

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 51 entitled “An act relating to group-wide supervision  
4 of internationally active insurance groups” respectfully reports that it has  
5 considered the same and recommends that the bill be amended by striking out  
6 all after the enacting clause and inserting in lieu thereof the following:

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

8 § 3308. LIST OF STOCKHOLDERS; CERTIFICATE TO TRANSACT  
9 BUSINESS; LIABILITY OF PRESIDENT AND DIRECTORS

10 When the entire capital stock of ~~such a~~ corporation having capital stock has  
11 been issued, a complete list of the stockholders with the name and post office  
12 address of each and the number of shares held by each shall be filed with the  
13 ~~commissioner~~ Commissioner, who shall ~~thereupon cause an examination to be~~  
14 ~~made~~ examine the corporation. If, after such examination, it appears that the  
15 whole capital stock has been paid in cash, and the Commissioner has  
16 considered the criteria in section 3361 of this chapter, the ~~commissioner~~  
17 Commissioner shall issue a certificate under his or her seal authorizing ~~such~~  
18 the corporation to begin the transaction of business, which shall be filed with  
19 the ~~secretary of state~~ Secretary of State. ~~Such a~~ A corporation having capital  
20 stock shall not begin the transaction of business until ~~such~~ the certificate has  
21 been ~~so~~ issued and filed. If ~~such~~ a corporation commences business before

1 ~~such~~ a certificate is ~~so~~ issued and filed, the president and directors assenting  
2 thereto ~~shall be~~ are personally liable for all debts incurred before ~~such~~ the  
3 certificate is ~~so~~ issued and filed.

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

5 § 3309. MUTUAL INSURERS TO COMMENCE BUSINESS; WHEN

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

8 (1) it complies with ~~such~~ preliminary requirements for the procurement  
9 of an adequate amount of subscriptions for insurance and possesses and  
10 thereafter maintains unimpaired basic surplus of not less than \$2,000,000.00  
11 and, when first ~~so~~ authorized, shall possess free surplus of not less than  
12 \$3,000,000.00; and

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

15 (b) The ~~commissioner~~ Commissioner in his or her discretion may establish  
16 lesser surplus amount requirements in the case of affiliated corporations jointly  
17 conducting the business of insurance under a pooling agreement. Such surplus  
18 shall be in the form of cash or marketable securities, a portion of which may be  
19 held on deposit with the ~~state treasurer~~ State Treasurer, such securities as  
20 designated by the insurer and approved by the ~~commissioner~~ Commissioner, in  
21 an amount and subject to ~~such~~ conditions determined by the ~~commissioner~~

1 ~~Commissioner.~~ Such ~~The~~ conditions shall include a requirement that any  
2 interest or other earnings attributable to ~~such~~ cash or marketable securities  
3 shall inure to the benefit of the insurer until ~~such time as the commissioner~~  
4 Commissioner determines that the deposit must be used for the benefit of the  
5 policyholders of the insurer or some other authorized public purpose relating to  
6 the regulation of the insurer. ~~The commissioner~~ Commissioner may prescribe  
7 additional surplus based upon the type, volume, and nature of insurance  
8 business transacted.

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

10 § 3681. DEFINITIONS

11 As used in this subchapter:

12 \* \* \*

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

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

19 (5)(6) “Insurer” means a company qualified and licensed to transact the  
20 business of insurance in this State and shall include a health maintenance

1 organization, a nonprofit hospital service corporation, and a nonprofit medical  
2 service corporation, except that it shall not include:

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

6 (B) fraternal benefit societies.

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

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

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

19 (B) meets the following criteria:

20 (i) premiums written in at least three countries;

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

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

6                    ~~(7)~~(9) “Person” means an individual, a corporation, a partnership, an  
7                    association, a joint stock company, a trust, an unincorporated organization, any  
8                    similar entity or any combination of the foregoing acting in concert, but shall  
9                    not include any securities broker performing no more than the usual and  
10                    customary broker’s function.

