

## THE INSURANCE CODE OF 1956 (EXCERPT)

### Act 218 of 1956

#### CHAPTER 46

#### CAPTIVE INSURANCE COMPANIES

##### 500.4601 Definitions.

Sec. 4601. As used in this chapter:

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

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

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

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

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

(f) "Branch captive insurance company" means an alien captive insurance company authorized by the director to transact the business of insurance in this state through a business unit with a principal place of business in this state.

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

(h) "Captive insurance company" means a pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company authorized under this chapter. For purposes of this chapter, a branch captive insurance company must be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the director.

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

(j) "Controlled unaffiliated business" means a company to which all of the following apply:

(i) The company is not in the corporate system of a parent and affiliated companies.

(ii) The company has an existing contractual relationship with a parent or affiliated company.

(iii) The company has risks managed by a captive insurance company in accordance with this chapter.

(k) "Foreign captive insurer" means an insurer formed under the laws of the District of Columbia, or a state, commonwealth, territory, or possession of the United States other than this state.

(l) "GAAP" means generally accepted accounting principles.

(m) "Industrial insured" means an insured to which all of the following apply:

(i) The insured procures insurance by use of the services of a full-time employee acting as a risk manager or insurance manager or utilizing the services of a regularly and continuously qualified insurance consultant.

(ii) The insured's aggregate annual premiums for insurance on all risks total at least \$25,000.00.

(iii) The insured has at least 25 full-time employees.

(n) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(o) "Industrial insured group" means a group that meets either of the following criteria:

(i) The group is a group of industrial insureds that collectively own, control, or hold, with power to vote, all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer or limited liability company or have complete voting control over an industrial insured captive

insurance company incorporated as a mutual insurer.

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

(p) "Irrevocable letter of credit" means a letter of credit that meets the description in section 1105(c).

(q) "Member organization" means an individual, corporation, limited liability company, partnership, or association that belongs to an association.

(r) "Office" means the department.

(s) "Organizational document" means the articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that create a legal entity or prescribe its existence.

(t) "Parent" means a corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting interests of a company.

(u) "Participant" means an entity as described in section 4667, and any affiliates of the entity, that are insured by a sponsored captive insurance company, if the recovery of the participant is limited through a participant contract to the assets of a protected cell.

(v) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the recovery of the participant to the assets of a protected cell.

(w) "Protected cell" means a segregated account established and maintained by a sponsored captive insurance company for 1 participant.

(x) "Pure captive insurance company" means a company that insures risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination of its parent, affiliated companies, and controlled unaffiliated businesses.

(y) "Qualified United States financial institution" means that term as defined in section 1101.

(z) "Safe, reliable, and entitled to public confidence" means that term as defined in section 116.

(aa) "Special purpose captive insurance company" means a captive insurance company that is authorized under this chapter and chapter 47 that does not meet the definition of any other type of captive insurance company defined in this section.

(bb) "Sponsor" means an entity that meets the requirements of section 4665 and is approved by the director to provide all or part of the capital and retained earnings required by applicable law and to organize and operate a sponsored captive insurance company.

(cc) "Sponsored captive insurance company" means a captive insurance company in which the minimum capital and retained earnings required by applicable law is provided by 1 or more sponsors, that is authorized under this chapter, that insures the risks of separate participants through the participant contract, and that segregates each participant's liability through 1 or more protected cells.

(dd) "Surplus" means unassigned funds for an entity using statutory accounting principles, with capital and surplus including all capital stock, paid in capital and contributed surplus, and other surplus funds with corresponding items under GAAP consisting of retained earnings and accumulated other comprehensive income, with capital and retained earnings including all capital stock, additional paid in capital, and other equity funds.

(ee) "Treasury rates" means the United States treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.

(ff) "Voting security" includes any security convertible into or evidencing the right to acquire a voting security.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008;—Am. 2016, Act 276, Imd. Eff. July 1, 2016.

