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H.659

2

Introduced by Representatives Marcotte of Coventry and Jerome of Brandon

3

Referred to Committee on

4

Date:

5

Subject: Insurance; captive insurance

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Statement of purpose of bill as introduced: This bill proposes to make various

7

amendments to Vermont law as it pertains to captive insurance.

8

An act relating to captive insurance

9

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

10

Sec. 1. 8 V.S.A. § 6032 is amended to read

11

§ 6032. DEFINITIONS

12

As used in this subchapter, ~~unless the context requires otherwise:~~

13

* * *

14

(7) "Sponsored captive insurance company" means any captive

15

insurance company:

16

(A) in which the minimum capital and surplus required by applicable

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law is provided by one or more sponsors;

18

(B) that is formed or licensed under the provisions of this chapter;

1 (C) that insures the risks only of its participants or, subject to
2 Commissioner approval, other parties unaffiliated with a participant as defined
3 in subsection 6036(d) of this title, through separate participant contracts; and

4 (D) that funds its liability to each participant through one or more
5 protected cells and segregates the assets of each protected cell from the assets
6 of other protected cells and from the assets of the sponsored captive insurance
7 company's general account.

8 (8) "Controlled unaffiliated entity" means any person or entity:

9 (A) that is not in the corporate system of a participant and its
10 affiliated companies;

11 (B) that has an existing contractual relationship with a participant or
12 one of its affiliated companies; and

13 (C) whose risks are managed by a participant, as applicable, in
14 accordance with section 6019 of this title.

15 Sec. 2. 8 V.S.A. § 6034h is added to read:

16 § 6034h. CONVERSION INTO PROTECTED GIFT

17 (a)(1) Subject to the prior written approval of the Commissioner, a captive
18 insurance company domiciled in this State and organized as an agency captive
19 insurance company, association captive insurance company, industrial insured
20 captive insurance company, pure captive insurance company, risk retention

1 group, or special purpose financial insurance company may be converted into
2 an unincorporated protected cell.

3 (2) Any such conversion shall be subject to subchapters 1 and 4 of this
4 chapter, as applicable, as well as to a plan or plans of operation approved by
5 the Commissioner, without affecting the converted entity's assets, rights,
6 benefits, obligations, or liabilities.

7 (b) Any such conversion shall be deemed for all purposes to be a
8 continuation of such converted entity's existence together with all of its assets,
9 rights, benefits, obligations, and liabilities as a new protected cell. Any such
10 conversion shall be deemed to occur without any transfer or assignment of any
11 such assets, rights, benefits, obligations, or liabilities and without the creation
12 of any reversionary interest in, or impairment of, any such assets, rights,
13 benefits, obligations, and liabilities.

14 (c) Any such conversion shall not be construed to limit any rights or
15 protections applicable to any converted entity under this subchapter or under
16 subchapter 1 or 4 of this chapter, as applicable, that existed immediately prior
17 to the date of such conversion.

18 (d)(1) Any entity converting into a protected cell pursuant to this section
19 shall perform such conversion in accordance with:

20 (A) the provisions of 11A V.S.A. chapter 11 if the converted entity
21 was a corporation;

1 (B) the provisions of 11 V.S.A. chapter 25, subchapter 10 if the
2 converted entity was a limited liability company; or

3 (C) the provisions applicable to any other type of entity permissible
4 under Vermont law if the converted entity was such an entity.

5 (2) As used in this subsection (d), a protected cell that is not an
6 incorporated protected cell shall be considered an “organization” as that term is
7 defined in 11A V.S.A. § 11.01 and 11 V.S.A. § 4141, an “other insurer” as that
8 term is defined in 8 V.S.A. § 6020, and an “entity” as that term is defined in
9 11C V.S.A. § 102.

