

HOUSE BILL No. 4745

May 21, 2013, Introduced by Rep. Lund and referred to the Committee on Insurance.

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 2008 PA 497, 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 used in this act means the
2 ~~commissioner of the office of financial and insurance~~
3 ~~services.~~**DIRECTOR.**

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

7 (3) "DIRECTOR" AS USED IN THIS ACT, UNLESS THE CONTEXT CLEARLY
8 IMPLIES A DIFFERENT MEANING, MEANS THE DIRECTOR OF INSURANCE AND
9 FINANCIAL SERVICES.

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

17 Sec. 814a. (1) Every property and casualty insurer doing
18 business in this state, unless exempted by the ~~commissioner,~~
19 **DIRECTOR**, shall annually file with the ~~commissioner~~**DIRECTOR** the

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

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

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

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

27 (5) The statement of actuarial opinion shall be filed with the

1 annual statement in accordance with section 438 and shall be
2 treated as a public document.

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

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

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

22 (7) Neither the ~~commissioner-DIRECTOR~~ nor any person who
23 received documents, materials, or other information while acting
24 under the ~~commissioner's-DIRECTOR'S~~ authority shall be permitted or
25 required to testify in any private civil action concerning any
26 confidential documents, materials, or information subject to
27 subsection (6).

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

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

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 and its affiliates and subsidiaries, and from
18 regulatory and law enforcement officials of other foreign or
19 domestic jurisdictions, and shall maintain as confidential or
20 privileged any document, material, or information received with
21 notice or the understanding that it is confidential or privileged
22 under the laws of the jurisdiction that is the source of the
23 document, material, or information.

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

27 (10) For purposes of this section, the Michigan automobile

1 insurance placement facility created under chapter 33 is not a
2 property and casualty insurer.

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

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

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

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

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

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

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

1 to provide reasonable assurance regarding the reliability of
2 financial statements in accordance with statutory accounting
3 principles.

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

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

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

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

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

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

1 documentation, in order to make its assertion in a cost-effective
2 manner and, as such, may include assembly of or reference to
3 existing documentation.

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

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

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

25 (2) The ~~commissioner~~**DIRECTOR**, after notice and opportunity
26 for a hearing, may suspend or revoke the license of a solicitor,
27 insurance counselor, or adjuster who fails to maintain the

1 standards required for initial licensing or who violates any
2 provision of this act.

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

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

26 (5) The ~~commissioner~~**DIRECTOR**, or his or her designated
27 deputy, may issue subpoenas to require the attendance and testimony

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

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

22 (2) Neither the ~~commissioner~~ **DIRECTOR** nor any person who
23 received documents, materials, or other information while acting
24 under the ~~commissioner's~~ **DIRECTOR'S** authority is permitted or
25 required to testify in any private civil action concerning any
26 confidential documents, materials, or information under subsection
27 (1).

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

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

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

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

25 (4) No waiver of any applicable privilege or claim of
26 confidentiality in the documents, materials, or information shall
27 occur as a result of disclosure to the ~~commissioner~~**DIRECTOR** under

1 section 1208b or this section, or as a result of sharing as
2 authorized under subsection (3).

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

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

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

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

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

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

26 (d) The company has violated any of the provisions of this
27 chapter or the rules and regulations promulgated under this

1 chapter.

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

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

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

1 the right to a hearing and court proceeding as provided for in
2 section 244.

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

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

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

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

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

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

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

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

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

26 (6) Notwithstanding any other provision in this act, a life
27 insurer may write a life insurance policy or annuity contract that

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

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

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

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

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

27 "This assignment may be revoked by the assignor or assignor's

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

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

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

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

24 (iii) For the assignment of a nonassociated life insurance
25 policy or annuity contract, that any increase in the price of the
26 cemetery services or goods or the funeral services or goods shall
27 not exceed the consumer price index or the retail price list in

1 effect when the death occurs, whichever is less.

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

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

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

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

26 (h) The assignment shall contain the dispute resolution rights
27 in subsection (8). After the death of the insured but before the

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

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

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

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

25 (l) At the time the assignment is made, the assignor certifies
26 that the insured does not have in effect other life insurance
27 policies or annuity contracts that have been assigned as payment

1 for cemetery goods or services or funeral goods or services which
2 together with the additional assignment would have an aggregate
3 face value in excess of the limitation provided in subdivision (g).

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

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

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

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

26 (8) After the cemetery services or goods or funeral services
27 or goods are provided, the funeral establishment, cemetery, or

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

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

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

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

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

23 (b) Upon the receipt of the dispute resolution notice
24 described in subdivision (a), the insurer shall retain the
25 assignment proceeds for 30 days. The insurer shall release the
26 assignment proceeds to the funeral establishment, cemetery, or
27 seller if after the expiration of the 30 days the insurer is not

1 informed that arbitration proceedings have been commenced, or
2 pursuant to the award of the arbitrator.

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

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

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

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

24 (b) A funeral establishment, cemetery, or seller that accepts
25 assignments pursuant to subsection (6) shall also offer to sell or
26 provide cemetery goods or services or funeral goods or funeral
27 services pursuant to prepaid funeral contracts as provided in the

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

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

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

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

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

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

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

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

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

1 the courts.

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

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

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

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

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

26 (b) The producer owns an interest, directly or indirectly, in
27 a corporation or other entity that holds an interest in a funeral

1 establishment, cemetery, or seller.

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

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

10 (14) As used in this section:

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

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

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

25 (d) "Cemetery" means that term as defined in but not
26 necessarily regulated under section 2 of the cemetery regulation
27 act, 1968 PA 251, MCL 456.522, or an officer, agent, or employee

1 thereof.

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

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

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

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

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

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

27 (k) "Funeral goods" means items of merchandise which will be

1 used in connection with a funeral or an alternative to a funeral or
2 final disposition of human remains including, but not limited to,
3 caskets, other burial containers, combination units, and
4 catafalques. Funeral goods does not include cemetery goods.

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

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

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

27 (ii) During the second year of the contract, not less than 50%

1 of the initial contract price of cemetery goods and services or
2 funeral goods and services.

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

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

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

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

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

26 (3) The ~~office of financial and insurance services~~ **DEPARTMENT**
27 shall develop a plan whereby the ~~office~~ **DEPARTMENT** informs

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

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

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

25 "In connection with this application for insurance, we may
26 review your credit report or obtain or use a credit-based insurance
27 score based on the information contained in that credit report. We

1 may use a third party in connection with the development of your
2 insurance score.".

