

**THE INSURANCE CODE OF 1956 (EXCERPT)**  
**Act 218 of 1956**  
**CHAPTER 47**  
**SPECIAL PURPOSE FINANCIAL CAPTIVES**

**500.4701 Definitions.**

Sec. 4701.

As used in this chapter:

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

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

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

(d) "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. This presumption may be rebutted by a showing that control does not exist. However, for purposes of this chapter, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.

(e) "Counterparty" means an SPFC's parent or affiliated company, or, subject to the prior approval of the director, a nonaffiliated company as ceding insurer to the SPFC contract.

(f) "Fair value" means the following:

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

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

(g) "Foreign captive" means a captive 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.

(h) "Insolvency" or "insolvent" means 1 or more of the following:

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

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

(iii) That the Ingham County circuit court has issued an order as provided for in section 8113, 8117, or 8120 in connection with a delinquency proceeding under chapter 81 instituted against the SPFC.

(i) "Insurance securitization" means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements by which all of the following apply:

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

(ii) The proceeds of the issuance of the SPFC securities secure the obligations of the SPFC under 1 or more SPFC contracts with a counterparty.

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

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

(k) "Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other agents to act on behalf of the SPFC.

- (l) "Office" means the department.
- (m) "Organizational document" means the SPFC's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the SPFC as a legal entity or prescribes its existence.
- (n) "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 securities of an SPFC.
- (o) "Permitted investments" means those investments that meet the qualifications in section 4727(1).
- (p) "Preferred securities" means securities, whether stock or debt, issued by an SPFC to the issuer of the SPFC securities in exchange for some or all of the proceeds of the issuance of the SPFC securities.
- (q) "Protected cell" means a segregated account established and maintained by an SPFC for 1 or more SPFC contracts that are part of a single securitization transaction as further provided for in chapter 48.
- (r) "Qualified United States financial institution" means that term as defined in section 1101.
- (s) "Reserves" means that term as used in chapter 8.
- (t) "Safe, reliable, and entitled to public confidence" means that term as defined in section 116.
- (u) "Securities" means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.
- (v) "Securities commissioner" means the securities administrator in the department of licensing and regulatory affairs.
- (w) "SPFC" or "special purpose financial captive" means a captive insurance company, a captive LLC, or a company otherwise qualified as an authorized insurer that has received a limited certificate of authority from the director for the purposes provided for in this chapter.
- (x) "SPFC contract" means a contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.
- (y) "SPFC securities" means the securities issued pursuant to an insurance securitization, the proceeds of which are used in the manner described in subdivision (i).
- (z) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with accounting practices and procedures designated by the director.
- (aa) "Third party" means a person unrelated to an SPFC or its counterparty, or both, that has been aggrieved by a decision of a director regarding that SPFC or its activities.

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

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

**Popular Name:** Act 218

### **500.4703 Conflict between provision of act and provision of chapter; chapter as controlling; sections applicable to SPFCs; exemption.**

Sec. 4703.

(1) No provisions of this act, other than those specifically referenced in this chapter, apply to an SPFC, 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) Sections 210 to 222, 226 to 238, 244 to 251, 2057 to 2062, and 4673 and chapter 45 apply to SPFCs.

(3) The commissioner, by rule, regulation, or order, may exempt an SPFC or its protected cells, 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.

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

**Popular Name:** Act 218

**500.4705 Limited certificate of authority to transact insurance or reinsurance; transaction of business by SPFC; limitation; requirements; submission of documents to commissioner; contents; liability of director; submission of documents to office of attorney general; evidence and documents required, considered, and reviewed by commissioner; additional filings; confidentiality; transaction of business; fees; limited certificate of authority granted after certain findings; renewal; foreign captive as SPFC.**

Sec. 4705.

(1) A captive insurance company, a captive LLC, or a company otherwise qualified as an authorized insurer may apply to the commissioner for a limited certificate of authority to transact insurance or reinsurance business as authorized by this chapter. An SPFC only may insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this chapter, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the commissioner.

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

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

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

(c) Maintain its principal place of business 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 the state.

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

(f) Provide a complete set of documentation of the insurance securitization to the commissioner shortly following closing of the insurance securitization transaction.

