

1 H.188

2 Introduced by Representatives Marcotte of Coventry, Bancroft of Westford,  
3 Carroll of Bennington, Dickinson of St. Albans Town, Hill of  
4 Wolcott, Jerome of Brandon, Kimbell of Woodstock,  
5 O'Sullivan of Burlington, and Ralph of Hartland

6 Referred to Committee on

7 Date:

8 Subject: Insurance; captive insurance companies; risk retention groups

9 Statement of purpose of bill as introduced: This bill proposes to make  
10 amendments to Vermont laws pertaining to captive insurance companies and  
11 risk retention groups.

12 An act relating to captive insurance companies and risk retention groups

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

14 \* \* \* Dividends; Distributions; Incorporated Protected Cells \* \* \*

15 Sec. 1. 8 V.S.A. § 6005 is amended to read:

16 § 6005. DIVIDENDS

17 No captive insurance company may pay a dividend out of, or other  
18 distribution with respect to, capital or surplus without the prior approval of the  
19 Commissioner. Approval of an ongoing plan for the payment of dividends or  
20 other distributions shall be conditioned upon the retention, at the time of each

1 payment, of capital or surplus in excess of amounts specified by, or determined  
2 in accordance with formulas approved by, the Commissioner. Notwithstanding  
3 the provisions of 11B V.S.A. chapter 13, a captive insurance company or  
4 incorporated protected cell organized under the provisions of Title 11B may  
5 make such distributions as are in conformity with its purposes and approved by  
6 the Commissioner.

7 \* \* \* Formation; Reciprocal Insurers; Attorney's Bond \* \* \*

8 Sec. 2. 8 V.S.A. § 6006 is amended to read:

9 § 6006. FORMATION OF CAPTIVE INSURANCE COMPANIES IN THIS

10 STATE

11 (a) ~~A pure captive insurance company may be incorporated as a stock~~  
12 ~~insurer with its capital divided into shares and held by the stockholders, as a~~  
13 ~~nonprofit corporation with one or more members, or as a manager managed~~  
14 ~~limited liability company~~ Subject to the approval of the Commissioner, a  
15 captive insurance company may be formed as any type of entity permissible  
16 under Vermont law.

17 (b) ~~An agency captive insurance company may be incorporated as a stock~~  
18 ~~insurer with its capital divided into shares and held by the stockholders, as a~~  
19 ~~nonprofit corporation with one or more members, or as a manager managed~~  
20 ~~limited liability company.~~

1       ~~(e) An association captive insurance company, an industrial insured captive~~  
2 ~~insurance company, or a risk retention group may be:~~

3           ~~(1) incorporated as a stock insurer with its capital divided into shares~~  
4 ~~and held by the stockholders;~~

5           ~~(2) incorporated as a mutual corporation;~~

6           ~~(3) organized as a reciprocal insurer in accordance with chapter 132 of~~  
7 ~~this title; or~~

8           ~~(4) organized as a manager managed limited liability company.~~

9       ~~(d)~~ A captive insurance company incorporated or organized in this State  
10 shall have one or more incorporators or one or more organizers, at least one of  
11 which shall be a resident of this State.

12       ~~(e)~~(c) In the case of a captive insurance company:

13           ~~(1)~~(A) ~~Formed as a corporation, before the articles of incorporation~~  
14 Before any required formation documents are transmitted to the Secretary of  
15 State, the incorporators or organizers shall petition the Commissioner to issue a  
16 certificate setting forth the Commissioner's finding that the establishment and  
17 maintenance of the proposed ~~corporation~~ entity will promote the general good  
18 of the State. In arriving at such a finding, the Commissioner shall consider:

19           ~~(i)~~(A) the character, reputation, financial standing, and purposes of  
20 the incorporators;

1            ~~(ii)~~(B) the character, reputation, financial responsibility, insurance  
2 experience, and business qualifications of the officers and directors; and

3            ~~(iii)~~(C) such other aspects the Commissioner deems advisable.

4            ~~(B)~~(2) The articles of incorporation, the certificate, and the organization  
5 fee shall be transmitted to the Secretary of State, who shall record both the  
6 articles of incorporation and the certificate.

7            ~~(2) Formed as a reciprocal insurer, the organizers shall petition the  
8 Commissioner to issue a certificate setting forth the Commissioner's finding  
9 that the establishment and maintenance of the proposed association will  
10 promote the general good of the State. In arriving at such a finding, the  
11 Commissioner shall consider the items set forth in subdivisions (1)(A)(i) (iii)  
12 of this subsection.~~

13            ~~(3) Formed as a limited liability company, before the articles of  
14 organization are transmitted to the Secretary of State, the organizers shall  
15 petition the Commissioner to issue a certificate setting forth the  
16 Commissioner's finding that the establishment and maintenance of the  
17 proposed company will promote the general good of the State. In arriving at  
18 such a finding, the Commissioner shall consider the items set forth in  
19 subdivisions (1)(A)(i) (iii) of this subsection.~~

