHIP OF 80% OR MORE OF THE SURPLUS AND THE VOTING POWER OF 2
2 OR MORE CORPORATIONS BY THE SAME MEMBER OR MEMBERS.

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

8 SEC. 4653. (1) NO PROVISIONS OF THIS ACT, OTHER THAN THOSE
9 SPECIFICALLY REFERENCED IN THIS CHAPTER OR CONTAINED IN SPECIFIC
10 REFERENCES CONTAINED IN THIS CHAPTER, APPLY TO CAPTIVE INSURANCE
11 COMPANIES. IF A CONFLICT OCCURS BETWEEN A PROVISION OF THIS ACT AND
12 A PROVISION OF THIS CHAPTER, THIS CHAPTER CONTROLS.

13 (2) THE COMMISSIONER BY RULE, REGULATION, OR ORDER MAY EXEMPT
14 SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES, ON A CASE-BY-CASE
15 BASIS, FROM PROVISIONS OF THIS CHAPTER THAT THE COMMISSIONER
16 DETERMINES TO BE INAPPROPRIATE GIVEN THE NATURE OF THE RISKS TO BE
17 INSURED.

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

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

24 (A) THE ASSETS OF THE PROTECTED CELL SHALL NOT BE USED TO PAY
25 EXPENSES OR CLAIMS OTHER THAN THOSE ATTRIBUTABLE TO THE PROTECTED
26 CELL.

27 (B) THE CAPITAL AND SURPLUS OF THE SPONSORED CAPTIVE INSURANCE

1 COMPANY SHALL AT ALL TIMES BE AVAILABLE TO PAY EXPENSES OF OR
2 CLAIMS AGAINST THE SPONSORED CAPTIVE INSURANCE COMPANY AND SHALL
3 NOT BE USED TO PAY EXPENSES OR CLAIMS ATTRIBUTABLE TO A PROTECTED
4 CELL.

5 SEC. 4659. THE COMMISSIONER SHALL PROMULGATE RULES PURSUANT TO
6 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201
7 TO 24.328, ESTABLISHING STANDARDS TO ENSURE THAT A PARENT OR
8 AFFILIATED COMPANY IS ABLE TO EXERCISE CONTROL OF THE RISK
9 MANAGEMENT FUNCTION OF ANY CONTROLLED UNAFFILIATED BUSINESS TO BE
10 INSURED BY THE PURE CAPTIVE INSURANCE COMPANY. UNTIL SUCH TIME AS
11 THESE RULES ARE PROMULGATED, THE COMMISSIONER MAY BY TEMPORARY
12 ORDER GRANT AUTHORITY TO A PURE CAPTIVE INSURANCE COMPANY TO INSURE
13 RISKS.

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

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

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

24 (B) EACH PROTECTED CELL SHALL BE ACCOUNTED FOR SEPARATELY ON
25 THE BOOKS AND RECORDS OF THE SPONSORED CAPTIVE INSURANCE COMPANY TO
26 REFLECT THE FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF THE
27 PROTECTED CELL, NET INCOME OR LOSS, DIVIDENDS OR OTHER

1 DISTRIBUTIONS TO PARTICIPANTS, AND OTHER FACTORS MAY BE PROVIDED IN
2 THE PARTICIPANT CONTRACT OR REQUIRED BY THE COMMISSIONER.

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

6 (D) NO SALE, EXCHANGE, OR OTHER TRANSFER OF ASSETS SHALL BE
7 MADE BY THE SPONSORED CAPTIVE INSURANCE COMPANY BETWEEN OR AMONG
8 ANY OF ITS PROTECTED CELLS WITHOUT THE CONSENT OF THE PROTECTED
9 CELLS.

10 (E) NO SALE, EXCHANGE, TRANSFER OF ASSETS, DIVIDEND, OR
11 DISTRIBUTION SHALL BE MADE FROM A PROTECTED CELL TO A SPONSOR OR
12 PARTICIPANT WITHOUT THE COMMISSIONER'S APPROVAL AND IN NO EVENT
13 SHALL THE APPROVAL BE GIVEN IF THE SALE, EXCHANGE, TRANSFER,
14 DIVIDEND, OR DISTRIBUTION WOULD RESULT IN INSOLVENCY OR IMPAIRMENT
15 WITH RESPECT TO A PROTECTED CELL.

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

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

24 (H) NO PARTICIPANT CONTRACT SHALL TAKE EFFECT WITHOUT THE
25 COMMISSIONER'S PRIOR WRITTEN APPROVAL, AND THE ADDITION OF EACH NEW
26 PROTECTED CELL AND WITHDRAWAL OF ANY PARTICIPANT OF ANY EXISTING
27 PROTECTED CELL CONSTITUTES A CHANGE IN THE BUSINESS PLAN REQUIRING

1 THE COMMISSIONER'S PRIOR WRITTEN APPROVAL.

2 SEC. 4665. A SPONSOR OF A SPONSORED CAPTIVE INSURANCE COMPANY
3 SHALL BE AN INSURER AUTHORIZED PURSUANT TO THE LAWS OF A STATE OR
4 THE DISTRICT OF COLUMBIA, AN INSURANCE HOLDING COMPANY THAT
5 CONTROLS AN INSURER AUTHORIZED PURSUANT TO THE LAWS OF A STATE OR
6 THE DISTRICT OF COLUMBIA AND SUBJECT TO REGISTRATION PURSUANT TO
7 THE INSURANCE HOLDING COMPANY SYSTEM LAWS OF THE STATE OF DOMICILE
8 OF THE INSURER, A REINSURER AUTHORIZED OR APPROVED PURSUANT TO THE
9 LAWS OF A STATE OR THE DISTRICT OF COLUMBIA, OR A CAPTIVE INSURANCE
10 COMPANY AUTHORIZED PURSUANT TO THIS CHAPTER. A RISK RETENTION GROUP
11 SHALL NOT BE EITHER A SPONSOR OR A PARTICIPANT OF A SPONSORED
12 CAPTIVE INSURANCE COMPANY. THE BUSINESS WRITTEN BY A SPONSORED
13 CAPTIVE INSURANCE COMPANY WITH RESPECT TO EACH PROTECTED CELL SHALL
14 MEET AT LEAST 1 OF THE FOLLOWING:

15 (A) BE FRONTED BY AN INSURANCE COMPANY AUTHORIZED PURSUANT TO
16 THE LAWS OF ANY STATE OR ANY JURISDICTION IF THE INSURANCE COMPANY
17 IS A WHOLLY OWNED SUBSIDIARY OF AN INSURANCE COMPANY AUTHORIZED
18 PURSUANT TO THE LAWS OF ANY STATE OR ANY JURISDICTION.

19 (B) BE REINSURED BY A REINSURER AUTHORIZED OR APPROVED BY THIS
20 STATE.

21 (C) BE SECURED BY A TRUST FUND IN THE UNITED STATES FOR THE
22 BENEFIT OF POLICYHOLDERS AND CLAIMANTS FUNDED BY AN IRREVOCABLE
23 LETTER OF CREDIT OR OTHER ASSET ACCEPTABLE TO THE COMMISSIONER. THE
24 AMOUNT OF SECURITY PROVIDED BY THE TRUST FUND SHALL NOT BE LESS
25 THAN THE RESERVES ASSOCIATED WITH THOSE LIABILITIES, INCLUDING
26 RESERVES FOR LOSSES, ALLOCATED LOSS ADJUSTMENT EXPENSES, INCURRED
27 BUT NOT REPORTED LOSSES, AND UNEARNED PREMIUMS FOR BUSINESS WRITTEN

1 THROUGH THE PARTICIPANT'S PROTECTED CELL. THE COMMISSIONER MAY
2 REQUIRE THE SPONSORED CAPTIVE TO INCREASE THE FUNDING OF A TRUST
3 ESTABLISHED PURSUANT TO THIS SUBDIVISION. A TRUST AND TRUST
4 INSTRUMENT MAINTAINED PURSUANT TO THIS SUBDIVISION SHALL BE IN A
5 FORM AND UPON TERMS APPROVED BY THE COMMISSIONER.

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

10 (2) A SPONSOR MAY BE A PARTICIPANT IN A SPONSORED CAPTIVE
11 INSURANCE COMPANY.

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

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

17 SEC. 4669. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER,
18 THE TERMS AND CONDITIONS PROVIDED IN CHAPTER 48 RELATING TO A
19 PROTECTED CELL INSURANCE COMPANY APPLY IN FULL TO A SPONSORED
20 CAPTIVE INSURANCE COMPANY.

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

23 (A) A PROTECTED CELL NEED NOT BE ESTABLISHED SOLELY FOR THE
24 PURPOSE OF EFFECTING INSURANCE SECURITIZATIONS, BUT MAY BE
25 ESTABLISHED FOR THE PURPOSE OF ISOLATING THE EXPENSES AND CLAIMS OF
26 A SPONSORED CAPTIVE INSURANCE COMPANY PARTICIPANT.

27 (B) THE SPONSORED CAPTIVE INSURANCE COMPANY SHALL ATTRIBUTE

1 ALL INSURANCE OBLIGATIONS, ASSETS, AND LIABILITIES RELATING TO A
2 PARTICIPANT'S RISKS TO THE PARTICIPANT'S PROTECTED CELL.

3 (C) SECTION 4805 DOES NOT APPLY.

4 SEC. 4673. THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION
5 FUND SHALL BE A SEPARATE FUND AND SHALL BE ADMINISTERED BY THE
6 COMMISSIONER FOR THE PURPOSE OF ADMINISTERING CHAPTERS 18 AND 47
7 AND THIS CHAPTER AND FOR REASONABLE EXPENSES INCURRED IN PROMOTING
8 THE CAPTIVE INSURANCE INDUSTRY IN THIS STATE. TWENTY PERCENT OF THE
9 TAXES COLLECTED PURSUANT TO THIS CHAPTER AND CHAPTER 47 AND ALL
10 FEES AND ASSESSMENTS RECEIVED BY THE DEPARTMENT OF TREASURY OR THE
11 OFFICE PURSUANT TO THE ADMINISTRATION OF THIS CHAPTER AND CHAPTER
12 47 SHALL BE CREDITED TO THE CAPTIVE INSURANCE REGULATORY AND
13 SUPERVISION FUND. ALL FEES RECEIVED BY THE DEPARTMENT OF TREASURY
14 FROM REINSURERS WHO ASSUME RISK ONLY FROM CAPTIVE INSURANCE
15 COMPANIES SHALL BE DEPOSITED INTO THE CAPTIVE INSURANCE REGULATORY
16 AND SUPERVISION FUND. ALL FINES AND ADMINISTRATIVE PENALTIES SHALL
17 BE DEPOSITED DIRECTLY INTO THE GENERAL FUND. MONEY IN THE CAPTIVE
18 INSURANCE REGULATORY AND SUPERVISION FUND SHALL NOT REVERT TO THE
19 GENERAL FUND AT THE CLOSE OF THE FISCAL YEAR BUT SHALL REMAIN IN
20 THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND.

21 CHAPTER 47

22 SPECIAL PURPOSE FINANCIAL CAPTIVES

23 SEC. 4701. AS USED IN THIS CHAPTER:

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

27 (B) "CAPTIVE LLC" MEANS A LIMITED LIABILITY COMPANY

1 ESTABLISHED UNDER THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993
2 PA 23, MCL 450.4101 TO 450.5200, OR COMPARABLE PROVISIONS OF ANY
3 OTHER STATE LAW, INCLUDING THE DISTRICT OF COLUMBIA BY A PARENT,
4 COUNTERPARTY, AFFILIATED COMPANY, OR SPFC FOR THE PURPOSE OF
5 ISSUING SPFC SECURITIES, ENTERING AN SPFC CONTRACT WITH A
6 COUNTERPARTY, OR OTHERWISE FACILITATING AN INSURANCE
7 SECURITIZATION.

8 (C) "COMMISSIONER" MEANS THE COMMISSIONER OF THE OFFICE OF
9 FINANCIAL AND INSURANCE SERVICES OR THE COMMISSIONER'S DESIGNEE.

