

1 H.513

2 Introduced by Committee on Commerce and Economic Development

3 Date:

4 Subject: Banking; insurance; securities; Department of Financial Regulation

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

8 An act relating to the Department of Financial Regulation

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

10 * * * Banking * * *

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

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

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

1 Department may retain experts or other persons who are independently
2 practicing their professions to assist in such examination, review, or
3 investigation. The ~~department~~ Department shall be reimbursed for all
4 reasonable costs and expenses, including the reasonable costs and expenses of
5 such persons retained by the ~~department~~ Department, by the person examined,
6 submitting the application or filing reviewed, investigated, or subject to or
7 under the jurisdiction of an order, decision, or certificate issued by the
8 ~~commissioner~~ Commissioner under this title or under Title 18. An
9 examination, review, or investigation subject to this section shall include, ~~but~~
10 ~~not be limited to~~, an examination, review, or investigation of any application,
11 information, rate filing, or form filing submitted, or any order, decision, or
12 certificate issued under this title, or under Title 18. In unusual circumstances,
13 the ~~commissioner~~ Commissioner may waive reimbursement for the costs and
14 expenses of any review in the interests of justice. ~~Those~~ Except as set forth in
15 subsection (b) of this section, those institutions subject to assessment or fees
16 for services provided under section 19 of this title, ~~other than merchant banks~~
17 ~~established under section 12603 of this title and independent trust companies~~
18 ~~subject to assessment under subdivision 2405(f)(1) of this title~~, shall not be
19 billed for a regular examination performed under subsection 11501(a) or
20 30601(a) of this title or for services for which such fees under subsection 19(a)
21 of this title have been paid.

1 (d) The ~~commissioner~~ Commissioner shall apportion the expenses allowed
2 under the title "~~Banking, insurance, securities, and health care administration~~
3 ~~banking~~" "Department of Financial Regulation - Banking" in the annual
4 appropriation bill among the several financial institutions, ~~and~~ credit unions,
5 and independent trust companies directly regulated under this title, including
6 the operations in Vermont of any such entity organized in another jurisdiction.
7 Annually, on or before November 1, the ~~commissioner~~ Commissioner shall
8 ~~issue a bulletin setting forth~~ notify the institutions of the proposed assessment.
9 The assessment shall consider surpluses or shortfalls from prior year
10 assessments, increases, and decreases in entity deposits and assets under
11 management, and any other factor that may affect the ~~banking division's~~
12 Banking Division's expenditures and revenues. The ~~commissioner~~
13 Commissioner shall send each entity a bill for such entity's portion of the
14 assessment on or before March 1 of each year, which bill shall be paid into the
15 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 or this title shall provide notice of a breach
19 to the 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~~ Except as provided in subdivision (3) of this subsection, a financial
3 institution that is subject to the following guidances, and any revisions,
4 additions, or substitutions relating to an interagency guidance shall be exempt
5 from this section:

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

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

14 (3) A financial institution regulated by the Department of Financial
15 Regulation that is subject to subdivision (1) or (2) of this subsection shall
16 notify the Department as soon as possible after it becomes aware of an incident
17 involving unauthorized access to or use of personally identifiable information.

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

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

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

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

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

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

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

8 § 2906. CONTENTS OF LICENSE; NONTRANSFERABLE

9 The license shall state the address at which the business is to be conducted
10 and shall state fully the name of the licensee and, if the licensee is other than
11 an individual, the date and place of its organization or incorporation. The
12 ~~commissioner~~ Commissioner may issue an electronic license. The license ~~or a~~
13 ~~copy of the electronic license shall be kept conspicuously posted in the place of~~
14 ~~business of the licensee and shall not be transferred or assigned.~~

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

16 § 10302. AUTOMATED TELLER MACHINES

17 (a) The owner of an automated teller machine or other remote service unit,
18 including a cash dispensing machine, located or employed in this ~~state~~ State
19 shall prominently and conspicuously disclose on or at the location of each such
20 machine or on the first screen of each such machine the identity, address, and
21 telephone number of the owner and the availability of consumer assistance.

1 The owner shall also disclose ~~to the consumer~~ on the screen of such machine
2 or on a paper notice issued from the machine the amount of the fees or charges
3 which the owner will assess to the consumer for the use of that machine. The
4 amount of the fees or charges shall be disclosed before the consumer is
5 irrevocably committed to completing the transaction. ~~The commissioner~~
6 Commissioner shall approve the form, content, timing, and location of such
7 disclosures and any amendments thereto prior to use. ~~The commissioner~~
8 Commissioner shall act on any submission made under this section within 30
9 days of receipt. If the ~~commissioner~~ Commissioner determines that any
10 disclosures do not provide adequate consumer protection, the ~~commissioner~~
11 Commissioner may by order or by rule specify minimum disclosure standards,
12 including the form, content, timing, and location of such disclosures. The
13 ~~commissioner~~ Commissioner may impose on the owner of an automated teller
14 machine or other remote service unit an administrative penalty of not more
15 than \$1,000.00 for each day's failure of the owner to apply to the
16 ~~commissioner~~ Commissioner for approval of disclosures required under this
17 section, for each day's failure of the owner to use disclosures approved by the
18 ~~commissioner~~ Commissioner, or for each day's continuing violation of an
19 order of the ~~commissioner~~ Commissioner relating to the disclosures required
20 by this section.

1 (b) In addition to an automated teller machine or other remote service unit
2 owned by a financial institution or credit union, the provisions of this section
3 shall apply to any automated teller machine or other remote service unit not
4 owned by a financial institution or credit union, except it shall not include a
5 point-of-sale terminal owned or operated by a merchant who does not charge a
6 fee for the use of the point-of-sale terminal. The activities of an automated
7 teller machine or other remote service unit whose owner is not a financial
8 institution shall be limited to cash dispensing or the offer or sale of nonbanking
9 services and products.

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

11 (c)(1) ~~The commissioner~~ Except as provided in subdivision (2) of this
12 subsection, the Commissioner shall provide notice of any enforcement order
13 proposed pursuant to this section and the grounds therefor by mail to the
14 financial institution and to any affected person. The financial institution or any
15 person so served may, within 30 days of service on the financial institution,
16 request that a hearing be held by the ~~commissioner~~ Commissioner. If no
17 hearing is requested, the proposed order shall become final 30 days after
18 service on the financial institution. The provisions of 3 V.S.A. chapter 25 ~~of~~
19 ~~Title 3~~ shall govern any hearing held by the ~~commissioner~~ Commissioner
20 under this section. An appeal under this section shall be filed within 30 days

1 of the date of the ~~commissioner's~~ Commissioner's decision; and shall be to the
2 Washington ~~superior court~~ Superior Court.

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

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

8 (B) protect the interests of the depositors.

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

10 (c)(1) ~~The commissioner~~ Except as provided in subdivision (2) of this
11 subsection, the Commissioner shall provide notice of any enforcement order
12 proposed pursuant to this section and the grounds therefore by mail to the
13 credit union and to any person named as a party to the enforcement
14 proceeding. The credit union or any person so served may, within 30 days of
15 service on the credit union, request that the ~~commissioner~~ Commissioner hold
16 a hearing. If no hearing is requested, the proposed order shall become final 30
17 days after service on the credit union or such person. The provisions of
18 3 V.S.A. chapter 25 of Title 3 and any applicable ~~department~~ Department
19 regulations shall govern any hearing held by the ~~commissioner~~ Commissioner
20 under this section. An appeal under this section shall be filed within 30 days

1 of the date of the ~~commissioner's~~ Commissioner's decision; and shall be to the
2 Washington ~~superior court~~ Superior Court.

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

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

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

9 * * * Securities * * *

10 Sec. 19. 9 V.S.A. § 5410(e) is amended to read:

11 (e) A federal covered investment adviser required to file a notice under
12 section 5405 of this chapter shall pay an initial fee of \$250.00 and an annual
13 notice fee of \$250.00. To the extent required to be included in documents filed
14 with the Securities and Exchange Commission, such notice filing shall include
15 information on the branch offices of a federal covered investment adviser who
16 transacts business in this ~~state~~ State from any place of business located within
17 this ~~state~~ State, accompanied by a notice filing fee of \$100.00 per branch office
18 in Vermont. A notice filing may be terminated by filing notice of such
19 termination with the ~~commissioner~~ Commissioner. If a notice filing results in
20 a denial or withdrawal, the Commissioner shall retain the fee.

1 Sec. 20. 9 V.S.A. § 5602 is amended to read:

2 § 5602. INVESTIGATIONS AND SUBPOENAS

3 * * *

4 (e) An individual is not excused from attending, testifying, filing a
5 statement, producing a record or other evidence, or obeying a subpoena of the
6 ~~commissioner~~ Commissioner under this chapter or in an action or proceeding
7 instituted by the ~~commissioner~~ Commissioner under this chapter on the ground
8 that the required testimony, statement, record, or other evidence, directly or
9 indirectly, may tend to incriminate the individual or subject the individual to a
10 criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a
11 statement, or produce a record or other evidence on the basis of the
12 individual's privilege against self-incrimination, the ~~commissioner~~
13 Commissioner, subject to subsection (f) of this section, may apply to the
14 ~~superior court of Washington County~~ Superior Court to compel the testimony,
15 the filing of the statement, the production of the record, or the giving of other
16 evidence. The testimony, record, or other evidence compelled under such an
17 order may not be used, directly or indirectly, against the individual in a
18 criminal case, except in a prosecution for perjury or contempt or otherwise
19 failing to comply with the order.

20 (f) Unless presented by an emergency or exigent circumstances, the
21 Commissioner shall give notice to the Attorney General and United States

1 Attorney not less than 5 days before applying to the Washington County
2 Superior Court to compel the testimony, the filing of the statement, the
3 production of the record, or the giving of other evidence under subsection (e)
4 of this section. In the case of an emergency or exigent circumstances, the
5 Commissioner shall notify the Attorney General and U.S. Attorney as soon as
6 possible before applying to the Washington County Superior Court.

7 (g) At the request of the securities regulator of another state or a foreign
8 jurisdiction, the ~~commissioner~~ Commissioner may provide assistance if the
9 requesting regulator states that it is conducting an investigation to determine
10 whether a person has violated, is violating, or is about to violate a law or rule
11 of the other state or foreign jurisdiction relating to securities matters that the
12 requesting regulator administers or enforces. The ~~commissioner~~
13 Commissioner may provide the assistance by using the authority to investigate
14 and the powers conferred by this section as the ~~commissioner~~ Commissioner
15 determines is necessary or appropriate. The assistance may be provided
16 without regard to whether the conduct described in the request would also
17 constitute a violation of this chapter or other law of this ~~state~~ State if occurring
18 in this ~~state~~ State. In deciding whether to provide the assistance, the
19 ~~commissioner~~ Commissioner may consider whether the requesting regulator is
20 permitted and has agreed to provide assistance reciprocally within its state or
21 foreign jurisdiction to the ~~commissioner~~ Commissioner when requested,

1 whether compliance with the request would violate or prejudice the public
2 policy of this ~~state~~ State, and the availability of resources and employees of the
3 ~~commissioner~~ Commissioner to carry out the request for assistance.

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

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

8 * * *

9 (7) records relating to the notice requirement in subsection 5602(f) of
10 this title;

11 (8) records otherwise exempt from public disclosure pursuant to
12 1 V.S.A. § 317(c).

13 * * *

14 * * * General Insurance Provisions * * *

15 Sec. 22. 8 V.S.A. § 3563 is amended to read:

16 § 3563. EXAMINATION OF COMPANIES; FEES

17 The ~~commissioner~~ Commissioner shall thoroughly inspect and examine the
18 affairs of each domestic insurer to ascertain its financial condition, its ability to
19 fulfill its obligations, and whether it has complied with the provisions of law.

20 Such an inspection and examination shall be conducted personally or by a

21 competent person appointed by the ~~commissioner~~ Commissioner at least every

1 three years and whenever determined to be prudent by the ~~commissioner~~
2 Commissioner. The ~~commissioner~~ Commissioner may enlarge the aforesaid
3 three-year period to five years, provided the insurer is subject to a
4 comprehensive annual audit during such period of a scope satisfactory to the
5 ~~commissioner~~ Commissioner by independent auditors approved by the
6 ~~commissioner~~ Commissioner. The examination shall include a review of the
7 financial analysis performed by the Commissioner and shall be conducted in
8 accordance with statutory accounting principles pursuant to guidelines,
9 principles, manuals, instructions, and other procedures promulgated by the
10 National Association of Insurance Commissioners, together with any useful or
11 necessary modifications or adaptations thereof required or approved by the
12 ~~commissioner~~ Commissioner. The expenses of the examinations shall be paid
13 to the ~~state~~ State by the company or companies examined and the
14 ~~commissioner of finance and management~~ Commissioner of Finance and
15 Management shall issue his or her warrants for the proper charges incurred in
16 all examinations.

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

18 (a) Each domestic, foreign, and alien insurer who is authorized to transact
19 insurance in this ~~state~~ State shall annually on or before ~~March 15~~ March 1 of
20 each year, or within any extension of time not to exceed 30 days which the
21 ~~commissioner~~ Commissioner, for good cause may have granted, file with the

1 National Association of Insurance Commissioners a copy of its annual
2 statement convention blank as prescribed and adopted by the National
3 Association of Insurance Commissioners, along with such additional filings as
4 prescribed by the ~~commissioner~~ Commissioner for the preceding year. The
5 information filed with the National Association of Insurance Commissioners
6 shall be in the same format and scope as that required by the ~~commissioner~~
7 Commissioner and shall include the signed jurat page and the actuarial
8 certification. Any amendments and addendums to the annual statement filing
9 subsequently filed with the ~~commissioner~~ Commissioner shall also be filed
10 with the National Association of Insurance Commissioners. The ~~commissioner~~
11 Commissioner in his or her sole discretion may waive one or more of the
12 requirements established by this subsection.

