

S.109

An act relating to captive insurance companies and risk retention groups

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

* * * Dividends; Distributions; Incorporated Protected Cells * * *

Sec. 1. 8 V.S.A. § 6005 is amended to read:

§ 6005. DIVIDENDS

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the Commissioner. Notwithstanding the provisions of 11B V.S.A. chapter 13, a captive insurance company or incorporated protected cell organized under the provisions of Title 11B may make such distributions as are in conformity with its purposes and approved by the Commissioner.

* * * Formation; Reciprocal Insurers; Attorney's Bond * * *

Sec. 2. 8 V.S.A. § 6006 is amended to read:

§ 6006. FORMATION OF CAPTIVE INSURANCE COMPANIES IN THIS
STATE

~~(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager managed limited liability company~~ Subject to the approval of the Commissioner, a captive insurance company may be formed as any type of entity permissible under Vermont law.

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

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

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

~~(2) incorporated as a mutual corporation;~~

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

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

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

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

~~(1)(A) Formed as a corporation, before the articles of incorporation~~
Before any required formation documents are transmitted to the Secretary of State, the incorporators or organizers shall petition the Commissioner to issue a certificate setting forth the Commissioner's finding that the establishment and maintenance of the proposed ~~corporation~~ entity will promote the general good of the State. In arriving at such a finding, the Commissioner shall consider:

~~(i)(A)~~ (i)(A) the character, reputation, financial standing, and purposes of the incorporators or organizers;

~~(ii)(B)~~ (ii)(B) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or members of the governing board; and

~~(iii)(C)~~ (iii)(C) such other aspects the Commissioner deems advisable.

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

~~(2) Formed as a reciprocal insurer, the organizers shall petition the Commissioner to issue a certificate setting forth the Commissioner's finding that the establishment and maintenance of the proposed association will promote the general good of the State. In arriving at such a finding, the~~

~~Commissioner shall consider the items set forth in subdivisions (1)(A)(i)-(iii) of this subsection.~~

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

* * *

(k) Captive insurance companies formed as reciprocal insurers under the provisions of this chapter shall have the privileges and be subject to the provisions of chapter 132 of this title in addition to the applicable provisions of this chapter. In the event of a conflict between the provisions of chapter 132 and the provisions of this chapter, the latter shall control. However, in approving assessments levied upon subscribers of a captive insurance company formed as a reciprocal insurer, the Commissioner may exempt the company from any provision of sections 4850 (assessments), 4851 (time limit for assessments), and 4852 (aggregate of liability) of chapter 132. To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to chapter 132, such provisions shall not be applicable to a reciprocal insurer

formed under this chapter unless such provisions are expressly made applicable to captive insurance companies under this chapter. The Commissioner may exempt a company's attorney-in-fact from the provisions of section 4840 (attorney's bond) of chapter 132 if:

- (1) the reciprocal insurer is formed as an association captive;
- (2) each member of the reciprocal insurer qualifies as "industrial insured" pursuant to subdivision 6001(9) of this subchapter; or
- (3) the reciprocal insurer is an incorporated protected cell of a sponsored captive insurance company.

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* * * Examinations * * *

Sec. 3. 8 V.S.A. § 6008(a) is amended to read:

(a) ~~At least once in three years, and whenever~~ Whenever the Commissioner determines it to be prudent, but not less frequently than once every five years, the Commissioner shall personally, or by some competent person appointed by the Commissioner, ~~visit each captive insurance company and thoroughly inspect and examine its affairs~~ each captive insurance company to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter. ~~The Commissioner may enlarge the aforesaid three-year period to five years, provided the captive insurance company is subject to a comprehensive annual audit during such period of a~~

~~scope satisfactory to the Commissioner by independent auditors approved by the Commissioner. The expenses and charges of the examination shall be paid to the State by the company or companies examined and the Commissioner of Finance and Management shall issue his or her warrants for the proper charges incurred in all examinations.~~

* * * Investments * * *

Sec. 4. 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, 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.

(3) Section 3463a of this title shall apply to agency captive insurance companies, association captive insurance companies, and risk retention groups except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this title to the contrary, the Commissioner may approve the use of alternative, reliable methods of valuation and rating.

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

(c) No pure captive insurance company may make a loan to or an investment in its parent company or affiliates without prior written approval of the Commissioner, and any such loan or investment must be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by section 6004 of this title are prohibited.

* * * Sponsored Captive Insurance Companies; Formation * * *

Sec. 5. 8 V.S.A. § 6031 is amended to read:

§ 6031. FORMATION

(a) One or more sponsors may form a sponsored captive insurance company under this chapter. In addition to the general provisions of this chapter, the provisions of this subchapter shall apply to sponsored captive insurance companies.

(b) ~~A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a manager managed limited liability company~~ Subject to the approval of the Commissioner, a sponsored captive insurance company may be formed as any type of entity permissible under Vermont law.

* * * Incorporated Protected Cells; Formation * * *

Sec. 6. 8 V.S.A. § 6032(2) is amended to read:

(2) “Incorporated protected cell” means a protected cell that ~~is established as a corporation, mutual corporation, nonprofit corporation with one or more members, limited liability company, or reciprocal insurer, subject~~ to the approval of the Commissioner, is formed as any type of entity permissible under Vermont law, separate from the sponsored captive insurance company of which it is a part.

* * * Participants; Sole Proprietorships * * *

Sec. 7. 8 V.S.A. § 6036 is amended to read:

§ 6036. PARTICIPANTS IN SPONSORED CAPTIVE INSURANCE
COMPANIES

(a) Associations, corporations, limited liability companies, partnerships, trusts, risk retention groups, sole proprietorships, and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter.

(b) A sponsor may be a participant in a sponsored captive insurance company.

(c) A participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof.

(d) A participant shall not insure any risks other than its own and the risks of affiliated entities or of controlled unaffiliated entities.

* * * Affiliated Reinsurance Companies; Annual Reporting * * *

Sec. 8. 8 V.S.A. § 6049h(a) is amended to read:

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

(1) ~~each~~ 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~~ 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~~ in accordance with the National Association of Insurance Commissioner's Accounting Practices and Procedures Manual. Reporting shall be in such general form and context, as approved by, and shall contain any other information required by, the National Association of Insurance Commissioners, with any useful 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.

* * * Risk Retention Groups; Governance; ORSA Requirement * * *

Sec. 9. 8 V.S.A. § 6052 is amended to read:

§ 6052. RISK RETENTION GROUPS CHARTERED IN THIS STATE

* * *

(g) This subsection establishes governance standards for a risk retention group.

(1) As used in this subsection:

* * *

(C)(i) “Independent director” means a director who does not have a material relationship with the risk retention group. ~~A person that is a direct or indirect owner of or subscriber in the risk retention group or is an officer, director, or employee of such an owner and insured, unless some other position of such officer, director, or employee constitutes a “material relationship” as contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act, is considered to be “independent.”~~ A director has a material relationship with a risk retention group if he or she, or a member of his or her immediate family:

~~(i)~~(I) In any 12-month period, receives from the risk retention group, or from a consultant or service provider to the risk retention group,

compensation or other item or items of value in an amount equal to or greater than five percent of the risk retention group's gross written premium or two percent of the risk retention group's surplus, as measured at the end of any fiscal quarter falling in such 12-month period, whichever is greater. This provision also applies to compensation or items of value received by any business with which the director is affiliated. Such material relationship shall continue for one year after receipt of the item or items of value ~~is received~~ or the compensation ~~ceases or~~ falls below the threshold established in this subdivision, ~~as applicable~~.

~~(ii)~~(II) Has a relationship with an auditor as follows: Is affiliated with or employed in a professional capacity by a current or former internal or external auditor of the risk retention group. Such material relationship shall continue for one year after the affiliation or employment ends.

~~(iii)(aa)~~ ~~Has a relationship with a related entity as follows:~~ Is employed as an executive officer of another ~~company whose board of directors~~ business entity that is affiliated with the risk retention group by virtue of common ownership and control, if such entity meets all of the following criteria:

(AA) the entity is not an insured of the risk retention group:

(BB) the entity has a contractual relationship with the risk retention group; and

(CC) the governing board of the entity includes executive officers of the risk retention group, unless a majority of the membership of such other company's board of directors is the same as the membership of the board of directors of the risk retention group entity's governing board is composed of individuals who are members of the governing board of the risk retention group.

(bb) Such material relationship shall continue until the employment or service ends.

(ii) Notwithstanding subdivision (i) of this subdivision (g)(1)(C), a director who is a direct or indirect owner of the risk retention group is deemed to be independent; and an officer, director, or employee of an insured of the risk retention group is deemed to be independent, unless some other relationship of such officer, director, or employee qualifies as a material relationship.

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(h) The provisions of subchapter 7A of chapter 101 of this title (own risk and solvency assessment) shall apply to risk retention groups chartered in this State.

* * * Effective Date * * *

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.