

1 H.85

2 Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,  
3 Frenier of Chelsea, Hill of Wolcott, Kimbell of Woodstock,  
4 McCoy of Poultney, Myers of Essex, O'Sullivan of Burlington,  
5 Poirier of Barre City, Stuart of Brattleboro, and Sullivan of  
6 Dorset

7 Referred to Committee on

8 Date:

9 Subject: Insurance; captives; reporting; tax credit; agency captives; dormant  
10 captives; protected cells; risk retention group governance

11 Statement of purpose of bill as introduced: This bill proposes to make various  
12 amendments to Vermont law governing captive insurance companies and risk  
13 retention groups.

14 An act relating to captive insurance companies

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

16 \* \* \* Accounting Standards \* \* \*

17 Sec. 1. 8 V.S.A. § 6007 is amended to read:

18 § 6007. REPORTS AND STATEMENTS

19 (a) Captive insurance companies shall not be required to make any annual  
20 report except as provided in this chapter.

1 (b) Prior to March 1 of each year, and prior to March 15 of each year in the  
2 case of pure captive insurance companies or industrial insured captive  
3 insurance companies, each captive insurance company shall submit to the  
4 Commissioner a report of its financial condition, verified by oath of two of its  
5 executive officers. Each captive insurance company shall report using  
6 generally accepted accounting principles, statutory accounting principles, or  
7 international financial reporting standards unless the Commissioner requires,  
8 approves, or accepts the use of ~~statutory accounting principles or any other~~  
9 comprehensive basis of accounting, in each case with any appropriate or  
10 necessary modifications or adaptations thereof required or approved or  
11 accepted by the Commissioner for the type of insurance and kinds of insurers  
12 to be reported upon, and as supplemented by additional information required  
13 by the Commissioner. For the purposes of this section, statutory accounting  
14 principles shall mean the accounting principles codified in the NAIC  
15 Accounting Practices and Procedures Manual. Except as otherwise provided,  
16 each risk retention group shall file its report in the form required by subsection  
17 3561(a) of this title, and each risk retention group shall comply with the  
18 requirements set forth in section 3569 of this title. The Commissioner shall by  
19 rule propose the forms in which pure captive insurance companies, association  
20 captive insurance companies, and industrial insured captive insurance  
21 companies shall report. Subdivision 6002(c)(3) of this title shall apply to each

1 report filed pursuant to this section, except that such subdivision shall not  
2 apply to reports filed by risk retention groups.

3 \* \* \*

4 \* \* \* Premium Tax Credit \* \* \*

5 Sec. 2. 8 V.S.A. § 6014(k) is amended to read:

6 (k) A captive insurance company first licensed under this chapter on or  
7 after January 1, ~~2011~~ 2017 shall receive a nonrefundable credit of ~~\$7,500.00~~  
8 \$5,000.00 applied against the aggregate taxes owed for the first two taxable  
9 ~~year~~ years for which the company has liability under this section.

10 \* \* \* Agency Captive Insurance Companies \* \* \*

11 Sec. 3. 8 V.S.A. § 6001 is amended to read:

12 § 6001. DEFINITIONS

13 As used in this chapter, unless the context requires otherwise:

14 (1) “Affiliated company” means any company in the same corporate  
15 system as a parent, an industrial insured, or a member organization by virtue of  
16 common ownership, control, operation, or management.

17 (2) “Agency captive insurance company” means a captive insurance  
18 company that is owned or directly or indirectly controlled by one or more  
19 insurance agencies or brokerages licensed under the laws of any state and that  
20 only insures risks of policies that are placed by or through such agency or  
21 agencies, or brokerage or brokerages, as applicable.

1           (3) “Association” means any legal association of individuals,  
2 corporations, limited liability companies, partnerships, associations, or other  
3 entities, the member organizations of which or which does itself, whether or  
4 not in conjunction with some or all of the member organizations:

5           (A) own, control, or hold with power to vote all of the outstanding  
6 voting securities of an association captive insurance company incorporated as a  
7 stock insurer; or

8           (B) have complete voting control over an association captive  
9 insurance company incorporated as a mutual insurer; or

10           (C) constitute all of the subscribers of an association captive  
11 insurance company formed as a reciprocal insurer; or

12           (D) have complete voting control over an association captive  
13 insurance company formed as a limited liability company.