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

14 (E) "CONTROL" INCLUDING THE TERMS "CONTROLLING", "CONTROLLED
15 BY", AND "UNDER COMMON CONTROL WITH" MEANS THE POSSESSION, DIRECT
16 OR INDIRECT, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE
17 MANAGEMENT AND POLICIES OF A PERSON, WHETHER THROUGH THE OWNERSHIP
18 OF VOTING SECURITIES, BY CONTRACT OTHER THAN A COMMERCIAL CONTRACT
19 FOR GOODS OR NONMANAGEMENT SERVICES, OR OTHERWISE, UNLESS THE POWER
20 IS THE RESULT OF AN OFFICIAL POSITION WITH OR CORPORATE OFFICE HELD
21 BY THE PERSON. CONTROL SHALL BE PRESUMED TO EXIST IF A PERSON,
22 DIRECTLY OR INDIRECTLY, OWNS, CONTROLS, HOLDS WITH THE POWER TO
23 VOTE, OR HOLDS PROXIES REPRESENTING 10% OR MORE OF THE VOTING
24 SECURITIES OF ANOTHER PERSON. THIS PRESUMPTION MAY BE REBUTTED BY A
25 SHOWING THAT CONTROL DOES NOT EXIST. HOWEVER, FOR PURPOSES OF THIS
26 CHAPTER, THE FACT THAT AN SPFC EXCLUSIVELY PROVIDES REINSURANCE TO
27 A CEDING INSURER UNDER AN SPFC CONTRACT IS NOT BY ITSELF SUFFICIENT

1 GROUND FOR A FINDING THAT THE SPFC AND CEDING INSURER ARE UNDER
2 COMMON CONTROL.

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

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

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

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

18 (H) "FOREIGN CAPTIVE" MEANS A CAPTIVE INSURER FORMED UNDER THE
19 LAWS OF THE DISTRICT OF COLUMBIA OR SOME STATE, COMMONWEALTH,
20 TERRITORY, OR POSSESSION OF THE UNITED STATES OTHER THAN THE STATE
21 OF MICHIGAN.

22 (I) "INSOLVENCY" OR "INSOLVENT" MEANS THAT THE SPFC OR 1 OR
23 MORE OF ITS PROTECTED CELLS IS UNABLE TO PAY ITS OBLIGATIONS WHEN
24 THEY ARE DUE, UNLESS THOSE OBLIGATIONS ARE THE SUBJECT OF A BONA
25 FIDE DISPUTE, OR THE COMMISSIONER PREVIOUSLY HAS ESTABLISHED BY
26 ORDER OTHER CRITERIA FOR DETERMINING THE SOLVENCY OF THE SPFC OR 1
27 OR MORE OF ITS PROTECTED CELLS, IN WHICH CASE THE SPFC IS INSOLVENT

1 IF IT FAILS TO MEET THAT CRITERIA.

2 (J) "INSURANCE SECURITIZATION" MEANS A PACKAGE OF RELATED RISK
3 TRANSFER INSTRUMENTS, CAPITAL MARKET OFFERINGS, AND FACILITATING
4 ADMINISTRATIVE AGREEMENTS BY WHICH PROCEEDS OF THE SALE OF SPFC
5 SECURITIES ARE OBTAINED BY AN SPFC DIRECTLY BY THE ISSUANCE OF THE
6 SPFC SECURITIES BY THE SPFC OR INDIRECTLY THROUGH THE ISSUANCE OF
7 PREFERRED SECURITIES BY THE SPFC IN EXCHANGE FOR SOME OR ALL OF THE
8 PROCEEDS OF THE SALE OF SPFC SECURITIES BY THE SPFC'S PARENT, AN
9 AFFILIATED COMPANY OF THE SPFC, A COUNTERPARTY, OR A CAPTIVE LLC,
10 IN TRANSACTIONS THAT COMPLY WITH APPLICABLE SECURITIES LAWS AND
11 WHERE THE PROCEEDS OF THE ISSUANCE OF THE SPFC SECURITIES, WHETHER
12 OBTAINED DIRECTLY OR INDIRECTLY, SECURE THE OBLIGATIONS OF THE SPFC
13 UNDER 1 OR MORE SPFC CONTRACTS WITH A COUNTERPARTY AND WHERE THE
14 OBLIGATION TO THE HOLDERS OF THE SPFC SECURITIES IS SECURED BY
15 ASSETS OBTAINED WITH PROCEEDS OF THE SPFC SECURITIES IN ACCORDANCE
16 WITH THE TRANSACTION TERMS.

17 (K) "IRREVOCABLE LETTER OF CREDIT" MEANS A CLEAN, IRREVOCABLE,
18 UNCONDITIONAL LETTER OF CREDIT, ISSUED OR CONFIRMED BY A QUALIFIED
19 UNITED STATES FINANCIAL INSTITUTION. LETTERS OF CREDIT MEETING
20 APPLICABLE STANDARDS OF ISSUER ACCEPTABILITY AS OF THE DATES OF
21 THEIR ISSUANCE OR CONFIRMATION SHALL, NOTWITHSTANDING THE ISSUING
22 OR CONFIRMING INSTITUTION'S SUBSEQUENT FAILURE TO MEET APPLICABLE
23 STANDARDS OF ISSUER ACCEPTABILITY, CONTINUE TO BE ACCEPTABLE AS
24 SECURITY UNTIL THEIR EXPIRATION, EXTENSION, RENEWAL, MODIFICATION,
25 OR AMENDMENT, WHICHEVER OCCURS FIRST.

26 (L) "MANAGEMENT" MEANS THE BOARD OF DIRECTORS, MANAGING BOARD,
27 OR OTHER INDIVIDUAL OR INDIVIDUALS VESTED WITH OVERALL

1 RESPONSIBILITY FOR THE MANAGEMENT OF THE AFFAIRS OF THE SPFC,
2 INCLUDING THE ELECTION AND APPOINTMENT OF OFFICERS OR OTHER AGENTS
3 TO ACT ON BEHALF OF THE SPFC.

4 (M) "OFFICE" MEANS THE OFFICE OF FINANCIAL AND INSURANCE
5 SERVICES.

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

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

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

16 (Q) "PREFERRED SECURITIES" MEANS SECURITIES, WHETHER STOCK OR
17 DEBT, ISSUED BY AN SPFC TO THE ISSUER OF THE SPFC SECURITIES IN
18 EXCHANGE FOR SOME OR ALL OF THE PROCEEDS OF THE ISSUANCE OF THE
19 SPFC SECURITIES.

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

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

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

4 (ii) REGULATED, SUPERVISED, AND EXAMINED BY FEDERAL OR STATE
5 AUTHORITIES HAVING REGULATORY AUTHORITY OVER BANKS AND TRUST
6 COMPANIES.

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

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

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

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

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

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

25 (Z) "SURPLUS NOTE" MEANS AN UNSECURED SUBORDINATED DEBT
26 OBLIGATION POSSESSING CHARACTERISTICS CONSISTENT WITH PARAGRAPH 3
27 OF THE STATEMENT OF STATUTORY ACCOUNTING PRINCIPLES NO. 41,

1 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

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

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

10 (2) SECTIONS 210 TO 223, 225 TO 238, 244 TO 251, 2057 TO 2062,
11 AND 4673 AND CHAPTER 45 APPLY TO SPFCs.

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

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

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

26 (A) OBTAIN FROM THE COMMISSIONER A CERTIFICATE OF AUTHORITY
27 AUTHORIZING IT TO CONDUCT INSURANCE OR REINSURANCE BUSINESS, OR

1 BOTH, IN THIS STATE.

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

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

5 (D) FILE WITH THE COMMISSIONER THE NAME AND ADDRESS OF A
6 RESIDENT REGISTERED AGENT DESIGNATED TO ACCEPT SERVICE OF PROCESS
7 AND TO OTHERWISE ACT ON ITS BEHALF IN THIS STATE. THE DESIGNATION
8 SHALL REMAIN IN FORCE AS LONG AS ANY LIABILITY REMAINS WITHIN THE
9 STATE. WHENEVER THE REGISTERED AGENT CANNOT WITH REASONABLE
10 DILIGENCE BE FOUND AT THE REGISTERED OFFICE OF THE SPFC, THE
11 COMMISSIONER SHALL BE AN AGENT OF THE SPFC UPON WHOM ANY PROCESS,
12 NOTICE, OR DEMAND MAY BE SERVED.

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

20 (F) PROVIDE A COMPLETE SET OF DOCUMENTATION OF THE INSURANCE
21 SECURITIZATION TO THE COMMISSIONER SHORTLY FOLLOWING CLOSING OF THE
22 INSURANCE SECURITIZATION TRANSACTION.

23 (3) BEFORE GRANTING A CERTIFICATE OF AUTHORITY FOR AN SPFC,
24 THE COMMISSIONER SHALL REQUIRE THE APPLICANT TO SUBMIT
25 ORGANIZATIONAL DOCUMENTS THAT CONTAIN ALL OF THE FOLLOWING:

26 (A) THE NAMES AND PLACES OF RESIDENCE OF AT LEAST 3
27 INCORPORATORS OR ORGANIZERS OF WHOM AT LEAST 2 ARE RESIDENTS OF

1 THIS STATE.

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

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

4 (D) THE PURPOSES OF THE CREATION OF THE ENTITY INCLUDING A
5 REFERENCE TO THIS CHAPTER.

6 (E) THE MANNER IN WHICH THE CORPORATE POWERS ARE TO BE
7 EXERCISED.

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

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

13 (H) THE AMOUNT AND VALUE OF CAPITAL STOCK, IF ANY.

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

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

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

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

25 (C) A TRANSACTION FROM WHICH THE DIRECTOR DERIVED AN IMPROPER
26 PERSONAL BENEFIT.

27 (5) BEFORE THE ORGANIZATIONAL DOCUMENTS SHALL BE EFFECTIVE FOR

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

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

12 (A) EVIDENCE OF ALL OF THE FOLLOWING:

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

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

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

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

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

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

1 (i) DRAFT DOCUMENTATION OR, AT THE COMMISSIONER'S DISCRETION, A
2 WRITTEN SUMMARY OF ALL MATERIAL AGREEMENTS THAT ARE ENTERED INTO IN
3 CONNECTION WITH THE SPFC CONTRACTS AND THE INSURANCE
4 SECURITIZATION, INCLUDING THE NAMES OF THE COUNTERPARTY, THE NATURE
5 OF THE RISKS TO BE ASSUMED, AND THE PROPOSED USE OF PROTECTED
6 CELLS, IF ANY. THE DOCUMENTATION OR WRITTEN SUMMARY SHALL ALSO
7 INCLUDE THE MAXIMUM AMOUNTS, PURPOSE, NATURE, AND THE RELATIONSHIP
8 BETWEEN THE VARIOUS TRANSACTIONS EFFECTUATING THE INSURANCE
9 SECURITIZATION.

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

14 (iii) THE SOURCE AND FORM OF ADDITIONAL CAPITALIZATION TO BE
15 CONTRIBUTED TO THE SPFC.

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

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

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

23 (c) BIOGRAPHICAL AFFIDAVITS IN NATIONAL ASSOCIATION OF
24 INSURANCE COMMISSIONER'S FORMAT OF ALL OF THE PROSPECTIVE SPFC'S
25 OFFICERS AND DIRECTORS, PROVIDING THEIR LEGAL NAMES, ANY NAMES
26 UNDER WHICH THEY HAVE OR ARE CONDUCTING THEIR AFFAIRS, AND ANY
27 AFFILIATIONS WITH OTHER PERSONS, TOGETHER WITH OTHER BIOGRAPHICAL

1 INFORMATION AS THE COMMISSIONER MAY REQUEST.

2 (D) AN AFFIDAVIT FROM THE APPLICANT SPFC VERIFYING ALL OF THE
3 FOLLOWING:

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

5 (ii) THE APPLICANT SPFC OPERATES ONLY PURSUANT TO THE
6 PROVISIONS IN THIS CHAPTER.

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

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

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

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

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

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

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

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

15 (D) A DESCRIPTION OF THE EXPENSES ALLOCATED TO EACH PROTECTED
16 CELL.