20            \* \* \*

1 (k) Captive insurance companies formed as reciprocal insurers under the  
2 provisions of this chapter shall have the privileges and be subject to the  
3 provisions of chapter 132 of this title in addition to the applicable provisions of  
4 this chapter. In the event of a conflict between the provisions of chapter 132  
5 and the provisions of this chapter, the latter shall control. However, in  
6 approving assessments levied upon subscribers of a captive insurance company  
7 formed as a reciprocal insurer, the Commissioner may exempt the company  
8 from any provision of sections 4850 (assessments), 4851 (time limit for  
9 assessments), and 4852 (aggregate of liability) of chapter 132. To the extent a  
10 reciprocal insurer is made subject to other provisions of this title pursuant to  
11 chapter 132, such provisions shall not be applicable to a reciprocal insurer  
12 formed under this chapter unless such provisions are expressly made  
13 applicable to captive insurance companies under this chapter. The  
14 Commissioner may exempt a company's attorney-in-fact from the provisions  
15 of section 4840 (attorney's bond) of chapter 132 if the reciprocal insurer is  
16 formed as an association captive and if each member of the reciprocal insurer  
17 qualifies as "industrial insured" pursuant to subdivision 6001(9) of this  
18 subchapter or if the reciprocal insurer is an incorporated protected cell of a  
19 sponsored captive insurance company.

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\* \* \* Examinations \* \* \*

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

(a) ~~At least once in three years, and whenever~~ Whenever the Commissioner determines it to be prudent, but not less frequently than once every five years, the Commissioner shall personally, or by some competent person appointed by the Commissioner, ~~visit each captive insurance company and thoroughly~~ inspect and examine ~~its affairs~~ each captive insurance company to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with the provisions of this chapter. ~~The Commissioner may enlarge the aforesaid three year period to five years, provided the captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the Commissioner by independent auditors approved by the Commissioner.~~ The expenses and charges of the examination shall be paid to the State by the company or companies ~~examined and the Commissioner of Finance and Management shall issue his or her warrants for the proper charges incurred in all examinations.~~

\* \* \* Investments \* \* \*

Sec. 4. 8 V.S.A. § 6010 is amended to read:

§ 6010. LEGAL INVESTMENTS

1           (a)(1) Except as may be otherwise authorized by the Commissioner, agency  
2 captive insurance companies, association captive insurance companies, and  
3 risk retention groups shall:

4                   (A) comply with the investment requirements contained in sections  
5 3461 through 3472 of this title, as applicable; or

6                   (B) submit for approval by the Commissioner the investment policy  
7 of the company. In reviewing the investment policy, the Commissioner shall  
8 consider diversification as to both type and issue, liquidity, and matching of  
9 assets and liabilities and shall determine whether the investment policy  
10 provides for the reasonable preservation, administration, and management of  
11 assets with respect to the risks associated with the company's transactions.  
12 Subdivision 6002(c)(3) of this title shall apply to all information submitted  
13 pursuant to this subsection.

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

19                   (3) Section 3463a of this title shall apply to agency captive insurance  
20 companies, association captive insurance companies, and risk retention groups  
21 except to the extent it is inconsistent with approved accounting standards in

1 use by the company. Notwithstanding any other provision of this title to the  
2 contrary, the Commissioner may approve the use of alternative, reliable  
3 methods of valuation and rating.

4 (b) No pure captive insurance company or industrial insured captive  
5 insurance company shall be subject to any restrictions on allowable  
6 investments ~~whatever~~, including those limitations contained in sections 3461–  
7 3472 of this title; provided, however, that the Commissioner may prohibit or  
8 limit any investment that threatens the solvency or liquidity of any such  
9 company.

10 (c) No pure captive insurance company may make a loan to or an  
11 investment in its parent company or affiliates without prior written approval of  
12 the Commissioner, and any such loan or investment must be evidenced by  
13 documentation approved by the Commissioner. Loans of minimum capital and  
14 surplus funds required by section 6004 of this title are prohibited.

15 \* \* \* Sponsored Captive Insurance Companies; Formation \* \* \*

16 Sec. 5. 8 V.S.A. § 6031 is amended to read:

17 § 6031. FORMATION

18 (a) One or more sponsors may form a sponsored captive insurance  
19 company under this chapter. In addition to the general provisions of this  
20 chapter, the provisions of this subchapter shall apply to sponsored captive  
21 insurance companies.



1           (b) ~~A sponsored captive insurance company shall be incorporated as a~~  
2 ~~stock insurer with its capital divided into shares and held by the stockholders,~~  
3 ~~as a mutual corporation, as a nonprofit corporation with one or more members,~~  
4 ~~or as a manager managed limited liability company~~ Subject to the approval of  
5 the Commissioner, a sponsored captive insurance company may be formed as  
6 any type of entity permissible under Vermont law.