10 Sec. 3. 8 V.S.A. § 6002(a)(10) is amended to read:

11 (10) Any captive insurance company that transfers risk by means of a
12 parametric contract shall comply with all applicable State and federal laws and
13 regulations. ~~As used in this subdivision, “parametric contract” means a~~
14 ~~contract to make a payment upon the occurrence of one or more specified~~
15 ~~triggering events without proof of loss or obligation to indemnify. A~~
16 ~~parametric contract is not an insurance contract.~~

17 Sec. 4. 8 V.S.A. § 6004 is amended to read:

18 § 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

19 (a) Prior to issuing any policies of insurance or entering into any contracts
20 of reinsurance, each captive insurance company shall possess and thereafter
21 maintain unimpaired paid-in capital and surplus of:

1 this title and all fees and assessments received by the Department pursuant to
2 the administration of these chapters shall be credited to this Fund. Of this
3 amount, not more than three percent of the premium tax under section 6014
4 may be expended by the Agency of Commerce and Community Development,
5 with approval of the Secretary of Administration, for promotional expenses.

6 ~~All fees received by the Department from reinsurers who assume risk solely~~
7 ~~from captive insurance companies and are subject to the provisions of~~
8 ~~subsections 3634a(a) through (f) of this title shall be deposited into the Captive~~
9 ~~Insurance Regulatory and Supervision Fund.~~ All fines and administrative
10 penalties, however, shall be deposited directly into the General Fund.

11 * * *

12 Sec. 6. 8 V.S.A. § 6011 is amended to read:

13 § 6011. REINSURANCE

14 * * *

15 (b) Any captive insurance company may take credit for the reinsurance of
16 risks or portions of risks ceded to reinsurers complying with the provisions of
17 subsections 3634a(a) through (e) of this title. Prior approval of the
18 Commissioner shall be required for ceding or taking credit for the reinsurance
19 of risks or portions of risks ceded to reinsurers not complying with subsections
20 3634a(a) through (e) of this title, ~~except for business written by an alien~~
21 ~~captive insurance company outside the United States.~~

1 ~~(i) the information sought is relevant to and necessary for the~~
2 ~~furtherance of such action or case;~~

3 ~~(ii) the information sought is unavailable from other~~
4 ~~nonconfidential sources; and~~

5 ~~(iii) a subpoena issued by a judicial or administrative officer of~~
6 ~~competent jurisdiction has been submitted to the Commissioner; provided,~~
7 ~~however, that the provisions of this subdivision (3) shall not apply to any risk~~
8 ~~retention group; and The Commissioner may, in the Commissioner's~~
9 ~~discretion, disclose or publish or authorize the disclosure or publication of any~~
10 ~~such record or report or any part thereof in the furtherance of legal or~~
11 ~~regulatory proceedings brought as a part of the Commissioner's official duties.~~
12 ~~The Commissioner may, in the Commissioner's discretion, disclose or publish~~
13 ~~or authorize the disclosure or publication of any such record or report or any~~
14 ~~part thereof to criminal law enforcement authorities for use in the exercise of~~
15 ~~such authority's duties in such manner as the Commissioner may deem proper.~~

16 (B) ~~the~~ The Commissioner may, in the Commissioner's discretion,
17 disclose such information to a public officer having jurisdiction over the
18 regulation of insurance ~~in another state~~ and with other state, federal, or
19 international agencies, provided that:

20 (i) such public official shall agree in writing to maintain the
21 confidentiality of such information; and

1 (ii) the laws of the state or foreign government in which such
2 public official serves require such information to be and to remain confidential.

3 (C) Neither the Commissioner nor any person who received
4 documents pursuant to this subsection, material, or information while acting
5 under the authority of the Commissioner shall be permitted or required to
6 testify in any private civil action concerning any confidential documents,
7 material, or information.

8 (D) Nothing in this subsection (c) shall excuse the applicant from
9 making any required disclosure under this chapter.

