

1 S.255

2 Introduced by Senator Cummings

3 Referred to Committee on

4 Date:

5 Subject: captive insurance

6 Statement of purpose of bill as introduced: This bill proposes to make various
7 amendments to Vermont's captive insurance laws.

8 An act relating to captive insurance

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

10 * * * Agency Captives * * *

11 Sec. 1. 8 V.S.A. § 6002 is amended to read:

12 § 6002. LICENSING; AUTHORITY

13 (a) Any captive insurance company, when permitted by its articles of
14 association, charter, or other organizational document, may apply to the
15 Commissioner for a license to do any and all insurance comprised in
16 subdivisions 3301(a)(1), (2), (3)(A)–(C), (E)–(Q), and (4)–(9) of this title and
17 may grant annuity contracts as defined in section 3717 of this title; provided,
18 however, that:

19 (1) No pure captive insurance company may insure any risks other than
20 those of its parent and affiliated companies or controlled unaffiliated business.

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

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

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

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

12 (1) possess and thereafter maintain unimpaired, paid-in capital and
13 surplus of not less than \$25,000.00 or such amount specified by the
14 Commissioner in his or her discretion;

15 * * *

16 * * * Sponsored Captives * * *

17 * * * Capitalization * * *

18 Sec. 3. 8 V.S.A. § 6004 is amended to read:

19 § 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

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

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(6) in the case of a sponsored captive insurance company, not less than
~~\$250,000.00~~ \$100,000.00.

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* * * Unaffiliated Business in a Protected Cell * * *

Sec. 4. 8 V.S.A. § 6034 is amended to read:

§ 6034. PROTECTED CELLS

A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants or, subject to Commissioner approval, other parties unaffiliated with a participant, subject to the following conditions:

* * *

* * * Separate Accounts Formed by Protected Cells * * *

Sec. 5. 8 V.S.A. § 6034b, 6034c₂ and 6034d shall be ~~renamed~~ redesignated as 6034c, 6034d₂ and 6034e, respectively.

Sec. 6. 8 V.S.A. § 6034b is added to read:

§ 6034b. SEPARATE ACCOUNTS OF PROTECTED CELLS

With the Commissioner's prior written approval, a protected cell of a sponsored captive insurance company may establish one or more separate accounts and may allocate to them amounts to provide for the insurance of

1 risks of one or more participants, or controlled unaffiliated business of such
2 participant or participants, 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 protected cell.

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

9 (3) Unless otherwise approved by the Commissioner, assets allocated to
10 a protected cell shall be valued in accordance with the rules otherwise
11 applicable to the protected cell's assets.

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

16 (5) No sale, exchange, or other transfer of assets may be made by such
17 protected cell between any of its separate accounts or between any other
18 investment account and one or more of its separate accounts unless, in the case
19 of a transfer into a separate account, such transfer is made solely to establish
20 the account or to support the operation of the contracts with respect to the
21 separate account to which the transfer is made, and unless such transfer,

1 whether into or from a separate account, is made by a transfer of cash or by a
2 transfer of securities having a readily determinable market value, provided that
3 such transfer of securities is approved by the Commissioner. The
4 Commissioner may approve other transfers among such accounts if, in his or
5 her opinion, such transfers would be equitable.

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

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

17 § 6010. LEGAL INVESTMENTS

18 (a)(1) Except as may be otherwise authorized by the Commissioner, agency
19 captive insurance companies, association captive insurance companies,
20 sponsored captive insurance companies, protected cells in sponsored captive
21 insurance companies, and risk retention groups shall:

1 Notwithstanding the provisions of section 6034 of this title, the assets of
2 two or more protected cells may be combined for purposes of investment, and
3 such combination shall not be construed as defeating the segregation of such
4 assets for accounting or other purposes. Sponsored captive insurance
5 companies and protected cells shall comply with the investment requirements
6 contained in ~~sections 3461 through 3472~~ section 6010 of this title, ~~as~~
7 ~~applicable; provided, however, that compliance with such investment~~
8 ~~requirements shall be waived for sponsored captive insurance companies to the~~
9 ~~extent that credit for reinsurance ceded to reinsurers is allowed pursuant to~~
10 ~~section 6011 of this title or to the extent otherwise deemed reasonable and~~
11 ~~appropriate by the Commissioner. Section 3463a of this title shall apply to~~
12 ~~sponsored captive insurance companies except to the extent it is inconsistent~~
13 ~~with approved accounting standards in use by the company. Notwithstanding~~
14 ~~any other provision of this title, the Commissioner may approve the use of~~
15 ~~alternative reliable methods of valuation and rating.~~

16 * * * Housekeeping – Erroneous Statutory References * * *

17 Sec. 9. 8 V.S.A. § 6018 is amended to read:

18 § 6018. DELINQUENCY

19 Except as otherwise provided in this chapter, the terms and conditions set
20 forth in chapter 145 of this title shall apply in full to captive insurance
21 companies formed or licensed under this chapter; however, the assets of a

1 separate account established under subsection 6006~~(p)~~(q) of this chapter shall
2 not be used to pay any expenses or claims other than those attributable to such
3 separate account.

4 Sec. 10. 8 V.S.A. § 6034a is amended to read:

5 § 6034a. INCORPORATED PROTECTED CELLS

6 (a) A protected cell of a sponsored captive insurance company may be
7 formed as an incorporated protected cell, as defined in subdivision 6032~~(1)~~(2)
8 of this title.

9 * * *

10 * * * Housekeeping – Accreditation Standard for Conduct of
11 Examinations * * *

12 Sec. 11. 8 V.S.A. § 6052(d) is amended to read:

13 (d) The provisions of subsection 6008(c) and sections 3573 and 3574 of
14 this title shall apply to risk retention groups chartered in this State, except that
15 such provisions shall not apply to final examination reports relating to risk
16 retention groups and except that the Commissioner may, in the
17 Commissioner's discretion, grant access to any other examination information
18 covered by subsection 6008(c) of this title to representatives of the National
19 Association of Insurance Commissioners to inspect (but not copy) such
20 information in connection with accreditation examinations, so long as the

1 National Association of Insurance Commissioners agrees in writing to
2 maintain the confidentiality of such information.

3 * * * Effective Date * * *

4 Sec. 12. EFFECTIVE DATE

5 This act shall take effect on passage.