

1 H.203

2 Introduced by Representative Botzow of Pownal

3 Referred to Committee on

4 Date:

5 Subject: Insurance; banking; securities; regulations

6 Statement of purpose of bill as introduced: This bill proposes to make various  
7 amendments to the laws governing entities and matters within the jurisdiction  
8 of the Department of Financial Regulation.

9 An act relating to the Department of Financial Regulation

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 \* \* \* Banking \* \* \*

12 Sec. 1. 8 V.S.A. § 18 is amended to read:

13 § 18. CHARGES FOR EXAMINATIONS, APPLICATIONS, REVIEWS,  
14 AND INVESTIGATIONS

15 (a) Every person subject to regulation by the ~~department~~ Department shall  
16 pay the ~~department~~ Department the reasonable costs of any examination,  
17 review, or investigation that is conducted or caused to be conducted by the  
18 ~~department~~ Department of such person, or of any application or filing made by  
19 such person, or of any examination, review, or investigation of any order,  
20 decision, or certificate issued by the ~~commissioner~~ Commissioner, at a rate to

1 be determined by the ~~commissioner~~ Commissioner. The ~~department~~  
2 Department may retain experts or other persons who are independently  
3 practicing their professions to assist in such examination, review, or  
4 investigation. The ~~department~~ Department shall be reimbursed for all  
5 reasonable costs and expenses, including the reasonable costs and expenses of  
6 such persons retained by the ~~department~~ Department, by the person examined,  
7 submitting the application or filing reviewed, investigated, or subject to or  
8 under the jurisdiction of an order, decision, or certificate issued by the  
9 ~~commissioner~~ Commissioner under this title or under Title 18. An  
10 examination, review, or investigation subject to this section shall include, ~~but~~  
11 ~~not be limited to~~, an examination, review, or investigation of any application,  
12 information, rate filing, or form filing submitted, or any order, decision, or  
13 certificate issued under this title, or under Title 18. In unusual circumstances,  
14 the ~~commissioner~~ Commissioner may waive reimbursement for the costs and  
15 expenses of any review in the interests of justice. ~~Those~~ Except as set forth in  
16 subsection (b) of this section, those institutions subject to assessment or fees  
17 for services provided under section 19 of this title, ~~other than merchant banks~~  
18 ~~established under section 12603 of this title and independent trust companies~~  
19 ~~subject to assessment under subdivision 2405(f)(1) of this title~~, shall not be  
20 billed for a regular examination performed under subsection 11501(a) or

1 30601(a) of this title or for services for which such fees under subsection 19(a)  
2 of this title have been paid.

3 (b) Merchant banks established under section 12603 of this title, uninsured  
4 banks established under section 12604 of this title, and independent trust  
5 companies subject to assessment under subdivision 2405(f)(1) of this title shall  
6 pay the ~~department~~ Department the costs and expenses of all examinations,  
7 including regular and special or expanded scope examinations.

8 (c) The authority granted to the ~~commissioner~~ Commissioner by this  
9 section is in addition to any other authority granted to the ~~commissioner~~  
10 Commissioner by law.

11 Sec. 2. 8 V.S.A. § 19 is amended to read:

12 § 19. FEES AND DEPARTMENTAL EXPENSES

13 \* \* \*

14 (b) ~~Those~~ Merchant banks established under section 12603 of this title,  
15 uninsured banks established under section 12604 of this title, and independent  
16 trust companies assessed as provided in subdivision 2405(f)(1) of this title  
17 shall be billed for all examinations. All other institutions subject to assessment  
18 under subsection (d) of this section, ~~other than merchant banks established~~  
19 ~~under section 12603 of this title and independent trust companies assessed as~~  
20 ~~provided in subdivision 2405(f)(1) of this title, will~~ shall not be billed for  
21 regular examinations ~~performed under subsection 11501(a) of this title.~~

1 \* \* \*

2 (d) The ~~commissioner~~ Commissioner shall apportion the expenses allowed  
3 under the title “Banking, insurance, securities, and health care administration-  
4 banking” in the annual appropriation bill among the several financial  
5 institutions, ~~and credit unions, and independent trust companies~~ directly  
6 regulated under this title, including the operations in Vermont of any such  
7 entity organized in another jurisdiction. Annually, on or before November 1,  
8 the ~~commissioner~~ Commissioner shall ~~issue a bulletin setting forth~~ notify the  
9 institutions of the proposed assessment. The assessment shall consider  
10 surpluses or shortfalls from prior year assessments, increases, and decreases in  
11 entity deposits and assets under management, and any other factor that may  
12 affect the ~~banking division’s~~ Banking Division’s expenditures and revenues.  
13 The ~~commissioner~~ Commissioner shall send each entity a bill for such entity’s  
14 portion of the assessment on or before March 1 of each year, which bill shall  
15 be paid into the state treasury on or before April 1.

16 (1) Financial institutions and credit unions that accept deposits will be  
17 assessed based on the amount of their deposits held in this ~~state~~ State on the  
18 preceding June 30.

19 (2) In the case of merchant banks established under section 12603 of  
20 this title, the assessment shall be based on assets in this ~~state~~ State on the  
21 preceding June 30.

1           (3) In the case of ~~special purpose financial institutions that are not~~  
2 ~~permitted to accept deposits, except merchant banks established under section~~  
3 ~~12603~~ nondepository trust companies established under section 12602 of this  
4 title, the assessment will be based on assets under management in this ~~state~~  
5 State on the preceding June 30.

6           (4) In the case of an uninsured bank established under section 12604 of  
7 this title:

8                 (A) an uninsured bank whose primary activity is transactional shall  
9 pay to the Department an annual assessment equal to \$0.0001 per dollar  
10 volume of activity performed for the most recent year ended December 31,  
11 which assessment shall not be greater than \$50,000.00; and

12                 (B) an uninsured bank whose primary activity is accepting uninsured  
13 deposits shall be assessed based on the amount of deposits on the preceding  
14 June 30.

15           (5) No financial institution, credit union, or independent nondepository  
16 trust company, or merchant bank, or uninsured bank subject to assessment  
17 under subdivision (1), (2), ~~or (3), or (4)~~ of this subsection may pay less than  
18 \$2,000.00 per annual assessment.

19           ~~(5)~~(6) Loan production offices or persons engaged in an approved loan  
20 production activity authorized under prior law, ~~which~~ that do not pay an

1 assessment under subdivision (1), (2), ~~or (3)~~, or (4) of this subsection; shall pay  
2 an annual fee of \$1,200.00.

3 ~~(6)(7)~~ In the case of independent trust companies organized under  
4 chapter 77 of this title:

5 (A) an independent trust company whose primary activity in this ~~state~~  
6 State is transactional shall pay an assessment calculated under subdivision  
7 2405(f)(1) of this title; and

8 (B) an independent trust company whose primary activity in this ~~state~~  
9 State is asset management shall pay an assessment based on assets under  
10 management, provided the annual assessment shall not be less than \$2,000.00.

11 \* \* \*

12 Sec. 3. 8 V.S.A. § 2201(d) is amended to read:

13 (d) No lender license, mortgage broker license, or sales finance company  
14 license shall be required of:

15 \* \* \*

16 (4) a depository institution or a financial institution as defined in  
17 8 V.S.A. §11101 (32);

18 \* \* \*

1 Sec. 4. 8 V.S.A. § 2204a(a) is amended to read:

2 (a) In order to meet the preclicensing education requirement for a mortgage  
3 loan originator, a person shall complete at least 20 hours of education approved  
4 in accordance with subsection (b) of this section, which shall include at least:

5 (1) Three hours of federal law and regulations;

6 (2) Three hours of ethics, which shall include instruction on fraud,  
7 consumer protection, and fair lending issues; ~~and~~

8 (3) Two hours of training related to lending standards for the  
9 nontraditional mortgage product marketplace; and

10 (4) Two hours of Vermont law and regulations.

11 Sec. 5. 8 V.S.A. § 2206(a) is amended to read:

12 (a) The license shall state the address at which the business is to be  
13 conducted and shall state fully the name of the licensee; ~~and, if the licensee is~~  
14 ~~other than an individual, the date and place of its organization or incorporation.~~  
15 ~~The commissioner~~ Commissioner may issue an electronic license. The license  
16 ~~or a copy of the electronic license shall be kept conspicuously posted in the~~  
17 ~~place of business of the licensee and shall not be transferable or assignable.~~

18 Sec. 6. 8 V.S.A. § 2219 is amended to read:

19 § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

20 (a) In advance of taking any fee or collecting any charges; or at the time the  
21 prospective borrower submits a signed application, a written agreement in a

1 form approved by the ~~commissioner~~ Commissioner shall be prepared by the  
2 mortgage broker, and shall be signed by both the mortgage broker and the  
3 prospective borrower. The agreement shall set forth the particulars of the  
4 service to be performed by the mortgage broker, including specifics as to what  
5 shall constitute reasonable efforts on the part of the mortgage broker to  
6 perform the agreed upon services, shall state clearly that the mortgage broker  
7 shall represent the interests of the prospective borrower rather than those of  
8 any lender, and shall state the fee for the services.

9 (b) A mortgage broker who acts as an independent contractor loan  
10 processor or an underwriter who performs loan processing or underwriting  
11 activities for a licensed or exempt mortgage broker or lender is not required to  
12 provide a mortgage broker agreement to the prospective borrower, provided:

13 (1) the mortgage broker is acting as an independent contractor loan  
14 processor or underwriter as described in subsection 2201(f) of this chapter;

15 (2) the mortgage broker's activities are limited to loan processor or  
16 underwriting activities as described in subdivision 2200(14) of this chapter;

17 (3) the mortgage broker is paid a fee solely by the licensed or exempt  
18 mortgage broker or lender, is not paid by the prospective borrower, and is not  
19 paid a commission based upon the dollar amount of the loan; and

20 (4) if the mortgage broker is acting as an independent contractor loan  
21 processor or underwriter on behalf of a mortgage broker, such mortgage broker

1 has already entered into a written mortgage broker agreement with the  
2 prospective borrower.

3 Sec. 7. 8 V.S.A. § 2244 is amended to read:

4 § 2244. UNIQUE IDENTIFIER SHOWN

5 (a) The unique identifier issued by the Nationwide Mortgage Licensing  
6 System and Registry of any person originating a residential mortgage loan  
7 shall be clearly shown on all residential mortgage loan application forms,  
8 solicitations, or advertisements, including business cards or websites, and any  
9 other documents as established by rule or order of the ~~commissioner~~  
10 Commissioner.

11 (b) The unique identifier issued by the Nationwide Mortgage Licensing  
12 System and Registry of any person engaging in the business of lending or  
13 acting as a mortgage broker or sales finance company shall be clearly shown  
14 on all loan application forms, solicitations, or advertisements, including  
15 business cards and websites, and any other documents as established by rule or  
16 order of the Commissioner.

17 Sec. 8. 8 V.S.A. § 2405(f) is amended to read:

18 (f) Any independent trust company that maintains one or more offices in  
19 this ~~state~~ State shall be assessed by the following applicable method:

20 (1) an independent trust company whose primary activity ~~in the state~~ is  
21 transactional shall pay to the ~~department~~ Department an annual assessment

1 equal to \$0.0001 per dollar volume of activity performed for the most recent  
2 year ending December 31, which assessment shall not be less than \$2,000.00  
3 or greater than \$50,000.00, and which shall be paid on or before April 1 of  
4 each year; or

5 \* \* \*

6 Sec. 9. 9 V.S.A. § 2405(g)(1)(I) is amended to read:

7 (I) The total time price, which is the sum of items (A), (D), (E), and  
8 ~~(F)~~(G) of this subdivision (1).

9 Sec. 10. 9 V.S.A. § 2435(b) is amended to read:

10 (b) Notice of breach.

11 \* \* \*

12 (3) A data collector or other entity subject to this subchapter, ~~other than~~  
13 ~~a person or entity licensed or registered with the department of financial~~  
14 ~~regulation under Title 8 or this title,~~ shall provide notice of a breach to the  
15 ~~attorney general's office~~ Attorney General or to the Department of Financial  
16 Regulation, as applicable, as follows:

17 (A) A data collector or other entity regulated by the Department of  
18 Financial Regulation under Title 8 shall provide notice of a breach to the  
19 Department. All other data collectors or other entities subject to this  
20 subchapter shall provide notice of a breach to the Attorney General.

1            ~~(B)~~(i) The data collector shall notify the ~~attorney general~~ Attorney  
2            General or the Department, as applicable, of the date of the security breach and  
3            the date of discovery of the breach and shall provide a preliminary description  
4            of the breach within 14 business days, consistent with the legitimate needs of  
5            the law enforcement agency as provided in ~~subdivisions~~ this subdivision (3)  
6            and subdivision (4) of this subsection, of the data collector's discovery of the  
7            security breach or when the data collector provides notice to consumers  
8            pursuant to this section, whichever is sooner.

9            (ii) Notwithstanding subdivision ~~(A)(i)~~ (B)(i) of this subdivision  
10           (b)(3), a data collector who, prior to the date of the breach, on a form and in a  
11           manner prescribed by the ~~office of the attorney general~~ Attorney General, had  
12           sworn in writing to the ~~attorney general~~ Attorney General that it maintains  
13           written policies and procedures to maintain the security of personally  
14           identifiable information and respond to a breach in a manner consistent with  
15           Vermont law shall notify the ~~attorney general~~ Attorney General of the date of  
16           the security breach and the date of discovery of the breach and shall provide a  
17           description of the breach prior to providing notice of the breach to consumers  
18           pursuant to subdivision (1) of this subsection.

19           (iii) If the date of the breach is unknown at the time notice is sent  
20           to the ~~attorney general~~ Attorney General or to the Department, the data

1 collector shall send the ~~attorney general~~ Attorney General or the Department  
2 the date of the breach as soon as it is known.

3 (iv) Unless otherwise ordered by a court of this ~~state~~ State for  
4 good cause shown, a notice provided under this subdivision ~~(3)(A)~~ (3)(B) shall  
5 not be disclosed to any person other than the Department, the authorized agent  
6 or representative of the ~~attorney general~~ Attorney General, a state's attorney, or  
7 another law enforcement officer engaged in legitimate law enforcement  
8 activities without the consent of the data collector.

9 ~~(B)(C)~~(i) When the data collector provides notice of the breach  
10 pursuant to subdivision (1) of this subsection (b), the data collector shall notify  
11 the ~~attorney general~~ Attorney General or the Department, as applicable, of the  
12 number of Vermont consumers affected, if known to the data collector, and  
13 shall provide a copy of the notice provided to consumers under subdivision (1)  
14 of this subsection (b).

15 (ii) The data collector may send to the ~~attorney general~~ Attorney  
16 General or the Department, as applicable, a second copy of the consumer  
17 notice, from which is redacted the type of personally identifiable information  
18 that was subject to the breach, and which the ~~attorney general~~ Attorney  
19 General or the Department shall use for any public disclosure of the breach.

20 \* \* \*

1 Sec. 11. 9 V.S.A. § 2435(f) is amended to read:

2 (f) ~~A financial institution that is subject to the following guidances, and any~~  
3 ~~revisions, additions, or substitutions relating to an interagency guidance shall~~  
4 ~~be exempt from this section:~~

5 (1) ~~The Federal Interagency Guidance Response Programs for~~  
6 ~~Unauthorized Access to Consumer Information and Customer Notice, issued~~  
7 ~~on March 7, 2005, by the Board of Governors of the Federal Reserve System,~~  
8 ~~the Federal Deposit Insurance Corporation, the Office of the Comptroller of~~  
9 ~~the Currency, and the Office of Thrift Supervision; or~~

10 (2) ~~Final Guidance on Response Programs for Unauthorized Access to~~  
11 ~~Member Information and Member Notice, issued on April 14, 2005, by the~~  
12 ~~National Credit Union Administration.~~

13 (1) A person subject to a federal law, rule, regulation, or guidance  
14 addressing security breaches, including and as may be amended: Title V of the  
15 Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 6801 to 6809; the Federal  
16 Interagency Guidance Response Programs for Unauthorized Access to  
17 Consumer Information and Customer Notice issued by the Board of Governors  
18 of the Federal Reserve System, the Federal Deposit Insurance Corporation, and  
19 the Office of the Comptroller of the Currency; and the Final Guidance on  
20 Response Programs for Unauthorized Access to Member Information and

1 Member Notice issued by the National Credit Union Administration is deemed  
2 to be in compliance with this section, provided:

3 (A) Such person is in compliance with the security breach provisions  
4 of an applicable federal law, rule, regulation, or guidance; and

5 (B) Such person complies with subdivision (b)(3) of this section and  
6 notifies the Attorney General or the Department, as applicable, of any security  
7 breach.

8 (2) A person who is not in compliance with the security breach  
9 provisions of an applicable federal law, rule, regulation, or guidance shall be  
10 subject to all of the provisions of this section.

11 Sec. 12. 8 V.S.A. § 2508(e) is added to read:

12 (e) The Commissioner may issue an electronic license. The license shall  
13 not be transferable or assignable.

14 Sec. 13. 8 V.S.A. § 2517(e) is added to read:

15 (e) The Commissioner may issue an electronic license. The license shall  
16 not be transferable or assignable.

17 Sec. 14. 8 V.S.A. § 2756(c) is added to read:

18 (c) The Commissioner may issue an electronic license. The license shall  
19 not be transferable or assignable.

1 Sec. 15. 8 V.S.A. § 2906 is amended to read:

2 § 2906. CONTENTS OF LICENSE; NONTRANSFERABLE

3 The license shall state the address at which the business is to be conducted  
4 and shall state fully the name of the licensee and, if the licensee is other than  
5 an individual, the date and place of its organization or incorporation. The  
6 ~~commissioner~~ Commissioner may issue an electronic license. The license ~~or a~~  
7 ~~copy of the electronic license shall be kept conspicuously posted in the place of~~  
8 ~~business of the licensee and shall not be transferred or assigned.~~

9 Sec. 16. 8 V.S.A. § 10302 is amended to read:

10 § 10302. AUTOMATED TELLER MACHINES

11 (a) The owner of an automated teller machine or other remote service unit,  
12 including a cash dispensing machine, located or employed in this ~~state~~ State  
13 shall prominently and conspicuously disclose on or at the location of each such  
14 machine or on the first screen of each such machine the identity, address, and  
15 telephone number of the owner and the availability of consumer assistance.  
16 The owner shall also disclose ~~to the consumer~~ on the screen of such machine  
17 or on a paper notice issued from the machine the amount of the fees or charges  
18 which the owner will assess to the consumer for the use of that machine. The  
19 amount of the fees or charges shall be disclosed before the consumer is  
20 irrevocably committed to completing the transaction. The ~~commissioner~~  
21 Commissioner shall approve the form, content, timing, and location of such

1 disclosures and any amendments thereto prior to use. The ~~commissioner~~  
2 Commissioner shall act on any submission made under this section within 30  
3 days of receipt. If the ~~commissioner~~ Commissioner determines that any  
4 disclosures do not provide adequate consumer protection, the ~~commissioner~~  
5 Commissioner may by order or by rule specify minimum disclosure standards,  
6 including the form, content, timing, and location of such disclosures. The  
7 ~~commissioner~~ Commissioner may impose on the owner of an automated teller  
8 machine or other remote service unit an administrative penalty of not more  
9 than \$1,000.00 for each day's failure of the owner to apply to the  
10 ~~commissioner~~ Commissioner for approval of disclosures required under this  
11 section, for each day's failure of the owner to use disclosures approved by the  
12 ~~commissioner~~ Commissioner, or for each day's continuing violation of an  
13 order of the ~~commissioner~~ Commissioner relating to the disclosures required  
14 by this section.

15 (b) In addition to an automated teller machine or other remote service unit  
16 owned by a financial institution or credit union, the provisions of this section  
17 shall apply to any automated teller machine or other remote service unit not  
18 owned by a financial institution or credit union, except it shall not include a  
19 point-of-sale terminal owned or operated by a merchant who does not charge a  
20 fee for the use of the point-of-sale terminal. The activities of an automated  
21 teller machine or other remote service unit whose owner is not a financial

1 institution shall be limited to cash dispensing or the offer or sale of nonbanking  
2 services and products.

3 Sec. 17. 8 V.S.A. § 11601(c) is amended to read:

4 (c)(1) ~~The commissioner~~ Except as provided in subdivision (2) of this  
5 subsection, the Commissioner shall provide notice of any enforcement order  
6 proposed pursuant to this section and the grounds therefor by mail to the  
7 financial institution and to any affected person. The financial institution or any  
8 person so served may, within 30 days of service on the financial institution,  
9 request that a hearing be held by the ~~commissioner~~ Commissioner. If no  
10 hearing is requested, the proposed order shall become final 30 days after  
11 service on the financial institution. The provisions of 3 V.S.A. chapter 25 of  
12 Title 3 shall govern any hearing held by the ~~commissioner~~ Commissioner  
13 under this section. An appeal under this section shall be filed within 30 days  
14 of the date of the ~~commissioner's~~ Commissioner's decision, and shall be to the  
15 Washington ~~superior court~~ Superior Court.

16 (2) Notwithstanding subdivision (1) of this subsection, the  
17 Commissioner may, ex parte without notice, issue any enforcement order  
18 under this section in any case in which the Commissioner determines such  
19 action is necessary to:

20 (A) conserve the assets of any financial institution; or

21 (B) protect the interests of the depositors.

1 Sec. 18. 8 V.S.A. § 30701(c) is amended to read:

2 (c)(1) ~~The commissioner~~ Except as provided in subdivision (2) of this  
3 subsection, the Commissioner shall provide notice of any enforcement order  
4 proposed pursuant to this section and the grounds therefore by mail to the  
5 credit union and to any person named as a party to the enforcement  
6 proceeding. The credit union or any person so served may, within 30 days of  
7 service on the credit union, request that the ~~commissioner~~ Commissioner hold  
8 a hearing. If no hearing is requested, the proposed order shall become final 30  
9 days after service on the credit union or such person. The provisions of  
10 3 V.S.A. chapter 25 of Title 3 and any applicable ~~department~~ Department  
11 regulations shall govern any hearing held by the ~~commissioner~~ Commissioner  
12 under this section. An appeal under this section shall be filed within 30 days  
13 of the date of the ~~commissioner's~~ Commissioner's decision; and shall be to the  
14 Washington ~~superior court~~ Superior Court.

15 (2) Notwithstanding subdivision (1) of this subsection, the  
16 Commissioner may, ex parte without notice, issue any enforcement order  
17 under this section in any case in which the Commissioner determines such  
18 action is necessary to:

19 (A) conserve the assets of any credit union; or

20 (B) protect the interests of the members of such credit union.



1 criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a  
2 statement, or produce a record or other evidence on the basis of the  
3 individual's privilege against self-incrimination, the ~~commissioner~~  
4 Commissioner, subject to subsection (f) of this section, may apply to the  
5 ~~superior court~~ of Washington County Superior Court to compel the testimony,  
6 the filing of the statement, the production of the record, or the giving of other  
7 evidence. The testimony, record, or other evidence compelled under such an  
8 order may not be used, directly or indirectly, against the individual in a  
9 criminal case, except in a prosecution for perjury or contempt or otherwise  
10 failing to comply with the order.

11 (f) Unless presented by an emergency or exigent circumstances, the  
12 Commissioner shall give notice to the Attorney General and United States  
13 Attorney not less than 5 days before applying to the Washington County  
14 Superior Court to compel the testimony, the filing of the statement, the  
15 production of the record, or the giving of other evidence under subsection (e)  
16 of this section. In the case of an emergency or exigent circumstances, the  
17 Commissioner shall notify the Attorney General and U.S. Attorney as soon as  
18 possible before applying to the Washington County Superior Court.

19 (g) At the request of the securities regulator of another state or a foreign  
20 jurisdiction, the ~~commissioner~~ Commissioner may provide assistance if the  
21 requesting regulator states that it is conducting an investigation to determine

1 whether a person has violated, is violating, or is about to violate a law or rule  
2 of the other state or foreign jurisdiction relating to securities matters that the  
3 requesting regulator administers or enforces. The ~~commissioner~~  
4 Commissioner may provide the assistance by using the authority to investigate  
5 and the powers conferred by this section as the ~~commissioner~~ Commissioner  
6 determines is necessary or appropriate. The assistance may be provided  
7 without regard to whether the conduct described in the request would also  
8 constitute a violation of this chapter or other law of this ~~state~~ State if occurring  
9 in this ~~state~~ State. In deciding whether to provide the assistance, the  
10 ~~commissioner~~ Commissioner may consider whether the requesting regulator is  
11 permitted and has agreed to provide assistance reciprocally within its state or  
12 foreign jurisdiction to the ~~commissioner~~ Commissioner when requested,  
13 whether compliance with the request would violate or prejudice the public  
14 policy of this ~~state~~ State, and the availability of resources and employees of the  
15 ~~commissioner~~ Commissioner to carry out the request for assistance.

