

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

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.

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