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

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

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

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

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

25 (e) The insurer or a third party on the insurer's behalf uses
26 a credit report issued within 90 days before the date an insurance
27 score based on that credit report is first applied to the insured.

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

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

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

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

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

25 (iv) Multiple lender inquiries, if coded by the consumer
26 reporting agency on the credit report as being from the automobile
27 lending industry and made within 30 days of one another, unless

1 only 1 inquiry is considered.

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

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

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

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

1 city, village, or township.

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

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

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

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

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

1 section does not apply to any loss that occurred before the
2 effective date of the addition.

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

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

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

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

25 (9) There is no liability on the part of, and a cause of
26 action does not arise against, an insurer or an agent or employee
27 of an insurer for withholding money in the course of complying with

1 or attempting to comply with this section.

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

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

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

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

16 (i) Child and adolescent care.

17 (ii) Maternity care.

18 (iii) Cardiac care.

19 (iv) Staying healthy.

20 (v) Member satisfaction.

21 (vi) Women's health.

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

26 (d) A summary for each health maintenance organization of the
27 report required to be provided to the ~~commissioner~~**DIRECTOR** under

1 section 23 of the patient's right to independent review act, 2000
2 PA 251, MCL 550.1923.

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

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

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

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

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

1 include all of the following:

2 (a) Information required by section 3925.

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

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

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

26 (ii) If the rate increase will trigger contingent benefit upon
27 lapse, disclosure of how reserves have been incorporated in this

1 rate increase.

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

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

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

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

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

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

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

23 (b) Premium rate schedule increases shall be calculated such
24 that the sum of the accumulated value of incurred claims, without
25 the inclusion of active life reserves, and the present value of
26 future projected incurred claims, without the inclusion of active
27 life reserves, will not be less than the sum of the following:

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

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

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

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

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

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

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

27 (6) If any premium rate in the revised premium rate schedule

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

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

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

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

1 both, or to demonstrate that appropriate administration and claims
2 processing have been implemented or are in effect.

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

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

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

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

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

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

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

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

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

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

26 (12) Subsections (1) to (11) do not apply to policies or
27 certificates for which the long-term care benefits provided by the

1 policy or certificate are incidental, if the policy or certificate
2 complies with all of the following:

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

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

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

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

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

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

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

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

26 (iv) A description and a table of each actuarial assumption
27 used. For expenses, an insurer shall include percent of premium

1 dollars per policy or certificate and dollars per unit of benefits,
2 if any.

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

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

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

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

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

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

10 (15) As used in this section:

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

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

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

24 (d) "Similar policies" means all of the long-term care
25 insurance policies and certificates issued by an insurer in the
26 same long-term care benefit classification as the policy or
27 certificate being considered. Certificates of groups described in

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

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

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

17 Sec. 4424. (1) The ~~commissioner~~ **DIRECTOR** may authorize the
18 insuring on a group insurance basis of groups other than those
19 specifically defined in sections 4404 to 4420 if conditions or
20 circumstances indicate that granting permission for discretionary
21 group life insurance coverages is in the interest of public policy.
22 This section does not limit the ~~commissioner~~ **DIRECTOR** to only
23 authorize those groups that are logically analagous in character
24 and composition to the groups specifically defined in sections 4404
25 to 4420.

26 (2) The ~~commissioner~~ **DIRECTOR** may refuse to grant permission
27 in any instance on the basis of a finding that the requested group

1 plan:

2 (a) Would not result in economies of acquisition and
3 administration that justify a group rate.

4 (b) Would present hazards of voluntary adverse selection to a
5 degree not usually present in group insurance.

6 (c) Would be actuarially unsound.

7 (d) Would fail to preclude individual selection among persons
8 to be insured under the proposed group plan.

9 (3) The discretionary group shall consist of not less than 250
10 persons. The discretionary group may consist of only a portion of
11 the employees of an employer or of the members of an organization,
12 if segregation arises out of reasonable grounds, geographical or
13 otherwise, that make it presently impossible or undesirable to
14 include in a single group all of the employees or members. The
15 discretionary group may consist of employees of more than 1
16 employer, or the members of more than 1 organization or
17 association, if evidence submitted clearly indicates the
18 desirability of embracing the proposed assemblage of individuals
19 under a single group. By way of particular, but not in limitation,
20 the group may consist of the employees of 1 or more governmental or
21 quasigovernmental units, federal, state, municipal, or local.

22 (4) If, for reasons that the ~~commissioner~~**DIRECTOR** determines
23 to be adequate, it appears to be impossible or infeasible for the
24 employer to be the policyholder in any group authorized under this
25 section, the ~~commissioner~~**DIRECTOR** may authorize the designation of
26 a trustee or trustees to be the policyholder, subject to rules the
27 ~~commissioner~~**DIRECTOR** approves.

1 (5) The ~~commissioner~~**DIRECTOR** may authorize discretionary
2 groups and plans of group insurance that qualify in all other
3 respects under this section although there be no contribution to
4 the premium payment from the employer or organization if the
5 ~~commissioner~~**DIRECTOR** finds that circumstances render the
6 contribution inequitable, impossible, or impracticable.

7 (6) The percentage of employees or members required to
8 participate in any group authorized under this section, the types
9 of insurance coverage to be offered to the members of the group,
10 and the amounts of insurance to be provided, shall be as the
11 ~~commissioner~~**DIRECTOR** determines.

12 (7) Before any application for permission to qualify under
13 this section is considered, the applicant shall deposit with the
14 ~~commissioner~~**DIRECTOR** a specific fee of \$100.00 to defray the costs
15 of examining into the circumstances and conditions appertaining to
16 the proposed group and group insurance and shall covenant to
17 compensate the ~~office of financial and insurance regulation~~
18 **DEPARTMENT** for any additional unusual expenses that it may incur.
19 The applicant shall furnish such information, documents, and data
20 pertaining to the proposed group plan as the ~~commissioner~~**DIRECTOR**
21 requires to arrive at his or her determination. The ~~commissioner~~
22 **DIRECTOR** shall, from time to time, promulgate rules for the
23 enforcement of this section.