(3) Before granting a limited certificate of authority for an SPFC, the commissioner shall require the applicant to submit organizational documents that contain all of 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 consists of no fewer than 1/3 of the managers required by the organizational document.

(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 an SPFC 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 an SPFC 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 SPFC, the commissioner shall require, consider, and review all of the following:

(a) Evidence of all of the following:

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

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

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

(iv) Other factors considered relevant by the commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations.

(v) The applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to 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 include all of the following:

(i) Draft documentation or, at the commissioner'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 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 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 other biographical information as the commissioner 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 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 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 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. 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, 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 this chapter.

(e) Any other statements or documents required by the commissioner 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 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, and how it reports those paid losses, reserves, and expenses to the commissioner.

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

(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 this section is confidential and is subject to sections 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 for processing its application for a limited certificate of authority. In addition, the commissioner 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 may use internal resources to examine and investigate the application for a fee of \$2,700.00, which is payable upon the filing of the application.

(b) An SPFC shall pay an annual renewal fee by March 1 of each calendar year. 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 be calculated based upon 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 \$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 \$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 \$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 \$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 \$40,000.00.

(vi) 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.

(vii) 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.

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

(10) The commissioner may grant a limited certificate of authority authorizing the applicant to transact insurance or reinsurance business as an SPFC in this state upon finding by the commissioner of all of the following:

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

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

(c) All required fees have been paid.

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

(e) The limited certificate of authority authorizing the SPFC to transact business is limited to the insurance or reinsurance activities that the SPFC is allowed to conduct pursuant to this chapter.

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

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

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

**Popular Name:** Act 218

**500.4707 SPFC; establishment; form of organization; documents; limitation; adoption of name; applicability of certain provisions in carrying out transactions; state residency; privileges and provisions applicable to limited liability company; corporate powers.**

Sec. 4707.

(1) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the commissioner.

(2) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this chapter and activities it conducts pursuant to any other chapter in this act.

(3) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this state.

(4) The provisions of this act pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by an SPFC in carrying out any of the transactions described in those provisions.

(5) At least 1 of the members of the management of the SPFC shall be a resident of this state.

(6) An SPFC or captive LLC 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. Nothing contained in this provision with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the commissioner.

(7) All SPFCs 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.

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



**500.4709 Minimum initial capitalization; additional capitalization; maintenance of deposits.**

Sec. 4709.

(1) An SPFC initially shall possess and after that maintain minimum capitalization of not less than \$250,000.00. All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the forms as provided in section 4727.

(2) Additional capitalization for the SPFC shall be determined, if so required, by the commissioner after giving due consideration to the SPFC's business plan, feasibility study, pro formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the commissioner.

(3) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 initially shall possess, and after that maintain, minimum capital and surplus in compliance with sections 408 to 410a.

(4) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 shall maintain deposits as specified in section 411.

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

**Popular Name:** Act 218

**500.4711 SPFC; insuring or reinsuring risks insured or reinsured by counterparty; contract for assumption of risk or indemnification of loss; related and incidental contracts; submission of actuarial opinion.**

Sec. 4711.

(1) An SPFC may insure or reinsure only the risks insured or reinsured by a counterparty.

(2) An SPFC shall not issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third party reinsurers through the purchase of reinsurance or retrocession protection.

(3) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this chapter. Those activities may include, but are not limited to: entering into SPFC contracts; issuing securities of the SPFC in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, or retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this chapter or the plan of operation submitted to the commissioner.

(4) An SPFC shall annually submit to the commissioner 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 shall be submitted in a form prescribed by the commissioner. 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 commissioner may establish by rule, regulation, or order.

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

**Popular Name:** Act 218

**500.4713 Protected cells; creation and use by SPFC; written approval of commissioner; possession of minimum capitalization; fraudulent purpose not inferred.**

Sec. 4713.

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

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

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

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

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

(d) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation submitted to the commissioner. No other attribution of assets or liabilities shall be made by an SPFC between the SPFC's general account and its protected cell or cells. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and all obligations, assets, and liabilities of the SPFC arising out of the related insurance securitization transaction to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell, the performance under an SPFC contract and the related securitization transaction, and any tax benefits, losses, refunds, or credits allocated at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or affiliated company, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the tax allocation agreement, shall reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and proceeds of the insurance securitization transaction that are attributed to a particular protected cell.

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

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

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

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

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

(3) An SPFC contract with or attributable to a protected cell does not take effect without the commissioner's prior written approval. The commissioner may retain legal, financial, and examination services from outside the office to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application the reasonable cost of which may be charged against the applicant up to a maximum of \$1,200.00, or may use both retained services and internal resources.

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

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

**500.4715 Protected cell; consideration as separate person; purposes; distinct name or designation; subject to orders of court; service of process; contract with third party advisor or manager; recourse by creditors; availability of assets; attachment of security interest to protected cell; identification of protected cell assets and liabilities; provisions in contracts or other documentation; income; crediting to or charging against protected cell; investment or reinvestment of amounts; annual report; notification of insolvency.**

Sec. 4715.

(1) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding subsection (1), if an order of conservation, rehabilitation, or liquidation is entered for a counterparty, the SPFC and each protected cell of the SPFC shall be considered separate persons for purposes of any offset undertaken as part of the conservation, rehabilitation, or liquidation, such that any offset of mutual debts and credits between the counterparty and either the SPFC or any protected cell shall not involve the debts and credits of any other protected cell or, if the offset involves a protected cell, the SPFC.

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

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

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

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

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

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

(9) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC counterparty and other creditors of the SPFC that are creditors only to that protected cell and, accordingly, are entitled, in conformity with this chapter, to have recourse to the protected cell assets attributable to that protected cell. Protected cell assets are absolutely protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction or is otherwise incurred for a protected cell, both of the following apply:

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

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

(10) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the



protected cell or to facilitate the insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the commissioner.

(11) An SPFC shall establish administrative and accounting procedures necessary to properly identify the 1 or more protected cells of the SPFC and the assets and liabilities of each protected cell. The directors of an SPFC shall keep protected cell assets and liabilities separate and separately identifiable from the assets and liabilities of the SPFC's general account. The assets and liabilities attributable to 1 protected cell shall be kept separate and separately identifiable from the assets and liabilities attributable to other protected cells.

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

(13) The income, and gains and losses, whether realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income and gains or losses of the SPFC, including income and gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested. The investments in a protected cell or cells shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the SPFC.

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

- (a) Detail the financial experience of each protected cell and the SPFC separately.
- (b) Provide the combined financial experience of the SPFC and all protected cells.
- (c) Account for the financial experience of each protected cell and the SPFC, both separately and on a combined basis, in satisfaction of section 4731(4).

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

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

**Popular Name:** Act 218

## **500.4717 Issuance of SPFC securities.**

Sec. 4717.

(1) An SPFC may issue securities, including SPFC securities and preferred securities, surplus notes, and other forms of financial instruments, subject to and in accordance with applicable law, the SPFC's approved plan of operation, and its organizational documents.

(2) An SPFC, its parent or an affiliated company, its counterparty, or a captive LLC may issue SPFC securities and any other securities necessary to implement the insurance securitization.

(3) Preferred securities may be issued by the SPFC to the issuer of the SPFC securities in connection with the insurance securitization in order to facilitate distributions to service SPFC securities and these preferred securities shall identify the associated protected cell. The SPFC may lawfully account for preferred securities as surplus and not as debt for purposes of statutory accounting.

(4) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(5) Subject to the commissioner's approval, the issuer of the SPFC securities or, if the issuer is a captive LLC, the party controlling the captive LLC, may lawfully account for the SPFC securities as surplus and not as debt for purposes of statutory accounting and submit for the commissioner's prior approval periodic written requests for payments of interest on and repayments of principal of surplus notes.

(6) Surplus notes issued pursuant to this section constitute surplus or contribution notes of the type described in section 8142(1)(h).

(7) The commissioner, without otherwise prejudicing the commissioner's authority, may approve formulas for an ongoing plan of interest payments, principal repayments, or both interest payments and principal repayments, to provide guidance in connection with his or her ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(8) The obligation to repay principal or interest, or both, on the SPFC securities shall reflect, in whole or in part, the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract, either directly or by being secured by assets, including the preferred securities, obtained with the proceeds of the sale of the SPFC securities.