**Compiler's note:** For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

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**Popular name:** Act 218

**500.4603 Limited certificate of authority; application; conditions; organizational documents; submission; contents; liability of director; submission of documents to attorney general for examination; duty of commissioner to require, consider, and review certain documents and factors; issuance of certificate; confidentiality; fee; foreign captive insurance company as captive insurance company.**

Sec. 4603. (1) A captive insurance company, if permitted by its organizational documents, may apply to

the commissioner for a limited certificate of authority to do any and all insurance authorized by this chapter except worker's compensation insurance, long-term care insurance, critical 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.

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

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

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

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

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

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

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

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

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

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

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

(i) The term of existence of the entity.

(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 effective for the purposes of this chapter, the organizational documents shall 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 to the commissioner. 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 granting a limited certificate of authority to any applicant, the commissioner 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 be made available for inspection or examination by the commissioner.

(b) A plan of operation, including, if applicable, a business plan demonstrating how the applicant will

account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report the experience to the commissioner.

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

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

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

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

(g) Biographical affidavits in the format prescribed by the commissioner for all officers and directors.

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

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

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

(k) Such other factors or documentation considered relevant by the commissioner.

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

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

(9) An applicant shall pay to the office a nonrefundable \$10,000.00 fee for processing its application for a limited certificate of authority. In addition, the commissioner may retain legal, financial, 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 may use internal resources to examine and investigate the application for a \$2,700.00 fee.

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

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

#### **500.4607 Adoption of name by captive insurance company.**

Sec. 4607. A captive insurance company shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this state.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

#### **500.4609 Confidentiality requirements.**

Sec. 4609. (1) Information and testimony submitted or furnished to the office pursuant to this chapter, examination reports, preliminary examination reports or results, and the office's work papers, correspondence, memoranda, reports, records, and other written or oral information related to an examination report or an investigation shall be confidential, shall be withheld from public inspection, shall not be subject to subpoena, and shall not be divulged to any person, except as provided in this section or with the written consent of the company. If assurances are provided that the information will be kept confidential, the commissioner may disclose confidential work papers, correspondence, memoranda, reports, records, or other information as follows:

(a) To the governor or the attorney general.

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

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

- (d) To law enforcement officials.
- (e) To persons authorized by the Ingham county circuit court to receive the information.
- (f) To persons entitled to receive such information in order to discharge duties specifically provided for in this act.

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

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4611 Issuance of limited certificate of authority; possession and maintenance of unimpaired paid-in capital and retained earnings; form of minimum capitalization; incorporation as nonprofit; unencumbered equity; assets; evidence to be submitted to commissioner; additional capital; branch captive insurance company; security for payment of liabilities; trust fund; payment of dividends; limitation; distributions.**

Sec. 4611. (1) The commissioner shall not issue a limited certificate of authority to a captive insurance company unless the company possesses and maintains unimpaired paid in capital and retained earnings as follows:

- (a) For a pure captive insurance company, not less than \$150,000.00.
- (b) For an association captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than \$400,000.00.
- (c) For an association captive insurance company incorporated as a mutual insurer, not less than \$750,000.00.
- (d) For an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, not less than \$300,000.00.
- (e) For a sponsored captive insurance company, not less than \$500,000.00. However, if the sponsored captive insurance company does not assume any risk, the risks insured by the protected cells are homogeneous, and there are no more than 10 cells, the commissioner may reduce this amount to an amount not less than \$150,000.00.
- (f) For a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured.

(2) Except for a sponsored captive that does not assume any risk, a captive insurance company initially shall possess and after that maintain minimum capitalization as required by subsection (1). All of the minimum initial capitalization shall be in cash. All other funds of the captive insurer in excess of its minimum initial capitalization shall be in the forms as provided by this chapter.

(3) The commissioner shall not issue a limited certificate of authority to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unencumbered equity as follows:

- (a) For a pure captive insurance company, not less than \$250,000.00.
- (b) For a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured.

(4) Net assets required by subsection (3) of a captive insurance company incorporated as a nonprofit corporation shall be in the form of cash, cash equivalent, or an irrevocable letter of credit.