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

19 (9) TO TRANSACT INSURANCE OR REINSURANCE BUSINESS IN THIS
20 STATE, AN SPFC SHALL PAY TO THE OFFICE ALL OF THE FOLLOWING:

21 (A) A NONREFUNDABLE FEE OF \$200.00 FOR PROCESSING ITS
22 APPLICATION FOR A CERTIFICATE OF AUTHORITY. IN ADDITION, THE
23 COMMISSIONER MAY RETAIN LEGAL, FINANCIAL, ACTUARIAL, AND
24 EXAMINATION SERVICES FROM OUTSIDE THE OFFICE TO EXAMINE AND
25 INVESTIGATE THE APPLICATION, THE REASONABLE COST OF WHICH MAY BE
26 CHARGED AGAINST THE APPLICANT, OR THE COMMISSIONER MAY USE INTERNAL
27 RESOURCES TO EXAMINE AND INVESTIGATE THE APPLICATION FOR A FEE OF

1 \$1,500.00, \$600.00 OF WHICH IS PAYABLE UPON FILING OF THE
2 APPLICATION AND THE REMAINING \$900.00 UPON RECEIPT OF ITS
3 CERTIFICATE OF AUTHORITY.

4 (B) A \$500.00 ANNUAL RENEWAL FEE.

5 (C) A \$2,400.00 ANNUAL REVIEW FEE OR THE ACTUAL COST AS
6 DETERMINED BY THE COMMISSIONER IF THE COSTS OF THE ANNUAL REVIEW
7 ARE HIGHER THAN \$2,400.00.

8 (10) THE COMMISSIONER MAY GRANT A CERTIFICATE OF AUTHORITY
9 AUTHORIZING THE SPFC TO TRANSACT INSURANCE OR REINSURANCE BUSINESS
10 AS AN SPFC IN THIS STATE UNTIL MARCH 1, AT WHICH TIME THE
11 CERTIFICATE OF AUTHORITY MAY BE RENEWED, UPON FINDING BY THE
12 COMMISSIONER OF ALL OF THE FOLLOWING:

13 (A) THE PROPOSED PLAN OF OPERATION PROVIDES A REASONABLE AND
14 EXPECTED SUCCESSFUL OPERATION.

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

17 (C) THE PROPOSED PLAN OF OPERATION IS NOT HAZARDOUS TO ANY
18 COUNTERPARTY.

19 (D) 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 (E) THE CERTIFICATE OF AUTHORITY AUTHORIZING THE SPFC TO
24 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) A FOREIGN CAPTIVE, UPON APPROVAL OF THE COMMISSIONER, MAY

1 BECOME A DOMESTIC SPFC BY COMPLYING WITH ALL OF THE PROVISIONS OF
2 THIS CHAPTER. AFTER THIS IS ACCOMPLISHED, THE FOREIGN CAPTIVE IS
3 ENTITLED TO A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS AS AN
4 SPFC IN THIS STATE AND IS SUBJECT TO THE AUTHORITY AND JURISDICTION
5 OF THIS STATE. IN CONNECTION WITH THIS REDOMESTICATION, THE
6 COMMISSIONER MAY WAIVE ANY REQUIREMENTS FOR PUBLIC HEARINGS. IT IS
7 NOT NECESSARY FOR A FOREIGN CAPTIVE REDOMESTICATING INTO THIS STATE
8 TO MERGE, CONSOLIDATE, TRANSFER ASSETS, OR OTHERWISE ENGAGE IN
9 ANOTHER REORGANIZATION, OTHER THAN AS SPECIFIED IN THIS SECTION.

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

13 (2) THE SPFC'S ORGANIZATIONAL DOCUMENTS SHALL LIMIT THE SPFC'S
14 AUTHORITY TO TRANSACT THE BUSINESS OF INSURANCE OR REINSURANCE TO
15 THOSE ACTIVITIES THE SPFC CONDUCTS TO ACCOMPLISH ITS PURPOSE AS
16 EXPRESSED IN THIS CHAPTER.

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

20 (4) THE PROVISIONS OF THIS ACT PERTAINING TO MERGERS,
21 CONSOLIDATIONS, CONVERSIONS, MUTUALIZATIONS, AND REDOMESTICATIONS
22 APPLY IN DETERMINING THE PROCEDURES TO BE FOLLOWED BY AN SPFC IN
23 CARRYING OUT ANY OF THE TRANSACTIONS DESCRIBED IN THOSE PROVISIONS,
24 EXCEPT THE COMMISSIONER MAY WAIVE OR MODIFY THE REQUIREMENTS FOR
25 PUBLIC NOTICE AND HEARING IN ACCORDANCE WITH REGULATIONS THAT THE
26 COMMISSIONER MAY ISSUE ADDRESSING CATEGORIES OF TRANSACTIONS. IF A
27 NOTICE OF PUBLIC HEARING IS REQUIRED, BUT NO ONE REQUESTS A

1 HEARING, THE COMMISSIONER MAY CANCEL THE HEARING.

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

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

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

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

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

26 (4) AN SPFC THAT IS AUTHORIZED AS AN INSURER OTHER THAN SOLELY
27 PURSUANT TO THIS CHAPTER AND CHAPTER 46 SHALL MAINTAIN DEPOSITS AS

1 SPECIFIED IN SECTION 411.

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

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

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

22 (4) AN SPFC SHALL ANNUALLY SUBMIT TO THE COMMISSIONER THE
23 OPINION OF A QUALIFIED ACTUARY AS TO WHETHER THE RESERVES AND
24 RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE RESERVES ARE
25 COMPUTED APPROPRIATELY, ARE BASED ON ASSUMPTIONS THAT SATISFY
26 CONTRACTUAL PROVISIONS, ARE CONSISTENT WITH PRIOR REPORTED AMOUNTS,
27 AND COMPLY WITH APPLICABLE LAWS OF THIS STATE. THE ACTUARIAL

1 OPINION REQUIRED BY THIS SECTION SHALL BE SUBMITTED IN A FORM
2 PRESCRIBED BY THE COMMISSIONER. FOR PURPOSES OF THIS SECTION,
3 "QUALIFIED ACTUARY" MEANS A MEMBER OF EITHER THE AMERICAN ACADEMY
4 OF ACTUARIES OR THE SOCIETY OF ACTUARIES WHO ALSO MEETS ANY OTHER
5 CRITERIA THAT THE COMMISSIONER MAY ESTABLISH BY RULE PURSUANT TO
6 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201
7 TO 24.328.

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

13 (2) AN SPFC MAY ESTABLISH AND MAINTAIN 1 OR MORE PROTECTED
14 CELLS WITH PRIOR WRITTEN APPROVAL OF THE COMMISSIONER AND SUBJECT
15 TO COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THIS CHAPTER AND
16 THE FOLLOWING CONDITIONS:

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

22 (B) EACH PROTECTED CELL SHALL BE ACCOUNTED FOR SEPARATELY ON
23 THE BOOKS AND RECORDS OF THE SPFC TO REFLECT THE FINANCIAL
24 CONDITION AND RESULTS OF OPERATIONS OF THE PROTECTED CELL,
25 INCLUDING INCOME, GAIN, EXPENSE, OR LOSS; DIVIDENDS; OTHER
26 DISTRIBUTIONS TO THE COUNTERPARTY FOR THE SPFC CONTRACT WITH EACH
27 CELL; AND OTHER ITEMS AS MAY BE PROVIDED IN THE SPFC CONTRACT,

1 INSURANCE SECURITIZATION TRANSACTION DOCUMENTS, PLAN OF OPERATION,
2 OR BUSINESS PLAN, OR AS REQUIRED BY THE COMMISSIONER.

3 (C) AMOUNTS ATTRIBUTED TO A PROTECTED CELL UNDER THIS CHAPTER,
4 INCLUDING ASSETS TRANSFERRED TO A PROTECTED CELL ACCOUNT, ARE OWNED
5 BY THE SPFC, AND THE SPFC SHALL NOT BE, OR SHALL NOT HOLD ITSELF
6 OUT TO BE, A TRUSTEE WITH RESPECT TO THOSE PROTECTED CELL ASSETS OF
7 THAT PROTECTED CELL ACCOUNT.

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

1 PROTECTED CELL.

2 (E) THE ASSETS OF A PROTECTED CELL SHALL NOT BE CHARGEABLE
3 WITH LIABILITIES ARISING OUT OF AN SPFC CONTRACT RELATED TO OR
4 ASSOCIATED WITH ANOTHER PROTECTED CELL. HOWEVER, 1 OR MORE SPFC
5 CONTRACTS MAY BE ATTRIBUTED TO A PROTECTED CELL SO LONG AS THOSE
6 SPFC CONTRACTS ARE INTENDED TO BE, AND ULTIMATELY ARE, PART OF A
7 SINGLE SECURITIZATION TRANSACTION.

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

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

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

1 COMMISSIONER.

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

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

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

26 SEC. 4715. (1) THE CREATION OF A PROTECTED CELL DOES NOT
27 CREATE, WITH RESPECT TO THAT PROTECTED CELL, A LEGAL PERSON

1 SEPARATE FROM THE SPFC.

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

8 (3) ALTHOUGH THE PROTECTED CELL IS NOT A SEPARATE LEGAL
9 PERSON, THE PROPERTY OF AN SPFC IN A PROTECTED CELL IS SUBJECT TO
10 ORDERS OF A COURT BY NAME AS IT WOULD HAVE BEEN IF THE PROTECTED
11 CELL WERE A SEPARATE LEGAL PERSON.

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

19 (5) A PROTECTED CELL EXISTS ONLY AT THE PLEASURE OF THE SPFC.
20 AT THE CESSATION OF BUSINESS OF A PROTECTED CELL IN ACCORDANCE WITH
21 THE PLAN OF OPERATION SUBMITTED TO THE COMMISSIONER, THE SPFC
22 VOLUNTARILY SHALL CLOSE OUT THE PROTECTED CELL ACCOUNT.

23 (6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN
24 SPFC FROM CONTRACTING WITH, OR ARRANGING FOR, AN INVESTMENT
25 ADVISOR, COMMODITY TRADING ADVISOR, OR OTHER THIRD PARTY TO MANAGE
26 THE ASSETS OF A PROTECTED CELL, IF ALL REMUNERATION, EXPENSES, AND
27 OTHER COMPENSATION OF THE THIRD PARTY ADVISOR OR MANAGER ARE

1 PAYABLE FROM THE ASSETS OF THAT PROTECTED CELL AND NOT FROM THE
2 ASSETS OF OTHER PROTECTED CELLS OR THE ASSETS OF THE SPFC'S GENERAL
3 ACCOUNT, UNLESS APPROVED BY THE COMMISSIONER.

