

1 **Draft Commerce Amendments Highlighted in Yellow**

2 TO THE HOUSE OF REPRESENTATIVES:

3 The Committee on Commerce and Economic Development to which was
4 referred Senate Bill No. 255 entitled “An act relating to captive insurance”
5 respectfully reports that it has considered the same and recommends that the
6 House propose to the Senate that the bill be amended by striking out all after
7 the enacting clause and inserting in lieu thereof the following:

8 * * * Agency Captives * * *

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

10 § 6002. LICENSING; AUTHORITY

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

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

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

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

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

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

14 * * *

15 * * * Dormant Captives * * *

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

17 § 6024. DORMANT CAPTIVE INSURANCE COMPANIES

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

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

1 (6) in the case of a sponsored captive insurance company, not less than
2 ~~\$250,000.00~~ \$100,000.00.

3 * * *

4 (c) Capital and surplus may be in the form of cash, marketable securities, a
5 trust approved by the Commissioner and of which the Commissioner is the
6 sole beneficiary, or an irrevocable letter of credit issued by a bank approved by
7 the Commissioner. The Commissioner may reduce or waive the capital and
8 surplus amounts required by this section pursuant to a plan of dissolution for
9 the company approved by the Commissioner.

10 * * *

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

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

17 * * *

18 (6) The Commissioner may waive or modify application of the
19 provisions of chapter 132 and chapter 101, subchapters 3 and 3A of this title
20 and the provisions of Titles 11, 11A, and 11B in order to permit mergers of a
21 non-insurer subsidiary of a captive insurance company with and into the

1 captive insurance company or another of its subsidiaries without approval of
2 the shareholders, members, or subscribers of such captive insurance company
3 and without making available to the shareholders, members, or subscribers
4 dissenters' rights otherwise made available in such a merger; provided,
5 however, that the board of directors, managers, or subscribers' advisory
6 committee of each of the merging entities shall approve such merger.

7 * * * Protected Cells; Unaffiliated Businesses * * *

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

9 § 6034. PROTECTED CELLS

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

15 * * *

16 * * * Protected Cells; Separate Accounts * * *

17 Sec. 5. REDESIGNATIONS

18 8 V.S.A. §§ 6034b, 6034c, and 6034d are redesignated as §§ 6034c, 6034d,
19 and 6034e.

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

21 § 6034b. SEPARATE ACCOUNTS OF PROTECTED CELLS

1 With the Commissioner’s prior written approval, a protected cell of a
2 sponsored captive insurance company may establish one or more separate
3 accounts and may allocate to them amounts to provide for the insurance of
4 risks of one or more participants, or controlled unaffiliated business of such
5 participant or participants, subject to the following:

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

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

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

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

19 (5) No sale, exchange, or other transfer of assets may be made by such
20 protected cell between any of its separate accounts or between any other
21 investment account and one or more of its separate accounts unless, in the case

1 of a transfer into a separate account, such transfer is made solely to establish
2 the account or to support the operation of the contracts with respect to the
3 separate account to which the transfer is made and unless such transfer,
4 whether into or from a separate account, is made by a transfer of cash or by a
5 transfer of securities having a readily determinable market value, provided that
6 such transfer of securities is approved by the Commissioner. The
7 Commissioner may approve other transfers among such accounts if, in his or
8 her opinion, such transfers would be equitable.

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

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

20 § 6010. LEGAL INVESTMENTS

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

5 (A) comply with the investment requirements contained in sections
6 3461 through 3472 of this title, as applicable; or

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

18 (2) The Commissioner may require any company subject to this
19 subsection to limit or withdraw from certain investments or discontinue certain
20 investment practices if the Commissioner determines that such investments or

1 practices of the company might be hazardous to the policyholders or the
2 general public.

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

4 § 6037. INVESTMENTS BY SPONSORED CAPTIVE INSURANCE

5 COMPANIES AND PROTECTED CELLS

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

1 retention groups and except that the Commissioner may, in the
2 Commissioner’s discretion, grant access to any other examination information
3 covered by subsection 6008(c) of this title to representatives of the National
4 Association of Insurance Commissioners to inspect (but not copy) such
5 information in connection with accreditation examinations, so long as the
6 National Association of Insurance Commissioners agrees in writing to
7 maintain the confidentiality of such information.

8 * * * Affiliated Reinsurance Companies * * *

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

10 (1) “Affiliated reinsurance company” means a company licensed by the
11 Commissioner pursuant to this subchapter to reinsure risks ceded by a ceding
12 insurer one or more ceding insurers that is its parent or affiliate are affiliated
13 companies. Subject to the prior approval of the Commissioner, not more than
14 10 percent of the risks reinsured may be ceded by ceding insurers that are not
15 affiliated companies.

16 * * * Effective Date * * *

17 Sec. 12. EFFECTIVE DATE

18 This act shall take effect on passage.

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE