

1

H.198

2

Introduced by Representatives Kitzmiller of Montpelier, Botzow of Pownal,

3

Kupersmith of South Burlington, Marcotte of Coventry, and

4

Young of Glover

5

Referred to Committee on

6

Date:

7

Subject: Insurance; commercial; closed block; nonadmitted; transfer

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Statement of purpose of bill as introduced: This bill proposes to regulate the

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receipt and management by Vermont companies of closed blocks of

10

nonadmitted commercial insurance policies and reinsurance agreements.

11

An act relating to the Legacy Insurance Management Act

12

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

13

~~Sec. 1. TITLE~~

14

~~This act shall be known as the "Legacy Insurance Management Act."~~

15

~~Sec. 2. FINDINGS AND PURPOSE~~

16

~~(a) The Vermont General Assembly finds:~~

17

~~(1) The creation of jobs and investment in the state of Vermont through~~

18

~~business expansion and recruitment is of the highest importance.~~

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

4 (b) The purpose of this act is to regulate the receipt and management by
5 solvent Vermont companies of closed blocks of nonadmitted commercial
6 insurance policies and reinsurance agreements.

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

8 CHAPTER 147. LEGACY INSURANCE TRANSFERS

9 § 7111. DEFINITIONS

10 As used in this chapter:

11 (1) "Assuming company" means a Vermont-domiciled company
12 established specifically to acquire a closed block under a legacy insurance
13 transfer plan approved by the Commissioner.

14 (2) "Closed block" means a block, line, or group of commercial
15 nonadmitted insurance policies or reinsurance agreements or both:

16 (A) which a transferring insurer has ceased to offer, write, or sell to
17 new applicants;

18 (B) for which all policy periods have been fully expired for not less
19 than 60 months;

20 (C) for which active premiums are no longer being paid; and

1 ~~(D) which is not workers' compensation, health, life, or any other~~
2 personal line of insurance.

3 (3) "Comment period" means the 60-day period starting on the date
4 notice is issued by an assuming company under subsection 7112(h) of this
5 chapter. For good cause, the comment period may be extended by the
6 Commissioner up to an additional 30 days.

7 (4) "Commissioner" means the Commissioner of Financial Regulation.

8 (5) "Controlling party" means a person having "control" of an assuming
9 company or transferring insurer. "Control" shall have the same meaning as in
10 section 3681 of this title.

11 (6) "Department" means the Department of Financial Regulation.

12 (7) "Domicile regulator" means the primary insurance regulatory
13 authority of the domicile jurisdiction of a transferring insurer.

14 (8) "Inward reinsurance agreement" means a contract of reinsurance
15 between a transferring insurer and another insurance company with respect to
16 which a transferring insurer is a party as the reinsurer.

17 (9) "Inward reinsurance counterparty" means an insurance company,
18 other than the transferring insurer, that is a party to an inward reinsurance
19 agreement.

20 (10) "Legacy insurance transfer" means the transfer of a closed block in
21 accordance with the requirements of this chapter.

1 ~~(11) "Legacy insurance transfer plan" or "plan" means a plan that sets~~
2 ~~forth all provisions and includes all documentation regarding a legacy~~
3 ~~insurance transfer required under subsection 7112(b) of this chapter.~~

4 (12) "Nonadmitted insurance" means any property and casualty
5 insurance permitted to be placed directly or through a surplus lines broker with
6 a nonadmitted insurer eligible to accept such insurance.

7 (13) "Nonadmitted insurer" means, with respect to a state, an insurer not
8 licensed to engage in the business of insurance in such state. The term does
9 not include a risk retention group.

10 (14) "Outward reinsurance agreement" means a contract of reinsurance
11 between a transferring insurer and another insurance company with respect to
12 which a transferring insurer is a party as the reinsured.

13 (15) "Party" means:

14 (A) the assuming company;

15 (B) the transferring insurer;

16 (C) with respect to any policy to be transferred under a plan, each
17 policyholder;

18 (D) with respect to any inward reinsurance agreement to be
19 transferred under a plan, each inward reinsurance counterparty; and

20 (E) any other person the Commissioner approves as a party with
21 respect to such proceeding.

1 ~~(16) "Plan summary" means a written statement of the key terms and~~
2 ~~provisions of a plan as required under subdivision 7112(b)(18) of this chapter.~~

3 ~~(17) "Policy" means a contract of property and casualty insurance that is~~
4 ~~not a contract of reinsurance or a personal lines insurance policy.~~

5 ~~(18) "Policyholder" means the person identified as the policyholder or~~
6 ~~first named in a policy.~~

7 ~~(19) "Outward reinsurance agreement" means a contract of reinsurance~~
8 ~~between a transferring insurer and another insurance company or companies~~
9 ~~with respect to which the transferring insurer is a party as the reinsured.~~

10 ~~(20) "Outward reinsurance counterparty" means an insurance company,~~
11 ~~other than the transferring insurer, that is a party to an outward reinsurance~~
12 ~~agreement.~~

13 ~~(21) "Reinsurance agreement" means an inward reinsurance agreement~~
14 ~~or an outward reinsurance agreement.~~

15 ~~(22) "Reinsurance agreement counterparty" means an inward~~
16 ~~reinsurance agreement counterparty or an outward reinsurance counterparty.~~

17 ~~(23) "Transferring insurer" means a nonadmitted insurer that is~~
18 ~~transferring a closed block to an assuming company under a legacy insurance~~
19 ~~transfer plan.~~

§ 7112. APPLICATION; FEE; PLAN

(a) An assuming company shall file a plan with the Commissioner and, at the time of filing, shall pay to the Commissioner the fee described in subdivision 7116(a)(1) of this chapter.

(b) A plan shall include the following:

(1) a list of all policies and inward reinsurance agreements in the closed block to be transferred under the plan;

(2) a list of all outward reinsurance agreements attaching to the closed block;

(3) a list of all policyholders and inward reinsurance counterparties to policies and inward reinsurance agreements in the closed block to be transferred under the plan;

(4) the identities of the transferring insurer and the assuming company and their respective controlling parties, if any;

(5) certificates issued by the domicile regulator of the transferring insurer and, if applicable, by any controlling party that is a regulated insurance company attesting to the good standing of the transferring insurer and the controlling party under the insurance regulatory laws of the jurisdiction of their respective domiciles; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the

1 ~~transferring insurer or the controlling party, as applicable, attesting to the~~

2 foregoing;

3 (6) a letter of no objection, or the equivalent, from the domicile
4 regulator of the transferring insurer confirming that the regulator has no
5 objection to the transfer of the closed block under the plan; or, if any such
6 certificate is not obtainable under the laws or practices of a domicile regulator,
7 a certificate of an officer of the transferring insurer or the controlling party, as
8 applicable, attesting to the foregoing;

9 (7) a statement describing the terms and conditions, if any, of any policy
10 or inward reinsurance agreement in the closed block prohibiting assignment
11 and assumption of the rights, liabilities, and obligations of the transferring
12 insurer without the prior written consent of the respective policyholder or
13 inward reinsurance counterparty;

14 (8) the most recent audited financial statements and annual reports of
15 the transferring insurer filed with its domicile regulator and such other
16 financial information as the Commissioner may reasonably require with
17 respect to a controlling party, if any;

18 (9) an actuarial study or opinion in a form satisfactory to the
19 Commissioner that quantifies the liabilities to be transferred to the assuming
20 company under the policies or inward reinsurance agreements in the closed
21 block;

1 ~~(10) a statement of outward reinsurance agreement assets attaching to~~
2 ~~the closed block;~~

3 ~~(11) three years of pro-forma financial statements demonstrating the~~
4 ~~solvency of the assuming company;~~

5 ~~(12) officer's certificates of the transferring insurer and the assuming~~
6 ~~company attesting that each has obtained all required internal approvals and~~
7 ~~authorizations regarding the plan and completed all necessary and appropriate~~
8 ~~actions relating thereto;~~

9 ~~(13) the form of notice to be provided under the plan to any policyholder~~
10 ~~or inward reinsurance counterparty in the closed block and how such notice~~
11 ~~shall be provided;~~

