

Legislative Analysis



CAPTIVE INSURANCE COMPANIES

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<http://www.house.mi.gov/hfa>

House Bill 6099 as introduced
Sponsor: Rep. Penelope Tsernoglou

Analysis available at
<http://www.legislature.mi.gov>

House Bill 6100 as introduced
Sponsor: Rep. Helena Scott

House Bill 6101 as introduced
Sponsor: Rep. Stephanie A. Young

House Bills 6103 and 6104 as introduced
Sponsor: Rep. Brenda Carter

House Bill 6102 as introduced
Sponsor: Rep. Jerry Neyer

House Bill 6106 as introduced
Sponsor: Rep. Mai Xiong

Committee: Insurance and Financial Services
Revised 12-5-24

SUMMARY:

House Bills 6099 to 6104 and 6106 would amend the Insurance Code to make various changes to the regulation and requirements relating to captive insurance companies and special purpose financial captives in Michigan.

House Bill 6099 would modify provisions related to the sponsors of captive insurance companies.

Currently, the code requires that any sponsor of a sponsored captive insurance company be one of the following:

- An insurer authorized under the laws of any state or Washington, D.C.
- An insurance holding company that controls an insurer authorized under the laws of any state or Washington, D.C. and is subject to registration pursuant to the insurer's state of domicile's laws regarding insurance holding company systems.
- A reinsurer authorized under the laws of any state or Washington, D.C.
- A captive insurance company authorized under Chapter 46 of the code.

The code prohibits a risk retention group from being either a sponsor or a participant of a sponsored captive insurance company.

The business written by a sponsored captive insurance company with respect to each protected cell must meet at least one of the following:

- Be fronted by an insurance company authorized under the laws of any state or any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company authorized under the laws of any state or any jurisdiction.
- Be reinsured by a reinsurer authorized or approved by Michigan.

- Be secured by a trust fund in the United States for the benefit of policyholders and claimants funded by an irrevocable letter of credit or other asset acceptable to the director of the Department of Insurance and Financial Services (DIFS). The amount of security provided by the trust fund must not be less than the reserves associated with those liabilities, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the participant's protected cell. The director can require the sponsored captive to increase the funding of a trust. A trust and trust instrument maintained pursuant to this required must be in a form and upon terms approved by the director.

The bill would remove each of these requirements and instead require that the sponsor of a captive insurance company be a person approved by the DIFS director in the exercise of their discretion, based on a determination that the approval of the sponsor is consistent with the purposes of the code.

In evaluating the qualifications of a prospective sponsor, the director would have to consider the proposed sponsor's type and structure, experience in financial operations, financial stability and strength, business reputation, and other relevant factors.

Under the bill, a risk retention group would still be prohibited from being a sponsor.

MCL 500.4665

House Bill 6100 would modify the definitions of the terms *participant* and *participant contract* as they pertain to captive insurance companies.

Specifically, the bill would amend the definitions to specify that they can apply to multiple entities or participants by replacing uses of the singular term *participant* with the plural *participants*.

In addition, the bill would add that the definition of *participant* can apply to multiple entities.

MCL 500.4601

House Bill 6101 would modify certain dates regarding when a special purpose financial captives (SPFC)¹ must file a statement of operations with the DIFS director.

Currently, the statement is required to be filed annually by March 1. In addition, the code allows SPFCs to include certain calculations for the previous calendar year in the filing.

¹ An SPFC is a type of captive insurer that can only insure the risks of its counterparty, or the risk that its parent or affiliated company does not fulfill its financial obligations.

Under the bill, the statement would be required to be filed within 60 days of the end of the SPFC's fiscal year. In addition, the calculations allowed to be included in the filing would be changed to a fiscal year basis, as opposed to the current calendar year format.

MCL 500.4731

House Bill 6102 would modify certain procedures related to fees for SPFCs.

Currently, the code requires an applicant to for a limited certificate of authority for an SPFC that is not a concurrent application with a sponsored captive insurer to pay a nonrefundable application fee of \$10,000. In addition, these entities must pay a renewal fee based on their annual premiums annually by March 1.

