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H.533

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,
Dickinson of St. Albans Town, Kitzmiller of Montpelier,
Kupersmith of South Burlington, Ralston of Middlebury,
Russell of Rutland City, Shand of Weathersfield and Young of
Glover

Referred to Committee on

Date:

Subject: Insurance; commercial policies; reinsurance agreements; business
transfers; state review and approval

Statement of purpose: This bill proposes to facilitate and streamline the
process for transfers of commercial insurance policies and reinsurance
agreements between solvent insurance companies, subject to review and
approval by the commissioner of banking, insurance, securities, and health care
administration.

An act relating to insurance business transfers

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

~~Sec. 1. TITLE~~

~~This act shall be known as the “Insurance Business Transfer Act.”~~

1 ~~Sec. 2. FINDINGS AND PURPOSE~~

2 ~~(a) The Vermont general assembly finds:~~

3 ~~(1) The creation of jobs and investment in the state of Vermont through~~
4 ~~business expansion and recruitment is of the highest importance.~~

5 ~~(2) Vermont has created a thriving captive insurance and alternative risk~~
6 ~~financing industry, which has provided Vermonters with well-paying jobs and~~
7 ~~has created significant premium tax revenue for the state.~~

8 ~~(3) Vermont is a competitive location for highly successful financial~~
9 ~~services firms as a result of its leadership in the field of captive insurance.~~
10 ~~Vermont's ability to modernize key aspects of its insurance laws has been a~~
11 ~~key to the state's success.~~

12 ~~(b) The purpose of this act is to facilitate and streamline the process for~~
13 ~~transfers of commercial insurance policies and reinsurance agreements~~
14 ~~between solvent insurance companies.~~

15 Sec. 3. 8 V.S.A. chapter 147 is added to read:

16 ~~CHAPTER 147. INSURANCE BUSINESS TRANSFERS~~

17 ~~Subchapter 1. Insurance Business Transfers~~

18 ~~§ 7111. DEFINITIONS~~

19 ~~As used in this chapter:~~

20 ~~(1) "Assuming insurer" means an insurance company that is the~~
21 ~~assuming insurer with respect to a plan, and that is a domestic insurer, a~~

1 ~~foreign or alien insurance company that has a certificate of authority issued by~~
2 the department other than pursuant to this chapter, an insurance company
3 branch, or a special insurance company.

4 (2) “Commissioner” means the commissioner of banking, insurance,
5 securities, and health care administration.

6 (3) “Department” means the department of banking, insurance,
7 securities, and health care administration.

8 (4) “Domicile regulator” means the insurance regulatory authority of the
9 domicile jurisdiction of a transferor insurer or an assuming insurer, if either
10 such insurance company is a foreign insurance company or an alien insurance
11 company.

12 (5) “Independent reviewer” means the person charged with review of a
13 plan as described in section 7116 of this chapter.

14 (6) “Insurance business transfer” means a policy transfer or a
15 reinsurance transfer.

16 (7) “Insurance business transfer plan” or “plan” means a plan that sets
17 forth all provisions regarding an insurance business transfer required under this
18 chapter.

19 (8) “Insurance company branch” means a branch established in Vermont
20 by an alien or foreign insurance company under this chapter.

21 (9) “Inuring reinsurance” means:

1 ~~(A) with respect to a policy transfer, all reinsurance of the policies~~
2 ~~included in the policy transfer; and~~

3 ~~(B) with respect to a reinsurance transfer, all reinsurance of the~~
4 ~~reinsurance agreements included in the reinsurance transfer.~~

5 ~~(10) "Party" means any person so defined under subsection 7118(c) of~~
6 ~~this chapter.~~

7 ~~(11) "Personal lines insurance" means an insurance policy that covers~~
8 ~~personal, family, or household risks.~~

9 ~~(12) "Policy" means a contract of property and casualty insurance other~~
10 ~~than a personal lines insurance policy.~~

11 ~~(13) "Policyholder" means the person identified as the policyholder or~~
12 ~~first named in a policy.~~

13 ~~(14) "Policy transfer" means a plan that calls for the transfer of all~~
14 ~~rights, obligations, and liabilities of a transferor insurer under a policy and all~~
15 ~~insuring reinsurance thereof to an assuming insurer.~~

16 ~~(15) "Reinsurance agreement" means an agreement of reinsurance that~~
17 ~~directly or indirectly reinsures a policy.~~

18 ~~(16) "Reinsurance transfer" means a plan that calls for the transfer of all~~
19 ~~rights, obligations, and liabilities of a transferor insurer under a reinsurance~~
20 ~~agreement and all inuring reinsurance thereof to an assuming insurer.~~

1 ~~(17) "Special insurance company" means a special insurance company~~
2 ~~established under this chapter.~~

3 (18) "Transferor insurer" means an insurance company that is the
4 transferring insurer with respect to a plan, and that is a domestic insurer, a
5 foreign or alien insurance company that has a certificate of authority issued by
6 the department other than pursuant to this chapter, an insurance company
7 branch, or a special insurance company.

8 § 7112. JURISDICTION; APPEALS

9 The commissioner shall have exclusive jurisdiction with respect to the
10 review and approval or denial of any insurance business transfer plan. Any
11 appeal of an order of the commissioner issued under section 7116 of this
12 chapter shall be to the supreme court only.

