

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

1 report except as provided in this chapter.

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

1 ~~companies shall report. Subdivision 6002(e)(3) of this title shall apply to each~~
2 ~~report filed pursuant to this section, except that such subdivision shall not~~
3 ~~apply to reports filed by risk retention groups.~~

(b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure captive insurance companies or industrial insured captive insurance companies, each captive insurance company shall submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, statutory accounting principles, or international financial reporting standards unless the Commissioner requires, approves, or accepts the use of ~~statutory accounting principles or any other comprehensive basis of accounting, in each case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner. As used in this section, statutory accounting principles shall mean the accounting principles codified in the NAIC Accounting Practices and Procedures Manual. Upon application for admission, a captive insurance company shall select, with explanation, an accounting method for reporting. Any change in a captive insurance company's accounting method shall require prior approval. Except as otherwise provided, each risk retention~~

group shall file its report in the form required by subsection 3561(a) of this title, and each risk retention group shall comply with the requirements set forth in section 3569 of this title. The Commissioner shall by rule propose the forms in which pure captive insurance companies, association captive insurance companies, and industrial insured captive insurance companies shall report. Subdivision 6002(c)(3) of this title shall apply to each report filed pursuant to this section, except that such subdivision shall not apply to reports filed by risk retention groups.

1 * * *

2 * * * Premium Tax Credit * * *

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

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

Sec. 2. [Deleted.]

8 * * * Agency Captive Insurance Companies * * *

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

10 § 6001. DEFINITIONS

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

12 (1) "Affiliated company" means any company in the same
13 corporate system as a parent, an industrial insured, or a member

1 organization by virtue of common ownership, control, operation, or
2 management.

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

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

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

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

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

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

21 ~~(3)~~(4) “Association captive insurance company” means any company
22 that insures risks of the member organizations of the association, and that also

1 may insure the risks of affiliated companies of the member organizations and
2 the risks of the association itself.

3 ~~(4)(5) “Captive insurance company” means any pure captive insurance~~
4 ~~company, association captive insurance company, sponsored captive insurance~~
5 ~~company, industrial insured captive insurance company, risk retention group,~~
6 ~~or special purpose financial insurance company formed or licensed under the~~
7 ~~provisions of this chapter. For purposes of this chapter, a branch captive~~
8 ~~insurance company shall be a pure captive insurance company with respect to~~
9 ~~operations in this State, unless otherwise permitted by the Commissioner.~~

*(4)(5) “Captive insurance company” means any pure captive insurance
company, association captive insurance company, sponsored captive insurance
company, industrial insured captive insurance company, agency captive
insurance company, risk retention group, or special purpose financial
insurance company formed or licensed under the provisions of this chapter.
For purposes of this chapter, a branch captive insurance company shall be a
pure captive insurance company with respect to operations in this State, unless
otherwise permitted by the Commissioner.*

10 ~~(5)(6)~~ “Commissioner” means the Commissioner of Financial
11 Regulation.

12 ~~(6)(7)~~ “Controlled unaffiliated business” means any person:

13 (A) that is not in the corporate system of a parent and its affiliated

1 companies in the case of a pure captive insurance company, or that is not in the
2 corporate system of an industrial insured and its affiliated companies in the
3 case of an industrial insured captive insurance company;

4 (B) that has an existing contractual relationship with a parent or one
5 of its affiliated companies in the case of a pure captive insurance company, or
6 with an industrial insured or one of its affiliated companies in the case of an
7 industrial insured captive insurance company; and

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

11 ~~(7)~~(8) “Excess workers’ compensation insurance” means, in the case of
12 an employer that has insured or self-insured its workers’ compensation risks in
13 accordance with applicable State or federal law, insurance in excess of a
14 specified per-incident or aggregate limit established by the Commissioner.

15 ~~(8)~~(9) “Industrial insured” means an insured:

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

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

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

21 ~~(9)~~(10) “Industrial insured captive insurance company” means any

1 company that insures risks of the industrial insureds that comprise the
2 industrial insured group, and that may insure the risks of the affiliated
3 companies of the industrial insureds and the risks of the controlled unaffiliated
4 business of an industrial insured or its affiliated companies.

