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H.538

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,  
Baser of Bristol, Carr of Brandon, Dakin of Colchester,  
Kitzmiller of Montpelier, O’Sullivan of Burlington, Parent of  
St. Albans Town, Scheuermann of Stowe, Sibia of Dover, and  
Stuart of Brattleboro

Referred to Committee on  
Date:

Subject: Insurance; captive insurance companies

Statement of purpose of bill as introduced: This bill proposes to make various  
amendments to Vermont law regarding captive insurance companies.

An act relating to captive insurance companies

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

\* \* \* Captive Insurance Company Reports and Statements \* \* \*

Sec. 1. 8 V.S.A. § 6007(c) is amended to read:

(c) Any pure captive insurance company, sponsored captive insurance  
company, or ~~an~~ industrial insured captive insurance company may make  
written application for filing the required report on a fiscal year-end. If an  
alternative reporting date is granted:

(1) the annual report is due 75 days after the fiscal year-end; and

1           (2) in order to provide sufficient detail to support the premium tax  
2 return, the pure captive insurance company, sponsored captive insurance  
3 company, or industrial insured captive insurance company shall file prior to  
4 March 15 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the  
5 “~~Captive Annual Statement; Pure or Industrial Insured,~~” “Vermont Captive  
6 Insurance Company Annual Report verified by oath of two of its executive  
7 officers.

8                           \* \* \* Dormant Captive Insurance Companies \* \* \*

9           Sec. 2. 8 V.S.A. § 6024 is amended to read:

10           § 6024. DORMANT CAPTIVE INSURANCE COMPANIES

11           (a) As used in this section, unless the context requires otherwise, “dormant  
12 captive insurance company” means a pure captive insurance company ~~which,~~  
13 sponsored captive insurance company, or industrial insured captive insurance  
14 company that has:

15                   (1) ~~at no time, insured-controlled unaffiliated business;~~

16                   (2) ceased transacting the business of insurance, including the issuance  
17 of insurance policies; and

18                   (3)~~(2)~~ no remaining liabilities associated with insurance business  
19 transactions, or insurance policies issued prior to the filing of its application for  
20 a certificate of dormancy under this section.

1 (b) A ~~pure~~ captive insurance company domiciled in Vermont ~~which~~ that  
2 meets the criteria of subsection (a) of this section may apply to the  
3 Commissioner for a certificate of dormancy. The certificate of dormancy shall  
4 be subject to renewal every five years and shall be forfeited if not renewed  
5 within such time.

6 (c) A dormant captive insurance company ~~which~~ that has been issued a  
7 certificate of dormancy shall:

8 \* \* \*

9 \* \* \* Risk Retention Groups; Governance Standards \* \* \*

10 Sec. 3. 8 V.S.A. § 6052(g) is amended to read:

11 (g) This subsection establishes governance standards for a risk retention  
12 group.

13 (1) As used in this subsection:

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

18 (B) “Director” means a natural person designated in the articles of  
19 the risk retention group or designated, elected, or appointed by any other  
20 manner, name, or title to act as a ~~director~~ member of the governing body of the  
21 risk retention group.

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

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

20           (ii) Has a relationship with an auditor as follows: Is affiliated with  
21 or employed in a professional capacity by a current or former internal or

1 external auditor of the risk retention group. Such material relationship shall  
2 continue for one year after the affiliation or employment ends.

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

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

20 (2) The board shall have a majority of independent directors. The board  
21 of directors shall determine whether a director is independent; review such

1 determinations annually; and maintain a record of the determinations, which  
2 shall be provided to the Commissioner promptly, upon request ~~The board shall~~  
3 ~~have a majority of independent directors. If the risk retention group is~~  
4 ~~reciprocal, then the attorney in fact is required to adhere to the same standards~~  
5 ~~regarding independence as imposed on the risk retention group's board of~~  
6 ~~directors~~ If the Commissioner disagrees with the board's determination  
7 regarding independence, the board, within six months, shall take such actions  
8 as are necessary in order to obtain written confirmation from the  
9 Commissioner that the board meets the independence requirements set forth in  
10 this subdivision (1)(C) of this subsection.

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

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

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

1           (A) provide evidence of ownership interest to each risk retention  
2 group member;

3           (B) develop governance standards applicable to the risk retention  
4 group;

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

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

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

13           (i) the risk retention group's goals and objectives relevant to the  
14 compensation of officers and material service providers;

15           (ii) the performance of officers and material service providers as  
16 measured against the risk retention group's goals and objectives;

17           (iii) the continued engagement of officers and material service  
18 providers.

19          (6) A risk retention group shall have an audit committee composed of at  
20 least three independent board members. A nonindependent board member may  
21 participate in the committee's activities, if invited to do so by the audit

1 committee, but he or she shall not serve as a committee member. The  
2 Commissioner may waive the requirement of an audit committee if the risk  
3 retention group demonstrates to the Commissioner's satisfaction that having  
4 such committee is impracticable and the board of directors is able to perform  
5 sufficiently the committee's responsibilities. The audit committee shall have a  
6 written charter defining its responsibilities, which shall include:

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

10 (B) reviewing annual and quarterly audited financial statements with  
11 management;

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

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

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

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

20 (G) reviewing with the independent auditor any audit problems and  
21 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   \* \* \*

11   \* \* \* Effective Date \* \* \*

12       Sec. 4. EFFECTIVE DATE

13       This act shall take effect on passage.