13 Sec. 24. REPEAL

14 8 V.S.A. § 3578 (annual audited financial reports pertaining to insurers) is
15 repealed.

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

17 § 3578a. ANNUAL FINANCIAL REPORTING

18 (a) The ~~commissioner~~ Commissioner shall adopt by rule the Annual
19 Financial Reporting Model Regulation of the National Association of
20 Insurance Commissioners, as may be amended from time to time, or in the

1 ~~commissioner's~~ Commissioner's discretion a regulation substantially similar
2 thereto.

3 ~~(b) A domestic insurer required to be audited pursuant to the annual~~
4 ~~financial reporting rule adopted by the commissioner under subsection (a) of~~
5 ~~this section shall register with the commissioner the name and address of the~~
6 ~~certified public accountant retained in compliance with this section, and pay a~~
7 ~~registration fee of \$100.00. If the commissioner determines that a report filed~~
8 ~~by a foreign or alien insurer is not substantially similar to the requirements~~
9 ~~imposed by the annual financial reporting rule adopted by the commissioner~~
10 ~~under subsection (a) of this section, the foreign or alien insurer shall, within 30~~
11 ~~days of such determination, register the name and address of the certified~~
12 ~~public accountant retained in compliance with this section, and pay a~~
13 ~~registration fee of \$100.00.~~

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

15 § 3579. QUALIFIED ACCOUNTANTS

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

19 * * *

20 (b) A domestic insurer required to be audited ~~under section 3578~~ pursuant
21 to the annual financial reporting rule adopted by the Commissioner under

1 section 3578a of this title shall register with the ~~commissioner~~ Commissioner
2 the name and address of the certified public accountant retained in compliance
3 with this section; and pay a registration fee of \$100.00. If the ~~commissioner~~
4 Commissioner determines that a report filed by a foreign or alien insurer under
5 ~~section subsection~~ 3578(f) of this title is not substantially similar to the
6 requirements imposed ~~on a domestic insurer, a~~ by the annual financial
7 reporting rule adopted by the Commissioner under section 3578a of this title,
8 the foreign or alien insurer shall, within 30 days of such determination, register
9 the name and address of the certified public accountant retained in compliance
10 with this section; and pay a registration fee of \$100.00. The notice of
11 registration shall include the accountant's statement that the accountant:

12 * * *

13 ~~(e) No partner or other person rendering the report required by section 3578~~
14 ~~the annual financial reporting rule adopted by the Commissioner under section~~
15 ~~3578a of this title may act in that capacity for more than seven consecutive~~
16 ~~years. Upon application, the ~~commissioner~~ Commissioner may find that the~~
17 ~~rotation requirement of this subsection would pose an unreasonable hardship~~
18 ~~on the insurer and may extend the accountant's period of qualification for an~~
19 ~~additional term. In making such determinations, the ~~commissioner~~~~
20 ~~Commissioner may consider the experience of the retained accountant and the~~

1 ~~size of his or her business, the premium volume of the insurer, and the number~~
2 ~~of jurisdictions in which the insurer transacts business.~~

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

3 * * *

4 * * * Insurance Matters Relating to NAIC Accreditation * * *

5 Sec. 27. 8 V.S.A. § 3681 is amended to read:

6 § 3681. DEFINITIONS

7 * * *

8 (6) "Enterprise risk" means any activity, circumstance, event, or series
9 of events involving one or more affiliates of an insurer that, if not remedied

1 promptly, is likely to have a material adverse effect upon the financial
2 condition or liquidity of the insurer or its insurance holding company system as
3 a whole, including anything that would cause the insurer's risk-based capital to
4 fall into company action level as set forth in section 8303 of this title or would
5 cause the insurer to be in hazardous financial condition under Department
6 Regulation I-93-2, sections 3-4.

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

12 ~~(7)~~(8) "Security holder" of a specified person means one who owns any
13 security of such person, including common stock, preferred stock, debt
14 obligations, and any other security convertible into or evidencing the right to
15 acquire any of the foregoing.

16 ~~(8)~~(9) "Subsidiary" of a specified person means an affiliate controlled
17 by such person directly, or indirectly through one or more intermediaries.

18 ~~(9)~~(10) "Voting security" shall include any security convertible into or
19 evidencing a right to acquire a voting security.

20 Sec. 28. 8 V.S.A. § 3683 is amended to read:

1 § 3683. ACQUISITION OF CONTROL OF OR MERGER WITH
2 DOMESTIC INSURER

3 (a) Filing requirements.

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

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

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

19 (4) For purposes of this section, a domestic insurer shall include any
20 person controlling a domestic insurer unless the person, as determined by the
21 Commissioner, is either directly or through its affiliates primarily engaged in

1 business other than the business of insurance. For the purposes of this section,
2 “person” shall not include any securities broker holding, in the usual and
3 customary broker’s function, less than 20 percent of the voting securities of an
4 insurance company or of any person which controls an insurance company.

5 (b) Content of statement. The statement to be filed with the ~~commissioner~~
6 Commissioner hereunder shall be made under oath or affirmation and shall
7 contain the following information:

8 * * *

9 (12) An agreement by the person required to file the statement referred
10 to in subsection (a) of this section that it will provide the annual report
11 specified in subsection 3684(m) of this chapter, for so long as control exists.

12 (13) An acknowledgment by the person required to file the statement
13 referred to in subsection (a) of this section that the person and all subsidiaries
14 within its control in the insurance holding company system will provide
15 information to the Commissioner upon request as necessary to evaluate
16 enterprise risk to the insurer.

17 (14) Such additional information as the ~~commissioner~~ Commissioner
18 may by rule ~~or regulation~~ prescribe as necessary or appropriate for the
19 protection of policyholders and security holders of the insurer or in the public
20 interest.

21 * * *

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

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

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

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

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

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

17 (iii) the Commissioner may condition the approval of the merger
18 or other acquisition on the removal of the basis of disapproval within a
19 specified period of time;

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

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

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

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

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

18 (2) The public hearing referred to in subdivision (1) of this subsection
19 shall be held within 30 days after the statement required by subsection (a) of
20 this section is filed, and at least 20 days' notice thereof shall be given by the
21 ~~commissioner~~ Commissioner to the person filing the statement. Not less than

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

18 (3) If the proposed acquisition of control will require the approval of
19 more than one Commissioner, the public hearing required by subdivision (2) of
20 this subsection may be held on a consolidated basis upon request of the person
21 filing the statement referred to in subsection (a) of this section. Such person

1 shall file the statement referred to in subsection (a) of this section with the
2 NAIC within five days of making the request for a public hearing. A
3 commissioner may opt out of a consolidated hearing and shall provide notice
4 to the applicant of the opt-out within 10 days of the receipt of the statement
5 referred to in subsection (a) of this section. A hearing conducted on a
6 consolidated basis shall be public and shall be held within the United States
7 before the commissioners of the states in which the insurers are domiciled.
8 Such commissioners shall hear and receive evidence. A commissioner may
9 attend such hearing in person or by telecommunication.

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

16 (5) The ~~commissioner~~ Commissioner may retain at the acquiring
17 person's expense any attorneys, actuaries, accountants, and other experts not
18 otherwise a part of the ~~commissioner's~~ Commissioner's staff as may be
19 reasonably necessary to assist the ~~commissioner~~ Commissioner in reviewing
20 the proposed acquisition of control.

21 Sec. 29. 8 V.S.A. § 3683a is added to read:

1 § 3683a. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE

2 COVERED

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

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

8 (2) "Highly concentrated market" is a market in which the share of the
9 four largest insurers is 75 percent or more of the market.

10 (3) "Insurer" means a company licensed to do business in this State and
11 includes any company or group of companies under common management,
12 ownership, or control.

13 (4) "Involved insurer" includes an insurer which either acquires or is
14 acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

15 (5) "Market" means the relevant product and geographical markets. In
16 determining the relevant product and geographical markets, the Commissioner
17 shall give due consideration to, among other things, the definitions or
18 guidelines, if any, adopted by the NAIC and to information, if any, submitted
19 by parties to the acquisition. In the absence of sufficient information to the
20 contrary, the relevant product market is assumed to be the direct written
21 insurance premium for a line of business, such line being that used in the

1 annual statement required to be filed by insurers doing business in this State,
2 and the relevant geographical market is assumed to be this State.

3 (6) “Significant trend toward increased concentration” means the
4 aggregate market share of any grouping of the largest insurers in the market,
5 from the two largest to the eight largest, has increased by seven percent or
6 more of the market over a period of time extending from any base year five to
7 ten years prior to the acquisition up to the time of the acquisition.

8 (b) Covered acquisitions. Except as provided in this subsection, this
9 section applies to any acquisition in which there is a change in control of an
10 insurer licensed to do business in this State, but not domiciled in this State.

11 This section shall not apply to the following:

12 (1) A purchase of securities solely for investment purposes so long as
13 the securities are not used by voting or otherwise to cause or attempt to cause
14 the substantial lessening of competition in any insurance market in this State.
15 If a purchase of securities results in a presumption of control under subdivision
16 3681(3) of this chapter, it is not solely for investment purposes unless the
17 commissioner of the insurer’s state of domicile accepts a disclaimer of control
18 or affirmatively finds that control does not exist and the disclaimer action or
19 affirmative finding is communicated by the domiciliary commissioner to the
20 Commissioner of this State.

1 (2) The acquisition of a person by another person when both persons are
2 neither directly nor through affiliates primarily engaged in the business of
3 insurance, if preacquisition notification is filed with the Commissioner in
4 accordance with subdivision (c)(1) of this section 30 days prior to the proposed
5 effective date of the acquisition or if the acquisition would otherwise be
6 excluded from this section by any other provision of this subsection.

7 (3) The acquisition of already affiliated persons.

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

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

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

12 (C) in no market would the combined market share of the involved
13 insurers exceed 12 percent of the total market and the market share increase by
14 more than two percent of the total market. For purposes of this subdivision,
15 “market” means direct written insurance premium in this State for a line of
16 business as contained in the annual statement required to be filed by insurers
17 licensed to do business in this State.

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

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

8 (c) Preacquisition notification; waiting period. An insurer involved in an
9 acquisition covered by subsection (b) of this section shall file a preacquisition
10 notification with the Commissioner so that the Commissioner may determine
11 whether the proposed acquisition, if consummated, would violate the
12 competitive standard established under subsection (d) of this section. The
13 Commissioner shall give confidential treatment to information submitted under
14 this subsection in the same manner as provided in section 3687 of this chapter.

15 (1) The preacquisition notification shall be in such form and contain
16 such information as prescribed by the NAIC relating to those markets which
17 cause the acquisition to be covered under provisions of this section. The
18 Commissioner may require such additional material and information as
19 deemed necessary to carry out the purposes of this section. The required
20 information may include an opinion of an economist as to the competitive
21 impact of the acquisition in this State accompanied by a summary of the

1 education and experience of such person indicating his or her ability to render
2 an informed opinion.

3 (2) The waiting period required shall begin on the date the
4 Commissioner receives a preacquisition notification and shall end on the
5 earlier of the 30th day after the date of receipt or termination of the waiting
6 period by the Commissioner. Prior to the end of the waiting period, the
7 Commissioner on a one-time basis may require the submission of additional
8 needed information relevant to the proposed acquisition, in which event the
9 waiting period shall end on the earlier of the 30th day after the Commissioner
10 receives the additional information or termination of the waiting period by the
11 Commissioner.

12 (d) Competitive standard.

13 (1) The Commissioner may enter an order under subsection (e)(1) of this
14 section with respect to an acquisition if there is substantial evidence that the
15 effect of the acquisition may be to lessen substantially competition in any line
16 of insurance in this State or may tend to create a monopoly.

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

1 (A) any acquisition covered under subsection (b) of this section
2 involving two insurers competing in the same market is prima facie evidence
3 of violation of the competitive standard if:

4 (i) the market is highly concentrated and the involved insurers
5 possess the following shares of the market;

6 (I) insurer A a share of four percent and insurer B a share of
7 four percent or more;

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

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

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

14 (I) insurer A a share of five percent and insurer B a share of
15 five percent or more;

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

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

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

1 (B) If more than two insurers competing in the same market are
2 involved in any acquisition covered under subsection (b) of this section, then
3 exceeding the total of the two figures set forth for insurer A and insurer B
4 established under subdivision (A)(i) or (ii) of this subdivision (2) is prima facie
5 evidence of violation of the competitive standard. For purposes of this
6 subdivision (2), the insurer with the largest share of the market shall be
7 considered to be insurer A.

8 (C) Any acquisition covered under subsection (b) of this section
9 involving two or more insurers competing in the same market is prima facie
10 evidence of violation of the competitive standard in subdivision (1) of this
11 subsection if:

12 (i) there is a significant trend toward increased concentration in
13 the market;

14 (ii) one of the insurers involved is one of the insurers in a
15 grouping of large insurers showing the requisite increase in the market share;
16 and

17 (iii) another involved insurer's market is two percent or more.

