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H.533

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,  
Dickinson of St. Albans Town, Kitzmiller of Montpelier,  
Kupersmith of South Burlington, Ralston of Middlebury,  
Russell of Rutland City, Shand of Weathersfield and Young of  
Glover

Referred to Committee on

Date:

Subject: Insurance; commercial policies; reinsurance agreements; business  
transfers; state review and approval

Statement of purpose: This bill proposes to facilitate and streamline the  
process for transfers of commercial insurance policies and reinsurance  
agreements between solvent insurance companies, subject to review and  
approval by the commissioner of banking, insurance, securities, and health care  
administration.

An act relating to insurance business transfers

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

Sec. 1. TITLE

This act shall be known as the “Insurance Business Transfer Act.”

1       Sec. 2. FINDINGS AND PURPOSE

2           (a) The Vermont general assembly finds:

3               (1) The creation of jobs and investment in the state of Vermont through  
4               business expansion and recruitment is of the highest importance.

5               (2) Vermont has created a thriving captive insurance and alternative risk  
6               financing industry, which has provided Vermonters with well-paying jobs and  
7               has created significant premium tax revenue for the state.

8               (3) Vermont is a competitive location for highly successful financial  
9               services firms as a result of its leadership in the field of captive insurance.  
10              Vermont's ability to modernize key aspects of its insurance laws has been a  
11              key to the state's success.

12              (b) The purpose of this act is to facilitate and streamline the process for  
13              transfers of commercial insurance policies and reinsurance agreements  
14              between solvent insurance companies.

15       Sec. 3. 8 V.S.A. chapter 147 is added to read:

16                      CHAPTER 147. INSURANCE BUSINESS TRANSFERS

17                              Subchapter 1. Insurance Business Transfers

18                              § 7111. DEFINITIONS

19                              As used in this chapter:

20                              (1) "Assuming insurer" means an insurance company that is the  
21                              assuming insurer with respect to a plan, and that is a domestic insurer, a

1 foreign or alien insurance company that has a certificate of authority issued by  
2 the department other than pursuant to this chapter, an insurance company  
3 branch, or a special insurance company.

4 (2) “Commissioner” means the commissioner of banking, insurance,  
5 securities, and health care administration.

6 (3) “Department” means the department of banking, insurance,  
7 securities, and health care administration.

8 (4) “Domicile regulator” means the insurance regulatory authority of the  
9 domicile jurisdiction of a transferor insurer or an assuming insurer, if either  
10 such insurance company is a foreign insurance company or an alien insurance  
11 company.

12 (5) “Independent reviewer” means the person charged with review of a  
13 plan as described in section 7116 of this chapter.

14 (6) “Insurance business transfer” means a policy transfer or a  
15 reinsurance transfer.

16 (7) “Insurance business transfer plan” or “plan” means a plan that sets  
17 forth all provisions regarding an insurance business transfer required under this  
18 chapter.

19 (8) “Insurance company branch” means a branch established in Vermont  
20 by an alien or foreign insurance company under this chapter.

21 (9) “Inuring reinsurance” means:

1           (A) with respect to a policy transfer, all reinsurance of the policies  
2 included in the policy transfer; and

3           (B) with respect to a reinsurance transfer, all reinsurance of the  
4 reinsurance agreements included in the reinsurance transfer.

5           (10) “Party” means any person so defined under subsection 7118(c) of  
6 this chapter.

7           (11) “Personal lines insurance” means an insurance policy that covers  
8 personal, family, or household risks.

9           (12) “Policy” means a contract of property and casualty insurance other  
10 than a personal lines insurance policy.

11           (13) “Policyholder” means the person identified as the policyholder or  
12 first named in a policy.

13           (14) “Policy transfer” means a plan that calls for the transfer of all  
14 rights, obligations, and liabilities of a transferor insurer under a policy and all  
15 insuring reinsurance thereof to an assuming insurer.

16           (15) “Reinsurance agreement” means an agreement of reinsurance that  
17 directly or indirectly reinsures a policy.