13 § 7113. EXCLUDED TRANSACTIONS

14 This chapter shall not apply to any transfer of a policy, reinsurance
15 agreement, or inuring reinsurance if all parties with an interest in the policies
16 and reinsurance agreements being transferred have approved the transfer and
17 the transfer is otherwise permitted under applicable law.

18 § 7114. APPLICATION FOR APPROVAL OF INSURANCE BUSINESS

19 TRANSFER PLAN

20 (a) A transferor insurer and assuming insurer shall submit a plan to the
21 commissioner.

1 ~~(b) A plan shall include the following:~~

2 ~~(1) a list of all parties, policies, reinsurance agreements, and inuring~~
3 ~~reinsurance covered by the plan;~~

4 ~~(2) certificates issued by the domicile regulators of the transferor insurer~~
5 ~~and the assuming insurer, each attesting to the good standing of the transferor~~
6 ~~insurer and the assuming insurer and the insurance regulatory laws of the~~
7 ~~jurisdiction of the domicile regulator;~~

8 ~~(3) a statement describing the terms of each policy and reinsurance~~
9 ~~agreement, if any, regarding assignment and assumption of the rights,~~
10 ~~liabilities, and obligations of the transferor insurer with respect to each policy~~
11 ~~and reinsurance agreement;~~

12 ~~(4) the most recent audited financial statements and annual reports filed~~
13 ~~by the transferor insurer and the assuming insurer with their respective~~
14 ~~domicile regulators;~~

15 ~~(5) a study by an actuary acceptable to the commissioner that quantifies~~
16 ~~the liabilities to be transferred to the assuming insurer under the policies and~~
17 ~~reinsurance agreements;~~

18 ~~(6) the form and amount of consideration payable by the transferor~~
19 ~~insurer and pro-forma financial statements that demonstrate the solvency of the~~
20 ~~transferor insurer after the insurance business transfer is effective;~~

1 ~~(7) pro forma financial statements that demonstrate the solvency of the~~
2 ~~assuming insurer after the insurance business transfer is effective;~~

3 ~~(8) officer certificates of the transferor insurer and the assuming insurer~~
4 ~~attesting that each has obtained all required internal approvals regarding the~~
5 ~~insurance business transfer;~~

6 ~~(9) how all notices required to be provided to a party under this chapter~~
7 ~~shall be provided;~~

8 ~~(10) a statement regarding any pending dispute between the transferor~~
9 ~~insurer and any policyholder or reinsurer, or of a disputed claim by any third~~
10 ~~party with respect to any policy, reinsurance agreement, or inuring reinsurance;~~

11 ~~(11) the report of the independent review described in section 7115 of~~
12 ~~this chapter; and~~

13 ~~(12) any other information that the commissioner may require with~~
14 ~~respect to the plan in the exercise of his or her reasonable discretion.~~

15 ~~(c) Within 10 days of the date the application is submitted, the~~
16 ~~commissioner shall notify the transferor insurer and the assuming insurer that~~
17 ~~the application is complete, or that the application is not complete and listing~~
18 ~~all additional required information and documentation to be submitted as part~~
19 ~~of the application.~~

20 ~~(d) Within 30 days of the date the commissioner provides notice that the~~
21 ~~application is complete under subsection (c) of this section, the transferor~~

1 ~~insurer shall provide notice to all parties in the form approved by the~~
2 ~~department that complies with the plan and the provisions of 3 V.S.A.~~
3 ~~§ 809(b). Such notice shall include a complete description of the plan, and a~~
4 ~~statement of the right of each party to submit written comments on the plan to~~
5 ~~the commissioner and to request a hearing on the plan before the~~
6 ~~commissioner.~~

7 ~~(e) Any party may submit written comments on the plan or the report of the~~
8 ~~independent reviewer, and any party may request a hearing on the plan. Any~~
9 ~~such comments or request for hearing shall be submitted to the commissioner~~
10 ~~during the 60-day period starting on the date the commissioner provides notice~~
11 ~~that the application is complete pursuant to subsection (c) of this section (the~~
12 ~~comment period). If a hearing is requested, the commissioner shall schedule a~~
13 ~~hearing to be held not earlier than 30 days and not later than 60 days after the~~
14 ~~end of the comment period.~~

15 ~~(f) The commissioner shall issue an order approving or disapproving the~~
16 ~~plan within 30 days of the following:~~

17 ~~(1) if a hearing is held on the plan, the date of the hearing; and~~

18 ~~(2) if no hearing is held on the plan, the end of the comment period.~~

1 ~~§ 7115. INDEPENDENT REVIEW~~

2 ~~(a) The independent reviewer shall be an individual approved by the~~
3 ~~commissioner to review and comment on the merits and fairness of a plan.~~

4 ~~The independent reviewer shall:~~

5 ~~(1) possess appropriate experience in commercial property and casualty~~
6 ~~insurance and reinsurance transactions;~~

7 ~~(2) not have an interest as a shareholder or owner of any policyholder,~~
8 ~~transferor insurer, assuming insurer, or an insurance company that is a party to~~
9 ~~any inuring reinsurance; and~~

10 ~~(3) not have served as a director, officer, or employee of the transferor~~
11 ~~insurer, the assuming insurer, or any other party during the 10-year period~~
12 ~~immediately preceding the date the application for approval of a plan is filed~~
13 ~~with the commissioner.~~

14 ~~(b) The independent reviewer shall review the plan and shall consider the~~
15 ~~following as part of such review:~~

16 ~~(1) the solvency of the transferor insurer, the assuming insurer, and all~~
17 ~~insurance companies that are parties to inuring reinsurance, both before and~~
18 ~~after the implementation of the proposed plan;~~

19 ~~(2) in the case of a policy transfer, the ability of the assuming insurer to~~
20 ~~comply with all requirements of the policy, including administration of claims~~
21 ~~in process as of and after the effective date of the transfer;~~

1 ~~(3) the fairness of the plan to all parties; and~~

2 (4) any other factors or issues raised by the plan that the independent
3 reviewer reasonably deems relevant.

