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H.538

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,
Baser of Bristol, Carr of Brandon, Dakin of Colchester,
Kitzmiller of Montpelier, O’Sullivan of Burlington, Parent of
St. Albans Town, Scheuermann of Stowe, Sibia of Dover, and
Stuart of Brattleboro

Referred to Committee on

Date:

Subject: Insurance; captive insurance companies

Statement of purpose of bill as introduced: This bill proposes to make various
amendments to Vermont law regarding captive insurance companies.

An act relating to captive insurance companies

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

~~*** Captive Insurance Company Reports and Statements ***~~

Sec. 1. 8 V.S.A. § 6007(c) is amended to read:

(c) Any pure captive insurance company, sponsored captive insurance
company, or ~~an~~ industrial insured captive insurance company may make
written application for filing the required report on a fiscal year-end. If an
alternative reporting date is granted:

(1) the annual report is due 75 days after the fiscal year-end; and

1 ~~(2) in order to provide sufficient detail to support the premium tax~~
2 return, the pure captive insurance company, sponsored captive insurance
3 company, or industrial insured captive insurance company shall file prior to
4 March 15 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the
5 ~~“Captive Annual Statement; Pure or Industrial Insured,”~~ “Vermont Captive
6 Insurance Company Annual Report verified by oath of two of its executive
7 officers.

8 * * * Dormant Captive Insurance Companies * * *

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

10 § 6024. DORMANT CAPTIVE INSURANCE COMPANIES

11 (a) As used in this section, unless the context requires otherwise, “dormant
12 captive insurance company” means a pure captive insurance company ~~which,~~
13 sponsored captive insurance company, or industrial insured captive insurance
14 company that has:

15 (1) ~~at no time, insured-controlled unaffiliated business;~~

16 ~~(2)~~ ceased transacting the business of insurance, including the issuance
17 of insurance policies; and

18 ~~(3)~~(2) no remaining liabilities associated with insurance business
19 transactions, or insurance policies issued prior to the filing of its application for
20 a certificate of dormancy under this section.

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

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

8 * * *

9 * * * Risk Retention Groups; Governance Standards * * *

10 Sec. 3. 8 V.S.A. § 6052(g) is amended to read:

11 (g) This subsection establishes governance standards for a risk retention
12 group.

13 (1) As used in this subsection:

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

18 (B) “Director” means a natural person designated in the articles of
19 the risk retention group or designated, elected, or appointed by any other
20 manner, name, or title to act as a ~~director~~ member of the governing body of the
21 risk retention group.

1 ~~(C) "Independent director" means a director who does not have a~~
2 material relationship with the risk retention group. A person that is a direct or
3 indirect owner of or subscriber in the risk retention group - or is an officer,
4 director, or employee of such an owner and insured, unless some other position
5 of such officer, director, or employee constitutes a "material relationship" - as
6 contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk
7 Retention Act, is considered to be "independent." A director has a material
8 relationship with a risk retention group if he or she, or a member of his or her
9 immediate family:

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

20 (ii) Has a relationship with an auditor as follows: Is affiliated with
21 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 (iii) Has a relationship with a related entity as follows: Is
4 employed as an executive officer of another company whose board of directors
5 includes executive officers of the risk retention group, unless a majority of the
6 membership of such other company's board of directors is the same as the
7 membership of the board of directors of the risk retention group. Such
8 material relationship shall continue until the employment or service ends.

9 (D) "Material service provider" includes a captive manager, auditor,
10 accountant, actuary, investment advisor, attorney, managing general
11 underwriter, or other person responsible for underwriting, determination of
12 rates, premium collection, claims adjustment or settlement, or preparation of
13 financial statements, whose aggregate annual contract fees are equal to or
14 greater than five percent of the risk retention group's annual gross written
15 premium or two percent of its surplus, whichever is greater. It does not mean
16 defense counsel retained by a risk retention group, unless his or her annual fees
17 ~~are~~ have been equal to or greater than five percent of a risk retention group's
18 annual gross premium or two percent of its surplus, whichever is greater,
19 during three or more of the previous five years.

20 (2) The board shall have a majority of independent directors. The board
21 of directors shall determine whether a director is independent; review such

1 ~~determinations annually; and maintain a record of the determinations, which~~
2 shall be provided to the Commissioner promptly, upon request. ~~The board~~
3 ~~shall have a majority of independent directors. If the risk retention group is~~
4 ~~reciprocal, then the attorney in fact is required to adhere to the same standards~~
5 ~~regarding independence as imposed on the risk retention group's board of~~
6 ~~directors~~ If the Commissioner disagrees with the board's determination
7 regarding independence, the board, within six months, shall take such actions
8 as are necessary in order to obtain written confirmation from the
9 Commissioner that the board meets the independence requirements set forth in
10 this subdivision (1)(C) of this subsection.

