

1 H.137

2 Introduced by Representatives Marcotte of Coventry, Bosch of Clarendon,  
3 Carris-Duncan of Whitingham, Cooper of Pownal, Duke of  
4 Burlington, Graning of Jericho, Micklus of Milton, Olson of  
5 Starksboro, and White of Bethel

6 Referred to Committee on

7 Date:

8 Subject: Insurance; captive insurance; property and casualty; regulation

9 Statement of purpose of bill as introduced: This bill proposes to make various  
10 amendments to Vermont law primarily as it pertains to the regulation of  
11 insurance products and services subject to the jurisdiction of the Department of  
12 Financial Regulation.

13 An act relating to the regulation of insurance products and services

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

15 Sec. 1. 8 V.S.A. § 23 is amended to read:

16 § 23. CONFIDENTIALITY OF INVESTIGATION AND EXAMINATION

17 REPORTS

18 (a) This section shall apply to all persons licensed, authorized, or  
19 registered, or required to be licensed, authorized, or registered, ~~under this title~~  
20 ~~or under 9 V.S.A. chapter 150~~ by the Commissioner.

1 (b) Regardless of source, all records of investigations, including  
2 information pertaining to a complaint by or for a consumer, and all records and  
3 reports of examinations by the Commissioner, whether in the possession of a  
4 supervisory agency or another person, shall be confidential and privileged,  
5 shall not be made public, and shall not be subject to discovery or introduction  
6 into evidence in any private civil action. No person who participated on behalf  
7 of the Commissioner in an investigation or examination shall be permitted or  
8 required to testify in any such civil action as to any findings,  
9 recommendations, opinions, results, or other actions relating to the  
10 investigation or examination.

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

20 (d) For the purposes of this section, records of investigations and records  
21 and reports of examinations shall include joint examinations by the

1 Commissioner and any other supervisory agency. Records of investigations  
2 and reports of examinations shall also include records of examinations and  
3 investigations conducted by:

4 (1) any agency with supervisory jurisdiction over the person; and

5 (2) any agency of any foreign government with supervisory jurisdiction  
6 over any person subject to the jurisdiction of the Department, when such  
7 records are considered confidential by such agency or foreign government and  
8 the records are in the possession of the Commissioner.

9 Sec. 2. 8 V.S.A. § 3303 is amended to read:

10 § 3303. MUTUAL COMPANIES; DIRECTORS, CHARTER PROVISIONS

11 AS TO

12 The articles of association or bylaws of a mutual insurer shall set forth the  
13 manner in which its board of directors or other governing body shall be  
14 elected, and in which meetings of policyholders shall be called, held, and  
15 conducted, subject to such procedures as may be required by the  
16 Commissioner under ~~section 75~~ subsection 15(a) of this title.

17 Sec. 3. 8 V.S.A. § 4688(a) is amended to read:

18 (a) Filings as to competitive markets. Except with respect to filings  
19 submitted pursuant to section 4687 of this title, in a competitive market, every  
20 insurer shall file with the Commissioner all rates and supplementary rate  
21 information, and supporting information that are to be used in this State,

1 provided that such rates and information need not be filed for specifically rated  
2 inland marine risks or such other risks that are designated by regulation of the  
3 Commissioner as not requiring a filing. Such rates, supplementary rate  
4 information, and supporting information shall be provided to the  
5 Commissioner not later than ~~15 days after~~ 30 days prior to the effective date.

6 An insurer may adopt by reference, with or without deviation or modification,  
7 provided that said deviation or modification is readily identifiable, the rates,  
8 supplementary rate information, and supporting information filed by another  
9 insurer or an advisory or service organization with which it is affiliated;  
10 provided, however, such an adoption shall not relieve an insurer from any  
11 other requirements of this chapter.

