

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

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not need to be presented in order to withdraw assets, except the counterparty may be required to acknowledge receipt of withdrawn assets.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 counterparty's 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.

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