16 Sec. 21. 9 V.S.A. § 5607(b) is amended to read:

17 (b) The following records are not public records and are not available for  
18 public examination and copying under the Public Records Act or under  
19 subsection (a) of this section:

20 \* \* \*



1 principles, manuals, instructions, and other procedures promulgated by the  
2 National Association of Insurance Commissioners, together with any useful or  
3 necessary modifications or adaptations thereof required or approved by the  
4 ~~commissioner~~ Commissioner. The expenses of the examinations shall be paid  
5 to the ~~state~~ State by the company or companies examined and the  
6 ~~commissioner of finance and management~~ Commissioner of Finance and  
7 Management shall issue his or her warrants for the proper charges incurred in  
8 all examinations.

9 Sec. 23. 8 V.S.A. § 3569(a) is amended to read:

10 (a) Each domestic, foreign, and alien insurer who is authorized to transact  
11 insurance in this ~~state~~ State shall annually on or before ~~March 15~~ March 1 of  
12 each year, or within any extension of time not to exceed 30 days which the  
13 ~~commissioner~~ Commissioner, for good cause may have granted, file with the  
14 National Association of Insurance Commissioners a copy of its annual  
15 statement convention blank as prescribed and adopted by the National  
16 Association of Insurance Commissioners, along with such additional filings as  
17 prescribed by the ~~commissioner~~ Commissioner for the preceding year. The  
18 information filed with the National Association of Insurance Commissioners  
19 shall be in the same format and scope as that required by the ~~commissioner~~  
20 Commissioner and shall include the signed jurat page and the actuarial  
21 certification. Any amendments and addendums to the annual statement filing

1 subsequently filed with the ~~commissioner~~ Commissioner shall also be filed  
2 with the National Association of Insurance Commissioners. The ~~commissioner~~  
3 Commissioner in his or her sole discretion may waive one or more of the  
4 requirements established by this subsection.

5 Sec. 24. REPEAL

6 8 V.S.A. § 3578 (annual audited financial reports pertaining to insurers) is  
7 repealed.

8 Sec. 25. 8 V.S.A. § 3578a is amended to read:

9 § 3578a. ANNUAL FINANCIAL REPORTING

10 (a) The ~~commissioner~~ Commissioner shall adopt by rule the Annual  
11 Financial Reporting Model Regulation of the National Association of  
12 Insurance Commissioners, as may be amended from time to time, or in the  
13 ~~commissioner's~~ Commissioner's discretion a regulation substantially similar  
14 thereto.

15 (b) ~~A domestic insurer required to be audited pursuant to the annual~~  
16 ~~financial reporting rule adopted by the commissioner under subsection (a) of~~  
17 ~~this section shall register with the commissioner the name and address of the~~  
18 ~~certified public accountant retained in compliance with this section, and pay a~~  
19 ~~registration fee of \$100.00. If the commissioner determines that a report filed~~  
20 ~~by a foreign or alien insurer is not substantially similar to the requirements~~  
21 ~~imposed by the annual financial reporting rule adopted by the commissioner~~

1 ~~under subsection (a) of this section, the foreign or alien insurer shall, within 30~~  
2 ~~days of such determination, register the name and address of the certified~~  
3 ~~public accountant retained in compliance with this section, and pay a~~  
4 ~~registration fee of \$100.00.~~

5 Sec. 26. 8 V.S.A. § 3579 is amended to read:

6 § 3579. QUALIFIED ACCOUNTANTS

7 (a) A certified public accountant retained to perform audits of an insurer  
8 ~~under section 3578~~ pursuant to the annual financial reporting rule adopted by  
9 the Commissioner under section 3578a of this title:

10 \* \* \*

11 (b) A domestic insurer required to be audited ~~under section 3578~~ pursuant  
12 to the annual financial reporting rule adopted by the Commissioner under  
13 section 3578a of this title shall register with the ~~commissioner~~ Commissioner  
14 the name and address of the certified public accountant retained in compliance  
15 with this section, and pay a registration fee of \$100.00. If the ~~commissioner~~  
16 Commissioner determines that a report filed by a foreign or alien insurer under  
17 ~~section~~ subsection 3578(f) of this title is not substantially similar to the  
18 requirements imposed ~~on a domestic insurer, a~~ by the annual financial  
19 reporting rule adopted by the Commissioner under section 3578a of this title,  
20 the foreign or alien insurer shall, within 30 days of such determination, register  
21 the name and address of the certified public accountant retained in compliance

1 with this section; and pay a registration fee of \$100.00. The notice of  
2 registration shall include the accountant's statement that the accountant:

3 \* \* \*

4 (e) No partner or other person rendering the report required by ~~section 3578~~  
5 the annual financial reporting rule adopted by the Commissioner under section  
6 3578a of this title may act in that capacity for more than seven consecutive  
7 years. Upon application, the ~~commissioner~~ Commissioner may find that the  
8 rotation requirement of this subsection would pose an unreasonable hardship  
9 on the insurer and may extend the accountant's period of qualification for an  
10 additional term. In making such determinations, ~~the commissioner~~  
11 Commissioner may consider the experience of the retained accountant and the  
12 size of his or her business, the premium volume of the insurer, and the number  
13 of jurisdictions in which the insurer transacts business.

14 \* \* \*

15 \* \* \* Insurance Matters Relating to NAIC Accreditation \* \* \*

16 Sec. 27. 8 V.S.A. § 3634a is amended to read:

17 § 3634a. CREDIT FOR REINSURANCE

18 (a) It is the purpose of this section to ~~permit credit for reinsurance on the~~  
19 ~~annual statement of an insurer filed under section 3561 of this title only in~~  
20 ~~connection with:~~

21 ~~(1) assuming insurers licensed in this state;~~

1           ~~(2) accredited reinsurers;~~

2           ~~(3) insurers licensed in a state whose reinsurance standards are~~  
3 ~~substantially similar to this state; or~~

4           ~~(4) insurers maintaining qualified trusts~~ protect the interest of insureds,  
5 claimants, ceding insurers, assuming insurers, and the public generally. The  
6 General Assembly hereby declares its intent is to ensure adequate regulation of  
7 insurers and reinsurers and adequate protection for those to whom they owe  
8 obligations. In furtherance of that state interest, the General Assembly hereby  
9 provides a mandate that upon the insolvency of a non-U.S insurer or reinsurer  
10 that provides security to fund its U.S. obligations in accordance with this  
11 section, the assets representing the security shall be maintained in the United  
12 States and claims shall be filed with and valued by the state insurance  
13 commissioner with regulatory oversight, and the assets shall be distributed in  
14 accordance with the insurance laws of the state in which the trust is domiciled  
15 that are applicable to the liquidation of domestic U.S. insurance companies.  
16 The General Assembly declares that the matters contained in this section are  
17 fundamental to the business of insurance in accordance with 15 U.S.C.  
18 §§ 1011-1012.

19           (b) Credit for reinsurance shall be allowed a domestic ceding insurer as  
20 either an asset or a deduction from liability on account of reinsurance ceded  
21 only when the reinsurer meets the requirements ~~of subsections (c), (d), (e), or~~

1 ~~(f) of this section~~ subdivision (1), (2), (3), (4), (5) or (6) of this subsection.  
2 ~~Reinsurers meeting the requirements of subsection (e) or (f) of this section~~  
3 ~~shall also meet the requirements of subsection (g) of this section.~~ Credit shall  
4 be allowed under subdivision (1), (2), or (3) of this subsection only with  
5 respect to cessions of those kinds or classes of business which the assuming  
6 insurer is licensed or otherwise permitted to write or assume in its state of  
7 domicile or, in the case of a U.S. branch of an alien assuming insurer, in the  
8 state through which it is entered and licensed to transact insurance or  
9 reinsurance. Credit shall be allowed under subdivision (3) or (4) of this  
10 subsection only if the applicable requirements of subdivision (7) of this  
11 subsection have been satisfied.

12 ~~(e)(1)~~ Credit shall be allowed when the reinsurance is ceded to an assuming  
13 insurer which is licensed to transact insurance or reinsurance in this ~~state~~ State.

14 ~~(d)(2)~~ Credit shall be allowed when the reinsurance is ceded to an  
15 assuming insurer which is accredited by the Commissioner as a reinsurer in  
16 this ~~state~~ State. An accredited reinsurer is one which:

17 ~~(1)(A)~~ files with the ~~commissioner~~ Commissioner evidence of its  
18 submission to this ~~state's~~ State's jurisdiction;

19 (B) submits to this state's authority to examine its books and records;

20 (C) is licensed to transact insurance or reinsurance in at least one

21 ~~state~~ State, or in the case of a ~~United States~~ U.S. branch of an alien assuming

1 insurer is entered through and licensed to transact insurance or reinsurance in  
2 at least one state;

3 (D) files with the ~~commissioner~~ Commissioner on or before March 1  
4 of each year a copy of its annual statement filed with the insurance department  
5 of its state of domicile and files on or before June 1 of each year a copy of its  
6 most recent audited financial statement;

7 (E) files with the ~~commissioner~~ Commissioner its charter, bylaws,  
8 and any other material required by the ~~commissioner~~ Commissioner; ~~and~~

9 (F) pays an initial fee of \$500.00 and thereafter an annual fee of  
10 \$200.00 on or before March 1 of each year; and

11 (G) demonstrates to the satisfaction of the Commissioner that it has  
12 adequate financial capacity to meet its reinsurance obligations and is otherwise  
13 qualified to assume reinsurance from domestic insurers. An assuming insurer  
14 is deemed to meet this requirement, provided that at the time of its application  
15 it:

16 ~~(2)(A)~~(i) maintains a surplus for policyholders which is not less than  
17 \$20,000,000.00 and whose accreditation has not been denied by the  
18 ~~commissioner~~ Commissioner within 90 days of its submission; or

19 ~~(B)~~(ii) maintains a surplus for policyholders in an amount less than  
20 \$20,000,000.00 and whose accreditation has been approved the ~~commissioner~~  
21 Commissioner.

1       ~~(e)(1)(3)(A)~~ Credit shall be allowed when the reinsurance is ceded to an  
2       assuming insurer which is domiciled and licensed in, or in the case of a ~~United~~  
3       ~~States~~ U.S. branch of an alien assuming insurer is entered through, a state  
4       which employs standards regarding credit for reinsurance substantially similar  
5       to those applicable under this statute and the assuming insurer or ~~United States~~  
6       U.S. branch of an alien assuming insurer:

7               ~~(A)(i)~~ maintains a surplus for policyholders in an amount not less  
8       than \$20,000,000.00; and

9               ~~(B)(ii)~~ submits to the authority of this ~~state~~ State to examine its books  
10      and records.

11              ~~(2)(B)~~ The requirement of ~~subdivision (e)(1)(A) of this section~~  
12      subdivision (3)(A)(i) of this subsection does not apply to reinsurance ceded  
13      and assumed pursuant to pooling arrangements among insurers in the same  
14      holding company system.

15              ~~(f)(1)(4)(A)~~ Credit shall be allowed when the reinsurance is ceded to an  
16      assuming insurer which maintains a trust fund in a qualified ~~United States~~ U.S.  
17      financial institution, ~~approved by the commissioner~~ as defined in subsection  
18      (d)(2) of this section, for the payment of the valid claims of its ~~United States~~  
19      U.S. policyholders and ceding insurers, their assigns and successors in interest.  
20      The assuming insurer shall report annually to the ~~commissioner~~ Commissioner  
21      information required by the ~~commissioner~~ Commissioner and substantially the

1 same as that required to be reported on the National Association of Insurance  
2 Commissioners' Annual Statement form by licensed insurers to enable the  
3 ~~commissioner~~ Commissioner to determine the sufficiency of the trust fund. ~~Not~~  
4 ~~later than~~ On or before February 28 of each year, the trustees of the trust shall  
5 report to the ~~commissioner~~ Commissioner in writing setting forth the balance  
6 of the trust and listing the trust's investments at the preceding year-end and  
7 shall certify the date of termination of the trust, if so planned, or certify that the  
8 trust shall not expire prior to the next following December 31.

9 (2) A trust and trust instrument maintained pursuant to ~~subdivision (1)~~  
10 ~~of this subsection~~ this subdivision shall:

11 (A)(i) be established in a form and upon such terms approved by the  
12 ~~commissioner of financial regulation~~ Commissioner;

13 (B)(ii) provide that contested claims shall be valid and enforceable  
14 upon the final order of any court of competent jurisdiction in the United States;

15 (C)(iii) vest legal title to its assets in the trustees of the trust for its  
16 ~~United States~~ U.S. policyholders and ceding insurers, their assigns and  
17 successors in interest;

18 (D)(iv) be subject to examination as determined by the ~~commissioner~~  
19 Commissioner; ~~and~~

1           ~~(E)~~(v) remain in effect for as long as the assuming insurer shall have  
2 outstanding obligations due under the reinsurance agreements subject to the  
3 trust; and

4           (vi) be filed with the commissioner of every state in which the  
5 ceding insurer beneficiaries of the trust are domiciled.

6           ~~(3)~~(B) In the case of a single assuming insurer, the trust shall consist  
7 of a trusteed account representing the assuming insurer's liabilities attributable  
8 to business written in the United States and, in addition, the assuming insurer  
9 shall maintain a trusteed surplus of not less than \$20,000,000.00, except at any  
10 time after the assuming insurer has permanently discontinued underwriting  
11 new business secured by the trust for at least three full years, the commissioner  
12 with principal regulatory oversight of the trust may authorize a reduction in the  
13 required trusteed surplus, but only after a finding, based on an assessment of  
14 the risk, that the new required surplus level is adequate for the protection of  
15 U.S. ceding insurers, policyholders, and claimants in light of reasonably  
16 foreseeable adverse loss development. The risk assessment may involve an  
17 actuarial review, including an independent analysis of reserves and cash flows,  
18 and shall consider all material risk factors, including when applicable the lines  
19 of business involved, the stability of the incurred loss estimates, and the effect  
20 of the surplus requirements on the assuming insurer's liquidity or solvency.  
21 The minimum required trusteed surplus may not be reduced to an amount less

1 than 30 percent of the assuming insurer's liabilities attributable to reinsurance  
2 ceded by U.S. ceding insurers covered by the trust.

3 ~~(4)(C)~~ In the case of a group including incorporated and individual  
4 unincorporated underwriters, the trust shall consist of a trustee account  
5 representing the group's liabilities attributable to business written in the United  
6 States and, in addition, the group shall maintain a trustee surplus of which  
7 \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S.  
8 ceding insurers of any member of the group; the incorporated members of the  
9 group shall not engage in any business other than underwriting as a member of  
10 the group and shall be subject to the same level of solvency regulation and  
11 control by the group's domiciliary regulator as are the unincorporated  
12 members; and the group shall make available to the ~~commissioner~~  
13 Commissioner an annual certification of the solvency of each underwriter by  
14 the group's domiciliary regulator and its independent public accountants.

15 ~~(5)(D)~~ In the case of a group of incorporated insurers under common  
16 administration which complies with the filing requirements contained in  
17 ~~subsection (d)~~ subdivision (b)(2) of this section, and which has continuously  
18 transacted an insurance business outside the United States for at least three  
19 years immediately prior to making application for accreditation; ~~and~~ and submits  
20 to this ~~state's~~ State's authority to examine its books and records and bears the  
21 expense of the examination, and which has aggregate policyholders' surplus of

1 \$10,000,000,000.00; the trust shall be in an amount equal to the group's  
2 several liabilities attributable to business ceded by ~~United States~~ U.S. ceding  
3 insurers to any member of the group pursuant to reinsurance contracts issued in  
4 the name of such group; plus the group shall maintain a joint trustee surplus  
5 of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~  
6 U.S. ceding insurers of any member of the group as additional security for any  
7 such liabilities, and each member of the group shall make available to the  
8 ~~commissioner~~ Commissioner an annual certification of the member's solvency  
9 by the member's domiciliary regulator and its independent public accountant.

10 (5) Credit shall be allowed when the reinsurance is ceded to an  
11 assuming insurer that has been certified by the Commissioner as a reinsurer in  
12 this State and secures its obligations in accordance with the requirements of  
13 this subdivision.

14 (A) In order to be eligible for certification, the assuming insurer shall  
15 meet the following requirements:

16 (i) the assuming insurer must be domiciled and licensed to transact  
17 insurance or reinsurance in a qualified jurisdiction, as determined by the  
18 Commissioner under subdivision (C) of this subdivision (5);

19 (ii) the assuming insurer must maintain minimum capital and  
20 surplus, or its equivalent, in an amount to be determined by the Commissioner  
21 by rule;

1           (iii) the assuming insurer must maintain financial strength ratings  
2 from two or more rating agencies deemed acceptable by the Commissioner by  
3 rule;

4           (iv) the assuming insurer must agree to submit to the jurisdiction  
5 of this State, appoint the Commissioner as its agent for service of process in  
6 this State, and agree to provide security for 100 percent of the assuming  
7 insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if  
8 it resists enforcement of a final U.S. judgment;

9           (v) the assuming insurer must agree to meet applicable  
10 information filing requirements as determined by the Commissioner, both with  
11 respect to an initial application for certification and on an ongoing basis; and

12           (vi) the assuming insurer must satisfy any other requirements for  
13 certification deemed relevant by the Commissioner.

14           (B) An association, including incorporated and individual  
15 unincorporated underwriters, may be a certified reinsurer. In order to be  
16 eligible for certification, in addition to satisfying the requirements of  
17 subdivision (A) of this subdivision (5):

18           (i) the association shall satisfy its minimum capital and surplus  
19 requirements through the capital and surplus equivalents, net of liabilities, of  
20 the association and its members, which shall include a joint central fund that  
21 may be applied to any unsatisfied obligation of the association or any of its

1 members, in an amount determined by the Commissioner to provide adequate  
2 protection;

3 (ii) The incorporated members of the association shall not be  
4 engaged in any business other than underwriting as a member of the  
5 association and shall be subject to the same level of regulation and solvency  
6 control by the association's domiciliary regulator as are the unincorporated  
7 members; and

8 (iii) Within 90 days after its financial statements are due to be  
9 filed with the association's domiciliary regulator, the association shall provide  
10 to the Commissioner an annual certification by the association's domiciliary  
11 regulator of the solvency of each underwriter member; or, if a certification is  
12 unavailable, financial statements, prepared by independent public accountants,  
13 of each underwriter member of the association.

14 (C) The Commissioner shall create and publish a list of qualified  
15 jurisdictions under which an assuming insurer licensed and domiciled in such  
16 jurisdiction is eligible to be considered for certification by the Commissioner  
17 as a certified reinsurer.

18 (i) In order to determine whether the domiciliary jurisdiction of a  
19 non-U.S. assuming insurer is eligible to be recognized as a qualified  
20 jurisdiction, the Commissioner shall evaluate the appropriateness and  
21 effectiveness of the reinsurance supervisory system of the jurisdiction, both

1 initially and on an ongoing basis, and consider the rights, benefits, and extent  
2 of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers  
3 licensed and domiciled in the United States. A qualified jurisdiction must  
4 agree to share information and cooperate with the Commissioner with respect  
5 to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may  
6 not be recognized as a qualified jurisdiction if the Commissioner has  
7 determined that the jurisdiction does not adequately and promptly enforce final  
8 U.S. judgments and arbitration awards. Additional factors may be considered  
9 in the discretion of the Commissioner.

10 (ii) A list of qualified jurisdictions shall be published through the  
11 NAIC committee process. The Commissioner shall consider this list in  
12 determining qualified jurisdictions. If the Commissioner approves a  
13 jurisdiction as qualified that does not appear on the list of qualified  
14 jurisdictions, the Commissioner shall provide thoroughly documented  
15 justification in accordance with criteria to be developed by rule.

16 (iii) U.S. jurisdictions that meet the requirement for accreditation  
17 under the NAIC financial standards and accreditation program shall be  
18 recognized as qualified jurisdictions.

19 (iv) If a certified reinsurer's domiciliary jurisdiction ceases to be a  
20 qualified jurisdiction, the Commissioner has the discretion to suspend the  
21 reinsurer's certification indefinitely, in lieu of revocation.

1           (D) The Commissioner shall assign a rating to each certified  
2 reinsurer, giving due consideration to the financial strength ratings that have  
3 been assigned by rating agencies deemed acceptable to the Commissioner by  
4 rule. The Commissioner shall publish a list of all certified reinsurers and their  
5 ratings.

6           (E) A certified reinsurer shall secure obligations assumed from U.S.  
7 ceding insurers under this subsection at a level consistent with its rating, as  
8 specified in rules adopted by the Commissioner.

9           (i) In order for a domestic ceding insurer to qualify for full  
10 financial statement credit for reinsurance ceded to a certified reinsurer, the  
11 certified reinsurer shall maintain security in a form acceptable to the  
12 Commissioner and consistent with the provisions of subsection (c) of this  
13 section or in a multibeneficiary trust in accordance with subdivision (4) of this  
14 subsection, except as otherwise provided in this subdivision.

15           (ii) If a certified reinsurer maintains a trust to fully secure its  
16 obligations subject to subdivision (4) of this subsection and chooses to secure  
17 its obligations incurred as a certified reinsurer in the form of a multibeneficiary  
18 trust, the certified reinsurer shall maintain separate trust accounts for its  
19 obligations incurred under reinsurance agreements issued or renewed as a  
20 certified reinsurer with reduced security as permitted by this subsection or  
21 comparable laws of other U.S. jurisdictions and for its obligations subject to

1 subdivision (4) of this subsection. It shall be a condition to the grant of  
2 certification under this subdivision (5) that the certified reinsurer shall have  
3 bound itself, by the language of the trust and agreement with the commissioner  
4 with principal regulatory oversight of each such trust account, to fund, upon  
5 termination of any such trust account, out of the remaining surplus of such  
6 trust any deficiency of any other such trust account.

7 (iii) The minimum trustee surplus requirements provided in  
8 subdivision (4) of this subsection are not applicable with respect to a  
9 multibeneficiary trust maintained by a certified reinsurer for the purpose of  
10 securing obligations incurred under this subsection, except that such trust shall  
11 maintain a minimum trustee surplus of \$10,000,000.00.

12 (iv) With respect to obligations incurred by a certified reinsurer  
13 under this subsection, if the security is insufficient, the Commissioner shall  
14 reduce the allowable credit by an amount proportionate to the deficiency and  
15 has the discretion to impose further reductions in allowable credit upon finding  
16 that there is a material risk that the certified reinsurer's obligations will not be  
17 paid in full when due.

18 (v) For purposes of this subdivision (5), a certified reinsurer  
19 whose certification has been terminated for any reason shall be treated as a  
20 certified reinsurer required to secure 100 percent of its obligations.

1                   (I) As used in this subdivision (5), the term “terminated” refers  
2 to revocation, suspension, voluntary surrender, and inactive status.

3                   (II) If the Commissioner continues to assign a higher rating as  
4 permitted by other provisions of this section, this requirement does not apply  
5 to a certified reinsurer in inactive status or to a reinsurer whose certification  
6 has been suspended.

7                   (F) If an applicant for certification has been certified as a reinsurer in  
8 an NAIC accredited jurisdiction, the Commissioner has the discretion to defer  
9 to that jurisdiction’s certification and has the discretion to defer to the rating  
10 assigned by that jurisdiction, and such assuming insurer shall be considered to  
11 be a certified reinsurer in this State.

12                   (G) A certified reinsurer that ceases to assume new business in this  
13 State may request to maintain its certification in inactive status in order to  
14 continue to qualify for a reduction in security for its in-force business. An  
15 inactive certified reinsurer shall continue to comply with all applicable  
16 requirements of this subsection, and the Commissioner shall assign a rating  
17 that takes into account, if relevant, the reasons why the reinsurer is not  
18 assuming new business.

19                   (6) Credit shall be allowed when the reinsurance is ceded to an  
20 assuming insurer not meeting the requirements of subdivision (1), (2), (3), (4)  
21 or (5) of this subsection, but only as to the insurance of risks located in

1 jurisdictions where the reinsurance is required by applicable law or regulation  
2 of that jurisdiction.

3 ~~(g)~~(7) If the assuming insurer is not licensed or accredited or certified to  
4 transact insurance or reinsurance in this ~~state~~ State, the credit permitted by  
5 ~~subsections (e) and (f) of this section~~ subdivisions (3) and (4) of this  
6 subsection shall not be allowed unless the assuming insurer agrees in the  
7 reinsurance agreements:

8 ~~(1)~~(A) that in the event of the failure of the assuming insurer to perform  
9 its obligations under the terms of the reinsurance agreement, the assuming  
10 insurer, at the request of the ceding insurer, shall submit to the jurisdiction of  
11 any court of competent jurisdiction in any state of the United States, will  
12 comply with all requirements necessary to give such court jurisdiction, and  
13 will abide by the final decision of such court or of any appellate court in the  
14 event of an appeal; and

15 ~~(2)~~(B) to designate the Commissioner, the ~~secretary of state~~ Secretary of  
16 State, or a designated attorney as its true and lawful attorney upon whom may  
17 be served any lawful process in any action, suit, or proceeding instituted by or  
18 on behalf of the ceding company. This provision is not intended to conflict  
19 with or override the obligation of the parties to a reinsurance agreement to  
20 arbitrate their disputes, if this obligation is created in the agreement.