The bill would lower the application fee to \$5,000 and change the date by which a renewal fee must be paid to within 90 days of the end of the SPFC's fiscal year.

MCL 500.4705

House Bill 6103 would modify what can be insured by a participant through a captive insurance company.

Currently, the code limits participants to only insuring their own risks through captive insurance companies, unless otherwise approved by the DIFS director.

The bill would add that participants are allowed to insure risks of their affiliates or controlled unaffiliated businesses.

MCL 500.4667

House Bill 6104 would modify several requirements for forming and maintaining a captive insurance company in Michigan.

Offering worker's compensation insurance

Currently, the code prohibits captive insurers from offering several types of instance, including worker's compensation insurance.

The bill would specify that captive insurers are prohibited from offering *first-dollar* worker's compensation insurance.

Access to financial records

The code requires that all financial records of a captive insurance company are required to be available for inspection by the DIFS director.

The bill would provide that the original financial record could be kept and maintained outside of Michigan if, according to a plan adopted by the company and approved by the director, suitable records are maintained. In addition, the bill would allow the original

financial records to be photographed, reproduced on film, or stored and reproduced electronically.

Application fee and renewal of certificate

The code currently imposes a nonrefundable application fee of \$10,000 on applicants for limited certificate of authority to operate a captive insurer in Michigan. A certificate of authority is valid until March 1 annually, at which time the director can renew it.

The bill would lower the application fee to \$5,000 and provide that each certificate of authority is valid until 90 days after the captive insurer's fiscal year ends. In addition, the bill would require the DIFS director to renew the certificate for any captive insurer upon receiving all required fees, so long as the insurer remains in good standing.

Board meeting requirement

The bill would eliminate a requirement that a captive insurance company hold at least one board of directors meeting, or a managing board meeting for limited liability companies, in Michigan each year.

MCL 500.4603

House Bill 6106 would add a requirement that captive insurance companies file audited financial statements prepared by an independent public accountant with the DIFS director within five months of the end of the company's fiscal year. The accountant would be required to be an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in good standing in each state in which they are licensed to practice.

In addition, the bill would change the date by which captive insurance companies are required to pay renewal fees from March 1 annually to within 90 days of the end of the company's fiscal year.

MCL 500.4621 and 500.4625

BACKGROUND AND DISCUSSION:

Generally speaking, a captive insurance company is an insurance company that is wholly owned and controlled by those it insures. This allows those that form captive insurance companies to obtain coverage for their unique risks, have greater control over the terms of their policy, and maintain stability in pricing, among other benefits.²

Michigan began regulating captive insurance companies in 2008 after the creation of chapters 46, 47, and 48 of the Insurance Code.³ According to committee testimony, there are currently 27 captive insurers domiciled (based) in Michigan.⁴

² <https://www.captive.com/captives-101/what-is-captive-insurance>

³ <https://www.legislature.mi.gov/documents/2007-2008/billanalysis/Senate/pdf/2007-SFA-1061-N.pdf>

⁴ <https://www.michigan.gov/difs/forms/insurance/captive/michigan-domestic-captive-insurance-companies>

According to supporters of the bills, the bills are meant to modernize and update Michigan's laws relating to captive insurers. Supporters argue that the updates will make Michigan more competitive in drawing new insurers to be domiciled in Michigan, while maintaining sufficient regulation and oversight.

FISCAL IMPACT:

House Bill 6099 would have an indeterminate, but likely minimal, fiscal impact on the Department of Insurance and Financial Services. The bill would expand the definition of *sponsor*, which would likely increase the number of captive insurance companies that DIFS would be required to review. Any additional activities required of DIFS would likely be absorbed by existing department resources. The bill would have no fiscal impact on any other units of state or local government.

House Bill 6102 would reduce the application processing fee for special purpose financial captives (SPFCs) from \$10,000 to \$5,000. Currently, no SPFCs exist in Michigan, so this bill would have minimal to no fiscal impact on DIFS.

House Bill 6104 would reduce the application processing fee for captive insurance companies from \$10,000 to \$5,000. DIFS would likely experience a decrease in revenue, but the amount of revenue would depend on the number of applications.

House Bills 6100, 6101, 6103, and 6106 would have no fiscal impact on any units of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.