12 ~~(14) the form of notice to be provided under the plan to any outward~~
13 ~~reinsurance counterparty attaching to the closed block and how such notice~~
14 ~~shall be provided;~~

15 ~~(15) a statement describing any pending dispute between the transferring~~
16 ~~insurer and any policyholder or inward reinsurance counterparty or any~~
17 ~~disputed claim by a third party with respect to any policy or inward reinsurance~~
18 ~~agreement in the closed block;~~

19 ~~(16) a statement describing the assuming company's proposed~~
20 ~~investment policies, officers, directors, key employees, and other arrangements~~
21 ~~regarding matters such as:~~

1 ~~(A) any contemplated third party claims management and~~
2 ~~administration arrangements;~~

3 ~~(B) operations, management, and solvency relating to the closed~~
4 ~~block; and~~

5 ~~(C) a detailed plan for annual or other periodic financial reporting to~~
6 ~~the Commissioner, including an annual financial audit with actuarial opinion;~~

7 ~~(17) a statement from the assuming company consenting to the~~
8 ~~jurisdiction of the Commissioner with regard to ongoing oversight of~~
9 ~~operations, management, and solvency relating to the closed block, including~~
10 ~~the authority of the Commissioner to conduct examinations under section 7117~~
11 ~~of this chapter and to set reasonable standards for oversight of the assuming~~
12 ~~company, including:~~

13 ~~(A) material transactions with affiliates;~~

14 ~~(B) adequacy of surplus; and~~

15 ~~(C) dividends and other distributions, including limitations on~~
16 ~~extraordinary dividends.~~

17 ~~(18) a statement from the assuming company submitting to the~~
18 ~~jurisdiction and authority of the Commissioner of Insurance, or the equivalent~~
19 ~~regulatory authority, in states in which policyholders or reinsurance~~
20 ~~counterparties reside, for the purposes of implementing each such state's~~
21 ~~Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's~~

1 ~~market conduct statutory framework. Notwithstanding any provision to the~~
2 ~~contrary in such act, the submission under this subdivision shall not confer a~~
3 ~~private cause of action upon any policyholder or reinsurance counterparty~~
4 ~~against the assuming company, even if the applicable Unfair Claims Settlement~~
5 ~~Practices Act, or equivalent, purports to provide a private cause of action;~~
6 ~~(19) a plan summary which includes all information regarding the plan~~
7 ~~as reasonably required by the Commissioner;~~
8 ~~(20) the statement described in subsection (c) of this section regarding~~
9 ~~the information and documents submitted as part of or with respect to a plan~~
10 ~~which are confidential; and~~
11 ~~(21) any other information the Commissioner may reasonably require~~
12 ~~with respect to the plan in the exercise of his or her discretion.~~
13 ~~(c) The plan shall include a statement of the information and~~
14 ~~documentation included in the plan that the assuming company or the~~
15 ~~transferring insurer may request be given confidential treatment, which in all~~
16 ~~cases shall include all information identifying policyholders and reinsurance~~
17 ~~counterparties and which may include any information that qualifies as a trade~~
18 ~~secret or other confidential research, development, or commercial information~~
19 ~~of the transferring insurer or the assuming company. The Commissioner,~~
20 ~~subject to the exercise of his or her reasonable discretion, shall determine~~
21 ~~whether the information designated in such statement qualifies for confidential~~

1 ~~treatment and therefore shall be exempt from public inspection and copying~~
2 under the Public Records Act. Any information qualifying for confidential
3 treatment shall not be subject to subpoena and shall not be made public by the
4 Commissioner or by any other person; provided, however, the Commissioner
5 may in his or her discretion grant access to such information to public officers
6 having jurisdiction over the regulation of insurance in any other state or
7 country, to public officers of a foreign or alien financial regulatory authority,
8 or to state or federal law enforcement officers pursuant to a validly issued
9 subpoena or search warrant; provided that such officers receiving the
10 information agree in writing to hold it in a manner consistent with this section.

11 (d) Within 10 business days of the date the application is filed and the fee
12 payable under subsection (a) of this section is paid in full, the Commissioner
13 shall notify the assuming company whether the plan is complete. In his or her
14 discretion, the Commissioner may extend the 10 business-day application
15 review period for an additional 10 business days. With the written consent of
16 the assuming company, the application review period may be extended beyond
17 20 business days.

18 (e) Upon submission of a plan, the assuming company shall have a
19 continuing obligation to notify the Commissioner promptly and in a full and
20 accurate manner of any material change to information in the plan.

1 ~~(f) If the Commissioner notifies the assuming company that the plan is not~~
2 ~~complete, the Commissioner shall specify any modifications, supplements, or~~
3 ~~amendments to the plan that are required, and any additional information or~~
4 ~~documentation with respect to the plan that must be provided to the~~
5 ~~Commissioner before the Commissioner issues the notice referenced in~~
6 ~~subsection (d) of this section.~~

7 (g) If the Commissioner notifies the assuming company that the plan is
8 complete, the Commissioner shall set a date, time, and place for a hearing on
9 the plan as required under subsection (l) of this section.

10 (h) Within 30 days of the date the Commissioner notifies the assuming
11 company under subsection (g) of this section that the plan is complete, the
12 assuming company shall cause notice to be provided, in the form and manner
13 specified in the plan, to all policyholders and reinsurance counterparties listed
14 in the plan. The notice shall:

15 (1) comply with the plan and the provisions of 3 V.S.A. § 809(b);

16 (2) include the plan summary;

17 (3) describe the effect of the plan and the transfer on each policyholder
18 and reinsurance counterparty and on his or her respective policy or reinsurance
19 agreement, as applicable;

20 (4) state the right of each policyholder or inward reinsurance
21 counterparty to:

1 ~~(A) accept or object to the plan, together with a description of the~~
2 ~~means by which a policyholder or inward reinsurance counterparty may~~
3 ~~expressly accept or object to the plan and the effect of such acceptance or~~
4 ~~objection;~~
5 ~~(B) file written comments on the plan with the Commissioner; and~~
6 ~~(C) appear and present evidence on the plan at the hearing;~~
7 ~~(5) describe the terms and conditions under which a policyholder or~~
8 ~~inward reinsurance counterparty shall be deemed to have accepted the plan;~~
9 ~~(6) specify the date, time, and place of the hearing on the plan;~~
10 ~~(7) include all other information reasonably required by the~~
11 ~~Commissioner; and~~
12 ~~(8) be published in two newspapers of general nationwide circulation on~~
13 ~~two separate occasions, as determined by the Commissioner.~~
14 ~~(i) During the comment period:~~
15 ~~(1) any party may file written comments on the plan with the~~
16 ~~Commissioner;~~
17 ~~(2) any policyholder or inward reinsurance counterparty may, by~~
18 ~~delivery of such notice in accordance with the terms and conditions of the plan~~
19 ~~and prior to the expiration of the comment period, provide an express written~~
20 ~~notice that he or she accepts or objects to the plan; and~~

1 ~~(3) the assuming company shall file with the Commissioner such~~
2 additional documentation and information regarding the plan as the
3 Commissioner may reasonably require.

4 (j) In the event that, prior to the expiration of the comment period, any
5 policyholder or inward reinsurance counterparty provides express written
6 notice that he or she objects to the plan, the assuming company shall, not later
7 than 15 days after the end of the comment period, submit to the Commissioner
8 either:

9 (1) an amended list of policies and reinsurance agreements, excluding
10 such policyholder or inward reinsurance counterparty and its respective policy
11 or inward reinsurance agreement from the plan; or

12 (2) an express written notice from such policyholder or inward
13 reinsurance counterparty accepting the plan and consenting to the transfer
14 having the full force and effect of a statutory novation of its respective policy
15 or reinsurance agreement, as applicable, and withdrawing and rescinding its
16 prior notice of objection.

17 (k) Any policyholder or inward reinsurance counterparty that, prior to the
18 expiration of the comment period, has not provided express written notice
19 objecting to the plan shall be deemed to have accepted the plan and the transfer
20 shall have the full force and effect of a statutory novation of his or her
21 respective policy or inward reinsurance agreement, as applicable.