7                           \* \* \* Incorporated Protected Cells; Formation \* \* \*

8           Sec. 6. 8 V.S.A. § 6032(2) is amended to read:

9                   (2) “Incorporated protected cell” means a protected cell that is  
10 ~~established as a corporation, mutual corporation, nonprofit corporation with~~  
11 ~~one or more members, limited liability company, or reciprocal insurer separate~~  
12 ~~from the sponsored captive insurance company of which it is a part ,~~ subject to  
13 the approval of the Commissioner, is formed as any type of entity permissible  
14 under Vermont law.

15                           \* \* \* Participants; Sole Proprietorships \* \* \*

16           Sec. 7. 8 V.S.A. § 6036 is amended to read:

17           § 6036. PARTICIPANTS IN SPONSORED CAPTIVE INSURANCE

18                   COMPANIES

19                   (a) Associations, corporations, limited liability companies, partnerships,  
20 trusts, risk retention groups, sole proprietorships, and other business entities

1 may be participants in any sponsored captive insurance company formed or  
2 licensed under this chapter.

3 (b) A sponsor may be a participant in a sponsored captive insurance  
4 company.

5 (c) A participant need not be a shareholder of the sponsored captive  
6 insurance company or any affiliate thereof.

7 (d) A participant shall not insure any risks other than its own and the risks  
8 of affiliated entities or of controlled unaffiliated entities.

9 \* \* \* Affiliated Reinsurance Companies; Annual Reporting \* \* \*

10 Sec. 8. 8 V.S.A. § 6049h(a) is amended to read:

11 (a) For the purposes of subsection 6007(b) of this chapter:

12 (1) ~~each~~ Each affiliated reinsurance company shall file its report in the  
13 form required by subsection 3561(a) of this title, and each affiliated  
14 reinsurance company shall comply with the requirements set forth in  
15 section 3569 of this title; ~~and,~~

16 (2) ~~an~~ An affiliated reinsurance company shall report using statutory  
17 accounting principles, ~~unless the Commissioner requires, approves, or accepts~~  
18 ~~the use of generally accepted accounting principles or another comprehensive~~  
19 ~~basis of accounting, in each case with any appropriate or necessary~~  
20 ~~modifications or adaptations required or approved or accepted by the~~  
21 ~~Commissioner and as supplemented by additional information required by the~~

1 ~~Commissioner~~ in accordance with the National Association of Insurance  
2 Commissioner's Accounting Practices and Procedures Manual. Reporting  
3 shall be in such general form and context, as approved by, and shall contain  
4 any other information required by, the National Association of Insurance  
5 Commissioners, with any useful or necessary modifications or adaptations  
6 thereof required or approved or accepted by the Commissioner for the type of  
7 insurance and kinds of insurers to be reported upon, and as supplemented by  
8 additional information required by the Commissioner.

9 \* \* \* Risk Retention Groups; Governance; ORSA Requirement \* \* \*

10 Sec. 9. 8 V.S.A. § 6052 is amended to read:

11 § 6052. RISK RETENTION GROUPS CHARTERED IN THIS STATE

12 \* \* \*

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

15 (1) As used in this subsection:

16 \* \* \*

17 (C) "Independent director" means a director who does not have a  
18 material relationship with the risk retention group. ~~A person that is a direct or~~  
19 ~~indirect owner of or subscriber in the risk retention group—~~or is an officer,  
20 director, or employee of such an owner and insured, unless some other position  
21 of such officer, director, or employee constitutes a "material relationship"—as

1 ~~contemplated under subdivision 3901(a)(4)(E)(ii) of the federal Liability Risk~~  
2 ~~Retention Act, is considered to be “independent.”~~ A director has a material  
3 relationship with a risk retention group if he or she, or a member of his or her  
4 immediate family:

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

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

19 (iii)(I) ~~Has a relationship with a related entity as follows:~~ Is  
20 employed as an executive officer of another ~~company whose board of directors~~  
21 business entity that is affiliated with the risk retention group by virtue of

1 common ownership and control, if such entity meets all of the following  
2 criteria:

3 (aa) the entity is not an insured of the risk retention group;

4 (bb) the entity has a contractual relationship with the risk  
5 retention group; and

6 (cc) the governing board of the entity includes executive  
7 officers of the risk retention group, unless a majority of the membership of  
8 such other company's board of directors is the same as the membership of the  
9 board of directors of the risk retention group entity's governing board is  
10 composed of individuals who are members of the governing board of the risk  
11 retention group.

12 (II) Such material relationship shall continue until the  
13 employment or service ends.

14 \* \* \*

15 (h) The provisions of subchapter 7A of chapter 101 of this title (own risk  
16 and solvency assessment) shall apply to risk retention groups chartered in this  
17 State.

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

19 Sec. 10. EFFECTIVE DATE

20 This act shall take effect on passage.