

# CAPTIVE INSURANCE COMPANIES

## TITLE 8 VERMONT STATUTES ANNOTATED

### CHAPTER 141. CAPTIVE INSURANCE COMPANIES

### CHAPTER 142. RISK RETENTION GROUPS and PURCHASING GROUPS

### CHAPTER 142A. RISK RETENTION MANAGING GENERAL AGENTS and REINSURANCE INTERMEDIARIES

#### Subchapter 1. General Provisions

##### Section 6001. Definitions

As used in this chapter, unless the context requires otherwise:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities, the member organizations of which or which does itself, whether or not in conjunction with some or all of the member organizations:

(A) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(B) have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(C) constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or

(D) have complete voting control over an association captive insurance company formed as a limited liability company.

(3) "Association captive insurance company" means any company that insures risks of the member organizations of the association, and that may also insure the risks of affiliated companies of the member organizations and the risks of the association itself.

(4) "Captive insurance company" means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, risk retention group, or special purpose financial captive insurance company formed or licensed under the provisions of this chapter. For purposes of this chapter, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner.

(5) "Commissioner" means the commissioner of the department of banking, insurance, securities, and health care administration.

(6) "Controlled unaffiliated business" means any person:

(A) that is not in the corporate system of a parent and its affiliated companies in the case of a pure captive insurance company, or that is not in the corporate system of an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;

(B) that has an existing contractual relationship with a parent or one of its affiliated companies in the case of a pure captive insurance company, or with an industrial insured or one of its affiliated companies in the case of an industrial insured captive insurance company; and

(C) whose risks are managed by a pure captive insurance company or an industrial insured captive insurance company, as applicable, in accordance with section 6019 of this title.

(7) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per-incident or aggregate limit established by the commissioner.

(8) "Industrial insured" means an insured:

(A) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) whose aggregate annual premiums for insurance on all risks total at least \$25,000.00, and

(C) who has at least 25 full-time employees.

(9) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and that may insure the risks of the affiliated companies of the industrial

insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies.

(10) "Industrial insured group" means any group of industrial insureds that collectively:

(A) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer;

(B) have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(C) constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer; or

(D) have complete voting control over an industrial insured captive insurance company formed as a limited liability company.

(11) "Member organization" means any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association.

(12) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.

(13) "Parent" means a corporation, limited liability company, partnership, other entity, or individual, that directly or indirectly owns, controls, or holds with power to vote more than 50 per centum of the outstanding voting:

(A) securities of a pure captive insurance company organized as a stock corporation; or

(B) member interests of a pure captive insurance company organized as a nonprofit corporation; or

(C) membership interests of a pure captive insurance company organized as a limited liability company.

(14) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

(15) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901 et seq., as amended, as a stock or mutual corporation, a reciprocal or other limited liability entity.

## **Section 6002. Licensing; authority**

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in subdivisions (1), (2), (3)(A)-(C), (E)-(R) and (4)-(9) of subsection 3301(a) of this title and may grant annuity contracts as defined in section 3717 of this title; provided, however, that:

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

(2) no association captive insurance company may insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies;

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

(4) no risk retention group may insure any risks other than those of its members and owners;

(5) no captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;;

(6) no captive insurance company may accept or cede reinsurance except as provided in section 6011 of this title;

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

(8) any captive insurance company which insures risks described in subdivisions (1) and (2) of section 3301(a) of this title shall comply with all applicable state and federal laws.

(b) No captive insurance company shall do any insurance business in this state unless:

(1) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) its board of directors, or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one meeting each year in this state;

(3) it maintains its principal place of business in this state; and

(4) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this state

(A) provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the secretary of state shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c) (1) Before receiving a license, a captive insurance company shall:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner;

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the commissioner evidence of the following:

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(C) the overall soundness of its plan of operation;

(D) the adequacy of the loss prevention programs of its insureds; and

(E) such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and remain confidential, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

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

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

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

(iii) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; provided, however, that the provisions of this subdivision (3) shall not apply to any risk retention group; and

(B) the commissioner may, in the commissioner's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that:

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

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

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$500.00 for examining, investigating, and processing its application for license, and for issuing same, and the commissioner is authorized to retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of section 3576 of this title shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license renewal fee for each year thereafter of \$500.00.

(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this chapter, the commissioner may grant a license authorizing it to do insurance business in this state until April 1 thereafter, which license may be renewed.

### **Section 6003. Names of companies**

No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the state of Vermont.

### **Section 6004. Minimum capital and surplus; letter of credit**

(a) No captive insurance company shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:

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

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

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

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

(5) in the case of a sponsored captive insurance company, not less than \$500,000.00.

(b) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(c) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank approved by the commissioner.

### **Section 6005. Dividends**

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus, without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner. Notwithstanding the provisions of chapter 13 of Title 11B, a captive insurance company organized under the provisions of Title 11B may make such distributions as are in conformity with its purposes and approved by the commissioner.

### **Section 6006. Formation of captive insurance companies in this state**

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be:

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

(2) incorporated as a mutual corporation;

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

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

(c) A captive insurance company incorporated or organized in this state shall have not less than three incorporators or three organizers of whom not less than one shall be a resident of this state.

(d) In the case of a captive insurance company:

(1)(A) formed as a corporation, before the articles of incorporation are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such a finding the commissioner shall consider:

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

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

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

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

(2) formed as a reciprocal insurer, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at such a finding the commissioner shall consider the items set forth in subdivisions (1)(A)(i)-(iii) of this subsection.

(3) formed as a limited liability company, before the articles of organization are transmitted to the secretary of state, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed company will promote the general good of the state. In arriving at such a finding, the commissioner shall consider the items set forth in subdivisions (1)(A)(i)-(iii) of this subsection.

(e) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(f) in the case of a captive insurance company:

(1) formed as a corporation, at least one of the members of the board of directors shall be a resident of this state;

(2) formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this state;

(3) formed as a limited liability company, at least one of the managers shall be a resident of this state.

(g) Other than captive insurance companies formed as limited liability companies under chapter 21 of Title 11 or as

nonprofit corporations under Title 11B, captive insurance companies formed as corporations under the provisions of this chapter shall have the privileges and be subject to the provisions of Title 11A as well as the applicable provisions contained in this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

(h) Captive insurance companies formed under the provisions of this chapter:

(1) as limited liability companies shall have the privileges and be subject to the provisions of chapter 21 of Title 11 as well as the applicable provisions contained in this chapter. In the event of a conflict between the provisions of chapter 21 of Title 11 and the provisions of this chapter, the latter shall control; or

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

(i) The provisions of subchapter 3, and subchapter 3A of chapter 101 of this title, pertaining to mergers, consolidations, conversions, mutualizations, redomestications, and mutual holding companies, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

(1) the commissioner may, upon request of an insurer party to a merger authorized under subsection (i) of this section, waive the requirement of subdivision (6) of section 3424 of this title;

(2) the commissioner may waive the requirements for public notice and hearing or, in accordance with rules which the commissioner may adopt addressing categories of transactions, modify the requirements for public notice and hearing. If a notice of public hearing is required, but no one requests a hearing ten days before the day set for the hearing, then the commissioner may cancel the hearing;

(3) the provisions of subsections 3423(f) and (h) of this title shall not apply, and the commissioner may waive or modify the requirement of subdivision 3423 (b)(4) of this title, with respect to market value of a converted company as necessary or desirable to reflect applicable restrictions on ownership of companies formed under this chapter;

(4) an alien insurer may be a party to a merger authorized under this subsection; provided that the requirements for a merger between a captive insurance company and a foreign insurer under section 3431 of this title shall apply to a merger between a captive insurance company and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under section 3431 and such other jurisdictions shall be the equivalents of a state for purposes of section 3431; and

(5) the commissioner may issue a certificate of general good to permit the formation of a captive insurance company that is established for the sole purpose of consolidating or merging with or assuming existing insurance or reinsurance business from an existing Vermont licensed captive insurance company. The commissioner may, upon request of such newly formed captive insurance company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and (2) of this title.

