

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4745**

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 102, 208, 814a, 1031, 1242, 1246, 1505, 2080,
2110b, 2153, 3010, 3580, 3926a, 3935, 4424, 4501, 4601, 4603, 4609,
4625, 4673, 4701, 4705, 4713, 4715, 4733, 4734, and 8111 (MCL
500.102, 500.208, 500.814a, 500.1031, 500.1242, 500.1246, 500.1505,
500.2080, 500.2110b, 500.2153, 500.3010, 500.3580, 500.3926a,
500.3935, 500.4424, 500.4501, 500.4601, 500.4603, 500.4609,
500.4625, 500.4673, 500.4701, 500.4705, 500.4713, 500.4715,
500.4733, 500.4734, and 500.8111), section 102 as amended by 2000
PA 252, section 208 as amended by 2002 PA 105, section 814a as
added by 2009 PA 198, section 1031 as added by 2008 PA 342, section
1242 as amended by 2002 PA 32, section 1246 as added by 2001 PA
228, section 1505 as amended by 2011 PA 75, section 2080 as amended

by 2008 PA 513, section 2110b as added by 2004 PA 190, section 2153 as added by 2012 PA 206, section 3010 as amended by 2006 PA 208, section 3580 as added by 2000 PA 249, section 3935 as amended and section 3926a as added by 2006 PA 442, section 4424 as amended by 2014 PA 139, section 4501 as amended by 2012 PA 39, sections 4601, 4603, 4609, 4625, 4673, 4701, 4705, 4713, 4715, 4733, and 4734 as added by 2008 PA 29, and section 8111 as amended by 2006 PA 358.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. ~~(1) "Commissioner" as~~ **AS** used in this act:

2 **(A) "COMMISSIONER"** means the ~~commissioner of the office of~~
3 ~~financial and insurance services.~~**DIRECTOR.**

4 **(B) (2) "Department"** ~~as used in this act~~ means the ~~office of~~
5 ~~financial and insurance services.~~**DEPARTMENT OF INSURANCE AND**
6 **FINANCIAL SERVICES.**

7 **(C) "DIRECTOR"** MEANS, UNLESS THE CONTEXT CLEARLY IMPLIES A
8 DIFFERENT MEANING, THE DIRECTOR OF THE DEPARTMENT.

9 **(D) "OFFICE OF FINANCIAL AND INSURANCE REGULATION" AND "OFFICE**
10 **OF FINANCIAL AND INSURANCE SERVICES" MEAN THE DEPARTMENT.**

11 Sec. 208. The department of **TECHNOLOGY**, management, and budget
12 shall assign to the ~~office of financial and insurance services~~
13 **DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES** at Lansing suitable
14 rooms for conducting the business of the ~~division,~~**DEPARTMENT OF**
15 **INSURANCE AND FINANCIAL SERVICES**, the necessary expense of which
16 shall be audited by the department of **TECHNOLOGY**, management, and
17 budget.

18 Sec. 814a. (1) Every property and casualty insurer doing
19 business in this state, unless exempted by the ~~commissioner,~~

1 **DIRECTOR**, shall annually file with the ~~commissioner~~**DIRECTOR** the
2 opinion of an appointed actuary which shall be entitled statement
3 of actuarial opinion. This statement ~~shall~~**MUST** be filed pursuant
4 ~~to~~**UNDER** the same instructions issued by the ~~commissioner~~**DIRECTOR**
5 for the filing of annual statements.

6 (2) Every property and casualty insurer domiciled in this
7 state that is required to file a statement of actuarial opinion
8 under subsection (1) shall annually file with the ~~commissioner~~
9 **DIRECTOR** an actuarial opinion summary, written by the insurer's
10 appointed actuary. This actuarial opinion summary ~~shall~~**MUST** be
11 filed ~~pursuant to~~**UNDER** the same instructions issued by the
12 ~~commissioner~~**DIRECTOR** for the filing of annual statements and shall
13 be considered as a document supporting the statement of actuarial
14 opinion required in subsection (1).

15 (3) A property and casualty insurer not domiciled in this
16 state that is required to file a statement of actuarial opinion
17 under subsection (1) shall provide an actuarial opinion summary
18 described in subsection (2) upon the ~~commissioner's~~**DIRECTOR'S**
19 request.

20 (4) An actuarial report and underlying workpapers shall be
21 prepared to support each statement of actuarial opinion. If the
22 property and casualty insurer fails to provide this actuarial
23 report or workpapers at the ~~commissioner's~~**DIRECTOR'S** request, the
24 ~~commissioner~~**DIRECTOR** may engage a qualified actuary at the expense
25 of the insurer to review the statement of actuarial opinion and the
26 basis for the opinion and prepare the actuarial report or
27 workpapers.

1 (5) The statement of actuarial opinion shall be filed with the
2 annual statement in accordance with section 438 and shall be
3 treated as a public document.

4 (6) Documents, materials, or other information in the
5 possession or control of the ~~office of financial and insurance~~
6 ~~regulation-DEPARTMENT~~ that are considered an actuarial report,
7 workpapers, or actuarial opinion summary provided in support of the
8 statement of actuarial opinion, and any other material provided by
9 the insurer to the ~~commissioner-DIRECTOR~~ in connection with the
10 actuarial report, workpapers, or actuarial opinion summary, is
11 confidential and privileged and is not subject to the freedom of
12 information act, 1976 PA 442, MCL 15.231 to 15.246, subpoena, or to
13 discovery and is not admissible in evidence in any private civil
14 action. This subsection does not do either of the following:

15 (a) Limit the ~~commissioner's-DIRECTOR'S~~ authority to release
16 the documents for the purpose of professional disciplinary
17 proceedings if the ~~commissioner-DIRECTOR~~ is satisfied that the
18 confidentiality of the documents will be preserved.

19 (b) Limit the ~~commissioner's-DIRECTOR'S~~ authority to use the
20 documents, materials, or other information in furtherance of any
21 regulatory or legal action brought as part of the ~~commissioner's~~
22 **DIRECTOR'S** official duties.

23 (7) Neither the ~~commissioner-DIRECTOR~~ nor any person who
24 received documents, materials, or other information while acting
25 under the ~~commissioner's-DIRECTOR'S~~ authority shall be permitted or
26 required to testify in any private civil action concerning any
27 confidential documents, materials, or information subject to

1 subsection (6).

2 (8) In order to assist in the performance of the
3 ~~commissioner's~~**DIRECTOR'S** duties, the ~~commissioner~~**DIRECTOR** may do
4 any of the following:

5 (a) Share documents, materials, or other information,
6 including the confidential and privileged documents, materials, or
7 information subject to subsection (6) with any other state,
8 federal, or international regulatory agencies, with the national
9 association of insurance commissioners and its affiliates and
10 subsidiaries, and with state, federal, and international law
11 enforcement authorities, provided that the recipient agrees to
12 maintain the confidentiality and privileged status of the document,
13 material, or other information and has the legal authority to
14 maintain confidentiality.

15 (b) Receive documents, materials, or information, including
16 otherwise confidential and privileged documents, materials, or
17 information, from the national association of insurance
18 commissioners and its affiliates and subsidiaries, and from
19 regulatory and law enforcement officials of other foreign or
20 domestic jurisdictions, and shall maintain as confidential or
21 privileged any document, material, or information received with
22 notice or the understanding that it is confidential or privileged
23 under the laws of the jurisdiction that is the source of the
24 document, material, or information.

25 (9) Any applicable privilege or claim of confidentiality is
26 not waived by the disclosing or sharing of documents, materials, or
27 information as permitted by this section.

1 (10) For purposes of this section, the Michigan automobile
2 insurance placement facility created under chapter 33 is not a
3 property and casualty insurer.

4 Sec. 1031. (1) Every insurer required to file an audited
5 financial report pursuant to this chapter that has annual direct
6 written and assumed premiums, excluding premiums reinsured with the
7 federal crop insurance corporation and federal flood program, of
8 \$500,000,000.00 or more shall prepare a report of the insurer's or
9 group of insurers' internal control over financial reporting, which
10 shall be as of the immediately preceding December 31. The report
11 shall be filed with the ~~commissioner~~**DIRECTOR** along with the
12 communication of internal control related matters noted in an audit
13 described under section 1017.

14 (2) Notwithstanding the premium threshold in subsection (1),
15 the ~~commissioner~~**DIRECTOR** may require an insurer to file a report
16 of internal control over financial reporting if the insurer is in a
17 risk-based capital level event or meets 1 or more of the standards
18 listed in chapter 4 of an insurer considered to be in hazardous
19 financial condition, or otherwise exhibits signs of a troubled
20 insurer.

21 (3) An insurer or a group of insurers that is directly subject
22 to section 404, part of a holding company system whose parent is
23 directly subject to section 404, not directly subject to section
24 404 but is a SOX compliant entity, or a member of a holding company
25 system whose parent is not directly subject to section 404 but is a
26 SOX compliant entity may file its or its parent's section 404
27 report and an addendum in satisfaction of the requirements of this

1 section provided that those internal controls of the insurer or
2 group of insurers having a material impact on the preparation of
3 the insurer's or group of insurers' audited statutory financial
4 statements as required in section 1007 were included in the scope
5 of the section 404 report. The addendum shall be a positive
6 statement by management that there are no material processes with
7 respect to the preparation of the insurer's or group of insurers'
8 audited statutory financial statements as required in section 1007
9 excluded from the section 404 report. If there are internal
10 controls of the insurer or group of insurers that have a material
11 impact on the preparation of the insurer's or group of insurers'
12 audited statutory financial statements and those internal controls
13 were not included in the scope of the section 404 report, the
14 insurer or group of insurers may either file a report as specified
15 in subsection (1), or the section 404 report and a report as
16 specified in subsection (1) for those internal controls that have a
17 material impact on the preparation of the insurer's or group of
18 insurers' audited statutory financial statements not covered by the
19 section 404 report.

20 (4) The report of internal control over financial reporting
21 shall include all of the following:

22 (a) A statement that management is responsible for
23 establishing and maintaining adequate internal control over
24 financial reporting.

25 (b) A statement that management has established internal
26 control over financial reporting and an assertion, to the best of
27 management's knowledge and belief, after diligent inquiry, as to

1 whether its internal control over financial reporting is effective
2 to provide reasonable assurance regarding the reliability of
3 financial statements in accordance with statutory accounting
4 principles.

5 (c) A statement that briefly describes the approach or
6 processes by which management evaluated the effectiveness of its
7 internal control over financial reporting.

8 (d) A statement that briefly describes the scope of work that
9 is included and whether any internal controls were excluded.

10 (e) Disclosure of any unremediated material weaknesses in the
11 internal control over financial reporting identified by management
12 as of the immediately preceding December 31. Management shall not
13 conclude that the internal control over financial reporting is
14 effective to provide reasonable assurance regarding the reliability
15 of financial statements in accordance with statutory accounting
16 principles if there is 1 or more unremediated material weaknesses
17 in its internal control over financial reporting.

18 (f) A statement regarding the inherent limitations of internal
19 control systems.

20 (g) Signatures of the chief executive officer and the chief
21 financial officer or his or her equivalent.

22 (5) Management shall document and make available upon
23 financial condition examination the basis upon which its
24 assertions, required in subsection (4), are made. Management may
25 base its assertions, in part, upon its review, monitoring, and
26 testing of internal controls undertaken in the normal course of its
27 activities. Management has discretion as to the nature of the

1 internal control framework used, and the nature and extent of
2 documentation, in order to make its assertion in a cost-effective
3 manner and, as such, may include assembly of or reference to
4 existing documentation.

5 (6) The ~~office of financial and insurance regulation~~
6 **DEPARTMENT** shall keep confidential the report on internal control
7 over financial reporting, required by subsection (1), and any
8 documentation provided in support thereof during the course of a
9 financial condition examination.

10 (7) This section takes effect beginning with the reporting
11 period that ends December 31, 2010. An insurer or group of insurers
12 that is not required to file a report because the total written
13 premium is below the required threshold and subsequently becomes
14 subject to the reporting requirement, whether through business
15 combination or not, shall have 2 years after the year the threshold
16 is exceeded to comply with this section's reporting requirements.

17 Sec. 1242. (1) The ~~commissioner~~**DIRECTOR** shall refuse to grant
18 a license to act as a solicitor, an insurance counselor, or an
19 adjuster to an applicant who fails to meet the requirements of this
20 chapter. Notice of the refusal shall be in writing and shall set
21 forth the basis for the refusal. If the applicant submits a written
22 request within 30 days after mailing of the notice of refusal, the
23 ~~commissioner~~**DIRECTOR** shall promptly conduct a hearing in which the
24 applicant shall be given an opportunity to show compliance with the
25 requirements of this chapter.

26 (2) The ~~commissioner~~**DIRECTOR**, after notice and opportunity
27 for a hearing, may suspend or revoke the license of a solicitor,

1 insurance counselor, or adjuster who fails to maintain the
2 standards required for initial licensing or who violates any
3 provision of this act.

4 (3) After notice and opportunity for a hearing, the
5 ~~commissioner~~**DIRECTOR** may refuse to grant or renew a license to act
6 as a solicitor, adjuster, or insurance counselor if he or she
7 determines by a preponderance of the evidence, that it is probable
8 that the business or primary occupation of the applicant will give
9 rise to coercion, indirect rebating of commissions, or other
10 practices in the sale of insurance that are prohibited by law.