12 Sec. 4. 8 V.S.A. § 4685a is added to read:

13 § 4685a. AFFORDABLE HOUSING INSURANCE; UNFAIR

14 DISCRIMINATION

15 (a) An insurer that issues or delivers in this State a policy of insurance  
16 covering loss of or damage to real property containing units for residential  
17 purposes or legal liability of an owner or renter of such real property shall not  
18 inquire about on an application, nor shall an insurer cancel, refuse to issue,  
19 refuse to renew, or increase the premium of a policy, or exclude, limit, restrict,  
20 or reduce coverage under a policy based on, the following:

1           (1) whether the residential building contains dwelling units that are  
2           required to be affordable to residents at a specific income level pursuant to a  
3           statute, regulation, restrictive declaration, or regulatory agreement with a local,  
4           State, or federal government entity;

5           (2) whether the real property owner or tenants of such residential  
6           building or the shareholders of a cooperative housing corporation receive  
7           rental assistance provided by a local, State, or federal government entity,  
8           including the receipt of federal vouchers issued under Section 8 of the U.S.  
9           Housing Act of 1937, 42 U.S.C. § 1437f;

10           (3) the level or source of income of the tenants of the residential  
11           building or the shareholders of a cooperative housing corporation; or

12           (4) whether the residential building is owned by a limited-equity  
13           cooperative, public housing agency, or cooperative housing corporation.

14           (b) Nothing in this section shall prohibit an insurer from cancelling,  
15           refusing to issue, refusing to renew, or increasing the premium of an insurance  
16           policy, or excluding, limiting, restricting, or reducing coverage under a policy,  
17           due to other factors that are permitted or not prohibited by any other section of  
18           this chapter.

19           Sec. 5. 8 V.S.A. § 6002(a) is amended to read:

20           (a) Any captive insurance company, when permitted by its articles of  
21           association, charter, or other organizational document, may apply to the

1 Commissioner for a license to ~~do any and all~~ conduct insurance business  
2 comprised in ~~subdivisions 3301(a)(1), (2), (3)(A) (C), (E) (Q), and (4) (9)~~  
3 section 3301 of this title and may grant annuity contracts as defined in section  
4 3717 of this title and may accept or transfer risk by means of a parametric  
5 contract; provided, however, that:

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

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

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

13 (B) it insures only the risks of the commercial policies that are placed  
14 by or through an insurance agency or brokerage that owns or directly or  
15 indirectly controls the agency captive insurance company and, if required by  
16 the Commissioner in ~~his or her~~ the Commissioner's discretion, it provides the  
17 Commissioner the form of such commercial policies;

18 (C) it discloses to the original policyholder or policyholders, in a  
19 form or manner approved by the Commissioner, that the agency captive  
20 insurance company as a result of its affiliation with an insurance agency or

1 brokerage may enter into a reinsurance or other risk-sharing agreement with  
2 the agency or brokerage; and

3 (D) if required by the Commissioner in ~~his or her~~ the  
4 Commissioner's discretion, the business written by an agency captive  
5 insurance company is:

6 (i) Fronted by an insurance company licensed under the laws of  
7 any state.

8 (ii) Reinsured by a reinsurer authorized or approved by the State  
9 of Vermont.

10 (iii) Secured by a trust fund in the United States for the benefit of  
11 policyholders and claimants or funded by an irrevocable letter of credit or  
12 other arrangement that is acceptable to the Commissioner. The Commissioner  
13 may require the agency captive insurance company to increase the funding of  
14 any security arrangement established under this subdivision. If the form of  
15 security is a letter of credit, the letter of credit shall be issued or confirmed by a  
16 bank approved by the Commissioner. A trust maintained pursuant to this  
17 subdivision shall be established in a form and upon terms approved by the  
18 Commissioner.

19 (3) No association captive insurance company may insure any risks  
20 other than those of its association, those of the member organizations of its  
21 association, and those of a member organization's affiliated companies.

1           (4) No industrial insured captive insurance company may insure any  
2 risks other than those of the industrial insureds that comprise the industrial  
3 insured group, those of their affiliated companies, and those of the controlled  
4 unaffiliated business of an industrial insured or its affiliated companies.

5           (5) No risk retention group may insure any risks other than those of its  
6 members and owners.

7           (6) No captive insurance company may provide personal motor vehicle  
8 or homeowner's insurance coverage or any component thereof.

9           (7) No captive insurance company may accept or cede reinsurance  
10 except as provided in section 6011 of this title.