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

**Popular Name:** Act 218

#### **500.4719 Asset management agreements.**

Sec. 4719.

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of the SPFC under the SPFC contract.

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

**Popular Name:** Act 218

#### **500.4721 SPFC contracts; agreements with affiliated companies and third parties; contents of contract; withdrawal of assets or income from trust and transfer to SPFC; approval from counterparty.**

Sec. 4721.

(1) An SPFC, at any given time, may enter into and effectuate an SPFC contract with a counterparty, provided that the SPFC contract meets all of the following:

(a) Complies with the plan of operation submitted to the commissioner.

(b) Obligates the SPFC to indemnify the counterparty for losses.

(c) Provides that contingent obligations of the SPFC under the SPFC contract are securitized through an SPFC insurance securitization and are funded and secured with assets held in trust for the benefit of the counterparty pursuant to this chapter and under agreements contemplated by this chapter and that are invested in a manner that meet the criteria under section 4727.

(2) An SPFC may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the SPFC contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in section 4719.

(3) An SPFC contract shall contain all of the following:

(a) A requirement for the SPFC to enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty.

(b) A stipulation that assets deposited in the trust account shall be valued according to their current fair value and shall consist only of permitted investments.

(c) A requirement for the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the SPFC or another entity.

(d) A requirement that all settlements of account between the counterparty and the SPFC be made in cash or its

equivalent.

(e) A stipulation that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the SPFC contract, are under the control of the counterparty and may be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract, and shall be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of section 4741, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:

(i) To transfer all of the assets into 1 or more trust accounts for the benefit of the counterparty pursuant to the terms of the SPFC contract and in compliance with this chapter.

(ii) To pay any other incurred and paid amounts that the counterparty claims are due pursuant to the terms of the SPFC contract and in compliance with this chapter.

(4) The SPFC contract may contain provisions that give the SPFC the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the SPFC, provided that at the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other assets having a fair value equal to the fair value of the assets withdrawn and that meet the provisions of section 4727; and after the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract is no less than an amount needed to satisfy the funded requirement of the SPFC contract. The counterparty shall be the sole judge as to the application of these provisions but shall not unreasonably nor arbitrarily withhold its approval.

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

**Popular Name:** Act 218

#### **500.4723 Insurance securitization; not considered as insurance producers or brokers.**

Sec. 4723.

SPFC securities and preferred securities issued pursuant to an insurance securitization are not, and shall not be considered to be, insurance or reinsurance contracts. An investor in these securities or a holder or issuer of these securities, by sole means of this investment, holding, or issuance, is not, and shall not be considered to be, transacting the business of insurance in this state. The underwriter's placement agent or selling agent and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this chapter shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with them.

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

**Popular Name:** Act 218

#### **500.4725 SPFC; duty to ensure contracts fulfill certain requirements.**

Sec. 4725.

In fulfilling its function, the SPFC shall adhere to the following and, to the extent of its powers, shall ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with all of the following:

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the SPFC contract with the counterparty, the issuance of preferred securities, or the insurance securitization and other related agreements.

(b) Assets held by an SPFC in trust shall be valued at their fair value.

(c) The proceeds from the sale of SPFC securities pursuant to the insurance securitization shall be deposited with the trustee to the extent required to secure the obligations of the SPFC under the SPFC contract as provided by this chapter and shall be held or invested by the trustee pursuant to section 4727 and an asset management agreement, if

any.

(d) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest or other consideration on any SPFC securities or other securities or outstanding debt or payments on preferred securities or other obligation of the SPFC. Nothing in this chapter shall be construed or interpreted to prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction.

(e) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(f) Unless otherwise approved by the commissioner, an SPFC shall not do any of the following:

(i) Issue or otherwise administer primary insurance policies.

(ii) Enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(iii) Assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC insurance securitization that meets the provisions of this chapter. However, the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party reinsurer.

(g) An SPFC shall not do any of the following:

(i) Have any direct obligation to the policyholders or reinsureds of the counterparty.