18           (16) “Reinsurance transfer” means a plan that calls for the transfer of all  
19 rights, obligations, and liabilities of a transferor insurer under a reinsurance  
20 agreement and all inuring reinsurance thereof to an assuming insurer.

1           (17) “Special insurance company” means a special insurance company  
2 established under this chapter.

3           (18) “Transferor insurer” means an insurance company that is the  
4 transferring insurer with respect to a plan, and that is a domestic insurer, a  
5 foreign or alien insurance company that has a certificate of authority issued by  
6 the department other than pursuant to this chapter, an insurance company  
7 branch, or a special insurance company.

8           § 7112. JURISDICTION; APPEALS

9           The commissioner shall have exclusive jurisdiction with respect to the  
10 review and approval or denial of any insurance business transfer plan. Any  
11 appeal of an order of the commissioner issued under section 7116 of this  
12 chapter shall be to the supreme court only.

13           § 7113. EXCLUDED TRANSACTIONS

14           This chapter shall not apply to any transfer of a policy, reinsurance  
15 agreement, or inuring reinsurance if all parties with an interest in the policies  
16 and reinsurance agreements being transferred have approved the transfer and  
17 the transfer is otherwise permitted under applicable law.

18           § 7114. APPLICATION FOR APPROVAL OF INSURANCE BUSINESS

19                   TRANSFER PLAN

20           (a) A transferor insurer and assuming insurer shall submit a plan to the  
21 commissioner.

1           (b) A plan shall include the following:

2           (1) a list of all parties, policies, reinsurance agreements, and inuring  
3           reinsurance covered by the plan;

4           (2) certificates issued by the domicile regulators of the transferor insurer  
5           and the assuming insurer, each attesting to the good standing of the transferor  
6           insurer and the assuming insurer and the insurance regulatory laws of the  
7           jurisdiction of the domicile regulator;

8           (3) a statement describing the terms of each policy and reinsurance  
9           agreement, if any, regarding assignment and assumption of the rights,  
10          liabilities, and obligations of the transferor insurer with respect to each policy  
11          and reinsurance agreement;

12          (4) the most recent audited financial statements and annual reports filed  
13          by the transferor insurer and the assuming insurer with their respective  
14          domicile regulators;

15          (5) a study by an actuary acceptable to the commissioner that quantifies  
16          the liabilities to be transferred to the assuming insurer under the policies and  
17          reinsurance agreements;

18          (6) the form and amount of consideration payable by the transferor  
19          insurer and pro-forma financial statements that demonstrate the solvency of the  
20          transferor insurer after the insurance business transfer is effective;

1           (7) pro-forma financial statements that demonstrate the solvency of the  
2           assuming insurer after the insurance business transfer is effective;

3           (8) officer certificates of the transferor insurer and the assuming insurer  
4           attesting that each has obtained all required internal approvals regarding the  
5           insurance business transfer;

6           (9) how all notices required to be provided to a party under this chapter  
7           shall be provided;

8           (10) a statement regarding any pending dispute between the transferor  
9           insurer and any policyholder or reinsurer, or of a disputed claim by any third  
10           party with respect to any policy, reinsurance agreement, or inuring reinsurance;

11           (11) the report of the independent review described in section 7115 of  
12           this chapter; and

13           (12) any other information that the commissioner may require with  
14           respect to the plan in the exercise of his or her reasonable discretion.

15           (c) Within 10 days of the date the application is submitted, the  
16           commissioner shall notify the transferor insurer and the assuming insurer that  
17           the application is complete, or that the application is not complete and listing  
18           all additional required information and documentation to be submitted as part  
19           of the application.

20           (d) Within 30 days of the date the commissioner provides notice that the  
21           application is complete under subsection (c) of this section, the transferor

1 insurer shall provide notice to all parties in the form approved by the  
2 department that complies with the plan and the provisions of 3 V.S.A.  
3 § 809(b). Such notice shall include a complete description of the plan, and a  
4 statement of the right of each party to submit written comments on the plan to  
5 the commissioner and to request a hearing on the plan before the  
6 commissioner.