1 ~~(1) The hearing on the plan shall be held not later than 60 days after the end~~
2 of the comment period. In his or her discretion, the Commissioner may
3 postpone the hearing for an additional 10 days. With the written consent of the
4 assuming company, the hearing may be postponed beyond 70 days. Each
5 person participating in the hearing shall bear his or her own costs and
6 attorney's fees.

7 § 7113. PLAN REVIEW

8 (a) The Commissioner may retain an actuary to conduct an actuarial study
9 quantifying the liabilities under insurance policies and reinsurance agreements
10 to be transferred to the assuming company under the plan and is authorized to
11 retain any other legal, financial, and examination services from outside the
12 Department necessary to assist in plan review.

13 (b) In reviewing the plan, the Commissioner shall take into account all
14 written comments filed with respect to the plan, all evidence taken at the
15 hearing, and any other factors the Commissioner reasonably deems relevant
16 with respect to the plan. In all cases, the Commissioner shall make findings
17 with respect to each of the following:

18 (1) the solvency of the assuming company before and after the
19 implementation of the proposed plan;

20 (2) the adequacy of the assuming company's proposals described in the
21 statement required under 7112(b)(15) of this chapter;

1 ~~(3) the adequacy of the assuming company's consent to jurisdiction~~
2 required under subdivision 7112(b)(16) of this chapter;

3 (4) the ability of the assuming company to comply with all requirements
4 of the policies and inward reinsurance agreements, including the capacity of
5 the assuming company regarding the administration of claims in process on or
6 after the effective date of the transfer;

7 (5) whether any outward reinsurance agreement relating to any policy or
8 policies in the closed block will be adversely effected by the transfer;

9 (6) whether the plan materially adversely affects either the interests of
10 objecting parties or the interests of policyholders or inward reinsurance
11 counterparties who have accepted or been deemed to have accepted the plan;

12 (7) whether policyholders or inward reinsurance counterparties
13 objecting to the plan and not withdrawing such objections, together with their
14 respective insurance policies and inward reinsurance agreements, have been
15 excluded from the plan as required under subsection 7114(f) of this
16 chapter; and

17 (8) the fairness of the plan to all parties.

18 § 7114. ORDER

19 (a) Within 30 days of the date the hearing is held on the plan, the
20 Commissioner shall issue an order setting forth the amount of fees payable by
21 the assuming company under subdivision 7116(a)(2) of this chapter, payable

1 ~~not later than 14 days after the date of such order. Upon receipt of such~~
2 payment, the Commissioner shall within five days issue an order approving or
3 disapproving the plan in whole or in part. Whenever it is not practicable to
4 issue an order within 30 days, the Commissioner may extend such time up to
5 an additional 30 days. If the order approves the plan, the order shall:

6 (1) include the terms and conditions of the Commissioner's oversight
7 with regard to ongoing oversight of the operations, management, and solvency
8 relating to the closed block and any specific standards that the assuming
9 company will be required to comply with, including standards relating to:

10 (A) material transactions with affiliates;

11 (B) adequacy of surplus; and

12 (C) dividends and other distributions, including limitations on
13 dividends;

14 (2) set forth the fee payable by the assuming company under subsection
15 7116(b) of this chapter, which fee shall be payable not later than 14 days after
16 the date of such order;

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

19 (b) The Commissioner shall not approve a plan unless the Commissioner
20 finds that the assuming company:

21 (1) has sufficient assets to meet its liabilities;

1 ~~(2) has sufficient procedures in place for the handling of claims; and~~

2 (3) has provided for sufficient regulatory oversight by the Department.

3 (c) An order issued under subsection (a) of this section approving the plan
4 shall have the full force and effect of a statutory novation with respect to all
5 policyholders and reinsurance counterparties and their respective policies and
6 reinsurance agreements under the plan and shall provide that the transferring
7 insurer shall have no further rights, obligations, or liabilities with respect to
8 such policies and reinsurance agreements, and that the assuming company shall
9 have all such rights, obligations, and liabilities as if it, instead of the
10 transferring insurer, were the original party to such policies and reinsurance
11 agreements.

12 (d) The Commissioner may issue any other orders he or she reasonably
13 deems necessary to fully implement an order issued under subsection (a) of
14 this section.

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

19 (f) Notwithstanding any provision of this chapter to the contrary, if a policy
20 or inward reinsurance agreement contains a provision prohibiting the transfer
21 of the policy or inward reinsurance agreement without the consent of the

1 ~~policyholder or inward reinsurance counterparty, then such policy or inward~~
2 reinsurance agreement shall not be transferred under this chapter unless the
3 applicable policyholder or inward reinsurance counterparty provides written
4 consent to the proposed transfer.

5 (g) If a party objects to a plan, the Commissioner may not approve the plan
6 with respect to such party unless the Commissioner determines that the plan:

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

8 (2) otherwise complies with the requirements of this chapter.

9 (h) At any time before the Commissioner issues the order described in
10 subsection (a) of this section, the assuming company may file an amendment to
11 the plan, subject to the Commissioner's approval.

12 (i) At any time before the Commissioner issues the order described in
13 subsection (a) of this section, the assuming company may withdraw the plan
14 without prejudice. Upon such withdrawal, however, the Commissioner shall
15 issue an order setting forth the amount of fees payable by the assuming
16 company under subdivision 7116(a)(2) of this chapter, payable not later than
17 14 days after the date of such order.

18 § 7115. JURISDICTION; APPEALS

19 (a) The Commissioner shall have exclusive jurisdiction with respect to the
20 review and approval or denial of any plan.

1 ~~(b) Any party aggrieved by a final order of the Commissioner may appeal~~
2 ~~that order to the Vermont Supreme Court under 3 V.S.A. § 815.~~

3 § 7116. FEES AND COSTS

4 (a) To cover the costs of processing and reviewing a plan under this
5 chapter, the assuming company shall pay to the Commissioner the following
6 nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of
7 this chapter:

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

9 (2) the reasonable costs of persons retained by the Commissioner under
10 subsection 7113(a) of this chapter.

11 (b) When a plan is approved, the assuming company shall pay the
12 Commissioner a transfer fee equal to the sum of:

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

16 (2) 0.5 percent of the gross liabilities transferred that exceed
17 \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss
18 adjustment expenses with no reductions for amounts ceded.

19 (c) All fees and payments received by the Department under subsection (a)
20 of this section and 10 percent of the transfer fee under subsection (b) of this
21 section shall be credited to the insurance regulatory and supervision fund under

1 ~~section 80 of this title. The remaining 90 percent of the transfer fee shall be~~
2 ~~deposited directly into the general fund.~~

3 § 7117. EXAMINATIONS

4 (a) The Commissioner has the authority to order any assuming company to
5 produce any records, books, and papers in the possession of the assuming
6 company or its affiliates necessary to ascertain the financial condition or
7 legality of conduct of the assuming company.

8 (b) The Commissioner shall exercise his or her authority under subsection
9 (a) of this section only if he or she has reason to believe the interests of the
10 assuming company's policyholders may be adversely affected under the plan.

11 (c) The Commissioner may retain, at the assuming company's expense,
12 attorneys, actuaries, accountants, and other experts not otherwise a part of the
13 Commissioner's staff reasonably necessary to assist with an examination under
14 this section. Any persons so retained shall be under the direction and control
15 of the Commissioner and shall act in a purely advisory capacity.

16 (d) Each assuming company that produces records, books, and papers for
17 examination under this section shall pay the expense of such examination.

18 § 7118. APPLICABLE LAWS

19 (a) Chapter 157 (transfer and novation of insurance contracts) of this title
20 shall not apply to any legacy insurance transfer under this chapter.

