

S.255

An act relating to captive insurance.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Agency Captives * * *

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

§ 6002. LICENSING; AUTHORITY

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

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

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

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

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

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

(C) it discloses to the original policyholder or policyholders, in a form or manner approved by the Commissioner, ~~any limitations, rights, and obligations held by that~~ the agency captive insurance company as a result of its affiliation with an insurance agency or brokerage may enter into a reinsurance or other risk-sharing agreement with the agency or brokerage; and

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* * * Dormant Captives * * *

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

§ 6024. DORMANT CAPTIVE INSURANCE COMPANIES

(a) As used in this section, unless the context requires otherwise, “dormant captive insurance company” means a captive insurance company that has:

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

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

(b) A captive insurance company domiciled in Vermont that meets the criteria of subsection (a) of this section may apply to the Commissioner for a

certificate of dormancy. The certificate of dormancy shall be subject to renewal every five years and shall be forfeited if not renewed within such time.

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

(1) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000.00; provided, however, that if the dormant captive insurance company had never capitalized, it shall not be required to add capital upon entering dormancy;

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* * * Capital and Surplus Requirements; Mergers * * *

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

§ 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

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

* * *

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

* * *

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

the Commissioner. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

* * *

Sec. 3A. 8 V.S.A. § 6006(j) is amended to read:

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

* * *

(6) The Commissioner may waive or modify application of the provisions of chapter 132 and chapter 101, subchapters 3 and 3A of this title and the provisions of Titles 11, 11A, and 11B in order to permit mergers of a non-insurer subsidiary of a captive insurance company with and into the captive insurance company or another of its subsidiaries without approval of the shareholders, members, or subscribers of such captive insurance company and without making available to the shareholders, members, or subscribers dissenters' rights otherwise made available in such a merger; provided, however, that the board of directors, managers, or subscribers' advisory committee of each of the merging entities shall approve such merger. The

Commissioner may condition any such waiver or modification upon a good faith effort by the captive insurance company to provide notice of the merger to its shareholders, members, or subscribers.

* * * Protected Cells; Unaffiliated Businesses * * *

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:

* * *

* * * Protected Cells; Separate Accounts * * *

Sec. 5. REDESIGNATIONS

8 V.S.A. §§ 6034b, 6034c, and 6034d are redesignated as §§ 6034c, 6034d, and 6034e.

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

risks of one or more participants, or controlled unaffiliated business of such participant or participants, subject to the following:

(1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the protected cell.

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

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

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

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

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

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

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

§ 6010. LEGAL INVESTMENTS

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

(A) comply with the investment requirements contained in sections 3461 through 3472 of this title, as applicable; or

(B) submit for approval by the Commissioner the investment policy of the company. In reviewing the investment policy, the Commissioner shall consider diversification as to both type and issue; limits on the aggregate investment that may be made in any category of investment; limits on the aggregate investment in any one business, issuer, or risk; liquidity; and matching of assets and liabilities. The Commissioner shall determine whether the investment policy provides for the reasonable preservation, administration, and management of assets with respect to the risks associated with the company's transactions and whether the investment policy supports the approved business plan. Subdivision 6002(c)(3) of this title shall apply to all information submitted pursuant to this subsection.

(2) The Commissioner may require any company subject to this subsection to limit or withdraw from certain investments or discontinue certain investment practices if the Commissioner determines that such investments or practices of the company might be hazardous to the policyholders or the general public.

Sec. 8. 8 V.S.A. § 6037 is amended to read:

§ 6037. INVESTMENTS BY SPONSORED CAPTIVE INSURANCE

COMPANIES AND PROTECTED CELLS

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

* * * Conforming Cross-references * * *

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

§ 6018. DELINQUENCY

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

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

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

§ 6034a. INCORPORATED PROTECTED CELLS

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

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* * * Risk Retention Groups; Examinations; Conduct; Reports; NAIC

Accreditation Standards * * *

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

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

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

* * * Affiliated Reinsurance Companies * * *

Sec. 11A. 8 V.S.A. § 6049b(1) is amended to read:

(1) “Affiliated reinsurance company” means a company licensed by the Commissioner pursuant to this subchapter to reinsure risks ceded by ~~a ceding insurer~~ one or more ceding insurers that is its parent or affiliate are affiliated companies. Subject to the prior approval of the Commissioner, not more than 10 percent of the risks reinsured may be ceded by ceding insurers that are not affiliated companies.

* * * Effective Date * * *

Sec. 12. EFFECTIVE DATE

This act shall take effect on passage.