5 ~~(10)~~(11) “Industrial insured group” means any group of industrial
6 insureds that collectively:

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

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

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

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

16 ~~(11)~~(12) “Member organization” means any individual, corporation,
17 limited liability company, partnership, association, or other entity that belongs
18 to an association.

19 ~~(12)~~(13) “Mutual corporation” means a corporation organized without
20 stockholders and includes a nonprofit corporation with members.

21 ~~(13)~~(14) “Parent” means a corporation, limited liability company,

1 partnership, other entity, or individual, that directly or indirectly owns,
2 controls, or holds with power to vote more than 50 ~~per centum~~ percent of the
3 outstanding voting:

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

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

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

10 ~~(14)~~(15) “Pure captive insurance company” means any company that
11 insures risks of its parent and affiliated companies or controlled unaffiliated
12 business.

13 ~~(15)~~(16) “Risk retention group” means a captive insurance company
14 organized under the laws of this State pursuant to the Liability Risk Retention
15 Act of 1986, 15 U.S.C. § 3901 et seq., as amended, as a stock or mutual
16 corporation, a reciprocal or other limited liability entity.

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

18 (a) Any captive insurance company, when permitted by its articles of
19 association, charter, or other organizational document, may apply to the
20 Commissioner for a license to do any and all insurance comprised in
21 subdivisions 3301(a)(1), (2), (3)(A)-(C), (E)-(R), and (4)-(9) of this title and

1 may grant annuity contracts as defined in section 3717 of this title; provided,
2 however, that:

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

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

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

11 (B) it insures only the risks of the commercial policies that are placed
12 by or through an insurance agency or brokerage that owns or directly or
13 indirectly controls the agency captive insurance company and, if required by
14 the Commissioner in his or her discretion, it provides the Commissioner the
15 form of such commercial policies;

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

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

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

3 (ii) Reinsured by a reinsurer authorized or approved by the State
4 of Vermont.

5 (iii) Secured by a trust fund in the United States for the benefit of
6 policyholders and claimants or funded by an irrevocable letter of credit or
7 other arrangement that is acceptable to the Commissioner. The Commissioner
8 may require the agency captive insurance company to increase the funding of
9 any security arrangement established under this subdivision. If the form of
10 security is a letter of credit, the letter of credit shall be issued or confirmed by
11 a bank approved by the Commissioner. A trust maintained pursuant to this
12 subdivision shall be established in a form and upon terms approved by the
13 Commissioner.

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

17 ~~(3)(4)~~ no No industrial insured captive insurance company may insure
18 any risks other than those of the industrial insureds that comprise the industrial
19 insured group, those of their affiliated companies, and those of the controlled
20 unaffiliated business of an industrial insured or its affiliated companies;

21 ~~(4)(5)~~ no No risk retention group may insure any risks other than those

1 of its members and owners;

2 ~~(5)(6)~~ no No captive insurance company may provide personal motor
3 vehicle or homeowner's insurance coverage or any component thereof;

4 ~~(6)(7)~~ no No captive insurance company may accept or cede reinsurance
5 except as provided in section 6011 of this title;

6 ~~(7)(8)~~ any Any captive insurance company may provide excess workers'
7 compensation insurance to its parent and affiliated companies, unless
8 prohibited by the federal law or laws of the state having jurisdiction over the
9 transaction. Any captive insurance company, unless prohibited by federal law,
10 may reinsure workers' compensation of a qualified self-insured plan of its
11 parent and affiliated companies; ~~and~~.

12 ~~(8)(9)~~ any Any captive insurance company ~~which~~ that insures risks
13 described in subdivisions 3301(a)(1) and (2) of this title shall comply with all
14 applicable State and federal laws.

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

16 § 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

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

19 (1) in the case of a pure captive insurance company, not less than
20 \$250,000.00;

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

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

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

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

7 ~~(5)~~(6) in the case of a sponsored captive insurance company, not less
8 than \$250,000.00.

