

1 H.659

2 An act relating to captive insurance

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

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

5 § 6032. DEFINITIONS

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

7 * * *

8 (7) “Sponsored captive insurance company” means any captive
9 insurance company:

10 (A) in which the minimum capital and surplus required by applicable
11 law is provided by one or more sponsors;

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

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

16 (D) that funds its liability to each participant through one or more
17 protected cells and segregates the assets of each protected cell from the assets
18 of other protected cells and from the assets of the sponsored captive insurance
19 company’s general account.

20 (8) “Controlled unaffiliated entity” means any person or entity:

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

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

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

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

8 § 6034h. CONVERSION INTO PROTECTED CELL

9 (a)(1) Subject to the prior written approval of the Commissioner, a captive
10 insurance company domiciled in this State and organized as an agency captive
11 insurance company, association captive insurance company, industrial insured
12 captive insurance company, pure captive insurance company, risk retention
13 group, or special purpose financial insurance company may be converted into
14 an unincorporated protected cell.

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

19 (b) Any such conversion shall be deemed for all purposes to be a
20 continuation of such converted entity's existence together with all of its assets,
21 rights, benefits, obligations, and liabilities as a new protected cell. Any such

1 conversion shall be deemed to occur without any transfer or assignment of any
2 such assets, rights, benefits, obligations, or liabilities and without the creation
3 of any reversionary interest in, or impairment of, any such assets, rights,
4 benefits, obligations, and liabilities.

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

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

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

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

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

17 (2) As used in this subsection (d), a protected cell that is not an
18 incorporated protected cell shall be considered an “organization” as that term is
19 defined in 11A V.S.A. § 11.01 and 11 V.S.A. § 4141, an “other insurer” as that
20 term is defined in 8 V.S.A. § 6020, and an “entity” as that term is defined in
21 11C V.S.A. § 102.

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

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

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

9 § 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

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

13 (1) in the case of a pure captive insurance company, not less than
14 \$250,000.00;

15 (2) in the case of an association captive insurance company, not less
16 than \$500,000.00;

17 (3) in the case of an industrial insured captive insurance company, not
18 less than \$500,000.00;

19 (4) in the case of an agency captive insurance company, not less than
20 ~~\$500,000.00~~ \$250,000.00;

21 (5) in the case of a risk retention group, not less than \$1,000,000.00; and

1 ~~Insurance Regulatory and Supervision Fund.~~ All fines and administrative
2 penalties, however, shall be deposited directly into the General Fund.

3 * * *

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

5 § 6011. REINSURANCE

6 * * *

7 (b) Any captive insurance company may take credit for the reinsurance of
8 risks or portions of risks ceded to reinsurers complying with the provisions of
9 subsections 3634a(a) through (e) of this title. Prior approval of the
10 Commissioner shall be required for ceding or taking credit for the reinsurance
11 of risks or portions of risks ceded to reinsurers not complying with subsections
12 3634a(a) through (e) of this title, ~~except for business written by an alien~~
13 ~~captive insurance company outside the United States.~~

14 * * *

15 Sec. 7. 8 V.S.A. § 22 is amended to read:

16 § 22. CONFIDENTIALITY AND INFORMATION-SHARING

17 AGREEMENTS

18 * * *

19 (f) The provisions of this section shall apply to information relating to
20 persons that engage in activities that are financial in nature, or incidental or
21 complementary to such financial activity within the meaning of 12 U.S.C. §

1 1843(k) and to credit unions; ~~provided, however, this.~~ This section shall also
2 apply to captives formed or licensed under the provisions of chapter 141 or 142
3 of this title ~~only to the extent contemplated by 15 U.S.C. § 6716.~~

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

5 (3) Information submitted pursuant to this subsection, including any
6 subsequent updates, amendments, or revisions of or to such information, shall
7 be and remain confidential, and may not be made public by the Commissioner
8 or an employee or agent of the Commissioner without the written consent of
9 the company, except that:

10 (A) ~~such information may be discoverable by a party in a civil action~~
11 ~~or contested case to which the captive insurance company that submitted such~~
12 ~~information is a party, upon a showing by the party seeking to discover such~~
13 ~~information that:~~