11 (4) Without prior hearing, the ~~commissioner~~**DIRECTOR** may order
12 summary suspension of a license if he or she finds that protection
13 of the public requires emergency action and incorporates this
14 finding in his or her order. The suspension shall be effective on
15 the date specified in the order or upon service of a certified copy
16 of the order on the licensee, whichever is later. If requested, the
17 ~~commissioner~~**DIRECTOR** shall conduct a hearing on the suspension
18 within a reasonable time but not later than 20 days after the
19 effective date of the summary suspension unless the person whose
20 license is suspended requests a later date. At the hearing, the
21 ~~commissioner~~**DIRECTOR** shall determine if the suspension should be
22 continued or if the suspension should be withdrawn, and, if proper
23 notice is given, may determine if the license should be revoked.
24 The ~~commissioner~~**DIRECTOR** shall announce his or her decision within
25 30 days after conclusion of the hearing. The suspension shall
26 continue until the decision is announced.

27 (5) The ~~commissioner~~**DIRECTOR**, or his or her designated

1 deputy, may issue subpoenas to require the attendance and testimony
2 of witnesses and the production of documents necessary to the
3 conduct of the hearing and may designate ~~an office of financial and~~
4 ~~insurance services~~ **A DEPARTMENT** employee to make service. The
5 subpoenas issued by the ~~commissioner~~, **DIRECTOR**, or his or her
6 designated deputy, may be enforced upon petition to the circuit
7 court of Ingham county to show cause why a contempt order should
8 not be issued, as provided by law.

9 Sec. 1246. (1) Any documents, materials, or other information
10 in the control or possession of the ~~office of financial and~~
11 ~~insurance services~~ **DEPARTMENT** that is furnished by an insurer, an
12 insurance producer, or an employee or representative acting on
13 behalf of the insurer or insurance producer, or obtained by the
14 ~~commissioner~~ **DIRECTOR** in an investigation pursuant to this section
15 is confidential by law and privileged, is not subject to the
16 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is
17 not subject to subpoena, and is not subject to discovery or
18 admissible in evidence in any private civil action. However, the
19 ~~commissioner~~ **DIRECTOR** is authorized to use the documents,
20 materials, or other information in the furtherance of any
21 regulatory or legal action brought as a part of the ~~commissioner's~~
22 **DIRECTOR'S** duties.

23 (2) Neither the ~~commissioner~~ **DIRECTOR** nor any person who
24 received documents, materials, or other information while acting
25 under the ~~commissioner's~~ **DIRECTOR'S** authority is permitted or
26 required to testify in any private civil action concerning any
27 confidential documents, materials, or information under subsection

1 (1).

2 (3) In order to assist in the performance of the
3 ~~commissioner's~~**DIRECTOR'S** duties under this chapter, the
4 ~~commissioner~~**DIRECTOR** may do any of the following:

5 (a) Share documents, materials, or other information,
6 including the confidential and privileged documents, materials, or
7 information subject to subsection (1), with other state, federal,
8 and international regulatory agencies, with the national
9 association of insurance commissioners, its affiliates or
10 subsidiaries, and with state, federal, and international law
11 enforcement authorities, provided that the recipient agrees to
12 maintain the confidentiality and privileged status of the document,
13 material, or other information.

14 (b) Receive documents, materials, or information, including
15 otherwise confidential and privileged documents, materials, or
16 information, from the national association of insurance
17 commissioners, its affiliates or subsidiaries, and from regulatory
18 and law enforcement officials of other foreign or domestic
19 jurisdictions, and shall maintain as confidential or privileged any
20 document, material, or information received with notice or the
21 understanding that it is confidential or privileged under the laws
22 of the jurisdiction that is the source of the document, material,
23 or information.

24 (c) Enter into agreements governing sharing and use of
25 information consistent with this subsection.

26 (4) No waiver of any applicable privilege or claim of
27 confidentiality in the documents, materials, or information shall

1 occur as a result of disclosure to the ~~commissioner~~**DIRECTOR** under
2 section 1208b or this section, or as a result of sharing as
3 authorized under subsection (3).

4 (5) This chapter does not prohibit the ~~commissioner~~**DIRECTOR**
5 from releasing final, adjudicated actions including for cause
6 terminations that are open to public inspection pursuant to the
7 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, to a
8 database or other clearinghouse service maintained by the national
9 association of insurance commissioners or its affiliates or
10 subsidiaries.

11 (6) An insurer, the authorized representative of the insurer,
12 or an insurance producer that fails to report as required under
13 section 1208b or this section or that is found to have reported
14 with actual malice by a court of competent jurisdiction may, after
15 notice and hearing, have its license or certificate of authority
16 suspended or revoked and may be fined under section 1244.

17 Sec. 1505. (1) The ~~commissioner~~**DIRECTOR** may revoke or suspend
18 the license of a premium finance company if after investigation it
19 appears to the ~~commissioner~~**DIRECTOR** that any of the following has
20 occurred:

21 (a) Any license issued to the company was obtained by fraud.

22 (b) There was any misrepresentation in the application for the
23 license.

24 (c) The holder of the license has otherwise shown himself or
25 herself untrustworthy or incompetent to act as a premium finance
26 company.

27 (d) The company has violated any of the provisions of this

1 chapter or the rules and regulations promulgated under this
2 chapter.

3 (e) Except as otherwise provided in subsection (4), the
4 company has remunerated any insurance producer or any employee of
5 an insurance producer or any other person as an inducement to the
6 financing of any insurance policy with the premium finance company.
7 Except, that if the insurance producer prepares the premium finance
8 agreement, the premium finance company may pay him or her a service
9 fee not to exceed \$2.00.

10 (2) Before the ~~commissioner~~**DIRECTOR** revokes, suspends, or
11 refuses to renew the license of a premium finance company, he or
12 she shall give to the person an opportunity to be fully heard and
13 to introduce evidence on its behalf. Instead of revoking or
14 suspending the license for any of the reasons listed in subsection
15 (1), after a hearing, the ~~commissioner~~**DIRECTOR** may subject the
16 company to a penalty of not more than \$200.00 for each offense with
17 a total not to exceed \$1,000.00 when in his or her judgment the
18 ~~commissioner~~**DIRECTOR** finds that the public interest would not be
19 harmed by the continued operation of the company. The amount of any
20 penalty shall be paid by the company through the ~~office of~~
21 ~~financial and insurance regulation~~**DEPARTMENT** to the state
22 treasury. At any hearing provided by this section, the ~~commissioner~~
23 **DIRECTOR** shall have authority to administer oaths to witnesses.
24 Anyone testifying falsely, after having been administered an oath,
25 is subject to the penalty of perjury.

26 (3) If the ~~commissioner~~**DIRECTOR** refuses to issue or renew a
27 license or if an applicant or licensee is aggrieved by any action

1 of the ~~commissioner~~, **DIRECTOR** the applicant or licensee shall have
2 the right to a hearing and court proceeding as provided for in
3 section 244.

4 (4) Subsection (1)(e) does not prohibit a premium finance
5 company that is majority owned by insurance producers from
6 remunerating any of its insurance producer owners. This subsection
7 does not apply to a premium finance company that is involved in any
8 manner in financing life insurance or annuity policies or
9 contracts.

10 Sec. 2080. (1) It is unlawful for any life or accident insurer
11 authorized to do business in this state to own, manage, supervise,
12 operate, or maintain a mortuary or undertaking establishment, or to
13 permit its officers, agents, or employees to own or maintain any
14 such funeral or undertaking establishment.

15 (2) Except as otherwise provided in subsection (6), it is
16 unlawful for any life insurance, sick or funeral benefit company,
17 or any company, corporation, or association engaged in a similar
18 business to contract or agree with any funeral director,
19 undertaker, or mortuary to the effect that the funeral director,
20 undertaker, or mortuary conducts the funeral of any person insured
21 by the company, corporation, or association.

22 (3) A funeral establishment, cemetery, or seller shall not be
23 licensed as an insurance producer under chapter 12 other than as a
24 limited licensee pursuant to this subsection and chapter 12. A
25 funeral establishment, cemetery, or seller shall not be a limited
26 life insurance producer unless that funeral establishment,
27 cemetery, or seller provides a written assurance to the

1 ~~commissioner~~**DIRECTOR** at the time of application for the limited
2 licensure and with each license renewal that he or she has read and
3 understands the conditions contained in subsection (9) and agrees
4 to comply with those conditions. A person licensed as a limited
5 life insurance producer under this subsection and chapter 12 is
6 authorized and licensed to sell only an associated life insurance
7 policy or annuity contract and is not authorized or licensed to
8 sell any other type of insurance policy or annuity contract. A
9 person licensed as a limited life insurance producer under this
10 subsection and chapter 12 to sell associated life insurance
11 policies or annuity contracts shall not sell cemetery goods or
12 services or funeral goods or services unless all of the conditions
13 provided in subsection (9) are met. A person licensed as a life
14 insurance producer, other than a limited life insurance producer,
15 shall not sell cemetery goods or services or funeral goods or
16 services or be associated with a funeral establishment, cemetery,
17 or seller. Notwithstanding any other provision in this act, a
18 funeral establishment, cemetery, or seller may advise customers or
19 potential customers of the availability of life insurance, the
20 proceeds of which may be assigned pursuant to subsection (6), and
21 may provide application forms and other information in regard to
22 that life insurance. If an application form is provided, the
23 funeral establishment, cemetery, or seller shall also provide to
24 the person a list annually prepared by the ~~commissioner~~**DIRECTOR**
25 setting forth the life insurance companies offering in ~~Michigan~~
26 **THIS STATE** associated life insurance policies or annuity contracts.
27 The list shall include the name, address, and telephone number of a

1 producer for each of the life insurance companies listed. The list
2 also shall include a statement that a person who is insured under
3 any life insurance policy or annuity contract may assign all or a
4 portion of the proceeds, not to exceed the amount provided in
5 subsection (6)(g), of the existing life insurance policy or annuity
6 contract for the payment of funeral services or goods or cemetery
7 services or goods to any funeral establishment, cemetery, or seller
8 that has accepted any other assignment of an associated life
9 insurance policy or annuity contract during that calendar year. The
10 funeral establishment, cemetery, or seller shall accept an
11 assignment on the proceeds from any associated or nonassociated
12 life insurance policy or annuity contract pursuant to subsection
13 (6), and this requirement on the funeral establishment, cemetery,
14 or seller shall be set forth in the statement prepared by the
15 ~~commissioner.~~ **DIRECTOR.** The assignor or the person or persons
16 legally entitled to make funeral arrangements for the person whose
17 life was insured may contract with the funeral establishment,
18 cemetery, or seller of his or her choice for the rendering of the
19 funeral goods or services or cemetery goods or services. Except as
20 otherwise provided in this subsection, each associated life
21 insurance policy or annuity contract delivered or issued for
22 delivery in this state shall have a death benefit that is
23 sufficient to cover the initial contract price of the cemetery
24 goods or services or funeral goods or services and that increases
25 at an annual rate of not less than the consumer price index.
26 However, a life insurer may provide an associated life insurance
27 policy or annuity contract with a limited death benefit to an

1 insured who does not meet insurance requirements for a policy that
2 provides immediate full coverage or who chooses not to answer
3 medical questions required for a policy that provides immediate
4 full coverage. An associated life insurance policy or annuity
5 contract with a limited death benefit shall disclose in boldfaced
6 type that the death benefit will not be sufficient to cover the
7 initial contract price for the cemetery goods and services or
8 funeral goods and services for a period of up to 2 years if the
9 premium is not paid in full and that during this period the price
10 for those goods and services may increase at a rate higher than the
11 increase in the consumer price index for this period.

12 (4) A person shall not be designated as the beneficiary in any
13 policy of life or accident insurance whereby the beneficiary,
14 directly or indirectly, shall, in return for all or a part of the
15 proceeds of the policy of insurance, furnish cemetery services or
16 goods or funeral services or goods in connection therewith.

17 (5) Except as otherwise provided in subsection (6), it ~~shall~~
18 ~~be~~ **IS** unlawful for any life or accident, or sick or funeral benefit
19 company, or any person, company, corporation, or association, to
20 offer or furnish goods or services or anything but money to its
21 insureds or to his or her heirs, representatives, attorneys,
22 relatives, associates, or assigns in any connection with, or by way
23 of encumbrance, assignment, payment, settlement, satisfaction,
24 discharge, or release of any insurance policy. However, this
25 subsection does not prohibit any company, corporation, or
26 association from furnishing medical, surgical, or hospital service.

27 (6) Notwithstanding any other provision in this act, a life

1 insurer may write a life insurance policy or annuity contract that
2 is subject to an assignment of the proceeds of the insurance policy
3 or annuity contract as payment for cemetery services or goods or
4 funeral services or goods as provided in this subsection regardless
5 of the relationship between the life insurer and the assignee. An
6 assignment of the proceeds of the insurance policy or annuity
7 contract pursuant to this subsection shall be in writing on a form
8 approved by the ~~commissioner~~. **DIRECTOR**. A predeath assignment of
9 the proceeds of a life insurance policy or annuity contract as
10 payment for cemetery services or goods or funeral services or goods
11 is void unless all of the following conditions and criteria are
12 met:

13 (a) The assignment is an inseparable part of the contract for
14 the cemetery services or goods or funeral services or goods for
15 which the assigned proceeds serve as payment.

16 (b) The assignment is revocable by the assignor, assignor's
17 successor, or if the assignor is the insured by the representative
18 of the insured's estate prior to the provision of the cemetery
19 services or goods or funeral services or goods.

