

1 H.719

2 Introduced by Representative Botzow of Pownal

3 Referred to Committee on

4 Date:

5 Subject: Insurance; rates; claims; investments; trust companies; board
6 meetings

7 Statement of purpose of bill as introduced: This bill proposes to amend
8 Vermont laws pertaining to insurance companies and trust companies.

9 An act relating to insurance companies and trust companies

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

11 * * * Authority to Transact Various Kinds of Insurance Business * * *

12 Sec. 1. 8 V.S.A. § 3362 is amended to read:

13 § 3362. AUTHORITY TO TRANSACT VARIOUS KINDS OF

14 INSURANCE BUSINESS

15 ~~The provisions of 11 V.S.A. § 762 shall not prevent a foreign or alien~~
16 ~~insurer from transacting~~ A foreign or alien insurer may transact more than one
17 kind of insurance business, provided the charter of such corporation authorizes
18 it to transact such different kinds of insurance business and its capital is
19 sufficient to provide the required capital for each kind of business to be

1 transacted.

2 * * * Permissible Investments for Domestic Insurance Companies * * *

3 Sec. 2. 8 V.S.A. § 3461 is amended to read:

4 § 3461. DEFINITIONS

5 ~~The following definitions, unless otherwise specified or qualified shall be~~
6 ~~applicable to~~ As used in this chapter:

7 (1) “Admitted assets” means assets permitted to be reported as admitted
8 assets on the annual statutory financial statement of the insurer for the next
9 preceding year or as shown by a current financial statement.

10 (2) “Appraised” or “appraised value” when used in connection with real
11 estate shall refer to appraisals made or examined and approved by an insurer or
12 its agents. An insurer shall have the right to make one or more renewals or
13 extensions of a loan secured by real estate, provided any renewal or extension
14 is based upon a reexamination of the facts and upon an appraisal made within
15 three years.

16 (3) “Asset-backed security” means a security or other instrument,
17 excluding a mutual fund, evidencing an interest in, or the right to receive
18 payments from, or payable from distributions on, an admitted asset, a pool of
19 admitted assets, or specifically divisible cash flows which are legally
20 transferred to a trust or another special purpose bankruptcy-remote business
21 entity, on the following conditions:

22 (A) The trust or other business entity is established solely for the

1 purpose of acquiring specific types of admitted assets or rights to cash flows,
2 issuing securities and other instruments representing an interest in or right to
3 receive cash flows from those admitted assets or rights, and engaging in
4 activities required to service the admitted assets or rights and any credit
5 enhancement or support features held by the trust or other business entity.

6 (B) The admitted assets of the trust or other business entity consist
7 solely of interest-bearing obligations or other contractual obligations
8 representing the right to receive payment from the cash flows from the
9 admitted assets or rights. However, the existence of credit enhancements, such
10 as letters of credit or guarantees, or support features such as swap agreements,
11 shall not cause a security or other instrument to be ineligible as an asset-
12 backed security.

13 (4) “Canada” means Canada, any province of Canada, or any political
14 subdivision of Canada.

15 (5) “Cap” means an agreement obligating the seller to make payments to
16 the buyer, with each payment based on the amount by which a reference price
17 or level or the performance or value of one or more underlying interests
18 exceeds a predetermined number, sometimes called the strike rate or strike
19 price.

20 (6) ~~“Class one bond mutual fund” means a mutual fund that at all times~~
21 ~~qualifies for investment using applicable SVO standards.~~

1 ~~(7) “Class one money market mutual fund” means a money market~~
2 ~~mutual fund that at all times qualifies for investment using applicable SVO~~
3 ~~standards.~~

4 (8) “Collar” means an agreement to receive payments as the buyer of an
5 option, cap, or floor and to make payments as the seller of a different option,
6 cap, or floor.

7 ~~(9)~~(7) “Counterparty exposure amount” means:

8 (A) The net amount of credit risk attributable to a derivative
9 instrument entered into with a business entity other than through a qualified
10 exchange, or qualified foreign exchange or cleared through a qualified
11 clearinghouse. Such derivative instruments are hereinafter referred to as
12 “over-the-counter derivative instruments.” The amount of credit risk equals:

13 (i) the market value of the over-the-counter derivative instrument
14 if the liquidation of the derivative instrument would result in a final cash
15 payment to the insurer; or

16 (ii) zero, if the liquidation of the derivative instrument would not
17 result in a final cash payment to the insurer.

