

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 98 entitled “An act relating to captive insurance
4 companies” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended as
6 follows:

7 First: By adding Sec. 6 to read as follows:

8 Sec. 6. 8 V.S.A. § 6036(d) is amended to read:

9 (d) A participant shall ~~insure only its own risks through a sponsored captive~~
10 insurance company not insure any risks other than its own and the risks of
11 affiliated entities or of controlled unaffiliated entities.

12 Second: By striking out Sec. 8 in its entirety and by inserting in lieu thereof
13 a new Sec. 8 (to be renumbered as Sec. 9) to read as follows:

14 Sec. 9. 8 V.S.A. § 6052(g) is added to read:

15 (g) This subsection establishes governance standards for a risk retention
16 group.

17 (1) As used in this subsection:

18 (A) “Board of directors” or “board” means the governing body of a
19 risk retention group elected by risk retention group members to establish
20 policy, elect or appoint officers and committees, and make other governing
21 decisions.

1 (B) “Director” means a natural person designated in the articles of
2 the risk retention group or designated, elected, or appointed by any other
3 manner, name, or title to act as a director.

4 (C) “Independent director” means a director who does not have a
5 material relationship with the risk retention group. A person that is a direct or
6 indirect owner of or subscriber in the risk retention group – or is an officer,
7 director, or employee of such an owner and insured, unless some other position
8 of such officer, director, or employee constitutes a “material relationship” – as
9 contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk
10 Retention Act, is considered to be “independent.” A director has a material
11 relationship with a risk retention group if he or she, or a member of his or her
12 immediate family:

13 (i) In any 12-month period, receives from the risk retention group,
14 or from a consultant or service provider to the risk retention group,
15 compensation or other item of value in an amount equal to or greater than five
16 percent of the risk retention group’s gross written premium or two percent of
17 the risk retention group’s surplus, as measured at the end of any fiscal quarter
18 falling in such 12-month period, whichever is greater. This provision also
19 applies to compensation or items of value received by any business with which
20 the director is affiliated. Such material relationship shall continue for one year

1 after the item of value is received or the compensation ceases or falls below the
2 threshold established in this subdivision, as applicable.

3 (ii) Has a relationship with an auditor as follows: Is affiliated with
4 or employed in a professional capacity by a current or former internal or
5 external auditor of the risk retention group. Such material relationship shall
6 continue for one year after the affiliation or employment ends.

7 (iii) Has a relationship with a related entity as follows: Is
8 employed as an executive officer of another company whose board of directors
9 includes executive officers of the risk retention group, unless a majority of the
10 membership of such other company's board of directors is the same as the
11 membership of the board of directors of the risk retention group. Such
12 material relationship shall continue until the employment or service ends.

13 (D) "Material service provider" includes a captive manager, auditor,
14 accountant, actuary, investment advisor, attorney, managing general
15 underwriter, or other person responsible for underwriting, determination of
16 rates, premium collection, claims adjustment or settlement, or preparation of
17 financial statements, whose aggregate annual contract fees are equal to or
18 greater than five percent of the risk retention group's annual gross written
19 premium or two percent of its surplus, whichever is greater. It does not mean
20 defense counsel retained by a risk retention group, unless his or her annual fees

1 are equal to or greater than five percent of a risk retention group's annual gross
2 premium or two percent of its surplus, whichever is greater.

3 (2) The board of directors shall determine whether a director is
4 independent; review such determinations annually; and maintain a record of
5 the determinations, which shall be provided to the Commissioner promptly,
6 upon request. The board shall have a majority of independent directors. If the
7 risk retention group is reciprocal, then the attorney-in-fact is required to adhere
8 to the same standards regarding independence as imposed on the risk retention
9 group's board of directors.

10 (3) The term of any material service provider contract entered into with
11 a risk retention group shall not exceed five years. The contract, or its renewal,
12 requires approval of a majority of the risk retention group's independent
13 directors. The board of directors has the right to terminate a contract at any
14 time for cause after providing adequate notice, as defined in the terms of the
15 contract.

16 (4) A risk retention group shall not enter into a material service provider
17 contract without the prior written approval of the Commissioner.

