

HOUSE BILL NO. 6102

November 13, 2024, Introduced by Reps. Neyer, Brenda Carter, Young, Pohutsky, McFall, O'Neal, Tyrone Carter, Neeley, Morgan, Dievendorf, McKinney, Fitzgerald, Brabec and Scott and referred to the Committee on Insurance and Financial Services.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 4705 (MCL 500.4705), as added by 2008 PA 29.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4705. (1) A captive insurance company, a captive LLC, or
2 a company otherwise qualified as an authorized insurer may apply to
3 the ~~commissioner~~**director of the department** for a limited
4 certificate of authority to transact insurance or reinsurance
5 business as authorized by this chapter. An SPFC only may insure or
6 reinsure the risks of its counterparty. Notwithstanding any other

1 provision of this chapter, an SPFC may purchase reinsurance to cede
2 the risks assumed under the SPFC contract as approved by the
3 ~~commissioner~~**director of the department**.

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

6 (a) Obtain from the ~~commissioner~~**director** a limited
7 certificate of authority authorizing it to conduct insurance or
8 reinsurance business, or both, in this state.

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

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

12 (d) File with the ~~commissioner~~**director of the department** the
13 name and address of a resident registered agent designated to
14 accept service of process and to otherwise act on its behalf in
15 this state. The designation ~~shall remain~~**remains** in force ~~as long~~
16 ~~as~~**while** any liability remains within the state.

17 (e) Provide ~~such~~ documentation of the insurance securitization
18 as requested by the ~~commissioner~~**director of the department**
19 immediately ~~upon~~**on** the closing of the insurance securitization
20 transaction, including an opinion of legal counsel with respect to
21 compliance with this chapter and any other applicable laws as of
22 the effective date of the insurance securitization transaction and
23 a statement under oath of its president and secretary showing its
24 financial condition.

25 (f) Provide a complete set of documentation of the insurance
26 securitization to the ~~commissioner~~**director of the department**
27 shortly following closing of the insurance securitization
28 transaction.

29 (3) Before granting a limited certificate of authority for an

1 SPFC, the ~~commissioner~~**director of the department** shall require the
2 applicant to submit organizational documents that contain all of
3 the following:

4 (a) The names and places of residence of at least 3
5 incorporators or organizers of whom at least 2 are residents of
6 this state.

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

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

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

11 (e) The manner in which the corporate powers are to be
12 exercised.

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

14 (g) The number of directors or managers, as applicable, that
15 constitute a quorum for the purposes of doing business, which
16 consists of ~~no~~**not** fewer than 1/3 of the managers required by the
17 organizational document.

18 (h) The amount and value of capital stock, if any. Each share
19 of authorized capital stock ~~shall~~**must** have a value of not less
20 than \$1.00.

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

22 (4) The organizational documents of an SPFC may contain a
23 provision providing that a director is not personally liable to the
24 corporation or its shareholders or policyholders for monetary
25 damages for a breach of the director's fiduciary duty. However, the
26 provision does not eliminate or limit the liability of a director
27 for any of the following:

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

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

3 (c) A transaction from which the director derived an improper
4 personal benefit.

5 (5) Before the organizational documents ~~shall be~~**are** effective
6 for the purposes of this chapter, the organizational documents
7 ~~shall~~**must** be submitted to the office of the attorney general for
8 examination. If such documents are found to be in compliance with
9 this chapter, the office of the attorney general shall ~~so~~ certify
10 **the documents** to the ~~commissioner~~**director of the department**. Each
11 applicant for an SPFC limited certificate of authority that submits
12 its organizational documents to the office of the attorney general
13 shall pay to the attorney general the examination fee provided in
14 section 240(2).

15 (6) ~~Prior to~~**Before** granting a limited certificate of
16 authority to any SPFC, the ~~commissioner~~**director of the department**
17 shall require, consider, and review all of the following:

18 (a) Evidence of all of the following:

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

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

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

24 (iv) Other factors considered relevant by the ~~commissioner~~
25 **director of the department** in ascertaining whether the proposed
26 SPFC is able to meet its policy obligations.

27 (v) The applicant SPFC's financial condition, including the
28 source and form of the minimum capitalization to be contributed to
29 the SPFC.

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

(i) Draft documentation or, at the ~~commissioner's~~**director of the department's** discretion, a written summary of all material agreements that are entered into in connection with the SPFC contracts and the insurance securitization, including the names of the counterparty, the nature of the risks to be assumed, and the proposed use of protected cells, if any. The documentation or written summary ~~shall~~**must** also include the maximum amounts, purpose, nature, and the relationship between the various transactions effectuating the insurance securitization.

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

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

(iv) The proposed investment strategy of the SPFC.

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

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

(c) Biographical affidavits in a form prescribed by the ~~commissioner~~**director of the department** of all of the prospective SPFC's officers and directors, providing their legal names, any

names under which they have or are conducting their affairs, and any affiliations with other persons, ~~together with~~ **and** other biographical information as the ~~commissioner~~ **director of the department** may request.

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

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

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

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

(iv) The SPFC securities proposed to be issued are valid legal obligations that are either properly registered with the securities ~~commissioner~~ **director** or constitute an exempt security or form part of an exempt transaction under ~~section 402 of the uniform securities act, 1964 PA 265, MCL 451.802.~~ **sections 201 and 202 of the uniform securities act (2002), 2008 PA 551, MCL 451.2201 and 451.2202.** If the issuer of the SPFC securities is not the SPFC, the SPFC shall obtain and submit an affidavit from the issuer that the securities proposed to be issued satisfy this subparagraph.

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

(e) Any other statements or documents required by the ~~commissioner~~ **director of the department** to evaluate and authorize the SPFC.

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

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

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

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

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

(8) Information submitted ~~pursuant to~~ **under** this section is confidential and is subject to ~~sections~~ **section** 4734. ~~and 4743.~~

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

(a) For an applicant not authorized under chapter 46 and not filing a concurrent application under chapter 46, a nonrefundable fee of ~~\$10,000.00~~ **\$5,000.00** for processing its application for a limited certificate of authority. In addition, the ~~commissioner~~

director of the department may retain legal, financial, actuarial, and examination services from outside the office to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the ~~commissioner~~**director of the department** may use internal resources to examine and investigate the application for a fee of \$2,700.00, which is payable ~~upon~~**on** the filing of the application.

(b) An SPFC shall pay an annual renewal fee by ~~March 1 of each calendar year.~~**not later than 90 days after the SPFC's fiscal year ends.** However, an SPFC that is authorized under both chapter 46 and this chapter and that pays the renewal fee provided in section 4625(5) is exempt from paying this renewal fee. The annual renewal fee ~~shall~~**must** be calculated based ~~upon~~**on** the annual volume of insurance or reinsurance premiums received by the SPFC as follows:

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

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

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

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

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

(vi) For annual premiums equal to or greater than

1 \$40,000,000.00, but less than \$55,000,000.00, the renewal fee ~~shall~~
 2 ~~be~~**is** \$50,000.00.

3 (vii) For annual premiums equal to or greater than
 4 \$55,000,000.00, but less than \$75,000,000.00, the renewal fee ~~shall~~
 5 ~~be~~**is** \$75,000.00.

6 (viii) For annual premiums equal to or greater than
 7 \$75,000,000.00, the renewal fee ~~shall be~~**is** \$100,000.00.

8 (10) The ~~commissioner~~**director of the department** may grant a
 9 limited certificate of authority authorizing the applicant to
 10 transact insurance or reinsurance business as an SPFC in this state
 11 ~~upon~~**on** finding by the ~~commissioner~~**director of the department** of
 12 all of the following:

13 (a) The proposed plan of operation provides a reasonable and
 14 expected successful operation.

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

17 (c) All required fees have been paid.

18 (d) The commissioner of the state of domicile of each
 19 counterparty has notified the ~~commissioner~~**director of the**
 20 **department** in writing or otherwise provided assurance satisfactory
 21 to the ~~commissioner~~**director of the department** that it has approved
 22 or not disapproved the transaction.

23 (e) The limited certificate of authority authorizing the SPFC
 24 to transact business is limited to the insurance or reinsurance
 25 activities that the SPFC is allowed to conduct ~~pursuant to~~**under**
 26 this chapter.

27 (11) The **director of the department shall annually renew the**
 28 limited certificate of authority ~~shall be renewed annually upon~~**on**
 29 payment of the renewal fee provided for by this section.

1 (12) A foreign captive, ~~upon~~**on** approval of the ~~commissioner,~~
2 **director of the department,** may become an SPFC by complying with
3 ~~all of the provisions of this~~ chapter. After this is accomplished,
4 the foreign captive is entitled to a limited certificate of
5 authority to transact business as an SPFC in this state and is
6 subject to the authority and jurisdiction of this state. It is not
7 necessary for a foreign captive redomesticating into this state to
8 merge, consolidate, transfer assets, or otherwise engage in another
9 reorganization, other than as specified in this section.