(ii) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

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

**Popular Name:** Act 218

#### **500.4727 Creation of trust to hold assets of SPFC.**

Sec. 4727.

(1) Assets of the SPFC held in trust to secure obligations under the SPFC contract shall at all times be held in cash and cash equivalents, securities listed by the securities valuation office of the national association of insurance commissioners, or another form of security acceptable to the commissioner.

(2) Assets of the SPFC that are pledged to secure obligations of the SPFC to a counterparty under an SPFC contract shall be held in trust and administered by a qualified United States financial institution that does not control, is not controlled by, or is not under common control with, the SPFC or the counterparty.

(3) The agreement governing a trust described in this section shall create 1 or more trust accounts into which all pledged assets shall be deposited and held until distributed in accordance with the trust agreement. The pledged assets shall be held by the trustee at 1 of the trustee's offices or branch offices in the United States and may be held in certificated or electronic form.

(4) The provisions for withdrawal by the counterparty of assets from the trust shall be clean and unconditional, subject only to the following:

(a) The counterparty has the right to withdraw assets from the trust account at any time, without notice to the SPFC, subject only to written notice to the trustee and the commissioner from the counterparty that funds in the amount requested are due and payable by the SPFC, pursuant to the SPFC contract.

(b) A statement or document does not need to be presented in order to withdraw assets, except the counterparty may be required to acknowledge receipt of withdrawn assets.

(c) The trust agreement shall indicate that it is not subject to any conditions or qualifications outside of the trust agreement.

(d) The trust agreement shall not contain references to any other agreements or documents.

(5) The trust agreement shall be established for the sole use and benefit of the counterparty at least to the full extent of the obligations of the SPFC to the counterparty under the SPFC contract. If there is more than 1 counterparty, or more than 1 SPFC contract with the same counterparty, a separate trust agreement shall be entered into with the counterparty and a separate trust account shall be maintained for each SPFC contract with the counterparty, unless otherwise approved by the commissioner.

- (6) The trust agreement shall provide for the trustee to do all of the following:
- (a) Receive assets and hold all assets in a safe place.
  - (b) Determine that all assets are in a form that the counterparty or the trustee, upon direction by the counterparty, may negotiate, whenever necessary, without consent or signature from the SPFC or another person or entity.
  - (c) Furnish to the SPFC, the commissioner, and the counterparty a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than 45 days after the end of each calendar quarter.
  - (d) Notify the SPFC and the counterparty, within 10 days, of any deposits to or withdrawals from the trust account.
  - (e) Upon written demand of the counterparty, immediately take the necessary steps to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the counterparty and deliver physical custody of the assets to the counterparty.
  - (f) Allow no substitutions or withdrawals of assets from the trust account, except pursuant to the trust agreement or SPFC contract, or as otherwise permitted by the counterparty.
- (7) The trust agreement shall provide that at least 30 days, but not more than 45 days, before termination of the trust account, written notification of termination shall be delivered by the trustee to the counterparty with a copy of the notice provided to the commissioner.
- (8) In addition to the requirement for the trust as provided in this chapter, the trust agreement may be made subject to and governed by the laws of any state. The state shall be disclosed in the plan of operation submitted to the commissioner.
- (9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.
- (10) The trust agreement shall provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith.
- (11) Notwithstanding subsection (4)(c) and (d), when a trust agreement is established in conjunction with an SPFC contract, then the trust agreement or SPFC contract, or both, may provide that the counterparty shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the counterparty or the SPFC, only for 1 or more of the following purposes:
- (a) To pay or reimburse the counterparty for payment of the SPFC's share of premiums to be returned to owners of counterparty's policies covered under the SPFC contract on account of cancellations of the policies under the counterparties policies.
  - (b) To pay or reimburse the counterparty for payment of the SPFC's share of surrenders, benefits, losses, or other benefits covered and payable pursuant to the SPFC contract.
  - (c) To fund an account with the counterparty in an amount to secure the credit or reduction from liability for reinsurance coverage provided under the SPFC contract.
  - (d) To pay any other amounts the counterparty claims are legally and properly due under the SPFC contract.
- (12) Any assets deposited into an account of the counterparty pursuant to subsection (11)(c) or withdrawn by the counterparty pursuant to subsection (11)(d) and any interest or other earnings on them, shall be held by the counterparty in trust and separate and apart from any general assets of the counterparty, for the sole purpose of funding the payments and reimbursements of the SPFC contract described in subsection (11).
- (13) The counterparty shall return to the SPFC amounts withdrawn under subsection (11) in excess of actual amounts required under subsection (11)(a) to (c), and in excess of the amounts subsequently determined to be due under subsection (11)(d), plus interest at a rate not in excess of the prime rate for the amounts held pursuant to subsection (11)(c) unless a higher rate of interest has been awarded by an arbitration panel, and any net costs or expenses, including attorney fees, awarded by an arbitration panel.
- (14) If the counterparty has received notification of termination of the trust account while any of the SPFC's obligations or liabilities under the SPFC contract that are secured by the trust account remain unliquidated as of 10 days prior to the termination date of the trust account, then the counterparty may withdraw amounts from the trust account equal to the unliquidated obligations and shall deposit such amounts in an account established by the counterparty, which account is separate and apart from the counterparty's general assets and is with a qualified United States financial institution, but only to the extent the obligations or liabilities have not been funded by the SPFC and only for those uses and purposes specified in subsection (11)(a) that may remain executory after the withdrawal and termination until such obligations or liabilities are discharged.

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

**Popular Name:** Act 218



**500.4729 Declaration and payment of dividends prohibited; exception; limitation; sufficiency of assets; provisions.**

Sec. 4729.

(1) An SPFC shall not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no event shall the dividends decrease the capital of the SPFC below \$250,000.00, and, after giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the commissioner that it can meet its obligations. Approval by the commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC with respect to securities shall be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC by the commissioner.

(2) The dividends may be declared by the management of the SPFC if the dividends do not violate the provisions of this chapter or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this chapter.

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

**Popular Name:** Act 218

**500.4731 Plan of operation; changes; filing of audited financial statements; inquiries by commissioner; filing of statement of operations; reports; preservation of books, records, documents, accounts, and vouchers; authority of securities commissioner.**

Sec. 4731.

(1) An SPFC may make the following material changes to its plan of operation pursuant to section 4705(6)(b), whether or not through an SPFC protected cell:

(a) If included in the initial plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of part or all of the securities issued pursuant to initial insurance securitization transactions, shall not be considered a material change.

(b) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to this chapter shall not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with 2 or more nationally recognized rating agencies.

(2) No later than 5 months after the fiscal year end of the SPFC, the SPFC shall file with the commissioner audited financial statements of the SPFC and the trust accounts prepared by an independent public accountant. The independent public accountant shall 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 all states in which the independent public accountant is licensed to practice.

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

(4) Each SPFC shall file by March 1 of each year a statement of operations. An SPFC with a counterparty that is authorized as an insurance company shall report using statutory accounting principles and shall value its assets and liabilities pursuant to this act and in a manner consistent with the counterparty. An SPFC with a counterparty that uses GAAP may report using either GAAP or, with the approval of the commissioner, statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of operations shall include a statement of income and a balance sheet and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract and additional descriptions and accounting of the reserves required or maintained by the SPFC. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31 of the previous year. The statements shall be prepared on forms required by the commissioner. In addition, the commissioner may require the filing of performance assessments of the SPFC contract.

(5) An SPFC that is authorized as an insurer other than solely pursuant to this chapter and chapter 46 or that is reinsuring risk of a counterparty that is authorized as an insurer under this act shall file annual reports pursuant to sections 438 and 438a and chapter 10. An SPFC shall maintain its records in this state, or in 1 or more locations outside the state with the approval of the commissioner, and shall make its records available for examination by the commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this chapter.

(6) The commissioner may require interim reporting on any or all of the SPFC's business, including any matter, condition, or requirement regulated by this chapter. The commissioner shall prescribe the format and content of the interim report.