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

11 (8) THE ASSETS OF THE PROTECTED CELL SHALL NOT BE USED TO PAY
12 EXPENSES OR CLAIMS OTHER THAN THOSE ATTRIBUTABLE TO THE PROTECTED
13 CELL. PROTECTED CELL ASSETS ARE AVAILABLE ONLY TO THE SPFC
14 COUNTERPARTY AND OTHER CREDITORS OF THE SPFC THAT ARE CREDITORS
15 ONLY TO THAT PROTECTED CELL AND, ACCORDINGLY, ARE ENTITLED, IN
16 CONFORMITY WITH THIS CHAPTER, TO HAVE RECOURSE TO THE PROTECTED
17 CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL. PROTECTED CELL
18 ASSETS ARE ABSOLUTELY PROTECTED FROM THE CREDITORS OF THE SPFC THAT
19 ARE NOT CREDITORS WITH RESPECT TO THAT PROTECTED CELL AND WHO,
20 ACCORDINGLY, ARE NOT ENTITLED TO HAVE RECOURSE TO THE PROTECTED
21 CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL. IF AN OBLIGATION
22 OF AN SPFC TO A PERSON OR COUNTERPARTY ARISES FROM AN SPFC CONTRACT
23 OR RELATED INSURANCE SECURITIZATION TRANSACTION OR IS OTHERWISE
24 INCURRED FOR A PROTECTED CELL, BOTH OF THE FOLLOWING APPLY:

25 (A) THAT OBLIGATION OF THE SPFC EXTENDS ONLY TO THE PROTECTED
26 CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL, AND THE PERSON OR
27 COUNTERPARTY, FOR THAT OBLIGATION, IS ENTITLED TO HAVE RECOURSE

1 ONLY TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED
2 CELL.

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

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

21 (10) AN SPFC SHALL ESTABLISH ADMINISTRATIVE AND ACCOUNTING
22 PROCEDURES NECESSARY TO PROPERLY IDENTIFY THE 1 OR MORE PROTECTED
23 CELLS OF THE SPFC AND THE ASSETS AND LIABILITIES OF EACH PROTECTED
24 CELL. THE DIRECTORS OF AN SPFC SHALL KEEP PROTECTED CELL ASSETS AND
25 LIABILITIES SEPARATE AND SEPARATELY IDENTIFIABLE FROM THE ASSETS
26 AND LIABILITIES OF THE SPFC'S GENERAL ACCOUNT. THE ASSETS AND
27 LIABILITIES ATTRIBUTABLE TO 1 PROTECTED CELL SHALL BE KEPT SEPARATE

1 AND SEPARATELY IDENTIFIABLE FROM THE ASSETS AND LIABILITIES
2 ATTRIBUTABLE TO OTHER PROTECTED CELLS.

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

20 (12) THE INCOME, AND GAINS AND LOSSES, WHETHER REALIZED OR
21 UNREALIZED, FROM PROTECTED CELL ASSETS AND PROTECTED CELL
22 LIABILITIES SHALL BE CREDITED TO OR CHARGED AGAINST THE PROTECTED
23 CELL WITHOUT REGARD TO OTHER INCOME AND GAINS OR LOSSES OF THE
24 SPFC, INCLUDING INCOME AND GAINS OR LOSSES OF OTHER PROTECTED
25 CELLS. AMOUNTS ATTRIBUTED TO ANY PROTECTED CELL AND ACCUMULATIONS
26 ON THE ATTRIBUTED AMOUNTS MAY BE INVESTED AND REINVESTED. THE
27 INVESTMENTS IN A PROTECTED CELL OR CELLS SHALL NOT BE TAKEN INTO

1 ACCOUNT IN APPLYING THE INVESTMENT LIMITATIONS OTHERWISE APPLICABLE
2 TO THE INVESTMENTS OF THE SPFC.

3 (13) AN SPFC WITH PROTECTED CELLS SHALL FILE ANNUALLY WITH THE
4 OFFICE ACCOUNTING STATEMENTS AND FINANCIAL REPORTS REQUIRED BY THIS
5 CHAPTER THAT, AMONG OTHER THINGS, SHALL DO ALL OF THE FOLLOWING:

6 (A) DETAIL THE FINANCIAL EXPERIENCE OF EACH PROTECTED CELL AND
7 THE SPFC SEPARATELY.

8 (B) PROVIDE THE COMBINED FINANCIAL EXPERIENCE OF THE SPFC AND
9 ALL PROTECTED CELLS.

10 (C) FOR AN SPFC THAT IS OTHERWISE QUALIFIED AS AN AUTHORIZED
11 INSURER, ACCOUNT FOR THE FINANCIAL EXPERIENCE OF EACH PROTECTED
12 CELL AND THE SPFC, BOTH SEPARATELY AND ON A COMBINED BASIS, IN
13 SATISFACTION OF SECTION 4731(3).

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

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

22 (2) AN SPFC, ITS PARENT OR AN AFFILIATED COMPANY, ITS
23 COUNTERPARTY, OR A CAPTIVE LLC MAY ISSUE SPFC SECURITIES AND ANY
24 OTHER SECURITIES NECESSARY TO IMPLEMENT THE INSURANCE
25 SECURITIZATION.

26 (3) PREFERRED SECURITIES MAY BE ISSUED BY THE SPFC TO THE
27 ISSUER OF THE SPFC SECURITIES IN CONNECTION WITH THE INSURANCE

1 SECURITIZATION IN ORDER TO FACILITATE DISTRIBUTIONS TO SERVICE SPFC
2 SECURITIES AND THESE PREFERRED SECURITIES SHALL IDENTIFY THE
3 ASSOCIATED PROTECTED CELL. THE SPFC MAY LAWFULLY ACCOUNT FOR
4 PREFERRED SECURITIES AS SURPLUS AND NOT AS DEBT FOR PURPOSES OF
5 STATUTORY ACCOUNTING.

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

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

16 (6) SURPLUS NOTES ISSUED PURSUANT TO THIS SECTION CONSTITUTE
17 SURPLUS OR CONTRIBUTION NOTES OF THE TYPE DESCRIBED IN SECTION
18 8142(1)(H).

19 (7) THE COMMISSIONER, WITHOUT OTHERWISE PREJUDICING THE
20 COMMISSIONER'S AUTHORITY, MAY APPROVE FORMULAS FOR AN ONGOING PLAN
21 OF INTEREST PAYMENTS, PRINCIPAL REPAYMENTS, OR BOTH INTEREST
22 PAYMENTS AND PRINCIPAL REPAYMENTS, TO PROVIDE GUIDANCE IN
23 CONNECTION WITH HIS OR HER ONGOING REVIEWS OF REQUESTS TO APPROVE
24 THE PAYMENTS ON AND PRINCIPAL REPAYMENTS OF THE SURPLUS NOTES.

25 (8) THE OBLIGATION TO REPAY PRINCIPAL OR INTEREST, OR BOTH, ON
26 THE SPFC SECURITIES SHALL REFLECT, IN WHOLE OR IN PART, THE RISK
27 ASSOCIATED WITH THE OBLIGATIONS OF THE SPFC TO THE COUNTERPARTY

1 UNDER THE SPFC CONTRACT, EITHER DIRECTLY OR BY BEING SECURED BY
2 ASSETS, INCLUDING THE PREFERRED SECURITIES, OBTAINED WITH THE
3 PROCEEDS OF THE SALE OF THE SPFC SECURITIES.

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

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

17 (A) COMPLIES WITH THE PLAN OF OPERATION SUBMITTED TO THE
18 COMMISSIONER.

19 (B) OBLIGATES THE SPFC TO INDEMNIFY THE COUNTERPARTY FOR
20 LOSSES.

21 (C) PROVIDES THAT CONTINGENT OBLIGATIONS OF THE SPFC UNDER THE
22 SPFC CONTRACT ARE SECURITIZED THROUGH AN SPFC INSURANCE
23 SECURITIZATION AND ARE FUNDED AND SECURED WITH ASSETS HELD IN TRUST
24 FOR THE BENEFIT OF THE COUNTERPARTY PURSUANT TO THIS CHAPTER AND
25 UNDER AGREEMENTS CONTEMPLATED BY THIS CHAPTER AND THAT ARE INVESTED
26 IN A MANNER THAT MEET THE CRITERIA UNDER SECTION 4727.

27 (2) AN SPFC MAY ENTER INTO AGREEMENTS WITH AFFILIATED

1 COMPANIES AND THIRD PARTIES AND CONDUCT BUSINESS NECESSARY TO
2 FULFILL ITS OBLIGATIONS AND ADMINISTRATIVE DUTIES INCIDENTAL TO THE
3 INSURANCE SECURITIZATION AND THE SPFC CONTRACT. THE AGREEMENTS MAY
4 INCLUDE MANAGEMENT AND ADMINISTRATIVE SERVICES AGREEMENTS AND OTHER
5 ALLOCATION AND COST SHARING AGREEMENTS, OR SWAP AND ASSET
6 MANAGEMENT AGREEMENTS, OR BOTH, OR AGREEMENTS FOR OTHER
7 CONTEMPLATED TYPES OF TRANSACTIONS PROVIDED IN SECTION 4719.

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

9 (A) A REQUIREMENT FOR THE SPFC TO ENTER INTO A TRUST AGREEMENT
10 SPECIFYING WHAT RECOVERABLES OR RESERVES, OR BOTH, THE AGREEMENT IS
11 TO COVER AND TO ESTABLISH A TRUST ACCOUNT FOR THE BENEFIT OF THE
12 COUNTERPARTY.

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

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

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

25 (E) A STIPULATION THAT THE SPFC AND THE COUNTERPARTY AGREE
26 THAT THE ASSETS IN THE TRUST ACCOUNT, ESTABLISHED PURSUANT TO THE
27 SPFC CONTRACT, ARE UNDER THE CONTROL OF THE COUNTERPARTY AND MAY BE

1 WITHDRAWN BY THE COUNTERPARTY AT ANY TIME, NOTWITHSTANDING ANY
2 OTHER PROVISIONS IN THE SPFC CONTRACT, AND SHALL BE UTILIZED AND
3 APPLIED BY THE COUNTERPARTY OR ANY SUCCESSOR BY OPERATION OF LAW OF
4 THE COUNTERPARTY, INCLUDING, SUBJECT TO THE PROVISIONS OF SECTION
5 4741, BUT WITHOUT FURTHER LIMITATION, ANY LIQUIDATOR,
6 REHABILITATOR, RECEIVER, OR CONSERVATOR OF THE COUNTERPARTY,
7 WITHOUT DIMINUTION BECAUSE OF INSOLVENCY ON THE PART OF THE
8 COUNTERPARTY OR THE SPFC, ONLY FOR THE FOLLOWING PURPOSES:

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

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

15 (4) THE SPFC CONTRACT MAY CONTAIN PROVISIONS THAT GIVE THE
16 SPFC THE RIGHT TO SEEK APPROVAL FROM THE COUNTERPARTY TO WITHDRAW
17 FROM THE TRUST ALL OR PART OF THE ASSETS, OR INCOME FROM THEM,
18 CONTAINED IN THE TRUST AND TO TRANSFER THE ASSETS TO THE SPFC,
19 PROVIDED THAT AT THE TIME OF THE WITHDRAWAL, THE SPFC SHALL REPLACE
20 THE WITHDRAWN ASSETS, EXCLUDING ANY INCOME WITHDRAWN, WITH OTHER
21 ASSETS HAVING A FAIR VALUE EQUAL TO THE FAIR VALUE OF THE ASSETS
22 WITHDRAWN AND THAT MEET THE PROVISIONS OF SECTION 4727; AND AFTER
23 THE WITHDRAWALS AND TRANSFER, THE FAIR VALUE OF THE ASSETS IN TRUST
24 SECURING THE OBLIGATIONS OF THE SPFC UNDER THE SPFC CONTRACT IS NO
25 LESS THAN AN AMOUNT NEEDED TO SATISFY THE FUNDED REQUIREMENT OF THE
26 SPFC CONTRACT. THE COUNTERPARTY SHALL BE THE SOLE JUDGE AS TO THE
27 APPLICATION OF THESE PROVISIONS BUT SHALL NOT UNREASONABLY NOR

1 ARBITRARILY WITHHOLD ITS APPROVAL.

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

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

21 (A) THE ASSETS OF AN SPFC SHALL BE PRESERVED AND ADMINISTERED
22 BY OR ON BEHALF OF THE SPFC TO SATISFY THE LIABILITIES AND
23 OBLIGATIONS OF THE SPFC INCIDENT TO THE SPFC CONTRACT WITH THE
24 COUNTERPARTY, THE ISSUANCE OF PREFERRED SECURITIES, OR THE
25 INSURANCE SECURITIZATION AND OTHER RELATED AGREEMENTS.

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

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

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

18 (E) IN THE SPFC INSURANCE SECURITIZATION, THE CONTRACTS OR
19 OTHER RELATING DOCUMENTATION SHALL CONTAIN PROVISIONS IDENTIFYING
20 THE SPFC.

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

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

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

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

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

7 (i) HAVE ANY DIRECT OBLIGATION TO THE POLICYHOLDERS OR
8 REINSUREDS OF THE COUNTERPARTY.

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

17 SEC. 4727. (1) ASSETS OF THE SPFC HELD IN TRUST TO SECURE
18 OBLIGATIONS UNDER THE SPFC CONTRACT SHALL AT ALL TIMES BE HELD IN
19 CASH AND CASH EQUIVALENTS, SECURITIES LISTED BY THE SECURITIES
20 VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE
21 COMMISSIONERS AND CONSIDERED AS ADMITTED ASSETS UNDER STATUTORY
22 ACCOUNTING CONVENTION IN ITS STATE OF DOMICILE, OR ANOTHER FORM OF
23 SECURITY ACCEPTABLE TO THE COMMISSIONER.

24 (2) ASSETS OF THE SPFC THAT ARE PLEDGED TO SECURE OBLIGATIONS
25 OF THE SPFC TO A COUNTERPARTY UNDER AN SPFC CONTRACT SHALL BE HELD
26 IN TRUST AND ADMINISTERED BY A QUALIFIED UNITED STATES FINANCIAL
27 INSTITUTION THAT DOES NOT CONTROL, IS NOT CONTROLLED BY, OR IS NOT

1 UNDER COMMON CONTROL WITH, THE SPFC OR THE COUNTERPARTY.

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

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

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

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

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

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

23 (5) THE TRUST AGREEMENT SHALL BE ESTABLISHED FOR THE SOLE USE
24 AND BENEFIT OF THE COUNTERPARTY AT LEAST TO THE FULL EXTENT OF THE
25 OBLIGATIONS OF THE SPFC TO THE COUNTERPARTY UNDER THE SPFC
26 CONTRACT. IF THERE IS MORE THAN 1 COUNTERPARTY, OR MORE THAN 1 SPFC
27 CONTRACT WITH THE SAME COUNTERPARTY, A SEPARATE TRUST AGREEMENT

1 SHALL BE ENTERED INTO WITH THE COUNTERPARTY AND A SEPARATE TRUST
2 ACCOUNT SHALL BE MAINTAINED FOR EACH SPFC CONTRACT WITH THE
3 COUNTERPARTY, UNLESS OTHERWISE APPROVED BY THE COMMISSIONER.

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

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

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

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

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

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

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

25 (7) THE TRUST AGREEMENT SHALL PROVIDE THAT AT LEAST 30 DAYS,
26 BUT NOT MORE THAN 45 DAYS, BEFORE TERMINATION OF THE TRUST ACCOUNT,
27 WRITTEN NOTIFICATION OF TERMINATION SHALL BE DELIVERED BY THE

1 TRUSTEE TO THE COUNTERPARTY WITH A COPY OF THE NOTICE PROVIDED TO
2 THE COMMISSIONER.

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

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

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

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

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

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

27 (C) TO FUND AN ACCOUNT WITH THE COUNTERPARTY IN AN AMOUNT TO

1 SECURE THE CREDIT OR REDUCTION FROM LIABILITY FOR REINSURANCE
2 COVERAGE PROVIDED UNDER THE SPFC CONTRACT.

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

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

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

21 (14) IF THE COUNTERPARTY HAS RECEIVED NOTIFICATION OF
22 TERMINATION OF THE TRUST ACCOUNT WHILE ANY OF THE SPFC'S
23 OBLIGATIONS OR LIABILITIES UNDER THE SPFC CONTRACT THAT ARE SECURED
24 BY THE TRUST ACCOUNT REMAIN UNLIQUIDATED AS OF 10 DAYS PRIOR TO THE
25 TERMINATION DATE OF THE TRUST ACCOUNT, THEN THE COUNTERPARTY MAY
26 WITHDRAW AMOUNTS FROM THE TRUST ACCOUNT EQUAL TO THE UNLIQUIDATED
27 OBLIGATIONS AND SHALL DEPOSIT SUCH AMOUNTS IN AN ACCOUNT

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

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

22 (2) THE DIVIDENDS MAY BE DECLARED BY THE MANAGEMENT OF THE
23 SPFC IF THE DIVIDENDS DO NOT VIOLATE THE PROVISIONS OF THIS CHAPTER
24 OR JEOPARDIZE THE FULFILLMENT OF THE OBLIGATIONS OF THE SPFC OR THE
25 TRUSTEE PURSUANT TO THE SPFC INSURANCE SECURITIZATION AGREEMENTS,
26 THE SPFC CONTRACT, OR ANY RELATED TRANSACTION AND OTHER PROVISIONS
27 OF THIS CHAPTER.

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

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

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

17 (2) NO LATER THAN 5 MONTHS AFTER THE FISCAL YEAR END OF THE
18 SPFC, THE SPFC SHALL FILE WITH THE COMMISSIONER AN AUDIT BY A
19 CERTIFIED PUBLIC ACCOUNTING FIRM OF THE FINANCIAL STATEMENTS OF THE
20 SPFC AND THE TRUST ACCOUNTS.

21 (3) EACH SPFC SHALL FILE BY MARCH 1, A STATEMENT OF
22 OPERATIONS, USING EITHER GENERALLY ACCEPTED ACCOUNTING PRINCIPLES
23 OR STATUTORY ACCOUNTING PRINCIPLES WITH USEFUL OR NECESSARY
24 MODIFICATIONS OR ADAPTIONS REQUIRED OR APPROVED OR ACCEPTED BY THE
25 COMMISSIONER FOR THE TYPE OF INSURANCE AND KINDS OF INSURERS TO BE
26 REPORTED UPON, AND AS SUPPLEMENTED BY ADDITIONAL INFORMATION
27 REQUIRED BY THE COMMISSIONER. THE STATEMENT OF OPERATIONS SHALL

1 INCLUDE A STATEMENT OF INCOME, A BALANCE SHEET, AND MAY INCLUDE A
2 DETAILED LISTING OF INVESTED ASSETS, INCLUDING IDENTIFICATION OF
3 ASSETS HELD IN TRUST TO SECURE THE OBLIGATIONS OF THE SPFC UNDER
4 THE SPFC CONTRACT AND ADDITIONAL DESCRIPTIONS AND ACCOUNTING OF THE
5 RESERVES REQUIRED OR MAINTAINED BY THE SPFC. THE SPFC ALSO MAY
6 INCLUDE WITH THE FILING RISK BASED CAPITAL CALCULATIONS AND OTHER
7 ADJUSTED CAPITAL CALCULATIONS TO ASSIST THE COMMISSIONER WITH
8 EVALUATING THE LEVELS OF THE SURPLUS OF THE SPFC FOR THE YEAR
9 ENDING ON DECEMBER 31 OF THE PREVIOUS YEAR. THE STATEMENTS SHALL BE
10 PREPARED ON FORMS REQUIRED BY THE COMMISSIONER. IN ADDITION, THE
11 COMMISSIONER MAY REQUIRE THE FILING OF PERFORMANCE ASSESSMENTS OF
12 THE SPFC CONTRACT.

13 (4) AN SPFC THAT IS AUTHORIZED AS AN INSURER OTHER THAN SOLELY
14 PURSUANT TO THIS CHAPTER AND CHAPTER 46 SHALL FILE ANNUAL REPORTS
15 PURSUANT TO SECTIONS 438 AND 438A AND CHAPTER 10. AN SPFC SHALL
16 MAINTAIN ITS RECORDS IN THIS STATE, OR IN 1 OR MORE LOCATIONS
17 OUTSIDE THE STATE WITH THE APPROVAL OF THE COMMISSIONER, AND SHALL
18 MAKE ITS RECORDS AVAILABLE FOR EXAMINATION BY THE COMMISSIONER AT
19 ANY TIME. THE SPFC SHALL KEEP ITS BOOKS AND RECORDS IN SUCH MANNER
20 THAT ITS FINANCIAL CONDITION, AFFAIRS, AND OPERATIONS CAN BE
21 ASCERTAINED AND SO THAT THE COMMISSIONER MAY READILY VERIFY ITS
22 FINANCIAL STATEMENTS AND DETERMINE ITS COMPLIANCE WITH THIS
23 CHAPTER.

24 (5) ALL ORIGINAL BOOKS, RECORDS, DOCUMENTS, ACCOUNTS, AND
25 VOUCHERS SHALL BE PRESERVED AND KEPT AVAILABLE IN THIS STATE FOR
26 THE PURPOSE OF EXAMINATION. THE ORIGINAL RECORDS, HOWEVER, MAY BE
27 KEPT AND MAINTAINED OUTSIDE THIS STATE IF, ACCORDING TO A PLAN

1 ADOPTED BY THE MANAGEMENT OF THE SPFC AND APPROVED BY THE
2 COMMISSIONER, IT MAINTAINS SUITABLE RECORDS. THE BOOKS OR RECORDS
3 MAY BE PHOTOGRAPHED, REPRODUCED ON FILM, OR STORED AND REPRODUCED
4 ELECTRONICALLY.

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

8 SEC. 4733. THE EXPENSES AND CHARGES OF AN SPFC'S EXAMINATIONS
9 SHALL BE PAID TO THE STATE BY THE SPFC EXAMINED, AND THE OFFICE
10 SHALL ISSUE THE WARRANTS FOR THE PROPER CHARGES INCURRED IN ALL
11 EXAMINATIONS.

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

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

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

27 (C) IN CONNECTION WITH AN ENFORCEMENT ACTION BROUGHT PURSUANT

1 TO THIS OR ANOTHER APPLICABLE ACT.

2 (D) TO LAW ENFORCEMENT OFFICIALS.

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

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

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

11 (3) THE INFORMATION LISTED IN SUBSECTION (1) MAY BE
12 DISCOVERABLE BY A PARTY IN A CIVIL ACTION OR CONTESTED CASE TO
13 WHICH THE SUBMITTING CAPTIVE INSURANCE COMPANY IS A PARTY, UPON
14 SHOWING BY THE PARTY SEEKING TO DISCOVER THE INFORMATION THAT ALL
15 OF THE FOLLOWING APPLY:

16 (A) THE INFORMATION SOUGHT IS RELEVANT TO AND NECESSARY FOR
17 THE FURTHERANCE OF THE ACTION OR CASE.

18 (B) THE INFORMATION SOUGHT IS UNAVAILABLE FROM OTHER
19 NONCONFIDENTIAL SOURCES.

20 (C) A SUBPOENA ISSUED BY A JUDICIAL OR ADMINISTRATIVE LAW
21 OFFICER OF COMPETENT JURISDICTION HAS BEEN SUBMITTED TO THE
22 COMMISSIONER.

23 SEC. 4735. (1) AT THE CESSATION OF BUSINESS OF AN SPFC
24 FOLLOWING TERMINATION OR CANCELLATION OF AN SPFC CONTRACT AND THE
25 REDEMPTION OF ANY RELATED SPFC SECURITIES ISSUED IN CONNECTION WITH
26 IT, THE AUTHORITY GRANTED BY THE COMMISSIONER EXPIRES OR, FOR
27 RETIRING AND SURVIVING PROTECTED CELLS, IS MODIFIED. THE SPFC IS NO

1 LONGER AUTHORIZED TO CONDUCT ACTIVITIES UNLESS AND UNTIL A NEW OR
2 MODIFIED CERTIFICATE OF AUTHORITY IS ISSUED PURSUANT TO A NEW
3 FILING UNDER SECTION 4705 OR AS AGREED BY THE COMMISSIONER.

4 (2) THE COMMISSIONER MAY SUSPEND OR REVOKE THE CERTIFICATE OF
5 AUTHORITY OF AN SPFC IN THIS STATE FOR ANY OF THE FOLLOWING:

6 (A) INSOLVENCY.

7 (B) FAILURE TO MEET THE PROVISIONS OF SECTION 4709, 4713(4),
8 OR 4737.

9 (C) THE SPFC IS NO LONGER SAFE, RELIABLE, OR ENTITLED TO
10 PUBLIC CONFIDENCE OR IS UNSOUND, OR THE SPFC IS USING FINANCIAL
11 METHODS AND PRACTICES IN THE CONDUCT OF ITS BUSINESS THAT RENDER
12 FURTHER TRANSACTION OF INSURANCE BY THE SPFC IN THIS STATE
13 HAZARDOUS TO THE PUBLIC, THE HOLDERS OF THE SECURITIES, OR
14 COUNTERPARTIES IN THE SPFC.

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

20 (E) FAILURE TO OTHERWISE COMPLY IN ANY MATERIAL RESPECT WITH
21 APPLICABLE LAWS OF THIS STATE.