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

16 (ii) ~~the information sought is unavailable from other~~
17 ~~nonconfidential sources; and~~

18 (iii) ~~a subpoena issued by a judicial or administrative officer of~~
19 ~~competent jurisdiction has been submitted to the Commissioner; provided,~~
20 ~~however, that the provisions of this subdivision (3) shall not apply to any risk~~
21 ~~retention group; and~~ The Commissioner may, in the Commissioner's

1 discretion, disclose or publish or authorize the disclosure or publication of any
2 such record or report or any part thereof in the furtherance of legal or
3 regulatory proceedings brought as a part of the Commissioner's official duties.
4 The Commissioner may, in the Commissioner's discretion, disclose or publish
5 or authorize the disclosure or publication of any such record or report or any
6 part thereof to criminal law enforcement authorities for use in the exercise of
7 such authority's duties in such manner as the Commissioner may deem proper.

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

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

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

16 (C) Neither the Commissioner nor any person who received
17 documents pursuant to this subsection, material, or information while acting
18 under the authority of the Commissioner shall be permitted or required to
19 testify in any private civil action concerning any confidential documents,
20 material, or information.

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

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

4 (c) ~~All Subdivision 6002(c)(3) of this title shall apply to all examination~~
5 reports, preliminary examination reports or results, working papers, recorded
6 information, documents and copies thereof produced by, obtained by, or
7 disclosed to the Commissioner or any other person in the course of an
8 examination made under this section ~~are confidential and are not subject to~~
9 ~~subpoena and may not be made public by the Commissioner or an employee or~~
10 ~~agent of the Commissioner without the written consent of the company, except~~
11 ~~to the extent provided in this subsection. Nothing in this subsection shall~~
12 ~~prevent the Commissioner from using such information in furtherance of the~~
13 ~~Commissioner's regulatory authority under this title. The Commissioner may,~~
14 ~~in the Commissioner's discretion, grant access to such information to public~~
15 ~~officers having jurisdiction over the regulation of insurance in any other state~~
16 ~~or country, or to law enforcement officers of this State or any other state or~~
17 ~~agency of the federal government at any time, so long as such officers~~
18 ~~receiving the information agree in writing to hold it in a manner consistent~~
19 ~~with this section.~~

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

2 § 6048o. CONFIDENTIALITY

3 (a) ~~All~~ Subdivision 6002(c)(3) and subsection 6008(c) of this title shall
4 apply to all documents, materials, or other information, including ~~confidential~~
5 ~~and privileged documents~~, examination reports, preliminary examination
6 reports or results, working papers, recorded information, and copies thereof
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 ~~are~~
9 ~~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, or 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 document, material, or other~~
4 ~~information;~~

5 ~~(2) receive documents, materials, or 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 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 special purpose financial~~
4 ~~insurer that is part of an affiliated group with international operations in order~~
5 ~~to assess the insurer's compliance with Vermont laws and regulations, as well~~
6 ~~as to assess the 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 may not be made public by the Commissioner or an employee or~~
12 ~~agent of the Commissioner without the written consent of the company, except~~
13 ~~to the extent provided in subsection (b) of this section. [Repealed.]~~

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

15 § 6049m. CONFIDENTIALITY

16 (a) ~~All~~ Subdivision 6002(c)(3) of this title and subsection 6008(c) of this
17 title shall apply to all documents, materials, and other information, including
18 confidential and privileged documents, examination reports, preliminary
19 examination reports or results, working papers, recorded information, and
20 copies of any of these produced by, obtained by, or disclosed to the

1 Commissioner or any other person in the course of an examination made under
2 this subchapter ~~are confidential and shall not be:~~

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

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

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

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

10 ~~(1) share documents, materials, and other information, including those~~
11 ~~that are confidential and privileged, with other state, federal, or 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, provided that the recipient agrees in writing to maintain the~~
17 ~~confidentiality and privileged status of the documents, materials, and other~~
18 ~~information;~~