11           (8) Any captive insurance company may provide excess workers'  
12 compensation insurance to its parent and affiliated companies, unless  
13 prohibited by the federal law or laws of the state having jurisdiction over the  
14 transaction. Any captive insurance company, unless prohibited by federal law,  
15 may reinsure workers' compensation of a qualified self-insured plan of its  
16 parent and affiliated companies.

17           (9) Any captive insurance company that insures risks described in  
18 subdivisions 3301(a)(1) and (2) of this title shall comply with all applicable  
19 State and federal laws.





1 (i) Captive insurance companies formed under the provisions of this  
2 chapter:

3 (1) As limited liability companies shall have the privileges and be  
4 subject to the provisions of 11 V.S.A. ~~chapter 21~~ chapter 25 as well as the  
5 applicable provisions contained in this chapter. In the event of a conflict  
6 between the provisions of 11 V.S.A. ~~chapter 21~~ chapter 25 and the provisions  
7 of this chapter, the latter shall control.

8 (2) As nonprofit corporations shall have the privileges and be subject to  
9 the provisions of Title 11B as well as the applicable provisions contained in  
10 this chapter. In the event of conflict between the provisions of Title 11B and  
11 the provisions of this chapter, the latter shall control.

12 (3) As mutual insurers shall have the privileges and be subject to the  
13 provisions of sections 3303 and 3311 of this title as well as the applicable  
14 provisions contained in this chapter. In the event of a conflict between the  
15 provisions of sections 3303 and 3311 of this title and the provisions of this  
16 chapter, the latter shall control.

17 \* \* \*

18 Sec. 8. 8 V.S.A. § 6006a(a) is amended to read:

19 (a) Any captive insurance company meeting the qualifications set forth in  
20 subdivision 6006(j)(1) of this title may merge with any other insurer, whether  
21 licensed in this State or elsewhere, in the following manner:

1           (1) The board of directors of each insurer shall, by a resolution adopted  
2           by a majority vote of the members of such board, approve a joint agreement of  
3           merger setting forth:

4                   (A) the names of the insurers proposed to merge, and the name of the  
5           insurer into which they propose to merge, which is hereafter designated as the  
6           surviving company;

7                   (B) the terms and conditions of the proposed merger and the mode of  
8           carrying the same into effect;

9                   (C) the manner and basis of converting the ownership interests, if  
10          applicable, in other than the surviving insurer into ownership interests or other  
11          consideration, securities, or obligations of the surviving insurer;

12                   (D) a restatement of such provisions of the articles of incorporation  
13          of the surviving insurer as may be deemed necessary or advisable to give effect  
14          to the proposed merger; and

15                   (E) any other provisions with respect to the proposed merger as are  
16          deemed necessary or desirable.

17           (2) The resolution of the board of directors of each insurer approving the  
18          agreement shall direct that the agreement be submitted to a vote of the  
19          shareholders, members, or policyholders, as the case may be, of each insurer  
20          entitled to vote in respect thereof at a designated meeting thereof, or via  
21          unanimous written consent of such shareholders, members, or policyholders in

1 lieu of a meeting. Notice of the meeting shall be given as provided in the  
2 bylaws, charter, or articles of association, or other governance document, as  
3 the case may be, of each insurer and shall specifically reflect the agreement as  
4 a matter to be considered at the meeting.

5 (3) The agreement of merger so approved shall be submitted to a vote of  
6 the shareholders, members, or policyholders, as the case may be, of each  
7 insurer entitled to vote in respect thereof at the meeting directed by the  
8 resolution of the board of directors of such company approving the agreement,  
9 and the agreement shall be unanimously adopted by the shareholders,  
10 members, or policyholders, as the case may be.

11 (4) Following the adoption of the agreement by any insurer, articles of  
12 merger shall be adopted in the following manner:

13 (A) Upon the execution of the agreement of merger by all of the  
14 insurers parties thereto, there shall be executed and filed, in the manner  
15 hereafter provided, articles of merger setting forth the agreement of merger, the  
16 signatures of the several insurers parties thereto, the manner of its adoption,  
17 and the vote by which adopted by each insurer.

18 (B) The articles of merger shall be signed on behalf of each insurer  
19 by a duly authorized officer or individual authorized by the governing board, in  
20 such multiple copies as shall be required to enable the insurers to comply with

1 the provisions of this subchapter with respect to filing and recording the  
2 articles of merger, and shall then be presented to the Commissioner.