18 (5) A risk retention group's plan of operation shall include written
19 policies approved by its board of directors requiring the board to:

20 (A) provide evidence of ownership interest to each risk retention
21 group member;

1 (B) develop governance standards applicable to the risk retention
2 group;

3 (C) oversee the evaluation of the risk retention group’s management,
4 including the performance of its captive manager, managing general
5 underwriter, or other person or persons responsible for underwriting, rate
6 determination, premium collection, claims adjustment and settlement, or
7 preparation of financial statements;

8 (D) review and approve the amount to be paid under a material
9 service provider contract; and

10 (E) at least annually, review and approve:

11 (i) the risk retention group’s goals and objectives relevant to the
12 compensation of officers and service providers;

13 (ii) the performance of officers and service providers as measured
14 against the risk retention group’s goals and objectives;

15 (iii) the continued engagement of officers and material service
16 providers.

17 (6) A risk retention group shall have an audit committee composed of at
18 least three independent board members. A nonindependent board member may
19 participate in the committee’s activities, if invited to do so by the audit
20 committee, but he or she shall not serve as a committee member. The
21 Commissioner may waive the requirement of an audit committee if the risk

1 retention group demonstrates to the Commissioner’s satisfaction that having
2 such committee is impracticable and the board of directors is able to perform
3 sufficiently the committee’s responsibilities. The audit committee shall have a
4 written charter defining its responsibilities, which shall include:

5 (A) assisting board oversight of the integrity of financial statements,
6 compliance with legal and regulatory requirements, and qualifications,
7 independence, and performance of the independent auditor or actuary;

8 (B) reviewing annual and quarterly audited financial statements with
9 management;

10 (C) reviewing annual audited financial statements with its
11 independent auditor and, if it deems advisable, the risk retention group’s
12 quarterly financial statements as well;

13 (D) reviewing risk assessment and risk management policies;

14 (E) meeting with management, either directly or through a designated
15 representative of the committee;

16 (F) meeting with independent auditors, either directly or through a
17 designated representative of the committee;

18 (G) reviewing with the independent auditor any audit problems and
19 management’s response;

1 (H) establishing clear hiring policies applicable to the hiring of
2 employees or former employees of the independent auditor by the risk
3 retention group;

4 (I) requiring the independent auditor to rotate the lead audit partner
5 having primary responsibility for the risk retention group’s audit, as well as the
6 audit partner responsible for reviewing that audit, so that neither individual
7 performs audit services for the risk retention group for more than five
8 consecutive fiscal years; and

9 (J) reporting regularly to the board of directors.

10 (7) The board of directors shall adopt governance standards, which shall
11 be available to risk retention group members through electronic or other
12 means, and provided to risk retention group members, upon request. The
13 governance standards shall include:

14 (A) a process by which risk retention group members elect directors.

15 (B) director qualifications, responsibilities, and compensation;

16 (C) director orientation and continuing education requirements;

17 (D) a process allowing the board access to management and, as
18 necessary and appropriate, independent advisors;

19 (E) policies and procedures for management succession; and

20 (F) policies and procedures providing for an annual performance
21 evaluation of the board.

1 (8) The board of directors shall adopt a code of business conduct and
2 ethics applicable to directors, officers, and employees of the risk retention
3 group and criteria for waivers of code provisions, which shall be available to
4 risk retention group members through electronic or other means, and provided
5 to risk retention group members, upon request. Provisions of the code shall
6 address:

7 (A) conflicts of interest;

8 (B) matters covered under the Vermont corporate opportunities
9 doctrine;

10 (C) confidentiality;

11 (D) fair dealing;

12 (E) protection and proper use of risk retention group assets;

13 (F) standards for complying with applicable laws, rules, and
14 regulations; and

15 (G) mandatory reporting of illegal or unethical behavior affecting
16 operation of the risk retention group.

17 (9) The president or chief executive officer of a risk retention group
18 shall promptly notify the Commissioner in writing of any known material
19 noncompliance with the governance standards established in this subsection.

20 Third: By striking out Sec. 9 (effective date) in its entirety and by inserting
21 in lieu thereof a new Sec. 9 (renumbered as Sec. 10) to read as follows:

1 Sec. 10. EFFECTIVE DATE; APPLICATION

2 This act shall take effect on passage. Sec. 9 (governance standards
3 applicable to risk retention groups) shall apply to risk retention groups first
4 licensed on or after the effective date of this act, and shall apply to all other
5 risk retention groups one year after the effective date of this act.

6 and by renumbering the remaining sections to be numerically correct.

7 and that after passage the title of the bill be amended to read: “An act relating
8 to captive insurance companies and risk retention groups”

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11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE