

1 H.563

2 Introduced by Representatives Botzow of Pownal, Bouchard of Colchester,  
3 Carr of Brandon, Cross of Winooski, Dickinson of St. Albans  
4 Town, Kitzmiller of Montpelier, Marcotte of Coventry, Ralston  
5 of Middlebury, and Young of Glover

6 Referred to Committee on

7 Date:

8 Subject: Insurance; captives; certificate of dormancy; National Association of  
9 Insurance Commissioners; accreditation

10 Statement of purpose of bill as introduced: This bill proposes to allow captive  
11 insurance companies to obtain a certificate of dormancy and also to make  
12 various other amendments to Vermont's captive insurance laws.

13 An act relating to captive insurance laws and accreditation standards

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

15 ~~\*\*\* Dormant Captive Insurance Companies \*\*\*~~

16 Sec. 1. 8 V.S.A. § 6024 is added to read:

17 § 6024. DORMANT CAPTIVE INSURANCE COMPANIES

18 (a) As used in this section, unless the context requires otherwise, "dormant  
19 captive insurance company" means a pure captive insurance company  
20 which has:

- 1 ~~(1) at no time, insured controlled unaffiliated business;~~
- 2 (2) ceased transacting the business of insurance, including the issuance  
3 of insurance policies; and
- 4 (3) no remaining liabilities associated with insurance business  
5 transactions, or insurance policies issued prior to the filing of its application for  
6 a certificate of dormancy under this section.
- 7 (b) A pure captive insurance company domiciled in Vermont which meets  
8 the criteria of subsection (a) of this section may apply to the Commissioner for  
9 a certificate of dormancy. The certificate of dormancy shall be subject to  
10 renewal every five years and shall be forfeited if not renewed within such time.
- 11 (c) A dormant captive insurance company which has been issued a  
12 certificate of dormancy shall:
- 13 (1) possess and thereafter maintain unimpaired, paid-in capital and  
14 surplus of not less than \$25,000.00;
- 15 (2) prior to March 15 of each year, submit to the Commissioner a report  
16 of its financial condition, verified by oath of two of its executive officers, in a  
17 form as may be prescribed by the Commissioner; and
- 18 (3) pay a license renewal fee as provided in subsection 6002(d) of this  
19 chapter.
- 20 (d) A dormant captive insurance company shall not be subject to or liable  
21 for the payment of any tax under section 6014 of this chapter.

1 ~~(e) A dormant captive insurance company shall apply to the Commissioner~~  
2 ~~for approval to surrender its certificate of dormancy and resume conducting the~~  
3 ~~business of insurance prior to issuing any insurance policies.~~

4 ~~(f) A certificate of dormancy shall be revoked if a dormant captive~~  
5 ~~insurance company no longer meets the criteria of subsection (a) of this~~  
6 ~~section.~~

7 ~~(g) The Commissioner may establish guidelines and procedures as~~  
8 ~~necessary to carry out the provisions of this section.~~

9 \* \* \* Risk Retention Groups; Producer Controlled Insurers \* \* \*

10 Sec. 2. 8 V.S.A. § 4815(6) is amended to read:

11 (6) "Licensed insurer" or "insurer" means any person, firm, association  
12 or corporation duly licensed to transact an insurance business in this State.

13 The following are not licensed insurers for the purposes of this subchapter:

14 (A) ~~all risk retention groups as defined in the Superfund~~  
15 ~~Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613~~  
16 ~~(1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp.~~  
17 ~~1986) and chapter 142 of this title;~~

18 (B) all residual market pools and joint underwriting authorities or  
19 associations; and

20 (C)(B) all captive insurers as defined in chapter 141 of this title,  
21 except risk retention groups.

1 ~~Sec. 3. 8 V.S.A. chapter 142A is amended to read:~~

2 CHAPTER 142A. RISK RETENTION GROUP MANAGING  
3 GENERAL AGENTS AND REINSURANCE INTERMEDIARIES,  
4 AND PRODUCER CONTROLLED INSURERS

5 \* \* \*

6 Sec. 4. 8 V.S.A. § 6070 is amended to read:

7 § 6070. APPLICATION OF CHAPTER

8 (a) This chapter applies to risk retention groups domiciled in this State  
9 operating under the provisions of chapters 141 and 142 of this title and to  
10 persons serving as managing general agents for such risk retention groups.

11 (b) The provisions of chapter 131, subchapter 2 of this title, pertaining to  
12 producer controlled insurers, shall apply to risk retention groups chartered in  
13 this State.

14 \* \* \* Captive; Reciprocal Insurer; Assessments; Exemption \* \* \*

15 Sec. 5. 8 V.S.A. § 6006(j) is amended to read:

16 (j) Captive insurance companies formed as reciprocal insurers under the  
17 provisions of this chapter shall have the privileges and be subject to the  
18 provisions of chapter 132 of this title in addition to the applicable provisions of  
19 this chapter. In the event of a conflict between the provisions of chapter 132  
20 and the provisions of this chapter, the latter shall control. However, in  
21 approving assessments levied upon subscribers of a captive insurance company

1 ~~formed as a reciprocal insurer, the Commissioner may exempt the company~~  
2 ~~from any provision of sections 4850 (assessments), 4851 (time limit for~~  
3 ~~assessments), and 4852 (aggregate of liability) of chapter 132. To the extent a~~  
4 ~~reciprocal insurer is made subject to other provisions of this title pursuant to~~  
5 ~~chapter 132, such provisions shall not be applicable to a reciprocal insurer~~  
6 ~~formed under this chapter unless such provisions are expressly made~~  
7 ~~applicable to captive insurance companies under this chapter.~~

8 \* \* \* Separate Account Assets; Delinquency \* \* \*

9 Sec. 6. 8 V.S.A. § 6018 is amended to read:

10 § 6018. DELINQUENCY

11 Except as otherwise provided in this chapter, the terms and conditions set  
12 forth in chapter 145 of this title shall apply in full to captive insurance  
13 companies formed or licensed under this chapter; however, the assets of a  
14 separate account established under subsection 6006(p) of this chapter shall not  
15 be used to pay any expenses or claims other than those attributable to such  
16 separate account.

17 \* \* \* Incorporated Protected Cell as Reciprocal Insurer \* \* \*

18 Sec. 7. 8 V.S.A. § 6032 is amended to read:

19 § 6032. DEFINITIONS

20 As used in this subchapter, unless the context requires otherwise:

1 ~~(1) "Incorporated protected cell" means a protected cell that is~~  
2 established as a corporation, mutual corporation, nonprofit corporation with  
3 one or more members, ~~or~~ limited liability company, or reciprocal insurer  
4 separate from the sponsored captive insurance company of which it is a part.

5 \* \* \*

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

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

16 \* \* \* Risk-Based Capital for Risk Retention Groups \* \* \*

17 Sec. 9. 8 V.S.A. § 6052(f) is added to read:

18 (f) The provisions of chapter 159 of this title shall apply to risk retention  
19 groups chartered in this State.

1 ~~\*\*\* Effective Date \*\*\*~~

2 Sec. 10. EFFECTIVE DATE

3 ~~This act shall take effect on passage.~~

*\*\*\* Dormant Captive Insurance Companies \*\*\**

*Sec. 1. 8 V.S.A. § 6024 is added to read:*

*§ 6024. DORMANT CAPTIVE INSURANCE COMPANIES*

*(a) As used in this section, unless the context requires otherwise, “dormant captive insurance company” means a pure captive insurance company which has:*

*(1) at no time, insured controlled unaffiliated business;*

*(2) ceased transacting the business of insurance, including the issuance of insurance policies; and*

*(3) no remaining liabilities associated with insurance business transactions, or insurance policies issued prior to the filing of its application for a certificate of dormancy under this section.*

*(b) A pure captive insurance company domiciled in Vermont which meets the criteria of subsection (a) of this section may apply to the Commissioner for a certificate of dormancy. The certificate of dormancy shall be subject to renewal every five years and shall be forfeited if not renewed within such time.*

*(c) A dormant captive insurance company which has been issued a certificate of dormancy shall:*

(1) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000.00;

(2) prior to March 15 of each year, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the Commissioner; and

(3) pay a license renewal fee as provided in subsection 6002(d) of this chapter.

(d) A dormant captive insurance company shall not be subject to or liable for the payment of any tax under section 6014 of this chapter.

(e) A dormant captive insurance company shall apply to the Commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.

(f) A certificate of dormancy shall be revoked if a dormant captive insurance company no longer meets the criteria of subsection (a) of this section.

(g) The Commissioner may establish guidelines and procedures as necessary to carry out the provisions of this section.

