

# HOUSE BILL NO. 6104

November 13, 2024, Introduced by Reps. Brenda Carter, Miller, Tsernoglou, 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 4603 (MCL 500.4603), as added by 2008 PA 29.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 4603. (1) A captive insurance company, if permitted by  
2       its organizational documents, may apply to the ~~commissioner~~  
3       **director** for a limited certificate of authority to do any and all  
4       insurance authorized ~~by~~ **under** this chapter except **first-dollar**  
5       worker's compensation insurance, long-term care insurance, critical  
6       care insurance, personal automobile insurance, or homeowners

insurance, or any component of these coverages. A captive insurance company is subject to all of the following:

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

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

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

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

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

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

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

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

~~(c)~~ **(b)** Maintain its principal place of business in this

1 state, or for a branch captive insurance company, maintain the  
 2 principal place of business for its branch operations in this  
 3 state.

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

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

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

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

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

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

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

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

22 (g) The number of directors or managers, as applicable, that  
 23 constitute a quorum for the purposes of doing business, which ~~shall~~  
 24 **must** consist of ~~no~~**not** fewer than 1/3 of the directors or managers.

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

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

29 (4) The organizational documents of a proposed captive

insurance company may contain a provision providing that a director is not personally liable to the corporation or its shareholders or policyholders for monetary damages for a breach of the director's fiduciary duty. However, the provision does not eliminate or limit the liability of a director for any of the following:

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

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

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

(5) Before the organizational documents ~~shall be~~ **are** effective for the purposes of this chapter, the organizational documents ~~shall~~ **must** be submitted to the office of the attorney general for examination. If such documents are found to be in compliance with this chapter, the office of the attorney general shall ~~so~~ certify **the documents** to the ~~commissioner~~ **director**. Each applicant for a captive insurance company limited certificate of authority that submits its organizational documents to the office of the attorney general shall pay to the attorney general the examination fee provided in section 240(2).

(6) ~~Prior to~~ **Before** granting a limited certificate of authority to ~~any~~ **an** applicant, the ~~commissioner~~ **director** shall require, consider, and review all of the following:

(a) A statement acknowledging that all financial records of the captive insurance company, including records pertaining to protected cells, if applicable, ~~shall~~ **must** be made available for inspection or examination by the ~~commissioner~~ **director**. **The original financial records may be kept and maintained outside of**

1 this state if, according to a plan adopted by the management of the  
2 captive insurance company and approved by the director, it  
3 maintains suitable records. The original financial records may be  
4 photographed, reproduced on film, or stored and reproduced  
5 electronically.

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

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

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

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

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

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

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

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

28 (j) For limited liability company applicants, a certificate of  
29 status demonstrating that the limited liability company has been

1 formed ~~pursuant to~~**under** the Michigan limited liability company  
 2 act, 1993 PA 23, MCL 450.4101 to 450.5200, and is in good standing.

3 (k) ~~Such other~~**Other** factors or documentation considered  
 4 relevant by the ~~commissioner~~**director**.

5 (7) The ~~commissioner~~**director** shall issue a limited  
 6 certificate of authority to an applicant if, after reviewing the  
 7 documents and information provided ~~pursuant to~~**under** this chapter,  
 8 the ~~commissioner~~**director** finds that the documents and statements  
 9 filed by the applicant comply with this chapter, the applicant  
 10 meets the standards in this chapter and will promote the general  
 11 good of ~~the~~**this** state, and all required fees have been paid. The  
 12 limited certificate of authority ~~shall authorize~~**authorizes** the  
 13 applicant to do business in this state until ~~March 1,~~**90 days after**  
 14 **its fiscal year ends**, at which time the ~~commissioner may~~**director**  
 15 **shall** renew the limited certificate of authority **upon receipt of**  
 16 **all required fees if the captive insurance company remains in good**  
 17 **standing.**

18 (8) Information submitted ~~pursuant to~~**under** this section is  
 19 confidential as provided in section 4609.

20 (9) An applicant shall pay to the office a nonrefundable  
 21 ~~\$10,000.00~~**\$5,000.00** fee for processing its application for a  
 22 limited certificate of authority. In addition, the ~~commissioner~~  
 23 **director** may retain legal, financial, and examination services from  
 24 outside the ~~office~~**department** to examine and investigate the  
 25 application, the reasonable cost of which may be charged against  
 26 the applicant, or the ~~commissioner~~**director** may use internal  
 27 resources to examine and investigate the application for a  
 28 \$2,700.00 fee.

29 (10) ~~Upon~~**On** approval of the ~~commissioner~~**director**, a foreign

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