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

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

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

16 § 6006. FORMATION OF CAPTIVE INSURANCE COMPANIES IN THIS
17 STATE

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

22 (b) An agency captive insurance company may be incorporated as a stock

1 insurer with its capital divided into shares and held by the stockholders, as a
2 nonprofit corporation with one or more members, or as a manager-managed
3 limited liability company.

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

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

8 (2) incorporated as a mutual corporation;

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

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

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

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

16 (1)(A) Formed as a corporation, before the articles of incorporation are
17 transmitted to the Secretary of State, the incorporators shall petition the
18 Commissioner to issue a certificate setting forth the Commissioner's finding
19 that the establishment and maintenance of the proposed corporation will
20 promote the general good of the State. In arriving at such a finding, the
21 Commissioner shall consider:

1 (i) the character, reputation, financial standing, and purposes of
2 the incorporators;

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

5 (iii) such other aspects as the Commissioner ~~shall deem~~ deems
6 advisable.

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

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

16 (3) Formed as a limited liability company, before the articles of
17 organization are transmitted to the Secretary of State, the organizers shall
18 petition the Commissioner to issue a certificate setting forth the
19 Commissioner's finding that the establishment and maintenance of the
20 proposed company will promote the general good of the State. In arriving at
21 such a finding, the Commissioner shall consider the items set forth in

1 subdivisions (1)(A)(i)-(iii) of this subsection.

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

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

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

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

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

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

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

20 (1) As limited liability companies shall have the privileges and be
21 subject to the provisions of 11 V.S.A. chapter 21 as well as the applicable

1 provisions contained in this chapter. In the event of a conflict between the
2 provisions of 11 V.S.A. chapter 21 and the provisions of this chapter, the latter
3 shall control.

4 (2) As nonprofit corporations shall have the privileges and be subject to
5 the provisions of Title 11B as well as the applicable provisions contained in
6 this chapter. In the event of conflict between the provisions of Title 11B and
7 the provisions of this chapter, the latter shall control.

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

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

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

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

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

13 (5) The Commissioner may issue a certificate of general good to permit
14 the formation of a captive insurance company that is established for the
15 purpose of consolidating or merging with or assuming existing insurance or
16 reinsurance business from an existing licensed captive insurance company.
17 The Commissioner may, upon request of such newly formed captive insurance
18 company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and
19 (2) of this title.

20 ~~(j)~~(k) Captive insurance companies formed as reciprocal insurers under the
21 provisions of this chapter shall have the privileges and be subject to the

1 provisions of chapter 132 of this title in addition to the applicable provisions
2 of this chapter. In the event of a conflict between the provisions of chapter
3 132 and the provisions of this chapter, the latter shall control. However, in
4 approving assessments levied upon subscribers of a captive insurance company
5 formed as a reciprocal insurer, the Commissioner may exempt the company
6 from any provision of sections 4850 (assessments), 4851 (time limit for
7 assessments), and 4852 (aggregate of liability) of chapter 132. To the extent a
8 reciprocal insurer is made subject to other provisions of this title pursuant to
9 chapter 132, such provisions shall not be applicable to a reciprocal insurer
10 formed under this chapter unless such provisions are expressly made
11 applicable to captive insurance companies under this chapter.

12 ~~(k)~~(l) The articles of incorporation or bylaws of a captive insurance
13 company formed as a corporation may authorize a quorum of its board of
14 directors to consist of no fewer than one-third of the fixed or prescribed
15 number of directors determined under 11A V.S.A. § 8.24(a) or under
16 11B V.S.A. § 8.24.

17 ~~(l)~~(m) The subscribers' agreement or other organizing document of a
18 captive insurance company formed as a reciprocal insurer may authorize a
19 quorum of its subscribers' advisory committee to consist of no fewer than
20 onethird of the number of its members.