18 (3) If an acquisition is not prima facie violative of the competitive
19 standard under subdivisions (A) through (C) of subdivision (2) of this
20 subsection, the Commissioner may establish the requisite anticompetitive
21 effect based upon other substantial evidence. If an acquisition is prima facie

1 violative of the competitive standard under subdivisions (A) through (C) of
2 subdivision (2), a party may establish the absence of the requisite
3 anticompetitive effect based upon other substantial evidence. Relevant factors
4 in making a determination under this subdivision include the following:
5 market shares, volatility of ranking of market leaders, number of competitors,
6 concentration, trend of concentration in the industry, and ease of entry and exit
7 into the market.

8 (4) The burden of showing prima facie evidence of violation of the
9 competitive standard rests upon the Commissioner.

10 (5) Percentages not provided in subdivisions (A) and (B) of subdivision
11 (2) of this subsection are interpolated proportionately to the percentages that
12 are provided.

13 (6) An order may not be entered under subdivision (e)(1) of this
14 section if:

15 (A) the acquisition will yield substantial economies of scale or
16 economies in resource utilization that cannot be feasibly achieved in any other
17 way and the public benefits which would arise from such economies exceed
18 the public benefits which would arise from not lessening competition; or

19 (B) the acquisition will substantially increase the availability of
20 insurance and the public benefits of the increase exceed the public benefits
21 which would arise from not lessening competition.

1 (e) Orders and penalties.

2 (1) If an acquisition violates the competitive standard of subsection (d)
3 of this section or if an involved insurer fails to file adequate information in
4 compliance with subsection (c) of this section, the Commissioner may enter an
5 order:

6 (A) requiring an involved insurer to cease and desist from doing
7 business in this State with respect to the line or lines of insurance involved in
8 the violation; or

9 (B) denying the application of an acquired or acquiring insurer for a
10 license to do business in this State.

11 (2) Such an order shall not be entered unless there is a hearing, notice of
12 the hearing is issued prior to the end of the waiting period and not less than
13 15 days prior to the hearing, and the hearing is concluded and the order is
14 issued no later than 60 days after the date of the filing of the preacquisition
15 notification with the Commissioner.

16 (3) 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 (4) 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 (5) 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) Subsections (b) and (c) of section 3689 of this title (regarding voting
9 securities) and section 3691 of this title (regarding receivership) do not apply
10 to acquisitions covered under subsection (b) of this section.

11 Sec. 30. 8 V.S.A. § 3684 is amended to read:

12 § 3684. REGISTRATION OF INSURERS

13 * * *

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

17 * * *

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

1 1933, as may be amended, or the Securities Exchange Act of 1934, as may be
2 amended. An insurer required to file financial statements under this
3 subdivision may satisfy the request by providing the Commissioner with the
4 most recently filed parent corporation financial statements that have been filed
5 with the SEC.

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

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

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

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

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

1 purchases, exchanges, loans or extensions of credit, or investments, involving
2 one-half of one percent or less of an insurer's admitted assets as of the 31st day
3 of December next preceding shall not be deemed material for purposes of this
4 section.

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

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

13 (d)(g) Amendments to registration statements. Each registered insurer shall
14 keep current the information required to be disclosed in its registration
15 statement by reporting all material changes or additions on amendment forms
16 provided by the ~~commissioner~~ Commissioner within 15 days after the end of
17 the month in which it learns of each such change or addition, provided,
18 however, that subject to subsection (c) of section 3685 of this title each
19 registered insurer shall so report all dividends and other distributions to
20 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 insurer
10 subject to registration shall also file an annual enterprise risk report. The
11 report shall identify, to the best of the ultimate controlling person's knowledge
12 and belief, the material risks within the insurance holding company system that
13 could pose enterprise risk to the insurer. The report shall be filed with the lead
14 state commissioner of the insurance holding company system as determined by
15 the procedures within the Financial Analysis Handbook adopted by the
16 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. 31. 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.~~

(4) The board of directors of a domestic insurer shall establish one or more committees composed of a majority of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers. For purposes of this subsection, principal officers shall mean the chief executive officer, the president, and any chief operating officer.

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.

1 (6) An insurer may make application to the Commissioner for a waiver
2 from the requirements of this subsection if the insurer's annual direct written
3 and assumed premium, excluding premiums reinsured with the Federal Crop
4 Insurance Corporation and Federal Flood Program, is less than
5 \$300,000,000.00. An insurer may also make application to the Commissioner
6 for a waiver from the requirements of this subsection based upon unique
7 circumstances. The Commissioner may consider various factors, including the
8 type of business entity, volume of business written, availability of qualified
9 board members, or the ownership or organizational structure of the entity.

10 Sec. 32. 8 V.S.A. § 3686 is amended to read:

11 § 3686. EXAMINATION

12 (a) Power of ~~commissioner~~ Commissioner. Subject to the limitation
13 contained in this section and in addition to the powers which the ~~commissioner~~
14 Commissioner has under subchapter 7 of this chapter relating to the
15 examination of insurers, the ~~commissioner~~ Commissioner shall also have the
16 power to ~~order any insurer registered under section 3684 of this title to produce~~
17 ~~such records, books, or other information papers in the possession of the~~
18 ~~insurer or its affiliates as shall be necessary to ascertain the financial condition~~
19 ~~or legality of conduct of such insurer. In the event such insurer fails to comply~~
20 ~~with such order, the commissioner shall have the power to examine such~~
21 ~~affiliates to obtain such information~~ examine any insurer registered under

1 section 3684 of this chapter and its affiliates to ascertain the financial condition
2 of the insurer, including the enterprise risk to the insurer by the ultimate
3 controlling party or by any entity or combination of entities within the
4 insurance holding company system or by the insurance holding company
5 system on a consolidated basis.

6 (b) Access to books and records.

7 (1) The Commissioner may order any insurer registered under section
8 3684 of this chapter to produce such records, books, or papers in the
9 possession of the insurer or its affiliates as are reasonably necessary to
10 determine compliance with this chapter.

11 (2) To determine compliance with this chapter, the Commissioner may
12 order any insurer registered under section 3684 of this chapter to produce
13 information not in the possession of the insurer if the insurer can obtain access
14 to such information pursuant to contractual relationships, statutory obligations,
15 or other method. In the event the insurer cannot obtain the information
16 requested by the Commissioner, the insurer shall provide the Commissioner a
17 detailed explanation of the reason that the insurer cannot obtain the
18 information and the identity of the holder of information. Whenever it appears
19 to the Commissioner that the detailed explanation is without merit, the
20 Commissioner may require, after notice and hearing, the insurer to pay a

1 penalty of up to \$1,000.00 for each day's delay or may suspend or revoke the
2 insurer's license.

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

8 ~~(e)~~(d) Use of consultants. The ~~commissioner~~ Commissioner may retain at
9 the registered insurer's expense such attorneys, actuaries, accountants, and
10 other experts not otherwise a part of the ~~commissioner's~~ Commissioner's staff
11 as shall be reasonably necessary to assist in the conduct of the examination
12 under subsection (a) of this section. Any persons so retained shall be under the
13 direction and control of the ~~commissioner~~ Commissioner and shall act in a
14 purely advisory capacity.

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

19 (f) Compelling production. In the event the insurer fails to comply with an
20 order, the Commissioner shall have the power to examine the affiliates to
21 obtain the information. The Commissioner also shall have the power to issue

1 subpoenas, to administer oaths, and to examine under oath any person for
2 purposes of determining compliance with this section. Upon the failure or
3 refusal of any person to obey a subpoena, the Commissioner may petition a
4 court of competent jurisdiction, and upon proper showing, the court may enter
5 an order compelling the witness to appear and testify or produce documentary
6 evidence. Failure to obey the court order shall be punishable as contempt of
7 court. Every person shall be obliged to attend as a witness at the place
8 specified in the subpoena, when subpoenaed, anywhere within the State. He or
9 she shall be entitled to the same fees and mileage, if claimed, as a witness in
10 the Superior Court of this State, which fees, mileage, and actual expense, if
11 any, necessarily incurred in securing the attendance of witnesses and their
12 testimony shall be itemized and charged against and be paid by the company
13 being examined.

14 Sec. 33. 8 V.S.A. § 3687 is amended to read:

15 § 3687. CONFIDENTIAL TREATMENT

(a) ~~All information, documents and copies thereof~~ *Documents, materials,*
or other information in the possession or control of the Department that are
obtained by or disclosed to the ~~commissioner~~ Commissioner or any other
person in the course of an examination or investigation made pursuant to
section 3686 of this title and all information reported pursuant to ~~section~~
subdivisions 3683(b)(12) and (13), section 3684, and section 3685 of this title;

shall be given confidential treatment, ~~and~~ shall not be subject to subpoena, shall not be subject to public inspection and copying under the Public Records Act, shall not be subject to discovery or admissible in evidence in any private civil action, and shall not be made public by the ~~commissioner~~ Commissioner or any other person, ~~except to insurance departments of other states where such information will remain confidential, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby,~~ However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

- 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 or with whom such documents, materials, or other information

1 are shared pursuant to this chapter shall be permitted or required to testify in
2 any private civil action concerning any confidential documents, materials, or
3 information subject to subsection (a) of this section.

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

6 (1) may share documents, materials, or other information, including the
7 confidential and privileged documents, materials, or information subject to
8 subsection (a) of this section, with other state, federal, and international
9 regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with
10 state, federal, and international law enforcement authorities, including
11 members of any supervisory college described in section 3695 of this title,
12 provided that the recipient agrees in writing to maintain the confidentiality and
13 privileged status of the document, material, or other information and has
14 verified in writing the legal authority to maintain confidentiality;

15 (2) notwithstanding subdivision (1) of this subsection, may only share
16 confidential and privileged documents, material, or information reported
17 pursuant to subsection 3684(m) of this chapter with commissioners of states
18 having statutes or regulations substantially similar to subsection (a) of this
19 section and who have agreed in writing not to disclose such information;

20 (3) may receive documents, materials, or information, including
21 otherwise confidential and privileged documents, materials, or information,

1 from the NAIC and its affiliates and subsidiaries and from regulatory and law
2 enforcement officials of other foreign or domestic jurisdictions and shall
3 maintain as confidential or privileged any document, material, or information
4 received with notice or the understanding that it is confidential or privileged
5 under the laws of the jurisdiction that is the source of the document, material,
6 or information; and

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

10 (A) specify procedures and protocols regarding the confidentiality
11 and security of information shared with the NAIC and its affiliates and
12 subsidiaries pursuant to this section, including procedures and protocols for
13 sharing by the NAIC with other state, federal, or international regulators;

14 (B) specify that ownership of information shared with the NAIC and
15 its affiliates and subsidiaries pursuant to this section remains with the
16 Commissioner and the NAIC's use of the information is subject to the
17 direction of the Commissioner;

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

1 (D) require the NAIC and its affiliates and subsidiaries to consent to
2 intervention by an insurer in any judicial or administrative action in which the
3 NAIC and its affiliates and subsidiaries may be required to disclose
4 confidential information about the insurer shared with the NAIC and its
5 affiliates and subsidiaries pursuant to this section.

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

10 (e) No waiver of any applicable privilege or claim of confidentiality in the
11 documents, materials, or information shall occur as a result of disclosure to the
12 Commissioner under this section or as a result of sharing as authorized in
13 subsection (c) of this section.

(f) Documents, materials, or other information in the possession or control
of the NAIC pursuant to this section shall be confidential by law and
privileged, *shall not be subject to public inspection and copying under the*
Public Records Act, shall not be subject to subpoena, shall not be subject to
discovery or admissible in evidence in any private civil action, and shall not be
made public by the Commissioner or any other person.

1 Sec. 34. 8 V.S.A. § 3690(f) is added to read:

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

8 Sec. 35. 8 V.S.A. § 3695 is added to read:

9 § 3695. SUPERVISORY COLLEGES

10 (a) Power of Commissioner. With respect to any insurer registered under
11 section 3684 of this title and in accordance with subsection (c) of this section,
12 the Commissioner shall also have the power to participate in a supervisory
13 college for any domestic insurer that is part of an insurance holding company
14 system with international operations in order to determine compliance by the
15 insurer with this chapter. The powers of the Commissioner with respect to
16 supervisory colleges include the following:

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

18 (2) clarifying the membership and participation of other supervisors in
19 the supervisory college;

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

1 (4) coordinating the ongoing activities of the supervisory college,
2 including planning meetings, supervisory activities, and processes for
3 information sharing; and

4 (5) establishing a crisis management plan.

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

13 (c) Supervisory College. In order to assess the business strategy, financial
14 position, legal and regulatory position, risk exposure, risk management, and
15 governance processes and as part of the examination of individual insurers in
16 accordance with section 3686 of this chapter, the Commissioner may
17 participate in a supervisory college with other regulators charged with
18 supervision of the insurer or its affiliates, including other state, federal, and
19 international regulatory agencies. The Commissioner may enter into
20 agreements in accordance with subsection 3687(c) of this chapter providing the
21 basis for cooperation between the Commissioner and the other regulatory

1 agencies and the activities of the supervisory college. Nothing in this section
2 shall delegate to the supervisory college the authority of the Commissioner to
3 regulate or supervise the insurer or its affiliates within its jurisdiction.

Sec. 35a. 8 V.S.A. chapter 159 is redesignated to read:

*CHAPTER 159. RISK BASED CAPITAL FOR ~~LIFE AND HEALTH~~
INSURERS*

4 Sec. 36. 8 V.S.A. § 8301 is amended to read:

5 § 8301. DEFINITIONS

6 As used in this chapter:

7 (1) “Adjusted risk based capital report” means a risk based capital report
8 which has been adjusted by the ~~commissioner~~ Commissioner in accordance
9 with subsection ~~8302(d)~~ 8302(e) of this title.

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

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

1 ~~(4)~~(3) “Corrective order” means an order issued by the ~~commissioner~~
2 Commissioner specifying corrective actions which the ~~commissioner~~
3 Commissioner has determined are required under this chapter.