10 Sec. 9. 8 V.S.A. § 6008(c) is amended to read:

11 (c) ~~All~~ Subdivision 6002(c)(3) of this title shall apply to all examination
12 reports, preliminary examination reports or results, working papers, recorded
13 information, documents and copies thereof produced by, obtained by, or
14 disclosed to the Commissioner or any other person in the course of an
15 examination made under this section ~~are confidential and are not subject to~~
16 ~~subpoena and may not be made public by the Commissioner or an employee or~~
17 ~~agent of the Commissioner without the written consent of the company, except~~
18 ~~to the extent provided in this subsection. Nothing in this subsection shall~~
19 ~~prevent the Commissioner from using such information in furtherance of the~~
20 ~~Commissioner's regulatory authority under this title. The Commissioner may,~~
21 ~~in the Commissioner's discretion, grant access to such information to public~~

1 ~~officers having jurisdiction over the regulation of insurance in any other state~~
2 ~~or country, or to law enforcement officers of this State or any other state or~~
3 ~~agency of the federal government at any time, so long as such officers~~
4 ~~receiving the information agree in writing to hold it in a manner consistent~~
5 ~~with this section.~~

6 Sec. 10. 8 V.S.A. § 6048o is amended to read:

7 § 6048o. CONFIDENTIALITY

8 (a) ~~All~~ Subdivision 6002(c)(3) and subsection 6008(c) of this title shall
9 apply to all documents, materials, or other information, including ~~confidential~~
10 and ~~privileged documents,~~ examination reports, preliminary examination
11 reports or results, working papers, recorded information, and copies thereof
12 produced by, obtained by, or disclosed to the Commissioner or any other
13 person in the course of an examination made under this subchapter ~~are~~
14 confidential and shall not be:

15 (1) ~~subject to subpoena;~~

16 (2) ~~subject to public inspection and copying under the Public Records~~
17 ~~Act; or~~

18 (3) ~~discoverable or admissible in evidence in any private civil action.~~

19 (b) In furtherance of ~~his or her~~ the Commissioner's regulatory duties, the
20 Commissioner may: share and receive documents, materials, or other
21 information pursuant to section 22 of this title.

1 ~~(1) share documents, materials, or other information, including those~~
2 ~~that are confidential and privileged, with other state, federal, or international~~
3 ~~regulatory agencies and law enforcement authorities, the National Association~~
4 ~~of Insurance Commissioners, the North American Securities Administrators~~
5 ~~Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,~~
6 ~~78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or~~
7 ~~subsidiaries, provided that the recipient agrees in writing to maintain the~~
8 ~~confidentiality and privileged status of the document, material, or other~~
9 ~~information;~~

10 ~~(2) receive documents, materials, or information, including those that~~
11 ~~are confidential and privileged, from other state, federal, and international~~
12 ~~regulatory agencies and law enforcement authorities, the National Association~~
13 ~~of Insurance Commissioners, the North American Securities Administrators~~
14 ~~Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,~~
15 ~~78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or~~
16 ~~subsidiaries and shall maintain as confidential or privileged any document,~~
17 ~~material, or information received with notice or the understanding that it is~~
18 ~~confidential or privileged under the laws of the jurisdiction that is the source of~~
19 ~~the document, material, or information;~~

20 ~~(3) enter into written agreements with other state, federal, and~~
21 ~~international regulatory agencies and law enforcement authorities, the National~~

1 ~~Association of Insurance Commissioners, the North American Securities~~
2 ~~Administrators Association, self-regulatory organizations organized under 15~~
3 ~~U.S.C. §§ 78f, 78o-3 and 78q-1, and other self-regulatory organizations and~~
4 ~~their affiliates or subsidiaries governing sharing and use of information~~
5 ~~consistent with this section, including agreements providing for cooperation~~
6 ~~between the Commissioner and other agencies in relation to the activities of a~~
7 ~~supervisory college; and~~

8 ~~(4) participate in a supervisory college for any special purpose financial~~
9 ~~insurer that is part of an affiliated group with international operations in order~~
10 ~~to assess the insurer's compliance with Vermont laws and regulations, as well~~
11 ~~as to assess the business strategy, financial condition, risk exposure, risk~~
12 ~~management, governance processes, and legal and regulatory position.~~

13 ~~(c) Prior to sharing information under subsection (b) of this section, the~~
14 ~~Commissioner shall determine that sharing the information will substantially~~
15 ~~further the performance of the regulatory or law enforcement duties of the~~
16 ~~recipient and may not be made public by the Commissioner or an employee or~~
17 ~~agent of the Commissioner without the written consent of the company, except~~
18 ~~to the extent provided in subsection (b) of this section. [Repealed.]~~