(5) For the purposes of subsections (1) through (4), the commissioner may issue a limited certificate of authority expressly conditioned upon the captive insurance company providing to the commissioner satisfactory evidence of possession of the minimum required unimpaired paid in capital. Until this evidence is provided, the captive insurance company shall not issue any policy, assume any liability, or otherwise provide coverage. The commissioner may revoke the conditional limited certificate of authority without legal recourse by the company if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed 1 year, to be established by the commissioner at the time the conditional limited certificate of authority is issued.

(6) The commissioner may prescribe additional capital based upon the type, volume, and nature of insurance business transacted. This additional capital shall be in the form of cash, cash equivalent, an irrevocable letter of credit, or securities invested as provided in section 4639.

(7) For a branch captive insurance company, as security for the payment of liabilities attributable to branch



operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security shall be no less than the capital and retained earnings required by this chapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations; however, the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer.

(8) A captive insurance company shall not pay a dividend out of, or other distribution with respect to, capital or retained earnings, in excess of the limitations set forth in section 1343, without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon retention, at the time of each payment, of capital or retained earnings in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner. A captive insurance company incorporated as a nonprofit corporation shall not make any distributions without the prior approval of the commissioner.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4619 Pure captive insurance company or sponsored captive insurance company; association captive insurance company or industrial insured captive insurance company; incorporation as stock insurer or limited liability company; issuance of capital stock or membership interests; formation of captive insurance company as corporation or nonprofit corporation or as limited liability company; state residency; chapter as controlling provision of law.**

Sec. 4619. (1) A pure captive insurance company or a sponsored captive insurance company may be any of the following:

- (a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (b) Incorporated as a public benefit, mutual benefit, or religious nonprofit corporation with members in accordance with the Michigan nonprofit corporation act of 1982, 1982 PA 162, MCL 450.2101 to 450.3192.
- (c) Organized as a limited liability company with its capital divided into capital accounts and held by its members.

(2) An association captive insurance company or an industrial insured captive insurance company may be any of the following:

- (a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (b) Organized as a limited liability company with its capital divided into capital accounts and held by its members.
- (c) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(3) The capital stock or membership interests of a captive insurance company incorporated as a stock insurer or limited liability company shall be issued at not less than par value.

(4) For a captive insurance company formed as a corporation or a nonprofit corporation, at least 1 of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(5) For a captive insurance company formed as a limited liability company, at least 1 of the managers of the captive insurance company shall be a resident of this state.

(6) A captive insurance company formed as a limited liability company has the privileges and is subject to the provisions of the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, for limited liability companies, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, for limited liability companies, and a provision of this chapter, this chapter controls.

(7) All captive insurers formed as corporations under this chapter are considered bodies corporate and politic, in fact and in name, are subject to all of the provisions of law in relation to corporations as far as they are applicable, and have the corporate powers provided for in chapter 52.

(8) This act's provisions pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in

carrying out any of the transactions described in those provisions.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

#### **500.4621 Reports and inquiries.**

Sec. 4621. (1) A captive insurance company is not required to make an annual report except as provided in this chapter.

(2) Annually, not later than 60 days after the end of a captive insurance company's fiscal year, the captive insurance company shall submit to the director a report of its financial condition, verified by oath of 2 of its executive officers. A captive insurance company may report using generally accepted accounting principles or, with the approval of the director, international financial reporting standards or statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the director for the type of insurance and kinds of insurers to be reported on, and as supplemented by additional information required by the director. The director may prescribe the form and manner in which captive insurance companies shall report. Information submitted under this section is confidential as provided in section 4609.

(3) The director may address inquiries to a captive insurer concerning the insurer's activities or conditions or any other matter connected with the insurer's transactions. An insurer addressed under this subsection shall reply in writing to each inquiry from the director within 30 days after receipt of the inquiry.

(4) The director may require interim reporting on any of the captive insurer's business, including any matter, condition, or requirement regulated by this chapter. The director shall prescribe the format and content of the interim report.

