

H.51

An act relating to group-wide supervision of internationally active insurance groups and the establishment of domestic insurers in Vermont

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

Sec. 1. 8 V.S.A. § 3308 is amended to read:

§ 3308. LIST OF STOCKHOLDERS; CERTIFICATE TO TRANSACT
BUSINESS; LIABILITY OF PRESIDENT AND DIRECTORS

When the entire capital stock of ~~such~~ a corporation having capital stock has been issued, a complete list of the stockholders with the name and post office address of each and the number of shares held by each shall be filed with the ~~commissioner~~ Commissioner, who shall ~~thereupon cause an examination to be made~~ examine the corporation. If, after such examination, it appears that the whole capital stock has been paid in cash, and the Commissioner has considered the criteria in section 3361 of this chapter, the ~~commissioner~~ Commissioner shall issue a certificate under his or her seal authorizing ~~such~~ the corporation to begin the transaction of business, which shall be filed with the ~~secretary of state~~ Secretary of State. ~~Such a~~ A corporation having capital stock shall not begin the transaction of business until ~~such~~ the certificate has been ~~so~~ issued and filed. If ~~such~~ a corporation commences business before ~~such~~ a certificate is ~~so~~ issued and filed, the president and directors assenting thereto ~~shall be~~ are personally liable for all debts incurred before ~~such~~ the certificate is ~~so~~ issued and filed.

Sec. 2. 8 V.S.A. § 3309 is amended to read:

§ 3309. MUTUAL INSURERS TO COMMENCE BUSINESS; WHEN

(a) A corporation ~~which~~ that, according to its charter, is not to have a capital stock shall not receive authorization to commence business until:

(1) it complies with ~~such~~ preliminary requirements for the procurement of an adequate amount of subscriptions for insurance and possesses and thereafter maintains unimpaired basic surplus of not less than \$2,000,000.00 and, when first ~~so~~ authorized, shall possess free surplus of not less than \$3,000,000.00; and

(2) the Commissioner has considered the criteria in section 3361 of this chapter.

(b) The ~~commissioner~~ Commissioner in his or her discretion may establish lesser surplus amount requirements in the case of affiliated corporations jointly conducting the business of insurance under a pooling agreement. Such surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the ~~state treasurer~~ State Treasurer, such securities as designated by the insurer and approved by the ~~commissioner~~ Commissioner, in an amount and subject to ~~such~~ conditions determined by the ~~commissioner~~ Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to ~~such~~ cash or marketable securities shall inure to the benefit of the insurer until ~~such time as the commissioner~~

Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer. The ~~commissioner~~ Commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted.

Sec. 3. 8 V.S.A. § 3681 is amended to read:

§ 3681. DEFINITIONS

As used in this subchapter:

* * *

(4) “Group-wide supervisor” or “supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities, as specified by the Commissioner under section 3696 of this subchapter.

(5) “Insurance holding company system” or “system” means two or more affiliated persons, one or more of which is an insurer.

~~(5)~~(6) “Insurer” means a company qualified and licensed to transact the business of insurance in this State and shall include a health maintenance organization, a nonprofit hospital service corporation, and a nonprofit medical service corporation, except that it shall not include:

(A) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; or

(B) fraternal benefit societies.

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

(8) “Internationally active insurance group” or “group” means an insurance holding company system that:

(A) includes an insurer registered under section 3684 of this subchapter; and

(B) meets the following criteria:

(i) premiums written in at least three countries;

(ii) the percentage of gross premiums written outside of the United States is at least 10 percent of the system’s total gross written premiums; and

(iii) based on a three-year rolling average, the total assets of the system are at least \$50,000,000,000.00, or the total gross written premiums of the system are at least \$10,000,000,000.00.

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

~~(8)~~(10) “Security holder” of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~(9)~~(11) “Subsidiary” of a specified person means an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

~~(10)~~(12) “Voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Sec. 4. 8 V.S.A. § 3696 is added to read:

§ 3696. GROUP-WIDE SUPERVISOR; INTERNATIONALLY ACTIVE
INSURANCE GROUP

(a)(1) The Commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group. The Commissioner, however,

may acknowledge another regulatory official as the supervisor, provided
the group:

(A) does not have substantial insurance operations in the
United States;

(B) has substantial insurance operations in the United States, but not
in Vermont; or

(C) has substantial insurance operations in the United States and in
Vermont, but the Commissioner has determined, pursuant to the factors in
subsections (b) and (g) of this section, that such other regulatory official is the
appropriate supervisor.