1 Sec. 11. 8 V.S.A. § 6049m is amended to read:

2 § 6049m. CONFIDENTIALITY

3 (a) ~~All~~ Subdivision 6002(c)(3) of this title and subsection 6008(c) of this
4 title shall apply to all documents, materials, and other information, including
5 confidential and privileged documents, examination reports, preliminary
6 examination reports or results, working papers, recorded information, and
7 copies of any of these produced by, obtained by, or disclosed to the
8 Commissioner or any other person in the course of an examination made under
9 this subchapter ~~are confidential and shall not be:~~

10 (1) ~~subject to subpoena;~~

11 (2) ~~subject to public inspection and copying under the Public Records~~
12 ~~Act; or~~

13 (3) ~~discoverable or admissible in evidence in any private civil action.~~

14 (b) In furtherance of ~~his or her~~ the Commissioner's regulatory duties, the
15 Commissioner may: share and receive documents, materials, or other
16 information pursuant to section 22 of this title.

17 (1) ~~share documents, materials, and other information, including those~~
18 ~~that are confidential and privileged, with other state, federal, or international~~
19 ~~regulatory agencies and law enforcement authorities, the National Association~~
20 ~~of Insurance Commissioners, the North American Securities Administrators~~
21 ~~Association, self regulatory organizations organized under 15 U.S.C. §§ 78f,~~

1 ~~78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or~~
2 ~~subsidiaries, provided that the recipient agrees in writing to maintain the~~
3 ~~confidentiality and privileged status of the documents, materials, and other~~
4 ~~information;~~

5 ~~(2) receive documents, materials, and information, including those that~~
6 ~~are confidential and privileged, from other state, federal, and international~~
7 ~~regulatory agencies and law enforcement authorities, the National Association~~
8 ~~of Insurance Commissioners, the North American Securities Administrators~~
9 ~~Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,~~
10 ~~78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or~~
11 ~~subsidiaries and shall maintain as confidential or privileged any document,~~
12 ~~material, or information received with notice or the understanding that it is~~
13 ~~confidential or privileged under the laws of the jurisdiction that is the source of~~
14 ~~the document, material, or information;~~

15 ~~(3) enter into written agreements with other state, federal, and~~
16 ~~international regulatory agencies and law enforcement authorities, the National~~
17 ~~Association of Insurance Commissioners, the North American Securities~~
18 ~~Administrators Association, self-regulatory organizations organized under 15~~
19 ~~U.S.C. §§ 78f, 78o-3, and 78q-1, and other self-regulatory organizations and~~
20 ~~their affiliates or subsidiaries governing the sharing and use of information~~
21 ~~consistent with this section, including agreements providing for cooperation~~

1 ~~between the Commissioner and other agencies in relation to the activities of a~~
2 ~~supervisory college; and~~

3 ~~(4) participate in a supervisory college for any affiliated reinsurance~~
4 ~~company that is part of an affiliated group with international operations in~~
5 ~~order to assess the insurer's compliance with Vermont laws and regulations, as~~
6 ~~well as to assess its business strategy, financial condition, risk exposure, risk~~
7 ~~management, governance processes, and legal and regulatory position.~~

8 ~~(c) Prior to sharing information under subsection (b) of this section, the~~
9 ~~Commissioner shall determine that sharing the information will substantially~~
10 ~~further the performance of the regulatory or law enforcement duties of the~~
11 ~~recipient and that the information shall not be made public by the~~
12 ~~Commissioner or an employee or agent of the Commissioner without the~~
13 ~~written consent of the company, except to the extent provided in subsection (b)~~
14 ~~of this section. [Repealed.]~~

15 Sec. 12. 8 V.S.A. § 6033 is amended to read:

16 § 6033. SUPPLEMENTAL APPLICATION MATERIALS

17 In addition to the information required by subdivisions 6002(c)(1) and (2)
18 of this title, and subject to the confidentiality provisions of subdivision
19 6002(c)(3) of this title, each applicant-sponsored captive insurance company
20 shall file with the Commissioner the following:

21 * * *

1 Sec. 15. 8 V.S.A. § 6047a is added to read:

2 § 6047a. CONFIDENTIALITY

3 (a) Subdivision 6002(c)(3) and subsection 6008(c) of this title shall apply
4 to all documents, materials, or other information, including confidential and
5 privileged documents, examination reports, preliminary examination reports or
6 results, working papers, recorded information, and copies thereof that are
7 produced by, obtained by, or disclosed to the Commissioner or any other
8 person in the course of an examination made under this subchapter.