3 (C) The Commissioner shall approve the articles of merger if ~~he or~~  
4 ~~she~~ the Commissioner finds that the merger will promote the general good of  
5 the State in conformity with those standards set forth in section 3305 of this  
6 title. If ~~he or she~~ the Commissioner approves the articles of merger, ~~he or she~~  
7 the Commissioner shall issue a certificate of approval of merger.

8 (5) The insurer shall file the articles of merger, accompanied by the  
9 agreement of merger and the certificate of approval of merger, with the  
10 Secretary of State and pay all fees as required by law. If the Secretary of State  
11 finds that they conform to law, ~~he or she~~ the Secretary shall issue a certificate  
12 of merger and return it to the surviving insurer or its representatives. The  
13 merger shall take effect upon the filing of articles of merger with the Secretary  
14 of State, unless a later effective date is specified therein.

15 (6) The surviving insurer shall file a copy of the certificate of merger  
16 from the Secretary of State with the Commissioner.

17 Sec. 9. 8 V.S.A. § 6007(b) is amended to read:

18 (b) Prior to March 1 of each year, and prior to March 15 of each year in the  
19 case of pure captive insurance companies, association captive insurance  
20 companies, sponsored captive insurance companies, industrial insured captive  
21 insurance companies, or agency captive insurance companies, each captive

1 insurance company shall submit to the Commissioner a report of its financial  
2 condition, verified by oath of two of its executive officers or two individuals  
3 authorized by the governing board. Each captive insurance company shall  
4 report using generally accepted accounting principles, statutory accounting  
5 principles, or international financial reporting standards unless the  
6 Commissioner requires, approves, or accepts the use of any other  
7 comprehensive basis of accounting, in each case with any appropriate or  
8 necessary modifications or adaptations thereof required or approved or  
9 accepted by the Commissioner for the type of insurance and kinds of insurers  
10 to be reported upon, and as supplemented by additional information required  
11 by the Commissioner. As used in this section, statutory accounting principles  
12 shall mean the accounting principles codified in the NAIC Accounting  
13 Practices and Procedures Manual. Upon application for admission, a captive  
14 insurance company shall select, with explanation, an accounting method for  
15 reporting. Any change in a captive insurance company's accounting method  
16 shall require prior approval. Except as otherwise provided, each risk retention  
17 group shall file its report in the form required by subsection 3561(a) of this  
18 title, and each risk retention group shall comply with the requirements set forth  
19 in section 3569 of this title. The Commissioner shall by rule propose the forms  
20 in which pure captive insurance companies, association captive insurance  
21 companies, sponsored captive insurance companies, and industrial insured

1 captive insurance companies shall report. Subdivision 6002(c)(3) of this title  
2 shall apply to each report filed pursuant to this section, except that such  
3 subdivision shall not apply to reports filed by risk retention groups.

4 Sec. 10. 8 V.S.A. § 6011(a) is amended to read:

5 (a) Any captive insurance company may provide reinsurance, of policies  
6 approved by the Commissioner comprised in ~~subsection 3301(a)~~ section 3301  
7 of this title, on risks of its parent, affiliated companies, and controlled  
8 unaffiliated business ceded by any other insurer, and may provide reinsurance  
9 of annuity contracts as defined in section 3717 of this title that are granted by  
10 any other insurer.

11 Sec. 11. 8 V.S.A. § 6024(c) is amended to read:

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

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

18 (2) prior to March 15 of each year, submit to the Commissioner a report  
19 of its financial condition, verified by oath of two of its executive officers or  
20 individuals authorized by its governing board, in a form as may be prescribed  
21 by the Commissioner; and

1           (3) pay a license renewal fee of \$500.00.

2           Sec. 12. 8 V.S.A. § 6045 is amended to read:

3           § 6045. BRANCH CAPTIVE REPORTS

4           Prior to March 15 of each year, or with the approval of the Commissioner  
5           within 75 days after its fiscal year-end, a branch captive insurance company  
6           shall file with the Commissioner a copy of all reports and statements required  
7           to be filed under the laws of the jurisdiction in which the alien captive  
8           insurance company is formed, verified by oath of two of its executive officers  
9           or individuals authorized by the governing board. If the Commissioner is  
10          satisfied that the annual report filed by the alien captive insurance company in  
11          its domiciliary jurisdiction provides adequate information concerning the  
12          financial condition of the alien captive insurance company, the Commissioner  
13          may waive the requirement for completion of the captive annual statement for  
14          business written in the alien jurisdiction.

