MEMORANDUM

TO: HOUSE COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT
FROM: DAVID PROVOST, DEPUTY COMMISSIONER, DEPARTMENT OF FINANCIAL REGULATION
SUBJECT: CAPTIVE BILL OUTLINE
DATE: JANUARY 13, 2016
CC: RICHARD SMITH, VCIA
DAN TOWLE, DIRECTOR OF FINANCIAL SERVICES

Below is an outline of proposed changes to Vermont's captive statute

Sec. 1. – Fiscal Year Filers

Proposal: Allow sponsored or industrial insured captives to file reports on a fiscal year-end. Many sponsored captives are only open to affiliates, and many industrial insured captives are small groups of sophisticated buyers. In those cases it is appropriate to allow the captive's year to match the owner/insured's.

Sec. 2. – Dormant Captives

Background: The legislature passed provisions allowing captives to enter a dormant statues in 2014. Since then 8 captives have taken advantage of the law. By the time a company qualifies to enter dormant status, it has served its purpose. It is only paying a $500 license fee and the minimum tax of $7,500 per year; it is ready to close up shop. When we permit the company to enter a dormant status, we waive the premium tax and the company stays in Vermont, ready to be reactivated when and if the need arises. There is no current fiscal impact (we were about to lose the company entirely), but there remains a potential for the company to be reactivated in Vermont, with no consideration for a change in venue.

Proposal: Allow sponsored or industrial insured captives to enter dormant status. The same logic applies as before: keep the company here rather than have it dissolve. As noted above, many sponsored captives are only open to affiliates or controlled unaffiliated business, and many industrial insured captives are small groups of sophisticated buyers. This change required removing prohibition of have insured controlled unaffiliated business.

There are currently 3 industrial insured captives and 5 sponsored captives with no premium activity that might be in a position to apply for dormant status.

Sec. 3. – Risk Retention Group Governance Standards

Background: We passed governance standards last session. With a year of operation under our belts, some minor adjustments are suggested. These governance standards are a NAIC model and are required for our continued accreditation. In order to maintain our accredited status, we must adopt model laws, and any deviations or modifications must be such that our statutes are "substantially similar and equally effective."

Proposal: Make the following amendments to the governance standards:

- **6052(g)(1)(B)**
  Change the definition of "Director" from a person "elected… to act as a director" to one who is "elected… to act as a member of the governing body" of the RRG. Defining a director as a director didn't seem very clear.

- **6052(g)(1)(D)**
  The model act tries to carve out defense counsel from the definition of "material service provider', but then puts defense counsel right back in the definition. This modification only includes defense counsel if his or her annual fees are material in a majority of the previous 5 years. It is not possible to know in advance of the amounts to be spent on defense counsel.

- **6052(g)(2)**
  First, the section moves the requirement that a board have a majority of independent directors to the first line for clarity. Second, it adds authority for the Commissioner to refute the boards' determination that any member of the board is "independent". This is to prevent technical compliance with the statute without adhering to the spirit of independent governance. This also ensures that our law is "equally effective" as the NAIC model, despite some variations from the model. Third, we have removed the requirement that the attorney-in-fact of a reciprocal adhere to the same board standards. The board of the reciprocal governs the company; the AIF is simply a legal construct that undertakes the reciprocal exchange of contracts among the members.

- **6052(g)(5)**
  Change "plan of operation" to "business plan" to avoid confusion with the federal risk retention act, which requires the plan of operation to be filed with all states in which the RRG does business.

- **6052(g)(5)(E)(i) and (ii)**
  Add "material" to service provider contract where appropriate

- **6052(g)(6)(B)**
  Deleted "audited" from review of financial statements. Quarterly statements are not audited, and the review should be conducted prior to the audit. Section C requires a review of the audited statements, so this is no less effective.