7 (e) Any party may submit written comments on the plan or the report of the  
8 independent reviewer, and any party may request a hearing on the plan. Any  
9 such comments or request for hearing shall be submitted to the commissioner  
10 during the 60-day period starting on the date the commissioner provides notice  
11 that the application is complete pursuant to subsection (c) of this section (the  
12 comment period). If a hearing is requested, the commissioner shall schedule a  
13 hearing to be held not earlier than 30 days and not later than 60 days after the  
14 end of the comment period.

15 (f) The commissioner shall issue an order approving or disapproving the  
16 plan within 30 days of the following:

17 (1) if a hearing is held on the plan, the date of the hearing; and

18 (2) if no hearing is held on the plan, the end of the comment period.



1        § 7115. INDEPENDENT REVIEW

2            (a) The independent reviewer shall be an individual approved by the  
3        commissioner to review and comment on the merits and fairness of a plan.

4        The independent reviewer shall:

5            (1) possess appropriate experience in commercial property and casualty  
6        insurance and reinsurance transactions;

7            (2) not have an interest as a shareholder or owner of any policyholder,  
8        transferor insurer, assuming insurer, or an insurance company that is a party to  
9        any inuring reinsurance; and

10          (3) not have served as a director, officer, or employee of the transferor  
11        insurer, the assuming insurer, or any other party during the 10-year period  
12        immediately preceding the date the application for approval of a plan is filed  
13        with the commissioner.

14          (b) The independent reviewer shall review the plan and shall consider the  
15        following as part of such review:

16            (1) the solvency of the transferor insurer, the assuming insurer, and all  
17        insurance companies that are parties to inuring reinsurance, both before and  
18        after the implementation of the proposed plan;

19            (2) in the case of a policy transfer, the ability of the assuming insurer to  
20        comply with all requirements of the policy, including administration of claims  
21        in process as of and after the effective date of the transfer;

1           (3) the fairness of the plan to all parties; and

2           (4) any other factors or issues raised by the plan that the independent  
3 reviewer reasonably deems relevant.

4           (c) The independent reviewer's report shall include his or her  
5 recommendation as to whether the plan should be approved or denied.

6           (d) The fee charged by the independent reviewer shall be payable by the  
7 transferor insurer in the amount mutually agreed upon by the independent  
8 reviewer and the transferor insurer.

9           § 7116. ORDER

10           (a) The transferor insurer and the assuming insurer shall file, individually  
11 or jointly, proposed findings of fact with the commissioner by the date  
12 determined by the commissioner. The commissioner may, in his or her  
13 discretion, allow any other party to file findings of fact by such date.

14           (b) The commissioner shall issue an order approving or disapproving the  
15 plan in compliance with subsection 7118(c) of this chapter. The order shall be  
16 valid notwithstanding any provision of any policy, reinsurance agreement, or  
17 inuring reinsurance that would otherwise prohibit the transfer, including any  
18 provision of a policy, reinsurance agreement, or inuring reinsurance that would  
19 require the approval of a policyholder or any other person. The order shall  
20 release the transferor insurer from any and all obligations and liabilities and  
21 transfer all rights of the transferor insurer from any and all obligations and

1 liabilities and transfer all rights to the transferor insurer, under a policy or  
2 reinsurance agreement, such that the assuming insurer has all such rights,  
3 liabilities, and obligations as if it were the original party to such agreements.

4 (c) The commissioner may issue any orders necessary to fully implement  
5 an order issued under subsection (b) of this section, including injunctions  
6 against litigation regarding the validity of such order.

7 (d) No order issued under subsection (b) or (c) of this section shall be  
8 construed to modify or amend the terms of a policy or reinsurance agreement,  
9 other than with respect to matters specifically subject to modification or  
10 amendment under this chapter.

11 § 7117. FEES AND COSTS

12 (a) The transferor insurer shall pay to the commissioner a fee of \$50,000.00  
13 to cover the costs of processing and reviewing a plan under this chapter.