1           (8) If the assuming insurer does not meet the requirements of  
2           subdivision (1), (2) or (3) of this subsection, the credit permitted by  
3           subdivision (4) or (5) of this subsection shall not be allowed unless the  
4           assuming insurer agrees in the trust agreements to the following conditions:

5           (A) Notwithstanding any other provisions in the trust instrument to  
6           the contrary, if the trust fund is inadequate because it contains an amount less  
7           than the amount required by subdivisions (4)(B)–(D) of this subsection or if  
8           the grantor of the trust has been declared insolvent or placed into receivership,  
9           rehabilitation, liquidation, or similar proceedings under the laws of its state or  
10           country of domicile, the trustee shall comply with an order of the  
11           Commissioner with regulatory oversight over the trust or with an order of a  
12           court of competent jurisdiction directing the trustee to transfer to the  
13           Commissioner with regulatory oversight all of the assets of the trust fund.

14           (B) The assets shall be distributed by and claims shall be filed with  
15           and valued by the Commissioner with regulatory oversight in accordance with  
16           the laws of the state in which the trust is domiciled that are applicable to the  
17           liquidation of domestic insurance companies.

18           (C) If the commissioner with regulatory oversight determines that the  
19           assets of the trust fund or any part thereof are not necessary to satisfy the  
20           claims of the U.S. ceding insurers of the grantor of the trust, the assets or part

1 thereof shall be returned by the commissioner with regulatory oversight to the  
2 trustee for distribution in accordance with the trust agreement.

3 (D) The grantor shall waive any right otherwise available to it under  
4 U.S. law that is inconsistent with this provision.

5 (9) If an accredited or certified reinsurer ceases to meet the requirements  
6 for accreditation or certification, the Commissioner may suspend or revoke the  
7 reinsurer's accreditation or certification.

8 (A) The Commissioner must give the reinsurer notice and  
9 opportunity for hearing. The Commissioner may suspend or revoke a  
10 reinsurer's accreditation or certification without a hearing if:

11 (i) the reinsurer waives its right to hearing;

12 (ii) the Commissioner's order is based on regulatory action by the  
13 reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of  
14 the reinsurer's eligibility to transact insurance or reinsurance business in its  
15 domiciliary jurisdiction or in the primary certifying state of the reinsurer under  
16 subdivision (5)(F) of this subsection; or

17 (iii) the Commissioner finds that an emergency requires  
18 immediate action and a court of competent jurisdiction has not stayed the  
19 Commissioner's action.

20 (B) While a reinsurer's accreditation or certification is suspended, no  
21 reinsurance contract issued or renewed after the effective date of the

1 suspension qualifies for credit except to the extent that the reinsurer's  
2 obligations under the contract are secured in accordance with subsection (c) of  
3 this section. If a reinsurer's accreditation or certification is revoked, no credit  
4 for reinsurance may be granted after the effective date of the revocation except  
5 to the extent that the reinsurer's obligations under the contract are secured in  
6 accordance with subdivision (5)(E) of this subsection or subsection (c) of this  
7 section.

8 (10) Concentration Risk.

9 (A) A ceding insurer shall take steps to manage its reinsurance  
10 recoverables proportionate to its own book of business. A domestic ceding  
11 insurer shall notify the Commissioner within 30 days after reinsurance  
12 recoverables from any single assuming insurer or group of affiliated assuming  
13 insurers exceeds 50 percent of the domestic ceding insurer's last reported  
14 surplus to policyholders or after it is determined that reinsurance recoverables  
15 from any single assuming insurer or group of affiliated assuming insurers is  
16 likely to exceed this limit. The notification shall demonstrate that the exposure  
17 is safely managed by the domestic ceding insurer.

18 (B) A ceding insurer shall take steps to diversify its reinsurance  
19 program. A domestic ceding insurer shall notify the Commissioner within 30  
20 days after ceding to any single assuming insurer or group of affiliated  
21 assuming insurers more than 20 percent of the ceding insurer's gross written

1 premium in the prior calendar year or after it has determined that the  
2 reinsurance ceded to any single assuming insurer or group of affiliated  
3 assuming insurers is likely to exceed this limit. The notification shall  
4 demonstrate that the exposure is safely managed by the domestic ceding  
5 insurer.

6 ~~(h)(c) Reduction from liability for reinsurance ceded by a domestic insurer~~  
7 ~~to an assuming insurer. A domestic insurer that does not meet the~~  
8 ~~requirements of subsections (a) through (g) of this section shall be allowed a~~  
9 ~~reduction in liability: An asset or a reduction from liability for the reinsurance~~  
10 ~~ceded by a domestic insurer to an assuming insurer not meeting the~~  
11 ~~requirements of subsection (b) of this section shall be allowed in an amount not~~  
12 ~~exceeding the liabilities carried by the ceding insurer. The reduction shall be~~

13 ~~(1) in an amount not exceeding the liabilities carried by the ceding~~  
14 ~~insurer; and~~

15 ~~(2) in the amount of funds held by or on behalf of the ceding insurer,~~  
16 ~~including funds held in trust for the ceding insurer, under a reinsurance~~  
17 ~~contract with such assuming insurer as collateral for the payment of obligations~~  
18 ~~thereunder, if such collateral is held in the United States subject to withdrawal~~  
19 ~~solely by, and under the exclusive control of, the ceding insurer; or, in the case~~  
20 ~~of a trust, held in a qualified ~~United States~~ U.S. financial institution ~~approved~~~~

1 ~~by the commissioner. Such collateral shall be in the form of:~~ as defined in  
2 subsection (d)(2) of this section. This security may be in the form of:

3 ~~(A)(1)~~ (1) cash;

4 ~~(B)(2)~~ (2) securities listed by the Securities Valuation Office of the  
5 National Association of Insurance Commissioners and qualifying as admitted  
6 assets; or

7 ~~(C)(3)~~ (3) clean, irrevocable, unconditional letters of credit, issued or  
8 confirmed by a qualified ~~United States~~ U.S. financial institution, ~~approved by~~  
9 ~~the commissioner~~ as defined in subsection (d)(1) of this section, which are  
10 effective no later than December 31 in respect of the year for which filing is  
11 being made, and in the possession of the ceding company on or before the  
12 filing date of its annual statement. Letters of credit meeting applicable  
13 standards of issuer acceptability as of the dates of their issuance or  
14 confirmation shall, notwithstanding the issuing or confirming institution's  
15 subsequent failure to meet applicable standards of issuer acceptability,  
16 continue to be acceptable as security until their expiration, extension, renewal,  
17 modification, or amendment, whichever first occurs; or

18 ~~(D)(4)~~ (4) any other form of collateral acceptable to the ~~commissioner~~

19 Commissioner.

20 (d)(1) For purposes of subdivision (c)(3) of this section, a “qualified U.S.  
21 financial institution” means an institution that:

1           (A) is organized or, in the case of a U.S. office of a foreign banking  
2           organization, licensed under the laws of the United States or any state thereof;

3           (B) is regulated, supervised, and examined by federal or state  
4           authorities having regulatory authority over banks and trust companies; and

5           (C) has been determined by either the Commissioner or the Securities  
6           Valuation Office of the National Association of Insurance Commissioners to  
7           meet such standards of financial condition and standing as are considered  
8           necessary and appropriate to regulate the quality of financial institutions whose  
9           letters of credit will be acceptable to the Commissioner.

10           (2) A “qualified U.S. financial institution” means, for purposes of those  
11           provisions of this section specifying those institutions that are eligible to act as  
12           a fiduciary of a trust, an institution that is:

13           (A) organized or, in the case of a U.S. branch or agency office of a  
14           foreign banking organization, licensed under the laws of the United States or  
15           any state thereof and has been granted authority to operate with fiduciary  
16           powers; and

17           (B) regulated, supervised, and examined by federal or state  
18           authorities having regulatory authority over banks and trust companies.

19           ~~com~~(e) Notwithstanding the provisions of this subsection to the contrary, the  
20           ~~commissioner~~ Commissioner shall allow credit for reinsurance ceded and  
21           assumed to a pooling arrangement that has the following characteristics:



1           (6) “Enterprise risk” means any activity, circumstance, event, or series  
2           of events involving one or more affiliates of an insurer that, if not remedied  
3           promptly, is likely to have a material adverse effect upon the financial  
4           condition or liquidity of the insurer or its insurance holding company system as  
5           a whole, including anything that would cause the insurer’s risk-based capital to  
6           fall into company action level as set forth in section 8303 of this title or would  
7           cause the insurer to be in hazardous financial condition under Department  
8           Regulation I-93-2, sections 3-4.

9           ~~(6)~~(7) “Person” means an individual, a corporation, a partnership, an  
10           association, a joint stock company, a trust, an unincorporated organization, any  
11           similar entity or any combination of the foregoing acting in concert, but shall  
12           not include any securities broker performing no more than the usual and  
13           customary broker’s function.

14           ~~(7)~~(8) “Security holder” of a specified person means one who owns any  
15           security of such person, including common stock, preferred stock, debt  
16           obligations, and any other security convertible into or evidencing the right to  
17           acquire any of the foregoing.

18           ~~(8)~~(9) “Subsidiary” of a specified person means an affiliate controlled  
19           by such person directly, or indirectly through one or more intermediaries.

20           ~~(9)~~(10) “Voting security” shall include any security convertible into or  
21           evidencing a right to acquire a voting security.

1 Sec. 29. 8 V.S.A. § 3683 is amended to read:

2 § 3683. ACQUISITION OF CONTROL OF OR MERGER WITH  
3 DOMESTIC INSURER

4 (a) Filing requirements.

5 (1) No person other than the issuer shall make a tender offer for or a  
6 request or invitation for tenders of, or enter into any agreement to exchange  
7 securities for, seek to acquire, or acquire, in the open market or otherwise, any  
8 voting security of a domestic insurer if, after the consummation thereof, such  
9 person would, directly or indirectly (or by conversion or by exercise of any  
10 right to acquire) be in control of such insurer, and no person shall enter into an  
11 agreement to merge with or otherwise to acquire control of a domestic insurer  
12 unless, at the time any such offer, request, or invitation is made or any such  
13 agreement is entered into, or prior to the acquisition of such securities if no  
14 offer or agreement is involved, such person has filed with the ~~commissioner~~  
15 Commissioner and has sent to such insurer, and such insurer has sent to its  
16 shareholders, a statement containing the information required by this section  
17 and such offer, request, invitation, agreement, or acquisition has been approved  
18 by the ~~commissioner~~ Commissioner in the manner hereinafter prescribed. ~~For~~  
19 ~~purposes of this section: a domestic insurer shall include any other person~~  
20 ~~controlling a domestic insurer unless such other person is either directly or~~

1 ~~through its affiliates primarily engaged in business other than the business of~~  
2 ~~insurance.~~

3 (2) For purposes of this subsection, any controlling person of a domestic  
4 insurer seeking to divest its controlling interest in the domestic insurer in any  
5 manner shall file with the Commissioner, with a copy to the insurer,  
6 confidential notice of its proposed divestiture at least 30 days prior to the  
7 cessation of control. The Commissioner shall determine those instances in  
8 which the party or parties seeking to divest or to acquire a controlling interest  
9 in an insurer will be required to file for and obtain approval of the transaction.  
10 The information shall remain confidential and not subject to public inspection  
11 and copying under the Public Records Act until the conclusion of the  
12 transaction unless the Commissioner, in his or her discretion, determines that  
13 confidential treatment will interfere with enforcement of this section. If the  
14 statement referred to in subdivision (1) of this subsection is otherwise filed,  
15 this subdivision shall not apply.

16 (3) With respect to a transaction subject to this section, the acquiring  
17 person must also file a preacquisition notification with the Commissioner,  
18 which shall contain the information set forth in subdivision 3683a(c)(1). A  
19 failure to file the notification may be subject to penalties specified in  
20 subdivision 3683a(e)(3) of this chapter.



1 protection of policyholders and security holders of the insurer or in the public  
2 interest.

3 \* \* \*

4 (f) Approval by ~~commissioner~~ Commissioner; hearings—

5 (1) The ~~commissioner~~ Commissioner shall approve any merger or other  
6 acquisition of control referred to in subsection (a) of this section unless, after a  
7 public hearing thereon, he or she finds that:

8 (A) after the change of control the domestic insurer referred to in  
9 subsection (a) of this section would not be able to satisfy the requirements for  
10 the issuance of a license to write the line or lines of insurance for which it is  
11 presently licensed;

12 (B) the effect of the merger or other acquisition of control would be  
13 substantially to lessen competition in insurance in this state or tend to create a  
14 monopoly ~~therein~~; In applying the competitive standard in this subdivision:

15 (i) the informational requirements of subdivision 3683a(c)(1) and  
16 the standards of subdivision 3683a(d)(2) of this chapter shall apply;

17 (ii) the merger or other acquisition shall not be disapproved if the  
18 Commissioner finds that any of the situations meeting the criteria provided by  
19 subdivision 3683a(d)(3) of this chapter exist; and

1                   (iii) the Commissioner may condition the approval of the merger  
2 or other acquisition on the removal of the basis of disapproval within a  
3 specified period of time;

4                   (C) the financial condition of any acquiring party is such as might  
5 jeopardize the financial stability of the insurer, or prejudice the interest of its  
6 policyholders;

7                   (D) the terms of the offer, request, invitation, agreement, or  
8 acquisition referred to in subsection (a) of this section are unfair and  
9 unreasonable to the security holders of the insurer;

10                  (E) the plans or proposals which the acquiring party has to liquidate  
11 the insurer, sell its assets or consolidate or merge it with any person, or to  
12 make any other material change in its business or corporate structure or  
13 management; are unfair and unreasonable to policyholders of the insurer and  
14 not in the public interest; ~~or~~

15                  (F) the competence, experience, and integrity of those persons who  
16 would control the operation of the insurer are such that it would not be in the  
17 interest of policyholders of the insurer and of the public to permit the merger  
18 or other acquisition of control; or

19                  (G) the acquisition is likely to be hazardous or prejudicial to the  
20 insurance-buying public.

1           (2) The public hearing referred to in subdivision (1) of this subsection  
2 shall be held within 30 days after the statement required by subsection (a) of  
3 this section is filed, and at least 20 days' notice thereof shall be given by the  
4 ~~commissioner~~ Commissioner to the person filing the statement. Not less than  
5 seven days' notice of such public hearing shall be given by the person filing  
6 the statement to the insurer and to such other persons as may be designated by  
7 the ~~commissioner~~ Commissioner. The insurer shall give such notice to its  
8 security holders. The ~~commissioner~~ Commissioner shall make a determination  
9 within 30 days after the conclusion of such hearing; provided, however, that, if  
10 the insurer is or will be an affiliate of a depository institution or any affiliate  
11 thereof, the ~~commissioner~~ Commissioner shall issue a determination within the  
12 60-day period preceding the effective date of the acquisition or change or  
13 continuation of control of an insurer. At such hearing, the person filing the  
14 statement, the insurer, any person to whom notice of hearing was sent, and any  
15 other person whose interests may be affected thereby shall have the right to  
16 present evidence, examine and cross-examine witnesses, and offer oral and  
17 written arguments and in connection therewith shall be entitled to conduct  
18 discovery proceedings in the same manner as is presently allowed in the  
19 ~~superior court of this state~~ Superior Court of this State. All discovery  
20 proceedings shall be concluded not later than three days prior to the  
21 commencement of the public hearing.

1           (3) If the proposed acquisition of control will require the approval of  
2 more than one Commissioner, the public hearing required by subdivision (2) of  
3 this subsection may be held on a consolidated basis upon request of the person  
4 filing the statement referred to in subsection (a) of this section. Such person  
5 shall file the statement referred to in subsection (a) of this section with the  
6 NAIC within five days of making the request for a public hearing. A  
7 commissioner may opt out of a consolidated hearing and shall provide notice  
8 to the applicant of the opt-out within 10 days of the receipt of the statement  
9 referred to in subsection (a) of this section. A hearing conducted on a  
10 consolidated basis shall be public and shall be held within the United States  
11 before the commissioners of the states in which the insurers are domiciled.  
12 Such commissioners shall hear and receive evidence. A commissioner may  
13 attend such hearing in person or by telecommunication.

14           (4) In connection with a change of control of a domestic insurer, any  
15 determination by the Commissioner that the person acquiring control of the  
16 insurer shall be required to maintain or restore the capital of the insurer to the  
17 level required by the laws and rules of this State shall be made not later than 60  
18 days after the date of notification of the change in control submitted pursuant  
19 to subdivision (a)(1) of this section.

20           (5) ~~The commissioner~~ Commissioner may retain at the acquiring  
21 person's expense any attorneys, actuaries, accountants, and other experts not

1 otherwise a part of the ~~commissioner's~~ Commissioner's staff as may be  
2 reasonably necessary to assist the ~~commissioner~~ Commissioner in reviewing  
3 the proposed acquisition of control.

4 Sec. 30. 8 V.S.A. § 3683a is added to read:

5 § 3683a. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE  
6 COVERED

7 (a) Definitions. For the purposes of this section:

8 (1) "Acquisition" means any agreement, arrangement, or activity the  
9 consummation of which results in a person acquiring directly or indirectly the  
10 control of another person and includes the acquisition of voting securities and  
11 assets, bulk reinsurance, and mergers.

12 (2) An "involved insurer" includes an insurer which either acquires or is  
13 acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

14 (b) Except as provided in this subsection, this section applies to any  
15 acquisition in which there is a change in control of an insurer authorized to do  
16 business in this State. This section shall not apply to the following:

17 (1) A purchase of securities solely for investment purposes so long as  
18 the securities are not used by voting or otherwise to cause or attempt to cause  
19 the substantial lessening of competition in any insurance market in this State.  
20 If a purchase of securities results in a presumption of control under subsection  
21 3681(c) of this section, it is not solely for investment purposes unless the

1 Commissioner of the insurer's state of domicile accepts a disclaimer of control  
2 or affirmatively finds that control does not exist and the disclaimer action or  
3 affirmative finding is communicated by the domiciliary commissioner to the  
4 Commissioner of this State.

5 (2) The acquisition of a person by another person when both persons are  
6 neither directly nor through affiliates primarily engaged in the business of  
7 insurance, if preacquisition notification is filed with the Commissioner in  
8 accordance with subdivision (c)(1) of this section 30 days prior to the proposed  
9 effective date of the acquisition. However, such preacquisition notification is  
10 not required for exclusion from this section if the acquisition would otherwise  
11 be excluded from this section by any other provision of this subsection.

12 (3) The acquisition of already affiliated persons.

13 (4) An acquisition if, as an immediate result of the acquisition:

14 (A) in no market would the combined market share of the involved  
15 insurers exceed five percent of the total market;

16 (B) there would be no increase in any market share; or

17 (C) in no market would the combined market share of the involved  
18 insurers exceed 12 percent of the total market and the market share increase by  
19 more than two percent of the total market. For the purposes of this  
20 subdivision, a "market" means direct written insurance premium in this State

1 for a line of business as contained in the annual statement required to be filed  
2 by insurers licensed to do business in this State.

3 (5) An acquisition for which a preacquisition notification would be  
4 required under this section due solely to the resulting effect on the ocean  
5 marine insurance line of business.

6 (6) An acquisition of an insurer whose domiciliary commissioner  
7 affirmatively finds that the insurer is in failing condition; there is a lack of  
8 feasible alternative to improving such condition; the public benefits of  
9 improving the insurer's condition through the acquisition exceed the public  
10 benefits that would arise from not lessening competition; and the findings are  
11 communicated by the domiciliary commissioner to the Commissioner of this  
12 State.

13 (c) Preacquisition Notification; Waiting Period. An acquisition covered by  
14 subsection (e) of this section may be subject to an order under that subsection  
15 unless the acquiring person files a preacquisition notification and the waiting  
16 period has expired. The acquired person may file a preacquisition notification.  
17 The Commissioner shall give confidential treatment to information submitted  
18 under this subsection in the same manner as provided in section 3687 of this  
19 chapter.

20 (1) The preacquisition notification shall be in such form and contain  
21 such information as prescribed by the NAIC relating to those markets which,

1 under subdivision (b)(4) of this section, cause the acquisition not to be  
2 exempted from the provisions of this section. The Commissioner may require  
3 such additional material and information as deemed necessary to determine  
4 whether the proposed acquisition, if consummated, would violate the  
5 competitive standard of subsection (d) of this section. The required  
6 information may include an opinion of an economist as to the competitive  
7 impact of the acquisition in this State accompanied by a summary of the  
8 education and experience of such person indicating his or her ability to render  
9 an informed opinion.

10 (2) The waiting period required shall begin on the date the  
11 Commissioner receives a preacquisition notification and shall end on the  
12 earlier of the 30th day after the date of receipt or termination of the waiting  
13 period by the Commissioner. Prior to the end of the waiting period, the  
14 Commissioner on a one-time basis may require the submission of additional  
15 needed information relevant to the proposed acquisition, in which event the  
16 waiting period shall end on the earlier of the 30th day after the Commissioner  
17 receives the additional information or termination of the waiting period by the  
18 Commissioner.

19 (d) Competitive Standard.

20 (1) The Commissioner may enter an order under subsection (e)(1) of this  
21 section with respect to an acquisition if there is substantial evidence that the

1 effect of the acquisition may be to lessen substantially competition in any line  
2 of insurance in this State or tend to create a monopoly or if the insurer fails to  
3 file adequate information in compliance with subsection (c) of this section.

4 (2) In determining whether a proposed acquisition would violate the  
5 competitive standard of subdivision (1) of this subsection, the Commissioner  
6 shall consider the following:

7 (A) any acquisition covered under subsection (b) of this section  
8 involving two insurers competing in the same market is prima facie evidence  
9 of violation of the competitive standards if:

10 (i) the market is highly concentrated and the involved insurers  
11 possess the following shares of the market:

12 (I) insurer A a share of four percent and insurer B a share of  
13 four percent or more;

14 (II) insurer A a share of 10 percent and insurer B a share of two  
15 percent or more; or

16 (III) insurer A a share of 15 percent and insurer B a share of  
17 one percent or more.

18 (ii) the market is not highly concentrated and the involved insurers  
19 possess the following shares of the market:

20 (I) insurer A a share of five percent and insurer B a share of  
21 five percent or more;

1                   (II) insurer A a share of 10 percent and insurer B a share of  
2 four percent or more;

3                   (III) insurer A a share of 15 percent and insurer B a share of  
4 three percent or more; or

5                   (IV) insurer A a share of 19 percent and insurer B a share of  
6 one percent or more.

7                   (B) If more than two insurers competing in the same market are  
8 involved in any acquisition covered under subsection (b) of this section,  
9 exceeding the total of the two figures set forth for insurer A and insurer B in an  
10 item set forth in subdivision (A) of this subsection is prima facie evidence of  
11 violation of the competitive standards. For the purpose of this subdivision, the  
12 insurer with the largest share of the market shall be considered to be insurer A.

13                   (C) There is a significant trend toward increased concentration when  
14 the aggregate market share of any grouping of the largest insurers in the  
15 market, from the two largest to the eight largest, has increased by seven  
16 percent or more of the market over a period of time extending from any base  
17 year five to ten years prior to the acquisition up to the time of the acquisition.  
18 Any acquisition or merger covered under subsection (b) of this section  
19 involving two or more insurers competing in the same market is prima facie  
20 evidence of violation of the competitive standard in subdivision (1) of this  
21 subsection if:

1                   (i) there is a significant trend toward increased concentration in  
2 the market;

3                   (ii) one of the insurers involved is one of the insurers in a  
4 grouping of large insurers showing the requisite increase in the market share;  
5 and

6                   (iii) Another involved insurer's market is two percent or more.

7                   (D) If an acquisition is not prima facie violative of the competitive  
8 standard under subdivisions (A) through (C) of this subdivision (2), the  
9 Commissioner may establish the requisite anticompetitive effect based upon  
10 other substantial evidence. If an acquisition is prima facie violative of the  
11 competitive standard under subdivisions (A) through (C) of this subdivision  
12 (2), a party may establish the absence of the requisite anticompetitive effect  
13 based upon other substantial evidence. Relevant factors in making a  
14 determination under this subdivision include the following: market shares,  
15 volatility of ranking of market leaders, number of competitors, concentration,  
16 trend of concentration in the industry, and ease of entry and exit into the  
17 market.

18                   (3) For the purposes of subdivision (2) of this subsection:

19                   (A) "Insurer" includes any company or group of companies under  
20 common management, ownership, or control.

1           (B) “Market” means the relevant product and geographical markets.  
2           In determining the relevant product and geographical markets, the  
3           Commissioner shall give due consideration to, among other things, the  
4           definitions or guidelines, if any, adopted by the NAIC and to information, if  
5           any, submitted by parties to the acquisition. In the absence of sufficient  
6           information to the contrary, the relevant product market is assumed to be the  
7           direct written insurance premium for a line of business, such line being that  
8           used in the annual statement required to be filed by insurers doing business in  
9           this State, and the relevant geographical market is assumed to be this State.

10           (C) A “highly concentrated market” is one in which the share of the  
11           four largest insurers is 75 percent or more of the market.