24 (8) The applicant may appeal from the ~~commissioner's~~
25 **DIRECTOR'S** refusal to authorize the discretionary group to the
26 circuit court for the county of Ingham on the grounds that the
27 refusal is arbitrary or capricious and devoid of sound underwriting

1 or actuarial grounds; but any fees or costs paid to or incurred by
2 the ~~office of financial and insurance regulation~~ **DEPARTMENT** under
3 subsection (7) is not subject to recovery.

4 Sec. 4501. As used in this chapter:

5 (a) "Authorized agency" means the department of state police;
6 a city, village, or township police department; a county sheriff's
7 department; a United States criminal investigative department or
8 agency; the prosecuting authority of a city, village, township,
9 county, or state or of the United States; the ~~office of financial~~
10 ~~and insurance regulation~~; **DEPARTMENT**; or the department of state.

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

14 (c) "Insurance policy" or "policy" means an insurance policy,
15 benefit contract of a self-funded plan, health maintenance
16 organization contract, nonprofit dental care corporation
17 certificate, or health care corporation certificate.

18 (d) "Insurer" means a property-casualty insurer, life insurer,
19 third party administrator, self-funded plan, health insurer, health
20 maintenance organization, nonprofit dental care corporation, health
21 care corporation, reinsurer, or any other entity regulated by the
22 insurance laws of this state and providing any form of insurance.

23 (e) "Organization" means an organization or internal
24 department of an insurer established to detect and prevent
25 insurance fraud.

26 (f) "Person" includes an individual, insurer, company,
27 association, organization, Lloyds, society, reciprocal or inter-

1 insurance exchange, partnership, syndicate, business trust,
2 corporation, and any other legal entity.

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

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

21 (i) "Statement" includes, but is not limited to, any notice
22 statement, proof of loss, bill of lading, receipt for payment,
23 invoice, account, estimate of property damages, bill for services,
24 claim form, diagnosis, prescription, hospital or doctor record, X-
25 rays, test result, or other evidence of loss, injury, or expense.

26 Sec. 4601. As used in this chapter:

27 (a) "Affiliated company" means a company in the same corporate

1 system as a parent, an industrial insured, or a member organization
2 by virtue of common ownership, control, operation, or management.

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

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

18 (d) "Association captive insurance company" means a company
19 that insures risks of the member organizations of the association
20 and their affiliated companies.

21 (e) "Branch business" means any insurance business transacted
22 by a branch captive insurance company in this state.

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

27 (g) "Branch operations" means any business operations of a

1 branch captive insurance company in this state.

2 (h) "Captive insurance company" means a pure captive insurance
3 company, association captive insurance company, sponsored captive
4 insurance company, special purpose captive insurance company, or
5 industrial insured captive insurance company authorized under this
6 chapter. For purposes of this chapter, a branch captive insurance
7 company shall be a pure captive insurance company with respect to
8 operations in this state, unless otherwise permitted by the
9 ~~commissioner.~~**DIRECTOR.**

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

12 (I) ~~(j)~~—"Control", including the terms "controlling",
13 "controlled by", and "under common control with", means the
14 possession, direct or indirect, of the power to direct or cause the
15 direction of the management and policies of a person, whether
16 through the ownership of voting securities, by contract other than
17 a commercial contract for goods or nonmanagement services, or
18 otherwise, unless the power is the result of an official position
19 with or corporate office held by the person. Control is presumed to
20 exist if a person, directly or indirectly, owns, controls, holds
21 with the power to vote, or holds proxies representing 10% or more
22 of the voting securities of another person. A showing that control
23 does not exist may rebut this presumption.

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

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

1 (ii) Has an existing contractual relationship with a parent or
2 affiliated company.

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

5 **(K)** ~~(I)~~—"Foreign captive insurer" means an insurer formed under
6 the laws of the District of Columbia, or some state, commonwealth,
7 territory, or possession of the United States other than ~~the state~~
8 ~~of Michigan~~ **THIS STATE**.

9 **(I)** ~~(m)~~—"GAAP" means generally accepted accounting principles.

10 **(M)** ~~(n)~~—"Industrial insured" means an insured that meets all
11 of the following:

12 (i) That procures insurance by use of the services of a full-
13 time employee acting as a risk manager or insurance manager or
14 utilizing the services of a regularly and continuously qualified
15 insurance consultant.

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

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

19 **(N)** ~~(e)~~—"Industrial insured captive insurance company" means a
20 company that insures risks of the industrial insureds that comprise
21 the industrial insured group and their affiliated companies.

22 **(O)** ~~(p)~~—"Industrial insured group" means a group that meets
23 either of the following criteria:

24 (i) Is a group of industrial insureds that collectively own,
25 control, or hold, with power to vote, all of the outstanding voting
26 securities of an industrial insured captive insurance company
27 incorporated as a stock insurer or limited liability company or

1 have complete voting control over an industrial insured captive
2 insurance company incorporated as a mutual insurer.

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

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

9 (Q) ~~(r)~~—"Member organization" means any individual,
10 corporation, limited liability company, partnership, or association
11 that belongs to an association.

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

14 (R) ~~(t)~~—"Organizational document" means the articles of
15 incorporation, articles of organization, bylaws, operating
16 agreement, or other foundational documents that create a legal
17 entity or prescribe its existence.

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

22 (T) ~~(v)~~—"Participant" means an entity as described in section
23 4667, and any affiliates of that entity, that are insured by a
24 sponsored captive insurance company, where the recovery of the
25 participant is limited through a participant contract to the assets
26 of a protected cell.

27 (U) ~~(w)~~—"Participant contract" means a contract by which a

1 sponsored captive insurance company insures the risks of a
2 participant and limits the recovery of the participant to the
3 assets of a protected cell.

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

7 (W) ~~(y)~~—"Pure captive insurance company" means a company that
8 insures risks of its parent, affiliated companies, controlled
9 unaffiliated business, or a combination of its parent, affiliated
10 companies, and controlled unaffiliated business.

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

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

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

19 (AA) ~~(cc)~~—"Sponsor" means an entity that meets the
20 requirements of section 4665 and is approved by the ~~commissioner~~
21 **DIRECTOR** to provide all or part of the capital and retained
22 earnings required by applicable law and to organize and operate a
23 sponsored captive insurance company.