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

3 ~~(c) A proposed legacy insurance transfer shall be a “contested case” under~~
4 ~~chapter 25 of Title 3, except that a “party” shall be limited as defined in~~
5 ~~subdivision 7111(15) of this chapter.~~

6 § 7119. ASSUMING COMPANY; BOARD; PRINCIPAL PLACE OF
7 BUSINESS; REGISTERED AGENT

8 No assuming company shall be a party to a legacy insurance transfer under
9 this chapter unless:

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

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

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

18 § 7120. POSTING OF PLANS ON WEBSITE

19 The Commissioner shall require that all plans filed with the Department are
20 posted on the Department’s website, along with any other notice or other

1 ~~information the Commissioner deems appropriate, excluding any information~~
2 ~~designated as confidential under subsection 7112(c) of this chapter.~~

3 § 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE

4 PROVIDERS

5 (a) Except as provided in subsection (b) of this section, an assuming
6 company shall be subject to all rules and standards adopted by the
7 Commissioner under this subchapter and also shall be subject to all Vermont
8 rules, regulations, and standards governing market conduct and unfair trade
9 practices.

10 (b) The Commissioner may adopt rules regarding the provision of services
11 to an assuming company by persons other than any director, officer, or
12 employee of the assuming company with respect to the administration of
13 policies and reinsurance agreements assumed by the assuming company under
14 a legacy insurance transfer, including licensing or other requirements.

15 (c) The Commissioner may adopt any other rules necessary or appropriate
16 to carry out the provisions of this chapter.

17 Sec. 4. EFFECTIVE DATE

18 This act shall take effect on passage.

Sec. 1. TITLE

This act shall be known as the "Legacy Insurance Management 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 regulate the receipt and management by solvent Vermont companies of closed blocks of nonadmitted commercial insurance policies and reinsurance agreements.~~

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~~§ 7111. DEFINITIONS~~

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~~(A) which a transferring insurer has ceased to offer, write, or sell to new applicants;~~

~~(B) for which all policy periods have been fully expired for not less than 60 months;~~

~~(C) for which active premiums are no longer being paid; and~~

~~(D) which is not workers' compensation, health, life, or any other personal line of insurance.~~

~~(3) "Comment period" means the 60-day period starting on the date notice is issued by an assuming company under subsection 7112(h) of this chapter. For good cause, the comment period may be extended by the Commissioner up to an additional 30 days.~~

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~~(6) "Department" means the Department of Financial Regulation.~~

~~(7) "Domicile regulator" means the primary insurance regulatory authority of the domicile jurisdiction of a transferring insurer.~~

~~(8) "Inward 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.~~

~~(9) "Inward reinsurance counterparty" means an insurance company, other than the transferring insurer, that is a party to an inward reinsurance agreement.~~

~~(10) "Legacy insurance transfer" means the transfer of a closed block in accordance with the requirements of this chapter.~~

~~(11) "Legacy insurance transfer plan" or "plan" means a plan that sets forth all provisions and includes all documentation regarding a legacy insurance transfer required under subsection 7112(b) of this chapter.~~

~~(12) "Nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.~~

~~(13) "Nonadmitted insurer" means, with respect to a state, an insurer not licensed to engage in the business of insurance in such state. The term does not include a risk retention group or a captive insurance company.~~

~~(14) "Outward 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 reinsured.~~

~~(15) "Outward reinsurance counterparty" means an insurance company, other than the transferring insurer, that is a party to an outward reinsurance agreement.~~

~~(16) "Party" means:~~

(A) the assuming company;

(B) the transferring insurer;

(C) with respect to any policy to be transferred under a plan, each policyholder;

(D) with respect to any inward reinsurance agreement to be transferred under a plan, each inward reinsurance counterparty; and

(E) any other person the Commissioner approves as a party with respect to such proceeding.

(17) "Plan summary" means a written statement of the key terms and provisions of a plan as required under subdivision 7112(b)(18) of this chapter.

(18) "Policy" means a contract of property and casualty insurance that is not a contract of reinsurance or a personal lines insurance policy.

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

(20) "Reinsurance agreement" means an inward reinsurance agreement or an outward reinsurance agreement.

(21) "Reinsurance agreement counterparty" means an inward reinsurance agreement counterparty or an outward reinsurance counterparty.

(22) "Transferring insurer" means a nonadmitted insurer that is transferring a closed block to an assuming company under a legacy insurance transfer plan.

~~§ 7112. APPLICATION; FEE; PLAN~~

~~(a) An assuming company shall file a plan with the Commissioner and, at the time of filing, shall pay to the Commissioner the fee described in subdivision 7116(a)(1) of this chapter.~~

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

~~(1) a list of all policies and inward reinsurance agreements in the closed block to be transferred under the plan;~~

~~(2) a list of all outward reinsurance agreements attaching to the closed block;~~

~~(3) a list of all policyholders and inward reinsurance counterparties to policies and inward reinsurance agreements in the closed block to be transferred under the plan;~~

~~(4) the identities of the transferring insurer and the assuming company and their respective controlling parties, if any;~~

~~(5) certificates issued by the domicile regulator of the transferring insurer and, if applicable, by any controlling party that is a regulated insurance company attesting to the good standing of the transferring insurer and the controlling party under the insurance regulatory laws of the jurisdiction of their respective domiciles; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of~~

~~an officer of the transferring insurer or the controlling party, as applicable,~~

~~attesting to the foregoing:~~

~~(6) a letter of no objection, or the equivalent, from the domicile regulator of the transferring insurer confirming that the regulator has no objection to the transfer of the closed block under the plan; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of an officer of the transferring insurer or the controlling party, as applicable, attesting to the foregoing;~~

~~(7) a statement describing the terms and conditions, if any, of any policy or inward reinsurance agreement in the closed block prohibiting assignment and assumption of the rights, liabilities, and obligations of the transferring insurer without the prior written consent of the respective policyholder or inward reinsurance counterparty;~~

~~(8) the most recent audited financial statements and annual reports of the transferring insurer filed with its domicile regulator and such other financial information as the Commissioner may reasonably require with respect to a controlling party, if any;~~

~~(9) an actuarial study or opinion in a form satisfactory to the Commissioner that quantifies the liabilities to be transferred to the assuming company under the policies or inward reinsurance agreements in the closed block;~~

~~(10) a statement of outward reinsurance agreement assets attaching to the closed block;~~

~~(11) three years of pro-forma financial statements demonstrating the solvency of the assuming company;~~

~~(12) officer's certificates of the transferring insurer and the assuming company attesting that each has obtained all required internal approvals and authorizations regarding the plan and completed all necessary and appropriate actions relating thereto;~~

~~(13) the form of notice to be provided under the plan to any policyholder or inward reinsurance counterparty in the closed block and how such notice shall be provided;~~

~~(14) the form of notice to be provided under the plan to any outward reinsurance counterparty attaching to the closed block and how such notice shall be provided;~~

~~(15) a statement describing any pending dispute between the transferring insurer and any policyholder or inward reinsurance counterparty or any disputed claim by a third party with respect to any policy or inward reinsurance agreement in the closed block;~~

~~(16) a statement describing the assuming company's proposed investment policies, officers, directors, key employees, and other arrangements regarding matters such as:~~

(A) any contemplated third party claims management and administration arrangements;

(B) operations, management, and solvency relating to the closed block; and

(C) a detailed plan for annual or other periodic financial reporting to the Commissioner, including an annual financial audit with actuarial opinion;

(17) a statement from the assuming company consenting to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management, and solvency relating to the closed block, including the authority of the Commissioner to conduct examinations under section 7117 of this chapter and to set reasonable standards for oversight of the assuming company, including:

(A) material transactions with affiliates;

(B) adequacy of surplus; and

(C) dividends and other distributions, including limitations on extraordinary dividends.