15          Sec. 13. 8 V.S.A. § 6048d(c)(2) is amended to read:

16                 (2) The special purpose financial insurance company shall submit an  
17                 affidavit of its president, a vice president, the treasurer, ~~or~~ the chief financial  
18                 officer, or an individual authorized by the governing board that includes the  
19                 following statements, to the best of such person's knowledge and belief after  
20                 reasonable inquiry:



1           (A) the proposed organization and operation of the special purpose  
2 financial insurance company comply with all applicable provisions of this  
3 chapter;

4           (B) the special purpose financial insurance company’s investment  
5 policy reflects and takes into account the liquidity of assets and the reasonable  
6 preservation, administration, and management of such assets with respect to  
7 the risks associated with the reinsurance contract and the insurance  
8 securitization transaction; and

9           (C) the reinsurance contract and any arrangement for securing the  
10 special purpose financial insurance company’s obligations under such  
11 reinsurance contract, including any agreements or other documentation to  
12 implement such arrangement, comply with the provisions of this subchapter.

13 Sec. 14. 8 V.S.A. § 6052(g) is amended to read:

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

16           (1) As used in this subsection:

17           (A) “Board of directors” or “board” means the governing body of a  
18 risk retention group elected by risk retention group members to establish  
19 policy, elect or appoint officers and committees, and make other governing  
20 decisions.

1           (B) “Director” means a natural person designated in the articles of  
2           the risk retention group or designated, elected, or appointed by any other  
3           manner, name, or title to act as a member of the governing body of the risk  
4           retention group.

5           (C)~~(i)~~ “Independent director” means a director who does not have a  
6           material relationship with the risk retention group. A director has a material  
7           relationship with a risk retention group if ~~he or she~~ the director, or a member of  
8           ~~his or her~~ the director’s immediate family:

9           ~~(i)~~(i) In any 12-month period, receives from the risk retention  
10          group, or from a consultant or service provider to the risk retention group,  
11          compensation or other item or items of value in an amount equal to or greater  
12          than five percent of the risk retention group’s gross written premium or two  
13          percent of the risk retention group’s surplus, as measured at the end of any  
14          fiscal quarter falling in such 12-month period, whichever is greater. This  
15          provision also applies to compensation or items of value received by any  
16          business with which the director is affiliated. Such material relationship shall  
17          continue for one year after receipt of the item or items of value or the  
18          compensation falls below the threshold established in this subdivision.

19          ~~(ii)~~(ii) Has a relationship with an auditor as follows: Is affiliated  
20          with or employed in a professional capacity by a current or former internal or

1 external auditor of the risk retention group. Such material relationship shall  
2 continue for one year after the affiliation or employment ends.

3 ~~(aa)~~(iii) Is employed as an executive officer of another business  
4 entity that is affiliated with the risk retention group by virtue of common  
5 ownership and control, if such entity meets all of the following criteria:

6 ~~(AA)~~(I) the entity is not an insured of the risk retention group;

7 ~~(BB)~~(II) the entity has a contractual relationship with the risk  
8 retention group; and

9 ~~(CC)~~(III) the governing board of the entity includes executive  
10 officers of the risk retention group, unless a majority of the membership of  
11 such entity's governing board is composed of individuals who are members of  
12 the governing board of the risk retention group.

13 ~~(bb)~~(IV) Such material relationship shall continue until the  
14 employment or service ends.

15 ~~(ii)~~(iv) Notwithstanding ~~subdivision (i)~~ subdivisions (i)–(iii) of  
16 this subdivision (g)(1)(C), a director who is a direct or indirect owner of the  
17 risk retention group is deemed to be independent; and an officer, director, or  
18 employee of an insured of the risk retention group is deemed to be  
19 independent, unless some other relationship of such officer, director, or  
20 employee qualifies as a material relationship.