24 (BB) ~~(dd)~~—"Sponsored captive insurance company" means a
25 captive insurance company in which the minimum capital and retained
26 earnings required by applicable law is provided by 1 or more
27 sponsors, is authorized under this chapter, insures the risks of

1 separate participants through the participant contract, and
2 segregates each participant's liability through 1 or more protected
3 cells.

4 (CC) ~~(ee)~~—"Surplus" means unassigned funds for an entity using
5 statutory accounting principles, with capital and surplus including
6 all capital stock, paid in capital and contributed surplus, and
7 other surplus funds with corresponding items under GAAP consisting
8 of retained earnings and accumulated other comprehensive income,
9 with capital and retained earnings including all capital stock,
10 additional paid in capital, and other equity funds.

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

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

16 Sec. 4603. (1) A captive insurance company, if permitted by
17 its organizational documents, may apply to the ~~commissioner~~
18 **DIRECTOR** for a limited certificate of authority to do any and all
19 insurance authorized by this chapter except worker's compensation
20 insurance, long-term care insurance, critical care insurance,
21 personal automobile insurance, or homeowners insurance, or any
22 component of these coverages. A captive insurance company is
23 subject to all of the following:

24 (a) A pure captive insurance company shall not insure any
25 risks other than those of its parent, affiliated companies,
26 controlled unaffiliated business, or a combination of its parent,
27 affiliated companies, and controlled unaffiliated business.

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

4 (c) An industrial insured captive insurance company shall not
5 insure any risks other than those of the industrial insureds that
6 comprise the industrial insured group and their affiliated
7 companies.

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

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

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

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

20 (b) Hold at least 1 board of directors meeting, or for a
21 limited liability company, a meeting of the managing board, each
22 year in this state.

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

26 (d) File with the ~~commissioner~~**DIRECTOR** the name and address
27 of a resident registered agent designated to accept service of

1 process and to otherwise act on its behalf in this state. The
2 designation shall remain in force as long as any liability remains
3 within this state.

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

7 (a) The names and places of residence of at least 3
8 incorporators or organizers of whom at least 2 are residents of
9 this state.

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

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

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

14 (e) The manner in which the corporate powers are to be
15 exercised.

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

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

20 (h) The amount and value of capital stock, if any. Each share
21 of authorized capital stock shall have a value of not less than
22 \$1.00.

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

24 (4) The organizational documents of a proposed captive
25 insurance company may contain a provision providing that a director
26 is not personally liable to the corporation or its shareholders or
27 policyholders for monetary damages for a breach of the director's

1 fiduciary duty. However, the provision does not eliminate or limit
2 the liability of a director for any of the following:

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

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

7 (c) A transaction from which the director derived an improper
8 personal benefit.

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

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

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

26 (b) A plan of operation, including, if applicable, a business
27 plan demonstrating how the applicant will account for the loss and

1 expense experience of each protected cell at a level of detail
2 found to be sufficient by the ~~commissioner~~**DIRECTOR** and how it will
3 report the experience to the ~~commissioner~~**DIRECTOR**.

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

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

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

10 (f) Evidence of the character, reputation, financial
11 responsibility, insurance experience, and business qualifications
12 of the officers and directors or managers.

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

15 (h) Evidence of the adequacy of the loss prevention programs
16 of its parent, member organization, or industrial insureds as
17 applicable.

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

21 (j) For limited liability company applicants, a certificate of
22 status demonstrating that the limited liability company has been
23 formed pursuant to the Michigan limited liability company act, 1993
24 PA 23, MCL 450.4101 to 450.5200, and is in good standing.

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

27 (7) The ~~commissioner~~**DIRECTOR** shall issue a limited

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

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

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

22 (10) Upon approval of the ~~commissioner~~**DIRECTOR**, a foreign
23 captive insurance company may become a captive insurance company by
24 complying with all of the requirements of law relative to the
25 authorization of a captive insurance company of the same or
26 equivalent type in this state. After this is accomplished, the
27 foreign captive insurance company is entitled to a limited

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

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

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

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

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

25 (d) To law enforcement officials.

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

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

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

7 Sec. 4625. (1) No provisions of this act, other than those
8 specifically referenced in this chapter, apply to a captive
9 insurance company, and those provisions apply only as modified by
10 this chapter. If a conflict occurs between a provision of this act
11 and a provision of this chapter, this chapter controls.

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

17 (3) Sections 210 to 222, 226 to 238, 244 to 251, and 2057 to
18 2062, and chapter 45 apply to captive insurance companies.

19 (4) The expenses and charges of a captive insurance company
20 examination shall be paid to ~~the~~**THIS** state by the captive
21 insurance company or companies examined, and the ~~office~~**DEPARTMENT**
22 shall issue warrants for the proper charges incurred in all
23 examinations. The payments received by ~~the~~**THIS** state shall be
24 deposited into the captive insurance regulatory and supervision
25 fund.

26 (5) A captive insurance company shall pay an annual renewal
27 fee by March 1 of each calendar year. The annual renewal fee ~~shall~~

1 ~~be~~**IS** calculated based upon the annual volume of insurance or
2 reinsurance premiums received by the captive insurance company as
3 follows:

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

6 (b) For annual premiums equal to or greater than
7 \$5,000,000.00, but less than \$10,000,000.00, the renewal fee ~~shall~~
8 ~~be~~**IS** \$10,000.00.

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

12 (d) For annual premiums equal to or greater than
13 \$15,000,000.00, but less than \$25,000,000.00, the renewal fee ~~shall~~
14 ~~be~~**IS** \$25,000.00.

15 (e) For annual premiums equal to or greater than
16 \$25,000,000.00, but less than \$40,000,000.00, the renewal fee ~~shall~~
17 ~~be~~**IS** \$40,000.00.

18 (f) For annual premiums equal to or greater than
19 \$40,000,000.00, but less than \$55,000,000.00, the renewal fee ~~shall~~
20 ~~be~~**IS** \$50,000.00.

21 (g) For annual premiums equal to or greater than
22 \$55,000,000.00, but less than \$75,000,000.00, the renewal fee ~~shall~~
23 ~~be~~**IS** \$75,000.00.

24 (h) For annual premiums equal to or greater than
25 \$75,000,000.00, the renewal fee ~~shall be~~**IS** \$100,000.00.

26 (6) The ~~office~~**DEPARTMENT** may charge a \$15.00 fee for any
27 document requiring certification of authenticity or the signature

1 of the ~~commissioner~~. **DIRECTOR**. The payments received shall be
2 deposited into the captive insurance regulatory and supervision
3 fund.

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

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

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

16 (10) Section 222 applies to all business written by a captive
17 insurance company except that the examination for a branch captive
18 insurance company shall be of branch business and branch operations
19 only, as long as the branch captive insurance company provides
20 annually to the ~~commissioner~~, **DIRECTOR**, a certificate of
21 compliance, or its equivalent, issued by or filed with the
22 licensing authority of the jurisdiction in which the branch captive
23 insurance company is formed and demonstrates to the ~~commissioner's~~
24 **DIRECTOR'S** satisfaction that it is operating in sound financial
25 condition in accordance with all applicable laws and regulations of
26 that jurisdiction.

27 Sec. 4673. (1) The captive insurance regulatory and

1 supervision fund is created within the state treasury.

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

18 (3) Money in the captive insurance regulatory and supervision
19 fund at the close of the fiscal year shall remain in the captive
20 insurance regulatory and supervision fund and shall not lapse to
21 the general fund.

22 (4) The ~~commissioner shall be~~ **DEPARTMENT IS** the administrator
23 of the captive insurance regulatory and supervision fund for
24 auditing purposes. ~~Money~~ **THE DEPARTMENT SHALL EXPEND MONEY** in the
25 captive insurance regulatory and supervision, ~~fund shall be~~
26 ~~expended by the commissioner,~~ upon appropriation, for the purpose
27 of administering chapters 18 and 47 and this chapter and for

1 reasonable expenses incurred in promoting the captive insurance
2 industry in this state.

3 Sec. 4701. As used in this chapter:

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

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

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

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

21 (D) ~~(e)~~ "Control" including the terms "controlling",
22 "controlled by", and "under common control with" means the
23 possession, direct or indirect, of the power to direct or cause the
24 direction of the management and policies of a person, whether
25 through the ownership of voting securities, by contract other than
26 a commercial contract for goods or nonmanagement services, or
27 otherwise, unless the power is the result of an official position

1 with or corporate office held by the person. Control ~~shall be~~ **IS**
 2 presumed to exist if a person, directly or indirectly, owns,
 3 controls, holds with the power to vote, or holds proxies
 4 representing 10% or more of the voting securities of another
 5 person. This presumption may be rebutted by a showing that control
 6 does not exist. However, for purposes of this chapter, ~~the fact~~
 7 ~~that~~ an SPFC **THAT** exclusively provides reinsurance to a ceding
 8 insurer under an SPFC contract is not by itself sufficient grounds
 9 for a finding that the SPFC and ceding insurer are under common
 10 control.

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

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

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

17 (ii) For assets other than cash, the amount at which that asset
 18 could be bought or sold in a current transaction between arm's
 19 length, willing parties. If available, the quoted mid-market price
 20 for the asset in active markets shall be used; and if quoted mid-
 21 market prices are not available, a value shall be determined using
 22 the best information available considering values of similar assets
 23 and other valuation methods, such as present value of future cash
 24 flows, historical value of the same or similar assets, or
 25 comparison to values of other asset classes, the value of which
 26 have been historically related to the subject asset.

27 (G) ~~(h)~~ "Foreign captive" means a captive insurer formed under

1 the laws of the District of Columbia or some state, commonwealth,
2 territory, or possession of the United States other than ~~the~~ **THIS**
3 state. ~~of Michigan.~~

4 (H) ~~(i)~~ "Insolvency" or "insolvent" means 1 or more of the
5 following:

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

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

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

16 (I) ~~(j)~~ "Insurance securitization" means a package of related
17 risk transfer instruments, capital market offerings, and
18 facilitating administrative agreements by which all of the
19 following apply:

20 (i) The proceeds of the sale of SPFC securities are obtained,
21 in a transaction that complies with applicable securities laws, by
22 an SPFC directly through the issuance of the SPFC securities by the
23 SPFC or indirectly through the issuance of preferred securities by
24 the SPFC in exchange for some or all of the proceeds of the sale of
25 SPFC securities by the SPFC's parent, an affiliated company of the
26 SPFC, a counterparty, or a captive LLC.

27 (ii) The proceeds of the issuance of the SPFC securities secure

1 the obligations of the SPFC under 1 or more SPFC contracts with a
2 counterparty.

3 (iii) The obligation to the holders of the SPFC securities is
4 secured by assets obtained with proceeds of the SPFC securities in
5 accordance with the transaction terms.

6 (J) ~~(k)~~—"Irrevocable letter of credit" means a letter of
7 credit that meets the description in section 1105(c).

8 (K) ~~(l)~~—"Management" means the board of directors, managing
9 board, or other individual or individuals vested with overall
10 responsibility for the management of the affairs of ~~the~~ **AN** SPFC,
11 including the election and appointment of officers or other agents
12 to act on behalf of the SPFC.

13 ~~—(m) "Office" means the office of financial and insurance~~
14 ~~regulation.~~

15 (l) ~~(n)~~—"Organizational document" means ~~the~~ **AN** SPFC's articles
16 of incorporation, articles of organization, bylaws, operating
17 agreement, or other foundational documents that establish the SPFC
18 as a legal entity or prescribes its existence.

19 (M) ~~(o)~~—"Parent" means any corporation, limited liability
20 company, partnership, or individual that directly or indirectly
21 owns, controls, or holds with power to vote more than 50% of the
22 outstanding voting securities of an SPFC.

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

25 (O) ~~(q)~~—"Preferred securities" means securities, whether stock
26 or debt, issued by an SPFC to the issuer of the SPFC securities in
27 exchange for some or all of the proceeds of the issuance of the

1 SPFC securities.

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

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

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

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

11 (T) ~~(v)~~—"Securities" means those different types of debt
12 obligations, equity, surplus certificates, surplus notes, funding
13 agreements, derivatives, and other legal forms of financial
14 instruments.

15 (U) ~~(w)~~—"Securities commissioner" means the
16 ~~commissioner~~**DIRECTOR**.

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

22 (W) ~~(y)~~—"SPFC contract" means a contract between ~~the~~**AN** SPFC
23 and ~~the~~**A** counterparty pursuant to which the SPFC agrees to provide
24 insurance or reinsurance protection to the counterparty for risks
25 associated with the counterparty's insurance or reinsurance
26 business.