4 (c) The independent reviewer's report shall include his or her
5 recommendation as to whether the plan should be approved or denied.

6 (d) The fee charged by the independent reviewer shall be payable by the
7 transferor insurer in the amount mutually agreed upon by the independent
8 reviewer and the transferor insurer.

9 § 7116. ORDER

10 (a) The transferor insurer and the assuming insurer shall file, individually
11 or jointly, proposed findings of fact with the commissioner by the date
12 determined by the commissioner. The commissioner may, in his or her
13 discretion, allow any other party to file findings of fact by such date.

14 (b) The commissioner shall issue an order approving or disapproving the
15 plan in compliance with subsection 7118(c) of this chapter. The order shall be
16 valid notwithstanding any provision of any policy, reinsurance agreement, or
17 inuring reinsurance that would otherwise prohibit the transfer, including any
18 provision of a policy, reinsurance agreement, or inuring reinsurance that would
19 require the approval of a policyholder or any other person. The order shall
20 release the transferor insurer from any and all obligations and liabilities and
21 transfer all rights of the transferor insurer from any and all obligations and

1 ~~liabilities and transfer all rights to the transferor insurer, under a policy or~~
2 ~~reinsurance agreement, such that the assuming insurer has all such rights,~~
3 ~~liabilities, and obligations as if it were the original party to such agreements.~~

4 (c) The commissioner may issue any orders necessary to fully implement
5 an order issued under subsection (b) of this section, including injunctions
6 against litigation regarding the validity of such order.

7 (d) No order issued under subsection (b) or (c) of this section shall be
8 construed to modify or amend the terms of a policy or reinsurance agreement,
9 other than with respect to matters specifically subject to modification or
10 amendment under this chapter.

11 § 7117. FEES AND COSTS

12 (a) The transferor insurer shall pay to the commissioner a fee of \$50,000.00
13 to cover the costs of processing and reviewing a plan under this chapter.

14 (b) If a plan is approved, the assuming insurer shall pay the commissioner a
15 transfer fee in an amount equal to the sum of:

16 (1) One percent of the first \$100,000,000.00 of consideration payable by
17 the transferor insurer to the assuming insurer for the insurance business
18 transfer; and

19 (2) 0.5 percent of the amount of such consideration that exceeds
20 \$100,000,000.00.

1 ~~(c) No premium tax shall be payable with respect to an insurance business~~
2 ~~transfer, and neither the transferor insurer nor the assuming insurer shall be~~
3 ~~subject to any other tax imposed by the state of Vermont, other than sales and~~
4 ~~use taxes and meals and rooms taxes.~~

5 ~~(d) The assuming insurer shall pay an annual fee of \$7,500.00 to the~~
6 ~~commissioner.~~

7 § 7118. APPLICABLE LAWS

8 ~~(a) In the event of any conflict between a provision of this chapter and any~~
9 ~~other provision of this title, such provision of this chapter shall control.~~

10 ~~Without limitation of the foregoing, chapter 157 of this title shall not apply to~~
11 ~~any insurance business transfer.~~

12 ~~(b) No transferor insurer, assuming insurer, or any insured or affiliate~~
13 ~~thereof shall be entitled to join, contribute to, or receive any benefit from any~~
14 ~~plan, pool, association, or guaranty or insolvency fund for claims arising out of~~
15 ~~any policy that is subject to an insurance business transfer under this chapter.~~

16 ~~(c) 3 V.S.A. §§ 801, 809, 812, 813, and 815 shall apply to a proposed~~
17 ~~insurance business transfer; provided, for purposes of the definitions set forth~~
18 ~~in 3 V.S.A. § 801:~~

19 ~~(1) A proposed insurance business transfer shall be a "contested case."~~

20 ~~(2) A "party" with respect to a proposed business transfer shall be~~
21 ~~limited to the transferor insurer, the assuming insurer, each policyholder, each~~

1 ~~reinsurer, and any other person the commissioner approves as a party with~~
2 ~~respect to such proceeding.~~

3 Subchapter 2. Insurance Company Branch and Special Insurance Company
4 Formation and Operation

5 § 7121. APPLICABILITY

6 This subchapter shall apply only to a transferor insurer or assuming insurer
7 that is organized as an insurance company branch or a special insurance
8 company.

9 § 7122. NAME

10 A special insurance company shall not adopt a name that is the same as,
11 deceptively similar to, or likely to be confused with or mistaken for any other
12 existing business name registered in the state of Vermont.

13 § 7123. FORMATION AND LICENSING

14 (a) A special insurance company may be incorporated under the Vermont
15 Business Corporation Act, Title 11A, as a stock insurer with its capital divided
16 into shares and held by the stockholders, or formed under the Vermont Limited
17 Liability Company Act, 11 V.S.A. chapter 21, as a manager managed limited
18 liability company.