21 ~~(m)~~(n) With the Commissioner's approval, a captive insurance company

1 organized as a stock insurer may convert to a nonprofit corporation with one or
2 more members by filing with the Secretary of State an irrevocable election for
3 such conversion, provided that:

4 (1) the irrevocable election shall certify that, at the time of the
5 company's original organization and at all times thereafter, the company
6 conducted its business in a manner not inconsistent with a nonprofit
7 purpose; and

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

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

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

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

20 ~~(e)~~(p) In the case of a captive insurance company formed as a limited
21 liability company, a reciprocal insurance company or mutual insurance

1 company, any proxy executed by the members, subscribers, and policyholders
2 of each shall be valid if executed and transmitted in compliance with
3 11A V.S.A. § 7.22.

4 ~~(p)~~(q) With the Commissioner's prior written approval, a captive insurance
5 company may establish one or more separate accounts and may allocate to
6 them amounts to provide for the insurance of risks of certain of its parents,
7 affiliates, or members, as the case may be, subject to the following:

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

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

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

19 (4) If and to the extent so provided under the applicable contracts, that
20 portion of the assets of any such separate account equal to the reserves and
21 other contract liabilities with respect to such account shall not be chargeable

1 with liabilities arising out of any other business the captive insurer may
2 conduct.

3 (5) No sale, exchange, or other transfer of assets may be made by such
4 captive insurer between any of its separate accounts or between any other
5 investment account and one or more of its separate accounts unless, in the case
6 of a transfer into a separate account, such transfer is made solely to establish
7 the account or to support the operation of the contracts with respect to the
8 separate account to which the transfer is made and unless such transfer,
9 whether into or from a separate account is made by a transfer of cash or by a
10 transfer of securities having a readily determinable market value, provided that
11 such transfer of securities is approved by the Commissioner. The
12 Commissioner may approve other transfers among such accounts if, in his or
13 her opinion, such transfers would be equitable.

14 (6) To the extent such captive insurer deems it necessary to comply with
15 any applicable federal or State laws, such captive insurer, with respect to any
16 separate account, including any separate account ~~which~~ that is a management
17 investment company or a unit investment trust, may provide for persons
18 having an interest therein appropriate voting and other rights and special
19 procedures for the conduct of the business of such account, including special
20 rights and procedures relating to investment policy, investment advisory
21 services, selection of independent public accountants, and the selection of a

1 committee, the members of which need not be otherwise affiliated with such
2 company, to manage the business of such account.

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

4 § 6010. LEGAL INVESTMENTS

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

14 (b) No pure captive insurance company or industrial insured captive
15 insurance company shall be subject to any restrictions on allowable
16 investments whatever, including those limitations contained in sections
17 34613472 of this title; provided, however, that the Commissioner may prohibit
18 or limit any investment that threatens the solvency or liquidity of any such
19 company.

20 (c) No pure captive insurance company may make a loan to or an
21 investment in its parent company or affiliates without prior written approval of
22 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
14 for 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
19 time.

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

22 (1) possess and thereafter maintain unimpaired, paid-in capital and

1 surplus of not less than \$25,000.00;

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

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

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

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

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

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

17 * * * Incorporated Protected Cells; Naming Conventions * * *

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

19 (d) An incorporated protected cell formed after May 7, 2015 shall have its
20 own distinct name or designation, which shall include the words “Incorporated
21 Cell” or the abbreviation “IC.” The provisions of Title 11A, chapter 4 and

1 Title 11B, chapter 4 shall not apply to the naming of incorporated protected
2 cells.

3 * * * Risk Retention Group Governance Standards * * *

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

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

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

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

20 (C) ~~reviewing~~ Reviewing annual audited financial statements with its
21 independent auditor and, if it deems advisable, the risk retention group's

1 quarterly financial statements as well;

2 (D) ~~reviewing~~ Reviewing risk assessment and risk management
3 policies;

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

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

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

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

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

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

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

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

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

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

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

7 * * * Effective Date * * *

8 Sec. 11. EFFECTIVE DATE

9 This act shall take effect on passage.