14           ~~(3)~~(4) “Association captive insurance company” means any company  
15 that insures risks of the member organizations of the association; and that also  
16 may insure the risks of affiliated companies of the member organizations and  
17 the risks of the association itself.

18           ~~(4)~~(5) “Captive insurance company” means any pure captive insurance  
19 company, association captive insurance company, sponsored captive insurance  
20 company, industrial insured captive insurance company, risk retention group,  
21 or special purpose financial insurance company formed or licensed under the

1 provisions of this chapter. For purposes of this chapter, a branch captive  
2 insurance company shall be a pure captive insurance company with respect to  
3 operations in this State, unless otherwise permitted by the Commissioner.

4 ~~(5)~~(6) “Commissioner” means the Commissioner of Financial  
5 Regulation.

6 ~~(6)~~(7) “Controlled unaffiliated business” means any person:

7 (A) that is not in the corporate system of a parent and its affiliated  
8 companies in the case of a pure captive insurance company, or that is not in the  
9 corporate system of an industrial insured and its affiliated companies in the  
10 case of an industrial insured captive insurance company;

11 (B) that has an existing contractual relationship with a parent or one  
12 of its affiliated companies in the case of a pure captive insurance company, or  
13 with an industrial insured or one of its affiliated companies in the case of an  
14 industrial insured captive insurance company; and

15 (C) whose risks are managed by a pure captive insurance company or  
16 an industrial insured captive insurance company, as applicable, in accordance  
17 with section 6019 of this title.

18 ~~(7)~~(8) “Excess workers’ compensation insurance” means, in the case of  
19 an employer that has insured or self-insured its workers’ compensation risks in  
20 accordance with applicable State or federal law, insurance in excess of a  
21 specified per-incident or aggregate limit established by the Commissioner.

1           ~~(8)~~(9) “Industrial insured” means an insured:

2                   (A) who procures the insurance of any risk or risks by use of the  
3 services of a full-time employee acting as an insurance manager or buyer;

4                   (B) whose aggregate annual premiums for insurance on all risks total  
5 at least \$25,000.00; and

6                   (C) who has at least 25 full-time employees.

7           ~~(9)~~(10) “Industrial insured captive insurance company” means any  
8 company that insures risks of the industrial insureds that comprise the  
9 industrial insured group, and that may insure the risks of the affiliated  
10 companies of the industrial insureds and the risks of the controlled unaffiliated  
11 business of an industrial insured or its affiliated companies.

12           ~~(10)~~(11) “Industrial insured group” means any group of industrial  
13 insureds that collectively:

14                   (A) own, control, or hold with power to vote all of the outstanding  
15 voting securities of an industrial insured captive insurance company  
16 incorporated as a stock insurer;

17                   (B) have complete voting control over an industrial insured captive  
18 insurance company incorporated as a mutual insurer; or

19                   (C) constitute all of the subscribers of an industrial insured captive  
20 insurance company formed as a reciprocal insurer; or

1           (D) have complete voting control over an industrial insured captive  
2 insurance company formed as a limited liability company.

3           ~~(11)~~(12) “Member organization” means any individual, corporation,  
4 limited liability company, partnership, association, or other entity that belongs  
5 to an association.

6           ~~(12)~~(13) “Mutual corporation” means a corporation organized without  
7 stockholders and includes a nonprofit corporation with members.

8           ~~(13)~~(14) “Parent” means a corporation, limited liability company,  
9 partnership, other entity, or individual, that directly or indirectly owns,  
10 controls, or holds with power to vote more than 50 ~~per centum~~ percent of the  
11 outstanding voting:

12           (A) securities of a pure captive insurance company organized as a  
13 stock corporation; or

14           (B) membership interests of a pure captive insurance company  
15 organized as a nonprofit corporation; or

16           (C) membership interests of a pure captive insurance company  
17 organized as a limited liability company.