27 (X) ~~(z)~~—"SPFC securities" means the securities issued pursuant

1 to an insurance securitization, the proceeds of which are used in
2 the manner described in subdivision ~~(j)~~ **(I)**.

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

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

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

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

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

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

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

25 (d) File with the ~~commissioner~~ **DIRECTOR** the name and address
26 of a resident registered agent designated to accept service of
27 process and to otherwise act on its behalf in this state. The

1 designation shall remain in force as long as any liability remains
2 within the state.

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

10 (f) Provide a complete set of documentation of the insurance
11 securitization to the ~~commissioner~~**DIRECTOR** shortly following
12 closing of the insurance securitization transaction.

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

16 (a) The names and places of residence of at least 3
17 incorporators or organizers of whom at least 2 are residents of
18 this state.

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

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

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

23 (e) The manner in which the corporate powers are to be
24 exercised.

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

26 (g) The number of directors or managers, as applicable, that
27 constitute a quorum for the purposes of doing business which

1 consists of no fewer than 1/3 of the managers required by the
2 organizational document.

3 (h) The amount and value of capital stock, if any. Each share
4 of authorized capital stock shall have a value of not less than
5 \$1.00.

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

7 (4) The organizational documents of an SPFC may contain a
8 provision providing that a director is not personally liable to the
9 corporation or its shareholders or policyholders for monetary
10 damages for a breach of the director's fiduciary duty. However, the
11 provision does not eliminate or limit the liability of a director
12 for any of the following:

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

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

17 (c) A transaction from which the director derived an improper
18 personal benefit.

19 (5) Before the organizational documents ~~shall be~~ **ARE** effective
20 for the purposes of this chapter, the organizational documents
21 shall be submitted to the office of the attorney general for
22 examination. If ~~such~~ **THE** documents ~~are found to be in compliance~~
23 **COMPLY** with this chapter, the office of the attorney general shall
24 so certify to the ~~commissioner.~~ **DIRECTOR**. Each applicant for an
25 SPFC limited certificate of authority that submits its
26 organizational documents to the office of the attorney general
27 shall pay to the attorney general the examination fee provided in

1 section 240(2).

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

5 (a) Evidence of all of the following:

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

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

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

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

14 (v) The applicant SPFC's financial condition, including the
15 source and form of the minimum capitalization to be contributed to
16 the SPFC.

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

21 (i) Draft documentation or, at the ~~commissioner's~~**DIRECTOR'S**
22 discretion, a written summary of all material agreements that are
23 entered into in connection with the SPFC contracts and the
24 insurance securitization, including the names of the counterparty,
25 the nature of the risks to be assumed, and the proposed use of
26 protected cells, if any. The documentation or written summary shall
27 also include the maximum amounts, purpose, nature, and the

1 relationship between the various transactions effectuating the
2 insurance securitization.

3 (ii) A description of any party, other than the SPFC or the
4 counterparty, that will issue SPFC securities in an insurance
5 securitization, including a description of its contemplated
6 operation.

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

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

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

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

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

22 (d) An affidavit from the applicant SPFC verifying all of the
23 following:

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

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

27 (iii) The applicant SPFC's investment strategy reflects and

1 takes into account the liquidity of assets and the reasonable
2 preservation, administration, and asset management of ~~such~~ **THE**
3 assets relative to the risks associated with the SPFC contract and
4 the insurance securitization transaction.

5 (iv) The SPFC securities proposed to be issued are valid legal
6 obligations that are either properly registered with the securities
7 commissioner or constitute an exempt security or form part of an
8 exempt transaction under ~~section 402 of~~ the uniform securities act,
9 ~~1964 PA 265, MCL 451.802. 2008 PA 551, (2002) MCL 451.2101 TO~~
10 **451.2703**. If the issuer of the SPFC securities is not the SPFC, the
11 SPFC shall obtain and submit an affidavit from the issuer that the
12 securities proposed to be issued satisfy this subparagraph.

13 (v) Unless otherwise exempted by the ~~commissioner~~, **DIRECTOR**,
14 the trust agreement, the trusts holding assets that secure the
15 obligations of the SPFC under the SPFC contract, and the SPFC
16 contract with the counterparty in connection with the contemplated
17 insurance securitization are structured pursuant to the provisions
18 in this chapter.

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

21 (7) In addition to the requirements of this section and
22 section 4713, if a protected cell is used, an applicant SPFC shall
23 file with the ~~commissioner~~ **DIRECTOR** all of the following:

24 (a) A business plan demonstrating how the applicant accounts
25 for the paid losses, reserves, and expenses of each protected cell
26 at a level of detail found to be sufficient by the ~~commissioner~~,
27 **DIRECTOR**, and how it reports those paid losses, reserves, and

1 expenses to the ~~commissioner~~**DIRECTOR**.

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

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

8 (d) A description of the expenses allocated to each protected
9 cell.

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

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

14 (a) For an applicant not authorized under chapter 46 and not
15 filing a concurrent application under chapter 46, a nonrefundable
16 fee of \$10,000.00 for processing its application for a limited
17 certificate of authority. In addition, the ~~commissioner~~**DIRECTOR**
18 may retain legal, financial, actuarial, and examination services
19 from outside the ~~office~~**DEPARTMENT** to examine and investigate the
20 application, the reasonable cost of which may be charged against
21 the applicant, or the ~~commissioner~~**DIRECTOR** may use internal
22 resources to examine and investigate the application for a fee of
23 \$2,700.00, which is payable upon the filing of the application.

24 (b) An SPFC shall pay an annual renewal fee by March 1 of each
25 calendar year. However, an SPFC that is authorized under both
26 chapter 46 and this chapter and that pays the renewal fee provided
27 in section 4625(5) is exempt from paying this renewal fee. The

1 annual renewal fee shall be calculated based upon the annual volume
2 of insurance or reinsurance premiums received by the SPFC as
3 follows:

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

6 (ii) For annual premiums equal to or greater than
7 \$5,000,000.00, but less than \$10,000,000.00, the renewal fee ~~shall~~
8 ~~be~~ **IS** \$10,000.00.

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

12 (iv) For annual premiums equal to or greater than
13 \$15,000,000.00, but less than \$25,000,000.00, the renewal fee ~~shall~~
14 ~~be~~ **IS** \$25,000.00.

15 (v) For annual premiums equal to or greater than
16 \$25,000,000.00, but less than \$40,000,000.00, the renewal fee ~~shall~~
17 ~~be~~ **IS** \$40,000.00.