11 (3) The term of any material service provider contract entered into with
12 a risk retention group shall not exceed five years. The contract, or its renewal,
13 requires approval of a majority of the risk retention group's independent
14 directors. The board of directors has the right to terminate a contract at any
15 time for cause after providing adequate notice, as defined in the terms of the
16 contract.

17 (4) A risk retention group shall not enter into a material service provider
18 contract without the prior written approval of the Commissioner.

19 (5) A risk retention group's ~~plan of operation~~ business plan shall include
20 written policies approved by its board of directors requiring the board to:

- 1 ~~(A) provide evidence of ownership interest to each risk retention~~
2 group member;
- 3 (B) develop governance standards applicable to the risk retention
4 group;
- 5 (C) oversee the evaluation of the risk retention group's management,
6 including the performance of its captive manager, managing general
7 underwriter, or other person or persons responsible for underwriting, rate
8 determination, premium collection, claims adjustment and settlement, or
9 preparation of financial statements;
- 10 (D) review and approve the amount to be paid under a material
11 service provider contract; and
- 12 (E) at least annually, review and approve:
- 13 (i) the risk retention group's goals and objectives relevant to the
14 compensation of officers and material service providers;
- 15 (ii) the performance of officers and material service providers as
16 measured against the risk retention group's goals and objectives;
- 17 (iii) the continued engagement of officers and material service
18 providers.
- 19 (6) A risk retention group shall have an audit committee composed of at
20 least three independent board members. A nonindependent board member may
21 participate in the committee's activities, if invited to do so by the audit

1 ~~committee, but he or she shall not serve as a committee member. The~~
2 Commissioner may waive the requirement of an audit committee if the risk
3 retention group demonstrates to the Commissioner's satisfaction that having
4 such committee is impracticable and the board of directors is able to perform
5 sufficiently the committee's responsibilities. The audit committee shall have a
6 written charter defining its responsibilities, which shall include:

7 (A) assisting board oversight of the integrity of financial statements,
8 compliance with legal and regulatory requirements, and qualifications,
9 independence, and performance of the independent auditor or actuary;

10 ~~(B) reviewing annual and quarterly audited financial statements with~~
11 ~~management;~~

*(B) reviewing quarterly financial statements and annual ~~and~~
quarterly audited financial statements with management;*

12 ~~(C) reviewing annual audited financial statements with its~~
13 ~~independent auditor and, if it deems advisable, the risk retention group's~~
14 ~~quarterly financial statements as well;~~

*(C) reviewing annual audited financial statements with its
independent auditor and, if it deems advisable, the risk retention group's
quarterly financial statements as well;*

15 (D) reviewing risk assessment and risk management policies;

16 (E) meeting with management, either directly or through a designated
17 representative of the committee;

- 1 ~~(F) meeting with independent auditors, either directly or through a~~
2 designated representative of the committee;
- 3 (G) reviewing with the independent auditor any audit problems and
4 management's response;
- 5 (H) establishing clear hiring policies applicable to the hiring of
6 employees or former employees of the independent auditor by the risk
7 retention group;
- 8 (I) requiring the independent auditor to rotate the lead audit partner
9 having primary responsibility for the risk retention group's audit, as well as the
10 audit partner responsible for reviewing that audit, so that neither individual
11 performs audit services for the risk retention group for more than five
12 consecutive fiscal years; and
- 13 (J) reporting regularly to the board of directors.

14 * * *

15 * * * Effective Date * * *

16 Sec. 4. EFFECTIVE DATE

17 ~~This act shall take effect on passage.~~

** * * Captive Insurance Company Reports and Statements * * **

Sec. 1. 8 V.S.A. § 6007(c) is amended to read:

(c) Any pure captive insurance company, association captive insurance company, sponsored captive insurance company, or ~~an~~ industrial insured

captive insurance company may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted:

(1) the annual report is due 75 days after the fiscal year-end; and

(2) in order to provide sufficient detail to support the premium tax return, the pure captive insurance company, association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company shall file prior to March 15 of each year for each calendar year-end, pages 1, 2, 3, and 5 of the ~~“Captive Annual Statement; Pure or Industrial Insured,”~~ “Vermont Captive Insurance Company Annual Report” verified by oath of two of its executive officers.

** * * Dormant Captive Insurance Companies * * **

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

§ 6024. DORMANT CAPTIVE INSURANCE COMPANIES

(a) As used in this section, unless the context requires otherwise, “dormant captive insurance company” means a pure captive insurance company ~~which,~~ sponsored captive insurance company, or industrial insured captive insurance company that has:

(1) ~~at no time, insured controlled unaffiliated business;~~

(2) ~~ceased transacting the business of insurance, including the issuance of insurance policies; and~~

~~(3)~~(2) *no remaining liabilities associated with insurance business transactions, or insurance policies issued prior to the filing of its application for a certificate of dormancy under this section.*

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

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

* * *

** * * Protected Cells; Conversion; Sale; Assignment; Transfer * * **

Sec. 3. 8 V.S.A. § 6034b is added to read:

*§ 6034b. PROTECTED CELL CONVERSION INTO AN INCORPORATED
PROTECTED CELL*

(a) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell or as otherwise permitted pursuant to a participation agreement, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may convert a protected cell into an incorporated protected cell pursuant to

the provisions of section 6034a of this title, without affecting the protected cell's assets, rights, benefits, obligations, and liabilities.

(b) Any such conversion shall be deemed for all purposes to be a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as an incorporated protected cell of the sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company, as applicable. Any such conversion shall be deemed to occur without any transfer or assignment of any such assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, any such assets, rights, benefits, obligations, and liabilities.

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

§ 6034c. SALE, TRANSFER, OR ASSIGNMENT OF PROTECTED

CELLS

(a) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell or as otherwise permitted pursuant to a participation agreement, or the consent of the affected incorporated protected cell, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may sell, transfer, assign, and otherwise convey a protected cell or incorporated

protected cell together with all of the protected cell's assets, rights, benefits, obligations, and liabilities to a new or existing sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company, pursuant to a plan or plans of operation approved by the Commissioner.

(b) Any such sale, transfer, assignment, or conveyance shall be deemed for all purposes to be a continuation of the protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as a protected cell of the transferee.

(c) Any such sale, transfer, assignment, or conveyance shall not be construed to limit any rights or protections applicable to the transferred protected cell or incorporated protected cell and the transferor sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company under this subchapter or under section 6048n of this title, as applicable, that existed immediately prior to any such sale, transfer, assignment, or conveyance.

Sec. 5. 8 V.S.A. § 6034d is added to read:

§ 6034d. PROTECTED CELL CONVERSION

(a)(1) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cells or as otherwise permitted pursuant to a participation

agreement and the consent of each affected incorporated protected cell, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may convert one or more protected cells or incorporated protected cells into a:

(A) single protected cell or incorporated protected cell;

(B) new sponsored captive insurance company;

(C) new sponsored captive insurance company licensed as a special purpose financial insurance company;

(D) new special purpose financial insurance company;

(E) new pure captive insurance company;

(F) new risk retention group;

(G) new industrial insured captive insurance company; or

(H) new association captive insurance company.

(2) Any such conversion shall be subject to section 6031 and subchapters 1 and 4 of this title, as applicable, as well as to a plan or plans of operation approved by the Commissioner, without affecting any protected cell's or incorporated protected cell's assets, rights, benefits, obligations, and liabilities.

(b) Any such conversion shall be deemed for all purposes to be a continuation of each such protected cell's or incorporated protected cell's existence together with all of its assets, rights, benefits, obligations, and

liabilities, as a new protected cell or incorporated protected cell, a licensed sponsored captive insurance company, a sponsored captive insurance company licensed as a special purpose financial insurance company, a special purpose financial insurance company, a pure captive insurance company, a risk retention group, an industrial insured captive insurance company, or an association captive insurance company, as applicable. Any such conversion shall be deemed to occur without any transfer or assignment of any such assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, any such assets, rights, benefits, obligations, and liabilities.

(c) Any such conversion shall not be construed to limit any rights or protections applicable to any converted protected cell or incorporated protected cell and such sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company under this subchapter or under subchapter 4 of this title, as applicable, that existed immediately prior to the date of any such conversion.

** * * Risk Retention Groups; Governance Standards * * **

Sec. 6. 8 V.S.A. § 6052(g) is amended to read:

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

(1) As used in this subsection:

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

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

(C) “Independent director” means a director who does not have a material relationship with the risk retention group. A person that is a direct or indirect owner of or subscriber in the risk retention group - or is an officer, director, or employee of such an owner and insured, unless some other position of such officer, director, or employee constitutes a “material relationship” - as contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk Retention Act, is considered to be “independent.” A director has a material relationship with a risk retention group if he or she, or a member of his or her immediate family:

(i) In any 12-month period, receives from the risk retention group, or from a consultant or service provider to the risk retention group, compensation or other item of value in an amount equal to or greater than five percent of the risk retention group’s gross written premium or two percent of

the risk retention group's surplus, as measured at the end of any fiscal quarter falling in such 12-month period, whichever is greater. This provision also applies to compensation or items of value received by any business with which the director is affiliated. Such material relationship shall continue for one year after the item of value is received or the compensation ceases or falls below the threshold established in this subdivision, as applicable.