19 (b) Before receiving a license, in the case of a special insurance company:

20 (1)(A) formed as a corporation, before the articles of incorporation
21 are transmitted to the secretary of state, the incorporators shall petition the

1 ~~commissioner to issue a certificate setting forth the commissioner's finding~~
2 that the establishment and maintenance of the proposed corporation shall
3 promote the general good of the state. In arriving at such a finding, the
4 commissioner shall consider:
5 (i) the character, reputation, financial standing, and purposes of
6 the incorporators;
7 (ii) the character, reputation, financial responsibility, insurance
8 experience, and business qualifications of the officers and directors; and
9 (iii) such other aspects as the commissioner shall deem advisable.
10 (B) the articles of incorporation, such certificate, and the organization
11 fee shall be transmitted to the secretary of state, who shall thereupon record
12 both the articles of incorporation and the certificate.
13 (2)(A) formed as a limited liability company, before the articles of
14 organization are transmitted to the secretary of state, the organizers shall
15 petition the commissioner to issue a certificate setting forth the commissioner's
16 finding that the establishment and maintenance of the proposed company shall
17 promote the general good of the state. In arriving at such a finding, the
18 commissioner shall consider the items set forth in subdivisions (1)(A)(i)–(iii)
19 of this subsection; and

1 ~~(B) the articles of organization, such certificate, and the organization~~
2 fee shall be transmitted to the secretary of state, who shall thereupon record
3 both such certificate and the certificate of formation.

4 (c) Before receiving a license, in the case of an insurance company branch,
5 the foreign or alien insurance company, as applicable, shall petition the
6 commissioner to issue a certificate setting forth the commissioner's finding
7 that, after considering the character, reputation, financial responsibility,
8 insurance experience, and business qualifications of the officers and directors
9 of the alien or foreign insurance company, as applicable, the licensing and
10 maintenance of the branch operations will promote the general good of the
11 state. The alien or foreign insurance company, as applicable, may register to
12 do business in this state after the commissioner's certificate is issued.

13 (d) Each special insurance company and insurance company branch shall
14 pay to the commissioner a nonrefundable fee of \$600.00 for examining,
15 investigating, and processing its application for license, and for issuing the
16 same, and the commissioner is authorized to retain legal, financial, and
17 examination services from outside the department, the reasonable cost of
18 which may be charged against the applicant. The provisions of section 3576 of
19 this title shall apply to examination, investigation, and processing conducted
20 under the authority of this section. In addition, each special insurance

1 ~~company and insurance company branch shall pay a license renewal fee for~~
2 ~~each year thereafter of \$600.00.~~

3 (e) If the commissioner is satisfied that the documents and statements
4 submitted with respect to the licensing of a special insurance company or an
5 insurance company branch, as applicable, comply with the provisions of this
6 chapter, the commissioner may grant a license authorizing the conduct of
7 business in this state until April 1 thereafter, which license may be renewed.

8 (f) The capital stock of a special insurance company incorporated as a stock
9 insurer may be authorized with no par value.

10 (g) A special insurance company formed as a corporation shall have the
11 privileges and be subject to the provisions of Title 11A as well as the
12 applicable provisions contained in this chapter. In the event of a conflict
13 between the provisions of the general corporation law and the provisions of
14 this chapter, the latter shall control.

15 (h) A special insurance company formed as a limited liability company
16 shall have the privileges and be subject to the provisions of 11 V.S.A. chapter
17 21, as well as the applicable provisions contained in this chapter. In the event
18 of a conflict between the provisions of the general corporation law and the
19 provisions of this chapter, the latter shall control.

1 ~~§ 7124. CAPITAL AND SURPLUS~~

2 ~~At all times, an insurance company branch and special insurance company~~
3 ~~shall maintain minimum unimpaired, paid-in capital and surplus in an amount~~
4 ~~to be determined by the commissioner, in the form of cash or other instrument~~
5 ~~approved by the commissioner. The commissioner may prescribe additional~~
6 ~~capital and surplus based on the type, volume, and nature of the insurance~~
7 ~~business transacted.~~

8 ~~§ 7125. DIVIDENDS AND DISTRIBUTIONS~~

9 ~~No special insurance company may pay a dividend out of, or other~~
10 ~~distribution with respect to, capital or surplus without the prior approval of the~~
11 ~~commissioner.~~

12 ~~§ 7126. REPORTS~~

13 ~~(a) An insurance company branch and a special insurance company shall~~
14 ~~not be required to make any annual report except as provided in this chapter.~~

15 ~~(b) Prior to March 15 of each year, a special insurance company shall~~
16 ~~submit to the commissioner a report of its financial condition, verified by oath~~
17 ~~of two of its executive officers. A special insurance company shall report~~
18 ~~using generally accepted accounting principles, unless the commissioner~~
19 ~~requires, approves, or accepts the use of statutory accounting principles or~~
20 ~~another comprehensive basis of accounting, in each case with any appropriate~~
21 ~~or necessary modifications or adaptations thereof required or approved or~~

1 ~~accepted by the commissioner for additional information required by the~~
2 commissioner. The commissioner shall determine the form of report to be
3 filed by a special insurance company. Subdivision 6002(c)(3) of this title shall
4 apply to each report filed under this section.

5 (c) Prior to March of each year, or with the approval of the commissioner
6 within 60 days after its fiscal year-end, an insurance company branch shall file
7 with the commissioner a copy of all reports and statements required to be filed
8 under the laws of its domicile jurisdiction, verified by oath of two of its
9 executive officers.

10 (d) A special insurance company may make written application for filing
11 the required report on a fiscal year-end. If an alternative reporting date is
12 granted, the annual report is due 75 days after the fiscal year-end.