20 (c) The contract for funeral services or goods or cemetery
21 services or goods and the assignment provide that upon revocation
22 of the assignment, the contract for the cemetery services or goods
23 or funeral services or goods is revoked and cemetery services or
24 goods or funeral services or goods may be obtained from any
25 cemetery, funeral establishment, or seller.

26 (d) The assignment contains the following disclosure in
27 boldfaced type:

1 "This assignment may be revoked by the assignor or assignor's
2 successor or, if the assignor is also the insured and deceased, by
3 the representative of the insured's estate before the rendering of
4 the cemetery services or goods or funeral services or goods. If the
5 assignment is revoked, the death benefit under the life insurance
6 policy or annuity contract shall be paid in accordance with the
7 beneficiary designation under the insurance policy or annuity
8 contract."

9 (e) The assignment provides for all of the following:

10 (i) That the actual price of the cemetery services or goods or
11 funeral services or goods delivered at the time of death may be
12 more than or less than the price set forth in the assignment.

13 (ii) For the assignment of an associated life insurance policy
14 or annuity contract, that any increase in the price of the cemetery
15 services or goods or funeral services or goods does not exceed the
16 ultimate death benefit under the life insurance policy or annuity
17 contract. This requirement does not apply to an insurance policy or
18 annuity contract with a limited death benefit during the period
19 that the limited death benefit is in effect. During this period,
20 neither the beneficiary nor the seller is obligated to fulfill the
21 terms of the contract for the cemetery services or goods or funeral
22 services or goods for which the assigned proceeds serve as payment
23 and the assignment of the associated life insurance policy or
24 annuity contract may be revoked.

25 (iii) For the assignment of a nonassociated life insurance
26 policy or annuity contract, that any increase in the price of the
27 cemetery services or goods or the funeral services or goods shall

1 not exceed the consumer price index or the retail price list in
2 effect when the death occurs, whichever is less.

3 (iv) That if the ultimate death benefit under a life insurance
4 policy or annuity contract exceeds the price of the cemetery
5 services or goods or funeral services or goods at the time of
6 performance, the excess amount shall be distributed to the
7 beneficiary designated under the life insurance policy or annuity
8 contract or the insured's estate.

9 (v) That any addition to or modification of the contract for
10 cemetery services or goods or funeral services or goods does not
11 revoke the assignment or the contract for the cemetery services or
12 goods or funeral services or goods that are not affected by the
13 addition or modification for which the assigned proceeds are
14 payment unless the assignment is revoked.

15 (f) The assignment is limited to that portion of the proceeds
16 of the life insurance policy or annuity contract that is needed to
17 pay for the cemetery services or goods or funeral services or goods
18 for which the assignor has contracted.

19 (g) For an associated life insurance policy or annuity
20 contract, the death benefit of the life insurance policy or annuity
21 contract subject to the assignment does not exceed \$5,000.00 when
22 the first premium payment is made on the life insurance policy or
23 annuity contract. For a nonassociated life insurance policy or
24 annuity contract, the initial amount of proceeds assigned does not
25 exceed \$5,000.00. The maximum amounts in this subdivision shall be
26 adjusted annually in accordance with the consumer price index.

27 (h) The assignment shall contain the dispute resolution rights

1 in subsection (8). After the death of the insured but before the
2 cemetery services or goods or funeral services or goods are
3 provided, the funeral establishment, cemetery, or seller shall
4 provide to a representative of the insured's estate a separate
5 document entitled, "dispute resolution disclosure statement," which
6 shall clearly set forth the dispute resolution rights in subsection
7 (8). The dispute resolution disclosure statement shall be filed
8 with the ~~commissioner~~**DIRECTOR** and shall be considered approved
9 unless disapproved within 30 days after the submission. The
10 language used to set forth the dispute resolution rights in
11 subsection (8) shall be written in a manner calculated to be
12 understood by a person of ordinary intelligence.

13 (i) The assignor and not the assignee is responsible for
14 making the premium payments due on the life insurance policy or
15 annuity contract. This subdivision does not apply to an insurance
16 producer when acting as a fiduciary pursuant to section 1207.

17 (j) After the death of the insured but before the cemetery
18 services or goods or funeral services or goods are provided, the
19 representative of the insured's estate is provided with a current
20 price list for the cemetery services or goods or funeral services
21 or goods provided pursuant to the assignment.

22 (k) At the time the assignment is made, the assignee complies
23 with the price disclosure rules of the federal trade commission
24 prescribed in 16 CFR part 453 whether or not the rules by their own
25 terms apply to the offering.

26 (l) At the time the assignment is made, the assignor certifies
27 that the insured does not have in effect other life insurance

1 policies or annuity contracts that have been assigned as payment
2 for cemetery goods or services or funeral goods or services which
3 together with the additional assignment would have an aggregate
4 face value in excess of the limitation provided in subdivision (g).

5 (m) For the assignment of a nonassociated life insurance
6 policy or annuity contract, the assignment complies with both of
7 the following:

8 (i) The assignment is sufficient to cover the initial contract
9 price of the cemetery goods or services or funeral goods or
10 services.

11 (ii) The assignment provides that any increase in the price of
12 the cemetery services or goods or the funeral services or goods
13 shall not exceed the consumer price index or the retail price list
14 in effect when the death occurs, whichever is less.

15 (7) An insurer or an insurance producer shall not make a false
16 or misleading statement, oral or written, regarding an assignment
17 subject to subsection (6) or regarding the rights or obligations of
18 any party or prospective party to the assignment. An insurer or an
19 insurance producer shall not advertise or promote an assignment
20 subject to subsection (6) in a manner that is false, misleading,
21 deceptive, or unfair. The ~~commissioner~~**DIRECTOR** shall promulgate
22 rules regulating the solicitation of plans promoting assignments
23 subject to subsection (6) to protect against solicitations that are
24 intimidating, vexatious, fraudulent, or misleading, or which take
25 unfair advantage of a person's ignorance or emotional
26 vulnerability.

27 (8) After the cemetery services or goods or funeral services

1 or goods are provided, the funeral establishment, cemetery, or
2 seller shall provide to a representative of the insured's estate a
3 statement to be signed by the representative of the insured's
4 estate authorizing the release of the assignment proceeds for the
5 payment of the cemetery services or goods or funeral services or
6 goods. The insurer shall release to the funeral establishment,
7 cemetery, or seller the assignment proceeds upon receipt of the
8 authorization statement signed by a representative of the insured's
9 estate. If a representative of the insured's estate fails to sign
10 the authorization statement, the following shall take place:

11 (a) The funeral establishment, cemetery, or seller shall
12 provide the representative of the insured's estate with a dispute
13 resolution notice, a copy of which is to be sent to the insurer and
14 the ~~commissioner~~**DIRECTOR** that states all of the following:

15 (i) That the funeral establishment, cemetery, or seller has
16 provided the cemetery services or goods or funeral services or
17 goods.

18 (ii) That a representative of the insured's estate has refused
19 to authorize the insurer to release the assignment proceeds for the
20 payment of the cemetery services or goods or funeral services or
21 goods.

22 (iii) That a representative of the insured's estate may seek
23 arbitration to resolve the payment dispute.

24 (b) Upon the receipt of the dispute resolution notice
25 described in subdivision (a), the insurer shall retain the
26 assignment proceeds for 30 days. The insurer shall release the
27 assignment proceeds to the funeral establishment, cemetery, or

1 seller if after the expiration of the 30 days the insurer is not
2 informed that arbitration proceedings have been commenced, or
3 pursuant to the award of the arbitrator.

4 (c) The funeral establishment, cemetery, seller, or a
5 representative of the insured's estate may commence arbitration
6 proceedings to determine the disposition of the assignment
7 proceeds. Arbitration shall be conducted pursuant to the rules and
8 procedures of the American arbitration association. Expenses of the
9 arbitration shall be shared equally by the insured's estate and the
10 assignee unless otherwise ordered by the arbitrator.

11 (d) Nothing in this subsection limits the right of any party
12 involved in the payment dispute to seek other recourse permitted by
13 law.

14 (9) A life insurance producer shall not sell or solicit the
15 sale of a life insurance policy or annuity contract with the
16 intention of having the purchaser assign the proceeds of the policy
17 or contract to a funeral establishment, cemetery, or seller with
18 which the producer is associated unless all of the following
19 conditions are met:

20 (a) The producer discloses in writing to the purchaser the
21 nature of his or her association with the funeral establishment,
22 cemetery, or seller and that both the funeral establishment,
23 cemetery, or seller and the producer will or may profit from the
24 transaction, if that is the case.

25 (b) A funeral establishment, cemetery, or seller that accepts
26 assignments pursuant to subsection (6) shall also offer to sell or
27 provide cemetery goods or services or funeral goods or funeral

1 services pursuant to prepaid funeral contracts as provided in the
2 prepaid funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
3 328.235, or pursuant to the trust provisions of the cemetery
4 regulation act, 1968 PA 251, MCL 456.521 to 456.543.

5 (c) If the contemplated assignment is to be made to pay the
6 cost of cemetery goods or services or funeral goods or funeral
7 services, the producer shall disclose in writing to the purchaser
8 that the cemetery goods or services or funeral goods or services
9 may also be purchased prior to death by making payment directly to
10 a funeral establishment, cemetery, or seller who will hold funds in
11 escrow for the benefit of the purchaser pursuant to the prepaid
12 funeral and cemetery sales act, 1986 PA 255, MCL 328.211 to
13 328.235, or in trust pursuant to the provisions of the cemetery
14 regulation act, 1968 PA 251, MCL 456.521 to 456.543. The written
15 disclosure shall also state that upon cancellation of the prepaid
16 funeral contract, the purchaser is entitled to a refund of at least
17 90% of the principal and income earned.

18 (d) The sale of cemetery goods or services or funeral goods or
19 services shall not be conditioned on the purchaser buying or
20 agreeing to buy a life insurance policy or annuity contract or on
21 the assignment of the proceeds of the policy or contract to that
22 funeral establishment, cemetery, or seller.

23 (e) The sale of a life insurance policy or annuity contract
24 shall not be conditioned on the purchaser buying or agreeing to buy
25 cemetery goods or services or funeral goods or services from the
26 funeral establishment, cemetery, or seller with which the producer
27 is associated or on the assignment of the proceeds of the policy or

1 contract to that funeral establishment, cemetery, or seller.

2 (f) A discount from the current price of cemetery goods or
3 services or funeral goods or services shall not be offered as an
4 inducement to purchase or assign a life insurance policy or annuity
5 contract.

6 (g) The life insurance policy or annuity contract sold by the
7 producer may be canceled by the purchaser within 10 days after the
8 receipt of the policy or annuity contract, in which event a full
9 refund of all premiums shall be paid to the purchaser.

10 (h) The producer shall disclose in writing to the purchaser
11 that the funeral establishment, cemetery, or seller with which the
12 producer is associated will accept assignments of life insurance
13 policies or annuity contracts sold by any other licensed producer.

14 (10) The ~~commissioner~~**DIRECTOR** or any other person, in order
15 to force compliance with subsection (6) or (7), may bring an action
16 in a circuit court in any county in which the assignee or insurance
17 producer or any other person has solicited or sold a life insurance
18 policy or annuity contract that is assigned pursuant to subsection
19 (6), whether or not that person has purchased the life insurance
20 policy or annuity contract or is personally aggrieved by a
21 violation of this section. The court may award damages and issue
22 equitable orders in accordance with the Michigan court rules to
23 restrain conduct in violation of this section.

24 (11) Any person violating any of the provisions of this
25 section is guilty of a misdemeanor, and each violation shall be a
26 separate offense and upon conviction shall be punished by a fine
27 not exceeding \$1,000.00 or by imprisonment for not more than 6

1 months, or both such fine and imprisonment within the discretion of
2 the courts.

3 (12) In addition to the penalty provided in subsection (11),
4 if, after a hearing conducted pursuant to the administrative
5 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the
6 ~~commissioner~~**DIRECTOR** determines a person has violated this
7 section, the ~~commissioner~~**DIRECTOR** may order the person to pay a
8 civil fine of not more than \$10,000.00 for each violation and may
9 also impose other sanctions provided pursuant to chapter 12. The
10 money collected under this subsection shall be deposited in the
11 funeral consumers education and advocacy fund. The funeral
12 consumers education and advocacy fund is created within the ~~office~~
13 ~~of financial and insurance regulation~~. **DEPARTMENT**. The fund shall
14 be administered by the ~~commissioner~~. **DIRECTOR**. The money in the
15 fund shall be used to do both of the following:

16 (a) To promote the education of consumers concerning the
17 prearrangement and purchase of cemetery or funeral services or
18 goods through the purchase and assignment of life insurance or
19 annuity contracts.

20 (b) To provide legal assistance to persons who were injured as
21 a result of a violation of this section.

22 (13) For purposes of this section, a life insurance producer
23 is associated with a funeral establishment, cemetery, or seller if
24 any of the following apply:

25 (a) The producer is a funeral establishment, cemetery, or
26 seller.

27 (b) The producer owns an interest, directly or indirectly, in

1 a corporation or other entity that holds an interest in a funeral
2 establishment, cemetery, or seller.

3 (c) The producer is an officer, employee, or agent of a
4 funeral establishment, cemetery, or seller.