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

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

9 SEC. 4737. (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS
10 SECTION, EACH SPFC SHALL PAY A TAX ON REINSURANCE PREMIUMS. FOR
11 PURPOSES OF THIS SUBSECTION, REINSURANCE PREMIUMS DO NOT INCLUDE
12 RECEIPT OF ASSETS IN EXCHANGE FOR THE ASSUMPTION OF LOSS RESERVES
13 AND OTHER LIABILITIES OF ANOTHER INSURER OR OTHER FUNDING MECHANISM
14 UNDER COMMON OWNERSHIP AND CONTROL IF THE TRANSACTION IS PART OF A
15 PLAN TO DISCONTINUE THE OPERATIONS RELATED TO THE LOSS RESERVES AND
16 OTHER LIABILITIES BEING ASSUMED OF THE OTHER INSURER OR FUNDING
17 MECHANISM AND IF THE INTENT OF THE PARTIES TO THE TRANSACTION IS TO
18 RENEW OR MAINTAIN BUSINESS WITH THE SPFC. THE TAX IMPOSED UNDER
19 THIS SUBSECTION SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT OF
20 REINSURANCE PREMIUMS BY THE FOLLOWING RATES:

21 (A) FOR THE FIRST \$20,000,000.00, 0.225%.

22 (B) FOR THE NEXT \$20,000,000.00, 0.15%.

23 (C) FOR THE NEXT \$20,000,000.00, 0.05%.

24 (D) FOR EVERY DOLLAR GREATER THAN \$60,000,000.00, 0.025%.

25 (2) THE AMOUNT OF THE TAX IMPOSED AND LEVIED ON ANY SPFC UNDER
26 SUBSECTION (1) SHALL NOT EXCEED \$100,000.00 FOR ANY SINGLE TAX
27 YEAR. HOWEVER, IF THE AMOUNT OF THE TAX IMPOSED ON AN SPFC UNDER

1 SUBSECTION (1) IS LESS THAN \$5,000.00 FOR THAT TAX YEAR, AN SPFC
2 SHALL PAY A MINIMUM TAX OF \$5,000.00 UNLESS IT IS THE FIRST YEAR IN
3 WHICH THE SPFC WAS ISSUED A CERTIFICATE OF AUTHORITY. FOR AN SPFC
4 THAT HAS BEEN ISSUED A CERTIFICATE OF AUTHORITY FOR A YEAR OR LESS
5 DURING THE TAX YEAR FOR WHICH THE MINIMUM TAX IS TO BE IMPOSED, THE
6 MINIMUM TAX SHALL BE PRORATED ON A QUARTERLY BASIS AS FOLLOWS:

7 (A) FOR AN SPFC ISSUED A CERTIFICATE OF AUTHORITY IN THE FIRST
8 QUARTER, \$5,000.00.

9 (B) FOR AN SPFC ISSUED A CERTIFICATE OF AUTHORITY IN THE
10 SECOND QUARTER, \$3,750.00.

11 (C) FOR AN SPFC ISSUED A CERTIFICATE OF AUTHORITY IN THE THIRD
12 QUARTER, \$2,500.00.

13 (D) FOR AN SPFC ISSUED A CERTIFICATE OF AUTHORITY IN THE
14 FOURTH QUARTER, \$1,250.00.

15 (3) ANY TAX INCURRED BY AN SPFC, WHETHER PURSUANT TO THIS
16 SECTION OR OTHERWISE, WITH RESPECT TO AN SPFC CONTRACT SHALL BE
17 ACCOUNTED FOR BY ALLOCATION TO THE ASSOCIATED PROTECTED CELL IN
18 ACCORDANCE WITH SECTION 8507, BUT NO PROTECTED CELL SHALL BE TAXED
19 AS IF IT WERE A SEPARATE SPFC.

20 (4) THE TAX IMPOSED UNDER THIS SECTION SHALL BE ADMINISTERED
21 BY THE DEPARTMENT OF TREASURY PURSUANT TO 1941 PA 122, MCL 205.1 TO
22 205.31. IF A CONFLICT EXISTS BETWEEN 1941 PA 122, MCL 205.1 TO
23 205.31, AND THIS SECTION, THE PROVISIONS OF THIS SECTION APPLY. THE
24 DEPARTMENT OF TREASURY SHALL PROMULGATE RULES TO IMPLEMENT THIS
25 SECTION PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969
26 PA 306, MCL 24.201 TO 24.328. THE DEPARTMENT OF TREASURY SHALL
27 PRESCRIBE FORMS FOR USE BY TAXPAYERS AND MAY PROMULGATE RULES IN

1 CONFORMITY WITH THIS ACT FOR THE MAINTENANCE BY TAXPAYERS OF
2 RECORDS, BOOKS, AND ACCOUNTS AND FOR THE COMPUTATION OF THE TAX,
3 THE MAKING OF RETURNS, AND THE ASCERTAINMENT, ASSESSMENT, AND
4 COLLECTION OF THE TAX IMPOSED UNDER THIS SECTION.

5 (5) AN ANNUAL RETURN SHALL BE FILED WITH THE DEPARTMENT OF
6 TREASURY IN THE FORM AND CONTENT PRESCRIBED BY THE DEPARTMENT OF
7 TREASURY BY THE FIRST DAY OF THE THIRD MONTH AFTER THE END OF THE
8 CAPTIVE INSURANCE COMPANY'S TAX YEAR. ANY LIABILITY SHALL BE
9 REMITTED WITH THIS RETURN.

10 (6) FOR EACH FISCAL YEAR AFTER THE EFFECTIVE DATE OF THE
11 AMENDATORY ACT THAT ADDED THIS CHAPTER, 20% OF THE REVENUE
12 COLLECTED UNDER THIS SECTION AND SECTION 4647 SHALL BE DISTRIBUTED
13 TO THE CAPTIVE INSURANCE REGULATORY AND SUPERVISION FUND CREATED
14 UNDER SECTION 4673.

15 (7) AS USED IN THIS SECTION, "COMMON OWNERSHIP AND CONTROL"
16 SHALL BE DETERMINED AS FOLLOWS:

17 (A) FOR STOCK CORPORATIONS OR LIMITED LIABILITY COMPANIES,
18 MEANS THE DIRECT OR INDIRECT OWNERSHIP OF 80% OR MORE OF THE
19 OUTSTANDING VOTING STOCK OR MEMBERSHIP INTERESTS OF 2 OR MORE
20 CORPORATIONS OR LIMITED LIABILITY COMPANIES BY THE SAME PERSON OR
21 ENTITY.

22 (B) FOR NONPROFIT CORPORATIONS, MEANS THE DIRECT OR INDIRECT
23 OWNERSHIP OF 80% OR MORE OF THE VOTING POWER OF 2 OR MORE NONPROFIT
24 CORPORATIONS BY THE SAME MEMBER OR MEMBERS.

25 (C) FOR MUTUAL CORPORATIONS, MEANS THE DIRECT OR INDIRECT
26 OWNERSHIP OF 80% OR MORE OF THE SURPLUS AND THE VOTING POWER OF 2
27 OR MORE CORPORATIONS BY THE SAME MEMBER OR MEMBERS.

1 SEC. 4739. A DOMESTIC INSURER CEDING BUSINESS TO AN SPFC
2 PURSUANT TO AN SPFC CONTRACT MEETING THIS CHAPTER SHALL BE GRANTED
3 CREDIT FOR THE REINSURANCE CEDED, AS AN ASSET OR A REDUCTION FROM
4 LIABILITY, UNDER SECTION 1105. CREDIT SHALL BE GRANTED ONLY AS
5 FOLLOWS:

6 (A) THE CREDIT IS LIMITED TO THE FAIR VALUE OF THE ASSETS IN
7 TRUST OR IRREVOCABLE LETTERS OF CREDIT HELD FOR THE BENEFIT OF THE
8 COUNTERPARTY UNDER THE SPFC CONTRACT.

9 (B) THE ASSETS ARE HELD IN TRUST PURSUANT TO THIS CHAPTER.

10 (C) THE ASSETS ARE ADMINISTERED IN THE MANNER AND PURSUANT TO
11 ARRANGEMENTS AS PROVIDED IN THIS CHAPTER.

12 (D) THE ASSETS ARE HELD OR INVESTED IN 1 OR MORE OF THE FORMS
13 ALLOWED IN SECTION 4727.

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

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

1 STATE ON 1 OR MORE OF THE FOLLOWING GROUNDS:

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

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

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

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

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

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

7 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, RULES
8 PROMULGATED UNDER THIS ACT, OR REGULATIONS, OR ANOTHER APPLICABLE
9 LAW, RULE, OR REGULATION, UPON ANY ORDER OF CONSERVATION,
10 REHABILITATION, OR LIQUIDATION OF AN SPFC, OR 1 OR MORE OF THE
11 SPFC'S PROTECTED CELLS, THE RECEIVER SHALL MANAGE THE ASSETS AND
12 LIABILITIES OF THE SPFC PURSUANT TO THIS CHAPTER. THE RECEIVER
13 SHALL ENSURE THAT THE ASSETS LINKED TO 1 PROTECTED CELL ARE NOT
14 APPLIED TO THE LIABILITIES LINKED TO ANOTHER PROTECTED CELL OR TO
15 THE SPFC GENERALLY, UNLESS AN ASSET OR LIABILITY IS LINKED TO MORE
16 THAN 1 PROTECTED CELL, IN WHICH CASE THE RECEIVER SHALL DEAL WITH
17 THE ASSET OR LIABILITY IN ACCORDANCE WITH THE TERMS OF ANY RELEVANT
18 GOVERNING INSTRUMENT OR CONTRACT.

19 (6) WITH RESPECT TO AMOUNTS RECOVERABLE UNDER AN SPFC
20 CONTRACT, THE AMOUNT RECOVERABLE BY THE RECEIVER SHALL NOT BE
21 REDUCED OR DIMINISHED AS A RESULT OF THE ENTRY OF AN ORDER OF
22 CONSERVATION, REHABILITATION, OR LIQUIDATION WITH RESPECT TO THE
23 COUNTERPARTY, NOTWITHSTANDING ANY OTHER PROVISION IN THE CONTRACTS
24 OR OTHER DOCUMENTATION GOVERNING THE SPFC INSURANCE SECURITIZATION.

25 (7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR OTHER
26 LAWS OF THIS STATE:

27 (A) AN APPLICATION OR PETITION, OR A TEMPORARY RESTRAINING

1 ORDER OR INJUNCTION ISSUED PURSUANT TO THIS ACT, WITH RESPECT TO A
2 COUNTERPARTY DOES NOT PROHIBIT THE TRANSACTION OF A BUSINESS BY AN
3 SPFC, INCLUDING ANY PAYMENT BY AN SPFC MADE PURSUANT TO AN SPFC
4 SECURITY, OR ANY ACTION OR PROCEEDING AGAINST AN SPFC OR ITS
5 ASSETS.

6 (B) THE COMMENCEMENT OF A SUMMARY PROCEEDING OR OTHER INTERIM
7 PROCEEDING COMMENCED BEFORE A FORMAL DELINQUENCY PROCEEDING WITH
8 RESPECT TO AN SPFC, AND ANY ORDER ISSUED BY THE COURT DOES NOT
9 PROHIBIT THE PAYMENT BY AN SPFC MADE PURSUANT TO AN SPFC SECURITY
10 OR SPFC CONTRACT OR THE SPFC FROM TAKING ANY ACTION REQUIRED TO
11 MAKE THE PAYMENT.

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

15 (D) A RECEIVER OF AN SPFC SHALL NOT VOID A NONFRAUDULENT
16 TRANSFER BY THE SPFC OF MONEY OR OTHER PROPERTY MADE TO A
17 COUNTERPARTY PURSUANT TO AN SPFC CONTRACT OR MADE TO OR FOR THE
18 BENEFIT OF ANY HOLDER OF AN SPFC SECURITY ON ACCOUNT OF THE SPFC
19 SECURITY.

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

25 (8) SUBSECTION (7) DOES NOT PROHIBIT THE COMMISSIONER FROM
26 TAKING ANY ACTION PERMITTED UNDER CHAPTER 81 WITH RESPECT ONLY TO
27 THE CONSERVATION OR REHABILITATION OF AN SPFC WITH PROTECTED CELL

1 OR CELLS, PROVIDED THE COMMISSIONER WOULD HAVE HAD SUFFICIENT
2 GROUNDS TO SEEK TO DECLARE THE SPFC INSOLVENT, SUBJECT TO AND
3 WITHOUT OTHERWISE AFFECTING SUBSECTION (7) (E). IN THIS CASE, WITH
4 RESPECT TO THE SOLVENT PROTECTED CELL OR CELLS, THE COMMISSIONER
5 SHALL NOT PROHIBIT PAYMENTS MADE BY THE SPFC PURSUANT TO AN SPFC
6 SECURITY, AN SPFC CONTRACT, OR OTHERWISE MADE UNDER THE INSURANCE
7 SECURITIZATION TRANSACTION THAT ARE ATTRIBUTABLE TO THESE PROTECTED
8 CELL OR CELLS OR PROHIBIT THE SPFC FROM TAKING ANY ACTION REQUIRED
9 TO MAKE THESE PAYMENTS.