14 (b) If a plan is approved, the assuming insurer shall pay the commissioner a  
15 transfer fee in an amount equal to the sum of:

16 (1) One percent of the first \$100,000,000.00 of consideration payable by  
17 the transferor insurer to the assuming insurer for the insurance business  
18 transfer; and

19 (2) 0.5 percent of the amount of such consideration that exceeds  
20 \$100,000,000.00.

1       (c) No premium tax shall be payable with respect to an insurance business  
2       transfer, and neither the transferor insurer nor the assuming insurer shall be  
3       subject to any other tax imposed by the state of Vermont, other than sales and  
4       use taxes and meals and rooms taxes.

5       (d) The assuming insurer shall pay an annual fee of \$7,500.00 to the  
6       commissioner.

7       § 7118. APPLICABLE LAWS

8       (a) In the event of any conflict between a provision of this chapter and any  
9       other provision of this title, such provision of this chapter shall control.  
10       Without limitation of the foregoing, chapter 157 of this title shall not apply to  
11       any insurance business transfer.

12       (b) No transferor insurer, assuming insurer, or any insured or affiliate  
13       thereof shall be entitled to join, contribute to, or receive any benefit from any  
14       plan, pool, association, or guaranty or insolvency fund for claims arising out of  
15       any policy that is subject to an insurance business transfer under this chapter.

16       (c) 3 V.S.A. §§ 801, 809, 812, 813, and 815 shall apply to a proposed  
17       insurance business transfer; provided, for purposes of the definitions set forth  
18       in 3 V.S.A. § 801:

19               (1) A proposed insurance business transfer shall be a “contested case.”

20               (2) A “party” with respect to a proposed business transfer shall be  
21       limited to the transferor insurer, the assuming insurer, each policyholder, each

1 reinsurer, and any other person the commissioner approves as a party with  
2 respect to such proceeding.

3 Subchapter 2. Insurance Company Branch and Special Insurance Company

4 Formation and Operation

5 § 7121. APPLICABILITY

6 This subchapter shall apply only to a transferor insurer or assuming insurer  
7 that is organized as an insurance company branch or a special insurance  
8 company.

9 § 7122. NAME

10 A special insurance company shall not adopt a name that is the same as,  
11 deceptively similar to, or likely to be confused with or mistaken for any other  
12 existing business name registered in the state of Vermont.

13 § 7123. FORMATION AND LICENSING

14 (a) A special insurance company may be incorporated under the Vermont  
15 Business Corporation Act, Title 11A, as a stock insurer with its capital divided  
16 into shares and held by the stockholders, or formed under the Vermont Limited  
17 Liability Company Act, 11 V.S.A. chapter 21, as a manager-managed limited  
18 liability company.

19 (b) Before receiving a license, in the case of a special insurance company:

20 (1)(A) formed as a corporation, before the articles of incorporation  
21 are transmitted to the secretary of state, the incorporators shall petition the

1 commissioner to issue a certificate setting forth the commissioner's finding  
2 that the establishment and maintenance of the proposed corporation shall  
3 promote the general good of the state. In arriving at such a finding, the  
4 commissioner shall consider:

5 (i) the character, reputation, financial standing, and purposes of  
6 the incorporators;

7 (ii) the character, reputation, financial responsibility, insurance  
8 experience, and business qualifications of the officers and directors; and

9 (iii) such other aspects as the commissioner shall deem advisable.

10 (B) the articles of incorporation, such certificate, and the organization  
11 fee shall be transmitted to the secretary of state, who shall thereupon record  
12 both the articles of incorporation and the certificate.

13 (2)(A) 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 commissioner's  
16 finding that the establishment and maintenance of the proposed company shall  
17 promote the general good of the state. In arriving at such a finding, the  
18 commissioner shall consider the items set forth in subdivisions (1)(A)(i)–(iii)  
19 of this subsection; and

1           (B) the articles of organization, such certificate, and the organization  
2           fee shall be transmitted to the secretary of state, who shall thereupon record  
3           both such certificate and the certificate of formation.