(j) Captive insurance companies formed as reciprocal insurers under the provisions of this chapter shall have the privileges and be subject to the provisions of chapter 132 of this title in addition to the applicable provisions of this chapter. In the event of a conflict between the provisions of chapter 132 and the provisions of this chapter, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this title pursuant to chapter 132, such provisions shall not be applicable to a reciprocal insurer formed under this chapter unless such provisions are expressly made applicable to captive insurance companies under this chapter.

(k) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under section 8.24(a) of Title 11A, or under section 8.24 of Title 11B.

(l) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third of the number of its members.

(m) With the commissioner's approval, a captive insurance company organized as a stock insurer may convert to a nonprofit corporation with one or more members by filing with the secretary of state an irrevocable election for such conversion, provided that:

(1) the irrevocable election shall certify that, at the time of the company's original organization and at all times thereafter, the company conducted its business in a manner not inconsistent with a nonprofit purpose; and

(2) at the time of its irrevocable election, the company shall file with both the commissioner and the secretary of state amended and restated articles of incorporation consistent with the provisions of this chapter and with Title 11B, duly authorized by the corporation.

(n) The following provisions of Title 11B shall not apply to captive insurance companies which are nonprofit corporations:

(1) subsection 2.02(c) (relating to the signing of articles of incorporation by directors);

(2) section 11.02, in the case of any merger in which a captive insurance company merges with and into a captive insurance company organized as a nonprofit corporation under Title 11B where the latter is the surviving corporation.

(o) In the case of a captive insurance company formed as a limited liability company, a reciprocal insurance company or mutual insurance company, any proxy executed by the members, subscribers, and policyholders of each shall be valid if executed and transmitted in compliance with section 7.22 of Title 11A.

### **Section 6007. Reports and statements**

(a) Captive insurance companies shall not be required to make any annual report except as provided in this chapter.

(b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure captive insurance companies or industrial insured captive insurance companies, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner requires, approves, or accepts the use of statutory accounting principles or other comprehensive basis of accounting, in each case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by subsection 3561(a) of this title, and each risk retention group shall comply with the requirements set forth in section 3569 of this title. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report. Subdivision 6002(c)(3) of this title shall apply to each report filed pursuant to this section, except that such subdivision shall not apply to reports filed by risk retention groups.

(c) Any pure 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 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", verified by oath of two of its executive officers.

### **Section 6008. Examinations and investigations**

(a) At least once in three years, and whenever the commissioner determines it to be prudent, 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 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 said 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.

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

(c) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner may, in the commissioner's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

### **Section 6009. Grounds and procedures for suspension or revocation of license**

(a) The license of a captive insurance company may be suspended or revoked by the commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section 6004 of this title;
- (3) Refusal or failure to submit an annual report, as required by this chapter, or any other report or statement required by law or by lawful order of the commissioner;
- (4) Failure to comply with the provisions of its own charter, bylaws or other organizational document;
- (5) Failure to submit to or pay the cost of examination or any legal obligation relative thereto, as required by this chapter;
- (6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (7) Failure otherwise to comply with the laws of this state.

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

### **Section 6010. Legal investments**

(a) Except as may be otherwise authorized by the commissioner, association captive insurance companies and risk retention groups shall comply with the investment requirements contained in sections 3461 through 3472, of this title, as applicable Section 3463a of this title shall apply to association captive insurance companies and risk retention groups except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in sections 3461-3472; provided, however, that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

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

### **Section 6011. Reinsurance**

(a) Any captive insurance company may provide reinsurance, comprised in subsection 3301(a) of this title, on risks ceded by any other insurer, and may provide reinsurance of annuity contracts as defined in section 3717 of this title that are granted by any other insurer.

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

(c) In addition to reinsurers authorized under the provisions of section 3634a of this title, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the commissioner. The commissioner may require any other documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgement, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) For all purposes of this chapter, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

### **Section 6012. Rating organizations; memberships**

No captive insurance company shall be required to join a rating organization.

### **Section 6013. Exemption from compulsory associations**

No captive insurance company, shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

### **Section 6014. Tax on premiums collected**

(a) Each captive insurance company shall pay to the commissioner of taxes, in the month of February of each year, a tax at the rate of 38 hundredths of one percent on the first 20 million dollars and 285 thousandths of one percent on the next 20 million dollars and 19 hundredths of one percent on the next 20 million dollars and 72 thousandths of one percent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders; provided, however, that no tax shall be due or payable as to considerations received for annuity contracts.

(b) Each captive insurance company shall pay to the commissioner of taxes in the month of February of each year a tax at the rate of 214 thousandths of one percent on the first 20 million dollars of assumed reinsurance premium, and 143 thousandths of one percent on the next 20 million dollars and 48 thousandths of one percent on the next 20 million dollars and 24 thousandths of one percent of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (a) of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if such transaction is part of a plan to discontinue the operations of such other insurer, and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

(c) The annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) of this section shall be \$7,500.00 and the annual maximum aggregate tax shall be \$200,000.00. The maximum aggregate tax to be paid by a sponsored captive insurance company shall apply to each protected cell only and not to the sponsored captive insurance company as a whole. If a captive insurance company is a special purpose financial captive organized and licensed under subchapter 4 of this chapter and it such captive insurance company is subject to subsection (e) of this section as a captive insurance company under common ownership and control with one or more other captive insurance companies (collectively, the "consolidated group"), the premium tax calculated with respect to the consolidated group under subsections (a) and (b) of this section shall be allocated to each member of the consolidated group in the same proportion that the premium allocable to such member bears to the total premium of all members. The consolidated group shall pay an aggregate premium tax equal to the greater of the sum of the premium tax allocated to the members and \$7,500.00; provided:

(1) If the total of premium tax allocated to all members of a consolidated group that are special purpose financial captives exceeds \$200,000.00, the total premium tax allocated to such members shall be \$200,000.00; and

(2) If the total of premium tax allocated to all members of the consolidated group that are not special purpose financial captive insurance companies exceeds \$200,000.00, the total of premium tax allocated to such members shall be \$200,000.00.

(d) A captive insurance company failing to make returns as required by chapter 211 of Title 32 or failing to pay within the time required all taxes assessed by this section, shall be subject to the provisions of sections 5868, 5869, 5873 and 5875 of Title 32.

(e) Subject to the provisions of subsection (c) of this section, two or more captive insurance companies under common ownership and control shall be taxed, as though they were a single captive insurance company.

(f) For the purposes of this section:

(1) common ownership and control shall mean ownership and control of two or more captive insurance companies by the same person or group of persons.

(2) ownership and control shall mean:

(A) in the case of a stock corporation, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of the corporation.

(B) in the case of a mutual or nonprofit corporation, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of such corporation.

(C) in the case of a limited liability company, the direct or indirect ownership of 80 percent or more of the membership interests in the limited liability company.

(D) in the case of a sponsored captive insurance company, for purposes of this section a protected cell shall be treated as a separate captive insurance company owned and controlled by the protected cell's participant, but only if:

(i) the participant is the only participant with respect to such protected cell; and

(ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.

(g) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

(h) Annually, 11 percent of the premium tax revenues collected pursuant to this section shall be transferred to the department of banking, insurance, securities, and health care administration for the regulation of captive insurance companies under this chapter.

(i) Repealed.

(j) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

(k) A captive insurance company first licensed under this chapter on or after May 27, 2009 and on or before December 31, 2010, shall receive a nonrefundable credit of \$7,500.00 applied against the aggregate taxes owed for the first taxable year for which the company has liability under this section.

### **Section 6015. Rules and regulations**

The commissioner may establish and from time to time amend such rules relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this chapter.

### **Section 6016. Laws applicable**

No provisions of this title, other than those contained in this chapter or contained in specific references contained in this chapter, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to the provisions of chapter 142 of this title in addition to the applicable provisions of this chapter.

### **Section 6017. Captive insurance regulatory and supervision fund**

(a)(1) There is hereby created a fund to be known as the captive insurance regulatory and supervision fund for the purpose of providing the financial means for the commissioner of banking, insurance, securities, and health care administration to administer this chapter, chapter 142, and chapter 142A of this title and for reasonable expenses incurred in promoting the captive insurance industry in Vermont. The transfer of 11 percent of the premium tax under subsection 6014(h) of this title, and all fees and assessments received by the department pursuant to the administration of these chapters shall be credited to this fund. Of this amount, not more than two percent of the premium tax under Section 6014 may be transferred to the agency of commerce and community development, with approval of the secretary of administration, for promotional expenses. All fees received by the department from reinsurers who assume risk solely from captive insurance companies and are subject to the provisions of subsections 3634a(a) through (f) of this title, shall be deposited into the captive insurance regulatory and supervision fund. All fines and administrative penalties, however, shall be deposited directly into the general fund.

(2) All payments from the captive insurance regulatory and supervision fund for the maintenance of staff and associated expenses, including contractual services as necessary, shall be disbursed from the state treasury only upon warrants issued by the commissioner of finance and management, after receipt of proper documentation regarding services rendered and expenses incurred.

(b) At the end of each fiscal year, that portion of the balance in the captive insurance regulatory and supervision fund shall be transferred to the general fund.

(c) The commissioner of finance and management may anticipate receipts to the captive insurance regulatory and supervision fund and issue warrants based thereon.

### **Section 6018. Delinquency**

Except as otherwise provided in this chapter, the terms and conditions set forth in chapter 145 of this title, shall apply

in full to captive insurance companies formed or licensed under this chapter.

### **Section 6019. Rules for controlled unaffiliated business**

The commissioner may adopt rules establishing standards to ensure that a parent or its affiliated company, or an industrial insured or its affiliated company, is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company or an industrial insured captive insurance company, respectively; provided, however, that, until such time as rules under this section are adopted, the commissioner may approve the coverage of such risks by a pure captive insurance company.

### **Section 6020. Conversion to or merger with reciprocal insurer**

(a) An association captive insurance company, risk retention group, or industrial insured captive insurance company formed as a stock or mutual corporation, or other insurer approved by the commissioner may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.

(b) Any plan for such conversion or merger shall provide a fair and equitable plan for purchasing, retiring, or otherwise extinguishing the interests of the stockholders and policyholders of a stock insurer, and the members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members, or policyholders.

(c) In the case of a conversion authorized under subsection (a) of this section:

(1) such conversion shall be accomplished under such reasonable plan and procedure as may be approved by the commissioner; provided, however, that the commissioner shall not approve any such plan of conversion unless such plan:

(A) satisfies the provisions of subsection (b) of this section;

(B) provides for a hearing, of which notice is given or to be given to the captive insurance company, its directors, officers, and policyholders, and, in the case of a stock insurer, its stockholders, and in the case of a mutual insurer, its members, all of which persons shall be entitled to attend and appear at such hearing; provided, however, that if notice of a hearing is given and no director, officer, policyholder, member, or stockholder requests a hearing, the commissioner may cancel such hearing;

(C) provides a fair and equitable plan for the conversion of stockholder, member, or policyholder interests into subscriber interests in the resulting reciprocal insurer, substantially proportionate to the corresponding interests in the stock or mutual insurer; provided, however, that this requirement shall not preclude the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and

(D) is approved:

(i) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; and

(ii) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting thereof at which a quorum is present;

(2) the commissioner shall approve such plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subdivision 6006(d)(2) of this title;

(3) if the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue such amended certificate of authority to the company's attorney-in-fact;

(4) upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective; and

(5) upon the effectiveness of such conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the secretary of state of such conversion.

(d) A merger authorized under subsection (a) of this section shall be accomplished substantially in accordance with the procedures set forth in sections 3424, 3426 and 3431 of this title, except that, solely for purposes of such merger:

(1) the plan of merger shall satisfy the provisions of subsection (b) of this section;

(2) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;

(3) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(4) if a subscribers' advisory committee does not have a president or secretary, the officers of such committee having substantially equivalent duties shall be deemed the president or secretary of such committee;

(5) the commissioner may, upon request of an insurer party to a merger authorized under subsection (a) of this section, waive the requirement of subdivision (6) of section 3424 of this title;

(6) subdivision (7) of section 3424 of this title shall not apply to such merger;

(7) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subdivision 6006(d)(2) of this title. If the commissioner approves the articles of merger, the commissioner shall indorse the commissioner's approval thereon and the surviving insurer shall present the same to the secretary of state at the secretary of state's office;

(8) notwithstanding section 6004 of this title, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section; provided, however, that there shall be no more than one authorized insurance company surviving such merger; and

(9) an alien insurer may be a party to a merger authorized under subsection (a) of this section; provided, that the requirements for a merger between a domestic and a foreign insurer under section 3431 of this title shall apply to a merger between a domestic and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under section 3431 and such other jurisdictions shall be the equivalent of a state for purposes of section 3431.

(e) A conversion or merger under this section shall have all of the effects set forth in subdivisions (3), (4) and (5) of section 3430 of this title, to the extent such effects are not inconsistent with the provisions of this chapter.

## **8 V.S.A. §§6021-6023 are recodified as 8 V.S.A. §§6034-6036.**

### **Subchapter 2. Sponsored Captive Insurance Companies**

#### **Section 6031. Formation**

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

(b) A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

#### **Section 6032. Definitions**

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

(1) "Participant" means an entity as defined in section 6036 of this title, and any affiliates thereof, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to such participant's pro rata share of the assets of one or more protected cells identified in such participant contract.

(2) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

(3) "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts.

(4) "Sponsor" means any entity that meets the requirements of section 6035 of this title and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(5) "Sponsored captive insurance company" means any captive insurance company:

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

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

(C) that insures the risks only of its participants through separate participant contracts; and

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

### **Section 6033. Supplemental application materials**

In addition to the information required by subdivisions 6002(c)(1) and (2) of this title, each applicant-sponsored captive insurance company shall file with the commissioner the following:

- (1) materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner, and how it will report such experience to the commissioner;
  - (2) a statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for inspection or examination by the commissioner or the commissioner's designated agent;
  - (3) all contracts or sample contracts between the sponsored captive insurance company and any participants;
- and
- (4) evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

### **Section 6034. Protected cells**

A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

- (1) the shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors, provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;
- (2) each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants, and such other factors as may be provided in the participant contract or required by the commissioner;
- (3) the assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
- (4) no sale, exchange, transfer of assets, dividend or distribution may be made by such sponsored captive insurance company between or among any of its protected cells without the consent of such protected cells;
- (5) no sale, exchange, transfer of assets, dividend or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell;
- (6) all attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities may be made by a sponsored captive insurance company between its general account and any protected cell or between any protected cells. The sponsored captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the sponsored captive insurance company is a party, including any payments made by or due to be made to the sponsored captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell;
- (7) in connection with the conservation, rehabilitation, or liquidation of a sponsored captive insurance company, the assets and liabilities of a protected cell shall, to the extent the commissioner determines they are separable, at all times be kept separate from, and shall not be commingled with, those of other protected cells and the sponsored captive insurance company;
- (8) the "general account" of a sponsored captive insurance company shall mean all assets and liabilities of the sponsored captive insurance company not attributable to a protected cell;
- (9) each sponsored captive insurance company shall annually file with the commissioner such financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- (10) each sponsored captive insurance company shall notify the commissioner in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;
- (11) no participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the business plan requiring the commissioner's prior written approval;

(12) the business written by a sponsored captive, with respect to each cell, shall be:

- (A) fronted by an insurance company licensed under the laws of any state;
- (B) reinsured by a reinsurer authorized or approved by the state of Vermont; or
- (C) secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be issued or confirmed by a bank approved by the commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the commissioner;

(13) notwithstanding the provisions of chapter 145 of this title or other laws of this state, and in addition to the provisions of section 6038 of this chapter, in the event of an insolvency of a sponsored captive insurance company where the commissioner determines that one or more protected cells remain solvent, the commissioner may separate such cells from the sponsored captive insurance company, and may allow, on application of the sponsor, for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies with a sponsor or sponsors, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the commissioner deems acceptable.