18 (B) If over-the-counter derivative instruments are entered into under
19 a written master agreement ~~which~~ that provides for netting of payments owed
20 by the respective parties, and the domiciliary jurisdiction of the counterparty is
21 either within the United States or, if not within the United States, within a

1 foreign jurisdiction listed in the Purposes and Procedures of the ~~Securities~~
2 ~~Valuation Office~~ NAIC Investment Analysis Office as eligible for netting, the
3 net amount of credit risk shall be the greater of zero or the net sum of:

4 (i) the market value of the over-the-counter derivative instruments
5 entered into under the agreement, the liquidation of which would result in a
6 final cash payment to the insurer; and

7 (ii) the market value of the over-the-counter derivative
8 instruments entered into under the agreement, the liquidation of which would
9 result in a final cash payment by the insurer to the business entity.

10 (C) For open transactions, market value shall be determined at the
11 end of the most recent quarter of the insurer's fiscal year, and shall be reduced
12 by the market value of acceptable collateral held by the insurer or placed in
13 escrow by one or both parties.

14 ~~(10)~~(8) "Covered" means that an insurer owns or can immediately
15 acquire, through the exercise of options, warrants, or conversion rights already
16 owned, the underlying interest in order to fulfill or secure its obligations under
17 a call option, cap, or floor it has written or has set aside under a custodial or
18 escrow agreement cash or cash equivalents with a market value equal to the
19 amount required to fulfill its obligations under a put option it has written, in an
20 income generation transaction.

21 ~~(11)~~(9) "Derivative instrument" means an agreement, option,

1 instrument, or a series or combination thereof:

2 (A) to make or take delivery of, or assume or relinquish, a specified
3 amount of one or more underlying interests or to make a cash settlement in
4 lieu thereof; or

5 (B) that has a price, performance, value, or cash flow based primarily
6 upon the actual or expected price, level, performance, value, or cash flow of
7 one or more underlying interests. Derivative instruments include options,
8 warrants used in a hedging transaction and not attached to another financial
9 instrument, caps, floors, collars, swaps, forwards, futures, and any other
10 agreements, options, or instruments substantially similar thereto or any series
11 or combination thereof and any agreements, options, or instruments permitted
12 under this chapter. Derivative instruments shall not include an investment
13 authorized under subdivisions 3463(a)(1) through (a)(14) and (a)(16) through
14 (a)(29) of this title.

15 ~~(12)~~(10) “Derivative transaction” means a transaction involving the use
16 of one or more derivative instruments.

17 ~~(13)~~(11) “Direct” when used in connection with “obligation” means that
18 a designated obligor shall be primarily liable on the instrument representing
19 the obligation.

20 ~~(14)~~(12) “Domestic jurisdiction” means the United States, any state of
21 the United States, or any political subdivision of any of the foregoing.

1 ~~(15)~~(13) “Equity interest” means any of the following that are not rated
2 credit instruments:

3 (A) common stock;

4 (B) preferred stock;

5 (C) trust certificate;

6 (D) equity investment in an investment company other than a money
7 market mutual fund or a ~~class one~~ listed bond mutual fund;

8 (E) investment in a common trust fund of a bank regulated by a
9 federal or state agency;

10 (F) an ownership interest in minerals, oil, or gas, the rights to which
11 have been separated from the underlying fee interest in the real estate where
12 the minerals, oil, or gas is located;

13 (G) instruments ~~which~~ that are mandatorily, or at the option of the
14 issuer, convertible to equity;

15 (H) limited partnership interests;

16 (I) member interests in limited liability companies;

17 (J) warrants or other rights to acquire equity interests that are created
18 by the person that owns or would issue the equity to be acquired; or

19 (K) instruments that would be rated credit instruments except for the
20 provisions of subdivision (39)(B) of this section.

21 ~~(16)~~(14) “Floor” means an agreement obligating the seller to make

1 payments to the buyer in which each payment is based on the amount by which
2 a predetermined number, sometimes called the floor rate or price, exceeds a
3 reference price, level, performance, or value of one or more underlying
4 interests.

5 ~~(17)~~(15)(A) “Foreign investment” means an investment in a foreign
6 jurisdiction, or an investment in a person, real estate, or asset domiciled in a
7 foreign jurisdiction, that is substantially of the same type as those eligible for
8 investment under this subchapter, other than under subdivision 3463(a)(28) of
9 this title. An investment shall not be deemed to be foreign if the issuing
10 person, qualified primary credit source, or qualified guarantor is a domestic
11 jurisdiction or Canada or a person domiciled in a domestic jurisdiction or
12 Canada, unless:

13 (i) the issuing person is a shell business entity; and
14 (ii) the investment is not assumed, accepted, guaranteed, or
15 insured or otherwise backed by a domestic jurisdiction or Canada or a person
16 that is not a shell business entity domiciled in a domestic jurisdiction or
17 Canada.

18 (B) For purposes of this definition:

19 (i) “Qualified guarantor” means a guarantor against which an
20 insurer has a direct claim for full and timely payment, evidenced by a
21 contractual right for which an enforcement action can be brought in a domestic

1 jurisdiction or Canada.