12           (D) The burden of showing prima facie evidence of violation of the  
13           competitive standard rests upon the Commissioner.

14           (E) Percentages not provided in subdivisions (A) and (B) of this  
15           subdivision (2) are interpolated proportionately to the percentages that are  
16           provided.

17           (4) An order may not be entered under subdivision (e)(1) of this  
18           section if:

19           (A) the acquisition will yield substantial economies of scale or  
20           economies in resource utilization that cannot be feasibly achieved in any other

1 way and the public benefits which would arise from such economies exceed  
2 the public benefits which would arise from not lessening competition; or

3 (B) the acquisition will substantially increase the availability of  
4 insurance and the public benefits of the increase exceed the public benefits  
5 which would arise from not lessening competition.

6 (e) Orders and Penalties.

7 (1) If an acquisition violates the standards of this section, the  
8 Commissioner may enter an order requiring an involved insurer to cease and  
9 desist from doing business in this State with respect to the line or lines of  
10 insurance involved in the violation or an order denying the application of an  
11 acquired or acquiring insurer for a license to do business in this State. Such an  
12 order shall not be entered unless there is a hearing, notice of the hearing is  
13 issued prior to the end of the waiting period and not less than 15 days prior to  
14 the hearing, and the hearing is concluded and the order is issued no later than  
15 60 days after the date of the filing of the preacquisition notification with the  
16 Commissioner. Every order shall be accompanied by a written decision of the  
17 Commissioner setting forth findings of fact and conclusions of law. An order  
18 under this subdivision shall not apply if the acquisition is not consummated.

19 (2) Any person who violates a cease and desist order of the  
20 Commissioner under subdivision (1) of this subsection and while the order is  
21 in effect may, after notice and hearing and upon order of the Commissioner, be

1 subject to a monetary penalty of not more than \$10,000.00 for every day of  
2 violation or suspension or revocation of the person's license, in the discretion  
3 of the Commissioner.

4 (3) Any insurer or other person who fails to make any filing required by  
5 this section and who also fails to demonstrate a good faith effort to comply  
6 with any filing requirement shall be subject to a fine of not more than  
7 \$50,000.00.

8 (f) Sections 3689(b)–(c), and 3691 do not apply to acquisitions covered  
9 under subsection (b) of this section.

10 Sec. 31. 8 V.S.A. § 3684 is amended to read:

11 § 3684. REGISTRATION OF INSURERS

12 \* \* \*

13 (b) Information and form required. Every insurer subject to registration  
14 shall file a registration statement on a form provided by the ~~commissioner~~  
15 Commissioner, which shall contain current information about:

16 \* \* \*

17 (5) If requested by the Commissioner, financial statements of or within  
18 an insurance holding company system, including all affiliates. Financial  
19 statements may include annual audited financial statements filed with the U.S.  
20 Securities and Exchange Commission (SEC) pursuant to the Securities Act of  
21 1933, as may be amended, or the Securities Exchange Act of 1934, as may be

1 amended. An insurer required to file financial statements under this  
2 subdivision may satisfy the request by providing the Commissioner with the  
3 most recently filed parent corporation financial statements that have been filed  
4 with the SEC.

5 (6) Other matters concerning transactions between registered insurers  
6 and any affiliates as may be included from time to time in any registration  
7 forms adopted or approved by the ~~commissioner~~ Commissioner.

8 (7) Statements that the insurer's board of directors is responsible for and  
9 oversees corporate governance and internal controls and that the insurer's  
10 officers or senior management have approved, implemented, and continue to  
11 maintain and monitor corporate governance and internal control procedures.

12 (8) Any other information required by the Commissioner by rule.

13 (c) Summary of changes to registration statement. All registration  
14 statements shall contain a summary outlining all items in the current  
15 registration statement representing changes from the prior registration  
16 statement.

17 ~~(e)~~(d) Materiality. No information need be disclosed on the registration  
18 statement filed pursuant to subsection (b) of this section if such information is  
19 not material for the purposes of this section. Unless the ~~commissioner~~  
20 Commissioner by rule, ~~regulation~~ or order provides otherwise, sales,  
21 purchases, exchanges, loans or extensions of credit, or investments, involving

1 one-half of one percent or less of an insurer's admitted assets as of the 31st day  
2 of December next preceding shall not be deemed material for purposes of this  
3 section.

4 (e) Reporting of dividends to shareholders. Subject to subsection 3685(d)  
5 of this chapter, each registered insurer shall report to the Commissioner all  
6 dividends and other distributions to shareholders within 15 business days  
7 following the declaration thereof.

8 (f) Information of insurers. Any person within an insurance holding  
9 company system subject to registration shall be required to provide complete  
10 and accurate information to an insurer where the information is reasonably  
11 necessary to enable the insurer to comply with the provisions of this section.

12 ~~(d)~~(g) Amendments to registration statements. Each registered insurer shall  
13 keep current the information required to be disclosed in its registration  
14 statement by reporting all material changes or additions on amendment forms  
15 provided by the ~~commissioner~~ Commissioner within 15 days after the end of  
16 the month in which it learns of each such change or addition, provided,  
17 however, that subject to subsection (c) of section 3685 of this title each  
18 registered insurer shall so report all dividends and other distributions to  
19 shareholders within two business days following the declaration thereto.

1       ~~(e)~~(h) Termination of registration. The ~~commissioner~~ Commissioner shall  
2 terminate the registration of any insurer which demonstrates that it no longer is  
3 a member of an insurance holding company system.

4       ~~(f)~~(i) Consolidated filing. The ~~commissioner~~ Commissioner may require or  
5 allow two or more affiliated insurers subject to registration hereunder to file a  
6 consolidated registration statement or consolidated reports amending their  
7 consolidated registration statement or their individual registration statements.

8       ~~(g)~~(j) Alternative registration. The ~~commissioner~~ Commissioner may  
9 allow an insurer which is authorized to do business in this ~~state~~ State and  
10 which is part of an insurance holding company system to register on behalf of  
11 any affiliated insurer which is required to register under subsection (a) of this  
12 section and to file all information and material required to be filed under this  
13 section.

14       ~~(h)~~(k) Exemptions. The provisions of this section shall not apply to any  
15 insurer, information, or transaction if and to the extent that the ~~commissioner~~  
16 Commissioner by rule, ~~regulation~~, or order shall exempt the same from the  
17 provisions of this section.

18       ~~(i)~~(l) Disclaimer. Any person may file with the ~~commissioner~~  
19 Commissioner a disclaimer of affiliation with any authorized insurer, or such a  
20 disclaimer may be filed by such insurer or any member of an insurance holding  
21 company system. The disclaimer shall fully disclose all material relationships

1 and bases for affiliation between such person and such insurer as well as the  
2 basis for disclaiming such affiliation. After a disclaimer has been filed, the  
3 insurer shall be relieved of any duty to register or report under this section  
4 which may arise out of the insurer's relationship with such person unless and  
5 until the ~~commissioner~~ Commissioner disallows such a disclaimer. The  
6 ~~commissioner~~ Commissioner shall disallow such a disclaimer only after  
7 furnishing all parties in interest with notice and opportunity to be heard and  
8 after making specific findings of fact to support such disallowance.

9 (m) Enterprise Risk Filing. The ultimate controlling person of every  
10 insurer subject to registration shall also file an annual enterprise risk report.  
11 The report shall identify, to the best of the ultimate controlling person's  
12 knowledge and belief, the material risks within the insurance holding company  
13 system that could pose enterprise risk to the insurer. The report shall be filed  
14 with the lead state commissioner of the insurance holding company system as  
15 determined by the procedures within the Financial Analysis Handbook adopted  
16 by the National Association of Insurance Commissioners.

17 (n) Violations. The failure to file a registration statement or any  
18 amendment thereto required by this section within the time specified for such  
19 filing shall be a violation of this section.

1 Sec. 32. 8 V.S.A. § 3685 is amended to read:

2 § 3685. STANDARDS AND MANAGEMENT OF AN INSURER WITHIN  
3 AN INSURANCE HOLDING COMPANY SYSTEM

4 (a) ~~Transactions with affiliates. Material transactions by registered insurers~~  
5 ~~with their affiliates~~ within an insurance holding company system to which an  
6 insurer subject to registration is a party shall be subject to the following  
7 standards:

8 (1) The terms shall be fair and reasonable;

9 (2) Agreements for cost sharing services and management shall include  
10 such provisions as required by rule adopted by the Commissioner;

11 (3) Charges or fees for services performed shall be reasonable;

12 ~~(3)~~(4) Expenses incurred and payment received shall be allocated to the  
13 insurer in conformity with customary insurance accounting practices  
14 consistently applied;

15 ~~(4)~~(5) The books, accounts, and records of each party to all such  
16 transactions shall be so maintained as to clearly and accurately disclose the  
17 precise nature and details of the transactions, including such accounting  
18 information as is necessary to support the reasonableness of the charges or fees  
19 to the respective parties; and

20 ~~(5)~~(6) The insurer's surplus as regards policyholders following any  
21 dividends or distributions to shareholder affiliates shall be reasonable in

1 relation to the insurer's outstanding liabilities and adequate to its financial  
2 needs.

3 (b) Adequacy of surplus. For purposes of this subchapter, in determining  
4 whether an insurer's surplus as regards policyholders is reasonable in relation  
5 to the insurer's outstanding liabilities and adequate to its financial needs, the  
6 following factors, among others, shall be considered:

7 (1) ~~The~~ the size of the insurer as measured by its assets, capital and  
8 surplus, reserves, premium writings, insurance in force, and other appropriate  
9 criteria;

10 (2) ~~The~~ the extent to which the insurer's business is diversified among  
11 the several lines of insurance;

12 (3) ~~The~~ the number and size of risks insured in each line of business;

13 (4) ~~The~~ the extent of the geographical dispersion of the insurer's insured  
14 risks;

15 (5) ~~The~~ the nature and extent of the insurer's reinsurance program;

16 (6) ~~The~~ the quality, diversification, and liquidity of the insurer's  
17 investment portfolio;

18 (7) ~~The~~ the recent past and projected future trend in the size of the  
19 insurer's surplus as regards policyholders;

20 (8) ~~The~~ the surplus as regards policyholders maintained by other  
21 comparable insurers;

1 (9) ~~The~~ the adequacy of the insurer's reserves; and

2 (10) ~~The~~ the quality and liquidity of investments in subsidiaries made  
3 pursuant to section 3682 of this title. ~~The commissioner~~ Commissioner may  
4 treat any such investment as a disallowed asset for purposes of determining the  
5 adequacy of surplus as regards policyholders whenever in his or her judgment  
6 such investment so warrants.

7 (c) Dividends and other distributions. No insurer subject to registration  
8 under section 3684 of this title shall pay any extraordinary dividend or make  
9 any other extraordinary distribution to its shareholders until:

10 (1) 30 days after the ~~commissioner~~ Commissioner has received notice of  
11 the declaration thereof and has not within such period disapproved such  
12 payment; or

13 (2) ~~The commissioner~~ the Commissioner shall have approved such  
14 payment within such 30 day period.

15 (d) Limitation on dividends.

16 (1) For purposes of this section, an extraordinary dividend or  
17 distribution includes any dividend or distribution of cash or other property,  
18 whose fair market value together with that of other dividends or distributions  
19 made within the preceding 12 months exceeds the lesser of:

20 (A) 10 percent of such insurer's surplus as regards policyholders as  
21 of the 31st day of December next preceding; or

1           (B) ~~The~~ the net gains from operations of such insurer, if such insurer  
2 is a life insurer, or the net income, if such insurer is not a life insurer, not  
3 including realized capital gains, for the 12-month period ending the 31st day of  
4 December next preceding, but shall not include pro rata distributions of any  
5 class of the insurer's own securities.

6           (2) In determining whether a dividend or distribution is extraordinary,  
7 an insurer other than a life insurer may carry forward net income from the  
8 previous two calendar years that has not already been paid out as dividends.  
9 This carry-forward shall be computed by taking the net income from the  
10 second and third preceding calendar years, not including realized capital gains,  
11 less dividends paid in the second and immediate preceding calendar years.

12           (e) Conditional dividends. Notwithstanding any other provision of law, an  
13 insurer may declare an extraordinary dividend or distribution which is  
14 conditional upon the ~~commissioner's~~ Commissioner's approval thereof, and  
15 such a declaration shall confer no rights upon shareholders until the  
16 Commissioner has:

17           (1) ~~The commissioner has~~ approved the payment of such dividend or  
18 distribution; or

19           (2) ~~The commissioner has~~ not disapproved such payment within the  
20 30-day period referred to above.

1 (f) The following transactions involving a domestic insurer and any person  
2 in its holding company system, including amendments or modifications of  
3 affiliate agreements previously filed under this section, which are subject to  
4 any materiality standards contained in subdivisions (1) through (7) of this  
5 subsection, may not be entered into unless the insurer has notified the  
6 ~~commissioner~~ Commissioner in writing of its intention to enter into such  
7 transaction at least 30 days prior thereto, or such shorter period as the  
8 ~~commissioner~~ Commissioner may permit, and the ~~commissioner~~  
9 Commissioner has not disapproved it within such period. The notice for  
10 amendments or modifications shall include the reasons for the change and the  
11 financial impact on the domestic insurer. Informal notice shall be reported  
12 within 30 days after a termination of a previously filed agreement to the  
13 Commissioner for determination of the type of filing required, if any. Nothing  
14 herein contained shall be deemed to authorize or permit any transactions  
15 which, in the case of an insurer not a member of the same holding company  
16 system, would be otherwise contrary to law.

17 (1) sales, purchases, exchanges, loans, or extensions of credit,  
18 guarantees, or investments provided such transactions are equal to or exceed:

19 (A) with respect to nonlife insurers, the lesser of three percent of the  
20 insurer's admitted assets or 25 percent of surplus as regards policyholders as of  
21 the 31st day of December next preceding;

1 (B) with respect to life insurers, three percent of the insurer's  
2 admitted assets; each as of the 31st day of December next preceding;

3 (2) loans or extensions of credit to any person who is not an affiliate,  
4 where the insurer makes such loans or extensions of credit with the agreement  
5 or understanding that the proceeds of such transactions, in whole or in  
6 substantial part, are to be used to make loans or extensions of credit to, to  
7 purchase assets of, or to make investments in; any affiliate of the insurer  
8 making such loans or extensions of credit provided such transactions are equal  
9 to or exceed:

10 (A) with respect to nonlife insurers, the lesser of three percent of the  
11 insurer's admitted assets or 25 percent of surplus as regards policyholders as of  
12 the 31st day of December next preceding;

13 (B) with respect to life insurers, three percent of the insurer's  
14 admitted assets; each as of the 31st day of December next preceding;

15 (3) reinsurance agreements or modifications thereto, including:

16 (A) all reinsurance pooling agreements;

17 (B) agreements in which the reinsurance premium or a change in the  
18 insurer's liabilities or the projected reinsurance premium or a change in the  
19 insurer's liabilities in any of the next three years equals or exceeds five percent  
20 of the insurer's surplus as regards policyholders, as of the 31st day of  
21 December next preceding, including those agreements which may require as

1 consideration the transfer of assets from an insurer to a nonaffiliate, if an  
2 agreement or understanding exists between the insurer and nonaffiliate that any  
3 portion of such assets will be transferred to one or more affiliates of the  
4 insurer;

5 (4) any material transactions, specified by regulation, which the  
6 ~~commissioner~~ Commissioner determines may adversely affect the interests of  
7 the insurer's policyholders;

8 (5) all management agreements, service contracts, and all cost-sharing  
9 arrangements;

10 (6) guarantees when made by a domestic insurer; provided, however,  
11 that a guarantee which is quantifiable as to amount is not subject to the notice  
12 requirements of this subsection unless it exceeds the lesser of one-half of one  
13 percent of the insurer's admitted assets or 10 percent of surplus as regards  
14 policyholders as of the 31st day of December next preceding. All guarantees  
15 which are not quantifiable as to amount are subject to the notice requirements  
16 of this subdivision; and

17 (7) direct or indirect acquisitions or investments in a person that controls  
18 the insurer or an affiliate of the insurer in an amount which, together with its  
19 present holdings in such investments, exceeds two and one-half percent of the  
20 insurer's surplus to policyholders. Direct or indirect acquisitions or  
21 investments in subsidiaries acquired pursuant to section 3682 of this chapter or

1 authorized under any other section of this chapter or in nonsubsidiary  
2 insurance affiliates that are subject to the provisions of this chapter are exempt  
3 from this requirement.

4 (g) A domestic insurer may not enter into transactions which are part of a  
5 plan or series of like transactions with persons within the holding company  
6 system if the purpose of those separate transactions is to avoid the statutory  
7 threshold amount and thus avoid the review that would occur otherwise. If the  
8 ~~commissioner~~ Commissioner determines that such separate transactions were  
9 entered into over any 12-month period for such purpose, he or she may  
10 exercise his or her authority under this title.

11 (h) The ~~commissioner~~ Commissioner, in reviewing transactions pursuant to  
12 subsection (f) of this section, shall consider whether the transactions comply  
13 with the standards set forth in subsection (a) of this section and whether they  
14 may adversely affect the interests of policyholders.

15 (i) The ~~commissioner~~ Commissioner shall be notified within 30 days of any  
16 investment of the domestic insurer in any one corporation if the total  
17 investment in such corporation by the insurance holding company system  
18 exceeds ten percent of such corporation's voting securities.

19 (j) Management of domestic insurers subject to registration.

20 (1) Notwithstanding the control of a domestic insurer by any person, the  
21 officers and directors of the insurer shall not thereby be relieved of any

1 obligation or liability to which they would otherwise be subject by law, and the  
2 insurer shall be managed so as to assure its separate operating identity  
3 consistent with this section.

4 (2) Nothing in this section shall preclude a domestic insurer from having  
5 or sharing a common management or cooperative or joint use of personnel,  
6 property, or services with one or more other persons under arrangements  
7 meeting the standards of subsection (a) of this section.

8 (3) Not less than one-third of the directors of a domestic insurer, and not  
9 less than one-third of the members of each committee of the board of directors  
10 of any domestic insurer shall be persons who are not officers or employees of  
11 the insurer or of any entity controlling, controlled by, or under common control  
12 with the insurer and who are not beneficial owners of a controlling interest in  
13 the voting stock of the insurer or entity. At least one such person must be  
14 included in any quorum for the transaction of business at any meeting of the  
15 board of directors or any committee thereof.

16 (4) The board of directors of a domestic insurer shall establish one or  
17 more committees composed solely of directors who are not officers or  
18 employees of the insurer or of any entity controlling, controlled by, or under  
19 common control with the insurer and who are not beneficial owners of a  
20 controlling interest in the voting stock of the insurer or any such entity. The  
21 committee or committees shall have responsibility for nominating candidates

1 for director for election by shareholders or policyholders, evaluating the  
2 performance of officers deemed to be principal officers of the insurer, and  
3 recommending to the board of directors the selection and compensation of the  
4 principal officers.

5 (5) The provisions of subdivisions (3) and (4) of this subsection shall  
6 not apply to a domestic insurer if the person controlling the insurer, such as an  
7 insurer, a mutual insurance holding company, or a publicly held corporation,  
8 has a board of directors and committees thereof that meet the requirements of  
9 subdivisions (3) and (4) of this subsection with respect to such controlling  
10 entity.

11 (6) An insurer may make application to the Commissioner for a waiver  
12 from the requirements of this subsection if the insurer's annual direct written  
13 and assumed premium, excluding premiums reinsured with the Federal Crop  
14 Insurance Corporation and Federal Flood Program, is less than  
15 \$300,000,000.00. An insurer may also make application to the Commissioner  
16 for a waiver from the requirements of this subsection based upon unique  
17 circumstances. The Commissioner may consider various factors, including the  
18 type of business entity, volume of business written, availability of qualified  
19 board members, or the ownership or organizational structure of the entity.

1 Sec. 33. 8 V.S.A. § 3686 is amended to read:

2 § 3686. EXAMINATION

3 (a) Power of ~~commissioner~~ Commissioner. Subject to the limitation  
4 contained in this section and in addition to the powers which the ~~commissioner~~  
5 Commissioner has under subchapter 7 of this chapter relating to the  
6 examination of insurers, the ~~commissioner~~ Commissioner shall also have the  
7 power to ~~order any insurer registered under section 3684 of this title to produce~~  
8 ~~such records, books, or other information papers in the possession of the~~  
9 ~~insurer or its affiliates as shall be necessary to ascertain the financial condition~~  
10 ~~or legality of conduct of such insurer. In the event such insurer fails to comply~~  
11 ~~with such order, the commissioner shall have the power to examine such~~  
12 ~~affiliates to obtain such information~~ examine any insurer registered under  
13 section 3684 of this chapter and its affiliates to ascertain the financial condition  
14 of the insurer, including the enterprise risk to the insurer by the ultimate  
15 controlling party or by any entity or combination of entities within the  
16 insurance holding company system or by the insurance holding company  
17 system on a consolidated basis.

18 (b) Access to books and records.

19 (1) The Commissioner may order any insurer registered under section  
20 3684 of this chapter to produce such records, books, or papers in the

1 possession of the insurer or its affiliates as are reasonably necessary to  
2 determine compliance with this chapter.

3 (2) To determine compliance with this chapter, the Commissioner may  
4 order any insurer registered under section 3684 of this chapter to produce  
5 information not in the possession of the insurer if the insurer can obtain access  
6 to such information pursuant to contractual relationships, statutory obligations,  
7 or other method. In the event the insurer cannot obtain the information  
8 requested by the Commissioner, the insurer shall provide the Commissioner a  
9 detailed explanation of the reason that the insurer cannot obtain the  
10 information and the identity of the holder of information. Whenever it appears  
11 to the Commissioner that the detailed explanation is without merit, the  
12 Commissioner may require, after notice and hearing, the insurer to pay a  
13 penalty of up to \$1,000.00 for each day's delay or may suspend or revoke the  
14 insurer's license.

15 (c) Purpose and limitation of examination. The ~~commissioner~~  
16 Commissioner shall exercise his or her power under ~~subsection~~ subsections (a)  
17 and (b) of this section only if the examination of the insurer under subchapter 7  
18 of this chapter is inadequate or the interests of the policyholders of such insurer  
19 may be adversely affected.

20 (~~e~~)(d) Use of consultants. The ~~commissioner~~ Commissioner may retain at  
21 the registered insurer's expense such attorneys, actuaries, accountants, and

1 other experts not otherwise a part of the ~~commissioner's~~ Commissioner's staff  
2 as shall be reasonably necessary to assist in the conduct of the examination  
3 under subsection (a) of this section. Any persons so retained shall be under the  
4 direction and control of the ~~commissioner~~ Commissioner and shall act in a  
5 purely advisory capacity.

6 ~~(d)~~(e) Expenses. Each registered insurer producing for examination  
7 records, books, and papers pursuant to subsection (a) of this section shall be  
8 liable for and shall pay the expense of such examination in accordance with  
9 section 3563 of this title.

10 (f) Compelling production. In the event the insurer fails to comply with an  
11 order, the Commissioner shall have the power to examine the affiliates to  
12 obtain the information. The Commissioner also shall have the power to issue  
13 subpoenas, to administer oaths, and to examine under oath any person for  
14 purposes of determining compliance with this section. Upon the failure or  
15 refusal of any person to obey a subpoena, the Commissioner may petition a  
16 court of competent jurisdiction, and upon proper showing, the court may enter  
17 an order compelling the witness to appear and testify or produce documentary  
18 evidence. Failure to obey the court order shall be punishable as contempt of  
19 court. Every person shall be obliged to attend as a witness at the place  
20 specified in the subpoena, when subpoenaed, anywhere within the State. He or  
21 she shall be entitled to the same fees and mileage, if claimed, as a witness in

1 the Superior Court of this State, which fees, mileage, and actual expense, if  
2 any, necessarily incurred in securing the attendance of witnesses and their  
3 testimony shall be itemized and charged against and be paid by the company  
4 being examined.

5 Sec. 34. 8 V.S.A. § 3687 is amended to read:

6 § 3687. CONFIDENTIAL TREATMENT

7 (a) All information, documents and copies thereof obtained by or disclosed  
8 to the ~~commissioner~~ Commissioner or any other person in the course of an  
9 examination or investigation made pursuant to section 3686 of this title and all  
10 information reported pursuant to ~~section~~ subdivisions 3683(b)(12) and (13),  
11 section 3684, and section 3685 of this title, shall be given confidential  
12 treatment, ~~and~~ shall not be subject to subpoena, shall not be subject to public  
13 inspection and copying under the Public Records Act, shall not be subject to  
14 discovery or admissible in evidence in any private civil action, and shall not be  
15 made public by the ~~commissioner~~ Commissioner or any other person, except to  
16 insurance departments of other states where such information will remain  
17 confidential, without the prior written consent of the insurer to which it  
18 pertains unless the commissioner, after giving the insurer and its affiliates who  
19 would be affected thereby, . However, the Commissioner is authorized to use  
20 the documents, materials, or other information in the furtherance of any  
21 regulatory or legal action brought as a part of the Commissioner's official

1 duties. The Commissioner shall not otherwise make the documents, materials,  
2 or other information public without the prior written consent of the insurer to  
3 which it pertains unless the Commissioner, after giving the insurer and its  
4 affiliates who would be affected thereby notice and opportunity to be heard,  
5 determines that the interests of policyholders, shareholders, or the public will  
6 be served by the publication thereof, in which event he or she may publish all  
7 or any part thereof in such manner as he or she may deem appropriate.

8 (b) Neither the Commissioner nor any person who received documents,  
9 materials, or other information while acting under the authority of the  
10 Commissioner or with whom such documents, materials, or other information  
11 are shared pursuant to this chapter shall be permitted or required to testify in  
12 any private civil action concerning any confidential documents, materials, or  
13 information subject to subsection (a) of this section.

14 (c) In order to assist in the performance of the Commissioner's duties, the  
15 Commissioner:

16 (1) may share documents, materials, or other information, including the  
17 confidential and privileged documents, materials, or information subject to  
18 subsection (a) of this section, with other state, federal, and international  
19 regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with  
20 state, federal, and international law enforcement authorities, including  
21 members of any supervisory college described in section 3695 of this title,

1 provided that the recipient agrees in writing to maintain the confidentiality and  
2 privileged status of the document, material, or other information and has  
3 verified in writing the legal authority to maintain confidentiality.

4 (2) notwithstanding subdivision (1) of this subsection, may only share  
5 confidential and privileged documents, material, or information reported  
6 pursuant to subsection 3684(m) of this chapter with commissioners of states  
7 having statutes or regulations substantially similar to subsection (a) of this  
8 section and who have agreed in writing not to disclose such information.

9 (3) may receive documents, materials, or information, including  
10 otherwise confidential and privileged documents, materials, or information,  
11 from the NAIC and its affiliates and subsidiaries and from regulatory and law  
12 enforcement officials of other foreign or domestic jurisdictions and shall  
13 maintain as confidential or privileged any document, material, or information  
14 received with notice or the understanding that it is confidential or privileged  
15 under the laws of the jurisdiction that is the source of the document, material,  
16 or information; and

17 (4) shall enter into written agreements with the NAIC governing sharing  
18 and use of information provided under this chapter consistent with this  
19 subsection that shall:

20 (A) specify procedures and protocols regarding the confidentiality  
21 and security of information shared with the NAIC and its affiliates and

1 subsidiaries pursuant to this section, including procedures and protocols for  
2 sharing by the NAIC with other state, federal, or international regulators;

3 (B) specify that ownership of information shared with the NAIC and  
4 its affiliates and subsidiaries pursuant to this section remains with the  
5 Commissioner and the NAIC's use of the information is subject to the  
6 direction of the Commissioner;

7 (C) require prompt notice be given to an insurer whose confidential  
8 information in the possession of the NAIC under this section is subject to a  
9 request or subpoena to the NAIC for disclosure or production; and

10 (D) require the NAIC and its affiliates and subsidiaries to consent to  
11 intervention by an insurer in any judicial or administrative action in which the  
12 NAIC and its affiliates and subsidiaries may be required to disclose  
13 confidential information about the insurer shared with the NAIC and its  
14 affiliates and subsidiaries pursuant to this section.

15 (d) The sharing of information by the Commissioner pursuant to this  
16 section shall not constitute a delegation of regulatory authority or rulemaking,  
17 and the Commissioner is solely responsible for the administration, execution,  
18 and enforcement of the provisions of this section.

19 (e) No waiver of any applicable privilege or claim of confidentiality in the  
20 documents, materials, or information shall occur as a result of disclosure to the

1 Commissioner under this section or as a result of sharing as authorized in  
2 subsection (c) of this section.

3 (f) Documents, materials, or other information in the possession or control  
4 of the NAIC pursuant to this section shall be confidential by law and  
5 privileged, shall not be subject to subpoena, shall not be subject to discovery or  
6 admissible in evidence in any private civil action, and shall not be made public  
7 by the Commissioner or any other person.

8 Sec. 35. 8 V.S.A. § 3690(f) is added to read:

9 (f) Whenever it appears to the Commissioner that any person has  
10 committed a violation of section 3681 of this chapter which prevents the full  
11 understanding of the enterprise risk to the insurer by affiliates or by the  
12 insurance holding company system, the violation may serve as an independent  
13 basis for disapproving dividends or distributions and for placing the insurer  
14 under an order of supervision under section 7041 of this title.

15 Sec. 36. 8 V.S.A. § 3695 is added to read:

16 § 3695. SUPERVISORY COLLEGES

17 (a) Power of Commissioner. With respect to any insurer registered under  
18 section 3684 of this title and in accordance with subsection (c) of this section,  
19 the Commissioner shall also have the power to participate in a supervisory  
20 college for any domestic insurer that is part of an insurance holding company  
21 system with international operations in order to determine compliance by the

1 insurer with this chapter. The powers of the Commissioner with respect to  
2 supervisory colleges include the following:

3 (1) initiating the establishment of a supervisory college;

4 (2) clarifying the membership and participation of other supervisors in  
5 the supervisory college;

6 (3) clarifying the functions of the supervisory college and the role of  
7 other regulators, including the establishment of a group-wide supervisor;

8 (4) coordinating the ongoing activities of the supervisory college,  
9 including planning meetings, supervisory activities, and processes for  
10 information sharing; and

11 (5) establishing a crisis management plan.

12 (b) Expenses. Each registered insurer subject to this section shall be liable  
13 for and shall pay the reasonable expenses of the Commissioner's participation  
14 in a supervisory college in accordance with subsection (c) of this section,  
15 including reasonable travel expenses. For purposes of this section, a  
16 supervisory college may be convened as either a temporary or permanent  
17 forum for communication and cooperation between the regulators charged with  
18 the supervision of the insurer or its affiliates, and the Commissioner may  
19 establish a regular assessment on the insurer for the payment of these expenses.

20 (c) Supervisory College. In order to assess the business strategy, financial  
21 position, legal and regulatory position, risk exposure, risk management, and

1 governance processes and as part of the examination of individual insurers in  
2 accordance with section 3686 of this chapter, the Commissioner may  
3 participate in a supervisory college with other regulators charged with  
4 supervision of the insurer or its affiliates, including other state, federal, and  
5 international regulatory agencies. The Commissioner may enter into  
6 agreements in accordance with subsection 3687(c) of this chapter providing the  
7 basis for cooperation between the Commissioner and the other regulatory  
8 agencies and the activities of the supervisory college. Nothing in this section  
9 shall delegate to the supervisory college the authority of the Commissioner to  
10 regulate or supervise the insurer or its affiliates within its jurisdiction.

11 Sec. 37. 8 V.S.A. § 8301 is amended to read:

12 § 8301. DEFINITIONS

13 As used in this chapter:

14 (1) “Adjusted risk based capital report” means a risk based capital report  
15 which has been adjusted by the ~~commissioner~~ Commissioner in accordance  
16 with subsection 8302~~(d)~~(f) of this title.

17 (2) ~~“Authorized control level risk based capital” means the number~~  
18 ~~determined using the risk based capital formula in accordance with the risk~~  
19 ~~based capital instructions. The formula shall take into account asset risk,~~  
20 ~~insurance risk, interest rate risk and other business risk of the insurer and may~~  
21 ~~adjust for the covariance between them.~~

1           ~~(3)~~ “Commissioner” means the ~~commissioner of financial regulation~~  
2           Commissioner of Financial Regulation.

3           ~~(4)(3)~~ “Corrective order” means an order issued by the ~~commissioner~~  
4           Commissioner specifying corrective actions which the ~~commissioner~~  
5           Commissioner has determined are required under this chapter.

6           ~~(5)(4)~~ “Domestic insurer” means any ~~life or health~~ insurance company  
7           organized in this ~~state~~ State under subchapter 1 of chapter 101 of this title, any  
8           fraternal benefit society organized in this State under chapter 121 of this title,  
9           any health maintenance organization organized in this ~~state~~ State under chapter  
10          139 of this title, and any ~~hospital or medical services corporation~~ entity  
11          organized in this ~~state~~ State under chapter 123 or 125 of this title.

12          ~~(6)~~ “~~Final adjusted risk based capital report~~” means an adjusted risk  
13          ~~based capital report that has not been appealed in accordance with section 8307~~  
14          ~~of this title or has been appealed and resulted in a determination adverse to the~~  
15          ~~insurer.~~

16          (5) “Fraternal benefit society” means any insurance company licensed  
17          under chapter 121 of this title.

18          ~~(7)(6)~~ “Foreign insurer” means any ~~life or health~~ insurance company  
19          ~~which is licensed to do~~ entity licensed to transact business in this ~~state~~ under  
20          ~~section 3361 of this title~~ State that is required to file a risk based capital  
21          statement in the state where the entity is domiciled.

1           ~~(8) “Margin” means the amount of total adjusted capital in excess of~~  
2 ~~authorized control level risk based capital.~~

3           ~~(9) “Marginal difference” means the amount of total adjusted capital in~~  
4 ~~excess of authorized control level risk based capital for a specified period of~~  
5 ~~time.~~

6           (7) “Life or health insurer” means any insurance company who insures  
7 lives or health as defined in subdivisions 3301(a)(1) and (2) of this title, any  
8 health maintenance organization organized in this State under chapter 139 of  
9 this title, any entity organized in this State under chapter 123 or 125 of this  
10 title, or a licensed property and casualty insurer writing only accident and  
11 health insurance.

12           (8) “NAIC” means the National Association of Insurance  
13 Commissioners.

14           ~~(4)(9)~~ (9) “Negative trend” means, with respect to a life or health insurer  
15 or fraternal benefit society, a decreasing marginal difference of total adjusted  
16 capital over authorized control level risk based capital negative trend over a  
17 period of time as determined in accordance with the trend test calculation  
18 incorporated in the risk based capital instructions.

19           (10) “Property and casualty insurer” means any insurance company who  
20 insures property or casualty as defined in subdivisions 3301(a)(3) and (7) of

1 this title, but shall not include monoline mortgage guaranty insurers, financial  
2 guaranty insurers, and title insurers.

3 (11) “Risk based capital instructions” means the risk based capital report  
4 form and the related instructions adopted by the ~~National Association of~~  
5 ~~Insurance Commissioners~~ NAIC and approved by the ~~commissioner~~  
6 Commissioner.

7 (12) “Risk based capital level” means one of the following four levels:  
8 company action level risk based capital, regulatory action level risk based  
9 capital, authorized control level risk based capital, or mandatory control level  
10 risk based capital.

11 (A) “Company action level risk based capital” means, with respect to  
12 any insurer, the product of 2.0 and its authorized control level risk based  
13 capital.

14 (B) “Regulatory action level risk based capital” means the product of  
15 1.5 and its authorized control level risk based capital.

16 (C) “Authorized control level risk based capital” means the number  
17 determined under the risk based capital formula in accordance with the risk  
18 based capital instructions.

19 ~~(D)~~ (D) “Mandatory control level risk based capital” means the  
20 product of 0.70 and its authorized control level risk based capital.

1           (13) “Risk based capital plan” means a comprehensive financial plan  
2 containing the elements specified in subsection 8303(b) of this title. If the  
3 ~~commissioner~~ Commissioner rejects the risk based capital plan, and it is  
4 revised by the insurer, with or without the ~~commissioner’s~~ Commissioner’s  
5 recommendation, the plan shall be called the “revised risk based capital plan.”

6           (14) “Risk based capital report” means the report required in section  
7 8302 of this title.

8           (15) “Total adjusted capital” means the sum of:

9           (A) the insurer’s statutory capital and surplus reported in the insurer’s  
10 annual statement under section 3561 of this title; and

11           (B) such other items, if any, as the risk based capital instructions may  
12 provide.

13           Sec. 38. 8 V.S.A. § 8302 is amended to read:

14           § 8302. RISK BASED CAPITAL REPORT

15           (a) Each domestic insurer shall annually prepare and submit to the  
16 ~~commissioner~~ Commissioner a report of its risk based capital level for the  
17 calendar year just ended. The report shall be filed prior to ~~March 15~~ March 1  
18 each year and shall be in the form and contain such information as is required  
19 by the risk based capital instructions.

20           (b) Each domestic insurer shall file its risk based capital report:

1           (1) with the ~~National Association of Insurance Commissioners on or~~  
2 ~~before March 15 each year~~ NAIC in accordance with the risk based capital  
3 instructions; and

4           (2) with the insurance commissioner of any state in which the insurer is  
5 authorized to do business, if the insurance commissioner of that state has  
6 notified the insurer of its request in writing. Any report required under this  
7 subdivision shall be filed not later than the later of 15 days from the receipt of  
8 notice to file the report with that state or the filing date provided in subsection  
9 (a) of this section.

10          (c) ~~In preparing the report, the insurer shall use the formula set forth in the~~  
11 ~~risk based capital instructions to determine its authorized control level risk~~  
12 ~~based capital and whether an event described in sections 8303, 8304, 8305, or~~  
13 ~~8306 of this title has occurred~~ A life or health insurer's or fraternal benefit  
14 society's risk based capital shall be determined in accordance with the formula  
15 set forth in the risk based capital instructions. The formula shall take into  
16 account and may adjust for the covariance between the following factors  
17 determined in each case by applying the factors in the manner set forth in the  
18 risk based capital instructions:

19           (1) the risk with respect to the insurer's assets;

20           (2) the risk of adverse insurance experience with respect to the insurer's  
21 liabilities and obligations;

1           (3) the interest rate risk with respect to the insurer's business; and

2           (4) all other business risks and such other relevant risks as are set forth

3 in the risk based capital instructions.

4           (d) A property and casualty insurer's risk based capital shall be determined  
5 in accordance with the formula set forth in the risk based capital instructions.

6 The formula shall take into account and may adjust for the covariance between  
7 the following factors determined in each case by applying the factors in the  
8 manner set forth in the risk based capital instructions:

9           (1) asset risk;

10          (2) credit risk;

11          (3) underwriting risk; and

12          (4) all other business risks and such other relevant risks as are set forth

13 in the risk based capital instructions.

14          (e) An excess of capital over the amount produced by the risk based capital  
15 requirements contained in this chapter and the formulas, schedules, and

16 instructions referenced in this chapter is desirable in the business of insurance.

17 Accordingly, insurers should seek to maintain capital above the risk based

18 capital levels required by this chapter. Additional capital is used and useful in

19 the insurance business and helps to secure an insurer against various risks

20 inherent in or affecting the business of insurance and not accounted for or only

1 partially measured by the risk based capital requirements contained in this  
2 chapter.

3 ~~(d)~~(f) If a domestic insurer files a risk based capital report which in the  
4 judgment of the ~~commissioner~~ Commissioner is inaccurate, then the  
5 ~~commissioner~~ Commissioner shall adjust the risk based capital report to  
6 correct the inaccuracy and shall notify the insurer of the adjustment. The  
7 notice shall contain a statement of the reason for the adjustment. A risk based  
8 capital report adjusted by the ~~commissioner~~ Commissioner under this  
9 subsection shall be referred to as an “adjusted risk based capital report.”

10 Sec. 39. 8 V.S.A. § 8303 is amended to read:

11 § 8303. COMPANY ACTION LEVEL EVENT

12 ~~(a) The following are deemed to be company action level events subject to~~  
13 ~~the requirements of this section when shown in a risk based capital report or~~  
14 ~~final adjusted risk based capital report which indicates:~~

15 ~~(1) that the insurer’s total adjusted capital is greater than or equal to its~~  
16 ~~regulatory action level risk based capital but less than its company action level~~  
17 ~~risk based capital; or~~

18 ~~(2) that the insurer has total adjusted capital which is greater than or~~  
19 ~~equal to its company action level risk based capital, but less than the product~~  
20 ~~of its authorized control level risk based capital and 2.5 and has experienced a~~  
21 ~~negative trend shall be considered a company action level event and subject to~~

1 ~~the requirements of this section. In the case of a health maintenance~~  
2 ~~organization or a hospital or medical services corporation, a company action~~  
3 ~~level event also shall include the filing of a report under this chapter in which~~  
4 ~~the insurer has total adjusted capital which is greater than or equal to its~~  
5 ~~company action level risk based capital but less than the product of its~~  
6 ~~authorized control level risk based capital and 3.0 and triggers the trend test~~  
7 ~~determined in accordance with the trend test calculation included in the risk-~~  
8 ~~based capital instructions for a health maintenance organization or a hospital or~~  
9 ~~medical services corporation~~ “Company action level event” means any of the  
10 following events:

11 (1) The filing of a risk based capital report by an insurer which indicates  
12 that:

13 (A) the insurer’s total adjusted capital is greater than or equal to its  
14 regulatory action level risk based capital but less than its company action level  
15 risk based capital;

16 (B) if a life or health insurer or a fraternal benefit society, the insurer  
17 or society has total adjusted capital which is greater than or equal to its  
18 company action level risk based capital but less than the product of its  
19 authorized control level risk based capital and 3.0 and has a negative trend; or

20 (C) if a property and casualty insurer, the insurer has total adjusted  
21 capital which is greater than or equal to its company action level risk based

1 capital but less than the product of its authorized control level risk based  
2 capital and 3.0 and triggers the trend test determined in accordance with the  
3 trend test calculation included in the property and casualty risk based capital  
4 instructions.

5 (2) The notification by the Commissioner to the insurer of an adjusted  
6 risk based capital report that indicates an event in subdivision (1) of this  
7 subsection, provided the insurer does not challenge the adjusted risk based  
8 capital report under section 8307 of this title.

9 (3) If, under section 8307 of this title, an insurer challenges an adjusted  
10 risk based capital report that indicates the event in subdivision (1) of this  
11 subsection, the notification by the Commissioner to the insurer that the  
12 Commissioner has, after a hearing, rejected the insurer's challenge.

13 (b) An insurer shall prepare and submit to the ~~commissioner~~ Commissioner  
14 a risk based capital plan within 45 days of filing a risk based capital report or  
15 within 45 days of a final adjusted risk based capital report showing a company  
16 action level event. The risk based capital plan shall be a comprehensive  
17 financial plan and shall:

18 (1) identify the conditions in the insurer which contribute to the  
19 company action level event;

20 (2) contain proposals of corrective actions which the insurer intends to  
21 take that would result in the elimination of the company action level event;

1           (3) provide ~~comparative projections of the insurer's statutory operating~~  
2 ~~income, net income, capital and surplus for the current year and at least the~~  
3 ~~four succeeding years showing both the effect and the absence of the proposed~~  
4 ~~corrective actions. The projections should include separate projections for~~  
5 ~~each major line of business for both new and renewal business and should~~  
6 ~~separately identify each significant income, expense and benefit component~~  
7 projections of the insurer's financial results in the current year and at least the  
8 four succeeding years, both in the absence of proposed corrective actions and  
9 giving effect to the proposed corrective actions, including projections of  
10 statutory operating income, net income, capital, and surplus. The projections  
11 for both new and renewal business should include separate projections for each  
12 major line of business and separately identify each significant income,  
13 expense, and benefit component;

14           (4) identify the key assumptions impacting the insurer's projections and  
15 the sensitivity of the projections to the assumptions; and

16           (5) identify the quality of, and problems associated with, the insurer's  
17 business, including, ~~but not limited to,~~ its assets, anticipated business growth  
18 and associated surplus strain, extraordinary exposure to risk, mix of business,  
19 and use of reinsurance.

20           (c) The ~~commissioner~~ Commissioner shall notify the insurer whether the  
21 proposed risk based capital plan is approved within 60 days of its submission.

1 If the ~~commissioner~~ Commissioner disapproves the plan, the notice shall set  
2 forth the reasons for the disapproval and may notify the insurer of revisions  
3 which will render the risk based capital plan satisfactory to the ~~commissioner~~  
4 Commissioner. Upon notice that a proposed plan is disapproved, the insurer  
5 shall prepare and submit a revised risk based capital plan within 45 days of the  
6 ~~commissioner's~~ Commissioner's notice of disapproval or, if the  
7 ~~commissioner's~~ Commissioner's notice of disapproval is appealed under  
8 section 8307 of this title, within 45 days of a ~~commissioner's~~ Commissioner's  
9 determination adverse to the insurer.

10 (d) In the event of a notification by the ~~commissioner~~ Commissioner to an  
11 insurer that the insurer's risk based capital plan or revised risk based capital  
12 plan is unsatisfactory, the ~~commissioner~~ Commissioner may at the  
13 ~~commissioner's~~ Commissioner's discretion, subject to the insurer's right to a  
14 hearing under section 8307 of this title, specify in the notification that the  
15 notification constitutes a regulatory action level event.

16 (e) Each domestic insurer required to file a risk based capital plan or  
17 revised risk based capital plan under this section shall file a copy of the plan  
18 with the insurance commissioner in any state in which the insurer is authorized  
19 to do business if:

20 (1) such state has a provision that is substantially similar to section 8308  
21 of this title; and

1           (2) the insurance commissioner of that state has notified the insurer of  
2 its request for the filing in writing. Plans required to be filed under this  
3 subdivision shall be filed no later than the later of:

4           (A) 15 days after notice to file a copy of its risk based capital plan or  
5 revised risk based capital plan with the state; or

6           (B) the date on which the risk based capital plan or revised risk based  
7 capital plan is required to be filed under section 8304 of this title.

8 Sec. 40. 8 V.S.A. § 8307 is amended to read:

9 § 8307. HEARINGS

10       Upon receipt of any notice required under subsections ~~8302(d)~~ 8302(f),  
11 8303(c) and (d), and subdivisions 8304(a)(4) and (5) and subsection 8304(c) of  
12 this title, any insurer aggrieved by any action taken under those sections may  
13 appeal to the ~~commissioner~~ Commissioner within five days of receipt of notice  
14 of the action. The hearing shall be subject to 3 V.S.A. chapter 25 of ~~Title 3~~.

15       Upon receipt of the insurer's request for a hearing, the ~~commissioner~~  
16 Commissioner shall set a date for the hearing, which date shall be no less than  
17 10 nor more than 30 days after the date of the insurer's request.

1 Sec. 41. 8 V.S.A. § 8308 is amended to read:

2 § 8308. CONFIDENTIALITY AND PROHIBITION ON

3 ANNOUNCEMENTS

4 (a) All risk based capital reports (to the extent the information therein is not  
5 required to be set forth in a publicly available annual statement schedule) and  
6 risk based capital plans (including the results or report of any examination or  
7 analysis of an insurer performed pursuant hereto and any corrective order  
8 issued by the commissioner pursuant to examination or analysis) with respect  
9 to any domestic insurer or foreign insurer which are filed with the  
10 ~~commissioner~~ Commissioner, constitute information that might be damaging  
11 to the insurer if made available to its competitors, and therefore shall be kept  
12 confidential and privileged by the ~~commissioner~~ Commissioner. This  
13 information shall not be made ~~public~~ available for public inspection and  
14 copying under the Public Records Act, nor shall it not be subject to subpoena,  
15 ~~other than by the commissioner and then only~~ shall not be subject to discovery,  
16 and shall not be admissible in evidence in any private civil action. However,  
17 the Commissioner is authorized to use the documents, materials, or other  
18 information for the purpose of enforcement actions taken by the ~~commissioner~~  
19 ~~pursuant to~~ Commissioner under this chapter or any other provision of the  
20 insurance laws of this ~~state~~ State.

1       (b) Neither the Commissioner nor any person who received documents,  
2       materials, or other information while acting under the authority of the  
3       Commissioner shall be permitted or required to testify in any private civil  
4       action concerning any confidential documents, materials, or information  
5       subject to subsection (a) of this section.

6       (c) In furtherance of his or her duties under this chapter, the Commissioner  
7       may:

8           (1) share documents, materials, or other information, including the  
9           confidential and privileged documents, materials, or information subject to  
10          subsection (a) of this section, with other state, federal, and international  
11          regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with  
12          state, federal, and international law enforcement authorities, provided the  
13          recipient agrees to maintain the confidentiality and privileged status of the  
14          document, material, or other information;

15          (2) receive documents, materials, or information, including otherwise  
16          confidential and privileged documents, materials, or information, from the  
17          NAIC and its affiliates and subsidiaries and from regulatory and law  
18          enforcement officials of other foreign or domestic jurisdictions and shall  
19          maintain as confidential or privileged any document, material, or information  
20          received with notice or the understanding that it is confidential or privileged

1 under the laws of the jurisdiction that is the source of the document, material,  
2 or information; and

3 (3) enter into agreements governing sharing and use of information  
4 consistent with this subsection.

5 (d) No waiver of any applicable privilege or claim of confidentiality in the  
6 documents, materials, or information shall occur as a result of disclosure to the  
7 Commissioner under this section or as a result of sharing as authorized in  
8 subsection (c) of this section.

9 ~~(b)~~(e) Except The General Assembly finds that the comparison of an  
10 insurer's total adjusted capital to any of its risk based capital levels is a  
11 regulatory tool which may indicate the need for possible corrective action with  
12 respect to the insurer and is not intended as a means to rank insurers generally.

13 Therefore, except as otherwise required under this chapter, the making,  
14 publishing, disseminating, circulating or placing before the public, directly or  
15 indirectly in any manner, the risk based capital levels of any insurer, or of any  
16 component derived in the calculation, by any insurer, agent, broker, or other  
17 person engaged in any manner in the insurance business is prohibited. Any  
18 person violating this section shall be subject to an administrative penalty of up  
19 to \$500.00.

20 ~~(e)~~(f) ~~The commissioner~~ Commissioner may, in his or her discretion,  
21 permit the correction of any material misstatement published by a party

1 unrelated to the insurer concerning any aspect of the insurer's risk based  
2 capital level or any component thereof. A correction permitted under this  
3 section may be used solely to rebut the material misstatement.

4 Sec. 42. 8 V.S.A. § 8309 is amended to read:

5 § 8309. SUPPLEMENTAL PROVISIONS

6 (a) The provisions of this chapter are in addition to any other provisions of  
7 the laws of this state State, and shall not preclude or limit any other powers or  
8 duties of the commissioner Commissioner under such laws, including, but not  
9 limited to, chapter 145 of this title.

10 (b) The Commissioner may adopt rules necessary for the implementation of  
11 this chapter.

12 (c) The Commissioner may exempt from the application of this chapter any  
13 domestic property and casualty insurer which:

14 (1) writes direct business only in this State;

15 (2) writes direct annual premiums of \$2,000,000.00 or less; and

16 (3) assumes no reinsurance in excess of five percent of direct premium  
17 written.

18 Sec. 43. 8 V.S.A. § 8310(c) is amended to read:

19 ~~(c) The commissioner may require a foreign insurer to submit and obtain~~  
20 ~~the commissioner's approval of a risk based capital plan if the commissioner of~~  
21 ~~the state of domicile of the insurer fails to require the insurer to file a plan that~~

1 ~~would have been required of a domestic insurer under section 8303 or 8304 of~~  
2 ~~this title~~ Upon the occurrence of an event under section 8303 (company action  
3 level event), 8304 (regulatory action level event), or 8305 (authorized control  
4 level event) of this title with respect to any foreign insurer as determined under  
5 the risk based capital statute applicable in the state of domicile of the insurer  
6 or, if no risk based capital statute is in force in that state, under the provisions  
7 of this chapter, if the insurance commissioner of the state of domicile of the  
8 foreign insurer fails to require the foreign insurer to file a risk based capital  
9 plan in the manner specified under that state's risk based capital statute or, if  
10 no risk based capital statute is in force in that state, then under section 8303 of  
11 this title, the Commissioner may require the foreign insurer to file a risk based  
12 capital plan with the Commissioner. The failure of the foreign insurer to  
13 ~~comply with the commissioner's order~~ file a risk based capital plan shall be  
14 grounds to order the insurer to cease and desist from writing new insurance  
15 business in this ~~state~~ State.

16 Sec. 44. 8 V.S.A. § 8313 is added to read:

17 § 8313. IMMUNITY

18 There shall be no liability on the part of and no cause of action shall arise  
19 against the Commissioner or the Department of Financial Regulation or its  
20 employees or agents for any action taken by them in the performance of their  
21 powers and duties under this chapter.

1 Sec. 45. 8 V.S.A. chapter 101, subchapter 7a is added to read:

2 Subchapter 7a. Own Risk and Solvency Assessment

3 § 3581. PURPOSE AND SCOPE

4 (a) The purpose of this subchapter is to provide the requirements for  
5 maintaining a risk management framework and completing an Own Risk and  
6 Solvency Assessment (ORSA) and provide guidance and instructions for filing  
7 an ORSA Summary Report with the Commissioner.

8 (b) The requirements of this subchapter shall apply to all insurers  
9 domiciled in this State unless exempt under section 3586 of this subchapter.

10 (c) The General Assembly finds and declares that the ORSA Summary  
11 Report will contain confidential and sensitive information related to an  
12 insurer's or insurance group's identification of risks material and relevant to  
13 the insurer or insurance group filing the report. This information will include  
14 proprietary and trade secret information that has the potential for harm and  
15 competitive disadvantage to the insurer or insurance group if the information is  
16 made public. It is the intent of the General Assembly that the summary report  
17 required under this subchapter shall be a confidential document filed with the  
18 Commissioner, that it shall be shared only as stated in this subchapter and to  
19 assist the Commissioner in the performance of his or her duties, and that in no  
20 event shall the summary report be subject to public inspection and copying  
21 under the Public Records Act.

1        § 3582. DEFINITIONS

2        As used in this subchapter:

3            (1) “Insurance group” means those insurers and affiliates included  
4        within an insurance holding company system as defined in subdivision 3681(4)  
5        of this title.

6            (2) “Insurer” shall have the same meaning as in subdivision 3681(5) of  
7        this title.

8            (3) “NAIC” means the National Association of Insurance  
9        Commissioners.

10          (4) “Own Risk and Solvency Assessment” or “ORSA” or “assessment”  
11        means a confidential, internal assessment, appropriate to the nature, scale, and  
12        complexity of an insurer or insurance group and conducted by that insurer or  
13        insurance group, of the material and relevant risks associated with the insurer’s  
14        or insurance group’s current business plan and the sufficiency of capital  
15        resources to support those risks.

16          (5) “Guidance Manual” means the current version of the Own Risk and  
17        Solvency Assessment Guidance Manual developed and adopted by the NAIC,  
18        as may be amended from time to time. A change in the Manual shall be  
19        effective on the January 1 following the calendar year in which the changes  
20        have been adopted by the NAIC.

1           (6) “Summary Report” means a confidential high-level summary of an  
2           insurer or insurance group’s ORSA.

3           § 3583. RISK MANAGEMENT FRAMEWORK

4           An insurer shall maintain a risk management framework to assist the insurer  
5           with identifying, assessing, monitoring, managing, and reporting on its  
6           material and relevant risks. This requirement may be satisfied if the insurance  
7           group of which the insurer is a member maintains a risk management  
8           framework applicable to the operations of the insurer.

9           § 3584. ORSA REQUIREMENT

10           Subject to section 3586 of this subchapter, an insurer or the insurance group  
11           of which the insurer is a member shall regularly conduct an ORSA consistent  
12           with a process comparable to the Guidance Manual. The assessment shall be  
13           conducted no less than annually but also at any time when there are significant  
14           changes to the risk profile of the insurer or the insurance group of which the  
15           insurer is a member.

16           § 3585. SUMMARY REPORT

17           (a) Upon the Commissioner’s request and no more than once each year, an  
18           insurer shall submit to the Commissioner a summary report or any  
19           combination of reports that together contain the information described in the  
20           Guidance Manual applicable to the insurer or the insurance group of which it is  
21           a member. Notwithstanding any request from the Commissioner, if the insurer

1 is a member of an insurance group, the insurer shall submit the report required  
2 by this subsection if the Commissioner is the lead state commissioner of the  
3 insurance group as determined by the procedures within the Financial Analysis  
4 Handbook adopted by the NAIC.

5 (b) Each report shall include a signature of the insurer or insurance group's  
6 chief risk officer or other executive having responsibility for the oversight of  
7 the insurer's enterprise risk management process attesting to the best of his or  
8 her belief and knowledge that the insurer applies the enterprise risk  
9 management process described in the summary report and that a copy of the  
10 report has been provided to the insurer's board of directors or the appropriate  
11 committee thereof.

12 (c) An insurer may comply with subsection (a) of this section by providing  
13 the most recent and substantially similar report provided by the insurer or  
14 another member of an insurance group of which the insurer is a member to the  
15 commissioner of another state or to a supervisor or regulator of a foreign  
16 jurisdiction if that report provides information that is comparable to the  
17 information described in the Guidance Manual. Any such report in a language  
18 other than English must be accompanied by a translation of that report into the  
19 English language.

20 § 3586. EXEMPTION

21 (a) An insurer shall be exempt from the requirements of this subchapter if:

1           (1) the insurer has annual direct written and unaffiliated assumed  
2           premium, including international direct and assumed premium but excluding  
3           premiums reinsured with the Federal Crop Insurance Corporation and Federal  
4           Flood Program, less than \$500,000,000.00; and

5           (2) the insurance group of which the insurer is a member has annual  
6           direct written and unaffiliated assumed premium including international direct  
7           and assumed premium, but excluding premiums reinsured with the Federal  
8           Crop Insurance Corporation and Federal Flood Program, less than  
9           \$1,000,000,000.00.

10          (b) If an insurer qualifies for exemption under subdivision (1) of subsection  
11          (a) of this section but the insurance group of which the insurer is a member  
12          does not qualify for exemption under subdivision (2) of subsection (a), then  
13          any summary report required under section 3585 of this subchapter shall  
14          include every insurer within the insurance group. This requirement may be  
15          satisfied by the submission of more than one summary report for any  
16          combination of insurers provided any combination of reports includes every  
17          insurer within the insurance group.

18          (c) If an insurer does not qualify for exemption under subdivision (1) of  
19          subsection (a) of this section but the insurance group of which it is a member  
20          qualifies for exemption under subdivision (2) of subsection (a), then the only

1 summary report required under section 3585 of this subchapter shall be the  
2 report applicable to that insurer.

3 (d) An insurer that does not qualify for exemption under subsection (a) of  
4 this section may apply to the Commissioner for a waiver from the requirements  
5 of this subchapter based upon unique circumstances. In deciding whether to  
6 grant the insurer's request for waiver, the Commissioner may consider the type  
7 and volume of business written, ownership and organizational structure, and  
8 any other factor the Commissioner considers relevant to the insurer or  
9 insurance group of which the insurer is a member. If the insurer is part of an  
10 insurance group with insurers domiciled in more than one state, the  
11 Commissioner shall coordinate with the lead state commissioner and with the  
12 other domiciliary commissioners in considering whether to grant the insurer's  
13 request for a waiver.

14 (e) Notwithstanding the exemptions stated in this section:

15 (1) The Commissioner may require that an insurer maintain a risk  
16 management framework, conduct an ORSA, and file an ORSA Summary  
17 Report based on unique circumstances including the type and volume of  
18 business written, ownership and organizational structure, federal agency  
19 requests, and international supervisor requests.

20 (2) The Commissioner may require that an insurer maintain a risk  
21 management framework, conduct an ORSA assessment, and file a summary

1 report if the insurer has risk based capital for company action level event as set  
2 forth in section 8303 of this title, meets one or more of the standards of an  
3 insurer deemed to be in hazardous financial condition as defined in Department  
4 Regulation I-93-2, sections 3-4, or otherwise exhibits qualities of a troubled  
5 insurer as determined by the Commissioner.

6 (f) If an insurer that qualifies for an exemption under subsection (a) of this  
7 section subsequently no longer qualifies for that exemption due to changes in  
8 premium as reflected in the insurer's most recent annual statement or in the  
9 most recent annual statements of the insurers within the insurance group of  
10 which the insurer is a member, the insurer shall have one year following the  
11 year the threshold is exceeded to comply with the requirements of this  
12 subchapter.

13 § 3587. CONTENTS OF ORSA SUMMARY REPORT

14 (a) The summary report shall be prepared consistent with the ORSA  
15 Guidance Manual, subject to the requirements of subsection (b) of this section.  
16 Documentation and supporting information shall be maintained and made  
17 available upon examination or upon request of the Commissioner.

18 (b) The review of the summary report, and any additional requests for  
19 information, shall be made using similar procedures currently used in the  
20 analysis and examination of multistate or global insurers and insurance groups.

1     § 3588. CONFIDENTIALITY

2           (a) Documents, materials, or other information, including the summary  
3     report, in the possession of or control of the Department that are obtained by,  
4     created by, or disclosed to the Commissioner or any other person under this  
5     subchapter, is recognized by this State as being proprietary and to contain trade  
6     secrets. All such documents, materials, or other information shall be  
7     confidential by law and privileged, shall be exempt from public inspection and  
8     copying under the Public Records Act, shall not be subject to subpoena, and  
9     shall not be subject to discovery or admissible in evidence in any private civil  
10    action. The Commissioner, however, is authorized to use the documents,  
11    materials, or other information in the furtherance of any regulatory or legal  
12    action brought as a part of the Commissioner's official duties. The  
13    Commissioner shall not otherwise make the documents, materials, or other  
14    information public without the prior written consent of the insurer.

15           (b) Neither the Commissioner nor any person who received documents,  
16    materials, or other ORSA-related information, through examination or  
17    otherwise, while acting under the authority of the Commissioner or with whom  
18    such documents, materials, or other information are shared pursuant to this  
19    subchapter shall be permitted or required to testify in any private civil action  
20    concerning any confidential documents, materials, or information subject to  
21    subsection (a) of this section.

1           (c) In furtherance of his or her regulatory duties, the Commissioner:

2                   (1) may, upon request, share documents, materials, or other

3           ORSA-related information, including the confidential and privileged

4           documents, materials, or information subject to subsection (a) of this section,

5           including proprietary and trade secret documents and materials, with other

6           state, federal, and international financial regulatory agencies, including

7           members of any supervisory college as defined in section 3695 of this title,

8           with the NAIC and with any third-party consultants designated by the

9           Commissioner, provided that the recipient agrees in writing to maintain the

10           confidentiality and privileged status of the ORSA-related documents,

11           materials, or other information and has verified in writing the legal authority to

12           maintain confidentiality; and

13                   (2) may receive documents, materials, or other ORSA-related

14           information, including otherwise confidential and privileged documents,

15           materials, or information, including proprietary and trade-secret information or

16           documents, from regulatory officials of other foreign or domestic jurisdictions,

17           including members of any supervisory college as defined in section 3695 of

18           this title and from the NAIC, and shall maintain as confidential or privileged

19           any documents, materials, or information received with notice or the

20           understanding that it is confidential or privileged under the laws of the

21           jurisdiction that is the source of the document, materials, or information.

1           (3) shall enter into a written agreement with the NAIC or a third-party  
2           consultant governing sharing and use of information provided under this  
3           subchapter consistent with this subsection that shall:

4                   (A) specify procedures and protocols regarding the confidentiality  
5                   and security of information shared with the NAIC or a third-party consultant  
6                   pursuant to this subchapter, including procedures and protocols for sharing by  
7                   the NAIC with other state regulators from states in which the insurance group  
8                   has domiciled insurers. The agreement shall provide that the recipient agrees  
9                   in writing to maintain the confidentiality and privileged status of the  
10                   ORSA-related documents, materials, or other information and has verified in  
11                   writing the legal authority to maintain confidentiality;

12                   (B) specify that ownership of information shared with the NAIC or a  
13                   third-party consultant under this subchapter remains with the Commissioner  
14                   and that the NAIC's or a third-party consultant's use of the information is  
15                   subject to the direction of the Commissioner;

16                   (C) prohibit the NAIC or third-party consultant from storing the  
17                   information shared under this subchapter in a permanent database after the  
18                   underlying analysis is completed;

19                   (D) require prompt notice to be given to an insurer whose  
20                   confidential information in the possession of the NAIC or a third-party

1 consultant under this subchapter is subject to a request or subpoena to the  
2 NAIC or a third-party consultant for disclosure or production;

3 (E) require the NAIC or a third-party consultant to consent to  
4 intervention by an insurer in any judicial or administrative action in which the  
5 NAIC or a third-party consultant may be required to disclose confidential  
6 information about the insurer shared with the NAIC or a third-party consultant  
7 under this subchapter; and

8 (F) in the case of an agreement involving a third-party consultant,  
9 provide for the insurer's written consent.

10 (d) The sharing of information and documents by the Commissioner under  
11 this subchapter shall not constitute a delegation of regulatory authority or  
12 rulemaking, and the Commissioner is solely responsible for the administration,  
13 execution, and enforcement of the provisions of this subchapter.

14 (e) No waiver of any applicable privilege or claim of confidentiality in the  
15 documents, proprietary and trade-secret materials, or other ORSA-related  
16 information shall occur as a result of disclosure of such ORSA-related  
17 information or documents to the Commissioner under this section or as a result  
18 of sharing as authorized under this subchapter.

19 (f) Documents, materials, or other information in the possession or control  
20 of the NAIC or a third-party consultant under this subchapter shall be  
21 confidential by law and privileged, shall be exempt from public inspection and

1 copying under the Public Records Act, shall not be subject to subpoena, and  
2 shall not be subject to discovery or admissible in evidence in any private civil  
3 action.

4 § 3589. SANCTIONS

5 Any insurer failing without just cause to timely file the summary report as  
6 required by this subchapter shall be required, after notice and hearing, to pay a  
7 penalty of \$10,000.00.00 for each day's delay, to be recovered by the  
8 Commissioner, and the penalty so recovered shall be paid into the general fund  
9 of this State. The maximum penalty under this section is \$1,000,000.00. The  
10 Commissioner may reduce the penalty if the insurer demonstrates to the  
11 Commissioner that the imposition of the penalty would constitute a financial  
12 hardship to the insurer.

13 \* \* \* Captives \* \* \*

14 Sec. 46. 8 V.S.A. § 4838(b)(4) is amended to read:

15 (b) The power of attorney must set forth:

16 \* \* \*

17 (4) Except as to nonassessable policies, a provision for a contingent  
18 several liability of each subscriber in a specified amount ~~which amount shall~~  
19 ~~be not less than one nor more than ten times the premium or premium deposit~~  
20 ~~stated in the policy.~~

1 Sec. 47. 8 V.S.A. § 4848(b) is amended to read:

2 (b) Except as to a nonassessable policy, each subscriber shall have a  
3 contingent assessment liability, in the amount provided for in the power of  
4 attorney or in the subscribers' agreement, for payment of actual losses and  
5 expenses incurred while his or her policy was in force. ~~The contingent liability~~  
6 ~~may be at the rate of not less than one nor more than 10 times the premium or~~  
7 ~~premium deposit stated in the policy, and the maximum aggregate thereof shall~~  
8 ~~be computed in the manner set forth in section 4852 of this title.~~

9 Sec. 48. 8 V.S.A. § 6002(d) is amended to read:

10 (d) Each captive insurance company shall pay to the ~~commissioner~~  
11 Commissioner a nonrefundable fee of \$500.00 and each special purpose  
12 financial insurance company shall pay to the Commissioner a nonrefundable  
13 fee of \$5,000.00 for examining, investigating, and processing its application  
14 for license, and for issuing same, and the ~~commissioner~~ Commissioner is  
15 authorized to retain legal, financial, and examination services from outside the  
16 ~~department~~ Department, the reasonable cost of which may be charged against  
17 the applicant. The provisions of section 3576 of this title shall apply to  
18 examinations, investigations, and processing conducted under the authority of  
19 this section. In addition, each captive insurance company shall pay a license  
20 renewal fee for each year thereafter of \$500.00, and each special purpose

1 financial insurance company shall pay to the Commissioner a nonrefundable  
2 fee of \$5,000.00.

3 Sec. 49. 8 V.S.A. § 6006(p) is added to read:

4 (p) With the Commissioner's prior written approval, a captive insurance  
5 company may establish one or more separate accounts and may allocate to  
6 them amounts to provide for the insurance of risks of certain of its parents,  
7 affiliates, or members, as the case may be, subject to the following:

8 (1) The income, gains, and losses, realized or unrealized, from assets  
9 allocated to a separate account shall be credited to or charged against the  
10 account, without regard to other income, gains, or losses of the captive  
11 insurance company.

12 (2) Amounts allocated to a separate account in the exercise of the power  
13 granted by this subsection are owned by the captive insurer, and the captive  
14 insurer may not be nor hold itself out to be a trustee with respect to such  
15 amounts.

16 (3) Unless otherwise approved by the Commissioner, assets allocated to  
17 a separate account shall be valued in accordance with the rules otherwise  
18 applicable to the captive insurer's assets.

19 (4) If and to the extent so provided under the applicable contracts, that  
20 portion of the assets of any such separate account equal to the reserves and  
21 other contract liabilities with respect to such account shall not be chargeable

1 with liabilities arising out of any other business the captive insurer may  
2 conduct.

3 (5) No sale, exchange, or other transfer of assets may be made by such  
4 captive insurer between any of its separate accounts or between any other  
5 investment account and one or more of its separate accounts unless, in the case  
6 of a transfer into a separate account, such transfer is made solely to establish  
7 the account or to support the operation of the contracts with respect to the  
8 separate account to which the transfer is made and unless such transfer,  
9 whether into or from a separate account is made by a transfer of cash or by a  
10 transfer of securities having a readily determinable market value, provided that  
11 such transfer of securities is approved by the Commissioner. The  
12 Commissioner may approve other transfers among such accounts if, in his or  
13 her opinion, such transfers would be equitable.

14 (6) To the extent such captive insurer deems it necessary to comply with  
15 any applicable federal or state laws, such captive insurer, with respect to any  
16 separate account, including any separate account which is a management  
17 investment company or a unit investment trust, may provide for persons having  
18 an interest therein appropriate voting and other rights and special procedures  
19 for the conduct of the business of such account, including special rights and  
20 procedures relating to investment policy, investment advisory services,  
21 selection of independent public accountants, and the selection of a committee,

1 the members of which need not be otherwise affiliated with such company, to  
2 manage the business of such account.

3 Sec. 50. 8 V.S.A. § 6014(e) is amended to read:

4 (e) Subject to the provisions of subsection (c) of this section, two or more  
5 captive insurance companies ~~that are not special purpose financial captives~~  
6 under common ownership and control shall be taxed as though they were a  
7 single captive insurance company; ~~and two or more captive insurance~~  
8 ~~companies that are special purpose financial captives under common~~  
9 ~~ownership and control shall be taxed as though they were a single captive~~  
10 ~~insurance company. Special purpose financial captives may not be~~  
11 ~~consolidated with other captives that are not special purpose financial captives~~  
12 ~~for purposes of calculating premium taxes due.~~

13 Sec. 51. 8 V.S.A. § 6034a is amended to read:

14 § 6034a. INCORPORATED PROTECTED CELLS

15 (a) A protected cell of a sponsored captive insurance company may be  
16 formed as an incorporated protected cell, as defined in subdivision 6032(1) of  
17 this title.

18 (b) Subject to the prior written approval of the sponsored captive insurance  
19 company and of the Commissioner, an incorporated protected cell shall be  
20 entitled to enter into contracts and undertake obligations in its own name and  
21 for its own account. In the case of a contract or obligation to which the

1 sponsored captive insurance company is not a party, either in its own name and  
2 for its own account or on behalf of a protected cell, the counterparty to the  
3 contract or obligation shall have no right or recourse against the sponsored  
4 captive insurance company and its assets other than against assets properly  
5 attributable to the incorporated protected cell that is a party to the contract or  
6 obligation.

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

15 ~~(e)~~(d) It is the intent of the ~~general assembly~~ General Assembly under this  
16 section to provide sponsored captive insurance companies, including those  
17 licensed as special purpose financial captive insurance companies under  
18 subchapter 4 of this chapter, with the option to establish one or more protected  
19 cells as a separate corporation, mutual corporation, nonprofit corporation, or  
20 limited liability company. This section shall not be construed to limit any  
21 rights or protections applicable to protected cells not established as

1 corporations, mutual corporations, nonprofit corporations, or limited liability  
2 companies.

3 Sec. 52. 8 V.S.A. § 6041 is amended to read:

4 § 6041. ESTABLISHMENT OF A BRANCH CAPTIVE

5 (a) A branch captive may be established in this ~~state~~ State in accordance  
6 with the provisions of this chapter ~~to write in this state only insurance or~~  
7 ~~reinsurance of the employee benefit business of its parent and affiliated~~  
8 ~~companies which is subject to the provisions of the Employee Retirement~~  
9 ~~Income Security Act of 1974, as amended.~~ In addition to the general  
10 provisions of this chapter, the provisions of this subchapter shall apply to  
11 branch captive insurance companies.

12 (b) No branch captive insurance company shall do any insurance business  
13 in this ~~state~~ State unless it maintains the principal place of business for its  
14 branch operations in this ~~state~~ State and it appoints a principal representative in  
15 this State who is a resident of this State. For purposes of this subsection,  
16 principal representative shall mean a person designated as such by the branch  
17 captive insurance company as its principal representative on such forms and  
18 with such information as required by the Commissioner. The provisions of  
19 subsection 6006(f) shall not apply to branch captives formed in this State.

1 Sec. 53. 8 V.S.A. § 6048a is amended to read:

2 § 6048a. APPLICABLE LAW

3 (a) A special purpose financial ~~capti~~ve insurance company shall be subject  
4 to the provisions of this subchapter and to the provisions of subchapter 1 of  
5 this chapter. In the event of any conflict between the provisions of this  
6 subchapter and the provisions of subchapter 1 of this chapter, the provisions of  
7 this subchapter shall control.

8 (b) A special purpose financial ~~capti~~ve insurance company shall be subject  
9 to all applicable rules adopted pursuant to section 6015 of this chapter that are  
10 in effect as of the effective date of this subchapter and that are adopted after  
11 the effective date of this subchapter.

12 (c) The ~~com~~missioner Commissioner may, by order, exempt a special  
13 purpose financial ~~capti~~ve insurance company from any provision of this  
14 chapter or from any rule adopted pursuant to section 6015 of this chapter if the  
15 ~~com~~missioner Commissioner determines such provision to be inappropriate  
16 based on the special purpose financial ~~capti~~ve insurance company's plan of  
17 operation.