13 § 7127. EXAMINATION AND INVESTIGATIONS

14 (a)(1) At least once in three years, and whenever the commissioner
15 determines it to be prudent, the commissioner shall personally, or by some
16 competent person appointed by the commissioner, visit each special insurance
17 company and thoroughly inspect and examine its affairs to ascertain its
18 financial condition, its ability to fulfill its obligations, and whether it has
19 complied with the provisions of this chapter. The commissioner may enlarge
20 the aforesaid three-year period to five years, provided the special insurance
21 company is subject to a comprehensive annual audit during such period of a

1 ~~scope satisfactory to the commissioner by independent auditors approved by~~
2 the commissioner. The expenses and charges of the examination shall be paid
3 to the state by the company examined, and the commissioner of finance and
4 management shall issue his or her warrants for the proper charges incurred in
5 all examinations.

6 (2) An insurance company branch shall submit to the commissioner a
7 copy of each periodic examination of the company that has established the
8 insurance company, as conducted by the domicile regulator of such company.

9 (b) The provisions of section 3576 of this title shall apply to examinations
10 conducted under this section.

11 (c) All examination reports, preliminary examination reports or results,
12 working papers, recorded information, and documents and copies thereof
13 produced by, obtained by, or disclosed to the commissioner or any other
14 person in the course of an examination made under this section are confidential
15 and are not subject to subpoena and may not be made public by the
16 commissioner or an employee or agent of the commissioner without the written
17 consent of the company, except to the extent provided in this subsection.
18 Nothing in this subsection shall prevent the commissioner from using such
19 information in furtherance of the commissioner's regulatory authority under
20 this title. The commissioner may, in the commissioner's discretion, grant
21 access to such information to public officers having jurisdiction over the

1 ~~regulation of insurance in any other state or country, or to law enforcement~~
2 officers of this state or any other state or agency of the federal government at
3 any time, so long as such officers receiving the information agree in writing to
4 hold it in a manner consistent with this section.

5 § 7128. LICENSE SUSPENSION OR REVOCATION

6 (a) The license of an insurance company branch and a special insurance
7 company may be suspended or revoked by the commissioner for any of the
8 following reasons:

9 (1) insolvency or impairment of capital or surplus;

10 (2) failure to meet the requirements of section 7123 of this subchapter;

11 (3) refusal or failure to submit an annual report, as required by this
12 chapter, or any other report or statement required by law or by lawful order of
13 the commissioner;

14 (4) failure to comply with the provisions of its owner charter, bylaws, or
15 other organizational document;

16 (5) failure to submit to or pay the cost of examination or any legal
17 obligation relative thereto, as required by this chapter;

18 (6) use of methods that, although not otherwise specifically prohibited
19 by law, nevertheless render its operation detrimental or its condition unsound
20 with respect to the public or to its policyholders; or

21 (7) failure otherwise to comply with the laws of this state.

1 ~~(b) If the commissioner finds, upon examination, hearing, or other~~
2 ~~evidence, that any insurance company branch or special insurance company~~
3 ~~has violated any provision of subsection (a) of this section, the commissioner~~
4 ~~may suspend or revoke such company's license if the commissioner deems it~~
5 ~~in the best interest of the public and the policyholders, notwithstanding any~~
6 ~~other provision of this title.~~

7 § 7129. LEGAL INVESTMENTS

8 An insurance company branch and a special insurance company shall not be
9 subject to any restrictions on allowable investments; provided the
10 commissioner may prohibit or limit any investment that threatens the solvency
11 or liquidity of the company, and the commissioner shall approve any loan by
12 an insurance company branch or special insurance company to its parent
13 company or affiliates.

14 § 7130. RATING ORGANIZATIONS; MEMBERSHIPS

15 No insurance company branch or special insurance company shall be
16 required or eligible to join a rating organization.

17 § 7131. EXEMPTION FROM COMPULSORY ASSOCIATIONS

18 No insurance company branch or special insurance company shall be
19 permitted to join or contribute financially to any plan, pool, association, or
20 guaranty or insolvency fund in this state, nor shall any such company, or any
21 insured or affiliate thereof, receive any benefit from any such plan, pool,

1 ~~association, or guaranty or insolvency fund for claims arising out of the~~
2 ~~operations of such company.~~

3 § 7132. APPLICABLE LAWS

4 No provisions of this title, other than those contained in this chapter or
5 contained in specific references contained in this chapter, shall apply to an
6 insurance company branch or special insurance company.

7 § 7133. DELINQUENCY

8 Except as otherwise provided in this chapter, the terms and conditions set
9 forth in chapter 145 of this title shall apply in full to an insurance company
10 branch and to a special insurance company.

11 Sec. 4. EFFECTIVE DATE

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

Sec. 1. TITLE

This act shall be known as the "Insurance Business Transfer Act."

Sec. 2. FINDINGS AND PURPOSE

(a) The Vermont general assembly finds:

(1) The creation of jobs and investment in the state of Vermont through
business expansion and recruitment is of the highest importance.

(2) Vermont has created a thriving alternative risk financing industry,
which has provided Vermonters with well-paying jobs and has created
significant premium tax revenue for the state.

(b) The purpose of this act is to facilitate and streamline the process for transfers of closed blocks of commercial insurance policies and reinsurance agreements between solvent insurance companies.