4           (c) Before receiving a license, in the case of an insurance company branch,  
5           the foreign or alien insurance company, as applicable, shall petition the  
6           commissioner to issue a certificate setting forth the commissioner's finding  
7           that, after considering the character, reputation, financial responsibility,  
8           insurance experience, and business qualifications of the officers and directors  
9           of the alien or foreign insurance company, as applicable, the licensing and  
10           maintenance of the branch operations will promote the general good of the  
11           state. The alien or foreign insurance company, as applicable, may register to  
12           do business in this state after the commissioner's certificate is issued.

13           (d) Each special insurance company and insurance company branch shall  
14           pay to the commissioner a nonrefundable fee of \$600.00 for examining,  
15           investigating, and processing its application for license, and for issuing the  
16           same, and the commissioner is authorized to retain legal, financial, and  
17           examination services from outside the department, the reasonable cost of  
18           which may be charged against the applicant. The provisions of section 3576 of  
19           this title shall apply to examination, investigation, and processing conducted  
20           under the authority of this section. In addition, each special insurance

1 company and insurance company branch shall pay a license renewal fee for  
2 each year thereafter of \$600.00.

3 (e) If the commissioner is satisfied that the documents and statements  
4 submitted with respect to the licensing of a special insurance company or an  
5 insurance company branch, as applicable, comply with the provisions of this  
6 chapter, the commissioner may grant a license authorizing the conduct of  
7 business in this state until April 1 thereafter, which license may be renewed.

8 (f) The capital stock of a special insurance company incorporated as a stock  
9 insurer may be authorized with no par value.

10 (g) A special insurance company formed as a corporation shall have the  
11 privileges and be subject to the provisions of Title 11A as well as the  
12 applicable provisions contained in this chapter. In the event of a conflict  
13 between the provisions of the general corporation law and the provisions of  
14 this chapter, the latter shall control.

15 (h) A special insurance company formed as a limited liability company  
16 shall have the privileges and be subject to the provisions of 11 V.S.A. chapter  
17 21, as well as the applicable provisions contained in this chapter. In the event  
18 of a conflict between the provisions of the general corporation law and the  
19 provisions of this chapter, the latter shall control.



1     § 7124. CAPITAL AND SURPLUS

2         At all times, an insurance company branch and special insurance company  
3     shall maintain minimum unimpaired, paid-in capital and surplus in an amount  
4     to be determined by the commissioner, in the form of cash or other instrument  
5     approved by the commissioner. The commissioner may prescribe additional  
6     capital and surplus based on the type, volume, and nature of the insurance  
7     business transacted.

8     § 7125. DIVIDENDS AND DISTRIBUTIONS

9         No special insurance company may pay a dividend out of, or other  
10     distribution with respect to, capital or surplus without the prior approval of the  
11     commissioner.

12     § 7126. REPORTS

13         (a) An insurance company branch and a special insurance company shall  
14     not be required to make any annual report except as provided in this chapter.

15         (b) Prior to March 15 of each year, a special insurance company shall  
16     submit to the commissioner a report of its financial condition, verified by oath  
17     of two of its executive officers. A special insurance company shall report  
18     using generally accepted accounting principles, unless the commissioner  
19     requires, approves, or accepts the use of statutory accounting principles or  
20     another comprehensive basis of accounting, in each case with any appropriate  
21     or necessary modifications or adaptations thereof required or approved or

1 accepted by the commissioner for additional information required by the  
2 commissioner. The commissioner shall determine the form of report to be  
3 filed by a special insurance company. Subdivision 6002(c)(3) of this title shall  
4 apply to each report filed under this section.

5 (c) Prior to March of each year, or with the approval of the commissioner  
6 within 60 days after its fiscal year-end, an insurance company branch shall file  
7 with the commissioner a copy of all reports and statements required to be filed  
8 under the laws of its domicile jurisdiction, verified by oath of two of its  
9 executive officers.