18 Sec. 54. 8 V.S.A. § 6048b is amended to read:

19 § 6048b. EXISTING LICENSES

20 Except as otherwise determined by the ~~com~~missioner Commissioner, a  
21 captive insurance company that has been licensed by the ~~com~~missioner

1 Commissioner pursuant to this chapter as of the effective date of this  
2 subchapter and that is engaged in or that will be engaged in an insurance  
3 securitization shall be subject to the provisions of this subchapter as a special  
4 purpose financial captive insurance company. The ~~commissioner~~  
5 Commissioner may require such captive insurance company to take any action  
6 that the ~~commissioner~~ Commissioner determines is reasonably necessary to  
7 bring such captive insurance company into compliance with the provisions of  
8 this subchapter. The ~~commissioner~~ Commissioner may issue an order  
9 described in subsection 6048d(b) of this title with respect to such captive  
10 insurance company.

11 Sec. 55. 8 V.S.A. § 6048c is amended to read:

12 § 6048c. DEFINITIONS

13 ~~For purposes of~~ As used in this subchapter:

14 (1) “Ceding insurer” means an insurance company approved by the  
15 ~~commissioner~~ Commissioner and licensed or otherwise authorized to transact  
16 the business of insurance or reinsurance in its state or country of domicile,  
17 which cedes risk to a special purpose financial captive insurance company  
18 pursuant to a reinsurance contract.

19 (2) “Insolvency” and “insolvent” for purpose of applying the provisions  
20 of chapter 145 of this title to a special purpose financial captive insurance  
21 company, mean:

1           (A) That the special purpose financial ~~capt~~ive insurance company is  
2           unable to pay its obligations when they are due, unless those obligations are  
3           the subject of a bona fide dispute; or

4           (B) The special purpose financial ~~capt~~ive insurance company has  
5           failed to meet all criteria and conditions for solvency of the special purpose  
6           financial captive insurance company established by the ~~commissioner~~  
7           Commissioner by rule or order.

8           (3) “Insurance securitization” and “securitization” mean a transaction or  
9           a group of related transactions, which may include capital market offerings,  
10          that are effected through related risk transfer instruments and facilitating  
11          administrative agreements where all or part of the result of such transactions is  
12          used to fund the special purpose financial ~~capt~~ive insurance company’s  
13          obligations under a reinsurance contract with a ceding insurer and by which:

14          (A) Proceeds are obtained by a special purpose financial ~~capt~~ive  
15          insurance company, directly or indirectly, through the issuance of securities by  
16          the special purpose financial ~~capt~~ive insurance company or any other  
17          person; or

18          (B) A person provides one or more letters of credit or other assets for  
19          the benefit of the special purpose financial ~~capt~~ive insurance company, which  
20          the ~~commissioner~~ Commissioner authorizes the special purpose financial  
21          captive insurance company to treat as admitted assets for purposes of the

1 special purpose financial ~~capti~~ve insurance company's annual report; where all  
2 or any part of such proceeds, letters of credit, or assets, as applicable, are used  
3 to fund the special purpose financial ~~capti~~ve insurance company's obligations  
4 under a reinsurance contract with a ceding insurer. The terms "insurance  
5 securitization" and "securitization" do not include the issuance of a letter of  
6 credit for the benefit of the ~~commissioner~~ Commissioner to satisfy all or part of  
7 the special purpose financial ~~capti~~ve insurance company's capital and surplus  
8 requirements under section 6048g of this chapter.

9 (4) "Management" means the board of directors, managing board, or  
10 other individual or individuals vested with overall responsibility for the  
11 management of the affairs of the special purpose financial ~~capti~~ve insurance  
12 company, including ~~but not limited to~~ officers or other agents elected or  
13 appointed to act on behalf of the special purpose financial ~~capti~~ve insurance  
14 company.

15 (5) "Organizational document" means:

16 (A) In the case of a special purpose financial ~~capti~~ve insurance  
17 company formed as a stock corporation, the special purpose financial ~~capti~~ve  
18 insurance company's articles of incorporation and bylaws; and

19 (B) In the case of a special purpose financial ~~capti~~ve insurance  
20 company formed as a limited liability company, the special purpose financial  
21 ~~capti~~ve insurance company's articles of organization and operating agreement.

1           (6) “Reinsurance contract” means a contract between a special purpose  
2 financial ~~captive~~ insurance company and a ceding insurer pursuant to which  
3 the special purpose financial ~~captive~~ insurance company agrees to provide  
4 reinsurance to the ceding insurer for risks associated with the ceding insurer’s  
5 insurance or reinsurance business.

6           (7) “Security” shall have the same meaning as defined in 9 V.S.A.  
7 § 5102(28); and shall also include any form of debt obligation, equity, surplus  
8 certificate, surplus note, funding agreement, derivative, or other financial  
9 instrument that the commissioner designates, by rule or order, as a “security”  
10 for purposes of this subchapter.

11           (8) “Special purpose financial ~~captive~~ insurance company” means a  
12 captive insurance company that has received a license from the ~~commissioner~~  
13 Commissioner to operate as a special purpose financial ~~captive~~ insurance  
14 company pursuant to this subchapter.

15           (9) “Special purpose financial ~~captive~~ insurance company security”  
16 means:

17           (A) A security issued by a special purpose financial ~~captive~~ insurance  
18 company; or

19           (B) A security issued by a third party, the proceeds of which are  
20 obtained directly or indirectly by a special purpose financial ~~captive~~ insurance  
21 company.

1           (10) "Surplus note" means an unsecured subordinated debt obligation  
2 possessing characteristics consistent with paragraph 3 of the National  
3 Association of Insurance Commissioners Statement of Statutory Accounting  
4 Principles No. 41, as amended from time to time and as modified or  
5 supplemented by rule or order of the ~~commissioner~~ Commissioner.

6 Sec. 56. 8 V.S.A. § 6048d is amended to read:

7 § 6048d. LICENSING; AUTHORITY

8           (a) A special purpose financial ~~capti~~ve insurance company may reinsure the  
9 risks of a ceding insurer only. A special purpose financial ~~capti~~ve insurance  
10 company may purchase reinsurance to cede the risks assumed under a  
11 reinsurance contract, subject to the prior approval of the ~~commissioner~~  
12 Commissioner.

13           (b) In conjunction with the issuance of a license to a special purpose  
14 financial ~~capti~~ve insurance company, the ~~commissioner~~ Commissioner may  
15 issue an order that includes any provisions, terms, and conditions regarding the  
16 organization, licensing, and operation of the special purpose financial ~~capti~~ve  
17 insurance company that are deemed appropriate by the ~~commissioner~~  
18 Commissioner and that are not inconsistent with the provisions of this chapter.  
19 Except as provided in sections 6048l and 6048m of this subchapter, a license  
20 issued to a special purpose financial ~~capti~~ve insurance company pursuant to  
21 this chapter and any order issued to a special purpose financial ~~capti~~ve

1 insurance company pursuant to this subsection shall not be revoked,  
2 suspended, amended, or modified other than as follows:

3 (1) The special purpose financial ~~capti~~ve insurance company consents to  
4 such revocation, suspension, amendment, or modification; or

5 (2) The ~~commissioner~~ Commissioner makes a showing of clear and  
6 convincing evidence demonstrating that such revocation, suspension,  
7 amendment, or modification is necessary to avoid irreparable harm to the  
8 special purpose financial ~~capti~~ve insurance company or to the ceding insurer.

9 (c) To qualify for a license, a special purpose financial ~~capti~~ve insurance  
10 company shall be subject, in addition to the requirements of subsection 6002(c)  
11 of this chapter, to the following:

12 (1) The special purpose financial ~~capti~~ve insurance company's plan of  
13 operation shall include:

14 (A) a complete description of all significant transactions, including  
15 reinsurance, reinsurance security arrangements, securitizations, related  
16 transactions or arrangements, and, to the extent not included in the transactions  
17 listed in this subdivision (A), a complete description of all parties other than  
18 the special purpose financial ~~capti~~ve insurance company and the ceding insurer  
19 that will be involved in the issuance of special purpose financial ~~capti~~ve  
20 insurance company securities and a description of any pledge, hypothecation,  
21 or grant of a security interest in any of the special purpose financial ~~capti~~ve

1 insurance company's assets and in any stock or limited liability company  
2 interest in the special purpose financial ~~captive~~ insurance company;

3 (B) the source and form of the special purpose financial ~~captive~~  
4 insurance company's capital and surplus;

5 (C) the proposed investment policy of the special purpose financial  
6 ~~captive~~ insurance company;

7 (D) a description of the underwriting, reporting, and claims payment  
8 methods by which losses covered by the reinsurance contract are reported,  
9 accounted for, and settled;

10 (E) pro forma balance sheets and income statements illustrating one  
11 or more adverse case scenarios, as determined under criteria required by the  
12 ~~commissioner~~ Commissioner, for the performance of the special purpose  
13 financial ~~captive~~ insurance company under all reinsurance contracts; and

14 (F) the proposed rate and method for discounting reserves, if the  
15 special purpose financial ~~captive~~ insurance company is requesting authority to  
16 discount its reserves.

17 (2) The special purpose financial ~~captive~~ insurance company shall  
18 submit an affidavit of its president, a vice-president, the treasurer, or the chief  
19 financial officer that includes the following statements, to the best of such  
20 person's knowledge and belief after reasonable inquiry:

1           (A) the proposed organization and operation of the special purpose  
2 financial ~~captive~~ insurance company comply with all applicable provisions of  
3 this chapter;

4           (B) the special purpose financial ~~captive~~ insurance company's  
5 investment policy reflects and takes into account the liquidity of assets and the  
6 reasonable preservation, administration, and management of such assets with  
7 respect to the risks associated with the reinsurance contract and the insurance  
8 securitization transaction; and

9           (C) the reinsurance contract and any arrangement for securing the  
10 special purpose financial captive insurance company's obligations under such  
11 reinsurance contract, including ~~but not limited to~~ any agreements or other  
12 documentation to implement such arrangement, comply with the provisions of  
13 this subchapter.

14           (3) The application shall include copies of all agreements and  
15 documentation described in subdivision (c)(1) of this section unless otherwise  
16 approved by the ~~commissioner~~ Commissioner and any other statements or  
17 documents required by the ~~commissioner~~ Commissioner to evaluate the special  
18 purpose financial ~~captive~~ insurance company's application for licensure.

19           (4) The application shall include an opinion of qualified legal counsel,  
20 in a form acceptable to the ~~commissioner~~ Commissioner, that the offer and sale  
21 of any special purpose financial ~~captive~~ insurance company securities complies

1 with all applicable registration requirements or applicable exemptions from or  
2 exceptions to such requirements of the federal securities laws and that the offer  
3 and sale of securities by the special purpose financial ~~capti~~ve insurance  
4 company itself comply with all registration requirements or applicable  
5 exemptions from or exceptions to such requirements of the securities laws of  
6 this ~~state~~ State. Such opinions shall not be required as part of the application if  
7 the special purpose financial ~~capti~~ve insurance company includes a specific  
8 statement in its plan of operation that such opinions will be provided to the  
9 ~~commissioner~~ Commissioner in advance of the offer or sale of any special  
10 purpose financial ~~capti~~ve insurance company securities.

11 (d) The ~~commissioner~~ Commissioner may grant a license, ~~that~~ which shall  
12 be valid through the next April 1 following the date of initial issuance and may  
13 be renewed annually thereafter, authorizing the special purpose financial  
14 ~~capti~~ve insurance company to transact reinsurance business as a special  
15 purpose financial ~~capti~~ve insurance company in this ~~state~~ State upon  
16 finding that:

17 (1) The proposed plan of operation provides for a reasonable and  
18 expected successful operation;

19 (2) The terms of the reinsurance contract and related transactions  
20 comply with this subchapter;

1           (3) The proposed plan of operation is not hazardous to any ceding  
2 insurer; and

3           (4) The insurance regulator of the state of domicile of each ceding  
4 insurer has notified the ~~commissioner~~ Commissioner in writing or otherwise  
5 has provided assurance satisfactory to the ~~commissioner~~ Commissioner that it  
6 has approved or has not disapproved the transaction, provided that the  
7 ~~commissioner~~ Commissioner shall not be precluded from issuing a license to a  
8 special purpose financial ~~capti~~ve insurance company in the event that the  
9 insurance regulator of the state of domicile of a ceding insurer has not  
10 responded with respect to all or any part of the transaction.

11          (e) The special purpose financial ~~capti~~ve insurance company shall provide  
12 the ~~commissioner~~ Commissioner with a copy of a complete set of executed  
13 documentation of an insurance securitization no later than 30 days after the  
14 closing on the transactions for such securitization.

15          (f) Subdivision 6002(c)(3) of this chapter shall apply to all information  
16 submitted pursuant to subsections (c) and (e) of this section and to any order  
17 issued to the special purpose financial ~~capti~~ve insurance company pursuant to  
18 subsection (b) of this section.

1 Sec. 57. 8 V.S.A. § 6048e is amended to read:

2 § 6048e. CHANGES IN PLAN OF OPERATION; VOLUNTARY

3 DISSOLUTION OR CESSATION OF BUSINESS

4 (a) Any change in the special purpose financial ~~capti~~ve insurance  
5 company's plan of operation shall require prior approval of the ~~com~~missioner  
6 Commissioner.

7 (b) Any transaction or series of transactions shall be subject to the prior  
8 approval of the ~~com~~missioner Commissioner if such transaction or series of  
9 transactions:

10 (1) Is undertaken to dissolve a special purpose financial ~~capti~~ve  
11 insurance company; or

12 (2) Results in the termination of all or any part of a special purpose  
13 financial ~~capti~~ve insurance company's business; but no prior approval of the  
14 ~~com~~missioner Commissioner shall be required for any transaction or series of  
15 transactions described in this subdivision (2) if such transaction or series of  
16 transactions is done in accordance with a document or agreement described in  
17 the special purpose financial ~~capti~~ve insurance company's plan of operation  
18 and if the ~~com~~missioner Commissioner is notified in advance of such  
19 transaction or series of transactions.

20 (c) A special purpose financial ~~capti~~ve insurance company shall notify the  
21 ~~com~~missioner Commissioner in advance of any change in the legal ownership

1 of any security issued by the special purpose financial ~~capt~~ive insurance  
2 company.

3 Sec. 58. 8 V.S.A. § 6048f is amended to read:

4 § 6048f. FORMATION

5 (a) A special purpose financial ~~capt~~ive insurance company may be  
6 incorporated as a stock insurer with its capital divided into shares and held by  
7 its stockholders, or it may be organized as a manager-managed limited liability  
8 company.

9 (b) A special purpose financial ~~capt~~ive insurance company's organizational  
10 documents shall limit the special purpose financial ~~capt~~ive insurance  
11 company's authority to transact the business of insurance or reinsurance to  
12 those activities that the special purpose financial ~~capt~~ive insurance company  
13 conducts to accomplish its purposes as expressed in this subchapter.

14 Sec. 59. 8 V.S.A. § 6048g is amended to read:

15 § 6048g. MINIMUM CAPITAL AND SURPLUS

16 A special purpose financial ~~capt~~ive insurance company shall not be issued a  
17 license unless it shall possess and thereafter maintain unimpaired paid-in  
18 capital and surplus of not less than ~~\$250,000.00~~ \$5,000,000.00.

19 Sec. 60. 8 V.S.A. § 6048h is amended to read:

20 § 6048h. SECURITIES

21 (a) A special purpose financial ~~capt~~ive insurance company may:

1           (1) subject to the prior approval of the ~~commissioner~~ Commissioner,  
2           account for the proceeds of a surplus note issued by the special purpose  
3           financial ~~capti~~ve insurance company as surplus; and  
4           (2) submit for prior approval of the ~~commissioner~~ Commissioner  
5           periodic written requests for authorization to make payments of interest on and  
6           repayments of principal of surplus notes and other debt obligations issued by  
7           the special purpose financial ~~capti~~ve insurance company, provided that the  
8           ~~commissioner~~ Commissioner shall not approve such payment if the  
9           ~~commissioner~~ Commissioner determines that such payment would jeopardize  
10          the ability of the special purpose financial ~~capti~~ve insurance company or any  
11          other person to fulfill ~~their~~ his or her respective obligations pursuant to the  
12          special purpose financial ~~capti~~ve insurance company securitization agreements,  
13          the reinsurance contract, or any related transaction. In lieu of approval of  
14          periodic written requests for authorization to make payments of interest on and  
15          repayments of principal of surplus notes and other debt obligations issued by  
16          the special purpose financial ~~capti~~ve insurance company, the ~~commissioner~~  
17          Commissioner may approve a formula or plan, which shall be included in the  
18          special purpose financial ~~capti~~ve insurance company's plan of operation as  
19          amended from time to time, for payment of interest, principal, or both with  
20          respect to such surplus notes and debt obligations.

1           (b) In addition to the provisions of section 6005 of this chapter, no dividend  
2 or distribution may be declared or paid by a special purpose financial ~~captive~~  
3 insurance company if such dividend or distribution would jeopardize the  
4 ability of the special purpose financial ~~captive~~ insurance company or any other  
5 person to fulfill the company's or other person's respective obligations  
6 pursuant to the special purpose financial ~~captive~~ insurance company  
7 securitization agreements, the reinsurance contract, or any related transaction.

8           (c) A special purpose financial ~~captive~~ insurance company security shall  
9 not be subject to regulation as an insurance or reinsurance contract. An  
10 investor in such a security or a holder of such a security shall not be considered  
11 to be transacting the business of insurance in this ~~state~~ State solely by reason of  
12 having an interest in the security. The underwriter's placement or selling  
13 agents and their partners, commissioners, officers, members, managers,  
14 employees, agents, representatives, and advisors involved in an insurance  
15 securitization by a special purpose financial ~~captive~~ insurance company shall  
16 not be considered to be insurance producers or brokers or to be conducting  
17 business as an insurance or reinsurance company or as an insurance agency,  
18 brokerage, intermediary, advisory, or consulting business solely by virtue of  
19 their underwriting activities in connection with such securitization.

1 Sec. 61. 8 V.S.A. § 6048i is amended to read:

2 § 6048i. PERMITTED REINSURANCE

3 (a) A special purpose financial ~~capt~~ive insurance company may reinsure  
4 only the risks of a ceding insurer, pursuant to a reinsurance contract. A special  
5 purpose financial ~~capt~~ive insurance company may not issue a contract of  
6 insurance or a contract for assumption of risk or indemnification of loss other  
7 than such reinsurance contract.

8 (b) Unless otherwise approved in advance by the ~~commissioner~~  
9 Commissioner, a special purpose financial ~~capt~~ive insurance company may not  
10 assume or retain exposure to insurance or reinsurance losses for its own  
11 account that are not funded by:

12 (1) Proceeds from a special purpose financial ~~capt~~ive insurance  
13 company securitization or letters of credit or other assets described in  
14 subdivision 6048c(3) of this chapter;

15 (2) Premium and other amounts payable by the ceding insurer to the  
16 special purpose financial ~~capt~~ive insurance company pursuant to the  
17 reinsurance contract; and

18 (3) Any return on investment of the items in subdivisions (1) and (2) of  
19 this subsection.

20 (c) The reinsurance contract shall contain all provisions reasonably  
21 required or approved by the ~~commissioner~~ Commissioner, which requirements

1 shall take into account the laws applicable to the ceding insurer regarding the  
2 ceding insurer taking credit for the reinsurance provided under such  
3 reinsurance contract.

4 (d) A special purpose financial ~~capti~~ve insurance company may cede risks  
5 assumed through a reinsurance contract to one or more reinsurers through the  
6 purchase of reinsurance, subject to the prior approval of the ~~com~~missioner  
7 Commissioner.

8 (e) A special purpose financial ~~capti~~ve insurance company may enter into  
9 contracts and conduct other commercial activities related or incidental to and  
10 necessary to fulfill the purposes of the reinsurance contract, the insurance  
11 securitization, and this subchapter, provided such contracts and activities are  
12 included in the special purpose financial ~~capti~~ve insurance company's plan of  
13 operation or are otherwise approved in advance by the ~~com~~missioner  
14 Commissioner. Such contracts and activities may include ~~but are not limited~~  
15 ~~to~~: entering into reinsurance contracts; issuing special purpose financial  
16 ~~capti~~ve insurance company securities; complying with the terms of these  
17 contracts or securities; entering into trust, guaranteed investment contract,  
18 swap, or other derivative, tax, administration, reimbursement, or fiscal agent  
19 transactions; ~~or~~ complying with trust indenture, reinsurance, or retrocession;  
20 and other agreements necessary or incidental to effect an insurance

1 securitization in compliance with this subchapter and the special purpose  
2 financial ~~capti~~ve insurance company's plan of operation.

3 (f) Unless otherwise approved in advance by the ~~com~~missioner  
4 Commissioner, a reinsurance contract shall not contain any provision for  
5 payment by the special purpose financial ~~capti~~ve insurance company in  
6 discharge of its obligations under the reinsurance contract to any person other  
7 than the ceding insurer or any receiver of the ceding insurer.

8 (g) A special purpose financial ~~capti~~ve insurance company shall notify the  
9 ~~com~~missioner Commissioner immediately of any action by a ceding insurer or  
10 any other person to foreclose on or otherwise take possession of collateral  
11 provided by the special purpose financial ~~capti~~ve insurance company to secure  
12 any obligation of the special purpose financial ~~capti~~ve insurance company.

13 Sec. 62. 8 V.S.A. § 6048j is amended to read:

14 § 6048j. DISPOSITION OF ASSETS; INVESTMENTS

15 (a) The assets of a special purpose financial ~~capti~~ve insurance company  
16 shall be preserved and administered by or on behalf of the special purpose  
17 financial ~~capti~~ve insurance company to satisfy the liabilities and obligations of  
18 the special purpose financial ~~capti~~ve insurance company incident to the  
19 reinsurance contract, the insurance securitization, and other related agreements.

20 (b) In the special purpose financial ~~capti~~ve insurance company  
21 securitization, the security offering memorandum or other document issued to

1 prospective investors regarding the offer and sale of a surplus note or other  
2 security shall include a disclosure that all or part of the proceeds of such  
3 insurance securitization will be used to fund the special purpose financial  
4 ~~capti~~ve insurance company's obligations to the ceding insurer.

5 (c) A special purpose financial ~~capti~~ve insurance company shall not be  
6 subject to any restriction on investments other than the following:

7 (1) A special purpose financial ~~capti~~ve insurance company shall not  
8 make a loan to any person other than as permitted under its plan of operation or  
9 as otherwise approved in advance by the ~~com~~missioner Commissioner; and

10 (2) The ~~com~~missioner Commissioner may prohibit or limit any  
11 investment that threatens the solvency or liquidity of the special purpose  
12 financial ~~capti~~ve insurance company unless the investment is otherwise  
13 approved in its plan of operation or in an order issued to the special purpose  
14 financial ~~capti~~ve insurance company pursuant to subsection 6048d(b) of this  
15 chapter, as either is amended from time to time.

16 Sec. 63. 8 V.S.A. § 6048k is amended to read:

17 § 6048k. ANNUAL REPORT; BOOKS AND RECORDS

18 (a) For purposes of subsection 6007(b) of this chapter:

19 (1) The ~~com~~missioner Commissioner shall, by rule or order, establish  
20 the form and content of the annual report to be filed by a special purpose  
21 financial ~~capti~~ve insurance company; and

1           (2) A special purpose financial ~~capti~~ve insurance company shall report  
2 using statutory accounting principles, unless the ~~commissio~~ner Commissioner  
3 requires, approves, or accepts the use of generally accepted accounting  
4 principles or other comprehensive basis of accounting, in each case with any  
5 appropriate or necessary modifications or adaptations required or approved or  
6 accepted by the ~~commissio~~ner Commissioner and as supplemented by  
7 additional information required by the ~~commissio~~ner Commissioner.

8           (b) A special purpose financial ~~capti~~ve insurance company may make  
9 written application to file its annual report on a fiscal-year basis. If an  
10 alternative reporting date is granted, the ~~commissio~~ner Commissioner shall  
11 establish the due date and content of any filing required by the special purpose  
12 financial ~~capti~~ve insurance company in addition to its annual report.

13           (c) Unless otherwise approved in advance by the ~~commissio~~ner  
14 Commissioner, a special purpose financial ~~capti~~ve insurance company shall  
15 maintain its books, records, documents, accounts, vouchers, and agreements in  
16 this ~~state~~ State. A special purpose financial ~~capti~~ve insurance company shall  
17 make its books, records, documents, accounts, vouchers, and agreements  
18 available for inspection by the ~~commissio~~ner Commissioner at any time. A  
19 special purpose financial ~~capti~~ve insurance company shall keep its books and  
20 records in such manner that its financial condition, affairs, and operations can

1 be readily ascertained and so that the ~~commissioner~~ Commissioner may readily  
2 verify its financial statements and determine its compliance with this chapter.