9 (b) In furtherance of the Commissioner's duties, the Commissioner may
10 share and receive documents, materials, or other information pursuant to
11 section 22 of this title.

12 Sec. 16. 8 V.S.A. § 6052 is amended to read:

13 § 6052. RISK RETENTION GROUPS CHARTERED IN THIS STATE

14 * * *

15 (c)(1) At the time of filing its application for charter, the risk retention
16 group shall provide to the Commissioner in summary form the following
17 information:

18 * * *

19 ~~(2) The applicant may bind separately any portions of the application or~~
20 ~~any amendment thereto that contain proprietary information or documents and~~
21 ~~request confidential treatment of such portions. As used in this section,~~

1 ~~“proprietary information or documents” means certain information or~~
2 ~~documents furnished by or pertaining to any of the persons specified in~~
3 ~~subdivision (1) of this subsection (c) that would customarily be treated as~~
4 ~~confidential or sensitive and the disclosure of which could result in harm or~~
5 ~~prejudice to the person to whom the information or documents pertain or unfair~~
6 ~~advantage to another person. Such information includes trade secrets,~~
7 ~~historical or projected loss data, or case reserves of members or policyholders,~~
8 ~~actuarial analyses that include such data or reserves, historical or projected~~
9 ~~financial data not otherwise publicly available, and similar information or~~
10 ~~documents. The Commissioner shall determine which portions specified by~~
11 ~~the applicant fall within the definition of proprietary information or documents~~
12 ~~and treat such portions as confidential. Provided, however, that nothing herein~~
13 ~~shall excuse the applicant from making any required disclosure under the RRA~~
14 ~~1986, this chapter or chapter 141 of this title, or prohibit the Commissioner~~
15 ~~from disclosing any proprietary information or documents in the furtherance of~~
16 ~~any legal or regulatory proceeding. Before using proprietary information or~~
17 ~~documents in a legal or regulatory proceeding that does not involve the~~
18 ~~applicant or any person named in the application or any amendment thereto,~~
19 ~~the Commissioner shall first seek to obtain the same information from~~
20 ~~nonconfidential sources. If unavailable from nonconfidential sources, the~~
21 ~~Commissioner shall seek to protect the confidential information or documents~~

1 ~~from unnecessary disclosure. Upon licensing, the Commissioner shall forward~~
2 ~~to the National Association of Insurance Commissioners all information~~
3 ~~required under the RRA 1986 to be submitted to each state where the risk~~
4 ~~retention group proposes to operate and all other information not deemed~~
5 ~~confidential under this section. Providing notification to the National~~
6 ~~Association of Insurance Commissioners is in addition to and shall not be~~
7 ~~sufficient to satisfy the requirements of section 6053 or any other sections of~~
8 ~~this chapter. In addition, the Commissioner may provide access to confidential~~
9 ~~application information with respect to risk retention groups to representatives~~
10 ~~of the National Association of Insurance Commissioners to inspect (but not~~
11 ~~copy) such information in connection with accreditation examinations, so long~~
12 ~~as the National Association of Insurance Commissioners agrees in writing to~~
13 ~~maintain the confidentiality of such information. Information submitted~~
14 ~~pursuant to this subsection, including any subsequent updates, amendments, or~~
15 ~~revisions of or to such information, shall be and remain confidential and may~~
16 ~~not be made public by the Commissioner or an employee or agent of the~~
17 ~~Commissioner without the written consent of the company, except that:~~
18 ~~(A) The Commissioner may, in the Commissioner's discretion,~~
19 ~~disclose or publish or authorize the disclosure or publication of any such~~
20 ~~record or report or any part thereof in the furtherance of legal or regulatory~~
21 ~~proceedings brought as a part of the Commissioner's official duties. The~~

1 Commissioner may, in the Commissioner's discretion and in a manner the
2 Commissioner deems proper, disclose or publish or authorize the disclosure or
3 publication of any such record or report or any part thereof to criminal law
4 enforcement authorities for use in the exercise of the authority's duties.