11                    ~~(8)~~(10) “Security holder” of a specified person means one who owns  
12                    any security of such person, including common stock, preferred stock, debt  
13                    obligations, and any other security convertible into or evidencing the right to  
14                    acquire any of the foregoing.

15                    ~~(9)~~(11) “Subsidiary” of a specified person means an affiliate controlled  
16                    by such person directly, or indirectly through one or more intermediaries.

17                    ~~(10)~~(12) “Voting security” shall include any security convertible into or  
18                    evidencing a right to acquire a voting security.

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

20                    § 3696. GROUP-WIDE SUPERVISOR; INTERNATIONALLY ACTIVE

21                    INSURANCE GROUP

1       (a)(1) The Commissioner is authorized to act as the group-wide supervisor  
2       for any internationally active insurance group. The Commissioner, however,  
3       may acknowledge another regulatory official as the supervisor, provided the  
4       group:

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

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

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

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

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

1 from another jurisdiction is the appropriate supervisor for such group. The  
2 Commissioner shall consider the following factors when making a  
3 determination or acknowledgment under this subsection:

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

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

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

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

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

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

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

20 (2) A commissioner identified under this subsection as the group-wide  
21 supervisor may determine that it is appropriate to acknowledge another

1 supervisor to serve as the group-wide supervisor. The acknowledgment of the  
2 supervisor shall be made after consideration of the factors listed in  
3 subdivisions (A) through (E) of this subdivision, and shall be made in  
4 cooperation with and subject to the acknowledgment of other regulatory  
5 officials involved with supervision of the members of the group, and in  
6 consultation with the group itself.

7 (c) Notwithstanding any other provision of law to the contrary, when  
8 another regulatory official is acting as the group-wide supervisor of an  
9 internationally active insurance group, the Commissioner shall acknowledge  
10 such official as the supervisor. However, in the event of a material change in  
11 the group that results in:

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

14 (2) Vermont becoming the place of domicile of the top-tiered insurers in  
15 the insurance holding company system of the group, the Commissioner shall  
16 make a determination or acknowledgment as to the appropriate supervisor for  
17 such an group pursuant to subsection (b) of this section.

18 (d) Pursuant to section 3686 of this subchapter, the Commissioner is  
19 authorized to collect from any insurer registered under section 3684 of this  
20 subchapter all information necessary to determine whether the Commissioner



1 shall act as the group-wide supervisor of an internationally active insurance  
2 group or, instead, acknowledge another regulatory official to act as supervisor.

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

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

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

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

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

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

21 (A) governance, risk assessment, and management;

1           (B) capital adequacy; and

2           (C) material intercompany transactions.

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

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

13           (5) Enter into agreements with or obtain documentation from any  
14 insurer registered under section 3684 of this subchapter, any member of the  
15 group, and any other state, federal, and international regulatory agencies of  
16 members of the group, providing the basis for or otherwise clarifying the  
17 Commissioner’s role as group-wide supervisor, including provisions for  
18 resolving disputes with other regulatory officials. Such agreements or  
19 documentation shall not serve as evidence in any proceeding that any insurer  
20 or person within an insurance holding company system not domiciled or

1 incorporated in Vermont is doing business in Vermont or is otherwise subject  
2 to Vermont jurisdiction.

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

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

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

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

17 (h) The Commissioner is authorized to enter into agreements with or obtain  
18 documentation from any insurer registered under section 3684 of this  
19 subchapter, any affiliate of the insurer, and other state, federal, and  
20 international regulatory agencies for members of the internationally active

1 insurance group that provide the basis for or otherwise clarify a regulatory  
2 official’s role as group-wide supervisor.

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

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

9 Sec. 5. EFFECTIVE DATE

10 This act shall take effect on passage.

11  
12 and that after passage the title of the bill be amended to read: “An act relating  
13 to group-wide supervision of internationally active insurance groups and the  
14 establishment of domestic insurers in Vermont”.

15  
16  
17  
18 (Committee vote: \_\_\_\_\_)

19 \_\_\_\_\_

20 Representative \_\_\_\_\_

21 FOR THE COMMITTEE