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

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

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

16 ~~(7)~~(6) “Foreign insurer” means any ~~life or health~~ insurance company
17 ~~which is licensed to do~~ entity licensed to transact business in this ~~state~~ under
18 ~~section 3361 of this title~~ State that is required to file a risk based capital
19 statement in the state where the entity is domiciled.

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

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

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

10 (8) “NAIC” means the National Association of Insurance
11 Commissioners.

12 ~~(10)(9) “Negative trend” means, with respect to a life or health insurer~~
13 ~~or fraternal benefit society, a decreasing marginal difference of total adjusted~~
14 ~~capital over authorized control level risk based capital negative trend over a~~
15 ~~period of time as determined in accordance with the trend test calculation~~
16 ~~incorporated in the risk based capital instructions~~

*(10)(9) “Negative trend” means a decreasing marginal difference of
total adjusted capital over authorized control level risk based capital, with
respect to a life or health insurer or fraternal benefit society, negative trend
over a period of time as determined in accordance with the trend test*

calculation ~~incorporated~~ included in the life or fraternal risk based capital instructions.

(10) “Property and casualty insurer” means any insurance company who insures property or casualty as defined in subdivisions 3301(a)(3) and (7) of this title, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

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

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

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

12 (B) “Regulatory action level risk based capital” means the product of
13 1.5 and its authorized control level risk based capital.

1 (C) “Authorized control level risk based capital” means the number
2 determined under the risk based capital formula in accordance with the risk
3 based capital instructions.

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

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

11 (14) “Risk based capital report” means the report required in section
12 8302 of this title.

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

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

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

18 Sec. 37. 8 V.S.A. § 8302 is amended to read:

19 § 8302. RISK BASED CAPITAL REPORT

20 (a) Each domestic insurer shall annually prepare and submit to the
21 ~~commissioner~~ Commissioner a report of its risk based capital level for the

1 calendar year just ended. The report shall be filed prior to ~~March 15~~ March 1
2 each year and shall be in the form and contain such information as is required
3 by the risk based capital instructions.

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

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

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

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

1 determined in each case by applying the factors in the manner set forth in the
2 risk based capital instructions:

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

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

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

7 (4) all other business risks and such other relevant risks as are set forth
8 in the risk based capital instructions.

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

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

14 (1) asset risk;

15 (2) credit risk;

16 (3) underwriting risk; and

17 (4) all other business risks and such other relevant risks as are set forth
18 in the risk based capital instructions.

19 ~~(d)~~(e) If a domestic insurer files a risk based capital report which in the
20 judgment of the ~~commissioner~~ Commissioner is inaccurate, then the
21 ~~commissioner~~ Commissioner shall adjust the risk based capital report to

1 correct the inaccuracy and shall notify the insurer of the adjustment. The
2 notice shall contain a statement of the reason for the adjustment. A risk based
3 capital report adjusted by the ~~commissioner~~ Commissioner under this
4 subsection shall be referred to as an “adjusted risk based capital report.”

5 Sec. 38. 8 V.S.A. § 8303 is amended to read:

6 § 8303. COMPANY ACTION LEVEL EVENT

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

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

13 (2) ~~that the insurer has total adjusted capital which is greater than or~~
14 ~~equal to its company action level risk based capital, but less than the product~~
15 ~~of its authorized control level risk based capital and 2.5 and has experienced a~~
16 ~~negative trend shall be considered a company action level event and subject to~~
17 ~~the requirements of this section. In the case of a health maintenance~~
18 ~~organization or a hospital or medical services corporation, a company action~~
19 ~~level event also shall include the filing of a report under this chapter in which~~
20 ~~the insurer has total adjusted capital which is greater than or equal to its~~
21 ~~company action level risk based capital but less than the product of its~~

1 ~~authorized control level risk based capital and 3.0 and triggers the trend test~~
2 ~~determined in accordance with the trend test calculation included in the risk-~~
3 ~~based capital instructions for a health maintenance organization or a hospital or~~
4 ~~medical services corporation~~ “Company action level event” means any of the
5 following events:

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

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

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

15 (C) if a property and casualty insurer, the insurer has total adjusted
16 capital which is greater than or equal to its company action level risk based
17 capital but less than the product of its authorized control level risk based
18 capital and 3.0 and triggers the trend test determined in accordance with the
19 trend test calculation included in the property and casualty risk based capital
20 instructions.

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

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

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

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

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

18 (3) provide ~~comparative projections of the insurer's statutory operating~~
19 ~~income, net income, capital and surplus for the current year and at least the~~
20 ~~four succeeding years showing both the effect and the absence of the proposed~~
21 ~~corrective actions. The projections should include separate projections for~~

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

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

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

16 (c) The ~~commissioner~~ Commissioner shall notify the insurer whether the
17 proposed risk based capital plan is approved within 60 days of its submission.
18 If the ~~commissioner~~ Commissioner disapproves the plan, the notice shall set
19 forth the reasons for the disapproval and may notify the insurer of revisions
20 which will render the risk based capital plan satisfactory to the ~~commissioner~~
21 Commissioner. Upon notice that a proposed plan is disapproved, the insurer

1 shall prepare and submit a revised risk based capital plan within 45 days of the
2 ~~commissioner's~~ Commissioner's notice of disapproval or, if the
3 ~~commissioner's~~ Commissioner's notice of disapproval is appealed under
4 section 8307 of this title, within 45 days of a ~~commissioner's~~ Commissioner's
5 determination adverse to the insurer.

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

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

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

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

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

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

5 Sec. 39. 8 V.S.A. § 8307 is amended to read:

6 § 8307. HEARINGS

7 Upon receipt of any notice required under subsections ~~8302(d)~~ 8302(e),
8 8303(c) and (d), and subdivisions 8304(a)(4) and (5) and subsection 8304(c) of
9 this title, any insurer aggrieved by any action taken under those sections may
10 appeal to the ~~commissioner~~ Commissioner within five days of receipt of notice
11 of the action. The hearing shall be subject to 3 V.S.A. chapter 25 of Title 3.

12 Upon receipt of the insurer's request for a hearing, the ~~commissioner~~
13 Commissioner shall set a date for the hearing, which date shall be no less than
14 10 nor more than 30 days after the date of the insurer's request.

15 Sec. 40. 8 V.S.A. § 8308 is amended to read:

16 § 8308. CONFIDENTIALITY AND PROHIBITION ON

17 ANNOUNCEMENTS

18 (a) All risk based capital reports (to the extent the information therein is not
19 required to be set forth in a publicly available annual statement schedule) and
20 risk based capital plans (including the results or report of any examination or
21 analysis of an insurer performed pursuant hereto and any corrective order

1 issued by the commissioner pursuant to examination or analysis) with respect
2 to any domestic insurer or foreign insurer which are filed with the
3 ~~commissioner~~ Commissioner, constitute information that might be damaging
4 to the insurer if made available to its competitors, and therefore shall be kept
5 confidential and privileged by the ~~commissioner~~ Commissioner. This
6 information shall not be made ~~public~~ available for public inspection and
7 copying under the Public Records Act, nor shall it not be subject to subpoena,
8 ~~other than by the commissioner and then only~~ shall not be subject to discovery,
9 and shall not be admissible in evidence in any private civil action. However,
10 the Commissioner is authorized to use the documents, materials, or other
11 information for the purpose of enforcement actions taken by the ~~commissioner~~
12 ~~pursuant to~~ Commissioner under this chapter or any other provision of the
13 insurance laws of this ~~state~~ State.

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

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

1 (1) share documents, materials, or other information, including the
2 confidential and privileged documents, materials, or information subject to
3 subsection (a) of this section, with other state, federal, and international
4 regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with
5 state, federal, and international law enforcement authorities, provided the
6 recipient agrees to maintain the confidentiality and privileged status of the
7 document, material, or other information;

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

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

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

1 ~~(b)~~(e) Except as otherwise required under this chapter, the making,
2 publishing, disseminating, circulating or placing before the public, directly or
3 indirectly in any manner, the risk based capital levels of any insurer, or of any
4 component derived in the calculation, by any insurer, agent, broker, or other
5 person engaged in any manner in the insurance business is prohibited. Any
6 person violating this section shall be subject to an administrative penalty of up
7 to \$500.00.

8 ~~(e)~~(f) The ~~commissioner~~ Commissioner may, in his or her discretion,
9 permit the correction of any material misstatement published by a party
10 unrelated to the insurer concerning any aspect of the insurer's risk based
11 capital level or any component thereof. A correction permitted under this
12 section may be used solely to rebut the material misstatement.

13 Sec. 41. 8 V.S.A. § 8309 is amended to read:

14 § 8309. SUPPLEMENTAL PROVISIONS

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

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

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

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

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

5 (3) assumes no reinsurance in excess of five percent of direct premium
6 written.

7 Sec. 42. 8 V.S.A. § 8310(c) is amended to read:

8 ~~(c) The commissioner may require a foreign insurer to submit and obtain~~
9 ~~the commissioner's approval of a risk based capital plan if the commissioner of~~
10 ~~the state of domicile of the insurer fails to require the insurer to file a plan that~~
11 ~~would have been required of a domestic insurer under section 8303 or 8304 of~~
12 ~~this title~~ Upon the occurrence of an event under section 8303 (company action
13 level event), 8304 (regulatory action level event), or 8305 (authorized control
14 level event) of this title with respect to any foreign insurer as determined under
15 the risk based capital statute applicable in the state of domicile of the insurer
16 or, if no risk based capital statute is in force in that state, under the provisions
17 of this chapter, if the insurance commissioner of the state of domicile of the
18 foreign insurer fails to require the foreign insurer to file a risk based capital
19 plan in the manner specified under that state's risk based capital statute or, if
20 no risk based capital statute is in force in that state, then under section 8303 of
21 this title, the Commissioner may require the foreign insurer to file a risk based

1 capital plan with the Commissioner. The failure of the foreign insurer to
2 ~~comply with the commissioner's order~~ file a risk based capital plan shall be
3 grounds to order the insurer to cease and desist from writing new insurance
4 business in this ~~state~~ State.

5 Sec. 43. 8 V.S.A. § 8313 is added to read:

6 § 8313. IMMUNITY

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

11 Sec. 44. 8 V.S.A. chapter 101, subchapter 7a is added to read:

12 Subchapter 7a. Own Risk and Solvency Assessment

13 § 3581. PURPOSE; SCOPE; INTENT

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

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

20 (c) The General Assembly finds and declares that the ORSA Summary
21 Report will contain confidential and sensitive information related to an

1 insurer's or insurance group's identification of risks material and relevant to
2 the insurer or insurance group filing the report. This information will include
3 proprietary and trade secret information that has the potential for harm and
4 competitive disadvantage to the insurer or insurance group if the information is
5 made public. It is the intent of the General Assembly that the summary report
6 required under this subchapter shall be a confidential document filed with the
7 Commissioner, that it shall be shared only as stated in this subchapter and to
8 assist the Commissioner in the performance of his or her duties, and that in no
9 event shall the summary report be subject to public inspection and copying
10 under the Public Records Act.

11 § 3582. DEFINITIONS

12 As used in this subchapter:

13 (1) "Insurance group" means those insurers and affiliates included
14 within an insurance holding company system as defined in subdivision 3681(4)
15 of this title.

16 (2) "Insurer" shall have the same meaning as in subdivision 3681(5) of
17 this title.

18 (3) "NAIC" means the National Association of Insurance
19 Commissioners.

20 (4) "Own Risk and Solvency Assessment" or "ORSA" or "assessment"
21 means a confidential, internal assessment, appropriate to the nature, scale, and

1 complexity of an insurer or insurance group and conducted by that insurer or
2 insurance group, of the material and relevant risks associated with the insurer's
3 or insurance group's current business plan and the sufficiency of capital
4 resources to support those risks.

5 (5) "Guidance Manual" means the current version of the Own Risk and
6 Solvency Assessment Guidance Manual developed and adopted by the NAIC,
7 as may be amended from time to time. A change in the Manual shall be
8 effective on the January 1 following the calendar year in which the changes
9 have been adopted by the NAIC.

10 (6) "Summary Report" means a confidential high-level summary of an
11 insurer or insurance group's ORSA.

12 § 3583. RISK MANAGEMENT FRAMEWORK

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

18 § 3584. ORSA REQUIREMENT

19 Subject to section 3586 of this subchapter, an insurer or the insurance group
20 of which the insurer is a member shall regularly conduct an ORSA consistent
21 with a process comparable to the Guidance Manual. The assessment shall be

1 conducted no less than annually but also at any time when there are significant
2 changes to the risk profile of the insurer or the insurance group of which the
3 insurer is a member.

4 § 3585. SUMMARY REPORT

5 (a) Upon the Commissioner's request and no more than once each year, an
6 insurer shall submit to the Commissioner a summary report or any
7 combination of reports that together contain the information described in the
8 Guidance Manual applicable to the insurer or the insurance group of which it is
9 a member. Notwithstanding any request from the Commissioner, if the insurer
10 is a member of an insurance group, the insurer shall submit the report required
11 by this subsection if the Commissioner is the lead state commissioner of the
12 insurance group as determined by the procedures within the Financial Analysis
13 Handbook adopted by the NAIC.

14 (b) Each report shall include a signature of the insurer or insurance group's
15 chief risk officer or other executive having responsibility for the oversight of
16 the insurer's enterprise risk management process attesting to the best of his or
17 her belief and knowledge that the insurer applies the enterprise risk
18 management process described in the summary report and that a copy of the
19 report has been provided to the insurer's board of directors or the appropriate
20 committee thereof.

1 (c) An insurer may comply with subsection (a) of this section by providing
2 the most recent and substantially similar report provided by the insurer or
3 another member of an insurance group of which the insurer is a member to the
4 commissioner of another state or to a supervisor or regulator of a foreign
5 jurisdiction if that report provides information that is comparable to the
6 information described in the Guidance Manual. Any such report in a language
7 other than English must be accompanied by a translation of that report into the
8 English language.

9 § 3586. EXEMPTION

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

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

15 (2) the insurance group of which the insurer is a member has annual
16 direct written and unaffiliated assumed premium including international direct
17 and assumed premium, but excluding premiums reinsured with the Federal
18 Crop Insurance Corporation and Federal Flood Program, less than
19 \$1,000,000,000.00.

20 (b) If an insurer qualifies for exemption under subdivision (1) of subsection

21 (a) of this section but the insurance group of which the insurer is a member

1 does not qualify for exemption under subdivision (2) of subsection (a), then
2 any summary report required under section 3585 of this subchapter shall
3 include every insurer within the insurance group. This requirement may be
4 satisfied by the submission of more than one summary report for any
5 combination of insurers provided any combination of reports includes every
6 insurer within the insurance group.

7 (c) If an insurer does not qualify for exemption under subdivision (1) of
8 subsection (a) of this section but the insurance group of which it is a member
9 qualifies for exemption under subdivision (2) of subsection (a), then the only
10 summary report required under section 3585 of this subchapter shall be the
11 report applicable to that insurer.

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

1 other domiciliary commissioners in considering whether to grant the insurer's
2 request for a waiver.

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

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

9 (2) The Commissioner may require that an insurer maintain a risk
10 management framework, conduct an ORSA assessment, and file a summary
11 report if the insurer has risk based capital for company action level event as set
12 forth in section 8303 of this title, meets one or more of the standards of an
13 insurer deemed to be in hazardous financial condition as defined in Department
14 Regulation I-93-2, sections 3-4, or otherwise exhibits qualities of a troubled
15 insurer as determined by the Commissioner.

16 (f) If an insurer that qualifies for an exemption under subsection (a) of this
17 section subsequently no longer qualifies for that exemption due to changes in
18 premium as reflected in the insurer's most recent annual statement or in the
19 most recent annual statements of the insurers within the insurance group of
20 which the insurer is a member, the insurer shall have one year following the

1 year the threshold is exceeded to comply with the requirements of this
2 subchapter.

3 § 3587. CONTENTS OF ORSA SUMMARY REPORT

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

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

11 § 3588. CONFIDENTIALITY

12 (a) Documents, materials, or other information, including the summary
13 report, in the possession of or control of the Department that are obtained by,
14 created by, or disclosed to the Commissioner or any other person under this
15 subchapter, is recognized by this State as being proprietary and to contain trade
16 secrets. All such documents, materials, or other information shall be
17 confidential by law and privileged, shall be exempt from public inspection and
18 copying under the Public Records Act, shall not be subject to subpoena, and
19 shall not be subject to discovery or admissible in evidence in any private civil
20 action. The Commissioner, however, is authorized to use the documents,
21 materials, or other information in the furtherance of any regulatory or legal

1 action brought as a part of the Commissioner's official duties. The
2 Commissioner shall not otherwise make the documents, materials, or other
3 information public without the prior written consent of the insurer.

4 (b) Neither the Commissioner nor any person who received documents,
5 materials, or other ORSA-related information, through examination or
6 otherwise, while acting under the authority of the Commissioner or with whom
7 such documents, materials, or other information are shared pursuant to this
8 subchapter shall be permitted or required to testify in any private civil action
9 concerning any confidential documents, materials, or information subject to
10 subsection (a) of this section.

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

12 (1) may, upon request, share documents, materials, or other
13 ORSA-related information, including the confidential and privileged
14 documents, materials, or information subject to subsection (a) of this section,
15 including proprietary and trade secret documents and materials, with other
16 state, federal, and international financial regulatory agencies, including
17 members of any supervisory college as defined in section 3695 of this title,
18 with the NAIC and with any third-party consultants designated by the
19 Commissioner, provided that the recipient agrees in writing to maintain the
20 confidentiality and privileged status of the ORSA-related documents,

1 materials, or other information and has verified in writing the legal authority to
2 maintain confidentiality; and

3 (2) may receive documents, materials, or other ORSA-related
4 information, including otherwise confidential and privileged documents,
5 materials, or information, including proprietary and trade-secret information or
6 documents, from regulatory officials of other foreign or domestic jurisdictions,
7 including members of any supervisory college as defined in section 3695 of
8 this title and from the NAIC, and shall maintain as confidential or privileged
9 any documents, materials, or information received with notice or the
10 understanding that it is confidential or privileged under the laws of the
11 jurisdiction that is the source of the document, materials, or information.

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

15 (A) specify procedures and protocols regarding the confidentiality
16 and security of information shared with the NAIC or a third-party consultant
17 pursuant to this subchapter, including procedures and protocols for sharing by
18 the NAIC with other state regulators from states in which the insurance group
19 has domiciled insurers. The agreement shall provide that the recipient agrees
20 in writing to maintain the confidentiality and privileged status of the

1 ORSA-related documents, materials, or other information and has verified in
2 writing the legal authority to maintain confidentiality;

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

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

10 (D) require prompt notice to be given to an insurer whose
11 confidential information in the possession of the NAIC or a third-party
12 consultant under this subchapter is subject to a request or subpoena to the
13 NAIC or a third-party consultant for disclosure or production;

14 (E) require the NAIC or a third-party consultant to consent to
15 intervention by an insurer in any judicial or administrative action in which the
16 NAIC or a third-party consultant may be required to disclose confidential
17 information about the insurer shared with the NAIC or a third-party consultant
18 under this subchapter; and

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

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

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

10 (f) Documents, materials, or other information in the possession or control
11 of the NAIC or a third-party consultant under this subchapter shall be
12 confidential by law and privileged, shall be exempt from public inspection and
13 copying under the Public Records Act, shall not be subject to subpoena, and
14 shall not be subject to discovery or admissible in evidence in any private civil
15 action.

16 § 3589. SANCTIONS

17 Any insurer failing without just cause to timely file the summary report as
18 required by this subchapter shall be required, after notice and hearing, to pay a
19 penalty of \$10,000.00.00 for each day's delay, to be recovered by the
20 Commissioner, and the penalty so recovered shall be paid into the general fund
21 of this State. The maximum penalty under this section is \$1,000,000.00. The

1 Commissioner may reduce the penalty if the insurer demonstrates to the
2 Commissioner that the imposition of the penalty would constitute a financial
3 hardship to the insurer.

4 * * * Captives * * *

5 Sec. 45. 8 V.S.A. § 4838(b)(4) is amended to read:

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

7 * * *

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

12 Sec. 46. 8 V.S.A. § 4848(b) is amended to read:

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

20 Sec. 47. 8 V.S.A. § 6002(d) is amended to read:

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

14 Sec. 48. 8 V.S.A. § 6006(p) is added to read:

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

19 (1) The income, gains, and losses, realized or unrealized, from assets
20 allocated to a separate account shall be credited to or charged against the

1 account, without regard to other income, gains, or losses of the captive
2 insurance company.

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

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

10 (4) If and to the extent so provided under the applicable contracts, that
11 portion of the assets of any such separate account equal to the reserves and
12 other contract liabilities with respect to such account shall not be chargeable
13 with liabilities arising out of any other business the captive insurer may
14 conduct.

15 (5) No sale, exchange, or other transfer of assets may be made by such
16 captive insurer between any of its separate accounts or between any other
17 investment account and one or more of its separate accounts unless, in the case
18 of a transfer into a separate account, such transfer is made solely to establish
19 the account or to support the operation of the contracts with respect to the
20 separate account to which the transfer is made and unless such transfer,
21 whether into or from a separate account is made by a transfer of cash or by a

1 transfer of securities having a readily determinable market value, provided that
2 such transfer of securities is approved by the Commissioner. The
3 Commissioner may approve other transfers among such accounts if, in his or
4 her opinion, such transfers would be equitable.

5 (6) To the extent such captive insurer deems it necessary to comply with
6 any applicable federal or state laws, such captive insurer, with respect to any
7 separate account, including any separate account which is a management
8 investment company or a unit investment trust, may provide for persons having
9 an interest therein appropriate voting and other rights and special procedures
10 for the conduct of the business of such account, including special rights and
11 procedures relating to investment policy, investment advisory services,
12 selection of independent public accountants, and the selection of a committee,
13 the members of which need not be otherwise affiliated with such company, to
14 manage the business of such account.

15 Sec. 49. 8 V.S.A. § 6014(e) is amended to read:

16 (e) Subject to the provisions of subsection (c) of this section, two or more
17 captive insurance companies ~~that are not special purpose financial captives~~
18 under common ownership and control shall be taxed as though they were a
19 single captive insurance company; ~~and two or more captive insurance~~
20 ~~companies that are special purpose financial captives under common~~
21 ~~ownership and control shall be taxed as though they were a single captive~~

1 ~~insurance company. Special purpose financial captives may not be~~
2 ~~consolidated with other captives that are not special purpose financial captives~~
3 ~~for purposes of calculating premium taxes due.~~

4 Sec. 50. 8 V.S.A. § 6034a is amended to read:

5 § 6034a. INCORPORATED PROTECTED CELLS

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

9 (b) Subject to the prior written approval of the sponsored captive insurance
10 company and of the Commissioner, an incorporated protected cell shall be
11 entitled to enter into contracts and undertake obligations in its own name and
12 for its own account. In the case of a contract or obligation to which the
13 sponsored captive insurance company is not a party, either in its own name and
14 for its own account or on behalf of a protected cell, the counterparty to the
15 contract or obligation shall have no right or recourse against the sponsored
16 captive insurance company and its assets other than against assets properly
17 attributable to the incorporated protected cell that is a party to the contract or
18 obligation.

19 ~~(b)~~(c) The articles of incorporation or articles of organization of an
20 incorporated protected cell shall refer to the sponsored captive insurance
21 company for which it is a protected cell and shall state that the protected cell is

1 incorporated or organized for the limited purposes authorized by the sponsored
2 captive insurance company's license. A copy of the prior written approval of
3 the ~~commissioner~~ Commissioner to add the incorporated protected cell,
4 required by subdivision 6034(11) of this title, shall be attached to and filed
5 with the articles of incorporation or the articles of organization.

6 ~~(e)~~(d) It is the intent of the ~~general assembly~~ General Assembly under this
7 section to provide sponsored captive insurance companies, including those
8 licensed as special purpose financial captive insurance companies under
9 subchapter 4 of this chapter, with the option to establish one or more protected
10 cells as a separate corporation, mutual corporation, nonprofit corporation, or
11 limited liability company. This section shall not be construed to limit any
12 rights or protections applicable to protected cells not established as
13 corporations, mutual corporations, nonprofit corporations, or limited liability
14 companies.

15 Sec. 51. 8 V.S.A. § 6041 is amended to read:

16 § 6041. ESTABLISHMENT OF A BRANCH CAPTIVE

17 (a) A branch captive may be established in this ~~state~~ State in accordance
18 with the provisions of this chapter ~~to write in this state only insurance or~~
19 ~~reinsurance of the employee benefit business of its parent and affiliated~~
20 ~~companies which is subject to the provisions of the Employee Retirement~~
21 ~~Income Security Act of 1974, as amended.~~ In addition to the general

1 provisions of this chapter, the provisions of this subchapter shall apply to
2 branch captive insurance companies.

3 (b) No branch captive insurance company shall do any insurance business
4 in this ~~state~~ State unless it maintains the principal place of business for its
5 branch operations in this ~~state~~ State and it appoints a principal representative in
6 this State who is a resident of this State. For purposes of this subsection,
7 principal representative shall mean a person designated as such by the branch
8 captive insurance company as its principal representative on such forms and
9 with such information as required by the Commissioner. The provisions of
10 subsection 6006(f) shall not apply to branch captives formed in this State.

Sec. 51a. 8 V.S.A. chapter 141, subchapter 4 is redesignated to read:

Subchapter 4. Special Purpose Financial ~~Captive~~ Insurance Companies

11 Sec. 52. 8 V.S.A. § 6048a is amended to read:

12 § 6048a. APPLICABLE LAW

13 (a) A special purpose financial ~~captive~~ insurance company shall be subject
14 to the provisions of this subchapter and to the provisions of subchapter 1 of
15 this chapter. In the event of any conflict between the provisions of this
16 subchapter and the provisions of subchapter 1 of this chapter, the provisions of
17 this subchapter shall control.

18 (b) A special purpose financial ~~captive~~ insurance company shall be subject
19 to all applicable rules adopted pursuant to section 6015 of this chapter that are

1 in effect as of the effective date of this subchapter and that are adopted after
2 the effective date of this subchapter.

3 (c) The ~~commissioner~~ Commissioner may, by order, exempt a special
4 purpose financial ~~captive~~ insurance company from any provision of this
5 chapter or from any rule adopted pursuant to section 6015 of this chapter if the
6 ~~commissioner~~ Commissioner determines such provision to be inappropriate
7 based on the special purpose financial ~~captive~~ insurance company's plan of
8 operation.