Sec. 3. 8 V.S.A. chapter 147 is added to read:

CHAPTER 147. INSURANCE BUSINESS TRANSFERS

§ 7111. DEFINITIONS

As used in this chapter:

(1) “Assuming insurer” means an insurance company that acquires an insurance obligation or risk from a transferring insurer pursuant to a plan and that is a domestic insurer that has a certificate of authority issued by the commissioner under chapter 101 of this title.

(2) “Closed block” means a block, line, or group of businesses which an insurance company ceases to offer or sell to new applicants.

(3) “Comment period” means the 60-day period starting on the date the commissioner authorizes notice regarding a plan to be issued pursuant to subsection 7114(d) of this chapter. For good cause, the comment period may be extended by the commissioner up to an additional 30 days.

(4) “Commissioner” means the commissioner of financial regulation.

(5) “Department” means the department of financial regulation.

(6) “Domicile regulator” means the insurance regulatory authority of the domicile jurisdiction of a transferring insurer if such insurance company is a foreign insurance company or an alien insurance company.

(7) “Insurance business transfer” means a policy transfer or a reinsurance transfer.

(8) “Insurance business transfer plan” or “plan” means a plan that sets forth all provisions and includes all documentation regarding an insurance business transfer required under this chapter.

(9) “Parent company” means any person that organizes an insurance company the business of which is limited to the ownership and administration of policies and reinsurance agreements that are assumed by such insurance company under this chapter.

(10) “Party” means any person so defined under subsection 7118(c) of this chapter.

(11) “Personal lines insurance” means property and casualty coverage sold to an individual or family for primarily noncommercial purposes and includes health, automobile, life, and homeowner’s insurance.

(12) “Plan summary” means the written statement of the key terms and provisions of a plan described under subdivision 7114(b)(12) of this chapter.

(13) “Policy” means a contract of property insurance, casualty insurance, or a combination of property and casualty insurance, other than a

personal lines insurance contract or an insurance contract that is subject to regulation under the workers' compensation laws of any state, which is not a reinsurance agreement.

(14) "Policyholder" means the person identified as the policyholder or first named in a policy.

(15) "Policy transfer" means the transfer by a transferring insurer and the assumption by an assuming insurer of all rights, obligations, and liabilities of the transferring insurer with respect to a closed block of policies and any reinsurance agreements that are included in a plan.

(16) "Reinsurance agreement" means a contract of reinsurance between a transferring insurer and another insurance company with respect to which a transferring insurer is a party as the reinsurer or the reinsured.

(17) "Reinsurance transfer" means the transfer by the transferring insurer and the assumption by an assuming insurer of all rights, obligations, and liabilities of a transferring insurer with respect to a closed block of reinsurance agreements that are included in a plan which does not include the transfer or assumption of any right, liability, or obligation of the transferring insurer with respect to a policy and to the extent such transfers are not preempted under the Nonadmitted Reinsurance Reform Act, Subtitle B of Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203.

(18) "Transferring insurer" means an insurance company that transfers an insurance obligation or risk to an assuming insurer pursuant to a plan and that is a domestic insurer or a foreign or alien insurance company that has a certificate of authority issued by the commissioner under chapter 101 of this title.

§ 7112. JURISDICTION; APPEALS

(a) The commissioner shall have exclusive jurisdiction with respect to the review and approval or denial of any insurance business transfer plan.

(b) Any appeal of an order of the commissioner issued under section 7116 of this chapter shall be to the supreme court only, and such review shall be on the record and not de novo.

§ 7113. EXCLUDED TRANSACTIONS

This chapter shall not apply to any transfer of a policy or reinsurance agreement if all parties with an interest in the policies and reinsurance agreements being transferred have approved the transfer and the transfer is otherwise permitted under applicable law, including chapter 157 of this title.

§ 7114. APPLICATION FOR APPROVAL; INSURANCE BUSINESS

TRANSFER PLAN

(a) A transferring insurer and an assuming insurer shall file a plan with the commissioner and, at the time of filing, shall pay to the commissioner the fee described in subdivision 7117(a)(1) of this chapter.

(b) A plan shall include the following:

(1) a list of all parties, policies, and reinsurance agreements included in the plan and the identity of any parent company of the assuming insurer;

(2) certificates issued by the domicile regulators of the transferring insurer and the assuming insurer and, if applicable, a parent company that is a regulated insurance company, each attesting to the good standing of the transferring insurer, the assuming insurer, and the parent company under the insurance regulatory laws of the jurisdiction of their respective domicile regulator; provided that, if such certificates are not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the transferring insurer, the assuming insurer, or the parent company, as applicable, attesting to the foregoing;

(3) a statement describing the terms of each policy and reinsurance agreement, if any, regarding assignment and assumption of the rights, liabilities, and obligations of the transferring insurer with respect to each policy and reinsurance agreement;

(4) the most recent audited financial statements and annual reports filed by the transferring insurer and the assuming insurer with their respective domicile regulators and such financial information with respect to a parent company, if any, with respect to the plan that the commissioner may reasonably require;

(5) an actuarial study that quantifies the liabilities to be transferred to the assuming insurer under the policies and reinsurance agreements;

(6) the form and amount of consideration payable by the transferring insurer and proforma financial statements that demonstrate the solvency of the transferring insurer commensurate with the nature of the insurance business transfer after the transfer is effective;

(7) proforma financial statements that demonstrate the solvency of the assuming insurer commensurate with the nature of the insurance business transfer after the transfer is effective;

(8) officer certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals regarding the insurance business transfer;

(9) the form of notice to be provided to a party under this chapter and how such notice shall be provided;

(10) a statement regarding any pending dispute between the transferring insurer and any policyholder or party to a reinsurance agreement or of a disputed claim by any third party with respect to any policy or reinsurance agreement that is included in the plan;

(11) the statement described in subsection (c) of this section regarding the information and documents submitted as part of or with respect to a plan that are confidential;

(12) a plan summary that includes all information regarding the plan as reasonably required by the commissioner; and

(13) any other information that the commissioner may reasonably require with respect to the plan in the exercise of his or her reasonable discretion.