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

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

22 (A) PROVE ITS CASE BY A CLEAR AND CONVINCING EVIDENCE
23 STANDARD.

24 (B) DEMONSTRATE IRREPARABLE HARM TO THE SPFC OR ITS
25 COUNTERPARTY, OR BOTH.

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

27 (D) POST A BOND OF SUFFICIENT SURETY TO PROTECT THE INTERESTS

1 OF THE HOLDERS OF THE SPFC SECURITIES AND POLICYHOLDERS SO LONG AS
2 IT IS NOT LESS THAN 15% OF THE TOTAL AMOUNT OF THE SECURITIZED
3 TRANSACTION.

4 (2) IF THE COMMISSIONER SUSPENDS, REVOKES, OR MODIFIES A
5 CERTIFICATE OF AUTHORITY PREVIOUSLY ISSUED TO AN SPFC OR AN ORDER
6 MADE IN CONNECTION WITH A CERTIFICATE OF AUTHORITY PREVIOUSLY
7 ISSUED TO AN SPFC, THE ACTION SHALL COMPLY WITH THE STANDARDS AND
8 CRITERIA PROVIDED IN SUBSECTION (1), UNLESS THE ACTION IN
9 SUSPENDING, REVOKING, OR MODIFYING THE CERTIFICATE OF AUTHORITY IS
10 IN CONFORMANCE WITH SECTION 4735(2).

11 SEC. 4747. THE COMMISSIONER MAY ISSUE REGULATIONS NECESSARY TO
12 EFFECTUATE THE PURPOSES OF THIS CHAPTER. REGULATIONS ISSUED
13 PURSUANT TO THIS SECTION DO NOT AFFECT AN SPFC INSURANCE
14 SECURITIZATION IN EFFECT AT THE TIME OF THE ISSUANCE OF THE
15 REGULATION.

16 CHAPTER 48

17 PROTECTED CELL INSURANCE COMPANIES

18 SEC. 4801. AS USED IN THIS CHAPTER:

19 (A) "DOMESTIC INSURER" MEANS AN INSURER DOMICILED IN THIS
20 STATE.

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

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

23 (ii) FOR ASSETS OTHER THAN CASH, THE AMOUNT AT WHICH THAT ASSET
24 COULD BE BOUGHT OR SOLD IN THE CURRENT TRANSACTION BETWEEN ARM'S
25 LENGTH, WILLING PARTIES. IF AVAILABLE, THE QUOTED MID-MARKET PRICE
26 FOR THE ASSET IN ACTIVE MARKETS SHALL BE USED; AND IF QUOTED MID-
27 MARKET PRICES ARE NOT AVAILABLE, A VALUE SHALL BE DETERMINED USING

1 THE BEST INFORMATION AVAILABLE CONSIDERING VALUES OF SIMILAR ASSETS
2 AND OTHER VALUATION METHODS, SUCH AS PRESENT VALUE OF FUTURE CASH
3 FLOWS, HISTORICAL VALUE OF THE SAME AND SIMILAR ASSETS, OR
4 COMPARISON TO VALUES OF OTHER ASSET CLASSES, THE VALUE OF WHICH
5 HAVE BEEN HISTORICALLY RELATED TO THE SUBJECT ASSET.

6 (C) "FULLY FUNDED" MEANS THAT, WITH RESPECT TO ANY EXPOSURE
7 ATTRIBUTED TO A PROTECTED CELL, THE FAIR VALUE OF THE PROTECTED
8 CELL ASSETS, ON THE DATE ON WHICH THE INSURANCE SECURITIZATION IS
9 EFFECTED, EQUALS OR EXCEEDS THE MAXIMUM POSSIBLE EXPOSURE
10 ATTRIBUTABLE TO THE PROTECTED CELL WITH RESPECT TO SUCH EXPOSURES.

11 (D) "GENERAL ACCOUNT" MEANS THE ASSETS AND LIABILITIES OF A
12 PROTECTED CELL COMPANY OTHER THAN PROTECTED CELL ASSETS AND
13 PROTECTED CELL LIABILITIES.

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

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

23 (G) "PROTECTED CELL" MEANS AN IDENTIFIED POOL OF ASSETS AND
24 LIABILITIES OF A PROTECTED CELL COMPANY SEGREGATED AND INSULATED BY
25 MEANS OF THIS CHAPTER FROM THE REMAINDER OF THE PROTECTED CELL
26 COMPANY'S ASSETS AND LIABILITIES.

27 (H) "PROTECTED CELL ACCOUNT" MEANS A SPECIFICALLY IDENTIFIED

1 BANK OR CUSTODIAL ACCOUNT ESTABLISHED BY A PROTECTED CELL COMPANY
2 FOR THE PURPOSE OF SEGREGATING THE PROTECTED CELL ASSETS OF 1
3 PROTECTED CELL FROM THE PROTECTED CELL ASSETS OF OTHER PROTECTED
4 CELLS AND FROM THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL
5 ACCOUNT.

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

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

11 (K) "PROTECTED CELL COMPANY INSURANCE SECURITIZATION" MEANS
12 THE ISSUANCE OF DEBT INSTRUMENTS, THE PROCEEDS FROM WHICH SUPPORT
13 THE EXPOSURES ATTRIBUTED TO THE PROTECTED CELL, BY A PROTECTED CELL
14 COMPANY WHERE REPAYMENT OF PRINCIPAL OR INTEREST, OR BOTH, TO
15 INVESTORS PURSUANT TO THE TRANSACTION TERMS IS CONTINGENT UPON THE
16 OCCURRENCE OR NONOCCURRENCE OF AN EVENT WITH RESPECT TO WHICH THE
17 PROTECTED CELL COMPANY IS EXPOSED TO LOSS UNDER INSURANCE OR
18 REINSURANCE CONTRACTS IT HAS ISSUED.

19 (L) "PROTECTED CELL LIABILITIES" MEANS ALL LIABILITIES AND
20 OTHER OBLIGATIONS IDENTIFIED WITH AND ATTRIBUTABLE TO A SPECIFIC
21 PROTECTED CELL OF A PROTECTED CELL COMPANY.

22 SEC. 4803. (1) A PROTECTED CELL COMPANY MAY ESTABLISH 1 OR
23 MORE PROTECTED CELLS WITH THE PRIOR WRITTEN APPROVAL OF THE
24 COMMISSIONER OF A PLAN OF OPERATION OR AMENDMENTS SUBMITTED BY THE
25 PROTECTED CELL COMPANY WITH RESPECT TO EACH PROTECTED CELL IN
26 CONNECTION WITH AN INSURANCE SECURITIZATION. UPON THE WRITTEN
27 APPROVAL OF THE COMMISSIONER OF THE PLAN OF OPERATION, WHICH SHALL

1 INCLUDE, BUT IS NOT LIMITED TO, THE SPECIFIC BUSINESS OBJECTIVES
2 AND INVESTMENT GUIDELINES OF THE PROTECTED CELL, THE PROTECTED CELL
3 COMPANY, IN ACCORDANCE WITH THE APPROVED PLAN OF OPERATION, MAY
4 ATTRIBUTE TO THE PROTECTED CELL INSURANCE OBLIGATIONS FOR ITS
5 INSURANCE BUSINESS AND OBLIGATIONS RELATING TO THE INSURANCE
6 SECURITIZATION AND ASSETS TO FUND THE OBLIGATIONS. A PROTECTED CELL
7 SHALL HAVE ITS OWN DISTINCT NAME OR DESIGNATION, WHICH SHALL
8 INCLUDE THE WORDS "PROTECTED CELL". THE PROTECTED CELL COMPANY
9 SHALL TRANSFER ALL ASSETS ATTRIBUTABLE TO A PROTECTED CELL TO 1 OR
10 MORE SEPARATELY ESTABLISHED AND IDENTIFIED PROTECTED CELL ACCOUNTS
11 BEARING THE NAME OR DESIGNATION OF THAT PROTECTED CELL. PROTECTED
12 CELL ASSETS SHALL BE HELD IN THE PROTECTED CELL ACCOUNTS FOR THE
13 PURPOSE OF SATISFYING THE OBLIGATIONS OF THAT PROTECTED CELL.

14 (2) ALL ATTRIBUTIONS OF ASSETS AND LIABILITIES BETWEEN A
15 PROTECTED CELL AND THE GENERAL ACCOUNT SHALL BE IN ACCORDANCE WITH
16 THE PLAN OF OPERATION APPROVED BY THE COMMISSIONER. NO OTHER
17 ATTRIBUTION OF ASSETS OR LIABILITIES SHALL BE MADE BY A PROTECTED
18 CELL COMPANY BETWEEN THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT
19 AND ITS PROTECTED CELLS. ANY ATTRIBUTION OF ASSETS AND LIABILITIES
20 BETWEEN THE GENERAL ACCOUNT AND A PROTECTED CELL, OR FROM INVESTORS
21 IN THE FORM OF PRINCIPAL ON A DEBT INSTRUMENT ISSUED BY A PROTECTED
22 CELL COMPANY IN CONNECTION WITH A PROTECTED CELL COMPANY
23 SECURITIZATION, SHALL BE IN CASH OR IN READILY MARKETABLE
24 SECURITIES WITH ESTABLISHED FAIR VALUES.

25 (3) THE CREATION OF A PROTECTED CELL DOES NOT CREATE, WITH
26 RESPECT TO THAT PROTECTED CELL, A LEGAL PERSON SEPARATE FROM THE
27 PROTECTED CELL COMPANY. AMOUNTS ATTRIBUTED TO A PROTECTED CELL

1 UNDER THIS CHAPTER, INCLUDING ASSETS TRANSFERRED TO A PROTECTED
2 CELL ACCOUNT, ARE OWNED BY THE PROTECTED CELL COMPANY, AND THE
3 PROTECTED CELL COMPANY SHALL NOT BE, AND SHALL NOT HOLD ITSELF OUT
4 TO BE, A TRUSTEE WITH RESPECT TO THOSE PROTECTED CELL ASSETS OF
5 THAT PROTECTED CELL ACCOUNT. NOTWITHSTANDING THIS SUBSECTION, THE
6 PROTECTED CELL COMPANY MAY ALLOW FOR A SECURITY INTEREST TO ATTACH
7 TO PROTECTED CELL ASSETS OR A PROTECTED CELL ACCOUNT IF IN FAVOR OF
8 A CREDITOR OF THE PROTECTED CELL AND AS OTHERWISE ALLOWED UNDER
9 APPLICABLE LAW.

10 (4) THIS CHAPTER SHALL NOT BE CONSTRUED TO PROHIBIT THE
11 PROTECTED CELL COMPANY FROM CONTRACTING WITH OR ARRANGING FOR AN
12 INVESTMENT ADVISOR, COMMODITY TRADING ADVISOR, OR OTHER THIRD PARTY
13 TO MANAGE THE PROTECTED CELL ASSETS OF A PROTECTED CELL, IF ALL
14 REMUNERATION, EXPENSES, AND OTHER COMPENSATION OF THE THIRD PARTY
15 ADVISOR OR MANAGER ARE PAYABLE FROM THE PROTECTED CELL ASSETS OF
16 THAT PROTECTED CELL AND NOT FROM THE PROTECTED CELL ASSETS OF OTHER
17 PROTECTED CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S
18 GENERAL ACCOUNT.