9 Sec. 53. 8 V.S.A. § 6048b is amended to read:

10 § 6048b. EXISTING LICENSES

11 Except as otherwise determined by the ~~commissioner~~ Commissioner, a
12 captive insurance company that has been licensed by the ~~commissioner~~
13 Commissioner pursuant to this chapter as of the effective date of this
14 subchapter and that is engaged in or that will be engaged in an insurance
15 securitization shall be subject to the provisions of this subchapter as a special
16 purpose financial ~~captive~~ insurance company. The ~~commissioner~~
17 Commissioner may require such captive insurance company to take any action
18 that the ~~commissioner~~ Commissioner determines is reasonably necessary to
19 bring such captive insurance company into compliance with the provisions of
20 this subchapter. The ~~commissioner~~ Commissioner may issue an order

1 described in subsection 6048d(b) of this title with respect to such captive
2 insurance company.

3 Sec. 54. 8 V.S.A. § 6048c is amended to read:

4 § 6048c. DEFINITIONS

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

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

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

14 (A) That the special purpose financial ~~captive~~ insurance company is
15 unable to pay its obligations when they are due, unless those obligations are
16 the subject of a bona fide dispute; or

17 (B) The special purpose financial ~~captive~~ insurance company has
18 failed to meet all criteria and conditions for solvency of the special purpose
19 financial captive insurance company established by the ~~commissioner~~
20 Commissioner by rule or order.

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

7 (A) Proceeds are obtained by a special purpose financial ~~capti~~ve
8 insurance company, directly or indirectly, through the issuance of securities by
9 the special purpose financial ~~capti~~ve insurance company or any other
10 person; or

11 (B) A person provides one or more letters of credit or other assets for
12 the benefit of the special purpose financial ~~capti~~ve insurance company, which
13 the ~~commissioner~~ Commissioner authorizes the special purpose financial
14 ~~capti~~ve insurance company to treat as admitted assets for purposes of the
15 special purpose financial ~~capti~~ve insurance company’s annual report; where all
16 or any part of such proceeds, letters of credit, or assets, as applicable, are used
17 to fund the special purpose financial ~~capti~~ve insurance company’s obligations
18 under a reinsurance contract with a ceding insurer. The terms “insurance
19 securitization” and “securitization” do not include the issuance of a letter of
20 credit for the benefit of the ~~commissioner~~ Commissioner to satisfy all or part of

1 the special purpose financial ~~capti~~ve insurance company's capital and surplus
2 requirements under section 6048g of this chapter.

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

9 (5) "Organizational document" means:

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

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

16 (6) "Reinsurance contract" means a contract between a special purpose
17 financial ~~capti~~ve insurance company and a ceding insurer pursuant to which
18 the special purpose financial ~~capti~~ve insurance company agrees to provide
19 reinsurance to the ceding insurer for risks associated with the ceding insurer's
20 insurance or reinsurance business.

1 (7) “Security” shall have the same meaning as defined in 9 V.S.A.
2 § 5102(28); and shall also include any form of debt obligation, equity, surplus
3 certificate, surplus note, funding agreement, derivative, or other financial
4 instrument that the commissioner designates, by rule or order, as a “security”
5 for purposes of this subchapter.

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

10 (9) “Special purpose financial ~~captive~~ insurance company security”
11 means:

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

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

17 (10) “Surplus note” means an unsecured subordinated debt obligation
18 possessing characteristics consistent with paragraph 3 of the National
19 Association of Insurance Commissioners Statement of Statutory Accounting
20 Principles No. 41, as amended from time to time and as modified or
21 supplemented by rule or order of the ~~commissioner~~ Commissioner.

1 Sec. 55. 8 V.S.A. § 6048d is amended to read:

2 § 6048d. LICENSING; AUTHORITY

3 (a) A special purpose financial ~~capt~~ive insurance company may reinsure the
4 risks of a ceding insurer only. A special purpose financial ~~capt~~ive insurance
5 company may purchase reinsurance to cede the risks assumed under a
6 reinsurance contract, subject to the prior approval of the ~~com~~missioner
7 Commissioner.

8 (b) In conjunction with the issuance of a license to a special purpose
9 financial ~~capt~~ive insurance company, the ~~com~~missioner Commissioner may
10 issue an order that includes any provisions, terms, and conditions regarding the
11 organization, licensing, and operation of the special purpose financial ~~capt~~ive
12 insurance company that are deemed appropriate by the ~~com~~missioner
13 Commissioner and that are not inconsistent with the provisions of this chapter.
14 Except as provided in sections 6048l and 6048m of this subchapter, a license
15 issued to a special purpose financial ~~capt~~ive insurance company pursuant to
16 this chapter and any order issued to a special purpose financial ~~capt~~ive
17 insurance company pursuant to this subsection shall not be revoked,
18 suspended, amended, or modified other than as follows:

19 (1) The special purpose financial ~~capt~~ive insurance company consents to
20 such revocation, suspension, amendment, or modification; or

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

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

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

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

20 (B) the source and form of the special purpose financial ~~capti~~ve
21 insurance company's capital and surplus;

1 (C) the proposed investment policy of the special purpose financial
2 ~~capti~~ve insurance company;

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

6 (E) pro forma balance sheets and income statements illustrating one
7 or more adverse case scenarios, as determined under criteria required by the
8 ~~commissioner~~ Commissioner, for the performance of the special purpose
9 financial ~~capti~~ve insurance company under all reinsurance contracts; and

10 (F) the proposed rate and method for discounting reserves, if the
11 special purpose financial ~~capti~~ve insurance company is requesting authority to
12 discount its reserves.

13 (2) The special purpose financial ~~capti~~ve insurance company shall
14 submit an affidavit of its president, a vice-president, the treasurer, or the chief
15 financial officer that includes the following statements, to the best of such
16 person's knowledge and belief after reasonable inquiry:

17 (A) the proposed organization and operation of the special purpose
18 financial ~~capti~~ve insurance company comply with all applicable provisions of
19 this chapter;

20 (B) the special purpose financial ~~capti~~ve insurance company's
21 investment policy reflects and takes into account the liquidity of assets and the

1 reasonable preservation, administration, and management of such assets with
2 respect to the risks associated with the reinsurance contract and the insurance
3 securitization transaction; and

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

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

14 (4) The application shall include an opinion of qualified legal counsel,
15 in a form acceptable to the ~~commissioner~~ Commissioner, that the offer and sale
16 of any special purpose financial ~~captive~~ insurance company securities complies
17 with all applicable registration requirements or applicable exemptions from or
18 exceptions to such requirements of the federal securities laws and that the offer
19 and sale of securities by the special purpose financial ~~captive~~ insurance
20 company itself comply with all registration requirements or applicable
21 exemptions from or exceptions to such requirements of the securities laws of

1 this ~~state~~ State. Such opinions shall not be required as part of the application if
2 the special purpose financial ~~captive~~ insurance company includes a specific
3 statement in its plan of operation that such opinions will be provided to the
4 ~~commissioner~~ Commissioner in advance of the offer or sale of any special
5 purpose financial ~~captive~~ insurance company securities.

6 (d) The ~~commissioner~~ Commissioner may grant a license, ~~that~~ which shall
7 be valid through the next April 1 following the date of initial issuance and may
8 be renewed annually thereafter, authorizing the special purpose financial
9 ~~captive~~ insurance company to transact reinsurance business as a special
10 purpose financial ~~captive~~ insurance company in this ~~state~~ State upon
11 finding that:

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

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

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

18 (4) The insurance regulator of the state of domicile of each ceding
19 insurer has notified the ~~commissioner~~ Commissioner in writing or otherwise
20 has provided assurance satisfactory to the ~~commissioner~~ Commissioner that it
21 has approved or has not disapproved the transaction, provided that the

1 ~~commissioner~~ Commissioner shall not be precluded from issuing a license to a
2 special purpose financial ~~capti~~ve insurance company in the event that the
3 insurance regulator of the state of domicile of a ceding insurer has not
4 responded with respect to all or any part of the transaction.

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

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

13 Sec. 56. 8 V.S.A. § 6048e is amended to read:

14 § 6048e. CHANGES IN PLAN OF OPERATION; VOLUNTARY

15 DISSOLUTION OR CESSATION OF BUSINESS

16 (a) Any change in the special purpose financial ~~capti~~ve insurance
17 company's plan of operation shall require prior approval of the ~~commissioner~~
18 Commissioner.

19 (b) Any transaction or series of transactions shall be subject to the prior
20 approval of the ~~commissioner~~ Commissioner if such transaction or series of
21 transactions:

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

3 (2) Results in the termination of all or any part of a special purpose
4 financial ~~capti~~ insurance company's business; but no prior approval of the
5 ~~commissioner~~ Commissioner shall be required for any transaction or series of
6 transactions described in this subdivision (2) if such transaction or series of
7 transactions is done in accordance with a document or agreement described in
8 the special purpose financial ~~capti~~ insurance company's plan of operation
9 and if the ~~commissioner~~ Commissioner is notified in advance of such
10 transaction or series of transactions.

11 (c) A special purpose financial ~~capti~~ insurance company shall notify the
12 ~~commissioner~~ Commissioner in advance of any change in the legal ownership
13 of any security issued by the special purpose financial ~~capti~~ insurance
14 company.

15 Sec. 57. 8 V.S.A. § 6048f is amended to read:

16 § 6048f. FORMATION

17 (a) A special purpose financial ~~capti~~ insurance company may be
18 incorporated as a stock insurer with its capital divided into shares and held by
19 its stockholders, or it may be organized as a manager-managed limited liability
20 company.

1 (b) A special purpose financial ~~capti~~ve insurance company's organizational
2 documents shall limit the special purpose financial ~~capti~~ve insurance
3 company's authority to transact the business of insurance or reinsurance to
4 those activities that the special purpose financial ~~capti~~ve insurance company
5 conducts to accomplish its purposes as expressed in this subchapter.

6 Sec. 58. 8 V.S.A. § 6048g is amended to read:

7 § 6048g. MINIMUM CAPITAL AND SURPLUS

8 A special purpose financial ~~capti~~ve insurance company shall not be issued a
9 license unless it shall possess and thereafter maintain unimpaired paid-in
10 capital and surplus of not less than ~~\$250,000.00~~ \$5,000,000.00.

11 Sec. 59. 8 V.S.A. § 6048h is amended to read:

12 § 6048h. SECURITIES

13 (a) A special purpose financial ~~capti~~ve insurance company may:

14 (1) subject to the prior approval of the ~~commissioner~~ Commissioner,
15 account for the proceeds of a surplus note issued by the special purpose
16 financial ~~capti~~ve insurance company as surplus; and

17 (2) submit for prior approval of the ~~commissioner~~ Commissioner
18 periodic written requests for authorization to make payments of interest on and
19 repayments of principal of surplus notes and other debt obligations issued by
20 the special purpose financial ~~capti~~ve insurance company, provided that the
21 ~~commissioner~~ Commissioner shall not approve such payment if the

1 ~~commissioner~~ Commissioner determines that such payment would jeopardize
2 the ability of the special purpose financial ~~capti~~ve insurance company or any
3 other person to fulfill ~~their~~ his or her respective obligations pursuant to the
4 special purpose financial ~~capti~~ve insurance company securitization agreements,
5 the reinsurance contract, or any related transaction. In lieu of approval of
6 periodic written requests for authorization to make payments of interest on and
7 repayments of principal of surplus notes and other debt obligations issued by
8 the special purpose financial ~~capti~~ve insurance company, the ~~commissioner~~
9 Commissioner may approve a formula or plan, which shall be included in the
10 special purpose financial ~~capti~~ve insurance company's plan of operation as
11 amended from time to time, for payment of interest, principal, or both with
12 respect to such surplus notes and debt obligations.

13 (b) In addition to the provisions of section 6005 of this chapter, no dividend
14 or distribution may be declared or paid by a special purpose financial ~~capti~~ve
15 insurance company if such dividend or distribution would jeopardize the
16 ability of the special purpose financial ~~capti~~ve insurance company or any other
17 person to fulfill the company's or other person's respective obligations
18 pursuant to the special purpose financial ~~capti~~ve insurance company
19 securitization agreements, the reinsurance contract, or any related transaction.

20 (c) A special purpose financial ~~capti~~ve insurance company security shall
21 not be subject to regulation as an insurance or reinsurance contract. An

1 investor in such a security or a holder of such a security shall not be considered
2 to be transacting the business of insurance in this ~~state~~ State solely by reason of
3 having an interest in the security. The underwriter's placement or selling
4 agents and their partners, commissioners, officers, members, managers,
5 employees, agents, representatives, and advisors involved in an insurance
6 securitization by a special purpose financial ~~captive~~ insurance company shall
7 not be considered to be insurance producers or brokers or to be conducting
8 business as an insurance or reinsurance company or as an insurance agency,
9 brokerage, intermediary, advisory, or consulting business solely by virtue of
10 their underwriting activities in connection with such securitization.

11 Sec. 60. 8 V.S.A. § 6048i is amended to read:

12 § 6048i. PERMITTED REINSURANCE

13 (a) A special purpose financial ~~captive~~ insurance company may reinsure
14 only the risks of a ceding insurer, pursuant to a reinsurance contract. A special
15 purpose financial ~~captive~~ insurance company may not issue a contract of
16 insurance or a contract for assumption of risk or indemnification of loss other
17 than such reinsurance contract.

18 (b) Unless otherwise approved in advance by the ~~commissioner~~
19 Commissioner, a special purpose financial ~~captive~~ insurance company may not
20 assume or retain exposure to insurance or reinsurance losses for its own
21 account that are not funded by:

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

4 (2) Premium and other amounts payable by the ceding insurer to the
5 special purpose financial ~~eaptive~~ insurance company pursuant to the
6 reinsurance contract; and

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

9 (c) The reinsurance contract shall contain all provisions reasonably
10 required or approved by the ~~commissioner~~ Commissioner, which requirements
11 shall take into account the laws applicable to the ceding insurer regarding the
12 ceding insurer taking credit for the reinsurance provided under such
13 reinsurance contract.