(18) a statement from the assuming company submitting to the jurisdiction and authority of the Commissioner of Insurance, or the equivalent regulatory authority, in states in which policyholders or reinsurance counterparties reside, for the purposes of implementing each such state's

~~Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's market conduct statutory framework. Notwithstanding any provision to the contrary in such act, the submission under this subdivision shall not confer a private cause of action upon any policyholder or reinsurance counterparty against the assuming company, even if the applicable Unfair Claims Settlement Practices Act, or equivalent, purports to provide a private cause of action;~~

~~(19) a plan summary which includes all information regarding the plan as reasonably required by the Commissioner;~~

~~(20) the statement described in subsection (c) of this section regarding the information and documents submitted as part of or with respect to a plan which are confidential; and~~

~~(21) any other information the Commissioner may reasonably require with respect to the plan in the exercise of his or her discretion.~~

~~(c) The plan shall include a statement of the information and documentation included in the plan that the assuming company or the transferring insurer may request be given confidential treatment, which in all cases shall include all information identifying policyholders and reinsurance counterparties 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 company. 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 and therefore shall be exempt from public inspection and copying under the Public Records Act. 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 a foreign or alien 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 business 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 assuming company whether the plan is complete. In his or her discretion, the Commissioner may extend the 10-business-day application review period for an additional 10 business days. With the written consent of the assuming company, the application review period may be extended beyond 20 business days.~~

~~(e) Upon submission of a plan, the assuming company shall have a continuing obligation to notify the Commissioner promptly and in a full and accurate manner of any material change to information in the plan.~~

~~(f) If the Commissioner notifies the assuming company that the plan is not complete, the Commissioner shall specify any modifications, supplements, or amendments to the plan that are required, and any additional information or documentation with respect to the plan that must be provided to the Commissioner before the Commissioner issues the notice referenced in subsection (d) of this section.~~

~~(g) If the Commissioner notifies the assuming company that the plan is complete, the Commissioner shall set a date, time, and place for a hearing on the plan as required under subsection (l) of this section.~~

~~(h) Within 30 days of the date the Commissioner notifies the assuming company under subsection (g) of this section that the plan is complete, the assuming company shall cause notice to be provided, in the form and manner specified in the plan, to all policyholders and reinsurance counterparties listed in the plan. The notice shall:~~

~~(1) comply with the plan and the provisions of 3 V.S.A. § 809(b);~~

~~(2) include the plan summary;~~

~~(3) describe the effect of the plan and the transfer on each policyholder and reinsurance counterparty and on his or her respective policy or reinsurance agreement, as applicable;~~

~~(4) state the right of each policyholder or inward reinsurance counterparty to:~~

~~(A) accept or object to the plan, together with a description of the means by which a policyholder or inward reinsurance counterparty may expressly accept or object to the plan and the effect of such acceptance or objection;~~

~~(B) file written comments on the plan with the Commissioner; and~~

~~(C) appear and present evidence on the plan at the hearing;~~

~~(5) describe the terms and conditions under which a policyholder or inward reinsurance counterparty shall be deemed to have accepted the plan;~~

~~(6) specify the date, time, and place of the hearing on the plan;~~

~~(7) include all other information reasonably required by the Commissioner; and~~

~~(8) be published in two newspapers of general nationwide circulation on two separate occasions, as determined by the Commissioner.~~

~~(i) During the comment period:~~

~~(1) any party may file written comments on the plan with the Commissioner;~~

~~(2) any policyholder or inward reinsurance counterparty may, by delivery of such notice in accordance with the terms and conditions of the plan and prior to the expiration of the comment period, provide an express written notice that he or she accepts or objects to the plan; and~~

~~(3) the assuming company shall file with the Commissioner such additional documentation and information regarding the plan as the Commissioner may reasonably require.~~

~~(j) In the event that, prior to the expiration of the comment period, any policyholder or inward reinsurance counterparty provides express written notice that he or she objects to the plan and specifies the policy or agreement with respect to which such objection is made, the assuming company shall, not later than 15 days after the end of the comment period, submit to the Commissioner either:~~

~~(1) an amended list of policies and reinsurance agreements in the plan, excluding such policyholder or inward reinsurance counterparty and its respective policy or inward reinsurance agreement from the plan; or~~

~~(2) an express written notice from such policyholder or inward reinsurance counterparty accepting the plan and consenting to the transfer having the full force and effect of a statutory novation of its respective policy or reinsurance agreement, as applicable, and withdrawing and rescinding its prior notice of objection.~~

~~(k) Any Except as provided in subsection 7114(f) of this chapter, any policyholder or inward reinsurance counterparty that, prior to the expiration of the comment period, has not provided express written notice objecting to the plan shall be deemed to have accepted the plan and the transfer shall have the full force and effect of a statutory novation of his or her respective policy or inward reinsurance agreement, as applicable.~~

~~(l) Notwithstanding any provision of this chapter to the contrary, if a policy or inward reinsurance agreement contains a provision prohibiting the transfer of the policy or inward reinsurance agreement without the consent of the policyholder or inward reinsurance counterparty, then such policy or inward reinsurance agreement shall not be transferred under this chapter unless the applicable policyholder or inward reinsurance counterparty provides written consent to the proposed transfer.~~

~~(m) The hearing on the plan shall be held not later than 60 days after the end of the comment period. In his or her discretion, the Commissioner may postpone the hearing for an additional 10 days. With the written consent of the assuming company, the hearing may be postponed beyond 70 days. Each party participating in the hearing shall bear his or her own costs and attorney's fees.~~

~~§ 7113. PLAN REVIEW~~

~~(a) The Commissioner may retain an actuary to conduct an actuarial study quantifying the liabilities under insurance policies and reinsurance agreements to be transferred to the assuming company under the plan and is authorized to retain any other legal, financial, and examination services from outside the Department necessary to assist in plan review.~~

~~(b) In reviewing the plan, the Commissioner shall take into account all written comments filed with respect to the plan, all evidence taken at the hearing, and any other factors the Commissioner reasonably deems relevant with respect to the plan. In all cases, the Commissioner shall make findings with respect to each of the following:~~

~~(1) the solvency of the assuming company before and after the implementation of the proposed plan;~~

~~(2) the adequacy of the assuming company's proposals described in the statement required under subdivision 7112(b)(16) of this chapter;~~

~~(3) the adequacy of the assuming company's consent to jurisdiction required under subdivision 7112(b)(17) of this chapter;~~

~~(4) the ability of the assuming company to comply with all requirements of the policies and inward reinsurance agreements, including the capacity of the assuming company regarding the administration of claims in process on or after the effective date of the transfer;~~

~~(5) whether any outward reinsurance agreement relating to any policy or policies in the closed block will be adversely affected by the transfer;~~

~~(6) whether the plan materially adversely affects the interests of any party or outward reinsurance counterparty or the interests of any policyholder or inward reinsurance counterparty who has accepted or been deemed to have accepted the plan;~~

~~(7) whether policyholders or inward reinsurance counterparties, together with their respective insurance policies and inward reinsurance agreements, have been excluded from the plan as required under subsections 7112(j) and (l) of this chapter; and~~

~~(8) the fairness of the plan to all parties.~~

§ 7114. 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 assuming company under subdivision 7116(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 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, the order shall:~~

~~(1) include the terms and conditions of the Commissioner's oversight with regard to ongoing oversight of the operations, management, and solvency relating to the closed block and any specific standards that the assuming company will be required to comply with, including standards relating to:~~

~~(A) material transactions with affiliates;~~

~~(B) adequacy of surplus; and~~

~~(C) dividends and other distributions, including limitations on dividends;~~

~~(2) set forth the ~~fee~~ tax payable by the assuming company under subsection 7116(b) of this chapter; which ~~fee~~ tax shall be payable not later than 14 days after the date of such order;~~

~~(3) not be effective until such time as the ~~fees~~ costs and transfer tax described in this subsection have been paid in full.~~

~~(b) The Commissioner shall not approve a plan unless the Commissioner finds that the assuming company has:~~

~~(1) sufficient assets to meet its liabilities;~~

~~(2) sufficient procedures in place for the handling of claims;~~

~~(3) consented to sufficient regulatory oversight by the Department; and~~

~~(4) excluded from the plan any policy or agreement required to be excluded under subsections 7112(j) and (l) of this chapter.~~

~~(c) An order issued under subsection (a) of this section approving the plan shall have the full force and effect of a statutory novation with respect to all policyholders and reinsurance counterparties and their respective policies and reinsurance agreements under the plan and shall provide that the transferring insurer shall have no further rights, obligations, or liabilities with respect to such policies and reinsurance agreements, and that the assuming company shall have all such rights, obligations, and liabilities as if it, instead of the transferring insurer, were the original party to such policies and reinsurance agreements.~~

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

~~(e) No order issued under subsection (a) or (d) 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.~~