5 (B) The Commissioner may, in the Commissioner's discretion,
6 disclose such information to a public officer having jurisdiction over the
7 regulation of insurance and with other state, federal, or international agencies,
8 provided that:

9 (i) such public official shall agree in writing to maintain the
10 confidentiality of such information; and

11 (ii) the laws of the state or foreign government in which such
12 public official serves require such information to be and remain confidential.

13 (C) The Commissioner may provide access to confidential
14 application information with respect to risk retention groups to representatives
15 of the National Association of Insurance Commissioners to inspect, but not
16 copy, such information in connection with accreditation examinations,
17 provided the National Association of Insurance Commissioners agrees in
18 writing to maintain the confidentiality of such information.

19 (D) Neither the Commissioner nor any person who received
20 documents pursuant to this subsection, material, or information while acting
21 under the authority of the Commissioner shall be permitted or required to

1 testify in any private civil action concerning any confidential documents,
2 material, or information.

3 (E) Nothing in this subsection (c) shall excuse an applicant from
4 making any required disclosure under the federal liability Risk Retention Act
5 of 1986, this chapter, or chapter 141 of this title.

6 * * *

7 Sec. 17. 8 V.S.A. § 6007 is amended to read:

8 § 6007. REPORTS AND STATEMENTS

9 * * *

10 (b) Prior to March 1 of each year, and prior to March 15 of each year in the
11 case of pure captive insurance companies, association captive insurance
12 companies, sponsored captive insurance companies, industrial insured captive
13 insurance companies, or agency captive insurance companies, each captive
14 insurance company shall submit to the Commissioner a report of its financial
15 condition, verified by oath of two of its executive officers. Each captive
16 insurance company shall report using generally accepted accounting principles,
17 statutory accounting principles, or international financial reporting standards
18 unless the Commissioner requires, approves, or accepts the use of any other
19 comprehensive basis of accounting, in each case with any appropriate or
20 necessary modifications or adaptations thereof required or approved or
21 accepted by the Commissioner for the type of insurance and kinds of insurers

1 to be reported upon, and as supplemented by additional information required
2 by the Commissioner. As used in this section, statutory accounting principles
3 shall mean the accounting principles codified in the NAIC Accounting
4 Practices and Procedures Manual. Upon application for admission, a captive
5 insurance company shall select, with explanation, an accounting method for
6 reporting. Any change in a captive insurance company's accounting method
7 shall require prior approval. Except as otherwise provided, each risk retention
8 group shall file its report in the form required by subsection 3561(a) of this
9 title, and each risk retention group shall comply with the requirements set forth
10 in section 3569 of this title. The Commissioner shall by rule propose the forms
11 in which pure captive insurance companies, association captive insurance
12 companies, sponsored captive insurance companies, and industrial insured
13 captive insurance companies shall report. Subdivision 6002(c)(3) of this title
14 shall apply to each report filed pursuant to this section, ~~except that such~~
15 ~~subdivision shall not apply to reports filed by risk retention groups.~~

16 * * *

17 Sec. 18. 8 V.S.A. § 6074 is amended to read:

18 § 6074. EXAMINATION AUTHORITY

19 * * *

20 (b) ~~All~~ Subsection 6052(a) of this title shall apply to all examination
21 reports, work papers, recorded information, documents and copies thereof

1 produced by, obtained by, or disclosed to the Commissioner or any other
2 person in the course of an examination made under this section ~~are confidential~~
3 ~~and are not subject to subpoena and may not be made public by the~~
4 ~~Commissioner or any other person, except as otherwise provided in this~~
5 ~~section. The Commissioner is authorized to use and make public any report,~~
6 ~~work paper, or other documents, or any other information discovered or~~
7 ~~developed during the course of any examination conducted pursuant to this~~
8 ~~section in the furtherance of any legal or regulatory action.~~

9 Sec. 19. EFFECTIVE DATE

10 This act shall take effect on July 1, 2024.