19 (5) A PROTECTED CELL COMPANY SHALL ESTABLISH ADMINISTRATIVE
20 AND ACCOUNTING PROCEDURES NECESSARY TO PROPERLY IDENTIFY THE 1 OR
21 MORE PROTECTED CELLS OF THE PROTECTED CELL COMPANY AND THE
22 PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES ATTRIBUTABLE
23 TO THE PROTECTED CELLS. THE DIRECTORS OF A PROTECTED CELL COMPANY
24 SHALL KEEP PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES
25 SEPARATE AND SEPARATELY IDENTIFIABLE FROM THE ASSETS AND
26 LIABILITIES OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT AND
27 ATTRIBUTABLE TO 1 PROTECTED CELL SEPARATE AND SEPARATELY

1 IDENTIFIABLE FROM PROTECTED CELL ASSETS AND PROTECTED CELL
2 LIABILITIES ATTRIBUTABLE TO OTHER PROTECTED CELLS. IF THIS
3 SUBSECTION IS VIOLATED, THE REMEDY OF TRACING IS APPLICABLE TO
4 PROTECTED CELL ASSETS WHEN COMMINGLED WITH PROTECTED CELL ASSETS OF
5 OTHER PROTECTED CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S
6 GENERAL ACCOUNT. THE REMEDY OF TRACING IS NOT AN EXCLUSIVE REMEDY.

7 (6) WHEN ESTABLISHING A PROTECTED CELL, THE PROTECTED CELL
8 COMPANY SHALL ATTRIBUTE TO THE PROTECTED CELL ASSETS WITH A VALUE
9 AT LEAST EQUAL TO THE RESERVES AND OTHER INSURANCE LIABILITIES
10 ATTRIBUTED TO THAT PROTECTED CELL.

11 SEC. 4805. (1) THE PROTECTED CELL ASSETS OF A PROTECTED CELL
12 SHALL NOT BE CHARGED WITH LIABILITIES ARISING OUT OF ANY OTHER
13 BUSINESS THE PROTECTED CELL COMPANY MAY CONDUCT. ALL CONTRACTS OR
14 OTHER DOCUMENTATION REFLECTING PROTECTED CELL LIABILITIES SHALL
15 CLEARLY INDICATE THAT ONLY THE PROTECTED CELL ASSETS ARE AVAILABLE
16 FOR THE SATISFACTION OF THOSE PROTECTED CELL LIABILITIES.

17 (2) THE INCOME, AND GAINS AND LOSSES, WHETHER REALIZED OR
18 UNREALIZED, FROM PROTECTED CELL ASSETS AND PROTECTED CELL
19 LIABILITIES SHALL BE CREDITED TO OR CHARGED AGAINST THE PROTECTED
20 CELL WITHOUT REGARD TO OTHER INCOME AND GAINS OR LOSSES OF THE
21 PROTECTED CELL COMPANY, INCLUDING INCOME AND GAINS OR LOSSES OF
22 OTHER PROTECTED CELLS. AMOUNTS ATTRIBUTED TO ANY PROTECTED CELL AND
23 ACCUMULATIONS ON THE ATTRIBUTED AMOUNTS MAY BE INVESTED AND
24 REINVESTED. THE INVESTMENTS IN A PROTECTED CELL OR CELLS SHALL NOT
25 BE TAKEN INTO ACCOUNT IN APPLYING THE INVESTMENT LIMITATIONS
26 OTHERWISE APPLICABLE TO THE INVESTMENTS OF THE PROTECTED CELL
27 COMPANY.

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

5 (4) A PROTECTED CELL COMPANY WITH RESPECT TO ANY OF ITS
6 PROTECTED CELLS SHALL ENGAGE IN FULLY FUNDED INDEMNITY TRIGGERED
7 INSURANCE SECURITIZATION TO SUPPORT IN FULL THE PROTECTED CELL
8 EXPOSURES ATTRIBUTABLE TO THAT PROTECTED CELL. A PROTECTED CELL
9 COMPANY INSURANCE SECURITIZATION THAT IS NONINDEMNITY TRIGGERED
10 SHALL QUALIFY AS AN INSURANCE SECURITIZATION UNDER THE TERMS OF
11 THIS CHAPTER ONLY AFTER THE COMMISSIONER PROMULGATES RULES PURSUANT
12 TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
13 24.201 TO 24.328, ADDRESSING THE METHODS OF FUNDING OF THE PORTION
14 OF THIS RISK THAT IS NOT INDEMNITY BASED AND ADDRESSING ACCOUNTING,
15 DISCLOSURE, RISK BASED CAPITAL TREATMENT, AND RISKS ASSOCIATED WITH
16 SUCH SECURITIZATIONS. A PROTECTED CELL COMPANY INSURANCE
17 SECURITIZATION THAT IS NOT FULLY FUNDED, WHETHER INDEMNITY
18 TRIGGERED OR NONINDEMNITY TRIGGERED, IS PROHIBITED. PROTECTED CELL
19 ASSETS MAY BE USED TO PAY INTEREST OR OTHER CONSIDERATION ON ANY
20 OUTSTANDING DEBT OR OTHER OBLIGATION ATTRIBUTABLE TO THAT PROTECTED
21 CELL. NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED OR INTERPRETED
22 TO PREVENT A PROTECTED CELL COMPANY FROM ENTERING INTO A SWAP
23 AGREEMENT OR OTHER TRANSACTION FOR THE ACCOUNT OF THE PROTECTED
24 CELL THAT HAS THE EFFECT OF GUARANTEEING INTEREST OR OTHER
25 CONSIDERATION.

26 (5) IN ALL PROTECTED CELL COMPANY INSURANCE SECURITIZATIONS,
27 THE CONTRACTS OR OTHER DOCUMENTATION EFFECTING THE TRANSACTION

1 SHALL CONTAIN PROVISIONS IDENTIFYING THE PROTECTED CELL TO WHICH
2 THE TRANSACTION WILL BE ATTRIBUTED. IN ADDITION, THE CONTRACTS OR
3 OTHER DOCUMENTATION SHALL CLEARLY DISCLOSE THAT THE ASSETS OF THAT
4 PROTECTED CELL, AND ONLY THOSE ASSETS, ARE AVAILABLE TO PAY THE
5 OBLIGATIONS OF THAT PROTECTED CELL. NOTWITHSTANDING THIS SUBSECTION
6 AND SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND ANY OTHER
7 APPLICABLE LAW, RULE, OR REGULATION, THE FAILURE TO INCLUDE SUCH
8 LANGUAGE IN THE CONTRACTS OR OTHER DOCUMENTATION SHALL NOT BE USED
9 AS THE SOLE BASIS BY CREDITORS, REINSURERS, OR OTHER CLAIMANTS TO
10 CIRCUMVENT THIS CHAPTER.

11 (6) A PROTECTED CELL COMPANY MAY ATTRIBUTE TO A PROTECTED CELL
12 ACCOUNT ONLY THE INSURANCE OBLIGATIONS RELATING TO THE PROTECTED
13 CELL COMPANY'S GENERAL ACCOUNT. UNDER NO CIRCUMSTANCES SHALL A
14 PROTECTED CELL BE AUTHORIZED TO ISSUE INSURANCE OR REINSURANCE
15 CONTRACTS DIRECTLY TO POLICYHOLDERS OR REINSUREDS OR HAVE ANY
16 OBLIGATION TO THE POLICYHOLDERS OR REINSUREDS OF THE PROTECTED CELL
17 COMPANY'S GENERAL ACCOUNT.

18 (7) AT THE CESSATION OF BUSINESS OF A PROTECTED CELL IN
19 ACCORDANCE WITH THE PLAN APPROVED BY THE COMMISSIONER, THE
20 PROTECTED CELL COMPANY VOLUNTARILY SHALL CLOSE OUT THE PROTECTED
21 CELL ACCOUNT.

22 SEC. 4807. (1) PROTECTED CELL ASSETS ARE ONLY AVAILABLE TO THE
23 CREDITORS OF THE PROTECTED CELL COMPANY THAT ARE CREDITORS FOR THAT
24 PROTECTED CELL AND ARE ENTITLED, IN CONFORMITY WITH THIS CHAPTER,
25 TO HAVE RECOURSE TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT
26 PROTECTED CELL. PROTECTED CELL ASSETS ARE ABSOLUTELY PROTECTED FROM
27 THE CREDITORS OF THE PROTECTED CELL COMPANY THAT ARE NOT CREDITORS

1 FOR THAT PROTECTED CELL AND WHO, ACCORDINGLY, ARE NOT ENTITLED TO
2 HAVE RECOURSE TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT
3 PROTECTED CELL. CREDITORS FOR A PROTECTED CELL ARE NOT ENTITLED TO
4 HAVE RECOURSE AGAINST THE PROTECTED CELL ASSETS OF OTHER PROTECTED
5 CELLS OR THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL
6 ACCOUNT. PROTECTED CELL ASSETS ARE ONLY AVAILABLE TO CREDITORS OF A
7 PROTECTED CELL COMPANY AFTER ALL PROTECTED CELL LIABILITIES HAVE
8 BEEN EXTINGUISHED OR OTHERWISE PROVIDED FOR IN ACCORDANCE WITH THE
9 PLAN OF OPERATION RELATING TO THAT PROTECTED CELL.

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

13 (A) THAT OBLIGATION OF THE PROTECTED CELL COMPANY EXTENDS ONLY
14 TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO THAT PROTECTED CELL,
15 AND THE PERSON, WITH RESPECT TO THAT OBLIGATION, IS ENTITLED TO
16 HAVE RECOURSE ONLY TO THE PROTECTED CELL ASSETS ATTRIBUTABLE TO
17 THAT PROTECTED CELL.

18 (B) THAT OBLIGATION OF THE PROTECTED CELL COMPANY DOES NOT
19 EXTEND TO THE PROTECTED CELL ASSETS OF ANY OTHER PROTECTED CELL OR
20 THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT, AND
21 THAT PERSON, WITH RESPECT TO THAT OBLIGATION, IS NOT ENTITLED TO
22 HAVE RECOURSE TO THE PROTECTED CELL ASSETS OF ANY OTHER PROTECTED
23 CELL OR THE ASSETS OF THE PROTECTED CELL COMPANY'S GENERAL ACCOUNT.

24 (3) WHEN AN OBLIGATION OF A PROTECTED CELL COMPANY RELATES
25 SOLELY TO THE GENERAL ACCOUNT, THE OBLIGATION OF THE PROTECTED CELL
26 COMPANY EXTENDS ONLY TO, AND THAT CREDITOR, WITH RESPECT TO THAT
27 OBLIGATION, IS ENTITLED TO HAVE RECOURSE ONLY TO, THE ASSETS OF THE

1 PROTECTED CELL COMPANY'S GENERAL ACCOUNT.

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

10 (5) THE ESTABLISHMENT OF 1 OR MORE PROTECTED CELLS ALONE DOES
11 NOT CONSTITUTE, AND SHALL NOT BE CONSIDERED TO BE, A FRAUDULENT
12 CONVEYANCE, AN INTENT BY THE PROTECTED CELL COMPANY TO DEFRAUD
13 CREDITORS, OR THE CARRYING OUT OF BUSINESS BY THE PROTECTED CELL
14 COMPANY FOR ANY OTHER FRAUDULENT PURPOSE.

15 SEC. 4809. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,
16 RULE, OR REGULATION, UPON AN ORDER OF CONSERVATION, REHABILITATION,
17 OR LIQUIDATION OF A PROTECTED CELL COMPANY, THE RECEIVER SHALL DEAL
18 WITH THE PROTECTED CELL COMPANY'S ASSETS AND LIABILITIES, INCLUDING
19 PROTECTED CELL ASSETS AND PROTECTED CELL LIABILITIES, IN ACCORDANCE
20 WITH THIS CHAPTER.

21 (2) FOR AMOUNTS RECOVERABLE UNDER A PROTECTED CELL COMPANY
22 INSURANCE SECURITIZATION, THE AMOUNT RECOVERABLE BY THE RECEIVER
23 SHALL NOT BE REDUCED OR DIMINISHED AS A RESULT OF THE ENTRY OF AN
24 ORDER OF CONSERVATION, REHABILITATION, OR LIQUIDATION WITH RESPECT
25 TO THE PROTECTED CELL COMPANY, NOTWITHSTANDING ANY OTHER PROVISION
26 TO THE CONTRARY IN THE CONTRACTS OR OTHER DOCUMENTATION GOVERNING
27 THE PROTECTED CELL COMPANY INSURANCE SECURITIZATION.

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

13 SEC. 4813. THE COMMISSIONER MAY ISSUE REGULATIONS NECESSARY TO
14 EFFECTUATE THE PURPOSES OF THIS CHAPTER.