### **Section 6035. Qualification of sponsors**

A sponsor of a sponsored captive insurance company shall be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this chapter, a broker-dealer registered with the department pursuant to chapter 150 of Title 9, a financial institution as defined under subdivision 11101(32) of this title, a financial institution holding company as defined under subdivision 11101(33) of this title, including any affiliate or subsidiary of such financial institution holding company, or any other person approved by the commissioner in the exercise of his or her discretion, after finding that the approval of a person as a sponsor is not consistent with the purposes of this chapter. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurance company.

### **Section 6036. Participants in sponsored captive insurance companies**

- (a) Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter.
- (b) A sponsor may be a participant in a sponsored captive insurance company.
- (c) A participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof.
- (d) A participant shall insure only its own risks through a sponsored captive insurance company.

### **Section 6037. Investments by sponsored captive insurance companies**

Notwithstanding the provisions of section 6034 of this title, the assets of two or more protected cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements contained in sections 3461 through 3472 of this title, as applicable; provided, however, that compliance with such investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section 6011 of this title or to the extent otherwise deemed reasonable and appropriate by the commissioner. Section 3463a. of this title shall apply to sponsored captive insurance companies except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this title, the commissioner may approve the use of alternative reliable methods of valuation and rating.

### **Section 6038. Delinquency of sponsored captive insurance companies**

- (a) Except as otherwise provided in this section, the provisions of chapter 145 of this title shall apply in full to a sponsored captive insurance company.
- (b) Upon any order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall manage the assets and liabilities of the sponsored captive insurance company pursuant to the provisions

of this subchapter.

(c) Notwithstanding the provisions of chapter 145 of this title:

(1) the assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) a sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

### **Subchapter 3. Branch captive insurance companies**

#### **Section 6041. Establishment of a branch captive**

(a) A branch captive may be established in this state in accordance with the provisions of this chapter to write in this state only insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provision of the Employee Retirement Income Security Act of 1974, as amended. In addition to the general provisions of this chapter, the provisions of this subchapter shall apply to branch captive insurance companies.

(b) No branch captive insurance company shall do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.

#### **Section 6042. Definitions**

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

(1) "Alien captive insurance company" means any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction.

(2) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(3) "Branch captive insurance company" means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(4) "Branch operations" means any business operations of a branch captive insurance company in this state.

#### **Section 6043. Security required**

(a) No branch captive insurance company shall be issued a license unless it shall possess and thereafter maintain, as security for the payment of liabilities attributable to the branch operations:

(1) an amount equal to the amount set forth in subdivision 6004(a)(1) of this title as the minimum capital requirement for a pure captive; and in addition

(2) reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the commissioner may permit a branch captive insurance company to credit against any such reserve requirement any security for loss reserves that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, in either case so long as such security remains posted.

(b) Subject to the prior approval of the commission, the amounts required in subsection (a) of this section may be held in the form of:

(1) a trust formed under a trust agreement and funded by assets acceptable to the commissioner;

(2) an irrevocable letter of credit issued or confirmed by a bank approved by the commissioner;

(3) with respect to the amounts required in subdivision (a)(1) only, cash on deposit with the commissioner; or

(4) any combination thereof.

#### **Section 6044. Certificate of general good**

In the case of a captive insurance company licensed as a branch captive, the alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the state. The alien captive insurance company may register to do business in this state after the

commissioner's certificate is issued.

### **Section 6045. Branch captive reports**

Prior to March 1 of each year, or with the approval of the commissioner within 60 days after its fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

### **Section 6046. Examination of branch captives**

(a) The examination of a branch captive insurance company pursuant to section 6008 of this title shall be of branch business and branch operations only, so long as the branch captive insurance company provides annually to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, the alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

### **Section 6047. Taxation of branch captives**

In the case of a branch captive insurance company, the tax provided for in section 6014 of this title shall apply only to the branch business of such company.

## **Subchapter 4. Special Purpose Financial Captive Insurance Company**

### **Section 6048a. Applicable law**

(a) A special purpose financial captive insurance company shall be subject to the provisions of this subchapter and to the provisions of subchapter 1 of this chapter. In the event of any conflict between the provisions of this subchapter and the provisions of subchapter 1 of this chapter, the provisions of this subchapter shall control.

(b) A special purpose financial captive insurance company shall be subject to all applicable rules adopted pursuant to section 6015 of this chapter that are in effect as of the effective date of this subchapter and that are adopted after the effective date of this subchapter.

(c) The commissioner may, by order, exempt a special purpose financial captive insurance company from any provision of this chapter or from any rule adopted pursuant to section 6015 of this chapter if the commissioner determines such provision to be inappropriate based on the special purpose financial captive insurance company's plan of operation.

### **Section 6048b. Existing licenses**

Except as otherwise determined by the commissioner, a captive insurance company that has been licensed by the commissioner pursuant to this chapter as of the effective date of this subchapter and that is engaged in or that will be engaged in an insurance securitization shall be subject to the provisions of this subchapter as a special purpose financial captive insurance company. The commissioner may require such captive insurance company to take any action that the commissioner determines is reasonably necessary to bring such captive insurance company into compliance with the provisions of this subchapter. The commissioner may issue an order described in section 6048(b) with respect to such captive insurance company.

### **Section 6048c. Definitions**

For purposes of this subchapter:

(1) "Ceding insurer" means an insurance company approved by the commissioner and licensed or otherwise authorized to transact the business of insurance or reinsurance in its state or country of domicile, which cedes risk to a special purpose financial captive insurance company pursuant to a reinsurance contract.

(2) “Insolvency” and “insolvent” for the purpose of applying the provisions of chapter 145 of this title to a special purpose financial captive insurance company, mean:

(A) That the special purpose financial captive insurance company is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute; or

(B) The special purpose financial captive insurance company has failed to meet all criteria and conditions for solvency of the special purpose financial captive insurance company established by the commissioner by rule or order.

(3) “Insurance securitization” and “securitization” mean a transaction or a group of related transactions, which may include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the special purpose financial captive insurance company’s obligations under a reinsurance contract with a ceding insurer and by which:

(A) Proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of securities by the special purpose financial captive insurance company or any other person; or

(B) A person provides one or more letters of credit or other assets for the benefit of the special purpose financial captive insurance company, which the commissioner authorizes the special purpose financial captive insurance company to treat as admitted assets for purposes of the special purpose financial captive insurance company’s annual report; where all or any part of such proceeds, letters of credit, or assets, as applicable, are used to fund the special purpose financial captive insurance company’s obligations under a reinsurance contract with a ceding insurer. The terms “insurance securitization” and “securitization” do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the special purpose financial captive insurance company’s capital and surplus requirements under section 6048g of this chapter.