*\*\*\* Risk Retention Groups; Producer Controlled Insurers \*\*\**

*Sec. 2. 8 V.S.A. § 4815(6) is amended to read:*

*(6) "Licensed insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact an insurance business in*

*this State. The following are not licensed insurers for the purposes of this subchapter:*

*(A) all risk retention groups as defined in the ~~Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986) and chapter 142 of this title;~~*

*~~(B)~~ all residual market pools and joint underwriting authorities or associations; and*

*~~(C)~~(B) all captive insurers as defined in chapter 141 of this title, except risk retention groups.*

*Sec. 3. 8 V.S.A. chapter 142A is amended to read:*

*CHAPTER 142A. RISK RETENTION GROUP MANAGING  
GENERAL AGENTS ~~AND~~ REINSURANCE INTERMEDIARIES,  
AND PRODUCER CONTROLLED INSURERS*

*\* \* \**

*Sec. 4. 8 V.S.A. § 6070 is amended to read:*

*§ 6070. APPLICATION OF CHAPTER*

*(a) This chapter applies to risk retention groups domiciled in this State operating under the provisions of chapters 141 and 142 of this title and to persons serving as managing general agents for such risk retention groups.*

(b) The provisions of chapter 131, subchapter 2 of this title, pertaining to producer controlled insurers, shall apply to risk retention groups chartered in this State.

*\*\*\* Captive; Reciprocal Insurer; Assessments; Exemption \*\*\**

*Sec. 5. 8 V.S.A. § 6006(j) is amended to read:*

*(j) Captive insurance companies formed as reciprocal insurers under the provisions of this chapter shall have the privileges and be subject to the provisions of chapter 132 of this title in addition to the applicable provisions of this chapter. In the event of a conflict between the provisions of chapter 132 and the provisions of this chapter, the latter shall control. However, in approving assessments levied upon subscribers of a captive insurance company formed as a reciprocal insurer, the Commissioner may exempt the company from any provision of sections 4850 (assessments), 4851 (time limit for assessments), and 4852 (aggregate of liability) of chapter 132. To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to chapter 132, such provisions shall not be applicable to a reciprocal insurer formed under this chapter unless such provisions are expressly made applicable to captive insurance companies under this chapter.*

*\*\*\* Separate Account Assets; Delinquency \*\*\**

*Sec. 6. 8 V.S.A. § 6018 is amended to read:*

*§ 6018. DELINQUENCY*

*Except as otherwise provided in this chapter, the terms and conditions set forth in chapter 145 of this title shall apply in full to captive insurance companies formed or licensed under this chapter; however, the assets of a separate account established under subsection 6006(p) of this chapter shall not be used to pay any expenses or claims other than those attributable to such separate account.*

*\* \* \* Incorporated Protected Cell as Reciprocal Insurer \* \* \**

*Sec. 7. 8 V.S.A. § 6032 is amended to read:*

*§ 6032. DEFINITIONS*

*As used in this subchapter, unless the context requires otherwise:*

*(1) “Incorporated protected cell” means a protected cell that is established as a corporation, mutual corporation, nonprofit corporation with one or more members, ~~or~~ limited liability company, or reciprocal insurer separate from the sponsored captive insurance company of which it is a part.*

*\* \* \**

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

*(d) It is the intent of the General Assembly under this section to provide sponsored captive insurance companies, including those licensed as special purpose financial insurance companies under subchapter 4 of this chapter, with the option to establish one or more protected cells as a separate corporation, mutual corporation, nonprofit corporation, ~~or~~ limited liability*

*company, or reciprocal insurer. This section shall not be construed to limit any rights or protections applicable to protected cells not established as corporations, mutual corporations, nonprofit corporations, ~~or~~ limited liability companies, or reciprocal insurers.*

*\* \* \* Risk Based Capital for Risk Retention Groups \* \* \**

*Sec. 9. 8 V.S.A. § 6052(f) is added to read:*

*(f) The provisions of chapter 159 of this title (risk based capital for insurers) shall apply to risk retention groups chartered in this State, except that the Commissioner may elect not to take regulatory action as otherwise required by sections 8303–8306 of chapter 159 of this title, provided at least one of the following conditions exist:*

*(1) The Commissioner determines that the risk retention group's members or sponsoring organization, or both, are sufficiently capitalized to support the operations of the risk retention group. As required by the Commissioner, the members or sponsoring organization, or both, shall provide evidence of:*

*(A) an investment grade credit rating from a nationally recognized statistical rating organization or rating of A- or better by the A. M. Best Company;*

*(B) an excess of assets over liabilities of at least \$100 million; or*

(C) an excess of assets over liabilities of at least 10 times the risk retention group's largest net retained per occurrence limit.

(2) Each policyholder qualifies as an industrial insured under the law of his or her home state, or under Vermont law, whichever the Commissioner determines to be more stringent.

(3) The risk retention group's certificate of authority was issued prior to January 1, 2011 and, based on a minimum of five years of solvent operation, is specifically exempted from the requirements for mandatory action in writing by the Commissioner.

*\* \* \* Effective Date \* \* \**

*Sec. 10. EFFECTIVE DATE*

*This act shall take effect on passage.*