

**State of Vermont**  
**Department of Financial Regulation**  
89 Main Street  
Montpelier, VT 05620-3101

For consumer assistance:  
[Banking] 888-568-4547  
[Insurance] 800-964-1784  
[Securities] 877-550-3907  
[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

To: Maria Royle, Legislative Counsel  
From: Sandy Bigglestone, Deputy Commissioner of Captive Insurance  
Date: March 31, 2023  
RE: H.76 Captive Bill Section by Section

### **H.76 Captive Bill Section by Section**

#### **Section 1**

Section 6045 contains the specific filing requirements for branch captives, including due dates for the annual filings. In 2018 the captive bill amended the due dates for annual statements contained in Section 6007, which is the section of the statute that applies to most types of captives. However, at the time, amendments to the due dates for branch captives in section 6045 were inadvertently missed.

#### **8 V.S.A. Section 6045 is amended to read:**

Prior to March ~~4~~15 of each year, or with the approval of the Commissioner within ~~60~~75 days after its fiscal year-end, a branch captive insurance company shall file with the Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the Commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the Commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

**Section 2** pertains to a proposed 2% increase in the DFR's share of taxes collected on captive insurance premiums. DFR's share of premium taxes to run the regulatory operations is set by statute in section 6014. In 2009, the department's share increased by 1% from 10% to 11%, therefore, it has been 14 years since the DFR's share of annual premium taxes collected was increased. To help keep up with annual operating costs over the past few years, the DFR has relied on the positive balances in the other DFR special funds to cover the deficit in



the Captives Fund. (2% is recommended, estimated at about \$600,000 for FY24, and the overall annual premium taxes from captive insurance have grown by almost \$8 million since FY 2012) This proposal would not increase the overall tax collected, and instead changes the timing of when the funds flow to the General Fund.

**8 V.S.A. Section 6014(h) is amended to read:**

Annually, ~~41~~13 percent of the premium tax revenues collected pursuant to this section shall be transferred to the Department of Financial Regulation for the regulation of captive insurance companies under this chapter.

**Section 3** corrects an outdated reference for incorporated protected cells in the sponsored captive statute. The reference to “subsection (11)”, which no longer exists, became outdated upon a previous amendment to this part of the statute.

**8 V.S.A Section 6034a(c) is amended to read:**

The articles of incorporation or articles of organization of an incorporated protected cell shall refer to the sponsored captive insurance company for which it is a protected cell and shall state that the protected cell is incorporated or organized for the limited purposes authorized by the sponsored captive insurance company's license. A copy of the prior written approval of the Commissioner to add the incorporated protected cell, required by subdivision ~~6034(11)(8)~~ of this title, shall be attached to and filed with the articles of incorporation or the articles of organization.

**Section 3** also contains language aimed at updating the naming conventions for sponsored captive protected cells. Incorporated protected cells can be formed as LLCs, non-profits, or mutual corporations, in addition to corporations. Current naming conventions in statute don't align, therefore language revisions to update the naming conventions and references to Vermont corporate code to be inclusive of these business types is needed.

**8 V.S.A. § 6034a(d) is amended to read:**

(d)(1) An incorporated protected cell formed after May 7, 2015 or established prior to the effective date of this act shall have its own distinct name or designation, which shall include the words “Incorporated Cell” or the abbreviation “IC.” or, in the alternative, such incorporated protected cell may instead choose to have its own distinct name or designation consistent with the naming conventions in subdivisions (2)(A)-(C) of this subsection, as applicable. The provisions of Title 11A, V.S.A. chapter 4 and Title 11B, V.S.A. chapter 4 shall not apply to the naming of incorporated protected cells.



- (2) An incorporated protected cell formed or established on or after the effective date of this act shall have its own distinct name or designation as follows:
- (A) If the incorporated protected cell is formed or established as a corporation, mutual corporation, or nonprofit corporation, its name or designation shall include the words "Incorporated Cell" or the abbreviation "IC." The provisions of 11A V.S.A. chapter 4 and 11B V.S.A. chapter 4 shall not apply to the naming of such incorporated protected cell.
- (B) If the incorporated protected cell is formed or established as a limited liability company, its name or designation shall include the word "Cell." In addition, 11 V.S.A. § 4005 shall apply to the naming of such incorporated protected cell.
- (C) If the incorporated protected cell is formed or established as a reciprocal insurer, its name or designation shall include the word "Cell." In addition, § 4834(1) of this title shall apply to the naming of such incorporated protected cell.

**Section 4 and 5** update requirements related to the form of records retention. Currently, the statutes require companies to maintain records of transactions in the "original" paper format. The DFR allows for other accepted formats of record retention, including through electronic means, as provided by DFR Regulation I-1999-01. The proposal would amend and modernize statutes to remove the word "original", which is confusing when books and records are allowed to be stored by means other than original paper format.

**In Section 4, 8 V.S.A. § 6048k. is amended to read:**

(d) Unless otherwise approved in advance by the Commissioner, all ~~original~~ books, records, documents, accounts, vouchers, and agreements shall be preserved and kept available in this State for the purpose of examination and inspection and until such time as the Commissioner approves the destruction or other disposition of such books, records, documents, accounts, vouchers, and agreements. If the Commissioner approves the keeping of the items listed in this subsection outside this State, the special purpose financial insurance company shall maintain in this State a complete and true copy of each such ~~original item~~. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically.

And...

**In Section 5, 8 V.S.A. § 6049h. is amended to read:**

(c) Unless otherwise approved in advance by the Commissioner, all ~~original~~ books, records, documents, accounts, vouchers, and agreements shall be preserved and kept



available in this State for the purpose of examination and inspection and until such time as the Commissioner approves the destruction or other disposition of such books, records, documents, accounts, vouchers, and agreements. If the Commissioner approves the keeping outside this State of the items listed in this subsection, the affiliated reinsurance company shall maintain in this State a complete and true copy of each such ~~original item~~. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically.

**Section 6** updates the statute in alignment with the information collected when a new company applies for a captive license. The addition to Section 6002(c)(2) recognizes the authority the DFR has to assess not only the captive, but the owners too.

**8 V.S.A. Section 6002(c) is amended to read:**

(c)(1) Before receiving a license, a captive insurance company shall:

- (A) File with the Commissioner a copy of its organizational documents and any other statements or documents required by the Commissioner.
- (B) Submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the Commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the Commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the Commissioner. The captive insurance company shall inform the Commissioner of any material change in rates within 30 days ~~of following~~ the adoption of such change.

(2) Each applicant captive insurance company shall also file with the Commissioner evidence of the following:

- (A) the amount and liquidity of its assets relative to the risks to be assumed;
- (B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (C) the overall soundness of its plan of operation;
- (D) the adequacy of the loss prevention programs of its insureds; and
- (E) its beneficial ownership, sponsorship, or membership; and
- (F) such other factors deemed relevant by the Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.



**Section 6** also updates the language for how the confidentiality of the information collected is handled, extending such treatment to subsequent updates, approved amendments or revisions to a company's information, plan of operation, etc. This change is also housekeeping, since in practice, the information related to subsequent approvals is held confidential. The proposed language for Section 6002(c)(3) will memorialize the treatment.

**8 V.S.A. Section 6002(c)(3) is amended to read:**

(3) Information submitted pursuant to this subsection, including any subsequent updates, amendments, or revisions of or to such information, shall be and remain confidential, and may not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except that:

**Section 7** proposes the effective dates for these amendments, to take effect upon passage for all except Section 2 (the increase in DFR's share of the premium tax transfer), which will take effect beginning the new fiscal year on July 1, 2023.