14 (d) A special purpose financial ~~eaptive~~ insurance company may cede risks
15 assumed through a reinsurance contract to one or more reinsurers through the
16 purchase of reinsurance, subject to the prior approval of the ~~commissioner~~
17 Commissioner.

18 (e) A special purpose financial ~~eaptive~~ insurance company may enter into
19 contracts and conduct other commercial activities related or incidental to and
20 necessary to fulfill the purposes of the reinsurance contract, the insurance
21 securitization, and this subchapter, provided such contracts and activities are

1 included in the special purpose financial ~~capti~~ve insurance company's plan of
2 operation or are otherwise approved in advance by the ~~com~~missioner
3 Commissioner. Such contracts and activities may include ~~but are not limited~~
4 ~~to~~: entering into reinsurance contracts; issuing special purpose financial
5 ~~capti~~ve insurance company securities; complying with the terms of these
6 contracts or securities; entering into trust, guaranteed investment contract,
7 swap, or other derivative, tax, administration, reimbursement, or fiscal agent
8 transactions; ~~or~~ complying with trust indenture, reinsurance, or retrocession;
9 and other agreements necessary or incidental to effect an insurance
10 securitization in compliance with this subchapter and the special purpose
11 financial ~~capti~~ve insurance company's plan of operation.

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

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

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

2 § 6048j. DISPOSITION OF ASSETS; INVESTMENTS

3 (a) The assets of a special purpose financial ~~capti~~ve insurance company
4 shall be preserved and administered by or on behalf of the special purpose
5 financial ~~capti~~ve insurance company to satisfy the liabilities and obligations of
6 the special purpose financial ~~capti~~ve insurance company incident to the
7 reinsurance contract, the insurance securitization, and other related agreements.

8 (b) In the special purpose financial ~~capti~~ve insurance company
9 securitization, the security offering memorandum or other document issued to
10 prospective investors regarding the offer and sale of a surplus note or other
11 security shall include a disclosure that all or part of the proceeds of such
12 insurance securitization will be used to fund the special purpose financial
13 ~~capti~~ve insurance company's obligations to the ceding insurer.

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

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

19 (2) The ~~com~~missioner Commissioner may prohibit or limit any
20 investment that threatens the solvency or liquidity of the special purpose
21 financial ~~capti~~ve insurance company unless the investment is otherwise

1 approved in its plan of operation or in an order issued to the special purpose
2 financial ~~capti~~ve insurance company pursuant to subsection 6048d(b) of this
3 chapter, as either is amended from time to time.

4 Sec. 62. 8 V.S.A. § 6048k is amended to read:

5 § 6048k. ANNUAL REPORT; BOOKS AND RECORDS

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

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

10 (2) A special purpose financial ~~capti~~ve insurance company shall report
11 using statutory accounting principles, unless the ~~com~~missioner Commissioner
12 requires, approves, or accepts the use of generally accepted accounting
13 principles or other comprehensive basis of accounting, in each case with any
14 appropriate or necessary modifications or adaptations required or approved or
15 accepted by the ~~com~~missioner Commissioner and as supplemented by
16 additional information required by the ~~com~~missioner Commissioner.

17 (b) A special purpose financial ~~capti~~ve insurance company may make
18 written application to file its annual report on a fiscal-year basis. If an
19 alternative reporting date is granted, the ~~com~~missioner Commissioner shall
20 establish the due date and content of any filing required by the special purpose
21 financial ~~capti~~ve insurance company in addition to its annual report.

1 (c) Unless otherwise approved in advance by the ~~commissioner~~
2 Commissioner, a special purpose financial ~~capti~~ve insurance company shall
3 maintain its books, records, documents, accounts, vouchers, and agreements in
4 this ~~state~~ State. A special purpose financial ~~capti~~ve insurance company shall
5 make its books, records, documents, accounts, vouchers, and agreements
6 available for inspection by the ~~commissioner~~ Commissioner at any time. A
7 special purpose financial ~~capti~~ve insurance company shall keep its books and
8 records in such manner that its financial condition, affairs, and operations can
9 be readily ascertained and so that the ~~commissioner~~ Commissioner may readily
10 verify its financial statements and determine its compliance with this chapter.

11 (d) Unless otherwise approved in advance by the ~~commissioner~~
12 Commissioner, all original books, records, documents, accounts, vouchers, and
13 agreements shall be preserved and kept available in this ~~state~~ State for the
14 purpose of examination and inspection and until such time as the ~~commissioner~~
15 Commissioner approves the destruction or other disposition of such books,
16 records, documents, accounts, vouchers, and agreements. If the ~~commissioner~~
17 Commissioner approves the keeping of the items listed in this subsection
18 outside this ~~state~~ State, the special purpose financial ~~capti~~ve insurance
19 company shall maintain in this ~~state~~ State a complete and true copy of each
20 such original. Books, records, documents, accounts, vouchers, and agreements

1 may be photographed, reproduced on film, or stored and reproduced
2 electronically.

3 Sec. 63. 8 V.S.A. § 60481 is amended to read:

4 § 60481. LICENSE SUSPENSION AND REVOCATION

5 (a) The ~~commissioner~~ Commissioner shall notify a special purpose
6 financial captive insurance company not less than 30 days before suspending
7 or revoking its license pursuant to section 6009 of this chapter, which notice
8 shall state the basis for such suspension or revocation. The special purpose
9 financial captive insurance company shall be afforded the opportunity for a
10 hearing pursuant to the provisions of the Vermont Administrative Procedure
11 Act, 3 V.S.A. chapter 25.

12 (b) Notwithstanding subsection (a) of this section and 3 V.S.A. § 814(c), no
13 prior notice or hearing shall be required if the grounds for suspension or
14 revocation of a special purpose financial captive insurance company's license
15 pursuant to section 6009 of this chapter relate primarily to the financial
16 condition or soundness of the special purpose financial captive insurance
17 company or to a deficiency in its assets.

18 (c) For purposes of this subchapter, reference to section 6004 in
19 subdivision 6009(a)(2) shall be construed also as a reference to section 6048g.

1 Sec. 64. 8 V.S.A. § 6048m is amended to read:

2 § 6048m. DELINQUENCY

3 (a) Except as otherwise provided in this section, the provisions of chapter
4 145 of this title shall apply in full to a special purpose financial ~~capti~~
5 insurance company.

6 (b) Upon any order of supervision, rehabilitation, or liquidation of a special
7 purpose financial ~~capti~~ insurance company, the receiver shall manage the
8 assets and liabilities of the special purpose financial ~~capti~~ insurance
9 company pursuant to the provisions of this subchapter.

10 (c) Amounts recoverable by the receiver of a special purpose financial
11 ~~capti~~ insurance company under a reinsurance contract shall not be reduced or
12 diminished as a result of the entry of an order of conservation, rehabilitation, or
13 liquidation with respect to a ceding insurer, notwithstanding any provision in
14 the contracts or other documentation governing the special purpose financial
15 ~~capti~~ insurance company securitization.

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

18 (1) An application or petition or a temporary restraining order or
19 injunction issued pursuant to the provisions of chapter 145 of this title with
20 respect to a ceding insurer does not prohibit the transaction of business by a
21 special purpose financial ~~capti~~ insurance company, including any payment

1 by a special purpose financial captive insurance company made with respect to
2 a special purpose financial captive insurance company security, or any action
3 or proceeding against a special purpose financial captive insurance company or
4 its assets.

5 (2) The commencement of a summary proceeding with respect to a
6 special purpose financial captive insurance company and any order issued by
7 the court in such summary proceeding shall not prohibit payments by a special
8 purpose financial captive insurance company and shall not prohibit the special
9 purpose financial captive insurance company from taking any action required
10 to make such payments, provided such payments are made:

11 (A) pursuant to a special purpose financial captive insurance
12 company security or reinsurance contract; and

13 (B) consistent with the special purpose financial captive insurance
14 company's plan of operation and any order issued to the special purpose
15 financial captive insurance company pursuant to subsection 6048d(b), as either
16 is amended from time to time.

17 (3) A receiver of a ceding insurer may not void a nonfraudulent transfer
18 by a ceding insurer to a special purpose financial captive insurance company of
19 money or other property made pursuant to a reinsurance contract.

1 (4) A receiver of a special purpose financial ~~capti~~ve insurance company
2 may not void a nonfraudulent transfer by the special purpose financial ~~capti~~ve
3 insurance company of money or other property:

4 (A) made to a ceding insurer pursuant to a reinsurance contract or
5 made to or for the benefit of any holder of a special purpose financial ~~capti~~ve
6 insurance company security with respect to the special purpose financial
7 ~~capti~~ve insurance company security; and

8 (B) made consistent with the special purpose financial ~~capti~~ve
9 insurance company's plan of operation and any order issued to the special
10 purpose financial ~~capti~~ve insurance company pursuant to subsection 6048d(b),
11 as either is amended from time to time.

12 (e) With the exception of the fulfillment of the obligations under a
13 reinsurance contract and notwithstanding another provision of this subchapter
14 or other laws of this ~~state~~ State, the assets of a special purpose financial ~~capti~~ve
15 insurance company, including assets held in trust, on a funds-withheld basis, or
16 in any other arrangement to secure the special purpose financial ~~capti~~ve
17 insurance company's obligations under a reinsurance contract, shall not be
18 consolidated with or included in the estate of a ceding insurer in any
19 delinquency proceeding against the ceding insurer pursuant to the provisions of
20 this subchapter for any purpose including, without limitation, distribution to
21 creditors of the ceding insurer.

1 Sec. 65. 8 V.S.A. § 6048n is amended to read:

2 § 6048n. SPONSORED CAPTIVES

3 In addition to the provisions of sections 6048a-6048m of this subchapter,
4 the provisions of this section shall apply to any sponsored captive insurance
5 company licensed as a special purpose financial ~~captive~~ insurance company
6 pursuant to this subchapter.

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

10 (2) The special purpose financial ~~captive~~ insurance company shall be
11 subject to the provisions of subchapter 2 of this chapter. In the event of any
12 conflict between the provisions of this subchapter and the provisions of
13 subchapter 2 of this chapter, the provisions of this subchapter shall control.

14 (3) Unless otherwise approved in advance by the ~~commissioner~~
15 Commissioner, a participant in a special purpose financial ~~captive~~ insurance
16 company shall be a ceding insurer. Any change in a participant shall be
17 subject to prior approval by the ~~commissioner~~ Commissioner.

18 (4) The special purpose financial ~~captive~~ insurance company on behalf
19 of a protected cell shall be entitled to assert the same claims and defenses in
20 actions in law or equity as if the protected cell were a corporation established
21 under Title 11A of the Vermont Statutes Annotated, including, ~~but not limited~~

1 ~~to~~, claims and defenses in actions at law or equity alleging alter ego, corporate
2 veil piercing, offset, substantive consolidation, equitable subordination, or
3 recoupment. In connection with the conservation, rehabilitation, or liquidation
4 of a special purpose financial ~~capti~~ve insurance company or one or more of its
5 protected cells, the assets and liabilities of a protected cell shall at all times be
6 kept separate from, and shall not be commingled with, those of other protected
7 cells and the special purpose financial ~~capti~~ve insurance company, and the
8 assets of one protected cell shall not be used to satisfy the obligations or
9 liabilities of another protected cell or the special purpose financial ~~capti~~ve
10 insurance company based on legal or equitable claims or defenses, including
11 ~~but not limited to~~ alter ego, piercing the corporate veil, offset, substantive
12 consolidation, equitable subordination, or recoupment, unless such claims or
13 defenses would apply to such protected cell if it were a special purpose finance
14 ~~capti~~ve insurance company without separate cells.

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

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

1 (7) The “general account” of a sponsored captive insurance company
2 licensed as a special purpose financial ~~captive~~ insurance company shall mean
3 all assets and liabilities of the sponsored captive insurance company not
4 attributable to a protected cell.

5 (8)(A) Any security issued by a special purpose financial ~~captive~~
6 insurance company with respect to a protected cell and any other contract or
7 obligation of the special purpose financial ~~captive~~ insurance company with
8 respect to a protected cell shall include the designation of such protected cell
9 and shall include the following statement, or such other statement as may be
10 required by the ~~commissioner~~ Commissioner:

11 (i) In the case of a security: “The holder of this security shall have
12 no right or recourse against the special purpose financial ~~captive~~ insurance
13 company and its assets other than against assets properly attributable to the
14 designated protected cell and the special purpose financial ~~captive~~ insurance
15 company’s general account, to the extent permitted by Vermont law.”

16 (ii) In the case of a contract or obligation: “The counterparty to
17 this contract or obligation shall have no right or recourse against the special
18 purpose financial ~~captive~~ insurance company and its assets other than against
19 assets properly attributable to the designated protected cell and the special
20 purpose financial ~~captive~~ insurance company’s general account, to the extent
21 permitted by Vermont law.”

1 (B) Notwithstanding the requirements of this subdivision (8) and
2 subject to the provisions of this chapter and other applicable law or regulation,
3 the failure to include such disclosure, in whole or part, in such security,
4 contract, or obligation with respect to a protected cell shall not serve as the sole
5 basis for a creditor, ceding insurer, or any other person to have recourse against
6 the general account of the special purpose financial ~~capti~~ve insurance company
7 in excess of the limitations provided for in subdivision (12)(E) of this
8 subsection, or against the assets of any other protected cell.

9 (9) In addition to the provisions of section 6034 of this chapter, the
10 special purpose financial ~~capti~~ve insurance company shall be subject to the
11 following with respect to its protected cells:

12 (A) The special purpose financial ~~capti~~ve insurance company shall
13 establish a protected cell only for the purpose of insuring or reinsuring risks of
14 one or more reinsurance contracts with a ceding insurer or two or more
15 affiliated ceding insurers, with the intent of facilitating an insurance
16 securitization. A separate protected cell shall be established with respect to
17 each separate securitization transaction; and

18 (B) A sale, an exchange, or another transfer of assets may not be
19 made by the special purpose financial ~~capti~~ve insurance company between or
20 among any of its protected cells without the prior approval of the
21 ~~commissioner~~ Commissioner.

1 (10) All attributions of assets and liabilities to the protected cells and the
2 general account shall be in accordance with the plan of operation approved by
3 the ~~commissioner~~ Commissioner. No other attribution of assets or liabilities
4 may be made by a special purpose financial ~~captive~~ insurance company
5 between its general account and any protected cell or between any protected
6 cells. The special purpose financial ~~captive~~ insurance company shall attribute
7 all insurance obligations, assets, and liabilities relating to a reinsurance
8 contract entered into with respect to a protected cell and shall attribute the
9 related insurance securitization transaction, including any securities issued by
10 the special purpose financial ~~captive~~ insurance company as part of the
11 insurance securitization, to such protected cell. The rights, benefits,
12 obligations, and liabilities of any securities attributable to such protected cell
13 and the performance under such reinsurance contract and the related
14 securitization transaction and any tax benefits, losses, refunds, or credits
15 allocated pursuant to a tax allocation agreement to which the special purpose
16 financial ~~captive~~ insurance company is a party, including any payments made
17 by or due to be made to the special purpose financial ~~captive~~ insurance
18 company pursuant to the terms of such agreement, shall reflect the insurance
19 obligations, assets, and liabilities relating to the reinsurance contract and the
20 insurance securitization transaction that are attributed to such protected cell.

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

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

8 (A) Except as otherwise modified in this section, the terms and
9 conditions set forth in chapter 145 of this title pertaining to administrative
10 supervision of insurers and the rehabilitation, receiverships, and liquidation of
11 insurers apply in full to special purpose financial ~~captive~~ insurance companies
12 or any of the special purpose financial ~~captive~~ insurance company’s protected
13 cells, independently, without causing or otherwise effecting a conservation,
14 rehabilitation, receivership, or liquidation of the special purpose financial
15 ~~captive~~ insurance company or another protected cell that is not otherwise
16 insolvent.

17 (B) Notwithstanding the provisions of chapter 145 of this title, and
18 without causing or otherwise effecting the conservation or rehabilitation of an
19 otherwise solvent protected cell of a special purpose financial ~~captive~~
20 insurance company and subject to the provisions of subdivision (G)(v) of this
21 subdivision (12), the ~~commissioner~~ Commissioner may apply by petition to the

1 ~~superior court~~ Superior Court for an order authorizing the ~~commissioner~~
2 Commissioner to conserve, rehabilitate, or liquidate a special purpose financial
3 ~~eaptive~~ insurance company domiciled in this ~~state~~ State on one or more of the
4 following grounds:

5 (i) embezzlement, wrongful sequestration, dissipation, or
6 diversion of the assets of the special purpose financial ~~eaptive~~ insurance
7 company intended to be used to pay amounts owed to the ceding insurer or the
8 holders of special purpose financial ~~eaptive~~ insurance company securities; or

9 (ii) the special purpose financial ~~eaptive~~ insurance company is
10 insolvent; or

11 (iii) the holders of a majority in outstanding principal amount of
12 each class of special purpose financial ~~eaptive~~ insurance company securities
13 attributable to each particular protected cell requests or consents to
14 conservation, rehabilitation, or liquidation pursuant to the provisions of this
15 subchapter.

16 (C) Notwithstanding the provisions of chapter 145 of this title, the
17 ~~commissioner~~ Commissioner may apply by petition to the ~~superior court~~
18 Superior Court for an order authorizing the ~~commissioner~~ Commissioner to
19 conserve, rehabilitate, or liquidate one or more of a special purpose financial
20 ~~eaptive~~ insurance company's protected cells, independently, without causing or
21 otherwise effecting a conservation, rehabilitation, receivership, or liquidation

1 of the special purpose financial ~~capti~~ve insurance company generally or
2 another of its protected cells, on one or more of the following grounds:

3 (i) embezzlement, wrongful sequestration, dissipation, or
4 diversion of the assets of the special purpose financial ~~capti~~ve insurance
5 company attributable to the affected protected cell or cells intended to be used
6 to pay amounts owed to the ceding insurer or the holders of special purpose
7 financial ~~capti~~ve insurance company securities of the affected protected cell or
8 cells; or

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

10 (iii) the holders of a majority in outstanding principal amount of
11 each class of special purpose financial ~~capti~~ve insurance company securities
12 attributable to that particular protected cell request or consent to conservation,
13 rehabilitation, or liquidation pursuant to the provisions of this subchapter.

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

1 (E) Notwithstanding another provision in this title, regulations
2 adopted under this title, or another applicable law or regulation, upon any order
3 of conservation, rehabilitation, or liquidation of a special purpose financial
4 captive insurance company, or one or more of the special purpose financial
5 captive insurance company's protected cells, the receiver shall manage the
6 assets and liabilities of the special purpose financial captive insurance
7 company or the applicable protected cell pursuant to the provisions of this
8 subchapter. The assets attributable to one protected cell shall not be applied to
9 the liabilities attributable to another protected cell, unless an asset or liability is
10 attributable to more than one protected cell, in which case the receiver shall
11 deal with the asset or liability in accordance with the terms of any relevant
12 governing instrument or contract. Recourse to the special purpose financial
13 captive insurance company's general account in connection with the
14 conservation, rehabilitation, or liquidation of a protected cell shall be limited to
15 the greater of the amount of assets in the general account as of the date such
16 proceeding is commenced or the required minimum capital for the general
17 account as of the date such proceeding is commenced. Assets attributable to
18 one protected cell shall not be set off against the liabilities attributable to
19 another protected cell, and assets attributable to the special purpose financial
20 captive insurance company's general account shall not be set off against the
21 liabilities attributable to any protected cell except to the extent provided in the

1 preceding sentence. Relief shall not be granted nor shall any order be issued
2 based on equitable theories of recovery, including substantive consolidation,
3 equitable subordination, or recoupment, to attach or seize the assets of any
4 solvent protected cell for the benefit of another protected cell or special
5 purpose financial ~~cap~~ ~~ti~~ ~~ve~~ insurance company, or to pierce the corporate veil of
6 any protected cell, in connection with the conservation, rehabilitation, or
7 liquidation of a special purpose financial ~~cap~~ ~~ti~~ ~~ve~~ insurance company or one or
8 more protected cells, unless such equitable theories, attachment, seizure, or
9 corporate veil piercing would apply to such cell if it were a special purpose
10 financial ~~cap~~ ~~ti~~ ~~ve~~ insurance company without separate cells.

11 (F) With respect to amounts recoverable under a reinsurance contract,
12 the amount recoverable by the receiver of a special purpose financial ~~cap~~ ~~ti~~ ~~ve~~
13 insurance company must not be reduced or diminished as a result of the entry
14 of an order of conservation, rehabilitation, or liquidation with respect to the
15 ceding insurer, notwithstanding another provision in the contract or other
16 documentation governing the insurance securitization.

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

19 (i) An application or petition, or a temporary restraining order or
20 injunction issued pursuant to the provisions of chapter 145 of this title, with
21 respect to a ceding insurer, does not prohibit the transaction of business by a

1 special purpose financial captive insurance company with the ceding insurer,
2 including any payment by a special purpose financial ~~captive~~ insurance
3 company made pursuant to a security issued by a special purpose financial
4 ~~captive~~ insurance company with respect to a protected cell, or any action or
5 proceeding against a special purpose financial ~~captive~~ insurance company or
6 its assets.

7 (ii) The commencement of a summary proceeding or other interim
8 proceeding commenced before a formal delinquency proceeding with respect
9 to a special purpose financial ~~captive~~ insurance company, and any order issued
10 by the ~~court~~ Court, does not prohibit the payment by a special purpose
11 financial ~~captive~~ insurance company made pursuant to a security issued by a
12 special purpose financial ~~captive~~ insurance company with respect to a
13 protected cell or special purpose financial ~~captive~~ insurance company contract
14 or the special purpose financial ~~captive~~ insurance company from taking any
15 action required to make the payment.

16 (iii) A receiver of a ceding insurer may not void a nonfraudulent
17 transfer by the ceding insurer to a special purpose financial ~~captive~~ insurance
18 company of money or other property made pursuant to a reinsurance contract.

19 (iv) A receiver of a special purpose financial ~~captive~~ insurance
20 company may not void a nonfraudulent transfer by the special purpose
21 financial ~~captive~~ insurance company of money or other property made to a

1 ceding insurer pursuant to a reinsurance contract or made to or for the benefit
2 of any holder of a special purpose financial ~~capti~~ve insurance company
3 security issued with respect to a protected cell, or a special purpose financial
4 ~~capti~~ve insurance company security.

5 (v) In the event of an insolvency of a special purpose financial
6 ~~capti~~ve insurance company where one or more protected cells remain solvent,
7 the ~~com~~missioner Commissioner shall separate the special purpose financial
8 ~~capti~~ve insurance company's solvent protected cells from the insolvent special
9 purpose financial ~~capti~~ve insurance company, shall allow on petition of the
10 sponsor for the conversion of such solvent protected cells into one or more
11 special purpose financial ~~capti~~ve insurance companies, and shall issue such
12 orders as the ~~com~~missioner Commissioner deems necessary to protect the
13 solvency of the remaining solvent protected cells. In the event of an
14 insolvency of a protected cell, the special purpose financial ~~capti~~ve insurance
15 company's assets shall be accounted for and managed in compliance with
16 subdivision (E) of this subdivision (12) and the other laws of this ~~state~~ State.

17 (H) Subdivision (G) of this subdivision (12) does not prohibit the
18 ~~com~~missioner Commissioner from taking any action permitted under chapter
19 145 of this title with respect only to the conservation or rehabilitation of a
20 special purpose financial ~~capti~~ve insurance company with protected cell or
21 cells, provided the ~~com~~missioner Commissioner would have had sufficient

1 grounds to seek to declare the special purpose financial ~~capti~~ve insurance
2 company insolvent; subject to and without otherwise affecting the provisions
3 of subdivision (G)(v) of this subdivision (12). In this case, with respect to the
4 solvent protected cell or cells, the ~~commissioner~~ Commissioner may not
5 prohibit payments made by the special purpose financial ~~capti~~ve insurance
6 company pursuant to the special purpose financial ~~capti~~ve insurance company
7 security, reinsurance contract, or otherwise made under the insurance
8 securitization transaction that are attributable to these protected cell or cells or
9 prohibit the special purpose financial ~~capti~~ve insurance company from taking
10 any action required to make these payments.

11 (I) With the exception of the fulfillment of the obligations under a
12 special purpose financial captive insurance company contract, and
13 notwithstanding another provision of this title or other laws of this ~~state~~ State,
14 the assets of a special purpose financial ~~capti~~ve insurance company, including
15 assets held in trust, shall not be consolidated with or included in the estate of a
16 ceding insurer in any delinquency proceeding against the ceding insurer
17 pursuant to the provisions of this title for any purpose, including, without
18 limitation, distribution to creditors of the ceding insurer.

1 Sec. 66. 8 V.S.A. § 6048o is added to read:

2 § 6048o. CONFIDENTIALITY

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

3 (1) subject to subpoena;

4 (2) subject to public inspection and copying under the Public Records
5 Act; or

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

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

8 (1) share documents, materials, or other information, including those
9 that are confidential and privileged, with other state, federal, or international
10 regulatory agencies and law enforcement authorities, the National Association
11 of Insurance Commissioners, the North American Securities Administrators
12 Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,
13 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or
14 subsidiaries, provided that the recipient agrees in writing to maintain the

1 confidentiality and privileged status of the document, material, or other
2 information;

3 (2) receive documents, materials, or information, including those that
4 are confidential and privileged, from other state, federal, and international
5 regulatory agencies and law enforcement authorities, the National Association
6 of Insurance Commissioners, the North American Securities Administrators
7 Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,
8 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or
9 subsidiaries and shall maintain as confidential or privileged any document,
10 material, or information received with notice or the understanding that it is
11 confidential or privileged under the laws of the jurisdiction that is the source of
12 the document, material, or information;

13 (3) enter into written agreements with other state, federal, and
14 international regulatory agencies and law enforcement authorities, the National
15 Association of Insurance Commissioners, the North American Securities
16 Administrators Association, self-regulatory organizations organized under
17 15 U.S.C. §§ 78f, 78o-3 and 78q-1, and other self-regulatory organizations and
18 their affiliates or subsidiaries governing sharing and use of information
19 consistent with this section, including agreements providing for cooperation
20 between the Commissioner and other agencies in relation to the activities of a
21 supervisory college; and

1 (a) This act shall take effect on passage, except that Sec. 44 (own risk and
2 solvency assessment) shall take effect on January 1, 2015, and the first filing of
3 the ORSA summary report required under 8 V.S.A. § 3585 shall be in 2015.

4 (b) Notwithstanding Secs. 52–65 of this act, a “special purpose financial
5 captive insurance company” licensed prior to the effective date of this act shall
6 be deemed to be a “special purpose financial insurance company” under
7 Vermont law.