18           ~~(14)~~(15) “Pure captive insurance company” means any company that  
19 insures risks of its parent and affiliated companies or controlled unaffiliated  
20 business.

1           ~~(15)~~(16) “Risk retention group” means a captive insurance company  
2 organized under the laws of this State pursuant to the Liability Risk Retention  
3 Act of 1986, 15 U.S.C. § 3901 et seq., as amended, as a stock or mutual  
4 corporation, a reciprocal or other limited liability entity.

5 Sec. 4. 8 V.S.A. § 6002(a) is amended to read:

6           (a) Any captive insurance company, when permitted by its articles of  
7 association, charter, or other organizational document, may apply to the  
8 Commissioner for a license to do any and all insurance comprised in  
9 subdivisions 3301(a)(1), (2), (3)(A)-(C), (E)-(R), and (4)-(9) of this title and  
10 may grant annuity contracts as defined in section 3717 of this title; provided,  
11 however, that:

12           (1) ~~no~~ No pure captive insurance company may insure any risks other  
13 than those of its parent and affiliated companies or controlled unaffiliated  
14 business;

15           (2) No agency captive insurance company may do any insurance  
16 business in this State unless:

17           (A) an insurance agency or brokerage that owns or controls the  
18 agency captive insurance company remains in regulatory good standing in all  
19 states in which it is licensed;

20           (B) it insures only the risks of the commercial policies that are placed  
21 by or through an insurance agency or brokerage that owns or directly or

1 indirectly controls the agency captive insurance company and, if required by  
2 the Commissioner in his or her discretion, it provides the Commissioner the  
3 form of such commercial policies;

4 (C) it discloses to the original policyholder or policyholders, in a  
5 form or manner approved by the Commissioner, any limitations, rights, and  
6 obligations held by the agency captive insurance company as a result of its  
7 affiliation with an insurance agency or brokerage; and

8 (D) if required by the Commissioner in his or her discretion, the  
9 business written by an agency captive insurance company is:

10 (i) Fronted by an insurance company licensed under the laws of  
11 any state.

12 (ii) Reinsured by a reinsurer authorized or approved by the State  
13 of Vermont.

14 (iii) Secured by a trust fund in the United States for the benefit of  
15 policyholders and claimants or funded by an irrevocable letter of credit or  
16 other arrangement that is acceptable to the Commissioner. The Commissioner  
17 may require the agency captive insurance company to increase the funding of  
18 any security arrangement established under this subdivision. If the form of  
19 security is a letter of credit, the letter of credit shall be issued or confirmed by a  
20 bank approved by the Commissioner. A trust maintained pursuant to this

1 subdivision shall be established in a form and upon terms approved by the  
2 Commissioner.

3 ~~(3)~~ No association captive insurance company may insure any risks  
4 other than those of its association, those of the member organizations of its  
5 association, and those of a member organization's affiliated companies;.

6 ~~(3)(4)~~ No industrial insured captive insurance company may insure  
7 any risks other than those of the industrial insureds that comprise the industrial  
8 insured group, those of their affiliated companies, and those of the controlled  
9 unaffiliated business of an industrial insured or its affiliated companies;.

10 ~~(4)(5)~~ No risk retention group may insure any risks other than those  
11 of its members and owners;.

12 ~~(5)(6)~~ No captive insurance company may provide personal motor  
13 vehicle or homeowner's insurance coverage or any component thereof;.

14 ~~(6)(7)~~ No captive insurance company may accept or cede reinsurance  
15 except as provided in section 6011 of this title;.

16 ~~(7)(8)~~ any Any captive insurance company may provide excess workers'  
17 compensation insurance to its parent and affiliated companies, unless  
18 prohibited by the federal law or laws of the state having jurisdiction over the  
19 transaction. Any captive insurance company, unless prohibited by federal law,  
20 may reinsure workers' compensation of a qualified self-insured plan of its  
21 parent and affiliated companies; ~~and~~.

1           ~~(8)(9)~~ any Any captive insurance company ~~which~~ that insures risks  
2 described in subdivisions 3301(a)(1) and (2) of this title shall comply with all  
3 applicable State and federal laws.

4           Sec. 5. 8 V.S.A. § 6004 is amended to read:

5           § 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

6           (a) No captive insurance company shall be issued a license unless it shall  
7 possess and thereafter maintain unimpaired paid-in capital and surplus of:

8           (1) in the case of a pure captive insurance company, not less than  
9 \$250,000.00;

10           (2) in the case of an association captive insurance company, not less  
11 than \$500,000.00;

12           (3) in the case of an industrial insured captive insurance company, not  
13 less than \$500,000.00;

14           (4) in the case of an agency captive insurance company, not less than  
15 \$500,000.00;

16           (5) in the case of a risk retention group, not less than \$1,000,000.00; and

17           ~~(5)(6)~~ in the case of a sponsored captive insurance company, not less  
18 than \$250,000.00.

19           (b) The Commissioner may prescribe additional capital and surplus based  
20 upon the type, volume, and nature of insurance business transacted.

1 (c) Capital and surplus may be in the form of cash, marketable securities, a  
2 trust approved by the Commissioner and of which the Commissioner is the  
3 sole beneficiary, or an irrevocable letter of credit issued by a bank approved by  
4 the Commissioner.

5 Sec. 6. 8 V.S.A. § 6006 is amended to read:

6 § 6006. FORMATION OF CAPTIVE INSURANCE COMPANIES IN THIS  
7 STATE

8 (a) A pure captive insurance company may be incorporated as a stock  
9 insurer with its capital divided into shares and held by the stockholders, as a  
10 nonprofit corporation with one or more members, or as a manager-managed  
11 limited liability company.

12 (b) An agency captive insurance company may be incorporated as a stock  
13 insurer with its capital divided into shares and held by the stockholders, as a  
14 nonprofit corporation with one or more members, or as a manager-managed  
15 limited liability company.

16 (c) An association captive insurance company, an industrial insured captive  
17 insurance company, or a risk retention group may be:

18 (1) incorporated as a stock insurer with its capital divided into shares  
19 and held by the stockholders;

20 (2) incorporated as a mutual corporation;

1           (3) organized as a reciprocal insurer in accordance with chapter 132 of  
2 this title; or

3           (4) organized as a manager-managed limited liability company.

4           ~~(e)~~(d) A captive insurance company incorporated or organized in this State  
5 shall have one or more incorporators or one or more organizers, at least one of  
6 which shall be a resident of this State.

7           ~~(d)~~(e) In the case of a captive insurance company:

8           (1)(A) Formed as a corporation, before the articles of incorporation are  
9 transmitted to the Secretary of State, the incorporators shall petition the  
10 Commissioner to issue a certificate setting forth the Commissioner's finding  
11 that the establishment and maintenance of the proposed corporation will  
12 promote the general good of the State. In arriving at such a finding, the  
13 Commissioner shall consider:

14                   (i) the character, reputation, financial standing, and purposes of  
15 the incorporators;

16                   (ii) the character, reputation, financial responsibility, insurance  
17 experience, and business qualifications of the officers and directors; and

18                   (iii) such other aspects as the Commissioner ~~shall deem~~ deems  
19 advisable.

1           (B) The articles of incorporation, ~~such~~ the certificate, and the  
2 organization fee shall be transmitted to the Secretary of State, who shall  
3 ~~thereupon~~ record both the articles of incorporation and the certificate.

4           (2) Formed as a reciprocal insurer, the organizers shall petition the  
5 Commissioner to issue a certificate setting forth the Commissioner's finding  
6 that the establishment and maintenance of the proposed association will  
7 promote the general good of the State. In arriving at such a finding, the  
8 Commissioner shall consider the items set forth in subdivisions (1)(A)(i)-(iii)  
9 of this subsection.