~~(f) If a policyholder or inward reinsurance counterparty provides express written notice that he or she objects to the plan after the comment period has expired, and provides evidence reasonably satisfactory to the Commissioner that he or she was not provided notice of the plan in the form and manner previously approved by the Commissioner, or if an outward reinsurance~~

~~counterparty or other party provides express written notice that he or she 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; and~~
- ~~(2) 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 assuming company may file an amendment to the plan, subject to the Commissioner's approval.~~

~~(h) At any time before the Commissioner issues the order described in subsection (a) of this section, the assuming company 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 assuming company under subdivision 7116(a)(2) of this chapter, payable not later than 14 days after the date of such order.~~

~~§ 7115. JURISDICTION; APPEALS~~

~~(a) The Commissioner shall have exclusive regulatory jurisdiction with respect to the review and approval or denial of any plan.~~

~~(b) Any party aggrieved by a final order of the Commissioner may appeal that order to the Vermont Supreme Court under 3 V.S.A. § 815.~~

~~§ 7116. FEES AND COSTS~~

~~(a) To cover the costs of processing and reviewing a plan under this chapter, the assuming company shall pay to the Commissioner the following nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of this chapter:~~

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

~~(2) the reasonable costs of persons retained by the Commissioner under subsection 7113(a) of this chapter.~~

~~(b) When a plan is approved, the assuming company 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 that exceed \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded.~~

~~(c) All fees and payments received by the Department under subsection (a) of this section and 10 percent of the transfer fee under subsection (b) of this section 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.~~

~~§ 7116. FEE; COSTS; TRANSFER TAX~~

~~(a) To cover the costs of processing and reviewing a plan under this chapter, the assuming company shall pay to the Commissioner the following nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of this chapter:~~

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

~~(2) the reasonable costs of persons retained by the Commissioner under subsection 7113(a) of this chapter.~~

~~(b) When a plan is approved, the assuming company shall pay the Commissioner a transfer tax 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 that exceed \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded.~~

~~(c) All fees and payments received by the Department under subsection (a) of this section and 10 percent of the transfer tax under subsection (b) of this section shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer tax shall be deposited directly into the general fund.~~

§ 7117. EXAMINATIONS

(a) The Commissioner has the authority to order any assuming company to produce any records, books, and papers in the possession of the assuming company or its affiliates necessary to ascertain the financial condition or legality of conduct of the assuming company.

(b) The Commissioner shall exercise his or her authority under subsection (a) of this section only if he or she has reason to believe the interests of the assuming company's policyholders may be adversely affected under the plan.

(c) The Commissioner may retain, at the assuming company's expense, attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff reasonably necessary to assist with an examination under this section. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(d) Each assuming company that produces records, books, and papers for examination under this section shall pay the expense of such examination.

§ 7118. APPLICABLE LAWS

(a) Chapter 157 (transfer and novation of insurance contracts) of this title shall not apply to any legacy insurance transfer under this chapter.

(b) 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.

~~(c) A proposed legacy insurance transfer shall be a "contested case" under 3 V.S.A. chapter 25, except that a "party" shall be limited as defined in subdivision 7111(15) of this chapter.~~

~~§ 7119. ASSUMING COMPANY; BOARD; PRINCIPAL PLACE OF
BUSINESS; REGISTERED AGENT~~

~~No assuming company shall be a party to a legacy insurance 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 company, the Secretary of State shall be an agent of such assuming company 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, excluding any information designated as confidential under subsection 7112(c) of this chapter.~~

~~§ 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE~~

PROVIDERS

~~(a) An assuming company shall be subject to all rules adopted by the Commissioner under this chapter and also shall be subject to:~~

~~(1) chapter 145 (supervision, rehabilitation, and liquidation of insurers) of this title;~~

~~(2) the market conduct and unfair trade practices provisions of chapter 129 (insurance trade practices) of this title, as deemed applicable by the Commissioner; and~~

~~(3) in addition to the initial transfer ~~fee~~ tax required under subsection 7116(b) of this chapter, an annual renewal fee of \$300.00.~~

~~(b) An assuming company shall not be subject to the requirements of chapter 101, subchapter 9 (Property and Casualty Insurance Guaranty Association) of this title.~~

~~(c) The Commissioner may adopt rules regarding the provision of services to an assuming company by persons other than any director, officer, or employee of the assuming company with respect to the administration of policies and reinsurance agreements assumed by the assuming company under a legacy insurance transfer, including licensing or other requirements.~~

~~(d) The Commissioner may adopt any other rules necessary or appropriate to carry out the provisions of this chapter.~~

~~Sec. 4. EFFECTIVE DATE~~

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

Sec. 1. TITLE

This act shall be known as the "Legacy Insurance Management Act."

Sec. 2. FINDINGS AND PURPOSE

(a) The Vermont General Assembly finds:

(1) Vermont is a competitive location for highly successful financial services firms as a result of its leadership in the field of captive insurance. Vermont's ability to modernize key aspects of its insurance laws has been a key to the State's success.

(2) The management of closed blocks of commercial insurance policies and reinsurance agreements has been a productive and successful sector of the insurance industry for decades in other jurisdictions.

(3) Vermont's respected, sophisticated, and experienced insurance regulatory apparatus makes it an ideal jurisdiction to establish a non-admitted insurance and reinsurance management industry.

(4) A new non-admitted insurance and reinsurance management industry has the potential to attract investment, create well-paying jobs, and generate tax revenue for Vermont.

(b) The purpose of this act is to regulate the receipt and management by solvent Vermont companies of closed blocks of non-admitted commercial insurance policies and reinsurance agreements.

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

CHAPTER 147. LEGACY INSURANCE TRANSFERS

§ 7111. DEFINITIONS

As used in this chapter:

(1) “Assuming company” means a Vermont-domiciled company established specifically to acquire a closed block under a legacy insurance transfer plan approved by the Commissioner.

(2) “Closed block” means a block, line, or group of commercial non-admitted insurance policies or reinsurance agreements or both:

(A) which a transferring insurer has ceased to offer, write, or sell to new applicants;

(B) for which all policy periods have been fully expired for not less than 60 months;

(C) for which active premiums are no longer being paid; and

(D) which is not workers’ compensation, health, life, or any other personal line of insurance.

(3) “Comment period” means the 60-day period starting on the date notice is issued by an assuming company under subsection 7112(h) of this

chapter. The Commissioner may, in his or her discretion, extend the comment period for up to an additional 30 days.

(4) "Commissioner" means the Commissioner of Financial Regulation.

(5) "Controlling party" means a person having "control" of an assuming company or transferring insurer. "Control" shall have the same meaning as in section 3681 of this title.

(6) "Department" means the Department of Financial Regulation.

(7) "Domicile regulator" means the primary insurance regulatory authority of the domicile jurisdiction of a transferring insurer.

(8) "Inward 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.

(9) "Inward reinsurance counterparty" means an insurance company, other than the transferring insurer, that is a party to an inward reinsurance agreement as the reinsured.

(10) "Legacy insurance transfer" means the transfer of a closed block in accordance with the requirements of this chapter.

(11) "Legacy insurance transfer plan" or "plan" means a plan that sets forth all provisions and includes all documentation regarding a legacy insurance transfer required under subsection 7112(b) of this chapter.

(12) “Non-admitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a non-admitted insurer eligible to accept such insurance.

(13) “Non-admitted insurer” means, with respect to a state, an insurer not licensed to engage in the business of insurance in such state. The term does not include a risk retention group or a captive insurance company.

(14) “Outward 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 reinsured.

(15) “Outward reinsurance counterparty” means an insurance company, other than the transferring insurer, that is a party to an outward reinsurance agreement as the reinsurer.

(16) “Party” means:

(A) the assuming company;

(B) the transferring insurer;

(C) with respect to any policy to be transferred under a plan, each policyholder;

(D) with respect to any inward reinsurance agreement to be transferred under a plan, each inward reinsurance counterparty; and

(E) any other person the Commissioner approves as a party with respect to such proceeding.

(17) "Plan summary" means a written statement of the key terms and provisions of a plan as required under subdivision 7112(b)(19) of this chapter.