19 ~~(2) receive documents, materials, and information, including those that~~
20 ~~are confidential and privileged, from other state, federal, and international~~
21 ~~regulatory agencies and law enforcement authorities, the National Association~~

1 of ~~Insurance Commissioners, the North American Securities Administrators~~
2 ~~Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f,~~
3 ~~78o-3, and 78q-1, and other self-regulatory organizations and their affiliates or~~
4 ~~subsidiaries and shall maintain as confidential or privileged any document,~~
5 ~~material, or information received with notice or the understanding that it is~~
6 ~~confidential or privileged under the laws of the jurisdiction that is the source of~~
7 ~~the document, material, or information;~~

8 ~~(3) enter into written agreements with other state, federal, and~~
9 ~~international regulatory agencies and law enforcement authorities, the National~~
10 ~~Association of Insurance Commissioners, the North American Securities~~
11 ~~Administrators Association, self-regulatory organizations organized under 15~~
12 ~~U.S.C. §§ 78f, 78o-3, and 78q-1, and other self-regulatory organizations and~~
13 ~~their affiliates or subsidiaries governing the sharing and use of information~~
14 ~~consistent with this section, including agreements providing for cooperation~~
15 ~~between the Commissioner and other agencies in relation to the activities of a~~
16 ~~supervisory college; and~~

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

1 obtained by, or disclosed to the Commissioner or any other person in the
2 course of an examination made under this subchapter.

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

6 Sec. 14. 8 V.S.A. § 6041 is amended to read:

7 § 6041. ESTABLISHMENT OF A BRANCH CAPTIVE INSURANCE
8 COMPANY

9 (a) A branch captive insurance company may be established in this State in
10 accordance with the provisions of this chapter, including subdivision
11 6002(c)(3) of this chapter. In addition to the general provisions of this chapter,
12 the provisions of this subchapter shall apply to branch captive insurance
13 companies.

14 * * *

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

16 § 6047a. CONFIDENTIALITY

17 (a) Subdivision 6002(c)(3) and subsection 6008(c) of this title shall apply
18 to all documents, materials, or other information, including confidential and
19 privileged documents, examination reports, preliminary examination reports or
20 results, working papers, recorded information, and copies thereof that are

1 produced by, obtained by, or disclosed to the Commissioner or any other
2 person in the course of an examination made under this subchapter.

3 (b) In furtherance of the Commissioner’s duties, the Commissioner may
4 share and receive documents, materials, or other information pursuant to
5 section 22 of this title.

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

7 § 6052. RISK RETENTION GROUPS CHARTERED IN THIS STATE

8 * * *

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

12 * * *

13 ~~(2) The applicant may bind separately any portions of the application or~~
14 ~~any amendment thereto that contain proprietary information or documents and~~
15 ~~request confidential treatment of such portions. As used in this section,~~
16 ~~“proprietary information or documents” means certain information or~~
17 ~~documents furnished by or pertaining to any of the persons specified in~~
18 ~~subdivision (1) of this subsection (c) that would customarily be treated as~~
19 ~~confidential or sensitive and the disclosure of which could result in harm or~~
20 ~~prejudice to the person to whom the information or documents pertain or unfair~~
21 ~~advantage to another person. Such information includes trade secrets,~~

1 ~~historical or projected loss data, or case reserves of members or policyholders,~~
2 ~~actuarial analyses that include such data or reserves, historical or projected~~
3 ~~financial data not otherwise publicly available, and similar information or~~
4 ~~documents. The Commissioner shall determine which portions specified by~~
5 ~~the applicant fall within the definition of proprietary information or documents~~
6 ~~and treat such portions as confidential. Provided, however, that nothing herein~~
7 ~~shall excuse the applicant from making any required disclosure under the RRA~~
8 ~~1986, this chapter or chapter 141 of this title, or prohibit the Commissioner~~
9 ~~from disclosing any proprietary information or documents in the furtherance of~~
10 ~~any legal or regulatory proceeding. Before using proprietary information or~~
11 ~~documents in a legal or regulatory proceeding that does not involve the~~
12 ~~applicant or any person named in the application or any amendment thereto,~~
13 ~~the Commissioner shall first seek to obtain the same information from~~
14 ~~nonconfidential sources. If unavailable from nonconfidential sources, the~~
15 ~~Commissioner shall seek to protect the confidential information or documents~~
16 ~~from unnecessary disclosure. Upon licensing, the Commissioner shall forward~~
17 ~~to the National Association of Insurance Commissioners all information~~
18 ~~required under the RRA 1986 to be submitted to each state where the risk~~
19 ~~retention group proposes to operate and all other information not deemed~~
20 ~~confidential under this section. Providing notification to the National~~
21 ~~Association of Insurance Commissioners is in addition to and shall not be~~

1 sufficient to satisfy the requirements of section 6053 or any other sections of
2 this chapter. ~~In addition, the Commissioner may provide access to confidential~~
3 ~~application information with respect to risk retention groups to representatives~~
4 ~~of the National Association of Insurance Commissioners to inspect (but not~~
5 ~~copy) such information in connection with accreditation examinations, so long~~
6 ~~as the National Association of Insurance Commissioners agrees in writing to~~
7 ~~maintain the confidentiality of such information.~~ Information submitted
8 pursuant to this subsection, including any subsequent updates, amendments, or
9 revisions of or to such information, shall be and remain confidential and may
10 not be made public by the Commissioner or an employee or agent of the
11 Commissioner without the written consent of the company, except that:

12 (A) The Commissioner may, in the Commissioner's discretion,
13 disclose or publish or authorize the disclosure or publication of any such
14 record or report or any part thereof in the furtherance of legal or regulatory
15 proceedings brought as a part of the Commissioner's official duties. The
16 Commissioner may, in the Commissioner's discretion and in a manner the
17 Commissioner deems proper, disclose or publish or authorize the disclosure or
18 publication of any such record or report or any part thereof to criminal law
19 enforcement authorities for use in the exercise of the authority's duties.

20 (B) The Commissioner may, in the Commissioner's discretion,
21 disclose such information to a public officer having jurisdiction over the

1 regulation of insurance and with other state, federal, or international agencies,
2 provided that:

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

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

7 (C) The Commissioner may provide access to confidential
8 application information with respect to risk retention groups to representatives
9 of the National Association of Insurance Commissioners to inspect, but not
10 copy, such information in connection with accreditation examinations,
11 provided the National Association of Insurance Commissioners agrees in
12 writing to maintain the confidentiality of such information.

13 (D) Neither the Commissioner nor any person who received
14 documents pursuant to this subsection, material, or information while acting
15 under the authority of the Commissioner shall be permitted or required to
16 testify in any private civil action concerning any confidential documents,
17 material, or information.

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

21 * * *

1 shall require prior approval. Except as otherwise provided, each risk retention
2 group shall file its report in the form required by subsection 3561(a) of this
3 title, and each risk retention group shall comply with the requirements set forth
4 in section 3569 of this title. The Commissioner shall by rule propose the forms
5 in which pure captive insurance companies, association captive insurance
6 companies, sponsored captive insurance companies, and industrial insured
7 captive insurance companies shall report. Subdivision 6002(c)(3) of this title
8 shall apply to each report filed pursuant to this section, ~~except that such~~
9 ~~subdivision shall not apply to reports filed by risk retention groups.~~

10 * * *

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

12 § 6074. EXAMINATION AUTHORITY

13 * * *

14 (b) ~~All~~ Subsection 6052(a) of this title shall apply to all examination
15 reports, work papers, recorded information, documents and copies thereof
16 produced by, obtained by, or disclosed to the Commissioner or any other
17 person in the course of an examination made under this section ~~are confidential~~
18 ~~and are not subject to subpoena and may not be made public by the~~
19 ~~Commissioner or any other person, except as otherwise provided in this~~
20 ~~section. The Commissioner is authorized to use and make public any report,~~
21 ~~work paper, or other documents, or any other information discovered or~~

1 ~~developed during the course of any examination conducted pursuant to this~~
2 ~~section in the furtherance of any legal or regulatory action.~~

3 Sec. 19. EFFECTIVE DATE

4 This act shall take effect on passage.