(5) A captive insurer that fails to file a report required by this section, or fails to reply within 30 days to an inquiry of the director, is subject to a civil penalty of not less than \$1,000.00 or more than \$5,000.00 per occurrence, and an additional \$50.00 for every day that the captive insurer fails to file the report or reply to the inquiry. In addition, a captive insurer that fails to file a report, or fails to make a satisfactory reply to an inquiry of the director concerning the captive insurer's affairs, is subject to proceedings under section 4637.

(6) A pure captive insurance company may make written application for filing the annual report on a fiscal year end that is consistent with the parent company's fiscal year. The annual report must be on a form prescribed by the director.

(7) A branch captive insurance company shall file with the director 60 days after the fiscal year end a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by 2 of its executive officers. If the director is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the director may waive the requirement for completion of the captive annual statement.

(8) A captive insurance company shall annually submit to the director the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the reserves are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The actuarial opinion required by this section must be submitted in a form prescribed by the director. For purposes of this section, "qualified actuary" means a member of either the American Academy of Actuaries or the Society of Actuaries who also meets any other criteria that the director may establish by rule, regulation, or order.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008;—Am. 2018, Act 397, Eff. Mar. 29, 2019.

**Popular name:** Act 218

#### **500.4623 Sponsored captive insurance company; discount of reserves.**

Sec. 4623. (1) A sponsored captive insurance company may discount its loss and loss adjustment expense reserves at the lesser of treasury rates or the captive insurance company's actual rate of return applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

(2) The commissioner may disallow the discounting of reserves if a sponsored captive insurance company violates a provision of this act.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

#### **500.4625 Conflict between act and chapter; exemption; applicability of certain sections; expenses and charges of examination; annual renewal fee; other fees; employment of legal counsel; confidentiality.**

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

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

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

(4) The expenses and charges of a captive insurance company examination shall be paid to the state by the captive insurance company or companies examined, and the office shall issue warrants for the proper charges incurred in all examinations. The payments received by the state shall be deposited into the captive insurance regulatory and supervision fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

### **500.4637 Limited certificate of authority; suspension or revocation; findings; best interest of public and policyholders.**

Sec. 4637. (1) The limited certificate of authority of a captive insurance company to conduct an insurance business in this state may be suspended or revoked by the commissioner for any of the following:

(a) Insolvency or impairment of capital or retained earnings.

(b) Failure to meet the requirements of section 4611.

(c) Refusal or failure to submit an annual report, as required by section 4621, or any other report or statement required by law or by order of the commissioner.

(d) Failure to comply with its own charter, bylaws, or other organizational document.



(e) Failure to submit to examination or any legal obligation relative to an examination, as required by section 4625.

(f) Refusal or failure to pay the cost of examination as required by section 4625.

(g) The company is no longer safe, reliable, or entitled to public confidence or is unsound, or is using financial methods and practices in the conduct of its business that render further transaction of insurance by the company in this state hazardous to policyholders, creditors, or the public.

(h) The certificate of authority or equivalent authorization of a branch captive insurance company has been suspended or revoked in the jurisdiction in which the company was formed.

(i) For a captive insurer formed as a limited liability company, the captive insurer is no longer in good standing under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.

(j) The company has failed, after written request by the commissioner, to remove or discharge an officer or director whose record of business conduct does not satisfy the requirements of section 4603 or who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(k) The company has failed, within 30 days after notice of delinquency from the commissioner, to cure its failure to pay taxes, fees, assessments, or expenses required by this act.

(l) The captive insurance company has failed for an unreasonable period to pay any final judgment rendered against it in this state on any policy, bond, recognizance, or undertaking issued or guaranteed by it.

(m) Failure otherwise to comply with the laws of this state.