10           (3) Formed as a limited liability company, before the articles of  
11 organization are transmitted to the Secretary of State, the organizers shall  
12 petition the Commissioner to issue a certificate setting forth the  
13 Commissioner's finding that the establishment and maintenance of the  
14 proposed company will promote the general good of the State. In arriving at  
15 such a finding, the Commissioner shall consider the items set forth in  
16 subdivisions (1)(A)(i)-(iii) of this subsection.

17           ~~(e)~~(f) The capital stock of a captive insurance company incorporated as a  
18 stock insurer may be authorized with no par value.

19           ~~(f)~~(g) In the case of a captive insurance company:

20           (1) formed as a corporation, at least one of the members of the board of  
21 directors shall be a resident of this State;

1           (2) formed as a reciprocal insurer, at least one of the members of the  
2 subscribers' advisory committee shall be a resident of this State;

3           (3) formed as a limited liability company, at least one of the managers  
4 shall be a resident of this State.

5           ~~(g)~~(h) Other than captive insurance companies formed as limited liability  
6 companies under 11 V.S.A. chapter 21 or as nonprofit corporations under  
7 Title 11B, captive insurance companies formed as corporations under the  
8 provisions of this chapter shall have the privileges and be subject to the  
9 provisions of Title 11A as well as the applicable provisions contained in this  
10 chapter. In the event of conflict between the provisions of said general  
11 corporation law and the provisions of this chapter, the latter shall control.

12           ~~(h)~~(i) Captive insurance companies formed under the provisions of this  
13 chapter:

14           (1) As limited liability companies shall have the privileges and be  
15 subject to the provisions of 11 V.S.A. chapter 21 as well as the applicable  
16 provisions contained in this chapter. In the event of a conflict between the  
17 provisions of 11 V.S.A. chapter 21 and the provisions of this chapter, the latter  
18 shall control.

19           (2) As nonprofit corporations shall have the privileges and be subject to  
20 the provisions of Title 11B as well as the applicable provisions contained in

1 this chapter. In the event of conflict between the provisions of Title 11B and  
2 the provisions of this chapter, the latter shall control.

3 ~~(i)~~(j) The provisions of subchapter 3 and subchapter 3A of chapter 101 of  
4 this title, pertaining to mergers, consolidations, conversions, mutualizations,  
5 redomestications, and mutual holding companies, shall apply in determining  
6 the procedures to be followed by captive insurance companies in carrying out  
7 any of the transactions described therein, except that:

8 (1) The Commissioner may, upon request of an insurer party to a merger  
9 authorized under this subsection, waive the requirement of subdivision 3424(6)  
10 of this title.

11 (2) The Commissioner may waive the requirements for public notice  
12 and hearing or, in accordance with rules which the Commissioner may adopt  
13 addressing categories of transactions, modify the requirements for public  
14 notice and hearing. If a notice of public hearing is required, but no one  
15 requests a hearing ten days before the day set for the hearing, then the  
16 Commissioner may cancel the hearing.

17 (3) The provisions of subsections 3423(f) and (h) of this title shall not  
18 apply, and the Commissioner may waive or modify the requirement of  
19 subdivision 3423(b)(4) of this title, with respect to market value of a converted  
20 company as necessary or desirable to reflect applicable restrictions on  
21 ownership of companies formed under this chapter.

1           (4) An alien insurer may be a party to a merger authorized under this  
2 subsection; provided that the requirements for a merger between a captive  
3 insurance company and a foreign insurer under section 3431 of this title shall  
4 apply to a merger between a captive insurance company and an alien insurer  
5 under this subsection. Such alien insurer shall be treated as a foreign insurer  
6 under section 3431 and such other jurisdictions shall be the equivalent of a  
7 state for purposes of section 3431.

8           (5) The Commissioner may issue a certificate of general good to permit  
9 the formation of a captive insurance company that is established for the  
10 purpose of consolidating or merging with or assuming existing insurance or  
11 reinsurance business from an existing licensed captive insurance company.