(c) The plan shall include a statement of the information and documentation included in the plan that the assuming insurer or the transferring insurer may request be given confidential treatment, which in all cases shall include all information identifying the persons insured under a policy and which may include any information that qualifies as a trade secret or other confidential research, development, or commercial information of the transferring insurer or the assuming insurer. The commissioner, subject to the exercise of his or her reasonable discretion, shall determine whether the information designated in such statement qualifies for confidential treatment. Any information qualifying for confidential treatment shall not be subject to subpoena and shall not be made public by the commissioner or by any other person; provided, however, the commissioner may in his or her discretion grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, to public officers of an international financial regulatory authority, or to state or federal law enforcement officers pursuant to a validly issued subpoena or search warrant.

provided that such officers receiving the information agree in writing to hold it in a manner consistent with this section.

(d) Within 10 days of the date the application is filed and the fee payable under subsection (a) of this section is paid in full, the commissioner shall notify the transferring insurer and the assuming insurer whether the notice described in subsection (e) of this section shall be issued. If the commissioner notifies the transferring insurer and the assuming insurer that such notice shall not be issued, the commissioner shall specify any modifications to the plan and additional information or documentation with respect to the plan that are required before such notice shall be issued. If the commissioner notifies the transferring insurer and the assuming insurer that the notice described in subsection (e) of this section shall be issued, the commissioner shall set a date for a hearing on the plan as required under subsection (g) of this section.

(e) Within 30 days of the date the commissioner notifies the transferring insurer and the assuming insurer pursuant to subsection (d) of this section that notice shall be issued, the transferring insurer shall provide notice to all parties that:

- (1) complies with the plan and the provisions of 3 V.S.A. § 809(b);
- (2) includes the plan summary, the date, time, and place of the hearing on the plan, and a statement of the right of each party to file written comments

on the plan with the commissioner or to appear and present evidence regarding the plan at the hearing or both;

(3) includes all other information reasonably required by the commissioner; and

(4) is published in two newspapers of general nationwide circulation on two separate occasions, as determined by the commissioner.

(f) During the comment period:

(1) any party may file written comments on the plan with the commissioner; and

(2) the transferring insurer and the assuming insurer shall file with the commissioner such additional documentation and information regarding the plan as the commissioner may reasonably require.

(g) The hearing on the plan shall be held not later than 60 days after the end of the comment period. Any party that participates in such a hearing shall bear its own costs of participation, including attorney's fees.

§ 7115. PLAN REVIEW

(a) The commissioner shall retain an actuary to conduct an actuarial study quantifying the liabilities to be transferred to the assuming insurer under the policies and reinsurance agreements and is authorized to retain any other legal, financial, and examination services from outside the department to assist in the review of the plan.

(b) In reviewing the plan, the commissioner shall take into account all written comments filed with respect to the plan and evidence taken at the hearing on the plan and any other factors that the commissioner reasonably deems relevant with respect to the plan, but in all cases the commissioner shall consider and determine each of the following:

(1) the solvency of the transferring insurer and the assuming insurer both before and after the implementation of the proposed plan;

(2) the ability of the assuming insurer to comply with all requirements of a policy and reinsurance agreements in the case of a policy transfer or with all requirements of reinsurance agreements in the case of a reinsurance transfer, including administration of claims in process as of and after the effective date of the transfer;

(3) the plan does not materially adversely affect either the interests of objecting parties or the interests of policyholders; and

(4) the fairness of the plan to all parties.

§ 7116. ORDER

(a) Within 30 days of the date the hearing is held on the plan, the commissioner shall issue an order setting forth the amount of fees payable by the transferring insurer under subdivision 7117(a)(2) of this chapter, payable not later than 14 days after the date of such order. Upon receipt of such payment the commissioner shall within five days issue an order that complies

with subsection 7118(c) of this chapter approving or disapproving the plan in whole or in part. Whenever it is not practicable to issue an order within 30 days, the commissioner may extend such time up to an additional 30 days.

If the order approves the plan, it shall:

(1) set forth the fee payable by the assuming insurer under subsection 7117(b) of this chapter, which fee shall be payable not later than 14 days after the date of such order;

(2) not be effective until such time as the fees described in this subsection have been paid in full.

(b) An order issued pursuant to subsection (a) of this section approving the plan shall transfer to the assuming insurer all of the transferring insurer's rights, obligations, liabilities, and assets with respect to each policy and reinsurance agreement that is subject to the plan such that the transferring insurer has no further rights, obligations, or liabilities with respect to such policies and reinsurance agreements and the assuming insurer has all such rights, obligations, and liabilities as if it, instead of the transferring insurer, were the original party to such agreement.

(c) The commissioner may issue any other orders that he or she reasonably deems necessary to fully implement an order issued under subsection (a) of this section.