(7) Each SPFC that fails to file a report required by this section, or fails to reply within 30 days to an inquiry of the commissioner, 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 SPFC fails to file a report or reply to the inquiry. In addition, each SPFC that fails to file a report, or fails to make a satisfactory reply to an inquiry of the commissioner concerning the SPFC's affairs, is subject to proceedings under section 4735(2).

(8) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this state for the purpose of examination. The original records, however, may be kept and maintained outside this state if, according to a plan adopted by the management of the SPFC and approved by the commissioner, it maintains suitable records. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

(9) Nothing contained in this section with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the securities commissioner pursuant to 1935 PA 13, MCL 451.1 to 451.4.

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

**Popular Name:** Act 218

#### **500.4732 Activities requiring notice to commissioner.**

Sec. 4732.

An SPFC shall not enter into any of the following transactions or engage in any of the following activities unless the SPFC has notified the commissioner in writing of its intention to enter into the transaction or activity at least 30 days, or a shorter period as the commissioner allows, prior to entering into the transaction or activity and the commissioner has not disapproved of it within that period:

(a) A sale, an exchange, or another transfer of assets made by the SPFC between or among any of its protected cells.

(b) Any third party management contract or arrangement that does not meet the requirements of section 4715(7).

(c) Any material change to the SPFC's plan of operation submitted pursuant to section 4705(6)(b) except those changes listed in section 4731(1).

(d) Except as otherwise contemplated in the SPFC contract or related insurance securitization documents, or both, a sale, an exchange, or a transfer of assets from a protected cell to a counterparty, captive LLC, or parent or affiliated company of the SPFC.

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

**Popular Name:** Act 218

#### **500.4733 Captive insurance company examination; expenses and charges; payment; fee.**

Sec. 4733.

(1) 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.

(2) 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.

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

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

**Popular Name:** Act 218

#### **500.4734 Confidentiality requirements; exception.**

Sec. 4734.

(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 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

#### **500.4735 Cessation of business; suspension or revocation of limited certificate of authority; violations; penalties; notice.**

Sec. 4735.

(1) At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related SPFC securities issued in connection with it, the authority granted by the commissioner expires or, for retiring and surviving protected cells, is modified. The SPFC is no longer authorized to conduct activities unless and until a new or modified limited certificate of authority is issued pursuant to a new filing under section 4705 or as agreed by the commissioner.

(2) The commissioner may suspend or revoke the limited certificate of authority of an SPFC in this state for any of the following:

- (a) Insolvency.
- (b) Failure to meet the provisions of section 4709 or 4713(4).
- (c) The SPFC is no longer safe, reliable, or entitled to public confidence or is unsound, or the SPFC is using financial methods and practices in the conduct of its business that render further transaction of insurance by the SPFC in this state hazardous to the public, the holders of the securities, or counterparties in the SPFC.
- (d) Failure to respond within 30 days to an inquiry from the commissioner under section 4731(3).
- (e) Failure to submit to examination or any legal obligation relative to an examination under section 4703.
- (f) Refusal or failure to pay the costs of examination under section 4733.
- (g) 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.

(h) The SPFC 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.

(i) 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.

(j) Failure to otherwise comply in any material respect with applicable laws of this state.

(3) If the commissioner finds, upon examination or other evidence, that an SPFC has committed any of the acts specified in subsection (2)(b), (c), or (d), the commissioner may impose the penalties provided in section 150 if the commissioner considers it in the best interest of the public, the holders of the securities, and the policyholders of the SPFC.

(4) Unless the grounds for suspension or revocation relate only to the financial condition or soundness of the SPFC or to a deficiency in its assets, the commissioner shall notify the SPFC not less than 30 days before revoking its authority to do business in this state and shall specify in the notice the particulars of the alleged violation of the law or its organizational documents or grounds for revocation and the SPFC shall be offered the opportunity to be heard pursuant to section 437.

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

**Popular Name:** Act 218

#### **500.4741 Administrative supervision, conservation, rehabilitation, receivership, and liquidation of insurers.**

Sec. 4741.

(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 SPFCs or each of the SPFC's protected cells, individually or in combination, without causing or otherwise effecting an administrative supervision, conservation, rehabilitation, receivership, or liquidation of the SPFC or another protected cell.