12 The Commissioner may, upon request of such newly formed captive insurance  
13 company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and  
14 (2) of this title.

15       ~~(j)~~(k) Captive insurance companies formed as reciprocal insurers under the  
16 provisions of this chapter shall have the privileges and be subject to the  
17 provisions of chapter 132 of this title in addition to the applicable provisions of  
18 this chapter. In the event of a conflict between the provisions of chapter 132  
19 and the provisions of this chapter, the latter shall control. However, in  
20 approving assessments levied upon subscribers of a captive insurance company  
21 formed as a reciprocal insurer, the Commissioner may exempt the company

1 from any provision of sections 4850 (assessments), 4851 (time limit for  
2 assessments), and 4852 (aggregate of liability) of chapter 132. To the extent a  
3 reciprocal insurer is made subject to other provisions of this title pursuant to  
4 chapter 132, such provisions shall not be applicable to a reciprocal insurer  
5 formed under this chapter unless such provisions are expressly made  
6 applicable to captive insurance companies under this chapter.

7 ~~(k)~~(l) The articles of incorporation or bylaws of a captive insurance  
8 company formed as a corporation may authorize a quorum of its board of  
9 directors to consist of no fewer than one-third of the fixed or prescribed  
10 number of directors determined under 11A V.S.A. § 8.24(a) or under  
11 11B V.S.A. § 8.24.

12 ~~(h)~~(m) The subscribers' agreement or other organizing document of a  
13 captive insurance company formed as a reciprocal insurer may authorize a  
14 quorum of its subscribers' advisory committee to consist of no fewer than  
15 one-third of the number of its members.

16 ~~(m)~~(n) With the Commissioner's approval, a captive insurance company  
17 organized as a stock insurer may convert to a nonprofit corporation with one or  
18 more members by filing with the Secretary of State an irrevocable election for  
19 such conversion, provided that:

20 (1) the irrevocable election shall certify that, at the time of the  
21 company's original organization and at all times thereafter, the company

1 conducted its business in a manner not inconsistent with a nonprofit  
2 purpose; and

3 (2) at the time of the filing of its irrevocable election, the company shall  
4 file with both the Commissioner and the Secretary of State amended and  
5 restated articles of incorporation consistent with the provisions of this chapter  
6 and with Title 11B, duly authorized by the corporation.

7 ~~(n)~~(o) The following provisions of Title 11B shall not apply to captive  
8 insurance companies ~~which~~ that are nonprofit corporations:

9 (1) subsection 2.02(c) (relating to the signing of articles of incorporation  
10 by directors); and

11 (2) section 11.02, in the case of any merger in which a captive insurance  
12 company merges with and into a captive insurance company organized as a  
13 nonprofit corporation under Title 11B where the latter is the surviving  
14 corporation.

15 ~~(o)~~(p) In the case of a captive insurance company formed as a limited  
16 liability company, a reciprocal insurance company or mutual insurance  
17 company, any proxy executed by the members, subscribers, and policyholders  
18 of each shall be valid if executed and transmitted in compliance with  
19 11A V.S.A. § 7.22.

20 ~~(p)~~(q) With the Commissioner's prior written approval, a captive insurance  
21 company may establish one or more separate accounts and may allocate to

1       them amounts to provide for the insurance of risks of certain of its parents,  
2       affiliates, or members, as the case may be, subject to the following:

3           (1) The income, gains, and losses, realized or unrealized, from assets  
4       allocated to a separate account shall be credited to or charged against the  
5       account, without regard to other income, gains, or losses of the captive  
6       insurance company.

7           (2) Amounts allocated to a separate account in the exercise of the power  
8       granted by this subsection are owned by the captive insurer, and the captive  
9       insurer may not be nor hold itself out to be a trustee with respect to such  
10      amounts.

11          (3) Unless otherwise approved by the Commissioner, assets allocated to  
12      a separate account shall be valued in accordance with the rules otherwise  
13      applicable to the captive insurer's assets.