18 (vi) For annual premiums equal to or greater than
19 \$40,000,000.00, but less than \$55,000,000.00, the renewal fee ~~shall~~
20 ~~be~~ **IS** \$50,000.00.

21 (vii) For annual premiums equal to or greater than
22 \$55,000,000.00, but less than \$75,000,000.00, the renewal fee ~~shall~~
23 ~~be~~ **IS** \$75,000.00.

24 (viii) For annual premiums equal to or greater than
25 \$75,000,000.00, the renewal fee ~~shall be~~ **IS** \$100,000.00.

26 (10) The ~~commissioner~~ **DIRECTOR** may grant a limited certificate
27 of authority authorizing the applicant to transact insurance or

1 reinsurance business as an SPFC in this state upon finding by the
2 ~~commissioner~~**DIRECTOR** of all of the following:

3 (a) The proposed plan of operation provides a reasonable and
4 expected successful operation.

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

7 (c) All required fees have been paid.

8 (d) The commissioner of the state of domicile of each
9 counterparty has notified the ~~commissioner~~**DIRECTOR** in writing or
10 otherwise provided assurance satisfactory to the ~~commissioner~~
11 **DIRECTOR** that it has approved or not disapproved the transaction.

12 (e) The limited certificate of authority authorizing the SPFC
13 to transact business is limited to the insurance or reinsurance
14 activities that the SPFC is allowed to conduct ~~pursuant to~~**UNDER**
15 this chapter.

16 (11) The limited certificate of authority shall be renewed
17 annually upon payment of the renewal fee provided for by this
18 section.

19 (12) A foreign captive, upon approval of the ~~commissioner~~,
20 **DIRECTOR**, may become an SPFC by complying with all of the
21 provisions of this chapter. After this is accomplished, the foreign
22 captive is entitled to a limited certificate of authority to
23 transact business as an SPFC in this state and is subject to the
24 authority and jurisdiction of this state. It is not necessary for a
25 foreign captive redomesticating into this state to merge,
26 consolidate, transfer assets, or otherwise engage in another
27 reorganization, other than as specified in this section.

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

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

10 (a) A protected cell shall be established only for the purpose
11 of isolating and identifying the assets and liabilities
12 attributable to the risk ceded to the SPFC by the counterparty
13 pursuant to 1 or more SPFC contracts and the assets and liabilities
14 of the SPFC arising out of the related insurance securitization.

15 (b) Each protected cell shall be accounted for separately on
16 the books and records of the SPFC to reflect the financial
17 condition and results of operations of the protected cell,
18 including income, gain, expense, or loss; dividends; other
19 distributions to the counterparty for the SPFC contract with each
20 cell; and other items as may be provided in the SPFC contract,
21 insurance securitization transaction documents, plan of operation,
22 or business plan, or as required by the ~~commissioner~~**DIRECTOR**.

23 (c) Amounts attributed to a protected cell under this chapter,
24 including assets transferred to a protected cell account, are owned
25 by the SPFC, and the SPFC shall not be, or shall not hold itself
26 out to be, a trustee with respect to those protected cell assets of
27 that protected cell account.

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

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

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

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

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

18 (i) An SPFC shall pay interest or repay principal or both or
19 make distributions or repayments of any SPFC securities issued by
20 the SPFC or make payments of preferred securities issued to a
21 particular protected cell from assets or cash flows relating to or
22 emerging from the SPFC contract and the insurance securitization
23 transactions that are attributable to that particular protected
24 cell as provided in this chapter or as otherwise approved by the
25 ~~commissioner~~**DIRECTOR**.

26 (3) An SPFC contract with or attributable to a protected cell
27 does not take effect without the ~~commissioner's~~**DIRECTOR'S** prior

1 written approval. The ~~commissioner~~**DIRECTOR** may retain legal,
2 financial, and examination services from outside the ~~office~~
3 **DEPARTMENT** to examine and investigate the application for a
4 protected cell, the reasonable cost of which may be charged against
5 the applicant, or the ~~commissioner~~**DIRECTOR** may use internal
6 resources to examine and investigate the application the reasonable
7 cost of which may be charged against the applicant up to a maximum
8 of \$1,200.00, or may use both retained services and internal
9 resources.

10 (4) An SPFC utilizing protected cells shall possess minimum
11 capitalization for each protected cell separate and apart from the
12 capitalization required by section 4709. For purposes of
13 determining the capitalization of each protected cell, an SPFC
14 initially shall capitalize and after that time maintain
15 capitalization in each protected cell in the amount and manner
16 required for an SPFC in section 4709.

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

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

25 (2) ~~Notwithstanding subsection (1), if~~ **IF** an order of
26 conservation, rehabilitation, or liquidation is entered for a
27 counterparty, the SPFC and each protected cell of the SPFC ~~shall be~~

1 ~~considered~~**ARE** separate persons for purposes of any offset
2 undertaken as part of the conservation, rehabilitation, or
3 liquidation, such that any offset of mutual debts and credits
4 between the counterparty and either the SPFC or any protected cell
5 shall not involve the debts and credits of any other protected cell
6 or, if the offset involves a protected cell, the SPFC.

7 (3) ~~Notwithstanding subsection (1), a~~**A** protected cell shall
8 have its own distinct name or designation that includes the words
9 "protected cell". The SPFC shall transfer all assets attributable
10 to the protected cell to 1 or more separately established and
11 identified protected cell accounts bearing the name or designation
12 of that protected cell.

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

17 (5) The property of an SPFC in a protected cell shall be
18 served in its own name with process in all civil actions or
19 proceedings involving or relating to the activities of that
20 protected cell or a breach by the SPFC of a duty to the protected
21 cell or to a counterparty to a transaction linked or attributed to
22 it by serving the SPFC in the manner described in section 1920 of
23 the revised judicature act of 1961, 1961 PA 236, MCL 600.1920.

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

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

9 (8) Creditors to a protected cell are not entitled to have
10 recourse against the protected cell assets of other protected cells
11 or the assets of the SPFC's general account. If an obligation of an
12 SPFC relates only to the general account, the obligation of the
13 SPFC extends only to that creditor for that obligation and that
14 creditor is entitled to have recourse only to the assets of the
15 SPFC's general account.