10 (d) A special insurance company may make written application for filing  
11 the required report on a fiscal year-end. If an alternative reporting date is  
12 granted, the annual report is due 75 days after the fiscal year-end.

13 § 7127. EXAMINATION AND INVESTIGATIONS

14 (a)(1) At least once in three years, and whenever the commissioner  
15 determines it to be prudent, the commissioner shall personally, or by some  
16 competent person appointed by the commissioner, visit each special insurance  
17 company and thoroughly inspect and examine its affairs to ascertain its  
18 financial condition, its ability to fulfill its obligations, and whether it has  
19 complied with the provisions of this chapter. The commissioner may enlarge  
20 the aforesaid three-year period to five years, provided the special insurance  
21 company is subject to a comprehensive annual audit during such period of a

1 scope satisfactory to the commissioner by independent auditors approved by  
2 the commissioner. The expenses and charges of the examination shall be paid  
3 to the state by the company examined, and the commissioner of finance and  
4 management shall issue his or her warrants for the proper charges incurred in  
5 all examinations.

6 (2) An insurance company branch shall submit to the commissioner a  
7 copy of each periodic examination of the company that has established the  
8 insurance company, as conducted by the domicile regulator of such company.

9 (b) The provisions of section 3576 of this title shall apply to examinations  
10 conducted under this section.

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

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

5 § 7128. LICENSE SUSPENSION OR REVOCATION

6 (a) The license of an insurance company branch and a special insurance  
7 company may be suspended or revoked by the commissioner for any of the  
8 following reasons:

9 (1) insolvency or impairment of capital or surplus;

10 (2) failure to meet the requirements of section 7123 of this subchapter;

11 (3) refusal or failure to submit an annual report, as required by this  
12 chapter, or any other report or statement required by law or by lawful order of  
13 the commissioner;

14 (4) failure to comply with the provisions of its owner charter, bylaws, or  
15 other organizational document;

16 (5) failure to submit to or pay the cost of examination or any legal  
17 obligation relative thereto, as required by this chapter;

18 (6) use of methods that, although not otherwise specifically prohibited  
19 by law, nevertheless render its operation detrimental or its condition unsound  
20 with respect to the public or to its policyholders; or

21 (7) failure otherwise to comply with the laws of this state.

1       (b) If the commissioner finds, upon examination, hearing, or other  
2 evidence, that any insurance company branch or special insurance company  
3 has violated any provision of subsection (a) of this section, the commissioner  
4 may suspend or revoke such company's license if the commissioner deems it  
5 in the best interest of the public and the policyholders, notwithstanding any  
6 other provision of this title.

7       § 7129. LEGAL INVESTMENTS

8       An insurance company branch and a special insurance company shall not be  
9 subject to any restrictions on allowable investments; provided the  
10 commissioner may prohibit or limit any investment that threatens the solvency  
11 or liquidity of the company, and the commissioner shall approve any loan by  
12 an insurance company branch or special insurance company to its parent  
13 company or affiliates.

14       § 7130. RATING ORGANIZATIONS; MEMBERSHIPS

15       No insurance company branch or special insurance company shall be  
16 required or eligible to join a rating organization.

17       § 7131. EXEMPTION FROM COMPULSORY ASSOCIATIONS

18       No insurance company branch or special insurance company shall be  
19 permitted to join or contribute financially to any plan, pool, association, or  
20 guaranty or insolvency fund in this state, nor shall any such company, or any  
21 insured or affiliate thereof, receive any benefit from any such plan, pool,

1 association, or guaranty or insolvency fund for claims arising out of the  
2 operations of such company.

3 § 7132. APPLICABLE LAWS

4 No provisions of this title, other than those contained in this chapter or  
5 contained in specific references contained in this chapter, shall apply to an  
6 insurance company branch or special insurance company.

7 § 7133. DELINQUENCY

8 Except as otherwise provided in this chapter, the terms and conditions set  
9 forth in chapter 145 of this title shall apply in full to an insurance company  
10 branch and to a special insurance company.

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on passage.