14          (4) If and to the extent so provided under the applicable contracts, that  
15      portion of the assets of any such separate account equal to the reserves and  
16      other contract liabilities with respect to such account shall not be chargeable  
17      with liabilities arising out of any other business the captive insurer may  
18      conduct.

19          (5) No sale, exchange, or other transfer of assets may be made by such  
20      captive insurer between any of its separate accounts or between any other  
21      investment account and one or more of its separate accounts unless, in the case

1 of a transfer into a separate account, such transfer is made solely to establish  
2 the account or to support the operation of the contracts with respect to the  
3 separate account to which the transfer is made and unless such transfer,  
4 whether into or from a separate account is made by a transfer of cash or by a  
5 transfer of securities having a readily determinable market value, provided that  
6 such transfer of securities is approved by the Commissioner. The  
7 Commissioner may approve other transfers among such accounts if, in his or  
8 her opinion, such transfers would be equitable.

9 (6) To the extent such captive insurer deems it necessary to comply with  
10 any applicable federal or State laws, such captive insurer, with respect to any  
11 separate account, including any separate account ~~which~~ that is a management  
12 investment company or a unit investment trust, may provide for persons having  
13 an interest therein appropriate voting and other rights and special procedures  
14 for the conduct of the business of such account, including special rights and  
15 procedures relating to investment policy, investment advisory services,  
16 selection of independent public accountants, and the selection of a committee,  
17 the members of which need not be otherwise affiliated with such company, to  
18 manage the business of such account.

1       Sec. 7. 8 V.S.A. § 6010 is amended to read:

2       § 6010. LEGAL INVESTMENTS

3           (a) Except as may be otherwise authorized by the Commissioner, agency  
4       captive insurance companies, association captive insurance companies, and  
5       risk retention groups shall comply with the investment requirements contained  
6       in sections 3461 through 3472 of this title, as applicable. Section 3463a of this  
7       title shall apply to association captive insurance companies and risk retention  
8       groups except to the extent it is inconsistent with approved accounting  
9       standards in use by the company. Notwithstanding any other provision of this  
10      title to the contrary, the Commissioner may approve the use of alternative,  
11      reliable methods of valuation and rating.

12          (b) No pure captive insurance company or industrial insured captive  
13      insurance company shall be subject to any restrictions on allowable  
14      investments whatever, including those limitations contained in sections  
15      3461-3472 of this title; provided, however, that the Commissioner may  
16      prohibit or limit any investment that threatens the solvency or liquidity of any  
17      such company.

18          (c) No pure captive insurance company may make a loan to or an  
19      investment in its parent company or affiliates without prior written approval of  
20      the Commissioner, and any such loan or investment must be evidenced by

1 documentation approved by the Commissioner. Loans of minimum capital and  
2 surplus funds required by section 6004 of this title are prohibited.

3 \* \* \* Dormant Captive Insurance Companies \* \* \*

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

5 § 6024. DORMANT CAPTIVE INSURANCE COMPANIES

6 (a) As used in this section, unless the context requires otherwise, “dormant  
7 captive insurance company” means ~~a pure captive insurance company,~~  
8 ~~sponsored captive insurance company, or industrial insured captive insurance~~  
9 ~~company~~ a captive insurance company that has:

10 (1) ceased transacting the business of insurance, including the issuance  
11 of insurance policies; and

12 (2) no remaining liabilities associated with insurance business  
13 transactions; or insurance policies issued prior to the filing of its application for  
14 a certificate of dormancy under this section.

15 (b) A captive insurance company domiciled in Vermont that meets the  
16 criteria of subsection (a) of this section may apply to the Commissioner for a  
17 certificate of dormancy. The certificate of dormancy shall be subject to  
18 renewal every five years and shall be forfeited if not renewed within such time.