16 (9) The assets of the protected cell shall not be used to pay
17 expenses or claims other than those attributable to the protected
18 cell. Protected cell assets are available only to the SPFC
19 counterparty and other creditors of the SPFC that are creditors
20 only to that protected cell and, accordingly, are entitled, in
21 conformity with this chapter, to have recourse to the protected
22 cell assets attributable to that protected cell. Protected cell
23 assets are absolutely protected from the creditors of the SPFC that
24 are not creditors with respect to that protected cell and who,
25 accordingly, are not entitled to have recourse to the protected
26 cell assets attributable to that protected cell. If an obligation
27 of an SPFC to a person or counterparty arises from an SPFC contract

1 or related insurance securitization transaction or is otherwise
2 incurred for a protected cell, both of the following apply:

3 (a) That obligation of the SPFC extends only to the protected
4 cell assets attributable to that protected cell, and the person or
5 counterparty, for that obligation, is entitled to have recourse
6 only to the protected cell assets attributable to that protected
7 cell.

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

17 (10) Notwithstanding any other provision of law, an SPFC may
18 allow for a security interest in accordance with applicable law to
19 attach to protected cell assets or a protected cell account when in
20 favor of a creditor of the protected cell or to facilitate the
21 insurance securitization, including, without limitation, the
22 issuance of the SPFC contract, to the extent those protected cell
23 assets are not required at all times to support the risk, but
24 without otherwise affecting the discharge of liabilities under the
25 SPFC contract, or as otherwise approved by the

26 ~~commissioner~~-DIRECTOR.

27 (11) An SPFC shall establish administrative and accounting

1 procedures necessary to properly identify the 1 or more protected
2 cells of the SPFC and the assets and liabilities of each protected
3 cell. The directors of an SPFC shall keep protected cell assets and
4 liabilities separate and separately identifiable from the assets
5 and liabilities of the SPFC's general account. The assets and
6 liabilities attributable to 1 protected cell shall be kept separate
7 and separately identifiable from the assets and liabilities
8 attributable to other protected cells.

9 (12) All contracts or other documentation reflecting protected
10 cell liabilities shall indicate clearly that only the protected
11 cell assets are available for the satisfaction of those protected
12 cell liabilities. In all SPFC insurance securitizations involving a
13 protected cell, including the issuance of preferred securities, the
14 contracts or other documentation effecting the transaction shall
15 contain provisions identifying the protected cell to which the
16 transaction is attributed. In addition, the contracts or other
17 documentation shall disclose clearly that the assets of that
18 protected cell, and only those assets, are available to pay the
19 obligations of that protected cell. Notwithstanding the provisions
20 of this subsection and subject to the provisions of this chapter
21 and any other applicable law or regulation, the failure to include
22 this language in the contracts or other documentation shall not be
23 used as the sole basis by creditors, insureds or reinsureds,
24 insurers or reinsurers, or other claimants to circumvent this
25 section.

26 (13) The income, and gains and losses, whether realized or
27 unrealized, from protected cell assets and protected cell

1 liabilities shall be credited to or charged against the protected
2 cell without regard to other income and gains or losses of the
3 SPFC, including income and gains or losses of other protected
4 cells. Amounts attributed to any protected cell and accumulations
5 on the attributed amounts may be invested and reinvested. The
6 investments in a protected cell or cells shall not be taken into
7 account in applying the investment limitations otherwise applicable
8 to the investments of the SPFC.

9 (14) An SPFC with protected cells shall file annually with the
10 ~~office-DEPARTMENT~~ accounting statements and financial reports
11 required by this chapter that, among other things, shall do all of
12 the following:

13 (a) Detail the financial experience of each protected cell and
14 the SPFC separately.

15 (b) Provide the combined financial experience of the SPFC and
16 all protected cells.

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

20 (15) An SPFC with protected cells shall notify the
21 ~~commissioner-DIRECTOR~~ in writing within 10 business days of a
22 protected cell becoming insolvent.

23 Sec. 4733. (1) The expenses and charges of a captive insurance
24 company examination shall be paid to ~~the-THIS~~ state by the captive
25 insurance company or companies examined, and the ~~office-DEPARTMENT~~
26 shall issue warrants for the proper charges incurred in all
27 examinations. The payments received by ~~the-THIS~~ state shall be

1 deposited into the captive insurance regulatory and supervision
2 fund.

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

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

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

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

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

27 (c) In connection with an enforcement action brought pursuant

1 to this or another applicable act.

2 (d) To law enforcement officials.

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

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

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

11 Sec. 8111. (1) Except as provided in subsection (2), in all
12 proceedings and judicial review of these proceedings under sections
13 8109 and 8110, all records of the insurer, other documents, ~~office~~
14 ~~of financial and insurance services~~ **DEPARTMENT** files, and court
15 records and papers, so far as they pertain to or are a part of the
16 record of the proceedings, are confidential and shall be held by
17 the clerk of the court in a confidential file except as is
18 necessary to obtain compliance therewith, unless the court, after
19 hearing arguments from the parties in chambers, orders otherwise or
20 the insurer requests that the matter be made public.

21 (2) Without compromising the confidentiality of the records of
22 the ~~commissioner, office of financial and insurance services,~~
23 **DIRECTOR, DEPARTMENT**, or supervisor, the ~~commissioner~~ **DIRECTOR** or
24 his or her supervisor may advise third parties of the existence of
25 a supervision order and of the supervisor's authority if considered
26 by either of them necessary to further the insurer's compliance
27 with the supervision order. The ~~commissioner~~ **DIRECTOR** may advise

1 third parties of the existence of a supervision order and of facts
2 pertaining to the supervision order if considered necessary by the
3 ~~commissioner~~**DIRECTOR** with regard to other regulatory matters
4 affecting the insurer or a person or entity related to the insurer.
5 Third parties advised under this subsection are required to keep
6 the existence of a supervision confidential. As used in this
7 subsection, "third parties" means the following persons:

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

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

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

12 (d) Insurance regulatory officials.

13 (e) Law enforcement agencies.

14 (f) The workers' compensation agency.

15 (g) Representatives of a guaranty association or foreign
16 guaranty association that may become obligated as a result of the
17 insolvency of the insurer. Confidentiality obligations of a
18 guaranty association or foreign guaranty association to the
19 receiver end upon the entry of an order of liquidation with a
20 finding of insolvency against the insurer.