(4) “Management” means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the special purpose financial captive insurance company, including but not limited to officers or other agents elected or appointed to act on behalf of the special purpose financial captive insurance company.

(5) “Organizational document” means:

(A) In the case of a special purpose financial captive insurance company formed as a stock corporation, the special purpose financial captive insurance company’s articles of incorporation and bylaws; and

(B) In the case of a special purpose financial captive insurance company formed as a limited liability company, the special purpose financial captive insurance company’s articles of organization and operating agreement.

(6) “Security” shall have the same meaning as defined in 9 V.S.A. Section 5102(28), and shall also include any form of debt obligation, equity, surplus certificate, surplus note, funding agreement, derivative, or other financial instrument that the commissioner designates, by rule or order, as a “security” for purposes of this subchapter.

(7) “Special purpose financial captive insurance company” means a captive insurance company that has received a license from the commissioner to operate as a special purpose financial captive insurance company pursuant to this subchapter.

(8) “Reinsurance contract” means a contract between a special purpose financial captive insurance company and a ceding insurer pursuant to which the special purpose financial captive insurance company agrees to provide reinsurance to the ceding insurer for risks associated with the ceding insurer’s insurance or reinsurance business.

(9) “Special purpose financial captive insurance company security” means:

(A) A security issued by a special purpose financial captive insurance company; or

(B) A security issued by a third party, the proceeds of which are obtained directly or indirectly by a special purpose financial captive insurance company.

(10) “Surplus note” means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the National Association of Insurance Commissioners Statement of Statutory Accounting Principals No. 41, as amended from time to time and as modified or supplemented by rule or order of the commissioner.

### **Section 6048d. Licensing; authority**

(a) A special purpose financial captive insurance company may reinsure the risks of a ceding insurer only. A special purpose financial captive insurance company may purchase reinsurance to cede the risks assumed under a reinsurance contract, subject to the prior approval of the commissioner.

(b) In conjunction with the issuance of a license to a special purpose financial captive insurance company, the commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the special purpose financial captive insurance company that are deemed appropriate by the commissioner and that are not inconsistent with the provisions of this chapter. Except as provided in sections 6048l and 6048m of this subchapter, a license issued to a special purpose financial captive insurance company pursuant to

this chapter and any order issued to a special purpose financial captive insurance company pursuant to this subsection shall not be revoked, suspended, amended, or modified other than as follows:

(1) The special purpose financial captive insurance company consents to such revocation, suspension, amendment, or modification; or

(2) The commissioner make a showing of clear and convincing evidence demonstrating that such revocation, suspension, amendment, or modification is necessary to avoid irreparable harm to the special purpose financial captive insurance company or to the ceding insurer.

(c) To qualify for a license, a special purpose financial captive insurance company shall be subject, in addition to the requirements of subsection 6002(c) of this chapter, to the following:

(1) The special purpose financial captive insurance company's plan of operation shall include:

(A) a complete description of all significant transactions, including reinsurance, reinsurance security arrangements, securitizations, related transactions or arrangements, and to the extent not included in the transactions listed in this subdivision (A), a complete description of all parties other than the special purpose financial captive insurance company and the ceding insurer that will be involved in the issuance of special purpose financial captive insurance company securities and a description of any pledge, hypothecation, or grant of a security interest in any of the special purpose financial captive insurance company's assets and in any stock or limited liability company interest in the special purpose financial captive insurance company;

(B) the source and form of the special purpose financial captive insurance company's capital and surplus;

(C) the proposed investment policy of the special purpose financial captive insurance company;

(D) a description of the underwriting, reporting, and claims payment methods by which losses covered by the reinsurance contract are reported, accounted for, and settled;

(E) pro forma balance sheets and income statements illustrating one or more adverse case scenarios, as determined under criteria required by the commissioner, for the performance of the special purpose financial captive insurance company under all reinsurance contracts; and

(F) the proposed rate and method for discounting reserves, if the special purpose financial captive insurance company is requesting authority to discount its reserves.

(2) The special purpose financial captive insurance company shall submit an affidavit of its president, a vice-president, the treasurer, or the chief financial officer that includes the following statements, to the best of such person's knowledge and belief after reasonable inquiry:

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

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

(C) the reinsurance contract and any arrangement for securing the special purpose financial captive insurance company's obligations under such reinsurance contract, including but not limited to any agreements or other documentation to implement such arrangement, comply with the provisions of this subchapter.

(3) The application shall include copies of all agreements and documentation described in subdivision (c)(1) unless otherwise approved by the commissioner and any other statements or documents required by the commissioner to evaluate the special purpose financial captive insurance company's application for licensure.

(4) The application shall include an opinion of qualified legal counsel, in a form acceptable to the commissioner, that the offer and sale of any special purpose financial captive insurance company securities complies with all applicable registration requirements or applicable exemptions from or exceptions to such requirements of the federal securities laws and that the offer and sale of securities by the special purpose financial captive insurance company itself comply with all registration requirements or applicable exemptions from or exceptions to such requirements of the securities laws of this state. Such opinions shall not be required as part of the application if the special purpose financial captive insurance company includes a specific statement in its plan of operation that such opinions will be provided to the commissioner in advance of the offer or sale of any special purpose financial captive insurance company securities.

(d) The commissioner may grant a license, that shall be valid through the next April 1 following the date of initial issuance and may be renewed annually thereafter, authorizing the special purpose financial captive insurance company to transact reinsurance business as a special purpose financial captive insurance company in this state upon finding that:

(1) The proposed plan of operation provides for a reasonable and expected successful operation;

(2) The terms of the reinsurance contract and related transactions comply with this subchapter;

(3) The proposed plan of operation is not hazardous to any ceding insurer; and

(4) The insurance regulator of the state of domicile of each ceding insurer has notified the commissioner in writing or otherwise has provided assurance satisfactory to the commissioner that it has approved or has not disapproved the transaction, provided that the commissioner shall not be precluded from issuing a license to a special purpose financial captive insurance company in the event that the insurance regulatory of the state of domicile of a ceding insurer has not responded with respect to all or any part of the transaction.

(e) The special purpose financial captive insurance company shall provide the commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 30 days after the closing on the transactions for such securitization.

(f) Subdivision 6002(c)(3) of this chapter shall apply to all information submitted pursuant to subsections (c) and (e) of this section and to any order issued to the special purpose financial captive insurance company pursuant to subsection (b) of this section.

### **Section 6048e. Changes in plan of operation; voluntary dissolution or cessation of business**

(a) Any change in the special purpose financial captive insurance company's plan of operation shall require prior approval of the commissioner.

(b) Any transaction or series of transactions shall be subject to the prior approval of the commissioner if such transaction or series of transactions:

(1) Is undertaken to dissolve a special purpose financial captive insurance company; or

(2) Results in the termination of all or any part of a special purpose financial captive insurance company's business; but no prior approval of the commissioner shall be required for any transaction or series of transactions described in this subdivision (2) if such transaction or series of transactions is done in accordance with a document or agreement described in the special purpose financial captive insurance company's plan of operation and if the commissioner is notified in advance of such transaction or series of transactions.

(c) A special purpose financial captive insurance company shall notify the commissioner in advance of any change in the legal ownership of any security issued by the special purpose financial captive insurance company.

### **Section 6048f. Formation**

(a) A special purpose financial captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by its stockholders, or it may be organized as a manager-managed limited liability company.

(b) A special purpose financial captive insurance company's organizational documents shall limit the special purpose financial captive insurance company's authority to transact the business of insurance or reinsurance to those activities that the special purpose financial captive insurance company conducts to accomplish its purposes as expressed in this subchapter.