19 (c) A dormant captive insurance company that has been issued a certificate  
20 of dormancy shall:

1 (1) possess and thereafter maintain unimpaired, paid-in capital and  
2 surplus of not less than \$25,000.00;

3 (2) prior to March 15 of each year, submit to the Commissioner a report  
4 of its financial condition, verified by oath of two of its executive officers, in a  
5 form as may be prescribed by the Commissioner; and

6 (3) pay a license renewal fee ~~as provided in subsection 6002(d) of this~~  
7 ~~chapter~~ of \$500.00.

8 (d) A dormant captive insurance company shall not be subject to or liable  
9 for the payment of any tax under section 6014 of this chapter.

10 (e) A dormant captive insurance company shall apply to the Commissioner  
11 for approval to surrender its certificate of dormancy and resume conducting the  
12 business of insurance prior to issuing any insurance policies.

13 (f) A certificate of dormancy shall be revoked if a dormant captive  
14 insurance company no longer meets the criteria of subsection (a) of this  
15 section.

16 (g) The Commissioner may establish guidelines and procedures as  
17 necessary to carry out the provisions of this section.

18 \* \* \* Incorporated Protected Cells; Naming Conventions \* \* \*

19 Sec. 9. 8 V.S.A. § 6034a(d) is amended to read:

20 (d) An incorporated protected cell formed after May 7, 2015 shall have its  
21 own distinct name or designation, which shall include the words “Incorporated

1 Cell” or the abbreviation “IC.” The provisions of Title 11A, chapter 4 and  
2 Title 11B, chapter 4 shall not apply to the naming of incorporated protected  
3 cells.

4 \* \* \* Risk Retention Group Governance Standards \* \* \*

5 Sec. 10. 8 V.S.A. § 6052(g)(6) is amended to read:

6 (6) A risk retention group shall have an audit committee composed of at  
7 least three independent board members. A nonindependent board member may  
8 participate in the committee’s activities, if invited to do so by the audit  
9 committee, but he or she shall not serve as a committee member. The  
10 Commissioner may waive the requirement of an audit committee if the risk  
11 retention group demonstrates to the Commissioner’s satisfaction that having  
12 such committee is impracticable and the board of directors is able to perform  
13 sufficiently the committee’s responsibilities. The audit committee shall have a  
14 written charter defining its responsibilities, which shall include:

15 (A) ~~assisting~~ Assisting board oversight of the integrity of financial  
16 statements, compliance with legal and regulatory requirements, and  
17 qualifications, independence, and performance of the independent auditor or  
18 actuary;

19 (B) ~~reviewing~~ Reviewing quarterly financial statements and annual  
20 audited financial statements with management;

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

4           (D) ~~reviewing~~ Reviewing risk assessment and risk management  
5 policies;

6           (E) ~~meeting~~ Meeting with management, either directly or through a  
7 designated representative of the committee;

8           (F) ~~meeting~~ Meeting with independent auditors, either directly or  
9 through a designated representative of the committee;

10          (G) ~~reviewing~~ Reviewing with the independent auditor any audit  
11 problems and management's response;

12          (H) ~~establishing~~ Establishing clear hiring policies applicable to the  
13 hiring of employees or former employees of the independent auditor by the  
14 risk retention group;

15          (I) ~~requiring~~ Requiring the independent auditor to rotate the lead  
16 audit partner having primary responsibility for the risk retention group's audit,  
17 ~~as well as the audit partner responsible for reviewing that audit, so that neither~~  
18 so that no individual performs audit services for the risk retention group for  
19 more than five consecutive fiscal years; ~~and~~. In a form and manner prescribed  
20 by the Commissioner, a risk retention group may request a waiver from the

1 rotation requirement of this subdivision. In determining whether to grant a  
2 waiver request, the Commissioner may consider:

3 (i) the number and expertise of the independent auditor's partners;

4 (ii) the number of insurance clients the independent auditor has;

5 (iii) the premium volume of the risk retention group;

6 (iv) the number of jurisdictions in which the risk retention group  
7 transacts business; and

8 (v) any other factor deemed relevant by the Commissioner.

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

10 \* \* \* Effective Date \* \* \*

11 Sec. 11. EFFECTIVE DATE

12 This act shall take effect on passage.