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

15 Sec. 64. 8 V.S.A. § 60481 is amended to read:

16 § 60481. LICENSE SUSPENSION AND REVOCATION

17 (a) The ~~commissioner~~ Commissioner shall notify a special purpose  
18 financial ~~capti~~ve insurance company not less than 30 days before suspending  
19 or revoking its license pursuant to section 6009 of this chapter, which notice  
20 shall state the basis for such suspension or revocation. The special purpose  
21 financial ~~capti~~ve insurance company shall be afforded the opportunity for a

1 hearing pursuant to the provisions of the Vermont Administrative Procedure  
2 Act, 3 V.S.A. chapter 25.

3 (b) Notwithstanding subsection (a) of this section and 3 V.S.A. § 814(c), no  
4 prior notice or hearing shall be required if the grounds for suspension or  
5 revocation of a special purpose financial ~~capti~~ve insurance company's license  
6 pursuant to section 6009 of this chapter relate primarily to the financial  
7 condition or soundness of the special purpose financial ~~capti~~ve insurance  
8 company or to a deficiency in its assets.

9 (c) For purposes of this subchapter, reference to section 6004 in  
10 subdivision 6009(a)(2) shall be construed also as a reference to section 6048g.  
11 Sec. 65. 8 V.S.A. § 6048m is amended to read:

12 § 6048m. DELINQUENCY

13 (a) Except as otherwise provided in this section, the provisions of chapter  
14 145 of this title shall apply in full to a special purpose financial ~~capti~~ve  
15 insurance company.

16 (b) Upon any order of supervision, rehabilitation, or liquidation of a special  
17 purpose financial ~~capti~~ve insurance company, the receiver shall manage the  
18 assets and liabilities of the special purpose financial ~~capti~~ve insurance  
19 company pursuant to the provisions of this subchapter.

20 (c) Amounts recoverable by the receiver of a special purpose financial  
21 ~~capti~~ve insurance company under a reinsurance contract shall not be reduced or

1 diminished as a result of the entry of an order of conservation, rehabilitation, or  
2 liquidation with respect to a ceding insurer, notwithstanding any provision in  
3 the contracts or other documentation governing the special purpose financial  
4 ~~capti~~ve insurance company securitization.

5 (d) Notwithstanding the provisions of chapter 145 of this title or any other  
6 law of this state:

7 (1) An application or petition or a temporary restraining order or  
8 injunction issued pursuant to the provisions of chapter 145 of this title with  
9 respect to a ceding insurer does not prohibit the transaction of business by a  
10 special purpose financial ~~capti~~ve insurance company, including any payment  
11 by a special purpose financial ~~capti~~ve insurance company made with respect to  
12 a special purpose financial ~~capti~~ve insurance company security, or any action  
13 or proceeding against a special purpose financial ~~capti~~ve insurance company or  
14 its assets.

15 (2) The commencement of a summary proceeding with respect to a  
16 special purpose financial ~~capti~~ve insurance company and any order issued by  
17 the court in such summary proceeding shall not prohibit payments by a special  
18 purpose financial ~~capti~~ve insurance company and shall not prohibit the special  
19 purpose financial ~~capti~~ve insurance company from taking any action required  
20 to make such payments, provided such payments are made:

1 (A) pursuant to a special purpose financial ~~capt~~<sup>e</sup> insurance  
2 company security or reinsurance contract; and

3 (B) consistent with the special purpose financial ~~capt~~<sup>e</sup> insurance  
4 company's plan of operation and any order issued to the special purpose  
5 financial ~~capt~~<sup>e</sup> insurance company pursuant to subsection 6048d(b), as either  
6 is amended from time to time.

7 (3) A receiver of a ceding insurer may not void a nonfraudulent transfer  
8 by a ceding insurer to a special purpose financial ~~capt~~<sup>e</sup> insurance company of  
9 money or other property made pursuant to a reinsurance contract.

10 (4) A receiver of a special purpose financial ~~capt~~<sup>e</sup> insurance company  
11 may not void a nonfraudulent transfer by the special purpose financial ~~capt~~<sup>e</sup>  
12 insurance company of money or other property:

13 (A) made to a ceding insurer pursuant to a reinsurance contract or  
14 made to or for the benefit of any holder of a special purpose financial ~~capt~~<sup>e</sup>  
15 insurance company security with respect to the special purpose financial  
16 ~~capt~~<sup>e</sup> insurance company security; and

17 (B) made consistent with the special purpose financial ~~capt~~<sup>e</sup>  
18 insurance company's plan of operation and any order issued to the special  
19 purpose financial ~~capt~~<sup>e</sup> insurance company pursuant to subsection 6048d(b),  
20 as either is amended from time to time.

1 (e) With the exception of the fulfillment of the obligations under a  
2 reinsurance contract and notwithstanding another provision of this subchapter  
3 or other laws of this ~~state~~ State, the assets of a special purpose financial ~~captive~~  
4 insurance company, including assets held in trust, on a funds-withheld basis, or  
5 in any other arrangement to secure the special purpose financial ~~captive~~  
6 insurance company's obligations under a reinsurance contract, shall not be  
7 consolidated with or included in the estate of a ceding insurer in any  
8 delinquency proceeding against the ceding insurer pursuant to the provisions of  
9 this subchapter for any purpose including, without limitation, distribution to  
10 creditors of the ceding insurer.

11 Sec. 66. 8 V.S.A. § 6048n is amended to read:

12 § 6048n. SPONSORED CAPTIVES

13 In addition to the provisions of sections 6048a-6048m of this subchapter,  
14 the provisions of this section shall apply to any sponsored captive insurance  
15 company licensed as a special purpose financial ~~captive~~ insurance company  
16 pursuant to this subchapter.

17 (1) A sponsored captive insurance company may be licensed as a special  
18 purpose financial ~~captive~~ insurance company pursuant to the provisions of this  
19 subchapter.

20 (2) The special purpose financial ~~captive~~ insurance company shall be  
21 subject to the provisions of subchapter 2 of this chapter. In the event of any

1 conflict between the provisions of this subchapter and the provisions of  
2 subchapter 2 of this chapter, the provisions of this subchapter shall control.

3 (3) Unless otherwise approved in advance by the ~~commissioner~~  
4 Commissioner, a participant in a special purpose financial ~~capti~~ve insurance  
5 company shall be a ceding insurer. Any change in a participant shall be  
6 subject to prior approval by the ~~commissioner~~ Commissioner.

7 (4) The special purpose financial ~~capti~~ve insurance company on behalf  
8 of a protected cell shall be entitled to assert the same claims and defenses in  
9 actions in law or equity as if the protected cell were a corporation established  
10 under Title 11A of the Vermont Statutes Annotated, including, ~~but not limited~~  
11 ~~to~~, claims and defenses in actions at law or equity alleging alter ego, corporate  
12 veil piercing, offset, substantive consolidation, equitable subordination, or  
13 recoupment. In connection with the conservation, rehabilitation, or liquidation  
14 of a special purpose financial ~~capti~~ve insurance company or one or more of its  
15 protected cells, the assets and liabilities of a protected cell shall at all times be  
16 kept separate from, and shall not be commingled with, those of other protected  
17 cells and the special purpose financial ~~capti~~ve insurance company, and the  
18 assets of one protected cell shall not be used to satisfy the obligations or  
19 liabilities of another protected cell or the special purpose financial ~~capti~~ve  
20 insurance company based on legal or equitable claims or defenses, including  
21 ~~but not limited to~~ alter ego, piercing the corporate veil, offset, substantive

1 consolidation, equitable subordination, or recoupment, unless such claims or  
2 defenses would apply to such protected cell if it were a special purpose finance  
3 ~~capti~~ve insurance company without separate cells.

4 (5) Notwithstanding subdivision 6034(1) of this chapter, the special  
5 purpose financial ~~capti~~ve insurance company may issue securities to any  
6 person approved in advance by the ~~commissioner~~ Commissioner.

7 (6) Notwithstanding section 6048g of this subchapter, the special  
8 purpose financial ~~capti~~ve insurance company shall possess and thereafter  
9 maintain unimpaired paid-in capital and surplus of not less than \$500,000.00.

10 (7) The “general account” of a sponsored captive insurance company  
11 licensed as a special purpose financial ~~capti~~ve insurance company shall mean  
12 all assets and liabilities of the sponsored captive insurance company not  
13 attributable to a protected cell.

14 (8)(A) Any security issued by a special purpose financial ~~capti~~ve  
15 insurance company with respect to a protected cell and any other contract or  
16 obligation of the special purpose financial ~~capti~~ve insurance company with  
17 respect to a protected cell shall include the designation of such protected cell  
18 and shall include the following statement, or such other statement as may be  
19 required by the ~~commissioner~~ Commissioner:

20 (i) In the case of a security: “The holder of this security shall have  
21 no right or recourse against the special purpose financial ~~capti~~ve insurance

1 company and its assets other than against assets properly attributable to the  
2 designated protected cell and the special purpose financial ~~capt~~ive insurance  
3 company's general account, to the extent permitted by Vermont law."

4 (ii) In the case of a contract or obligation: "The counterparty to  
5 this contract or obligation shall have no right or recourse against the special  
6 purpose financial ~~capt~~ive insurance company and its assets other than against  
7 assets properly attributable to the designated protected cell and the special  
8 purpose financial ~~capt~~ive insurance company's general account, to the extent  
9 permitted by Vermont law."

10 (B) Notwithstanding the requirements of this subdivision (8) and  
11 subject to the provisions of this chapter and other applicable law or regulation,  
12 the failure to include such disclosure, in whole or part, in such security,  
13 contract, or obligation with respect to a protected cell shall not serve as the sole  
14 basis for a creditor, ceding insurer, or any other person to have recourse against  
15 the general account of the special purpose financial ~~capt~~ive insurance company  
16 in excess of the limitations provided for in subdivision (12)(E) of this  
17 subsection, or against the assets of any other protected cell.

18 (9) In addition to the provisions of section 6034 of this chapter, the  
19 special purpose financial ~~capt~~ive insurance company shall be subject to the  
20 following with respect to its protected cells:

1           (A) The special purpose financial ~~capt~~<sup>ive</sup> insurance company shall  
2 establish a protected cell only for the purpose of insuring or reinsuring risks of  
3 one or more reinsurance contracts with a ceding insurer or two or more  
4 affiliated ceding insurers, with the intent of facilitating an insurance  
5 securitization. A separate protected cell shall be established with respect to  
6 each separate securitization transaction; and

7           (B) A sale, an exchange, or another transfer of assets may not be  
8 made by the special purpose financial ~~capt~~<sup>ive</sup> insurance company between or  
9 among any of its protected cells without the prior approval of the  
10 ~~commissioner~~ Commissioner.

11           (10) All attributions of assets and liabilities to the protected cells and the  
12 general account shall be in accordance with the plan of operation approved by  
13 the ~~commissioner~~ Commissioner. No other attribution of assets or liabilities  
14 may be made by a special purpose financial ~~capt~~<sup>ive</sup> insurance company  
15 between its general account and any protected cell or between any protected  
16 cells. The special purpose financial ~~capt~~<sup>ive</sup> insurance company shall attribute  
17 all insurance obligations, assets, and liabilities relating to a reinsurance  
18 contract entered into with respect to a protected cell and shall attribute the  
19 related insurance securitization transaction, including any securities issued by  
20 the special purpose financial ~~capt~~<sup>ive</sup> insurance company as part of the  
21 insurance securitization, to such protected cell. The rights, benefits,

1 obligations, and liabilities of any securities attributable to such protected cell  
2 and the performance under such reinsurance contract and the related  
3 securitization transaction and any tax benefits, losses, refunds, or credits  
4 allocated pursuant to a tax allocation agreement to which the special purpose  
5 financial captive insurance company is a party, including any payments made  
6 by or due to be made to the special purpose financial captive insurance  
7 company pursuant to the terms of such agreement, shall reflect the insurance  
8 obligations, assets, and liabilities relating to the reinsurance contract and the  
9 insurance securitization transaction that are attributed to such protected cell.

10 (11) For purposes of applying the provisions of chapter 145 of this title  
11 to a sponsored captive insurance company licensed as a special purpose  
12 financial captive insurance company, the definition of “insolvency” and  
13 “insolvent” in subdivision 6048c(2) of this title shall be applied separately to  
14 each protected cell and to the special purpose financial captive insurance  
15 company’s general account.

16 (12) In addition to the provisions of section 6048m of this chapter:

17 (A) Except as otherwise modified in this section, the terms and  
18 conditions set forth in chapter 145 of this title pertaining to administrative  
19 supervision of insurers and the rehabilitation, receiverships, and liquidation of  
20 insurers apply in full to special purpose financial captive insurance companies  
21 or any of the special purpose financial captive insurance company’s protected

1 cells, independently, without causing or otherwise effecting a conservation,  
2 rehabilitation, receivership, or liquidation of the special purpose financial  
3 ~~capti~~ve insurance company or another protected cell that is not otherwise  
4 insolvent.

5 (B) Notwithstanding the provisions of chapter 145 of this title, and  
6 without causing or otherwise effecting the conservation or rehabilitation of an  
7 otherwise solvent protected cell of a special purpose financial ~~capti~~ve  
8 insurance company and subject to the provisions of subdivision (G)(v) of this  
9 subdivision (12), the ~~com~~missioner Commissioner may apply by petition to the  
10 ~~superior court~~ Superior Court for an order authorizing the ~~com~~missioner  
11 Commissioner to conserve, rehabilitate, or liquidate a special purpose financial  
12 ~~capti~~ve insurance company domiciled in this ~~state~~ State on one or more of the  
13 following grounds:

14 (i) embezzlement, wrongful sequestration, dissipation, or  
15 diversion of the assets of the special purpose financial ~~capti~~ve insurance  
16 company intended to be used to pay amounts owed to the ceding insurer or the  
17 holders of special purpose financial ~~capti~~ve insurance company securities; or

18 (ii) the special purpose financial ~~capti~~ve insurance company is  
19 insolvent; or

20 (iii) the holders of a majority in outstanding principal amount of  
21 each class of special purpose financial ~~capti~~ve insurance company securities

1       attributable to each particular protected cell requests or consents to  
2       conservation, rehabilitation, or liquidation pursuant to the provisions of this  
3       subchapter.

4               (C) Notwithstanding the provisions of chapter 145 of this title, the  
5       ~~commissioner~~ Commissioner may apply by petition to the ~~superior court~~  
6       Superior Court for an order authorizing the ~~commissioner~~ Commissioner to  
7       conserve, rehabilitate, or liquidate one or more of a special purpose financial  
8       ~~capti~~ve insurance company's protected cells, independently, without causing or  
9       otherwise effecting a conservation, rehabilitation, receivership, or liquidation  
10       of the special purpose financial ~~capti~~ve insurance company generally or  
11       another of its protected cells, on one or more of the following grounds:

12               (i) embezzlement, wrongful sequestration, dissipation, or  
13       diversion of the assets of the special purpose financial ~~capti~~ve insurance  
14       company attributable to the affected protected cell or cells intended to be used  
15       to pay amounts owed to the ceding insurer or the holders of special purpose  
16       financial ~~capti~~ve insurance company securities of the affected protected cell or  
17       cells; or

18               (ii) the affected protected cell is insolvent; or

19               (iii) the holders of a majority in outstanding principal amount of  
20       each class of special purpose financial ~~capti~~ve insurance company securities

1       attributable to that particular protected cell request or consent to conservation,  
2       rehabilitation, or liquidation pursuant to the provisions of this subchapter.

3               (D) Except where consent is given as described in subdivisions  
4       (B)(iii) and (C)(iii) of this subdivision (12), the ~~court~~ Court may not grant  
5       relief provided by subdivision (B) or (C) of this subdivision (12) unless, after  
6       notice and a hearing, the ~~commissioner~~ Commissioner, who shall have the  
7       burden of proof, establishes by clear and convincing evidence that relief must  
8       be granted. The ~~court's~~ Court's order may be made in respect of one or more  
9       protected cells by name, rather than the special purpose financial ~~capti~~  
10       insurance company generally.

11              (E) Notwithstanding another provision in this title, regulations  
12       adopted under this title, or another applicable law or regulation, upon any order  
13       of conservation, rehabilitation, or liquidation of a special purpose financial  
14       ~~capti~~ insurance company, or one or more of the special purpose financial  
15       ~~capti~~ insurance company's protected cells, the receiver shall manage the  
16       assets and liabilities of the special purpose financial ~~capti~~ insurance  
17       company or the applicable protected cell pursuant to the provisions of this  
18       subchapter. The assets attributable to one protected cell shall not be applied to  
19       the liabilities attributable to another protected cell, unless an asset or liability is  
20       attributable to more than one protected cell, in which case the receiver shall  
21       deal with the asset or liability in accordance with the terms of any relevant

1 governing instrument or contract. Recourse to the special purpose financial  
2 ~~capti~~ve insurance company's general account in connection with the  
3 conservation, rehabilitation, or liquidation of a protected cell shall be limited to  
4 the greater of the amount of assets in the general account as of the date such  
5 proceeding is commenced or the required minimum capital for the general  
6 account as of the date such proceeding is commenced. Assets attributable to  
7 one protected cell shall not be set off against the liabilities attributable to  
8 another protected cell, and assets attributable to the special purpose financial  
9 ~~capti~~ve insurance company's general account shall not be set off against the  
10 liabilities attributable to any protected cell except to the extent provided in the  
11 preceding sentence. Relief shall not be granted nor shall any order be issued  
12 based on equitable theories of recovery, including substantive consolidation,  
13 equitable subordination, or recoupment, to attach or seize the assets of any  
14 solvent protected cell for the benefit of another protected cell or special  
15 purpose financial ~~capti~~ve insurance company, or to pierce the corporate veil of  
16 any protected cell, in connection with the conservation, rehabilitation, or  
17 liquidation of a special purpose financial ~~capti~~ve insurance company or one or  
18 more protected cells, unless such equitable theories, attachment, seizure, or  
19 corporate veil piercing would apply to such cell if it were a special purpose  
20 financial ~~capti~~ve insurance company without separate cells.

1           (F) With respect to amounts recoverable under a reinsurance contract,  
2           the amount recoverable by the receiver of a special purpose financial ~~capti~~  
3           insurance company must not be reduced or diminished as a result of the entry  
4           of an order of conservation, rehabilitation, or liquidation with respect to the  
5           ceding insurer, notwithstanding another provision in the contract or other  
6           documentation governing the insurance securitization.

7           (G) Notwithstanding the provisions of chapter 145 of this title or  
8           other laws of this ~~state~~ State:

9           (i) An application or petition, or a temporary restraining order or  
10          injunction issued pursuant to the provisions of chapter 145 of this title, with  
11          respect to a ceding insurer, does not prohibit the transaction of business by a  
12          special purpose financial captive insurance company with the ceding insurer,  
13          including any payment by a special purpose financial ~~capti~~ insurance  
14          company made pursuant to a security issued by a special purpose financial  
15          ~~capti~~ insurance company with respect to a protected cell, or any action or  
16          proceeding against a special purpose financial ~~capti~~ insurance company or  
17          its assets.

18          (ii) The commencement of a summary proceeding or other interim  
19          proceeding commenced before a formal delinquency proceeding with respect  
20          to a special purpose financial ~~capti~~ insurance company, and any order issued  
21          by the ~~court~~ Court, does not prohibit the payment by a special purpose

1 financial ~~capt~~ive insurance company made pursuant to a security issued by a  
2 special purpose financial ~~capt~~ive insurance company with respect to a  
3 protected cell or special purpose financial ~~capt~~ive insurance company contract  
4 or the special purpose financial ~~capt~~ive insurance company from taking any  
5 action required to make the payment.

6 (iii) A receiver of a ceding insurer may not void a nonfraudulent  
7 transfer by the ceding insurer to a special purpose financial ~~capt~~ive insurance  
8 company of money or other property made pursuant to a reinsurance contract.

9 (iv) A receiver of a special purpose financial ~~capt~~ive insurance  
10 company may not void a nonfraudulent transfer by the special purpose  
11 financial ~~capt~~ive insurance company of money or other property made to a  
12 ceding insurer pursuant to a reinsurance contract or made to or for the benefit  
13 of any holder of a special purpose financial ~~capt~~ive insurance company  
14 security issued with respect to a protected cell, or a special purpose financial  
15 ~~capt~~ive insurance company security.

16 (v) In the event of an insolvency of a special purpose financial  
17 ~~capt~~ive insurance company where one or more protected cells remain solvent,  
18 the ~~commissioner~~ Commissioner shall separate the special purpose financial  
19 ~~capt~~ive insurance company's solvent protected cells from the insolvent special  
20 purpose financial ~~capt~~ive insurance company, shall allow on petition of the  
21 sponsor for the conversion of such solvent protected cells into one or more

1 special purpose financial ~~capti~~ve insurance companies, and shall issue such  
2 orders as the ~~com~~missioner Commissioner deems necessary to protect the  
3 solvency of the remaining solvent protected cells. In the event of an  
4 insolvency of a protected cell, the special purpose financial ~~capti~~ve insurance  
5 company's assets shall be accounted for and managed in compliance with  
6 subdivision (E) of this subdivision (12) and the other laws of this ~~state~~ State.

7 (H) Subdivision (G) of this subdivision (12) does not prohibit the  
8 ~~com~~missioner Commissioner from taking any action permitted under chapter  
9 145 of this title with respect only to the conservation or rehabilitation of a  
10 special purpose financial ~~capti~~ve insurance company with protected cell or  
11 cells, provided the ~~com~~missioner Commissioner would have had sufficient  
12 grounds to seek to declare the special purpose financial ~~capti~~ve insurance  
13 company insolvent; subject to and without otherwise affecting the provisions  
14 of subdivision (G)(v) of this subdivision (12). In this case, with respect to the  
15 solvent protected cell or cells, the ~~com~~missioner Commissioner may not  
16 prohibit payments made by the special purpose financial ~~capti~~ve insurance  
17 company pursuant to the special purpose financial ~~capti~~ve insurance company  
18 security, reinsurance contract, or otherwise made under the insurance  
19 securitization transaction that are attributable to these protected cell or cells or  
20 prohibit the special purpose financial ~~capti~~ve insurance company from taking  
21 any action required to make these payments.

1           (I) With the exception of the fulfillment of the obligations under a  
2 special purpose financial captive insurance company contract, and  
3 notwithstanding another provision of this title or other laws of this ~~state~~ State,  
4 the assets of a special purpose financial ~~captiv~~e insurance company, including  
5 assets held in trust, shall not be consolidated with or included in the estate of a  
6 ceding insurer in any delinquency proceeding against the ceding insurer  
7 pursuant to the provisions of this title for any purpose, including, without  
8 limitation, distribution to creditors of the ceding insurer.

9       Sec. 67. 8 V.S.A. § 6048o is added to read:

10       § 6048o. CONFIDENTIALITY

11       (a) All documents, materials, or other information, including confidential  
12 and privileged documents, examination reports, preliminary examination  
13 reports or results, working papers, recorded information, and copies thereof  
14 produced by, obtained by, or disclosed to the Commissioner or any other  
15 person in the course of an examination made under this chapter are  
16 confidential and shall not be:

17           (1) subject to subpoena;

18           (2) subject to public inspection and copying under the Public Records

19 Act; or

20           (3) discoverable or admissible in evidence in any private civil action.

21       (b) In furtherance of his or her regulatory duties, the Commissioner may:

1           (1) share documents, materials, or other information, including those  
2           that are confidential and privileged, with other state, federal, or international  
3           regulatory agencies and law enforcement authorities, the National Association  
4           of Insurance Commissioners, the North American Securities Administrators  
5           Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,  
6           78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or  
7           subsidiaries, provided that the recipient agrees to maintain the confidentiality  
8           and privileged status of the document, material, or other information;

9           (2) receive documents, materials, or information, including those that  
10           are confidential and privileged, from other state, federal, and international  
11           regulatory agencies and law enforcement authorities, the National Association  
12           of Insurance Commissioners, the North American Securities Administrators  
13           Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,  
14           78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or  
15           subsidiaries and shall maintain as confidential or privileged any document,  
16           material, or information received with notice or the understanding that it is  
17           confidential or privileged under the laws of the jurisdiction that is the source of  
18           the document, material, or information;

19           (3) enter into agreements with other state, federal, and international  
20           regulatory agencies and law enforcement authorities, the National Association  
21           of Insurance Commissioners, the North American Securities Administrators

1 Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,  
2 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or  
3 subsidiaries governing sharing and use of information consistent with this  
4 section, including agreements providing for cooperation between the  
5 Commissioner and other agencies in relation to the activities of a supervisory  
6 college; and

7 (4) participate in a supervisory college for any domestic insurer,  
8 including a captive insurer, that is part of an affiliated group with international  
9 operations in order to assess the insurer's compliance with Vermont laws and  
10 regulations, as well as to assess the business strategy, financial condition, risk  
11 exposure, risk management, governance processes, and legal and regulatory  
12 position.

13 (5) Prior to sharing information under this subsection, the Commissioner  
14 shall determine that sharing the information will substantially further the  
15 performance of the regulatory or law enforcement duties of the recipient and  
16 may not be made public by the Commissioner or an employee or agent of the  
17 Commissioner without the written consent of the company, except to the extent  
18 provided in this subsection.