### **Section 6048g. Capital and Surplus**

A special purpose financial captive insurance company shall not be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of not less than \$250,000.00

### **Section 6048h. Securities**

(a) A special purpose financial captive insurance company may:

(1) subject to the prior approval of the commissioner, account for the proceeds of a surplus note issued by the special purpose financial captive insurance company as surplus; and

(2) submit for prior approval of the commissioner periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the special purpose financial captive insurance company, provided that the commissioner shall not approve such payment if the commissioner determines that such payment would jeopardize the ability of the special purpose financial captive insurance company or any other person to fulfill their respective obligations pursuant to the special purpose financial captive insurance company securitization agreements, the reinsurance contract, or any related transaction. In lieu of approval of periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the special purpose financial captive insurance company, the commissioner may approve a formula or plan, which shall be included in the special purpose financial captive insurance company's plan of operation as amended from time to time, for payment of interest, principal, or both with respect to such surplus notes and debt obligations.

(b) In addition to the provisions of section 6005 of this chapter, no dividend or distribution may be declared or paid by a

special purpose financial captive insurance company if such dividend or distribution would jeopardize the ability of the special purpose financial captive insurance company or any other person to fulfill the company's or other person's respective obligations pursuant to the special purpose financial captive insurance company securitization agreements, the reinsurance contract, or any related transaction.

(c) A special purpose financial captive insurance company security shall not be subject to regulation as an insurance or reinsurance contract. An investor in such a security or a holder of such a security shall not be considered to be transacting the business of insurance in this state solely by reason of having an interest in the security. The underwriter's placement or selling agents and their partners, commissioners, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization by a special purpose financial captive insurance company shall not be considered to be insurance producers or brokers or to be conducting business as an insurance or reinsurance company or as an insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of their underwriting activities in connection with such securitization.

### **Section 6048i. Permitted reinsurance**

(a) A special purpose financial captive insurance company may reinsure only the risks of a ceding insurer, pursuant to a reinsurance contract. A special purpose financial captive insurance company may not issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than such reinsurance contract.

(b) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company may not assume or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

(1) Proceeds from a special purpose financial captive insurance company securitization or letters of credit or other assets described in subdivision 6048c(3) of this chapter;

(2) Premium and other amounts payable by the ceding insurer to the special purpose financial captive insurance company pursuant to the reinsurance contract; and

(3) Any return on investment of the items in subdivision (1) and (2) of this subsection.

(c) The reinsurance contract shall contain all provisions reasonably required or approved by the commissioner, which requirements shall take into account the laws applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under such reinsurance contract.

(d) A special purpose financial captive insurance company may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner.

(e) A special purpose financial captive insurance company may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance securitization, and this subchapter, provided such contracts and activities are included in the special purpose financial captive insurance company's plan of operation or are otherwise approved in advance by the commissioner. Such contracts and activities may include but are not limited to: entering into reinsurance contracts; issuing special purpose financial captive insurance company securities; complying with the terms of these contracts or securities; entering into trust, guaranteed investment contract, swap, or other derivative, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, or retrocession; and other agreements necessary or incidental to effect an insurance securitization in compliance with this subchapter and the special purpose financial captive insurance company's plan of operation.

(f) Unless otherwise approved in advance by the commissioner, a reinsurance contract shall not contain any provision for payment by the special purpose financial captive insurance company in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

(g) A special purpose financial captive insurance company shall notify the commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the special purpose financial captive insurance company to secure any obligation of the special purpose financial captive insurance company.

### **Section 6048j. Disposition of assets; investments**

(a) The assets of a special purpose financial captive insurance company shall be preserved and administered by or on behalf of the special purpose financial captive insurance company to satisfy the liabilities and obligations of the special purpose financial captive insurance company incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the special purpose financial captive insurance company securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall

include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the special purpose financial captive insurance company's obligations to the ceding insurer.

(c) A special purpose financial captive insurance company shall not be subject to any restriction on investments other than the following:

(1) A special purpose financial captive insurance company shall not make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the commissioner; and

(2) The commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the special purpose financial captive insurance company unless the investment is otherwise approved in its plan of operation or in an order issued to the special purpose financial captive insurance company pursuant to subsection 6048d(b) of this chapter, as either is amended from time to time.

### **Section 6048k. Annual report; books and records**

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

(1) The commissioner shall, but rule or order, establish the form and content of the annual report to be filed by a special purpose financial captive insurance company; and

(2) A special purpose financial captive insurance company shall report using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of generally accepted accounting principles or other comprehensive basis of accounting, in each case with any appropriate or necessary modifications or adaptations required or approved or accepted by the commissioner and as supplemented by additional information required by the commissioner.

(b) A special purpose financial captive insurance company may make written application to file its annual report on a fiscal-year basis. If an alternative reporting date is granted, the commissioner shall establish the due date and content of any filing required by the special purpose financial captive insurance company in addition to its annual report.

(c) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall maintain its books, records, documents, accounts, vouchers and agreements in this state. A special purpose financial captive insurance company shall make its books, records, documents, accounts, vouchers and agreements available for inspection by the commissioner at any time. A special purpose financial captive insurance company shall keep its books and records in such manner that its financial condition, affairs, and operations can be readily ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this chapter.

(d) Unless otherwise approved in advance by the commissioner, all original books, records, documents, accounts, vouchers, and agreements shall be preserved and kept available in this state for the purpose of examination and inspection and until such time as the commissioner approves the destruction or other disposition of such books, records, documents, accounts, vouchers, and agreements. If the commissioner approves the keeping of the items listed in this subsection outside this state, the special purpose financial captive insurance company shall maintain in this state a complete and true copy of each such original. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on file, or stored and reproduced electronically.

### **Section 6048l. License suspension and revocation**

(a) The commissioner shall notify a special purpose financial captive insurance company not less than 30 days before suspending or revoking its license pursuant to section 6009 of this chapter, which notice shall state the basis for such suspension or revocation. The special purpose financial captive insurance company shall be afforded the opportunity for a hearing pursuant to the provisions of the Vermont Administrative Procedure Act, 3 V.S.A. chapter 25.

(b) Notwithstanding subsection (a) of this section and 3 V.S.A. Section 814(c), no prior notice or hearing shall be required if the grounds for suspension or revocation of a special purpose financial captive insurance company's license pursuant to section 6009 of this chapter relate primarily to the financial condition or soundness of the special purpose financial captive insurance company or to a deficiency in its assets.

(c) For purposes of this subchapter, reference to section 6004 in subdivision 6009(a)(2) shall be construed also as a reference to section 6048g.

### **Section 6048m. Delinquency**

(a) Except as otherwise provided in this section, the provisions of chapter 145 of this title shall apply in full to a special purpose financial captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance

company pursuant to the provisions of this subchapter.

(c) Amounts recoverable by the receiver of a special purpose financial captive insurance company under a reinsurance contract shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding insurer, notwithstanding any provision in the contracts or other documentation governing the special purpose financial captive insurance company securitization.

(d) Notwithstanding the provisions of chapter 145 of this title or any other law of this state:

(1) An application or petition or a temporary restraining order or injunction issued pursuant to the provisions of chapter 145 of this title with respect to a ceding insurer does not prohibit the transaction of business by a special purpose financial captive insurance company, including any payment by a special purpose financial captive insurance company made with respect to a special purpose financial captive insurance company security, or any action or proceeding against a special purpose financial captive insurance company or its assets;

(2) The commencement of a summary proceeding with respect to a special purpose financial captive insurance company and any other issued by the court in such summary proceeding shall not prohibit payments by a special purpose financial captive insurance company and shall not prohibit the special purpose financial captive insurance company from taking any action required to make such payments, provided such payments are made:

(A) pursuant to a special purpose financial captive insurance company security or reinsurance contract; and

(B) consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to subsection 6048d(b), as either is amended from time to time.