(d) No order issued under subsection (a) or (c) of this section shall be construed to modify or amend the terms of a policy or reinsurance agreement, other than with respect to matters specifically subject to modification or amendment under this chapter.

(e) If a policy or reinsurance agreement contains a provision prohibiting the transfer of the policy or reinsurance agreement without the consent of the policyholder or other person, then such policy or reinsurance agreement shall not be transferred under this chapter unless the applicable policyholder or other person provides written consent to the proposed transfer.

(f) If a party objects to a plan, the commissioner may not approve the plan with respect to such party unless the commissioner determines that the plan:

(1) does not materially adversely affect the objecting party;

(2) is in the public interest; and

(3) otherwise complies with the requirements of this chapter.

(g) At any time before the commissioner issues the order described in subsection (a) of this section, the transferring insurer and the assuming insurer may file an amendment to the plan subject to rules adopted by the commissioner.

(h) At any time before the commissioner issues the order described in subsection (a) of this section, either the transferring insurer or the assuming insurer may withdraw the plan without prejudice. Upon such withdrawal,

however, the commissioner shall issue an order setting forth the amount of fees payable by the transferring insurer under subdivision 7117(a)(2) of this chapter, payable not later than 14 days after the date of such order.

§ 7117. FEES AND COSTS

(a) To cover the costs of processing and reviewing a plan under this chapter, the transferring insurer shall pay to the commissioner the following nonrefundable fees at the times set forth in subsections 7114(a) and 7116(a) of this chapter:

(1) an administrative fee in the amount of \$30,000.00; and

(2) the reasonable cost of persons retained by the commissioner under subsection 7115(a) of this chapter.

(b) When a plan is approved, the assuming insurer shall pay the commissioner a transfer fee equal to the sum of:

(1) One percent of the first \$100,000,000.00 of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded; and

(2) 0.5 percent of the gross liabilities transferred, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded that exceed \$100,000,000.00.

(c) All fees and payments received by the department under subsection 7117(a) of this chapter and 10 percent of the transfer fee under

subsection 7117(b) of this chapter shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer fee shall be deposited directly into the general fund.

§ 7118. APPLICABLE LAWS

(a) In the event of any conflict between a provision of this chapter and any other provision of this title, such provision of this chapter shall control.

Without limitation of the foregoing, chapter 157 of this title shall not apply to any insurance business transfer under this chapter.

(b) A Vermont insured shall be entitled to receive any benefit under subchapter 9 (property and casualty insurance guaranty association) of chapter 101 of this title for claims arising out of any policy that is subject to an insurance business transfer under this chapter.

(c) A proposed insurance business transfer shall be a “contested case” under chapter 25 of Title 3, except that a “party” shall be limited to the transferring insurer, the assuming insurer, each counterparty to a reinsurance agreement, each policyholder in the case of a policy transfer only, and any other person the commissioner approves as a party with respect to such proceeding.

§ 7119. ASSUMING INSURERS

No assuming insurer shall be a party to an insurance business transfer under this chapter unless:

(1) its board of directors or committee of managers holds at least one meeting each year in this state;

(2) it maintains its principal place of business in this state; and

(3) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this state; provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the assuming insurer, the secretary of state shall be an agent of such insurer upon whom any process, notice, or demand may be served.

§ 7120. POSTING OF PLANS ON WEBSITE

The commissioner shall require that all plans filed with the department are posted on the department's website, along with any other notice or other information the commissioner deems appropriate.

§ 7121. REGULATION OF INSURERS AND SERVICE PROVIDERS

(a) Except as provided in subsection (b) of this section, a transferring insurer and an assuming insurer shall be subject to all provisions of this title and all rules adopted by the commissioner under this title applicable to property and casualty insurance companies domiciled or licensed in this state.

(b) The commissioner shall adopt rules regarding the provision of services to an assuming insurer by persons other than any director, officer, or employee of such assuming insurer with respect to the administration of policies and reinsurance agreements assumed by such assuming insurer

pursuant to an insurance business transfer, including any licensing or other requirements.

(c) The commissioner may adopt any other rules necessary or appropriate to carry out the provisions of this chapter. Such rules shall ensure that the insurance business transfers authorized by this chapter take into account any rights and obligations arising under the laws of the domicile jurisdiction of any affected insurers and policyholders.

Sec. 4. INSURANCE BUSINESS TRANSFERS; REPORTS

(a) Interim report. On or before January 15, 2013, the commissioner of financial regulation shall submit to the house committee on commerce and economic development and the senate committee on finance a report summarizing the rulemaking process authorized under Sec. 3 of this act, including the major issues raised by interested parties. The interim report shall include also a description of the number and nature of any insurance business transfer plans expected to be filed under 8 V.S.A. chapter 147, as well as the commissioner's recommendations, if any, for statutory amendments to 8 V.S.A. chapter 147.

(b) Final report. On or before January 15, 2014, the commissioner of financial regulation shall submit to the house committee on commerce and economic development and the senate committee on finance a report describing the number and nature of insurance business transfer plans filed

under 8 V.S.A. chapter 147 and their current status. The report shall include also the commissioner's recommendations, if any, for statutory amendments to 8 V.S.A. chapter 147.

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1, 2, and 4 of this act shall take effect on passage.

(b) Sec. 3 of this act shall take effect on passage only with respect to the rulemaking authority granted to the commissioner of financial regulation under that section. The remaining provisions of Sec. 3 of this act shall take effect May 1, 2013, provided all rules required under Sec. 3 of this act have been adopted.