(2) Notwithstanding any other provision of this act and without causing or otherwise affecting the conservation or rehabilitation of an otherwise solvent protected cell of an SPFC and subject to subsection (7)(e), the commissioner may petition the circuit court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate an SPFC domiciled in this state on 1 or more of the following grounds:

(a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities.

(b) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to this chapter.

(3) Notwithstanding any other provision of this act, the commissioner may petition the circuit court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate 1 or more of an SPFC's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC generally or another of its protected cells, on 1 or more of the following grounds:

(a) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected cell or cells.

(b) The affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to conservation, rehabilitation, or liquidation pursuant to this chapter.

(4) The court may not grant relief provided by subsection (2)(a) or subsection (3)(a) unless, after notice and a hearing, the commissioner, who shall have the burden of proof, establishes by the applicable rules of evidence that relief must be granted. The court's order may be made in respect of 1 or more protected cells by name, rather than the SPFC generally.

(5) Notwithstanding any other provision of this act, rules promulgated or regulations entered under this act, or other applicable law, rule, or regulation, a receiver appointed pursuant to any order or conservation, rehabilitation, or liquidation shall do all of the following:

(a) For an SPFC subject to an order of conservation, rehabilitation, or liquidation, manage the assets and liabilities of the SPFC pursuant to this chapter.

(b) For a protected cell or cells subject to an order of conservation, rehabilitation, or liquidation, manage the

assets and liabilities of the protected cell or cells pursuant to this chapter and the SPFC contract.

(c) Ensure that the assets of 1 protected cell are not utilized to satisfy the liabilities of another protected cell or of the SPFC generally.

(6) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver, including all expenses of taking possession of the SPFC or 1 or more of the SPFC's protected cells, shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding any other provision in the contracts or other documentation governing the SPFC insurance securitization.

(7) Notwithstanding any other provision of this act or other laws of this state:

(a) An application or petition, or a temporary restraining order or injunction issued pursuant to this act, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.

(b) The commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security or SPFC contract or the SPFC from taking any action required to make the payment.

(c) A receiver of a counterparty shall not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.

(d) A receiver of an SPFC shall not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.

(e) The commissioner shall not seek to have an SPFC with protected cells declared insolvent as long as at least 1 of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle SPFC's assets in compliance with subsection (5) and other laws of this state.

(8) Subsection (7) does not prohibit the commissioner from taking any action permitted under chapter 81 with respect only to the conservation or rehabilitation of an SPFC with protected cell or cells, provided the commissioner would have had sufficient grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting subsection (7)(e). In this case, with respect to the solvent protected cell or cells, the commissioner shall not prohibit payments made by the SPFC pursuant to an SPFC security, an SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(9) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding any other provision of this chapter or other laws of this state, the assets of an SPFC, including assets held in trust, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to this chapter for any purpose including, without limitation, distribution to creditors of the counterparty.

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

**Popular Name:** Act 218

#### **500.4745 Contested case brought by third party; suspension, revocation, or modification of limited certificate of authority.**

Sec. 4745.

(1) A contested case brought by a third party based on a decision of the commissioner pursuant to this chapter is governed by applicable law of this state except that the third party shall do all of the following:

(a) Prove its case in accordance with the applicable rules of evidence.

(b) Demonstrate irreparable harm to the SPFC or its counterparty, or both.

(c) Show that there is no other adequate remedy at law.

(d) Post a bond of sufficient surety to protect the interests of the holders of the SPFC securities and policyholders so long as it is not less than 15% of the total amount of the securitized transaction.

(2) The commissioner may suspend, revoke, or modify a limited certificate of authority issued to an SPFC or an order made in connection with a limited certificate of authority issued to an SPFC in compliance with the standards and criteria provided in subsection (1) or in conformance with section 4735(2).

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



**Popular Name:** Act 218

**500.4747 Issuance of regulations; employment of legal counsel.**

Sec. 4747.

(1) The commissioner may issue regulations necessary to effectuate the purposes of this chapter. Regulations issued pursuant to this section do not affect an SPFC insurance securitization in effect at the time of the issuance of the regulation.

(2) 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.

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

**Popular Name:** Act 218