(3) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding insurer to a special purpose financial captive insurance company of money or other property made pursuant to a reinsurance contract; and

(4) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property:

(A) made to a ceding insurer pursuant to a reinsurance contract or made to or for the benefit of any holder of a special purpose financial captive insurance company security with respect to the special purpose financial captive insurance company security; and

(B) made consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to subsection 6048d(b), as either is amended from time to time.

(e) With the exception of the fulfillment of the obligations under a reinsurance contract and notwithstanding another provision of this subchapter or other laws of this state, the assets of a special purpose financial captive insurance company, including assets held in trust, on a funds-withheld basis, or in any other arrangement to secure the special purpose financial captive insurance company's obligations under a reinsurance contract, shall not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer pursuant to the provisions of this subchapter for any purpose including, without limitation, distribution to creditors of the ceding insurer.

### **Section 6048n. Sponsored captives**

In addition to the provisions of sections 6048a-6048m of this subchapter, the provisions of this section shall apply to any sponsored captive insurance company licensed as a special purpose financial captive insurance company pursuant to this subchapter.

(1) A sponsored captive insurance company may be licensed as a special purpose financial captive insurance company pursuant to the provisions of this subchapter.

(2) The special purpose financial captive insurance company shall be subject to the provisions of subchapter 2 of this chapter. In the event of any conflict between the provisions of this subchapter and the provisions of subchapter 2 of this chapter, the provisions of this subchapter shall control.

(3) Unless otherwise approved in advance by the commissioner, a participant in a special purpose financial captive insurance company shall be a ceding insurer. Any change in a participant shall be subject to prior approval by the commissioner.

(4) The special purpose financial captive insurance company on behalf of a protected cell shall be entitled to assert the same claims and defenses in actions in law or equity as if the protected cell were a corporation established under Title 11A of the Vermont Statutes Annotated, including, but not limited to, claims and defenses in actions at law or equity alleging alter ego, corporate veil piercing, offset, substantive consolidation, equitable subordination, or recoupment. In connection with conservation, rehabilitation, or liquidation or a special purpose financial captive insurance company or one or more of its protected cells, the assets and liabilities of a protected cell shall at all times be kept separate from, and shall not be commingled with, those of other protected cells and the special purpose financial

captive insurance company, and the assets of one protected cell shall not be used to satisfy the obligations or liabilities of another protected cell or the special purpose financial captive insurance company based on legal or equitable claims or defenses, including but not limited to alter ego, piercing the corporate veil, offset, substantive consolidation, equitable subordination, or recoupment, unless such claims or defenses would apply to such protected cell if it were a special purpose finance captive insurance company without separate cells.

(5) Notwithstanding subdivision 6034(l) of this chapter, the special purpose financial captive insurance company may issue securities of any person approved in advance by the commissioner.

(6) Notwithstanding section 6048g of this subchapter, the special purpose financial captive insurance company shall possess and thereafter maintain unimpaired paid-in capital and surplus of not less than \$500,000.00.

(7) The "general account" of a sponsored captive insurance company licensed as a special purpose financial captive insurance company shall mean all assets and liabilities of the sponsored captive insurance company not attributable to a protected cell.

(8)(A) Any security issued by a special purpose financial captive insurance company with respect to a protected cell and any other contract or obligation of the special purpose financial captive insurance company with respect to a protected cell shall include the designation of such protected cell and shall include the following statement, or such other statement as may be required by the commissioner:

(i) In the case of a security: "The holder of this security shall have no right or recourse against the special purpose financial captive insurance company and its assets other than against assets properly attributable to the designated protected cell and the special purpose financial captive insurance company's general account, to the extent permitted by Vermont law."

(ii) In the case of a contract or obligation: "The counter party to this contract or obligation shall have no right or recourse against the special purpose financial captive insurance company and its assets other than against assets properly attributable to the designated protected cell and the special purpose financial captive insurance company's general account, to the extent permitted by Vermont law."

(B) Notwithstanding the requirements of this subdivision (8) and subject to the provisions of this chapter and other applicable law or regulation, the failure to include such disclosure, in whole or part, in such security, contract, or obligation with respect to a protected cell shall not serve as the sole basis for a creditor, ceding insurer, or any other person to have recourse against the general account of the special purpose financial captive insurance company in excess of the limitations provided for in subdivision (12)(E) of this subsection, or against the assets of any other protected cell.

(9) In addition to the provisions of section 6034 of this chapter, the special purpose financial captive insurance company shall be subject to the following with respect to its protected cells:

(A) The special purpose financial captive insurance company shall establish a protected cell only for the purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding insurer or two or more affiliated ceding insurers, with the intent of facilitating an insurance securitization. A separate protected cell shall be established with respect to each separate securitization transaction; and

(B) A sale, an exchange, or another transfer of assets may not be made by the special purpose financial captive between or among any of its protected cells without the prior approval of the commissioner.

(10) All attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities may be made by a special purpose financial captive insurance company between its general account and any protected cell or between any protected cells. The special purpose financial captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell and shall attribute the related insurance securitization transaction, including any securities issued by the special purpose financial captive insurance company as part of the insurance securitization, to such protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to such protected cell and the performance under such reinsurance contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the special purpose financial captive insurance company is a party, including any payments made by or due to be made to the special purpose financial captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract and the insurance securitization transaction that are attributed to such protected cell.

(11) For purposes of applying the provisions of chapter 145 of this title to a sponsored captive insurance company licensed as a special purpose financial captive insurance company, the definition of "insolvency" and "insolvent" in subdivision 6048c(2) shall be applied separately to each protected cell and to the special purpose financial captive insurance company's general account.

(12) In addition to the provisions of section 6048m of this chapter:

(A) Except as otherwise modified in this section, the terms and conditions set forth in chapter 145 of this title pertaining to administrative supervision of insurers and the rehabilitation, receiverships and liquidation of insurers apply in full to special purpose financial captive insurance companies or any of the special purpose financial captive insurance company's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the special purpose financial captive insurance company or another protected cell that is not otherwise insolvent.

(B) Notwithstanding the provisions of chapter 145 of this title, and without causing or otherwise effecting the conservation or rehabilitation of an otherwise solvent protected cell of a special purpose financial captive insurance company and subject to the provisions of subdivision (G)(v) of this subdivision (12), the commissioner may apply by petition to the superior court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate a special purpose financial captive insurance company domiciled in this state on one or more of the following grounds:

(i) embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurance company intended to be used to pay amounts owed to the ceding insurer or the holders of special purpose financial captive insurance company securities; or

(ii) the special purpose financial captive insurance company is insolvent; or

(iii) the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurance company securities attributable to each particular protected cell requests or consents to conservation, rehabilitation, or liquidation pursuant to the provisions of this subchapter.

(C) Notwithstanding the provisions of chapter 145 of this title, the commissioner may apply by petition to the superior court for an order authorizing the commissioner to conserve, rehabilitate, or liquidate one or more of a special purpose financial captive insurance company's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the special purpose financial captive insurance company generally or another of its protected cells, on one or more of the following grounds:

(i) embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurance company attributable to the affected protected cell or cells intended to be used to pay amounts owed to the ceding insurer or the holders of special purpose financial captive insurance company securities of the affected protected cell or cells; or

(ii) the affected protected cell is insolvent; or

(iii) the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurance company securities attributable to that particular protected cell request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this subchapter.