(2) An insurance holding company system that does not otherwise
qualify as an internationally active insurance group under subdivision 3681(8)
of this subchapter may request that the Commissioner make a determination or
acknowledgment as to a supervisor pursuant to this section.

(b)(1) In cooperation with other state, federal, and international regulatory
agencies, the Commissioner shall identify a single group-wide supervisor for a
group. The Commissioner may determine that he or she is the appropriate
supervisor for a group if the group conducts substantial insurance operations in
Vermont, or the Commissioner may acknowledge that a regulatory official
from another jurisdiction is the appropriate supervisor for such group. The

Commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(A) the place of domicile of the insurers within the group that hold the largest share of the group's written premiums, assets, or liabilities;

(B) the place of domicile of the top-tiered insurers in the insurance holding company system of the group;

(C) the location of the executive offices or largest operational offices of the group;

(D) whether another regulatory official is acting or is seeking to act as the supervisor under a regulatory system the Commissioner determines to be:

(i) substantially similar to the system of regulation provided under Vermont law, or

(ii) otherwise sufficient in terms of providing for supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(E) whether another regulatory official acting or seeking to act as the supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

(2) A commissioner identified under this subsection as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the

supervisor shall be made after consideration of the factors listed in subdivisions (A) through (E) of this subdivision, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of the members of the group, and in consultation with the group itself.

(c) Notwithstanding any other provision of law to the contrary, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the Commissioner shall acknowledge such official as the supervisor. However, the Commissioner shall make a determination or acknowledgment as to the appropriate supervisor for such group pursuant to subsection (b) of this section in the event of a material change in the group that results in:

(1) the group's insurers domiciled in Vermont holding the largest share of the group's premiums, assets, or liabilities; or

(2) Vermont becoming the place of domicile of the top-tiered insurers in the insurance holding company system of the group.

(d) Pursuant to section 3686 of this subchapter, the Commissioner is authorized to collect from any insurer registered under section 3684 of this subchapter all information necessary to determine whether the Commissioner shall act as the group-wide supervisor of an internationally active insurance group or, instead, acknowledge another regulatory official to act as supervisor.

(e) Prior to issuing a determination that a group is subject to supervision by the Commissioner, the Commissioner shall notify the insurer registered pursuant to section 3684 of this subchapter of the pending determination, including the ultimate controlling person within the group. The group shall have not less than 30 days to provide the Commissioner with any additional information it deems relevant to the determination. The Commissioner shall publish on its website the identity of internationally active insurance groups subject to supervision by him or her.

(f) If the Commissioner is the supervisor for a group, the Commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the group to ensure that:

(A) the material financial condition and liquidity risks to the members of group engaged in the business of insurance are identified by management; and

(B) reasonable and effective mitigation measures are in place.

(2) Request, from any member of a group subject to the Commissioner's supervision, information necessary and appropriate to assess enterprise risk, including information about the members of the group regarding:

(A) governance, risk assessment, and management;

(B) capital adequacy; and

(C) material intercompany transactions.

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the group are domiciled, compel development and implementation of reasonable measures designed to ensure that the group is able to timely recognize and mitigate enterprise risks to members of the group engaged in the business of insurance.

(4) Communicate with other state, federal, and international regulatory agencies of members within group and share relevant information, subject to the confidentiality provisions of section 3687 of this subchapter, through supervisory colleges as provided in section 3695 of this subchapter or otherwise.

(5) Enter into agreements with or obtain documentation from any insurer registered under section 3684 of this subchapter, any member of the group, and any other state, federal, and international regulatory agencies of members of the group, providing the basis for or otherwise clarifying the Commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in Vermont is doing business in Vermont or is otherwise subject to Vermont jurisdiction.

(6) Engage in other group-wide supervision activities, consistent with this subsection, as deemed necessary by the Commissioner.

(g) If the Commissioner acknowledges another regulatory official from a jurisdiction not accredited by the NAIC as the group-wide supervisor, the Commissioner is authorized to reasonably cooperate, through supervisory colleagues or otherwise, with group-wide supervision undertaken by the supervisor, provided:

(1) The Commissioner's cooperation is in compliance with Vermont law.

(2) The regulatory official acknowledged as the supervisor also recognizes and cooperates with the Commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. When such recognition and cooperation is not reasonably reciprocal, the Commissioner is authorized to refuse recognition and cooperation.

(h) The Commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under section 3684 of this subchapter, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(i) The Commissioner may adopt rules necessary for the administration of this section.

(j) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the Commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals, as well as all reasonable travel expenses.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.