2 (ii) “Qualified primary credit source” means the credit source to
3 which an insurer looks for payment as to an investment and against which an
4 insurer has a direct claim for full and timely payment, evidenced by a
5 contractual right for which an enforcement action can be brought in a domestic
6 jurisdiction or Canada.

7 (iii) “Shell business entity” means a business entity having no
8 economic substance except as a vehicle for owning interests in assets issued,
9 owned, or previously owned by a person domiciled in a foreign jurisdiction.

10 ~~(18)~~(16) “Foreign jurisdiction” means a jurisdiction other than a
11 domestic jurisdiction or Canada.

12 ~~(19)~~(17) “Forward” means an agreement (other than a future) to make
13 or take delivery of, or effect a cash settlement based on the actual or expected
14 price, level, performance, or value of, one or more underlying interests.

15 ~~(20)~~(18) “Future” means an agreement, traded on a qualified exchange
16 or qualified foreign exchange, to make or take delivery of, or effect a cash
17 settlement based on the actual or expected price, level, performance, or value
18 of, one or more underlying interests.

19 ~~(21)~~(19) “Guaranteed” means that the guarantor will perform the
20 obligation of the obligor or will purchase the obligation to the extent of the
21 guaranty.

1 (22)(20) “Hedging transaction” means a derivative transaction ~~which~~
2 that is entered into and maintained to reduce:

3 (A) the risk of a change in the value, yield, price, cash flow, or
4 quantity of assets or liabilities ~~which~~ that the insurer has acquired or incurred
5 or anticipates acquiring or incurring; or

6 (B) the currency exchange rate risk or the degree of exposure as to
7 assets or liabilities ~~which~~ that an insurer has acquired or incurred or anticipates
8 acquiring or incurring.

9 (23)(21) “High grade investment” means a rated credit instrument rated
10 1 or 2 by the SVO or that meets and continues to meet the conditions for
11 exemption as provided in section 3461d of this title.

12 (24)(22) “Income generation transaction” means a derivative transaction
13 involving the writing of covered call options, covered put options, covered
14 caps, or covered floors that is intended to generate income or enhance return.

15 (25)(23) “Institution” or “business entity” includes a sole proprietorship,
16 corporation, limited liability company, association, partnership, joint stock
17 company, joint venture, mutual fund, trust, joint tenancy, or other similar form
18 of business organization, whether organized for profit or ~~not-for-profit~~ not for
19 profit.

20 (24) “Listed bond mutual fund” means a mutual fund that at all times
21 qualifies for inclusion on the “bond fund list” within the Purposes and

1 Procedures of the NAIC Investment Analysis Office or any successor
2 publication.

3 (26)(25) “Lower grade investment” or “lower grade obligation” means a
4 rated credit instrument rated 4, 5, or 6 by the SVO.

5 (27)(26) “Medium grade investment” or “medium grade obligation”
6 means a rated credit instrument rated 3 by the SVO.

7 (28)(27) “Money market mutual fund” means a mutual fund that meets
8 the conditions of 17 ~~Code of Federal Regulations Part~~ C.F.R. Part 270.2a-7,
9 under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), as
10 amended or renumbered.

11 (29)(28) “Mortgage loan” means an obligation secured by a mortgage,
12 deed of trust, trust deed, or other consensual lien on real estate.

13 (30)(29) “Mutual fund” means an investment company or, in the case of
14 an investment company that is organized as a series company, an investment
15 company series that, in either case, is registered with the ~~U.S.~~ U.S. Securities
16 and Exchange Commission under the Investment Company Act of 1940 (15
17 U.S.C. § 80a-1 et seq.), as amended.

18 (31)(30) “NAIC” means the National Association of Insurance
19 Commissioners.

20 (32)(31) “Obligation” means a bond, note, debenture, trust certificate,
21 including an equipment certificate, production payment, negotiable bank

1 certificate of deposit, bankers' acceptance, credit tenant plan, loan secured by
2 financing net leases, and other evidence of indebtedness for the payment of
3 money (or participations, certificates, or other evidences of interest in any of
4 the foregoing).

5 ~~(33)~~(32) "Option" means an agreement giving the buyer the right to buy
6 or receive (a "call option"), sell or deliver (a "put option"), enter into, extend,
7 or terminate or effect a cash settlement based on the actual or expected price,
8 level, performance, or value of one or more underlying interests.

9 ~~(34)~~(33) "Potential exposure" means the amount determined in
10 accordance with the NAIC Annual Statement Instructions.

11 ~~(35)~~(34) "Qualified bank" means:

12 (A) A national bank, state bank, or trust company that at all times is
13 no less than adequately capitalized as determined by standards adopted by U.S.
14 banking regulators, and that is either regulated by state banking laws or is a
15 member of the Federal Reserve System; or

16 (B) A bank or trust company incorporated or organized under the
17 laws of a country other than the United States that is regulated as a bank or
18 trust company by that country's government or an agency thereof, and that at
19 all times is no less than adequately capitalized as determined by the standards
20 adopted by international banking authorities.

21 ~~(36)~~(35) "Qualified clearinghouse" means a clearinghouse for, and

1 subject to the rules of, a qualified exchange or a qualified foreign exchange,
2 which provides clearing services, including acting as a counterparty to each of
3 the parties to a transaction, such that the parties no longer have credit risk as to
4 each other.

5 ~~(37)~~(36) “Qualified exchange” means:

6 (A) a securities exchange registered as a national securities exchange
7 or a securities market regulated under the Securities Exchange Act of 1934
8 (15 U.S.C. § 78 et seq.), as amended;

9 (B) a board of trade or commodities exchange designated as a
10 contract market by the Commodity Futures Trading Commission or any
11 successor thereof;

12 (C) private Offerings, Resales and Trading through Automated
13 Linkages (PORTAL);

14 (D) a designated offshore securities market as defined in Securities
15 Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or

16 (E) a qualified foreign exchange.

17 ~~(38)~~(37) “Qualified foreign exchange” means a foreign exchange, board
18 of trade, or contract market located outside the United States, its territories, or
19 possessions:

20 (A) that has received regulatory comparability relief under
21 Commodity Futures Trading Commission (CFTC) Rule 30.10 (as set forth in

1 Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);

2 (B) that is, or its members are, subject to the jurisdiction of a foreign
3 futures authority that has received regulatory comparability relief under CFTC
4 Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations,
5 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the
6 exchange, board of trade, or contract market is located; or

7 (C) upon which foreign stock index futures contracts are listed that
8 are the subject of no-action relief issued by the CFTC's Office of General
9 Counsel, provided that an exchange, board of trade, or contract market that
10 qualifies as a "qualified foreign exchange" only under this subdivision shall
11 only be a "qualified foreign exchange" as to foreign stock index futures
12 contracts that are the subject of no-action relief.

13 ~~(39)~~(38)(A) "Rated credit instrument" means a contractual right to
14 receive cash or another rated credit instrument from another entity, which
15 instrument:

16 (i) is rated or required to be rated by the SVO or meets and
17 continues to meet the conditions for exemption as provided in section 3461d of
18 this title;

19 (ii) in the case of an instrument with a maturity of 397 days or
20 less, is issued, guaranteed, or insured by an entity that is rated by, or another
21 obligation of such entity is rated by, the SVO or by a nationally-recognized

1 nationally recognized statistical rating organization recognized by the SVO;

2 (iii) in the case of an instrument with a maturity of 90 days or
3 less, is issued by a qualified bank;

4 (iv) is a share of a ~~class-one~~ listed bond mutual fund; or

5 (v) is a share of a money market mutual fund.

6 (B) “Rated credit instrument” does not mean:

7 (i) an instrument that is mandatorily or, at the option of the issuer,
8 convertible to an equity interest; or

9 (ii) a security that has a par value and whose terms provide that
10 the issuer’s net obligation to repay all or part of the security’s par value is
11 determined by reference to the performance of an equity, a commodity, a
12 foreign currency, or an index of equities, commodities, foreign currencies, or
13 combinations thereof.

14 ~~(40)~~(39) “Special rated credit instrument” means a rated credit
15 instrument that is:

16 (A) An instrument that is structured so that, if it is held until retired
17 by or on behalf of the issuer, its rate of return, based on its purchase cost and
18 any cash flow stream possible under the structure of the transaction, may
19 become negative due to reasons other than the credit risk associated with the
20 issuer of the instrument; however, a rated credit instrument shall not be a
21 special rated credit instrument under this subdivision if it is:

1 (i) a share in a ~~class-one~~ listed bond mutual fund;

2 (ii) an instrument, other than an asset-backed security, with
3 payments of par value fixed as to amount and timing, or callable but in any
4 event payable only at par or greater, and interest or dividend cash flows that
5 are based on either a fixed or variable rate determined by reference to a
6 specified rate or index;

7 (iii) an instrument, other than an asset-backed security, that has a
8 par value, and is purchased at a price no greater than 110 percent of par;

9 (iv) an instrument, including an asset-backed security, whose rate
10 of return would become negative only as a result of a prepayment due to
11 casualty, condemnation or economic obsolescence of collateral, or change of
12 law;

13 (v) an asset-backed security that relies on collateral that meets the
14 requirements of subdivision (ii) of this ~~subdivision (40)(A)~~ subdivision
15 (39)(A), the par value of which collateral:

16 (I) is not permitted to be paid sooner than one-half of the
17 remaining term to maturity from the date of acquisition;

18 (II) is permitted to be paid prior to maturity only at a premium
19 sufficient to provide a yield to maturity for the investment, considering the
20 amount prepaid and reinvestment rates at the time of early repayment, at least
21 equal to the yield to maturity of the initial investment; or

1 (III) is permitted to be paid prior to maturity at a premium at
2 least equal to the yield of a treasury issue of comparable remaining life; or

3 (vi) an asset-backed security that relies on cash flows from assets
4 that are not prepayable at any time at par, but is not otherwise governed by
5 subdivision (v) of this ~~subdivision (40)(A)~~ subdivision (39)(A), if the asset-
6 backed security has a par value reflecting principal payments to be received if
7 held until retired by or on behalf of the issuer, and is purchased at a price no
8 greater than 105 percent of such par amount.

9 (B) An asset-backed security that:

10 (i) Relies on cash flows from assets that are prepayable at par at
11 any time;

12 (ii) Does not make payments of par that are fixed as to amount
13 and timing; and

14 (iii) Has a negative rate of return at the time of acquisition if a
15 prepayment threshold assumption is used with such prepayment threshold
16 assumption defined as either:

17 (I) Two times the prepayment expectation reported by a
18 recognized, publicly available source as being the median of expectations
19 contributed by broker dealers or other entities, except insurers, engaged in the
20 business of selling or evaluating such securities or assets. The prepayment
21 expectation used in this calculation shall be, at the insurer's election, the

1 prepayment expectation for pass-through securities of the Federal National
2 Mortgage Association, the Federal Home Loan Mortgage Corporation, the
3 Government National Mortgage Association, or for other assets of the same
4 type as the assets that underlie the asset-backed security, in either case with a
5 gross weighted average coupon comparable to the gross weighted average
6 coupon of the assets that underlie the asset-backed security; or

7 (II) Another prepayment threshold assumption specified by the
8 ~~commissioner by regulation~~ Commissioner by rule.

9 (C) For purposes of subdivision (B) of this ~~subdivision (40)~~
10 subdivision (39), if the asset-backed security is purchased in combination with
11 one or more other asset-backed securities that are supported by identical
12 underlying collateral, the insurer may calculate the rate of return for these
13 specific combined asset-backed securities in combination. The insurer must
14 maintain documentation demonstrating that such securities were acquired and
15 are continuing to be held in combination.

16 ~~(41)~~(40) “State of the United States” means any state of the United
17 States of America, ~~and~~ the District of Columbia, and the Commonwealth of
18 Puerto Rico.

19 ~~(42)~~(41) “SVO” means the Securities Valuation Office of the NAIC or
20 any successor office established by the NAIC.

21 ~~(43)~~(42) “Swap” means an agreement to exchange or to net payments at

1 one or more times based on the actual or expected price, level, performance, or
2 value of one or more underlying interests.

3 (44)(43) “Underlying interest” means the assets, liabilities, other
4 interests, or a combination thereof underlying a derivative instrument, such as
5 any one or more securities, currencies, rates, indices, commodities, or
6 derivative instruments.

7 (45)(44) “Warrant” means an instrument that gives the holder the right
8 to purchase an underlying financial instrument at a given price and time or at a
9 series of prices and times outlined in the warrant agreement. Warrants may be
10 issued alone or in connection with the sale of other securities, for example, as
11 part of a merger or recapitalization agreement or to facilitate divestiture of the
12 securities of another business entity.

13 Sec. 3. 8 V.S.A. § 3461c(3) is amended to read:

14 (3)(A) Subject to applicable limitations of subsection 3461a(b) or
15 3461b(b) of this subchapter, but not the limitations of subsection 3461a(a) or
16 3461b(a), an insurer may acquire rated credit instruments, excluding asset-
17 backed securities:

18 (i) issued by a government money market mutual fund, ~~a class one~~
19 ~~money market mutual fund~~, or a ~~class one~~ listed bond mutual fund;

20 (ii) issued, assumed, guaranteed, or insured by a government-
21 sponsored enterprise of the United States other than those eligible under

1 subdivision (i) of this subdivision (3)(A);

2 (iii) issued, assumed, guaranteed, or insured by a state, if the
3 instruments are general obligations of the State state; or

4 (iv) issued by a multilateral development bank.

5 (B) However, an insurer shall not acquire an instrument of any one
6 fund, any one enterprise or entity or any one state under this section if, as a
7 result of and after giving effect to the investment, the aggregate amount of
8 investments then held in any one fund, enterprise, or entity or state under this
9 subdivision would exceed 10 percent of its admitted assets.

10 Sec. 4. 8 V.S.A. § 3461d is amended to read:

11 § 3461d. REGISTRATION OR FILING EXEMPTION

12 Notwithstanding the provisions of any other section of subchapter 4 of this
13 chapter, an insurer shall not be required to register or file with the SVO any
14 security that meets and continues to meet the conditions for exemption for
15 certain nationally recognized statistical rating organization rated securities
16 consistent with the Purposes and Procedures Manual of the NAIC ~~Securities~~
17 ~~Valuation Office, as amended from time to time~~ Investment Analysis Office or
18 any successor publication.

19 * * * Interest Rate for Late Payment of Insurance Claims * * *

20 ~~Sec. 5. 8 V.S.A. § 3665(d) is amended to read:~~

21 ~~(d)(1) If an insurer fails to pay timely a claim, it shall pay interest on the~~

1 ~~amount of the claim beginning 30 days after a beneficiary files a properly~~
2 ~~executed proof of loss. The interest rate shall be the rate paid on proceeds left~~
3 ~~on deposit, or six percent, whichever is greater.~~

4 ~~(2) In the event judgment is entered for a beneficiary or a settlement~~
5 ~~agreement between the insurer and the beneficiary is executed, interest shall~~
6 ~~accrue from 30 days after the beneficiary filed a proof of loss. The interest~~
7 ~~rate imposed on the insurer shall be the judgment rate allowed by law.~~

Sec. 5. 8 V.S.A. § 3665(d) is amended to read:

(d)(1) If an insurer fails to pay timely a an uncontested claim, it shall pay interest on the amount of the claim beginning 30 days after a beneficiary files a properly executed proof of loss. The interest rate shall be the rate paid on proceeds left on deposit, or six percent, whichever is greater.

(2) In the event more than 60 days elapse from the date payment on an uncontested claim is due to a beneficiary, or in the event judgment is entered for a beneficiary or the Department or a settlement agreement between the insurer and the beneficiary or the Department is executed, interest shall accrue from 30 days after the beneficiary filed a proof of loss.—The interest rate imposed on the insurer shall be at the judgment rate allowed by law.

8 * * * Property and Casualty Insurance; Unfairly Discriminatory Rates * * *

9 Sec. 6. 8 V.S.A. § 4685 is amended to read:

10 § 4685. RATE STANDARDS

1 (a) General. Rates shall not be excessive, inadequate, or unfairly
2 discriminatory.

3 (b) Excessiveness.

4 (1) Competitive market. A rate in a competitive market is not excessive
5 ~~or unfairly discriminatory.~~

6 (2) Noncompetitive market. Rates in a noncompetitive market are
7 excessive if they are producing or are likely to produce unreasonably high
8 profits for the insurance provided or if expenses are unreasonably high in
9 relation to services rendered.

10 (c) Inadequacy. Rates are not inadequate unless insufficient to sustain
11 projected losses and expenses in the class or classes of business to which they
12 apply or the use of such rates has or, if continued, will have the effect of
13 substantially lessening competition or the tendency to create a monopoly in
14 any market.

15 (d) Unfair discrimination. Unfair discrimination exists if, after allowing
16 for practical limitations, price differentials fail to reflect equitably the
17 differences in expected losses and expenses. A rate is not unfairly
18 discriminatory because different premiums result for a class of policyholders
19 with like loss exposures but different expenses, or like expenses but different
20 loss exposures, ~~so long as~~ provided that the rate equitably reflects the
21 differences with reasonable accuracy. A rate is not unfairly discriminatory if it

1 is averaged broadly among persons insured under a group, franchise, or
2 blanket policy or a mass marketed plan.

3 * * * Trust Company Board Meeting Requirements * * *

4 Sec. 7. 8 V.S.A. § 2402(f) is amended to read:

5 (f) An independent trust company formed and authorized under this
6 chapter shall:

7 (1) maintain its principal place of business in this State;

8 (2) appoint a registered agent to accept service of process and to
9 otherwise act on its behalf in this State, provided that whenever such registered
10 agent cannot with reasonable diligence be found at the Vermont registered
11 office of the independent trust company, the Secretary of State shall be an
12 agent of such independent trust company upon whom any process, notice, or
13 demand may be served;

14 (3) hold at least ~~one meeting~~ four meetings of its governing body ~~in this~~
15 State each year, including once quarterly, and at least one such meeting each
16 year shall be held in Vermont; and

17 (4) have at least one Vermont resident as a member of its governing
18 body.

19 Sec. 8. 8 V.S.A. § 12602(q) is added to read:

(q) Notwithstanding ~~section 12201~~ *subsection 12201(a)* of this title, the
governing body of a nondepository trust company shall meet at least four

times a year, including once quarterly.

** * * Captive Insurance; Affiliated Reinsurance Companies * * **

Sec. 9. 8 V.S.A. § 6001(5) is amended to read:

(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, affiliated reinsurance company, 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.