5 (d) The producer is an officer, employee, or agent of a
6 corporation or other entity that holds an interest, either directly
7 or indirectly, in a funeral establishment, cemetery, or seller, or
8 in a corporation or other entity that holds an interest, directly
9 or indirectly, in a corporation or other entity that holds an
10 interest in a funeral establishment, cemetery, or seller.

11 (14) As used in this section:

12 (a) "Associated life insurance policy or annuity contract" is
13 a life insurance policy or annuity contract that is marketed,
14 designed, and intended to be assigned as payment for cemetery goods
15 or services or funeral goods or services.

16 (b) "Casket" means any box or container consisting of 1 or
17 more parts in which a dead human body is placed prior to interment,
18 entombment, or cremation which may or may not be permanently
19 interred, entombed, or cremated with the dead human body. A
20 permanent interment or entombment receptacle designed or intended
21 for use without a cemetery burial vault or other outside container
22 shall also be considered a casket.

23 (c) "Catafalque" means an ornamental or decorative object or
24 structure placed beneath, over, or around a casket, vault, or a
25 dead human body prior to final disposition of the dead human body.

26 (d) "Cemetery" means that term as defined in but not
27 necessarily regulated under section 2 of the cemetery regulation

1 act, 1968 PA 251, MCL 456.522, or an officer, agent, or employee
2 thereof.

3 (e) "Cemetery burial vault or other outside container" means a
4 box or container used solely at the place of interment to
5 permanently surround or enclose a casket and to support the earth
6 above the casket after burial.

7 (f) "Cemetery goods" means land or interests in land, crypts,
8 lawn crypts, mausoleum crypts, or niches that are sold by a
9 cemetery. In addition, cemetery goods include cemetery burial
10 vaults or other outside containers, markers, monuments, urns, and
11 merchandise items used for the purpose of memorializing a decedent
12 and placed on or in proximity to a place of interment or entombment
13 of a casket, catafalque, or vault or to a place of inurnment which
14 are sold by a cemetery.

15 (g) "Cemetery services" means those services customarily
16 performed by a cemetery.

17 (h) "Combination unit" means any product consisting of a unit
18 or a series of units designed or intended to be used together as
19 both a casket and as a permanent burial receptacle.

20 (i) "Consumer price index" means the annual average percentage
21 increase in the Detroit consumer price index for all items for the
22 prior 12-month period as reported by the United States department
23 of labor and as certified by the ~~commissioner~~**DIRECTOR**.

24 (j) "Funeral establishment" means a funeral establishment or a
25 person who is engaged in the practice of mortuary science as those
26 terms are defined in section 1801 of the occupational code, 1980 PA
27 299, MCL 339.1801, or an officer, agent, or employee thereof.

1 (k) "Funeral goods" means items of merchandise which will be
2 used in connection with a funeral or an alternative to a funeral or
3 final disposition of human remains including, but not limited to,
4 caskets, other burial containers, combination units, and
5 catafalques. Funeral goods does not include cemetery goods.

6 (l) "Funeral services" means services customarily performed by
7 a person who is licensed pursuant to sections 1801 to 1812 of the
8 occupational code, 1980 PA 299, MCL 339.1801 to 339.1812. Funeral
9 services includes, but is not limited to, care of human remains,
10 embalming, preparation of human remains for final disposition,
11 professional services relating to a funeral or an alternative to a
12 funeral or final disposition of human remains, transportation of
13 human remains, limousine services, use of facilities or equipment
14 for viewing human remains, visitation, memorial services, or
15 services used in connection with a funeral or alternative to a
16 funeral, coordinating or conducting funeral rites or ceremonies,
17 and other services provided in connection with a funeral,
18 alternative to a funeral, or final disposition of human remains.

19 (m) "Limited death benefit" means the sum payable upon the
20 insured's death during not more than the first 2 years that an
21 associated life insurance policy or annuity contract is in effect
22 that is less than the amount necessary to cover the initial
23 contract price of cemetery goods and services or funeral goods and
24 services, but that provides for a minimum benefit as follows:

25 (i) During the first year of the contract, not less than 25% of
26 the initial contract price of cemetery goods and services or
27 funeral goods and services.

1 (ii) During the second year of the contract, not less than 50%
2 of the initial contract price of cemetery goods and services or
3 funeral goods and services.

4 (n) "Nonassociated life insurance policy or annuity contract"
5 means a life insurance policy or annuity contract that is not
6 marketed to be assigned, designed to be assigned, or intended to be
7 assigned as payment for cemetery goods or services or funeral goods
8 or services.

9 (o) "Representative of insured's estate" means the person or
10 persons legally entitled to make the funeral arrangements for the
11 person whose life was insured.

12 (p) "Seller" means a person who offers to sell cemetery goods
13 or services or funeral goods or services or any agent, officer, or
14 employee thereof.

15 Sec. 2110b. (1) An automobile insurance policy and an
16 automobile insurer and its employees, agents, and adjusters shall
17 not unreasonably restrict an insured from using a particular
18 person, place, shop, or entity for the providing of any automobile
19 repair or automobile glass repair or replacement service or product
20 covered by the policy.

21 (2) An automobile insurer shall disclose, prior to or at the
22 time a claim is filed with the insurer, whether the insurer has an
23 agreement with any repair or replacement facility to provide a
24 repair or replacement service or product to an insured and shall
25 inform an insured that he or she is under no obligation to use a
26 particular repair or replacement facility.

27 (3) ~~The office of financial and insurance services~~ **DEPARTMENT**

1 shall develop a plan whereby the ~~office~~ **DEPARTMENT** informs
2 consumers of their rights regarding insurance coverage of
3 automobile repairs, that the insurer is not required to pay more
4 than a reasonable amount for repairs and parts, and of the
5 insured's ability to report violations of their rights to the
6 ~~office of financial and insurance services~~ **DEPARTMENT** through the
7 ~~office's~~ **DEPARTMENT'S** toll-free telephone number or website. The
8 plan shall be developed and submitted to the senate and house of
9 representatives standing committees on insurance issues not later
10 than 6 months after ~~the effective date of this section.~~ **JULY 8,**
11 **2004.**

12 Sec. 2153. An insurer shall not use credit information or an
13 insurance score as any part of a decision to deny, cancel, or
14 nonrenew a personal insurance policy under chapters 21, 24, and 26.
15 However, credit information and an insurance score may be used to
16 determine premium installment payment options and availability. An
17 insurer shall not apply credit information or a credit-based
18 insurance score that is otherwise permitted under this act unless
19 all of the following are met:

20 (a) The insurer or its producer discloses, either on the
21 insurance application or at the time the application is taken, that
22 it may obtain credit information in connection with the
23 application. This disclosure shall be either written or provided to
24 an applicant in the same medium as the application for insurance.
25 An insurer may use the following disclosure statement:

26 "In connection with this application for insurance, we may
27 review your credit report or obtain or use a credit-based insurance

1 score based on the information contained in that credit report. We
2 may use a third party in connection with the development of your
3 insurance score.".

4 (b) The insurer or a third party on behalf of the insurer does
5 not use income, gender, address, zip code, ethnic group, religion,
6 marital status, or nationality of the insured or insurance
7 applicant in calculating an insurance score.

8 (c) The insurer does not take an adverse action against a
9 consumer because he or she does not have a credit card account.
10 However, an insurer may take an adverse action against that insured
11 if it is based on any other applicable factor that is independent
12 of the fact that the consumer does not have a credit card account.

13 (d) The insurer or a third party on behalf of the insurer does
14 not consider an absence of credit information or an inability to
15 calculate an insurance score in the rating of personal insurance
16 unless any resulting rate differential is filed with and not
17 disapproved by the ~~office of financial and insurance regulation~~.
18 **DEPARTMENT**. The ~~office of financial and insurance regulation~~
19 **DEPARTMENT** shall not disapprove a filing under this subdivision if
20 it meets 1 of the following:

21 (i) Is reasonably justified by differences in losses, expenses,
22 or both.

23 (ii) Provides the insured or insurance applicant with a
24 discount that is not less, on average, than the average credit
25 based discount received by the insurer's insureds in this state.

26 (e) The insurer or a third party on the insurer's behalf uses
27 a credit report issued within 90 days before the date an insurance

1 score based on that credit report is first applied to the insured.

2 (f) Upon the insured's request or with the insured's
3 permission the insured's producer's request at annual renewal, or
4 upon the insured's request during the course of the policy, an
5 insurer or a third party on the insurer's behalf shall obtain a new
6 credit report or insurance score and rerate the insured. An insurer
7 or a third party on the insurer's behalf is not required to obtain
8 a new credit report or recalculate the insurance score more
9 frequently than once in a 12-month period. An insurer or a third
10 party on the insurer's behalf may order a credit report upon any
11 renewal if the insurer does so using a consistent methodology with
12 all its insureds.

13 (g) For insurance scores calculated or recalculated on or
14 after the effective date of the amendatory act that added this
15 section, the insurer or a third party on the insurer's behalf does
16 not use the following as a negative factor in any insurance score
17 or in reviewing credit information:

18 (i) Credit inquiries not initiated by the consumer or requested
19 by the consumer for his or her own credit information.

20 (ii) Credit inquiries relating to insurance coverage, if so
21 identified on an insured's or insurance applicant's credit report.

22 (iii) Multiple lender inquiries, if coded by the consumer
23 reporting agency on the credit report as being from the home
24 mortgage industry and made within 30 days of one another, unless
25 only 1 inquiry is considered.

26 (iv) Multiple lender inquiries, if coded by the consumer
27 reporting agency on the credit report as being from the automobile

1 lending industry and made within 30 days of one another, unless
2 only 1 inquiry is considered.

3 (v) Collection accounts with a medical industry code, if so
4 identified on the consumer's credit report.

5 Sec. 3010. (1) Notwithstanding any other provision of this
6 act, an automobile insurer shall not pay a claim of \$2,000.00 or
7 more for loss or damage caused by fire or explosion to an insured
8 motor vehicle until a report under subsection (2) has been
9 submitted and the insurer has received from the insured a copy of
10 the report.

11 (2) If an insured motor vehicle suffers loss or damage caused
12 by fire or explosion, the insured shall submit to the fire or law
13 enforcement authority designated by the city, village, or township
14 a report prescribed by the ~~office of financial and insurance~~
15 ~~services-DEPARTMENT~~ in conjunction with the bureau of fire services
16 created in section 1b of the fire prevention code, 1941 PA 207, MCL
17 29.1b, that requires information concerning the motor vehicle fire
18 or explosion.

19 (3) This section does not apply to accidental fires or
20 explosions as determined by the insurer or the fire or law
21 enforcement authority designated by the city, village, or township.
22 If the insurer or the fire or law enforcement authority designated
23 by the city, village, or township determines that the fire or
24 explosion may not be accidental, the insurer or the fire or law
25 enforcement authority designated by the city, village, or township
26 shall notify the insured of the requirement for a report under this
27 section by not later than 30 days after the determination by the

1 insurer or the fire or law enforcement authority designated by the
2 city, village, or township.

3 (4) This section applies only if the fire or law enforcement
4 authority responsible for investigating the fire or explosion is
5 located in a city, village, or township described in subsection (8)
6 and if the city, village, or township, pursuant to a resolution by
7 its governing body, notifies the commissioner in writing of both of
8 the following:

9 (a) That the city, village, or township has elected to receive
10 the reports prepared under subsection (2).

11 (b) The name and address of the fire or law enforcement
12 authority designated by the city, village, or township to receive
13 reports prepared under subsection (2).

14 (5) The ~~commissioner~~**DIRECTOR** shall prepare and distribute a
15 list of all cities, villages, and townships that have elected to
16 apply this section to all insurance companies transacting
17 automobile insurance in this state.

18 (6) A city, village, or township may be added to the list
19 prepared under subsection (5) by submitting a written request
20 containing the information required under subsection (4) to the
21 ~~commissioner~~**DIRECTOR**. If a written request is received, the
22 ~~commissioner~~**DIRECTOR** shall prepare and distribute an amended list
23 indicating the addition. The addition shall be effective on the
24 date specified by the ~~commissioner~~**DIRECTOR** in the amended list.
25 The ~~commissioner~~**DIRECTOR** shall notify the city, village, township,
26 and all insurers transacting automobile insurance in this state of
27 the effective date of an addition, which shall be not less than 30

1 days after receipt of the notice by the insurance company. This
2 section does not apply to any loss that occurred before the
3 effective date of the addition.

4 (7) A city, village, or township may request to be deleted
5 from the list or may cease to apply this section for a period of
6 not less than 6 months upon not less than 30 days' written notice
7 to the ~~commissioner~~-**DIRECTOR**. After receipt of a request to be
8 deleted from the list, the ~~commissioner~~-**DIRECTOR** shall prepare and
9 distribute an amendment to the list indicating the deletion. The
10 deletion shall be effective on the date specified by the
11 ~~commissioner~~-**DIRECTOR** in the amendment. The ~~commissioner~~-**DIRECTOR**
12 shall notify the city, village, township, and all insurers
13 transacting automobile insurance in this state of the effective
14 date of a deletion which shall be effective not less than 30 days
15 after receipt of the notice by the insurance company. A city,
16 village, or township shall continue to apply this section to any
17 loss that occurred before the effective date of the deletion,
18 notwithstanding the deletion.

19 (8) A city, village, or township may elect to apply this
20 section as provided in subsection (4) and as follows:

21 (a) If the city, village, or township is located in a county
22 with a population of 425,000 or more.

23 (b) If the city, village, or township is located in a county
24 with a population of less than 425,000 but the city, village, or
25 township has a population of 50,000 or more.

26 (9) There is no liability on the part of, and a cause of
27 action does not arise against, an insurer or an agent or employee

1 of an insurer for withholding money in the course of complying with
2 or attempting to comply with this section.

3 Sec. 3580. (1) The ~~commissioner~~**DIRECTOR** shall prepare and
4 beginning January 1, 2001 and annually thereafter publish a
5 consumer guide to health maintenance organizations as provided in
6 this section.

7 (2) The consumer guide to health maintenance organizations
8 shall include all of the following for the most recent year and for
9 the immediately preceding year for which the information is
10 available:

11 (a) The national accreditation status of and any limitation on
12 accreditation for each health maintenance organization.

13 (b) Measurements of the quality of care provided by each
14 health maintenance organization, as required by the ~~commissioner~~,
15 **DIRECTOR**, including, but not limited to, the following health
16 employer data information set categories:

17 (i) Child and adolescent care.

18 (ii) Maternity care.

19 (iii) Cardiac care.

20 (iv) Staying healthy.

21 (v) Member satisfaction.

22 (vi) Women's health.

23 (c) The toll-free telephone number at the ~~office of financial~~
24 ~~and insurance services~~**DEPARTMENT** that consumers may call to make
25 requests for the consumer guide and make inquiries and complaints
26 about health maintenance organizations.

27 (d) A summary for each health maintenance organization of the

1 report required to be provided to the ~~commissioner~~**DIRECTOR** under
2 section 23 of the patient's right to independent review act, 2000
3 PA 251, MCL 550.1923.

4 (3) The ~~commissioner~~**DIRECTOR** may request, and a health
5 maintenance organization and the department of community health
6 shall provide in a timely manner, audited health employer
7 information set data and other information that the ~~commissioner~~
8 **DIRECTOR** needs to prepare the annual consumer guide under
9 subsection (1).

10 (4) The annual consumer guide under subsection (1) shall be
11 written in plain English and shall be presented in a manner that
12 facilitates comparisons among individual health maintenance
13 organizations. The ~~commissioner~~**DIRECTOR** shall promote and
14 publicize to the general public the existence of the annual
15 consumer guide. The ~~commissioner~~**DIRECTOR** shall distribute the
16 guide to members of the public upon request and shall provide
17 access to the consumer guide through the internet.

18 Sec. 3926a. (1) Except as provided in subsection (2), this
19 section applies to any long-term care policy or certificate issued
20 in this state on or after June 1, 2007.

21 (2) For certificates issued on or after June 1, 2007 under a
22 group long-term care insurance policy described in section
23 3901(c)(i), which policy was in force on June 1, 2007, this section
24 applies on the policy anniversary date following June 1, 2007.

25 (3) An insurer shall provide notice of a pending premium rate
26 schedule increase, including an exceptional increase, to the
27 ~~commissioner~~**DIRECTOR** at least 30 days prior to the notice to the

1 policyholders. This notice to the ~~commissioner~~**DIRECTOR** shall
2 include all of the following:

3 (a) Information required by section 3925.

4 (b) Certification by a qualified actuary that if the requested
5 premium rate schedule increase is implemented and the underlying
6 assumptions, which reflect moderately adverse conditions, are
7 realized, no further premium rate schedule increases are
8 anticipated and that the premium rate filing is in compliance with
9 the provisions of this section.

10 (c) An actuarial memorandum justifying the rate schedule
11 change request that includes all of the following:

12 (i) Lifetime projections of earned premiums and incurred claims
13 based on the filed premium rate schedule increase and the method
14 and assumptions used in determining the projected values, including
15 reflection of any assumptions that deviate from those used for
16 pricing other policies or certificates currently available for
17 sale. Annual values for the 5 years preceding and the 3 years
18 following the valuation date shall be provided separately. The
19 projections shall include the development of the lifetime loss
20 ratio, unless the rate increase is an exceptional increase. The
21 projections shall demonstrate compliance with subsection (4). For
22 exceptional increases, the projected experience shall be limited to
23 the increases in claims expenses attributable to the approved
24 reasons for the exceptional increase and if the ~~commissioner~~
25 **DIRECTOR** determines that offsets may exist, the insurer shall use
26 appropriate net projected experience.

27 (ii) If the rate increase will trigger contingent benefit upon

1 lapse, disclosure of how reserves have been incorporated in this
2 rate increase.

3 (iii) Disclosure of the analysis performed to determine why a
4 rate adjustment is necessary, which pricing assumptions were not
5 realized and why, and what other actions taken by the insurer have
6 been relied on by the actuary.

7 (iv) A statement that policy design, underwriting, and claims
8 adjudication practices have been taken into consideration.

9 (v) If it is necessary to maintain consistent premium rates
10 for new certificates and certificates receiving a rate increase,
11 the insurer will need to file composite rates reflecting
12 projections of new certificates.

13 (d) A statement that renewal premium rate schedules are not
14 greater than new business premium rate schedules except for
15 differences attributable to benefits, unless sufficient
16 justification is provided to the commissioner.

17 (e) Sufficient information for review and approval of the
18 premium rate schedule increase by the ~~commissioner~~**DIRECTOR**.

19 (4) All premium rate schedule increases shall be determined in
20 accordance with the following requirements:

21 (a) Exceptional increases shall provide that 70% of the
22 present value of projected additional premiums from the exceptional
23 increase will be returned to policyholders in benefits.

24 (b) Premium rate schedule increases shall be calculated such
25 that the sum of the accumulated value of incurred claims, without
26 the inclusion of active life reserves, and the present value of
27 future projected incurred claims, without the inclusion of active

1 life reserves, will not be less than the sum of the following:

2 (i) The accumulated value of the initial earned premium times
3 58%.

4 (ii) Eighty-five percent of the accumulated value of prior
5 premium rate schedule increases on an earned basis.

6 (iii) The present value of future projected initial earned
7 premiums times 58%.

8 (iv) Eighty-five percent of the present value of future
9 projected premiums not in subparagraph (iii) on an earned basis.

10 (c) If a policy or certificate has both exceptional and other
11 increases, the values in subdivision (b) (ii) and (iv) shall also
12 include 70% for exceptional rate increase amounts.

13 (d) All present and accumulated values used to determine rate
14 increases shall use the maximum valuation interest rate for
15 contract reserves as specified in section 733(1). The actuary shall
16 disclose as part of the actuarial memorandum the use of any
17 appropriate averages.

18 (5) For each rate increase that is implemented, the insurer
19 shall file for review and approval by the ~~commissioner~~**DIRECTOR**
20 updated projections, as described in subsection (3)(c)(i), annually
21 for the next 3 years and include a comparison of actual results to
22 projected values. The ~~commissioner~~**DIRECTOR** may extend the period
23 to greater than 3 years if actual results are not consistent with
24 projected values from prior projections. For group insurance
25 certificates that meet the conditions in subsection (13), the
26 projection required by this subsection shall be provided to the
27 policyholder in lieu of filing with the ~~commissioner~~**DIRECTOR**.

1 (6) If any premium rate in the revised premium rate schedule
2 is greater than 200% of the comparable rate in the initial premium
3 schedule, lifetime projections, as described in subsection
4 (3)(c)(i), shall be filed for review and approval by the
5 ~~commissioner~~**DIRECTOR** every 5 years following the end of the
6 required period in subsection (5). For group insurance certificates
7 that meet the conditions in subsection (13), the projections
8 required by this subsection shall be provided to the policyholder
9 in lieu of filing with the ~~commissioner~~**DIRECTOR**.

10 (7) If the ~~commissioner~~**DIRECTOR** has determined that the
11 actual experience following a rate increase does not adequately
12 match the projected experience and that the current projections
13 under moderately adverse conditions demonstrate that incurred
14 claims will not exceed proportions of premiums specified in
15 subsection (4), the ~~commissioner~~**DIRECTOR** may require the insurer
16 to implement premium rate schedule adjustments or other measures to
17 reduce the difference between the projected and actual experience.
18 In determining whether the actual experience adequately matches the
19 projected experience, consideration should be given to subsection
20 (3)(c)(iii), if applicable.

21 (8) If the majority of the policies or certificates to which
22 an increase is applicable are eligible for the contingent benefit
23 upon lapse, the insurer shall file both of the following with the
24 ~~commissioner~~**DIRECTOR**:

25 (a) A plan, subject to ~~commissioner~~**DIRECTOR** approval, for
26 improved administration or claims processing designed to eliminate
27 the potential for further deterioration of the policy or

1 certificate requiring further premium rate schedule increases, or
2 both, or to demonstrate that appropriate administration and claims
3 processing have been implemented or are in effect.

4 (b) The original anticipated lifetime loss ratio, and the
5 premium rate schedule increase that would have been calculated
6 according to subsection (4) had the greater of the original
7 anticipated lifetime loss ratio or 58% been used in the
8 calculations described in subsection (4) (b) (i) and (iii).

9 (9) The ~~commissioner~~**DIRECTOR** shall review, for all policies
10 and certificates included in a filing, the projected lapse rates
11 and past lapse rates during the 12 months following each increase
12 to determine if significant adverse lapsation has occurred or is
13 anticipated for any rate increase filing meeting the following
14 criteria:

15 (a) The rate increase is not the first rate increase requested
16 for the specific policy or certificate.

17 (b) The rate increase is not an exceptional increase.

18 (c) The majority of the policies or certificates to which the
19 increase is applicable are eligible for the contingent benefit upon
20 lapse.

21 (10) If significant adverse lapsation has occurred, is
22 anticipated in the filing, or is evidenced in the actual results as
23 presented in the updated projections provided by the insurer
24 following the requested rate increase, the ~~commissioner~~**DIRECTOR**
25 may determine that a rate spiral exists. Following the
26 determination that a rate spiral exists, the ~~commissioner~~**DIRECTOR**
27 may require the insurer to offer, without underwriting, to all in

1 force insureds subject to the rate increase the option to replace
2 existing coverage with 1 or more reasonably comparable products
3 being offered by the insurer or its affiliates. An offer under this
4 subsection is subject to the ~~commissioner's~~**DIRECTOR'S** approval,
5 shall be based on actuarially sound principles, but shall not be
6 based on attained age, and shall provide that maximum benefits
7 under any new policy or certificate accepted by an insured shall be
8 reduced by comparable benefits already paid under the existing
9 policy or certificate. The insurer shall maintain the experience of
10 all the replacement insureds separate from the experience of
11 insureds originally issued the policy or certificate. If a rate
12 increase is requested on the policy or certificate, the rate
13 increase shall be limited to the lesser of the maximum rate
14 increase determined based on the combined experience and the
15 maximum rate increase determined based only on the experience of
16 the insureds originally issued the policy or certificate plus 10%.

17 (11) If the ~~commissioner~~**DIRECTOR** determines that an insurer
18 has exhibited a persistent practice of filing inadequate initial
19 premium rates for long-term care insurance, the ~~commissioner~~,
20 **DIRECTOR**, in addition to the provisions of subsections (9) and
21 (10), may prohibit the insurer from either of the following:

22 (a) Filing and marketing comparable coverage for a period of
23 up to 5 years.

24 (b) Offering all other similar coverages and limiting
25 marketing of new applications to the products subject to recent
26 premium rate schedule increases.

27 (12) Subsections (1) to (11) do not apply to policies or

1 certificates for which the long-term care benefits provided by the
2 policy or certificate are incidental, if the policy or certificate
3 complies with all of the following:

4 (a) For any plan that may have a cash value, the interest
5 credited internally to determine cash value accumulations,
6 including long-term care, if any, are guaranteed not to be less
7 than the minimum guaranteed interest rate for cash value
8 accumulations without long-term care set forth in the policy or
9 certificate.

10 (b) The portion of the policy or certificate that provides
11 insurance benefits other than long-term care coverage meets the
12 nonforfeiture requirements as applicable in section 4060 or 4072.

13 (c) The policy or certificate meets sections 3928, 3933, 3951,
14 and 3953.

15 (d) The portion of the policy or certificate that provides
16 insurance benefits other than long-term care coverage meets, as
17 applicable, the policy illustrations and disclosure requirements
18 under section 4038.

19 (e) An actuarial memorandum is filed with the ~~office of~~
20 ~~financial and insurance services~~ **DEPARTMENT** that includes all of
21 the following:

22 (i) A description of the basis on which the long-term care
23 rates were determined.

24 (ii) A description of the basis for the reserves.

25 (iii) A summary of the type of policy, benefits, renewability,
26 general marketing method, and limits on ages of issuance.

27 (iv) A description and a table of each actuarial assumption

1 used. For expenses, an insurer shall include percent of premium
2 dollars per policy or certificate and dollars per unit of benefits,
3 if any.

4 (v) A description and a table of the anticipated policy or
5 certificate reserves and additional reserves to be held in each
6 future year for active lives.

7 (vi) The estimated average annual premium per policy or
8 certificate and the average issue age.

9 (vii) A statement as to whether underwriting is performed at
10 the time of application. The statement shall indicate whether
11 underwriting is used and, if used, shall include a description of
12 the type or types of underwriting used, such as medical
13 underwriting or functional assessment underwriting. For a group
14 certificate, the statement shall indicate whether the enrollee or
15 any dependent will be underwritten and when underwriting occurs.

16 (viii) A description of the effect of the long-term care policy
17 or certificate provision on the required premiums, nonforfeiture
18 values, and reserves on the underlying insurance policy or
19 certificate, both for active lives and those in long-term care
20 claim status.

21 (13) Subsections (7), (8), and (9) do not apply to a group
22 insurance policy described in section 3901(c)(i) if the policy
23 insures 250 or more persons and the policyholder has 5,000 or more
24 eligible employees of a single employer or the policyholder, and
25 not the certificate holders, pays a material portion of the
26 premium, which shall not be less than 20% of the total premium for
27 the group in the calendar year prior to the year a rate increase is

1 filed.

2 (14) Except as otherwise provided in this section, exceptional
3 increases are subject to the same requirements as other premium
4 rate schedule increases. The ~~commissioner~~**DIRECTOR** may request a
5 review by an independent qualified actuary or a professional
6 qualified actuarial body of the basis for a request that an
7 increase be considered an exceptional increase. The ~~commissioner~~,
8 **DIRECTOR**, in determining that the necessary basis for an
9 exceptional increase exists, shall also determine any potential
10 offsets to higher claims costs.

11 (15) As used in this section:

12 (a) "Exceptional increase" means only those increases filed by
13 an insurer as exceptional for which the ~~commissioner~~**DIRECTOR**
14 determines the need for the premium rate increase is justified due
15 to changes in laws or regulations applicable to long-term care
16 coverage in this state or due to increased and unexpected
17 utilization that affects the majority of insurers of similar
18 products.

19 (b) "Incidental" means that the value of the long-term care
20 benefits provided is less than 10% of the total value of the
21 benefits provided over the life of the policy or certificate as
22 measured on the date of issue.

23 (c) "Qualified actuary" means a member in good standing of the
24 American academy of actuaries.

25 (d) "Similar policies" means all of the long-term care
26 insurance policies and certificates issued by an insurer in the
27 same long-term care benefit classification as the policy or

1 certificate being considered. Certificates of groups described in
2 section 3901(c)(i) are not considered similar to policies or
3 certificates otherwise issued as long-term care insurance, but are
4 similar to other comparable certificates with the same long-term
5 care benefit classifications. For purposes of determining similar
6 policies, long-term care benefit classifications are defined as
7 follows: institutional long-term care benefits only,
8 noninstitutional long-term care benefits only, or comprehensive
9 long-term care benefits.

10 Sec. 3935. An application for a long-term care policy shall
11 contain the following statement printed, stamped, or as part of a
12 sticker permanently affixed to the application in capital letters
13 on the first page:

14 "For additional information about long-term care coverage
15 write to the ~~office of financial and insurance services,~~ **DEPARTMENT**
16 **OF INSURANCE AND FINANCIAL SERVICES**, P.O. Box 30220, Lansing, MI
17 48909 or call the area agency on aging in your community.".

18 Sec. 4424. Group life insurance offered to a resident of this
19 state under a group life insurance policy issued to a group other
20 than a group described in sections 4404 to 4420 is subject to all
21 of the following:

22 (a) A group life insurance policy shall not be issued in this
23 state unless the director ~~of the department of insurance and~~
24 ~~financial services~~ finds all of the following:

25 (i) The issuance of the group policy is not contrary to the
26 best interest of the public.

27 (ii) The issuance of the group policy would result in economies

1 of acquisition and administration.

2 (iii) The benefits of the group policy are reasonable in
3 relation to the premiums charged.

4 (b) The premium for the policy is paid from the policy
5 holder's funds, the funds contributed by the covered persons, or
6 both.

7 (c) An insurer may exclude or limit the coverage on an
8 individual as to whom evidence of individual insurability is not
9 satisfactory to the insurer.

10 Sec. 4501. As used in this chapter:

11 (a) "Authorized agency" means the department of state police;
12 a city, village, or township police department; a county sheriff's
13 department; a United States criminal investigative department or
14 agency; the prosecuting authority of a city, village, township,
15 county, or state or of the United States; the ~~office of financial~~
16 ~~and insurance regulation;~~ **DEPARTMENT**; or the department of state.

17 (b) "Financial loss" includes, but is not limited to, loss of
18 earnings, out-of-pocket and other expenses, repair and replacement
19 costs, investigative costs, and claims payments.

20 (c) "Insurance policy" or "policy" means an insurance policy,
21 benefit contract of a self-funded plan, health maintenance
22 organization contract, nonprofit dental care corporation
23 certificate, or health care corporation certificate.

24 (d) "Insurer" means a property-casualty insurer, life insurer,
25 third party administrator, self-funded plan, health insurer, health
26 maintenance organization, nonprofit dental care corporation, health
27 care corporation, reinsurer, or any other entity regulated by the

1 insurance laws of this state and providing any form of insurance.

2 (e) "Organization" means an organization or internal
3 department of an insurer established to detect and prevent
4 insurance fraud.

5 (f) "Person" includes an individual, insurer, company,
6 association, organization, Lloyds, society, reciprocal or inter-
7 insurance exchange, partnership, syndicate, business trust,
8 corporation, and any other legal entity.

9 (g) "Practitioner" means a licensee of this state authorized
10 to practice medicine and surgery, psychology, chiropractic, or law,
11 any other licensee of the state, or an unlicensed health care
12 provider whose services are compensated, directly or indirectly, by
13 insurance proceeds, or a licensee similarly licensed in other
14 states and nations, or the practitioner of any nonmedical treatment
15 rendered in accordance with a recognized religious method of
16 healing.

17 (h) "Runner", "capper", or "steerer" means a person who
18 receives a pecuniary or other benefit from a practitioner, whether
19 directly or indirectly, for procuring or attempting to procure a
20 client, patient, or customer at the direction or request of, or in
21 cooperation with, a practitioner whose intent is to obtain benefits
22 under a contract of insurance or to assert a claim against an
23 insured or an insurer for providing services to the client,
24 patient, or customer. Runner, capper, or steerer does not include a
25 practitioner who procures clients, patients, or customers through
26 the use of public media.

27 (i) "Statement" includes, but is not limited to, any notice

1 statement, proof of loss, bill of lading, receipt for payment,
2 invoice, account, estimate of property damages, bill for services,
3 claim form, diagnosis, prescription, hospital or doctor record, X-
4 rays, test result, or other evidence of loss, injury, or expense.

5 Sec. 4601. As used in this chapter:

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

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

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

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

27 (e) "Branch business" means any insurance business transacted

1 by a branch captive insurance company in this state.

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

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

8 (h) "Captive insurance company" means a pure captive insurance
9 company, association captive insurance company, sponsored captive
10 insurance company, special purpose captive insurance company, or
11 industrial insured captive insurance company authorized under this
12 chapter. For purposes of this chapter, a branch captive insurance
13 company shall be a pure captive insurance company with respect to
14 operations in this state, unless otherwise permitted by the
15 ~~commissioner~~**DIRECTOR**.

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

18 (I) ~~(j)~~ "Control", including the terms "controlling",
19 "controlled by", and "under common control with", means the
20 possession, direct or indirect, of the power to direct or cause the
21 direction of the management and policies of a person, whether
22 through the ownership of voting securities, by contract other than
23 a commercial contract for goods or nonmanagement services, or
24 otherwise, unless the power is the result of an official position
25 with or corporate office held by the person. Control is presumed to
26 exist if a person, directly or indirectly, owns, controls, holds
27 with the power to vote, or holds proxies representing 10% or more

1 of the voting securities of another person. A showing that control
2 does not exist may rebut this presumption.

3 (J) ~~(k)~~—"Controlled unaffiliated business" means a company
4 that meets all of the following:

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

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

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

11 (K) ~~(l)~~—"Foreign captive insurer" means an insurer formed under
12 the laws of the District of Columbia, or some state, commonwealth,
13 territory, or possession of the United States other than ~~the state~~
14 ~~of Michigan~~ **THIS STATE**.

15 (L) ~~(m)~~—"GAAP" means generally accepted accounting principles.

16 (M) ~~(n)~~—"Industrial insured" means an insured that meets all
17 of the following:

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

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

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

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

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

3 (i) Is a group of industrial insureds that collectively own,
4 control, or hold, with power to vote, all of the outstanding voting
5 securities of an industrial insured captive insurance company
6 incorporated as a stock insurer or limited liability company or
7 have complete voting control over an industrial insured captive
8 insurance company incorporated as a mutual insurer.

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

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

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

18 ~~—— (s) "Office" means the office of financial and insurance~~
19 ~~regulation.~~

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

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

1 (T) ~~(v)~~—"Participant" means an entity as described in section
 2 4667, and any affiliates of that entity, that are insured by a
 3 sponsored captive insurance company, where the recovery of the
 4 participant is limited through a participant contract to the assets
 5 of a protected cell.

6 (U) ~~(w)~~—"Participant contract" means a contract by which a
 7 sponsored captive insurance company insures the risks of a
 8 participant and limits the recovery of the participant to the
 9 assets of a protected cell.

10 (V) ~~(x)~~—"Protected cell" means a segregated account
 11 established and maintained by a sponsored captive insurance company
 12 for 1 participant.

13 (W) ~~(y)~~—"Pure captive insurance company" means a company that
 14 insures risks of its parent, affiliated companies, controlled
 15 unaffiliated business, or a combination of its parent, affiliated
 16 companies, and controlled unaffiliated business.

17 (X) ~~(z)~~—"Qualified United States financial institution" means
 18 that term as defined in section 1101.

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

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

25 (AA) ~~(cc)~~—"Sponsor" means an entity that meets the
 26 requirements of section 4665 and is approved by the ~~commissioner~~
 27 **DIRECTOR** to provide all or part of the capital and retained

1 earnings required by applicable law and to organize and operate a
2 sponsored captive insurance company.

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

10 **(CC)** ~~(ee)~~—"Surplus" means unassigned funds for an entity using
11 statutory accounting principles, with capital and surplus including
12 all capital stock, paid in capital and contributed surplus, and
13 other surplus funds with corresponding items under GAAP consisting
14 of retained earnings and accumulated other comprehensive income,
15 with capital and retained earnings including all capital stock,
16 additional paid in capital, and other equity funds.

17 **(DD)** ~~(ff)~~—"Treasury rates" means the United States treasury
18 strips asked yield as published in the Wall Street Journal as of a
19 balance sheet date.

20 **(EE)** ~~(gg)~~—"Voting security" includes any security convertible
21 into or evidencing the right to acquire a voting security.

22 Sec. 4603. (1) A captive insurance company, if permitted by
23 its organizational documents, may apply to the ~~commissioner~~
24 **DIRECTOR** for a limited certificate of authority to do any and all
25 insurance authorized by this chapter except worker's compensation
26 insurance, long-term care insurance, critical care insurance,
27 personal automobile insurance, or homeowners insurance, or any

1 component of these coverages. A captive insurance company is
2 subject to all of the following:

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

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

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

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

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

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

23 (a) Obtain from the ~~commissioner~~**DIRECTOR** a limited
24 certificate of authority authorizing it to conduct insurance
25 business in this state.

26 (b) Hold at least 1 board of directors meeting, or for a
27 limited liability company, a meeting of the managing board, each

1 year in this state.

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

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

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

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

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

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

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

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

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

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

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

1 \$1.00.

2 (i) The term of existence of the entity.

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

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

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

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

15 (5) Before the organizational documents ~~shall be~~ **ARE** effective
16 for the purposes of this chapter, the organizational documents
17 shall be submitted to the office of the attorney general for
18 examination. If ~~such~~ **THE ORGANIZATIONAL** documents are found to be
19 in compliance with this chapter, the office of the attorney general
20 shall so certify to the ~~commissioner~~ **DIRECTOR**. Each applicant for
21 a captive insurance company limited certificate of authority that
22 submits its organizational documents to the office of the attorney
23 general shall pay to the attorney general the examination fee
24 provided in section 240(2).

25 (6) ~~Prior to~~ **BEFORE** granting a limited certificate of
26 authority to any applicant, the ~~commissioner~~ **DIRECTOR** shall
27 require, consider, and review all of the following:

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

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

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

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

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

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

19 (g) Biographical affidavits in the format prescribed by the
20 ~~commissioner~~**DIRECTOR** for all officers and directors.

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

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

27 (j) For limited liability company applicants, a certificate of

1 status demonstrating that the limited liability company has been
2 formed pursuant to the Michigan limited liability company act, 1993
3 PA 23, MCL 450.4101 to 450.5200, and is in good standing.

4 (k) Such other factors or documentation considered relevant by
5 the ~~commissioner~~**DIRECTOR**.

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

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

19 (9) An applicant shall pay to the ~~office~~**DEPARTMENT** a
20 nonrefundable \$10,000.00 fee for processing its application for a
21 limited certificate of authority. In addition, the ~~commissioner~~
22 **DIRECTOR** may retain legal, financial, and examination services from
23 outside the ~~office~~**DEPARTMENT** to examine and investigate the
24 application, the reasonable cost of which may be charged against
25 the applicant, or the ~~commissioner~~**DEPARTMENT** may use internal
26 resources to examine and investigate the application for a
27 \$2,700.00 fee.

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

13 Sec. 4609. (1) Information and testimony submitted or
14 furnished to the ~~office~~ **DEPARTMENT** pursuant to this chapter,
15 examination reports, preliminary examination reports or results,
16 and the ~~office's~~ **DEPARTMENT'S** work papers, correspondence,
17 memoranda, reports, records, and other written or oral information
18 related to an examination report or an investigation shall be
19 confidential, shall be withheld from public inspection, shall not
20 be subject to subpoena, and shall not be divulged to any person,
21 except as provided in this section or with the written consent of
22 the company. If assurances are provided that the information will
23 be kept confidential, the ~~commissioner~~ **DIRECTOR** may disclose
24 confidential work papers, correspondence, memoranda, reports,
25 records, or other information as follows:

26 (a) To the governor or the attorney general.

27 (b) To any relevant regulatory agency, including regulatory

1 agencies of other states or the federal government.

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

4 (d) To law enforcement officials.

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

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

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

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

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

23 (3) Sections 210 to 222, 226 to 238, 244 to 251, and 2057 to
24 2062, and chapter 45 apply to captive insurance companies.

25 (4) The expenses and charges of a captive insurance company
26 examination shall be paid to ~~the~~**THIS** state by the captive
27 insurance company or companies examined, and the ~~office~~**DEPARTMENT**

1 shall issue warrants for the proper charges incurred in all
2 examinations. The payments received by ~~the~~**THIS** state shall be
3 deposited into the captive insurance regulatory and supervision
4 fund.

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

10 (a) For annual premiums less than \$5,000,000.00, the renewal
11 fee ~~shall be~~**IS** \$5,000.00.

12 (b) For annual premiums equal to or greater than
13 \$5,000,000.00, but less than \$10,000,000.00, the renewal fee ~~shall~~
14 ~~be~~**IS** \$10,000.00.

15 (c) For annual premiums equal to or greater than
16 \$10,000,000.00, but less then \$15,000,000.00, the renewal fee ~~shall~~
17 ~~be~~**IS** \$15,000.00.

18 (d) For annual premiums equal to or greater than
19 \$15,000,000.00, but less than \$25,000,000.00, the renewal fee ~~shall~~
20 ~~be~~**IS** \$25,000.00.

21 (e) For annual premiums equal to or greater than
22 \$25,000,000.00, but less than \$40,000,000.00, the renewal fee ~~shall~~
23 ~~be~~**IS** \$40,000.00.

24 (f) For annual premiums equal to or greater than
25 \$40,000,000.00, but less than \$55,000,000.00, the renewal fee ~~shall~~
26 ~~be~~**IS** \$50,000.00.

27 (g) For annual premiums equal to or greater than

1 \$55,000,000.00, but less than \$75,000,000.00, the renewal fee ~~shall~~
2 ~~be~~ **IS** \$75,000.00.

3 (h) For annual premiums equal to or greater than
4 \$75,000,000.00, the renewal fee ~~shall be~~ **IS** \$100,000.00.

5 (6) The ~~office~~ **DEPARTMENT** may charge a \$15.00 fee for any
6 document requiring certification of authenticity or the signature
7 of the ~~commissioner~~ **DIRECTOR**. The payments received shall be
8 deposited into the captive insurance regulatory and supervision
9 fund.

10 (7) The ~~office~~ **DEPARTMENT** may charge a fee of \$25.00 payable
11 to the attorney general for the examination of any amendment to the
12 organizational documents.

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

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

22 (10) Section 222 applies to all business written by a captive
23 insurance company except that the examination for a branch captive
24 insurance company shall be of branch business and branch operations
25 only, as long as the branch captive insurance company provides
26 annually to the ~~commissioner~~ **DIRECTOR**, a certificate of
27 compliance, or its equivalent, issued by or filed with the

1 licensing authority of the jurisdiction in which the branch captive
2 insurance company is formed and demonstrates to the ~~commissioner's~~
3 **DIRECTOR'S** satisfaction that it is operating in sound financial
4 condition in accordance with all applicable laws and regulations of
5 that jurisdiction.

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

8 (2) The state treasurer may receive money or other assets from
9 any source for deposit into the captive insurance regulatory and
10 supervision fund. All fees and assessments received by the
11 department of treasury or the ~~office pursuant to~~ **DEPARTMENT UNDER**
12 the administration of this chapter and chapter 47 shall be credited
13 to the captive insurance regulatory and supervision fund. All fees
14 received by the department of treasury from reinsurers who assume
15 risk only from captive insurance companies shall be deposited into
16 the captive insurance regulatory and supervision fund. All fines
17 and administrative penalties ordered under this chapter or chapter
18 47 shall be deposited directly into the captive insurance
19 regulatory and supervision fund. The state treasurer shall direct
20 the investment of the captive insurance regulatory and supervision
21 fund. The state treasurer shall credit to the captive insurance
22 regulatory and supervision fund interest and earnings from fund
23 investments.

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

1 (4) The ~~commissioner shall be~~ **DEPARTMENT IS** the administrator
 2 of the captive insurance regulatory and supervision fund for
 3 auditing purposes. ~~Money~~ **THE DEPARTMENT SHALL EXPEND MONEY** in the
 4 captive insurance regulatory and supervision, ~~fund shall be~~
 5 ~~expended by the commissioner,~~ upon appropriation, for the purpose
 6 of administering chapters 18 and 47 and this chapter and for
 7 reasonable expenses incurred in promoting the captive insurance
 8 industry in this state.

9 Sec. 4701. As used in this chapter:

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

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

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

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

27 (D) ~~(e)~~ "Control" including the terms "controlling",

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

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

(F) ~~(g)~~ "Fair value" means the following:

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

(ii) For assets other than cash, the amount at which that asset could be bought or sold in a current transaction between arm's length, willing parties. If available, the quoted mid-market price for the asset in active markets shall be used; and if quoted mid-market prices are not available, a value shall be determined using

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 or 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 (G) ~~(h)~~—"Foreign captive" means a captive insurer formed under
7 the laws of the District of Columbia or some state, commonwealth,
8 territory, or possession of the United States other than ~~the~~ **THIS**
9 state. ~~of Michigan.~~

10 (H) ~~(i)~~—"Insolvency" or "insolvent" means 1 or more of the
11 following:

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

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

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

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

26 (i) The proceeds of the sale of SPFC securities are obtained,
27 in a transaction that complies with applicable securities laws, by

1 an SPFC directly through the issuance of the SPFC securities by the
2 SPFC or indirectly through the issuance of preferred securities by
3 the SPFC in exchange for some or all of the proceeds of the sale of
4 SPFC securities by the SPFC's parent, an affiliated company of the
5 SPFC, a counterparty, or a captive LLC.

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

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

12 (J) ~~(K)~~ "Irrevocable letter of credit" means a letter of
13 credit that meets the description in section 1105(c).

14 (K) ~~(L)~~ "Management" means the board of directors, managing
15 board, or other individual or individuals vested with overall
16 responsibility for the management of the affairs of ~~the~~ **AN** SPFC,
17 including the election and appointment of officers or other agents
18 to act on behalf of the SPFC.

19 ~~(M) "Office" means the office of financial and insurance~~
20 ~~regulation.~~

21 (L) ~~(N)~~ "Organizational document" means ~~the~~ **AN** SPFC's articles
22 of incorporation, articles of organization, bylaws, operating
23 agreement, or other foundational documents that establish the SPFC
24 as a legal entity or prescribes its existence.

25 (M) ~~(O)~~ "Parent" means any corporation, limited liability
26 company, partnership, or individual that directly or indirectly
27 owns, controls, or holds with power to vote more than 50% of the

1 outstanding voting securities of an SPFC.

2 (N) ~~(p)~~—"Permitted investments" means those investments that
3 meet the qualifications in section 4727(1).

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

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

12 (Q) ~~(s)~~—"Qualified United States financial institution" means
13 that term as defined in section 1101.

14 (R) ~~(t)~~—"Reserves" means that term as used in chapter 8.

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

17 (T) ~~(v)~~—"Securities" means those different types of debt
18 obligations, equity, surplus certificates, surplus notes, funding
19 agreements, derivatives, and other legal forms of financial
20 instruments.

21 (U) ~~(w)~~—"Securities commissioner" means the
22 ~~commissioner~~**DIRECTOR**.

23 (V) ~~(x)~~—"SPFC" or "special purpose financial captive" means a
24 captive insurance company, a captive LLC, or a company otherwise
25 qualified as an authorized insurer that has received a limited
26 certificate of authority from the ~~commissioner~~**DIRECTOR** for the
27 purposes provided for in this chapter.

1 (W) ~~(y)~~—"SPFC contract" means a contract between ~~the~~ **AN** SPFC
 2 and ~~the~~ **A** counterparty pursuant to which the SPFC agrees to provide
 3 insurance or reinsurance protection to the counterparty for risks
 4 associated with the counterparty's insurance or reinsurance
 5 business.

6 (X) ~~(z)~~—"SPFC securities" means the securities issued pursuant
 7 to an insurance securitization, the proceeds of which are used in
 8 the manner described in subdivision ~~(j)~~ **(I)**.

9 (Y) ~~(aa)~~—"Surplus note" means an unsecured subordinated debt
 10 obligation possessing characteristics consistent with accounting
 11 practices and procedures designated by the ~~commissioner~~ **DIRECTOR**.

12 (Z) ~~(bb)~~—"Third party" means a person unrelated to an SPFC or
 13 its counterparty, or both, that has been aggrieved by a decision of
 14 a ~~commissioner~~ **DIRECTOR** regarding that SPFC or its activities.

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

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

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

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

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

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

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

16 (f) Provide a complete set of documentation of the insurance
17 securitization to the ~~commissioner~~**DIRECTOR** shortly following
18 closing of the insurance securitization transaction.

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

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

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

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

27 (d) The purposes of the creation of the entity including a

1 reference to this chapter.

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

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

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

9 (h) The amount and value of capital stock, if any. Each share
10 of authorized capital stock shall have a value of not less than
11 \$1.00.

12 (i) The term of existence of the entity.

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

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

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

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

25 (5) Before the organizational documents ~~shall be~~ **ARE** effective
26 for the purposes of this chapter, the organizational documents
27 shall be submitted to the office of the attorney general for

1 examination. If ~~such~~ **THE** documents are found to be in compliance
2 **COMPLY** with this chapter, the office of the attorney general shall
3 so certify to the ~~commissioner~~ **DIRECTOR**. Each applicant for an
4 SPFC limited certificate of authority that submits its
5 organizational documents to the office of the attorney general
6 shall pay to the attorney general the examination fee provided in
7 section 240(2).

8 (6) Prior to granting a limited certificate of authority to
9 ~~any~~ **AN** SPFC, the ~~commissioner~~ **DIRECTOR** shall require, consider, and
10 review all of the following:

11 (a) Evidence of all of the following:

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

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

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

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

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

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

27 (i) Draft documentation or, at the ~~commissioner's~~ **DIRECTOR'S**

1 discretion, a written summary of all material agreements that are
2 entered into in connection with the SPFC contracts and the
3 insurance securitization, including the names of the counterparty,
4 the nature of the risks to be assumed, and the proposed use of
5 protected cells, if any. The documentation or written summary shall
6 also include the maximum amounts, purpose, nature, and the
7 relationship between the various transactions effectuating the
8 insurance securitization.

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

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

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

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

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

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

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

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

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

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

11 (iv) The SPFC securities proposed to be issued are valid legal
12 obligations that are either properly registered with the securities
13 commissioner or constitute an exempt security or form part of an
14 exempt transaction under ~~section 402 of the uniform securities act,~~
15 ~~1964 PA 265, MCL 451.802.~~ **2008 PA 551, (2002) MCL 451.2101 TO**
16 **451.2703.** If the issuer of the SPFC securities is not the SPFC, the
17 SPFC shall obtain and submit an affidavit from the issuer that the
18 securities proposed to be issued satisfy this subparagraph.

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

25 (e) Any other statements or documents required by the
26 ~~commissioner~~ **DIRECTOR** to evaluate and authorize the SPFC.

27 (7) In addition to the requirements of this section and

1 section 4713, if a protected cell is used, an applicant SPFC shall
2 file with the ~~commissioner~~**DIRECTOR** all of the following:

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

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

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

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

16 (8) Information submitted pursuant to ~~UNDER~~ this section is
17 confidential and is subject to ~~sections~~**SECTION** 4734. and ~~4743~~.

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

20 (a) For an applicant not authorized under chapter 46 and not
21 filing a concurrent application under chapter 46, a nonrefundable
22 fee of \$10,000.00 for processing its application for a limited
23 certificate of authority. In addition, the ~~commissioner~~**DIRECTOR**
24 may retain legal, financial, actuarial, and examination services
25 from outside the ~~office~~**DEPARTMENT** to examine and investigate the
26 application, the reasonable cost of which may be charged against
27 the applicant, or the ~~commissioner~~**DIRECTOR** may use internal

resources to examine and investigate the application for a fee of \$2,700.00, which is payable upon the filing of the application.

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

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

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

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

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

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

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

(vii) For annual premiums equal to or greater than

1 \$55,000,000.00, but less than \$75,000,000.00, the renewal fee ~~shall~~
2 ~~be~~ **IS** \$75,000.00.

3 (viii) For annual premiums equal to or greater than
4 \$75,000,000.00, the renewal fee ~~shall be~~ **IS** \$100,000.00.

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

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

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

13 (c) All required fees have been paid.

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

18 (e) The limited certificate of authority authorizing the SPFC
19 to transact business is limited to the insurance or reinsurance
20 activities that the SPFC is allowed to conduct ~~pursuant to~~ **UNDER**
21 this chapter.

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

25 (12) A foreign captive, upon approval of the ~~commissioner~~,
26 **DIRECTOR**, may become an SPFC by complying with all of the
27 provisions of this chapter. After this is accomplished, the foreign

1 captive is entitled to a limited certificate of authority to
2 transact business as an SPFC in this state and is subject to the
3 authority and jurisdiction of this state. It is not necessary for a
4 foreign captive redomesticating into this state to merge,
5 consolidate, transfer assets, or otherwise engage in another
6 reorganization, other than as specified in this section.

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

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

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

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

1 or business plan, or as required by the ~~commissioner~~**DIRECTOR**.

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

7 (d) All attributions of assets and liabilities between a
8 protected cell and the general account shall be in accordance with
9 the plan of operation submitted to the ~~commissioner~~**DIRECTOR**. No
10 other attribution of assets or liabilities shall be made by an SPFC
11 between the SPFC's general account and its protected cell or cells.
12 The SPFC shall attribute all insurance obligations, assets, and
13 liabilities relating to an SPFC contract and all obligations,
14 assets, and liabilities of the SPFC arising out of the related
15 insurance securitization transaction to a particular protected
16 cell. The rights, benefits, obligations, and liabilities of any
17 securities attributable to that protected cell, the performance
18 under an SPFC contract and the related securitization transaction,
19 and any tax benefits, losses, refunds, or credits allocated at any
20 point in time pursuant to a tax allocation agreement between the
21 SPFC and the SPFC's counterparty, parent, or affiliated company, as
22 ~~the case may be,~~ **APPLICABLE**, including any payments made by or due
23 to be made to the SPFC pursuant to the terms of the tax allocation
24 agreement, shall reflect the insurance obligations, assets, and
25 liabilities relating to the SPFC contract and proceeds of the
26 insurance securitization transaction that are attributed to a
27 particular protected cell.

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

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

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

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

24 (i) An SPFC shall pay interest or repay principal or both or
25 make distributions or repayments of any SPFC securities issued by
26 the SPFC or make payments of preferred securities issued to a
27 particular protected cell from assets or cash flows relating to or

1 emerging from the SPFC contract and the insurance securitization
2 transactions that are attributable to that particular protected
3 cell as provided in this chapter or as otherwise approved by the
4 ~~commissioner~~**DIRECTOR**.

5 (3) An SPFC contract with or attributable to a protected cell
6 does not take effect without the ~~commissioner's~~**DIRECTOR'S** prior
7 written approval. The ~~commissioner~~**DIRECTOR** may retain legal,
8 financial, and examination services from outside the ~~office~~
9 **DEPARTMENT** to examine and investigate the application for a
10 protected cell, the reasonable cost of which may be charged against
11 the applicant, or the ~~commissioner~~**DIRECTOR** may use internal
12 resources to examine and investigate the application the reasonable
13 cost of which may be charged against the applicant up to a maximum
14 of \$1,200.00, or may use both retained services and internal
15 resources.

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

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

1 Sec. 4715. (1) ~~The~~ **SUBJECT TO SUBSECTIONS (2) AND (3),**
2 creation of a protected cell does not create, with respect to that
3 protected cell, a legal person separate from the SPFC.

4 (2) ~~Notwithstanding subsection (1), if~~ **IF** an order of
5 conservation, rehabilitation, or liquidation is entered for a
6 counterparty, the SPFC and each protected cell of the SPFC ~~shall be~~
7 ~~considered~~ **ARE** separate persons for purposes of any offset
8 undertaken as part of the conservation, rehabilitation, or
9 liquidation, such that any offset of mutual debts and credits
10 between the counterparty and either the SPFC or any protected cell
11 shall not involve the debts and credits of any other protected cell
12 or, if the offset involves a protected cell, the SPFC.

13 (3) ~~Notwithstanding subsection (1), a~~ **A** protected cell shall
14 have its own distinct name or designation that includes the words
15 "protected cell". The SPFC shall transfer all assets attributable
16 to the protected cell to 1 or more separately established and
17 identified protected cell accounts bearing the name or designation
18 of that protected cell.

19 (4) Although the protected cell is not a separate legal
20 person, the property of an SPFC in a protected cell is subject to
21 orders of a court by name as it would have been if the protected
22 cell were a separate legal person.

23 (5) The property of an SPFC in a protected cell shall be
24 served in its own name with process in all civil actions or
25 proceedings involving or relating to the activities of that
26 protected cell or a breach by the SPFC of a duty to the protected
27 cell or to a counterparty to a transaction linked or attributed to

1 it by serving the SPFC in the manner described in section 1920 of
2 the revised judicature act of 1961, 1961 PA 236, MCL 600.1920.

3 (6) A protected cell exists only at the pleasure of the SPFC.
4 At the cessation of business of a protected cell in accordance with
5 the plan of operation submitted to the ~~commissioner~~, **DIRECTOR**, the
6 SPFC voluntarily shall close out the protected cell account.

7 (7) Nothing in this section shall be construed to prohibit an
8 SPFC from contracting with, or arranging for, an investment
9 advisor, commodity trading advisor, or other third party to manage
10 the assets of a protected cell, if all remuneration, expenses, and
11 other compensation of the third party advisor or manager are
12 payable from the assets of that protected cell and not from the
13 assets of other protected cells or the assets of the SPFC's general
14 account.

15 (8) Creditors to a protected cell are not entitled to have
16 recourse against the protected cell assets of other protected cells
17 or the assets of the SPFC's general account. If an obligation of an
18 SPFC relates only to the general account, the obligation of the
19 SPFC extends only to that creditor for that obligation and that
20 creditor is entitled to have recourse only to the assets of the
21 SPFC's general account.

22 (9) The assets of the protected cell shall not be used to pay
23 expenses or claims other than those attributable to the protected
24 cell. Protected cell assets are available only to the SPFC
25 counterparty and other creditors of the SPFC that are creditors
26 only to that protected cell and, accordingly, are entitled, in
27 conformity with this chapter, to have recourse to the protected

1 cell assets attributable to that protected cell. Protected cell
2 assets are absolutely protected from the creditors of the SPFC that
3 are not creditors with respect to that protected cell and who,
4 accordingly, are not entitled to have recourse to the protected
5 cell assets attributable to that protected cell. If an obligation
6 of an SPFC to a person or counterparty arises from an SPFC contract
7 or related insurance securitization transaction or is otherwise
8 incurred for a protected cell, both of the following apply:

9 (a) That obligation of the SPFC extends only to the protected
10 cell assets attributable to that protected cell, and the person or
11 counterparty, for that obligation, is entitled to have recourse
12 only to the protected cell assets attributable to that protected
13 cell.

14 (b) That obligation of the SPFC does not extend to the
15 protected cell assets of another protected cell or the assets of
16 the SPFC's general account, and that person, for that obligation,
17 is not entitled to have recourse to the protected cell assets of
18 another protected cell or the assets of the SPFC's general account.
19 The SPFC's capitalization of its protected cell or cells as
20 required by section 4713(4) shall be available at all times to pay
21 expenses of or claims against the SPFC and shall not be used to pay
22 expenses or claims attributable to any protected cell.

23 (10) Notwithstanding any other provision of law, an SPFC may
24 allow for a security interest in accordance with applicable law to
25 attach to protected cell assets or a protected cell account when in
26 favor of a creditor of the protected cell or to facilitate the
27 insurance securitization, including, without limitation, the

1 issuance of the SPFC contract, to the extent those protected cell
2 assets are not required at all times to support the risk, but
3 without otherwise affecting the discharge of liabilities under the
4 SPFC contract, or as otherwise approved by the
5 ~~commissioner~~-**DIRECTOR**.

6 (11) An SPFC shall establish administrative and accounting
7 procedures necessary to properly identify the 1 or more protected
8 cells of the SPFC and the assets and liabilities of each protected
9 cell. The directors of an SPFC shall keep protected cell assets and
10 liabilities separate and separately identifiable from the assets
11 and liabilities of the SPFC's general account. The assets and
12 liabilities attributable to 1 protected cell shall be kept separate
13 and separately identifiable from the assets and liabilities
14 attributable to other protected cells.

15 (12) All contracts or other documentation reflecting protected
16 cell liabilities shall indicate clearly that only the protected
17 cell assets are available for the satisfaction of those protected
18 cell liabilities. In all SPFC insurance securitizations involving a
19 protected cell, including the issuance of preferred securities, the
20 contracts or other documentation effecting the transaction shall
21 contain provisions identifying the protected cell to which the
22 transaction is attributed. In addition, the contracts or other
23 documentation shall disclose clearly that the assets of that
24 protected cell, and only those assets, are available to pay the
25 obligations of that protected cell. Notwithstanding the provisions
26 of this subsection and subject to the provisions of this chapter
27 and any other applicable law or regulation, the failure to include

1 this language in the contracts or other documentation shall not be
2 used as the sole basis by creditors, insureds or reinsureds,
3 insurers or reinsurers, or other claimants to circumvent this
4 section.

5 (13) The income, and gains and losses, whether realized or
6 unrealized, from protected cell assets and protected cell
7 liabilities shall be credited to or charged against the protected
8 cell without regard to other income and gains or losses of the
9 SPFC, including income and gains or losses of other protected
10 cells. Amounts attributed to any protected cell and accumulations
11 on the attributed amounts may be invested and reinvested. The
12 investments in a protected cell or cells shall not be taken into
13 account in applying the investment limitations otherwise applicable
14 to the investments of the SPFC.

15 (14) An SPFC with protected cells shall file annually with the
16 ~~office~~**DEPARTMENT** accounting statements and financial reports
17 required by this chapter that, among other things, shall do all of
18 the following:

19 (a) Detail the financial experience of each protected cell and
20 the SPFC separately.

21 (b) Provide the combined financial experience of the SPFC and
22 all protected cells.

23 (c) Account for the financial experience of each protected
24 cell and the SPFC, both separately and on a combined basis, in
25 satisfaction of section 4731(4).

26 (15) An SPFC with protected cells shall notify the
27 ~~commissioner~~**DIRECTOR** in writing within 10 business days of a

1 protected cell becoming insolvent.

2 Sec. 4733. (1) The expenses and charges of a captive insurance
3 company examination shall be paid to ~~the-THIS~~ state by the captive
4 insurance company or companies examined, and the ~~office-DEPARTMENT~~
5 shall issue warrants for the proper charges incurred in all
6 examinations. The payments received by ~~the-THIS~~ state shall be
7 deposited into the captive insurance regulatory and supervision
8 fund.

9 (2) The ~~office-DEPARTMENT~~ may charge a \$15.00 fee for any
10 document requiring certification of authenticity or the signature
11 of the ~~commissioner-DIRECTOR~~. The payments received shall be
12 deposited into the captive insurance regulatory and supervision
13 fund.

14 (3) The ~~office-DEPARTMENT~~ may charge a fee of \$25.00 payable
15 to the attorney general for the examination of any amendment to the
16 organizational documents.

17 Sec. 4734. (1) Information and testimony submitted or
18 furnished to the ~~office pursuant to-DEPARTMENT UNDER~~ this chapter,
19 examination reports, preliminary examination reports or results,
20 and the ~~office's-DEPARTMENT'S~~ work papers, correspondence,
21 memoranda, reports, records, and other written or oral information
22 related to an examination report or an investigation ~~shall be-ARE~~
23 confidential, shall be withheld from public inspection, shall not
24 be subject to subpoena, and shall not be divulged to any person,
25 except as provided in this section or with the written consent of
26 the company. If assurances are provided that the information will
27 be kept confidential, the ~~commissioner-DIRECTOR~~ may disclose

1 confidential work papers, correspondence, memoranda, reports,
2 records, or other information as follows:

3 (a) To the governor or the attorney general.

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

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

8 (d) To law enforcement officials.

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

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

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

17 Sec. 8111. (1) Except as provided in subsection (2), in all
18 proceedings and judicial review of these proceedings under sections
19 8109 and 8110, all records of the insurer, other documents, ~~office~~
20 ~~of financial and insurance services~~ **DEPARTMENT** files, and court
21 records and papers, so far as they pertain to or are a part of the
22 record of the proceedings, are confidential and shall be held by
23 the clerk of the court in a confidential file except as is
24 necessary to obtain compliance therewith, unless the court, after
25 hearing arguments from the parties in chambers, orders otherwise or
26 the insurer requests that the matter be made public.

27 (2) Without compromising the confidentiality of the records of

1 the ~~commissioner, office of financial and insurance services,~~
2 **DIRECTOR, DEPARTMENT**, or supervisor, the ~~commissioner~~**DIRECTOR** or
3 his or her supervisor may advise third parties of the existence of
4 a supervision order and of the supervisor's authority if considered
5 by either of them necessary to further the insurer's compliance
6 with the supervision order. The ~~commissioner~~**DIRECTOR** may advise
7 third parties of the existence of a supervision order and of facts
8 pertaining to the supervision order if considered necessary by the
9 ~~commissioner~~**DIRECTOR** with regard to other regulatory matters
10 affecting the insurer or a person or entity related to the insurer.
11 Third parties advised under this subsection are required to keep
12 the existence of a supervision confidential. As used in this
13 subsection, "third parties" means the following persons:

14 (a) Debtors and creditors of the insurer and its affiliates.

15 (b) Persons who hold or control assets of the insurer and its
16 affiliates.

17 (c) Reinsurers of the insurer and its affiliates.

18 (d) Insurance regulatory officials.

19 (e) Law enforcement agencies.

20 (f) The workers' compensation agency.

21 (g) Representatives of a guaranty association or foreign
22 guaranty association that may become obligated as a result of the
23 insolvency of the insurer. Confidentiality obligations of a
24 guaranty association or foreign guaranty association to the
25 receiver end upon the entry of an order of liquidation with a
26 finding of insolvency against the insurer.