(ii) Has a relationship with an auditor as follows: Is affiliated with or employed in a professional capacity by a current or former internal or external auditor of the risk retention group. Such material relationship shall continue for one year after the affiliation or employment ends.

(iii) Has a relationship with a related entity as follows: Is employed as an executive officer of another company whose board of directors includes executive officers of the risk retention group, unless a majority of the membership of such other company's board of directors is the same as the membership of the board of directors of the risk retention group. Such material relationship shall continue until the employment or service ends.

(D) "Material service provider" includes a captive manager, auditor, accountant, actuary, investment advisor, attorney, managing general underwriter, or other person responsible for underwriting, determination of rates, premium collection, claims adjustment or settlement, or preparation of financial statements, whose aggregate annual contract fees are equal to or

greater than five percent of the risk retention group's annual gross written premium or two percent of its surplus, whichever is greater. It does not mean defense counsel retained by a risk retention group, unless his or her annual fees ~~are~~ have been equal to or greater than five percent of a risk retention group's annual gross premium or two percent of its surplus, whichever is greater, during three or more of the previous five years.

(2) The board shall have a majority of independent directors. The board of directors shall determine whether a director is independent; review such determinations annually; and maintain a record of the determinations, which shall be provided to the Commissioner promptly, upon request. ~~The board shall have a majority of independent directors. If the risk retention group is reciprocal, then the attorney in fact is required to adhere to the same standards regarding independence as imposed on the risk retention group's board of directors.~~ If the Commissioner disagrees with the board's determination regarding independence, the board, within six months, shall take such actions as are necessary in order to obtain written confirmation from the Commissioner that the board meets the independence requirements set forth in this subdivision (1)(C) of this subsection.

(3) The term of any material service provider contract entered into with a risk retention group shall not exceed five years. The contract, or its renewal, requires approval of a majority of the risk retention group's independent

directors. The board of directors has the right to terminate a contract at any time for cause after providing adequate notice, as defined in the terms of the contract.

(4) A risk retention group shall not enter into a material service provider contract without the prior written approval of the Commissioner.

(5) A risk retention group's ~~plan of operation~~ business plan shall include written policies approved by its board of directors requiring the board to:

(A) provide evidence of ownership interest to each risk retention group member;

(B) develop governance standards applicable to the risk retention group;

(C) oversee the evaluation of the risk retention group's management, including the performance of its captive manager, managing general underwriter, or other person or persons responsible for underwriting, rate determination, premium collection, claims adjustment and settlement, or preparation of financial statements;

(D) review and approve the amount to be paid under a material service provider contract; and

(E) at least annually, review and approve:

(i) the risk retention group's goals and objectives relevant to the compensation of officers and material service providers;

(ii) the performance of officers and material service providers as measured against the risk retention group's goals and objectives;

(iii) the continued engagement of officers and material service providers.

(6) A risk retention group shall have an audit committee composed of at least three independent board members. A nonindependent board member may participate in the committee's activities, if invited to do so by the audit committee, but he or she shall not serve as a committee member. The Commissioner may waive the requirement of an audit committee if the risk retention group demonstrates to the Commissioner's satisfaction that having such committee is impracticable and the board of directors is able to perform sufficiently the committee's responsibilities. The audit committee shall have a written charter defining its responsibilities, which shall include:

(A) assisting board oversight of the integrity of financial statements, compliance with legal and regulatory requirements, and qualifications, independence, and performance of the independent auditor or actuary;

(B) reviewing quarterly financial statements and annual ~~and~~ ~~quarterly~~ audited financial statements with management;

(C) reviewing annual audited financial statements with its independent auditor and, if it deems advisable, the risk retention group's quarterly financial statements as well;

(D) reviewing risk assessment and risk management policies;

(E) meeting with management, either directly or through a designated representative of the committee;

(F) meeting with independent auditors, either directly or through a designated representative of the committee;

(G) reviewing with the independent auditor any audit problems and management's response;

(H) establishing clear hiring policies applicable to the hiring of employees or former employees of the independent auditor by the risk retention group;

(I) requiring the independent auditor to rotate the lead audit partner having primary responsibility for the risk retention group's audit, as well as the audit partner responsible for reviewing that audit, so that neither individual performs audit services for the risk retention group for more than five consecutive fiscal years; and

(J) reporting regularly to the board of directors.

** * **

** * * Effective Date * * **

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.