(18) "Policy" means a contract of property and casualty insurance that is neither a contract of reinsurance nor a contract of workers' compensation, health, life, or any other personal line of insurance.

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

(20) "Reinsurance agreement" means an inward reinsurance agreement or an outward reinsurance agreement.

(21) "Reinsurance agreement counterparty" means an inward reinsurance agreement counterparty or an outward reinsurance counterparty.

(22) "Transferring insurer" means a non-admitted insurer that is transferring a closed block to an assuming company under a legacy insurance transfer plan.

§ 7112. APPLICATION; FEE; PLAN

(a) An assuming company shall file a plan with the Commissioner and, at the time of filing, shall pay to the Commissioner the fee described in subdivision 7116(a)(1) of this chapter.

(b) A plan shall include the following:

(1) A list of all policies and inward reinsurance agreements in the closed block to be transferred under the plan.

(2) A list of all outward reinsurance agreements attaching to policies or inward reinsurance agreements in the closed block.

(3) A list of all policyholders and inward reinsurance counterparties to policies and inward reinsurance agreements in the closed block to be transferred under the plan.

(4) The identities of the transferring insurer and the assuming company and their respective controlling parties, if any.

(5) Certificates issued by the domicile regulator of the transferring insurer and, if applicable, of any controlling party that is a regulated insurance company, in each case attesting to the good standing of the transferring insurer and the controlling party under the insurance regulatory laws of the jurisdiction of their respective domiciles; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of the transferring insurer or the controlling party, as applicable, attesting to the foregoing, verified by oath of two of its executive officers.

(6) A letter of no objection, or the equivalent, from the domicile regulator of the transferring insurer confirming that the regulator has no objection to the transfer of the closed block under the plan; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of the transferring insurer or the controlling party, as

applicable, attesting to the foregoing, verified by oath of two of its executive officers.

(7) A list of policies and inward reinsurance agreements in the closed block to be transferred under the plan, if any, which by their terms and conditions prohibit assignment and assumption of the rights, liabilities, and obligations of the transferring insurer without the prior written consent of the respective policyholder or inward reinsurance counterparty, together with a statement describing such terms and conditions of any such policy or inward reinsurance agreement.

(8) The most recent audited financial statements and annual reports of the transferring insurer filed with its domicile regulator and such other financial information, if any, with respect to the transferring insurer or any controlling party of the transferring insurer, as the Commissioner may reasonably require.

(9) An actuarial study or opinion in a form satisfactory to the Commissioner that quantifies the liabilities to be transferred to the assuming company under the policies or inward reinsurance agreements in the closed block.

(10) A statement of the outward reinsurance agreement assets, if any, attaching to any policy or inward reinsurance agreement in the closed block.

(11) Three years of pro-forma financial statements demonstrating the solvency of the assuming company.

(12) Officer's certificates of the transferring insurer and the assuming company attesting that each has obtained all required internal approvals and authorizations regarding the plan and completed all necessary and appropriate actions relating thereto.

(13) The form of notice to be provided under the plan to any policyholder or inward reinsurance counterparty in connection with any policy or inward reinsurance agreement in the closed block and how such notice shall be provided.

(14) The form of notice to be provided under the plan to any outward reinsurance counterparty attaching to any policy or inward reinsurance agreement in the closed block and how such notice shall be provided.

(15) A statement describing any pending dispute between the transferring insurer and any policyholder or inward reinsurance counterparty in connection with any policy or inward reinsurance agreement in the closed block or any disputed claim by a third party with respect to any policy or inward reinsurance agreement in the closed block.

(16) A statement describing the assuming company's proposed investment policies, officers, directors, key employees, and other arrangements regarding matters such as:

(A) any contemplated third-party claims management and administration arrangements;

(B) operations, management, and solvency relating to the closed block; and

(C) a detailed plan for annual or other periodic financial reporting to the Commissioner, including an annual financial audit with actuarial opinion.

(17) A statement from the assuming company consenting to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management, and solvency relating to the closed block, including the authority of the Commissioner to conduct examinations under section 7117 of this chapter and to set reasonable standards for oversight of the assuming company, including oversight standards relating to:

(A) material transactions with affiliates;

(B) adequacy of surplus; and

(C) dividends and other distributions, including limitations on extraordinary dividends.

(18) A statement from the assuming company submitting to the jurisdiction and authority of the Commissioner of Insurance, or the equivalent regulatory authority, in states in which policyholders or reinsurance counterparties reside, for the purposes of implementing each such state's

Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's market conduct statutory framework; and confirmation of the delivery of such statements of submission.

(19) A plan summary which includes all information regarding the plan as reasonably required by the Commissioner.

(20) The statement described in subsection (c) of this section regarding the information and documents submitted as part of or with respect to a plan which are confidential.

(21) Any other information the Commissioner may reasonably require with respect to the plan in the exercise of his or her discretion.

(c)(1) Information in the plan identifying policyholders and reinsurance counterparties shall be exempt from public inspection and copying under the Public Records Act.

(2) The plan shall include a statement of the information and documentation included in the plan that the assuming company or the transferring insurer requests be given confidential treatment. The Commissioner shall determine whether information designated in the statement, including any information designated as trade secrets, is exempt from public inspection and copying under the Public Records Act. If such information is exempt, it 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 a foreign or alien 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 subsection.

(d) Within 10 business 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 assuming company whether the plan is complete. In his or her discretion, the Commissioner may extend the 10-business-day application review period for an additional 10 business days. With the written consent of the assuming company, the application review period may be extended beyond 20 business days.

(e) Upon submission of a plan, the assuming company shall have a continuing obligation to notify the Commissioner promptly and in a full and accurate manner of any material change to information in the plan.

(f) If the Commissioner notifies the assuming company that the plan is not complete, the Commissioner shall specify any modifications, supplements, or amendments to the plan that are required, and any additional information or documentation with respect to the plan that must be provided to the

Commissioner before the Commissioner issues the notice referenced in subsection (d) of this section.

(g) If the Commissioner notifies the assuming company that the plan is complete, the Commissioner shall set a date, time, and place for a hearing on the plan as required under subsection (m) of this section.

(h) Within 30 days of the date the Commissioner notifies the assuming company under subsection (g) of this section that the plan is complete, the assuming company shall cause direct written notice to be provided, in the form and manner specified in the plan, to all policyholders and reinsurance counterparties listed in the plan. The notice shall:

(1) comply with the plan and the provisions of 3 V.S.A. § 809(b);

(2) include the plan summary;

(3) describe the effect of the plan and the transfer on each policyholder and reinsurance counterparty and on his or her respective policy or reinsurance agreement, as applicable;

(4) state the right of each policyholder or inward reinsurance counterparty to:

(A) accept or object to the plan, together with a description of the means by which a policyholder or inward reinsurance counterparty may expressly accept or object to the plan and the effect of such acceptance or objection;

- (B) file written comments on the plan with the Commissioner; and
- (C) appear and present evidence on the plan at the hearing;
- (5) describe the terms and conditions under which a policyholder or inward reinsurance counterparty shall be deemed to have accepted the plan;
- (6) specify the date, time, and place of the hearing on the plan;
- (7) include all other information reasonably required by the Commissioner; and
- (8) be published in two newspapers of general nationwide circulation on two separate occasions, as determined by the Commissioner.
- (i) During the comment period:
- (1) any party may file written comments on the plan with the Commissioner;
- (2) any policyholder or inward reinsurance counterparty may, by delivery of such notice in accordance with the terms and conditions of the plan and prior to the expiration of the comment period, provide an express written notice that he or she accepts or objects to the plan; and
- (3) the assuming company shall file with the Commissioner such additional documentation and information regarding the plan as the Commissioner may reasonably require.
- (j) In the event that, prior to the expiration of the comment period, any policyholder or inward reinsurance counterparty provides express written

notice that he or she objects to the plan and specifies the policy or agreement with respect to which such objection is made, the assuming company shall, not later than 15 days after the end of the comment period, submit to the Commissioner either:

(1) an amended list of policies and reinsurance agreements in the plan, excluding such policyholder or inward reinsurance counterparty and its respective policy or inward reinsurance agreement from the plan; or

(2) an express written notice from such policyholder or inward reinsurance counterparty accepting the plan and consenting to the transfer having the full force and effect of a statutory novation of its respective policy or reinsurance agreement, as applicable, and withdrawing and rescinding its prior notice of objection.

