

House Calendar

Wednesday, February 04, 2015

29th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 23

An act relating to the Uniform Transfers to Minors Act

Favorable with Amendment

H. 51

An act relating to group-wide supervision of internationally active insurance groups

Rep. O'Sullivan of Burlington, for the Committee on **Commerce & Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

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, 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, the Commissioner shall make a determination or acknowledgment as to the appropriate supervisor for such a group pursuant to subsection (b) of this section.

(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.

and that after passage the title of the bill be amended to read: "An act relating to group-wide supervision of internationally active insurance groups and the establishment of domestic insurers in Vermont".

(Committee Vote: 10-0-1)

NOTICE CALENDAR

Favorable with Amendment

H. 73

An act relating to the corporate governance structure of insurers

Rep. Baser of Bristol, for the Committee on **Commerce & Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 3316 is added to read:

§ 3316. CORPORATE GOVERNANCE; DISCLOSURE

(a) Purpose. The purpose of this section is to:

(1) provide the Commissioner a summary of an insurer or insurance group's corporate governance structure, policies, and practices so the Commissioner may gain and maintain an understanding of the insurer's corporate governance framework;

(2) outline the requirements for completing a corporate governance annual disclosure with the Commissioner; and

(3) provide for the confidential treatment of the corporate governance annual disclosure and related information that contains confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information that, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(b) Scope. This section shall not be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable State corporate law. Nor shall it be construed to limit the Commissioner's authority, or the rights or obligations of third parties, under section 13 of this title.

(c) Application. The requirements of this section shall apply to all insurers domiciled in Vermont.

(d) Definitions. As used in this section:

(1) "Corporate Governance Annual Disclosure" or "CGAD" means a confidential report on corporate governance filed by the insurer or insurance group as required by this section.

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

(3) "Insurer" means an insurance company that offers any of the types of insurance itemized under subsection 3301(a) of this chapter, except that it shall not include 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. It shall also mean an insurance group.

(4) "ORSA Summary Report" means a report as defined in subdivision 3582(6) of this chapter.

(e)(1) Disclosure. On or before June 1 of each year, beginning in the year 2016, an insurer shall submit to the Commissioner a CGAD, which contains

the information described in subdivision (g)(2) of this section. Notwithstanding a request from the Commissioner made under subdivision (3) of this subsection, if the insurer is a member of an insurance group, the insurer shall submit the report required by this subsection to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners (NAIC).

(2) The CGAD shall include a signature of the insurer's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer not required to submit a CGAD under this section shall do so upon the Commissioner's request.

(4) For purposes of completing the CGAD, the insurer may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer has structured its system of corporate governance. The insurer is encouraged to make the CGAD disclosures at the level at which: the insurer's risk appetite is determined; the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or legal liability for failure of general corporate governance duties would be placed. If the insurer determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(5) The review of the CGAD and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent Handbook referenced in subdivision (1) of this subsection.

(6) Insurers providing information substantially similar to the information required by this section in other documents provided to the Commissioner, including proxy statements filed in conjunction with Form B requirements, or other state or federal filings provided to the Commissioner, shall not be required to duplicate that information in the CGAD, but shall only be required to cross reference the document in which the information is included.

(f) Rules. The Commissioner may adopt rules and issue orders necessary to carry out the provisions of this section.

(g)(1) CGAD contents. An insurer has discretion over the responses to CGAD inquiries, provided CGAD contains the material information necessary to permit the Commissioner to gain an understanding of the insurer's corporate governance structure, policies, and practices. The Commissioner may request additional information he or she deems material and necessary to provide the Commissioner with a clear understanding of the corporate governance policies, and the reporting or information system or controls implementing those policies.

(2) Notwithstanding subdivision (1) of this subsection, CGAD shall be prepared consistent with CGAD rules adopted by the Commissioner. Rules adopted by the Commissioner under this subdivision shall be consistent with the NAIC Model Regulation on CGAD. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commissioner.

(h)(1) Confidentiality. Documents, materials, or other information, including CGAD, in the possession or control of the Department obtained or created by, or disclosed to the Commissioner or any other person under this section, are recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information are confidential and privileged, and are exempt from public inspection and copying under the Public Records Act. In addition, they are not subject to subpoena nor discovery, nor admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this subsection shall be construed to require written consent of the insurer before the Commissioner may share or receive confidential documents, materials, or other CGAD-related information pursuant to subdivision (3) of this subsection for the purpose of assisting in the performance of the Commissioner's regular duties.

(2) Neither the Commissioner nor any person who receives documents, materials, or other CGAD-related information, through examination or otherwise, while acting under the authority of the Commissioner, or with whom such documents, materials, or other information are shared pursuant to this section, is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (1) of this subsection.

(3) In order to assist in the performance of the Commissioner's regulatory duties, the Commissioner may:

(A) Upon request, share documents, materials, or other CGAD-related information including confidential and privileged documents, materials, or information subject to subdivision (1) of this subsection including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in subsection 3695(c) of this chapter, the NAIC, and with third-party consultants pursuant to subsection (i) of this section, provided the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and verifies in writing the legal authority to maintain confidentiality.

(B) Receive documents, materials, or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in subsection 3695(c) of this chapter, and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or information.

(4) The sharing of information and documents by the Commissioner pursuant to this section does not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this section.

(5) A waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other CGAD-related information shall not occur as a result of disclosure of such CGAD-related information or documents to the Commissioner under this section or as a result of sharing as authorized under this section.

(i)(1) NAIC and third-party consultants. The Commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff he or she deems reasonably necessary to assist with the review of the CGAD and related information or with the insurer's compliance with this section.

(2) A person retained under this subsection is under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(3) The NAIC and third-party consultants are subject to the same confidentiality standards and requirements as the Commissioner.

(4) As part of the retention process, a third-party consultant shall verify to the Commissioner, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this section.

(5) A written agreement with the NAIC or a third-party consultant governing the sharing and use of information provided under this section shall contain the following provisions and expressly require the written consent of the insurer prior to making public such information:

(A) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to this subdivision (5).

(B) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which an insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(C) A provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the Department and that use of such information by the NAIC or a third-party consultant is subject to the direction of the Commissioner.

(D) A provision prohibiting the NAIC and third-party consultants from storing the information in a permanent database after the underlying analysis is completed.

(E) A provision requiring the NAIC and third-party consultants to provide prompt notice to the Commissioner and to the insurer regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information.

(F) A requirement that the NAIC and third-party consultants consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or third-party consultant pursuant to this section.

(j) Sanctions. An insurer failing, without just cause, to timely file the CGAD as required by this section shall be required, after notice and hearing, to pay a penalty of \$10,000.00 for each day's delay, to be recovered by the Commissioner, and the penalty so recovered shall be paid into the General

Fund of this State. The maximum penalty under this section is \$1,000,000.00. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(k) Severability Clause. If any provision of this section other than subsection (h), or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions of this section, with the exception of subsection (h), are severable.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

Public Hearings

February 10, 2015 - House Chambers - 5:30pm-8:00 pm - Public Hearing on Criminal Background Check for Firearms - Senate Judiciary and Health and Welfare

Information Notice

HOUSE BILL INTRODUCTION DEADLINES

To All House Members:

Request Deadline - All requests for introduction of bills drafted in standard form must be submitted to the Legislative Council by Friday, January 30, 2015.

During the first year of the biennium, a member may request introduction of a bill drafted in short form and submitted to the Legislative Council anytime during the session.

Introduction Deadline - Except with prior consent of the Committee on Rules, all bills drafted in standard form, shall be introduced by February 27, 2015.

During the first year of the biennium Committee bills may be introduced at anytime.