(2) If the commissioner finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in subsection (1), the commissioner may suspend or revoke the captive insurance company's limited certificate of authority if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company, notwithstanding any other provision of this act.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4639 Association captive insurance company and industrial insured captive insurance company; compliance with investment requirements; pure captive insurance company and special purpose captive insurance company not subject to restrictions on allowable investments; exception; loans; combining of assets for purposes of investment; sponsored captive insurance companies to be in compliance with chapter 9; waiver of investment requirements.**

Sec. 4639. (1) An association captive insurance company and an industrial insured captive insurance company insuring the risks of an industrial insured group shall comply with the investment requirements contained in sections 910 to 947. Notwithstanding any other provision of this chapter or in chapter 9, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(2) A pure captive insurance company and a special purpose captive insurance company are not subject to any restrictions on allowable investments contained in chapter 9 except that the commissioner may request a written investment plan and may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(3) Only a pure captive insurance company may make loans to its parent company or affiliates and only upon the prior written approval of the commissioner evidenced by a note in a form approved by the commissioner. Loans of minimum capital and retained earnings required to be held by section 4611(1) are prohibited.

(4) Notwithstanding the provisions of sections 4663 and 4665, the assets of 2 or more protected cells may be combined for purposes of investment upon written agreement of the participants, and this combination shall not be construed as defeating the segregation of those assets for accounting or other purposes.

(5) Sponsored captive insurance companies shall comply with the investment requirements contained in chapter 9, as applicable; provided, however, that compliance with such investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section 4641(2) or to the extent otherwise considered reasonable and appropriate by the commissioner. Sections 841 and 842 shall apply to sponsored captive insurance companies except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this act, the commissioner may approve the use of alternative reliable methods of valuation and rating.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4641 Reinsurance on risks ceded by other insurer.**

Sec. 4641. (1) A captive insurance company may provide reinsurance, as authorized by this act and with the prior approval of the commissioner, on risks ceded by any other insurer.

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of sections 1103 and 1105. A captive insurer shall not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with sections 1103 and 1105.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4643 Rating organization; joining not required.**

Sec. 4643. A captive insurance company shall not be required to join a rating organization.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4645 Plan, pool, association, or guaranty or insolvency fund; joining, contributing to, or receiving benefit from prohibited.**

Sec. 4645. A captive insurance company shall not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state. A captive insurance company, its insured, its parent, or any affiliated company or any member organization of its association, shall not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4651 Rules.**

Sec. 4651. The commissioner may promulgate pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, rules, and may issue regulations and orders relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this chapter.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4655 Applicability of terms and conditions in chapter 81 pertaining to administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers; payment of expenses or claims from assets of protected cell or from capital and surplus of sponsored captive insurance company.**

Sec. 4655. (1) Except as otherwise provided in this section, the terms and conditions under chapter 81 pertaining to administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers apply in full to captive insurers authorized under this chapter.

(2) For a sponsored captive insurance company, both of the following apply:

(a) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell.

(b) The capital and surplus of the sponsored captive insurance company shall at all times be available to pay expenses of or claims against the sponsored captive insurance company and shall not be used to pay expenses or claims attributable to a protected cell.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4659 Exercise of control of risk management function by parent or affiliated company; standards.**

Sec. 4659. The commissioner by rule, regulation, or order may establish standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. Until such time as the standards are established, the commissioner may by temporary order grant authority to a pure captive insurance company to insure risks.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4663 Sponsored captive insurance company; formation; establishment and maintenance of protected cell to insure risks; conditions.**

Sec. 4663. (1) One or more sponsors may form a sponsored captive insurance company under this chapter.

(2) A sponsored captive insurance company authorized under this chapter may establish and maintain 1 or more protected cells to insure risks of 1 or more participants, subject to all of the following:

(a) The shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner.

(b) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the commissioner.

(c) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct.

(d) No sale, exchange, or other transfer of assets shall be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells.

(e) No sale, exchange, or other transfer of assets shall be made from a protected cell to a sponsor or participant unless the captive insurer has notified the commissioner in writing at least 30 days, or a shorter period as the commissioner allows, prior to such transaction and the commissioner has not disapproved the transaction during that period.

(f) No dividend or distribution shall be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall the approval be given if the dividend or distribution would result in insolvency or impairment with respect to a protected cell.

(g) A sponsored captive insurance company shall file annually with the commissioner financial reports the commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell.

(h) A sponsored captive insurance company shall notify the commissioner in writing within 10 business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations.

(i) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell requires the commissioner's prior written approval.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

**Popular name:** Act 218

**500.4665 Sponsor of sponsored captive insurance company; authorized insurer; risk retention group as sponsor or participant prohibited; business written by sponsored captive insurance company with respect to protected cell; requirements.**

Sec. 4665. A sponsor of a sponsored captive insurance company shall be an insurer authorized pursuant to the laws of a state or the District of Columbia, an insurance holding company that controls an insurer authorized pursuant to the laws of a state or the District of Columbia and subject to registration pursuant to the insurance holding company system laws of the state of domicile of the insurer, a reinsurer authorized or approved pursuant to the laws of a state or the District of Columbia, or a captive insurance company authorized pursuant to this chapter. A risk retention group shall not be 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 shall meet at least 1 of the following:

(a) Be fronted by an insurance company authorized pursuant to the laws of any state or any jurisdiction if the insurance company is a wholly owned subsidiary of an insurance company authorized pursuant to the laws of any state or any jurisdiction.

(b) Be reinsured by a reinsurer authorized or approved by this state.

(c) 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 commissioner. The amount of security provided by the trust fund shall 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 commissioner may require the sponsored captive to increase the funding of a trust established pursuant to this subdivision. A trust and trust instrument maintained pursuant to this subdivision shall be in a form and upon terms approved by the commissioner.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

Popular name: Act 218

**500.4667 Sponsored captive insurance companies; business entities as participants.**

Sec. 4667. (1) An association, a corporation, a limited liability company, a partnership, a trust, or other business entity may be a participant in a sponsored captive insurance company authorized pursuant to this chapter.

(2) A sponsor may be a participant in a sponsored captive insurance company.

(3) A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.

(4) A participant shall insure only its own risks through a sponsored captive insurance company, unless otherwise approved by the commissioner.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

Popular name: Act 218

**500.4669 Sponsored captive insurance companies; applicability of terms and conditions in chapter 48 pertaining to protected cell insurance company.**

Sec. 4669. (1) Except as otherwise provided in this chapter, the terms and conditions provided in chapter 48 relating to a protected cell insurance company apply in full to a sponsored captive insurance company.

(2) Except as otherwise provided, all of the following apply to a sponsored captive insurance company:

(a) A protected cell need not be established solely for the purpose of effecting insurance securitizations, but may be established for the purpose of isolating the expenses and claims of a sponsored captive insurance company participant.

(b) The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a participant's risks to the participant's protected cell.

(c) Section 4805 does not apply.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

Popular name: Act 218

**500.4673 Captive insurance regulatory and supervision fund; creation; deposit of certain money, assets, fees, and assessments; money remaining in fund at close of fiscal year; commissioner as administrator for auditing purposes.**

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

(2) The state treasurer may receive money or other assets from any source for deposit into the captive insurance regulatory and supervision fund. All fees and assessments received by the department of treasury or the office pursuant to the administration of this chapter and chapter 47 shall be credited to the captive insurance regulatory and supervision fund. All fees received by the department of treasury from reinsurers who assume risk only from captive insurance companies shall be deposited into the captive insurance regulatory and supervision fund. All fines and administrative penalties ordered under this chapter or chapter 47 shall be deposited directly into the captive insurance regulatory and supervision fund. The state treasurer shall direct the investment of the captive insurance regulatory and supervision fund. The state treasurer shall credit to the captive insurance regulatory and supervision fund interest and earnings from fund investments.

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

(4) The commissioner shall be the administrator of the captive insurance regulatory and supervision fund for auditing purposes. Money in the captive insurance regulatory and supervision fund shall be expended by the commissioner, upon appropriation, for the purpose of administering chapters 18 and 47 and this chapter and for reasonable expenses incurred in promoting the captive insurance industry in this state.

**History:** Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

Popular name: Act 218