Sec. 10. 8 V.S.A. chapter 141, subchapter 5 is added to read:

Subchapter 5. Affiliated Reinsurance Companies

§ 6049a. APPLICABLE LAW

(a) An affiliated reinsurance company shall be subject to the provisions of this subchapter and to the provisions of subchapter 1 of this chapter. In the event of any conflict between the provisions of this subchapter and the provisions of subchapter 1 of this chapter, the provisions of this subchapter shall control.

(b) An affiliated reinsurance company shall be subject to all applicable

rules adopted pursuant to section 6015 of this chapter that are in effect as of the effective date of this subchapter and those that are adopted after the effective date of this subchapter.

§ 6049b. DEFINITIONS

As used in this subchapter:

(1) “Affiliated reinsurance company” means a company licensed by the Commissioner pursuant to this subchapter to reinsure risks ceded by a ceding insurer that is its parent or affiliate.

(2) “Ceding insurer” means an insurance company approved by the Commissioner and licensed or otherwise authorized to transact the business of insurance or reinsurance in its state or country of domicile, which cedes risk to an affiliated reinsurance company pursuant to a reinsurance contract.

(3) “Organizational documents” means the affiliated reinsurance company’s articles of incorporation and bylaws and such other documents as shall be approved by the Commissioner.

(4) “Reinsurance contract” means a contract between an affiliated reinsurance company and a ceding insurer pursuant to which the affiliated reinsurance company agrees to provide reinsurance to the ceding insurer.

§ 6049c. LICENSING; AUTHORITY

(a) An affiliated reinsurance company shall only reinsure the risks of a ceding insurer. An affiliated reinsurance company may cede the risks assumed

under a reinsurance contract to another reinsurer, subject to the prior approval of the Commissioner:

(b) In conjunction with the issuance of a license to an affiliated reinsurance company, the Commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the affiliated reinsurance company that are deemed appropriate by the Commissioner and that are not inconsistent with the provisions of this chapter:

(c) To qualify for a license, an affiliated reinsurance company shall be subject, in addition to the requirements of subsection 6002(c) of this chapter, to the following:

(1) The information submitted to the Commissioner pursuant to subsection 6002(c)(1)(B) of this chapter shall include:

(A) the source and form of the affiliated reinsurance company's capital and surplus;

(B) the investment policy of the affiliated reinsurance company, which shall provide for a diversified investment portfolio both as to type and issue and shall include a requirement for liquidity and for the reasonable preservation, administration, and management of such assets with respect to the risks associated with any reinsurance transactions.

(2) The application shall include copies of all agreements and

documentation, including reinsurance agreements, described in subdivision (1) of this subsection (c) unless otherwise approved by the Commissioner and any other statements or documents required by the Commissioner to evaluate the affiliated reinsurance company's application for licensure.

(d) Subdivision 6002(c)(3) of this chapter shall apply to all information submitted pursuant to subsection (c) of this section and to any order issued to the affiliated reinsurance company pursuant to subsection (b) of this section.

§ 6049d. FORMATION

(a) An affiliated reinsurance company may be incorporated as a stock insurer with its capital divided into shares, or in such other organizational form as may be approved by the Commissioner.

(b) An affiliated reinsurance company's organizational documents shall limit the affiliated reinsurance company's authority to the transaction of the business of insurance or reinsurance and to those activities that the affiliated reinsurance company conducts to accomplish its purposes as expressed in this subchapter.

§ 6049e. MINIMUM CAPITAL AND SURPLUS

An affiliated reinsurance company shall not be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital and surplus of not less than \$5,000,000.00. The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of reinsurance

business transacted. Except as otherwise provided in this section, the provisions of chapter 159 of this title, Risk Based Capital for Insurers, shall apply in full to an affiliated reinsurance company.

§ 6049f. PERMITTED REINSURANCE

(a) An affiliated reinsurance company shall only reinsure the risks of a ceding insurer, pursuant to a reinsurance contract. An affiliated reinsurance company shall not issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than such reinsurance contract.

(b) The reinsurance contract shall contain all provisions reasonably required or approved by the Commissioner, which requirements shall take into account the laws applicable to the ceding insurer regarding the ceding insurer's taking credit for the reinsurance provided under such reinsurance contract.

(c) An affiliated reinsurance company may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the Commissioner. Except as otherwise provided in this section, the provisions of subchapter 10 of chapter 101 of this title, reinsurance of risks, shall apply in full to an affiliated reinsurance company.

(d) Unless otherwise approved in advance by the Commissioner, a reinsurance contract shall not contain any provision for payment by the

affiliated reinsurance company in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

(e) An affiliated reinsurance company shall notify the Commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the affiliated reinsurance company to secure any obligation of the affiliated reinsurance company.

§ 6049g. DISPOSITION OF ASSETS; INVESTMENTS

(a) The assets of an affiliated reinsurance company shall be preserved and administered by or on behalf of the affiliated reinsurance company to satisfy the liabilities and obligations of the affiliated reinsurance company incident to the reinsurance contract and other related agreements.

(b) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the affiliated reinsurance company unless the investment is otherwise approved in its plan of operation or in an order issued to the affiliated reinsurance company pursuant to subsection 6049c of this chapter.

§ 6049h. ANNUAL REPORT; BOOKS AND RECORDS

(a) For the purposes of subsection 6007(b) of this chapter:

(1) Each affiliated reinsurance company shall file its report in the form

required by subsection 3561(a) of this title, and each affiliated reinsurance company shall comply with the requirements set forth in section 3569 of this title; and

(2) An affiliated reinsurance company shall report using statutory accounting principles, unless the Commissioner requires, approves, or accepts the use of generally accepted accounting principles or another comprehensive basis of accounting, in each case with any appropriate or necessary modifications or adaptations required or approved or accepted by the Commissioner and as supplemented by additional information required by the Commissioner.

(b) Unless otherwise approved in advance by the Commissioner, an affiliated reinsurance company shall maintain its books, records, documents, accounts, vouchers, and agreements in this State. An affiliated reinsurance company shall make its books, records, documents, accounts, vouchers, and agreements available for inspection by the Commissioner at any time. An affiliated reinsurance company shall keep its books and records in such manner that its financial condition, affairs, and operations can be readily ascertained and so that the Commissioner may readily verify its financial statements and determine its compliance with this chapter.

(c) Unless otherwise approved in advance by the Commissioner, all original books, records, documents, accounts, vouchers, and agreements shall

be preserved and kept available in this State for the purpose of examination and inspection and until such time as the Commissioner approves the destruction or other disposition of such books, records, documents, accounts, vouchers, and agreements. If the Commissioner approves the keeping outside this State of the items listed in this subsection, the affiliated reinsurance company shall maintain in this State a complete and true copy of each such original. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically

(d) The provisions of sections 3578a (annual financial reporting) and 3579 (qualified accountants) of this title shall apply in full to an affiliated reinsurance company.

§ 6049i. INSURANCE HOLDING COMPANY SYSTEMS

Except as otherwise provided in this section, the provisions of subchapter 13 of chapter 101 of this title shall apply in full to an affiliated reinsurance company.

§ 6049j. CORPORATE GOVERNANCE; DISCLOSURE

Except as otherwise provided in this section, the provisions of section 3316 of this title shall apply in full to an affiliated reinsurance company.

§ 6049k. OWN RISK AND SOLVENCY ASSESSMENT

Except as otherwise provided in this section, the provisions of chapter 101, subchapter 7A (own risk and solvency assessment) of this title shall apply in

full to an affiliated reinsurance company.

§ 6049l. REQUIREMENTS FOR ACTUARIAL OPINIONS

Except as otherwise provided in this section, the provisions of chapter 101, section 3577 (requirements for actuarial opinions) of this title shall apply in full to an affiliated reinsurance company.

§ 6049m. CONFIDENTIALITY

(a) All documents, materials, and other information, including confidential and privileged documents, examination reports, preliminary examination reports or results, working papers, recorded information, and copies of any of these produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under this subchapter are confidential and shall not be:

(1) subject to subpoena;

(2) subject to public inspection and copying under the Public Records Act; or

(3) discoverable or admissible in evidence in any private civil action.

(b) In furtherance of his or her regulatory duties, the Commissioner may:

(1) share documents, materials, and other information, including those that are confidential and privileged, with other state, federal, or international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators

Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or subsidiaries, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, and other information;

(2) receive documents, materials, and information, including those that are confidential and privileged, from other state, federal, and international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or subsidiaries and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

(3) enter into written agreements with other state, federal, and international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3 and 78q-1, and other self-regulatory organizations and their affiliates or subsidiaries governing the sharing and use

of information consistent with this section, including agreements providing for cooperation between the Commissioner and other agencies in relation to the activities of a supervisory college; and

(4) participate in a supervisory college for any affiliated reinsurance company that is part of an affiliated group with international operations in order to assess the insurer's compliance with Vermont laws and regulations, as well as to assess its business strategy, financial condition, risk exposure, risk management, governance processes, and legal and regulatory position.

(c) Prior to sharing information under subsection (b) of this section, the Commissioner shall determine that sharing the information will substantially further the performance of the regulatory or law enforcement duties of the recipient and that the information shall not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except to the extent provided in subsection (b) of this section.

* * * Effective Date ***

1 Sec. **9** 11. EFFECTIVE DATE

2 This act shall take effect on July 1, 2018.