

1 TO THE HONORABLE SENATE:

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

6 \* \* \* Agency Captives \* \* \*

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

8 § 6002. LICENSING; AUTHORITY

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

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

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

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

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

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

11 \* \* \*

12 \* \* \* Dormant Captives \* \* \*

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

14 § 6024. DORMANT CAPTIVE INSURANCE COMPANIES

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

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

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

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

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

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

11 \* \* \*

12 \* \* \* Sponsored Captives; Capitalization \* \* \*

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

14 § 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

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

17 \* \* \*

18 (6) in the case of a sponsored captive insurance company, not less than  
19 ~~\$250,000.00~~ \$100,000.00.

20 \* \* \*

1                             \* \* \* Protected Cells; Unaffiliated Businesses \* \* \*

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

3     § 6034. PROTECTED CELLS

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

9   \* \* \*

10                             \* \* \* Protected Cells; Separate Accounts \* \* \*

11     Sec. 5. REDESIGNATION

12             8 V.S.A. § 6034b, § 6034c, and § 6034d are redesignated as § 6034c,  
13     § 6034d, and § 6034e.

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

15     § 6034b. SEPARATE ACCOUNTS OF PROTECTED CELLS

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

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

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

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

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

14           (5) No sale, exchange, or other transfer of assets may be made by such  
15           protected cell between any of its separate accounts or between any other  
16           investment account and one or more of its separate accounts unless, in the case  
17           of a transfer into a separate account, such transfer is made solely to establish  
18           the account or to support the operation of the contracts with respect to the  
19           separate account to which the transfer is made, and unless such transfer,  
20           whether into or from a separate account, is made by a transfer of cash or by a  
21           transfer of securities having a readily determinable market value, provided that

1 such transfer of securities is approved by the Commissioner. The  
2 Commissioner may approve other transfers among such accounts if, in his or  
3 her opinion, such transfers would be equitable.

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

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

15 § 6010. LEGAL INVESTMENTS

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

20 (A) comply with the investment requirements contained in sections  
21 3461 through 3472 of this title, as applicable; or

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

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

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

18 § 6037. INVESTMENTS BY SPONSORED CAPTIVE INSURANCE

19           COMPANIES AND PROTECTED CELLS

20           Notwithstanding the provisions of section 6034 of this title, the assets of  
21 two or more protected cells may be combined for purposes of investment, and

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

14 \* \* \* Conforming Cross-references \* \* \*

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

16 § 6018. DELINQUENCY

17 Except as otherwise provided in this chapter, the terms and conditions set  
18 forth in chapter 145 of this title shall apply in full to captive insurance  
19 companies formed or licensed under this chapter; however, the assets of a  
20 separate account established under subsection 6006~~(p)~~(q) of this chapter shall



1 not be used to pay any expenses or claims other than those attributable to such  
2 separate account.

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

4 § 6034a. INCORPORATED PROTECTED CELLS

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

8 \* \* \*

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

10 Accreditation Standards \* \* \*

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

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

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\* \* \* Effective Date \* \* \*

Sec. 12. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Senator \_\_\_\_\_

FOR THE COMMITTEE