(k) Except as provided in subsection 7114(f) of this chapter, any policyholder or inward reinsurance counterparty that, prior to the expiration of the comment period, has not provided express written notice objecting to the plan shall be deemed to have accepted the plan and the transfer shall have the full force and effect of a statutory novation of his or her respective policy or inward reinsurance agreement, as applicable.

(l) Notwithstanding any provision of this chapter to the contrary, if a policy or inward reinsurance agreement contains a provision prohibiting the transfer of the policy or inward reinsurance agreement without the consent of the

policyholder or inward reinsurance counterparty, then such policy or inward reinsurance agreement shall not be transferred under this chapter unless the applicable policyholder or inward reinsurance counterparty provides written consent to the proposed transfer.

(m) The hearing on the plan shall be held not later than 60 days after the end of the comment period. In his or her discretion, the Commissioner may postpone the hearing for an additional 10 days. With the written consent of the assuming company, the hearing may be postponed beyond 70 days. Each party participating in the hearing shall bear his or her own costs and attorney's fees.

§ 7113. PLAN REVIEW

(a) The Commissioner may retain an actuary to conduct an actuarial study quantifying the liabilities under insurance policies and reinsurance agreements to be transferred to the assuming company under the plan and is authorized to retain any other legal, financial, and examination services from outside the Department necessary to assist in plan review.

(b) In reviewing the plan, the Commissioner shall take into account all written comments filed with respect to the plan, all evidence taken at the hearing, and any other factors the Commissioner reasonably deems relevant with respect to the plan. In all cases, the Commissioner shall make findings with respect to each of the following:

(1) the solvency of the assuming company before and after the implementation of the proposed plan;

(2) the adequacy of the assuming company's proposals described in the statement required under subdivision 7112(b)(16) of this chapter;

(3) the adequacy of the assuming company's consent to jurisdiction required under subdivision 7112(b)(17) of this chapter;

(4) the ability of the assuming company to comply with all requirements of the policies and inward reinsurance agreements, including the capacity of the assuming company regarding the administration of claims in process on or after the effective date of the transfer;

(5) whether any outward reinsurance agreement relating to any policy or policies in the closed block will be adversely affected by the transfer;

(6) whether the plan materially adversely affects the interests of any party or outward reinsurance counterparty, including the interests of any policyholder or inward reinsurance counterparty who has accepted or has been deemed to have accepted the plan;

(7) whether policyholders or inward reinsurance counterparties, together with their respective insurance policies and inward reinsurance agreements, have been excluded from the plan as required under subsections 7112(j) and (l) of this chapter; and

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

§ 7114. 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 assuming company under subdivision 7116(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 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, the order shall:

(1) include the terms and conditions of the Commissioner's oversight with regard to ongoing oversight of the operations, management, and solvency relating to the closed block and any specific standards that the assuming company will be required to comply with, including standards relating to:

(A) material transactions with affiliates;

(B) adequacy of surplus; and

(C) dividends and other distributions, including limitations on dividends;

(2) set forth the tax payable by the assuming company under subsection 7116(b) of this chapter, which tax shall be payable not later than 14 days after the date of such order;

(3) not be effective until such time as the costs and transfer tax described in this subsection have been paid in full.

(b) The Commissioner shall not approve a plan unless the Commissioner finds that the assuming company has:

(1) sufficient assets to meet its liabilities;

(2) sufficient procedures in place for the handling of claims;

(3) consented to sufficient regulatory oversight by the Department; and

(4) excluded from the plan any policy or agreement required to be excluded under subsections 7112(j) and (l) of this chapter.

(c) An order issued under subsection (a) of this section approving the plan shall have the full force and effect of a statutory novation with respect to all policyholders and reinsurance counterparties and their respective policies and reinsurance agreements under the plan and shall provide that the transferring insurer shall have no further rights, obligations, or liabilities with respect to such policies and reinsurance agreements, and that the assuming company shall have all such rights, obligations, and liabilities as if it, instead of the transferring insurer, were the original party to such policies and reinsurance agreements.

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

(e) No order issued under subsection (a) or (d) 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.

(f) If a policyholder or inward reinsurance counterparty provides express written notice that he or she objects to the plan after the comment period has expired, and provides evidence reasonably satisfactory to the Commissioner that he or she was not provided notice of the plan in the form and manner previously approved by the Commissioner, or if an outward reinsurance counterparty or other party provides express written notice that he or she 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; and

(2) 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 assuming company may file an amendment to the plan, subject to the Commissioner's approval.

(h) At any time before the Commissioner issues the order described in subsection (a) of this section, the assuming company 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 assuming

company under subdivision 7116(a)(2) of this chapter, payable not later than 14 days after the date of such order.

§ 7115. JURISDICTION; APPEALS

(a) The Commissioner shall have exclusive regulatory jurisdiction with respect to the review and approval or denial of any plan.

(b) Any party aggrieved by a final order of the Commissioner may appeal that order to the Vermont Supreme Court under 3 V.S.A. § 815.

§ 7116. FEE; COSTS; TRANSFER TAX

(a) To cover the costs of processing and reviewing a plan under this chapter, the assuming company shall pay to the Commissioner the following nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of this chapter:

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

(2) the reasonable costs of persons retained by the Commissioner under subsection 7113(a) of this chapter.

(b) When a plan is approved, the assuming company shall pay the Commissioner a transfer tax 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 that exceed \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss adjustment expenses with no reductions for amounts ceded.

(c) All fees and payments received by the Department under subsection (a) of this section and 10 percent of the transfer tax under subsection (b) of this section shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer tax shall be deposited directly into the general fund.

§ 7117. EXAMINATIONS

(a) The Commissioner has the authority to order any assuming company to produce any records, books, and papers in the possession of the assuming company or its affiliates necessary to ascertain the financial condition or legality of conduct of the assuming company.

(b) The Commissioner shall exercise his or her authority under subsection (a) of this section only if he or she has reason to believe the interests of the assuming company's policyholders may be adversely affected under the plan.

(c) The Commissioner may retain, at the assuming company's expense, attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff reasonably necessary to assist with an examination under this section. Any persons so retained shall be under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(d) Each assuming company that produces records, books, and papers for examination under this section shall pay the expense of such examination.

§ 7118. APPLICABLE LAWS

(a) Chapter 157 (transfer and novation of insurance contracts) of this title shall not apply to any legacy insurance transfer under this chapter.

(b) 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.

(c) A proposed legacy insurance transfer shall be a “contested case” under 3 V.S.A. chapter 25, except that a “party” shall be limited as defined in subdivision 7111(16) of this chapter.

§ 7119. ASSUMING COMPANY; BOARD; PRINCIPAL PLACE OF BUSINESS; REGISTERED AGENT

No assuming company shall be a party to a legacy insurance 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 company, the Secretary of State shall be an agent of

such assuming company 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, excluding any information designated as confidential under subsection 7112(c) of this chapter.

§ 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE PROVIDERS

(a) An assuming company shall be subject to all rules adopted by the Commissioner under this chapter and also shall be subject to:

(1) chapter 145 (supervision, rehabilitation, and liquidation of insurers) of this title;

(2) the market conduct and unfair trade practices provisions of chapter 129 (insurance trade practices) of this title, as deemed applicable by the Commissioner; and

(3) in addition to the initial transfer tax required under subsection 7116(b) of this chapter, an annual renewal fee of \$300.00.

(b) An assuming company shall not be subject to the requirements of chapter 101, subchapter 9 (Property and Casualty Insurance Guaranty Association) of this title.

(c) The Commissioner may adopt rules regarding the provision of services to an assuming company by persons other than any director, officer, or employee of the assuming company with respect to the administration of policies and reinsurance agreements assumed by the assuming company under a legacy insurance transfer, including licensing or other requirements.

(d) The Commissioner may adopt any other rules necessary or appropriate to carry out the provisions of this chapter.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.