(D) Except where consent is given as described in subdivisions (B)(iii) and (C)(iii) of this subdivision (12), the court may not grant relief provided by subdivision (B) or (C) of this subdivision (12) unless, after notice and a hearing, the commissioner, who shall have the burden of proof, establishes by clear and convincing evidence that relief must be granted. The court's order may be made in respect of one or more protected cells by name, rather than the special purpose financial captive insurance company generally.

(E) Notwithstanding another provision in this title, regulations adopted under this title, or another applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of a special purpose financial captive insurance company, or one or more of the special purpose financial captive insurance company's protected cells, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company or the applicable protected cell pursuant to the provisions of this subchapter. The assets attributable to one protected cell shall not be applied to the liabilities attributable to another protected cell, unless an asset or liability is attributable to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract. Recourse to the special purpose financial captive insurance company's general account in connection with the conservation, rehabilitation, or liquidation of a protected cell shall be limited to the greater of the amount of assets in the general account as of the date such proceeding is commenced or the required minimum capital for the general account as of the date such proceeding is commenced. Assets attributable to one protected cell shall not be set off against the liabilities attributable to another protected cell, and assets attributable to the special purpose financial captive insurance company's general account shall not be set off against the liabilities attributable to any protected cell except to the extent provided in the preceding sentence. Relief shall not be granted nor shall any order be issued based on equitable theories of recovery, including substantive consolidation, equitable subordination, or recoupment, to attach or seize the assets of any solvent protected cell for the benefit of another protected cell or special purpose financial captive insurance company, or to pierce the corporate veil of any protected cell, in connection with the conservation, rehabilitation, or liquidation of a special purpose financial captive insurance company or one or more protected cells, unless such equitable theories, attachment, seizure or corporate veil piercing would apply to such cell if it were a special purpose financial captive insurance company without

separate cells.

(F) With respect to amounts recoverable under a reinsurance contract, the amount recoverable by the receiver of a special purpose financial captive insurance company must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the ceding insurer, notwithstanding another provision in the contract or other documentation governing the insurance securitization.

(G) Notwithstanding the provisions of chapter 145 of this title or other laws of this state:

(i) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of chapter 145 of this title, with respect to a ceding insurer, does not prohibit the transaction of business by a special purpose financial captive insurance company with the ceding insurer, including any payment by a special purpose financial captive insurance company made pursuant to a security issued by a special purpose financial captive insurance company with respect to a protected cell, or any action or proceeding against a special purpose financial captive insurance company or its assets.

(ii) The commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurance company, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurance company made pursuant to a security issued by a special purpose financial captive insurance company with respect to a protected cell or special purpose financial captive insurance company contract or the special purpose financial captive insurance company from taking any action required to make the payment.

(iii) A receiver of a ceding insurer may not void a nonfraudulent transfer by the ceding insurer to a special purpose financial captive insurance company of money or other property made pursuant to a reinsurance contract.

(iv) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property made to a ceding insurer pursuant to a reinsurance contract or made to or for the benefit of any holder of a special purpose financial captive insurance company security issued with respect to a protected cell, or a special purpose financial captive insurance company security.

(v) In the event of an insolvency of a special purpose financial captive insurance company where one or more protected cells remain solvent, the commissioner shall separate the special purpose financial captive insurance company's solvent protected cells from the insolvent special purpose financial captive insurance company, shall allow on petition of the sponsor for the conversion of such solvent protected cells into one or more special purpose financial captive insurance companies, and shall issue such orders as the commissioner deems necessary to protect the solvency of the remaining solvent protected cells. In the event of an insolvency of a protected cell, the special purpose financial captive insurance company's assets shall be accounted for and managed in compliance with subdivision (E) of this subdivision (12) and the other laws of this state.

(H) Subdivision (G) of this subdivision (12) does not prohibit the commissioner from taking any action permitted under chapter 145 of this title with respect only to the conservation or rehabilitation of a special purpose financial captive insurance company with protected cell or cells, provided the commissioner would have had sufficient grounds to seek to declare the special purpose financial captive insurance company solvent; subject to and without otherwise affecting the provisions of subdivision (G)(v) of this subdivision (12). In this case, with respect to the solvent protected cell or cells, the commissioner may not prohibit payments made by the special purpose financial captive insurance company pursuant to the special purpose financial captive insurance company security, reinsurance contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the special purpose financial captive insurance company from taking any action required to make these payments.

(I) With the exception of the fulfillment of the obligations under a special purpose financial captive insurance company contract, and notwithstanding another provision of this title or other laws of this state, the assets of a special purpose financial captive insurance company, including assets held in trust, shall not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer pursuant to the provisions of this title for any purpose, including, without limitation, distribution to creditors of the ceding insurer.

## **Section 6050. Purpose**

The purpose of this chapter is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 ("RRA 1986"), to the extent permitted by such law.

## **Section 6051. Definitions**

As used in this chapter:

- (1) "Commissioner" means the commissioner of the department of banking, insurance, securities, and health care administration of this state, or the commissioner, director or superintendent of insurance in any other state.
- (2) "Domicile", for purposes of determining the state in which a purchasing group is domiciled, means:
  - (A) for a corporation, the state in which the purchasing group is incorporated; and
  - (B) for an unincorporated entity, the state of its principal place of business.
- (3) "Hazardous financial condition" shall have the same meaning as in 15 U.S.C. §3901(a)(7).
- (4) "Insurance" shall have the same meaning as in 15 U.S.C. §3901(a)(1).
- (5) "Liability" shall have the same meaning as in 15 U.S.C. §3901 (a)(2).
- (6) "Personal risk liability" shall have the same meaning as in 15 U.S.C. §3901 (a)(3).
- (7) "Plan of operation and feasibility study" means an analysis which presents the expected activities and results of a risk retention group as required by chapter 141 of this title.
- (8) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.
- (9) "Purchasing group" has the same meaning as in 15 U.S.C. §3901(a)(5).
- (10) "Risk retention group" shall have the same meaning as in 15 U.S.C. §3901(a)(4).
- (11) "State" means any state of the United States or the District of Columbia.

## **Section 6052. Risk retention groups chartered in this state**

(a) Pursuant to the provisions of chapter 141 of this title, a risk retention group shall be chartered and licensed to write only liability insurance pursuant to this chapter, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state under chapter 141 of this title, and with subdivisions (4), (5), (7), and (8) of section 6053 of this title. A risk retention group chartered in this state may provide coverage for payment of punitive damages, the multiplied portion of multiple damages, or other penalties in the nature of compensatory damages, and any such coverage shall be enforceable against such risk retention group in accordance with its terms.

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation and feasibility study which includes a description of the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer, together with such additional information as the commissioner may reasonably require. The risk retention group shall submit for approval by the commissioner an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, including any material change in the information called for in subsection (c) of this section, but excluding the identity of policyholders and any changes in rates or rating classification systems. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of such plan or study is approved by the commissioner. The risk retention group shall inform the commissioner of any material changes in rates or rating classification systems, within thirty (30) days of the adoption of such change.

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

- (A) the identity of the initial policyholders or members of the group or if the identity is not known or cannot be determined, a description of who is eligible to be a policyholder or a member;
- (B) the identity of the persons that organized the group;
- (C) the identity of any persons that will act as a managing general agent or reinsurance intermediary for, provide other significant administrative services to, or otherwise influence or control the activities of, the group;
- (D) summary descriptions of the services, described in subdivision (C) of this subsection, and of any contracts under which the services are to be performed, including the method of compensation therefor;
- (E) the amount and nature of initial capitalization;
- (F) plans for the payment of dividends or other distributions of members' capital and surplus; and
- (G) the states in which the group intends to file.

(2) The applicant may bind separately any portions of the application or any amendment thereto that contain proprietary information or documents, and request confidential treatment of such portions. For the purposes of this section, "proprietary information or documents" means certain information or documents furnished by or pertaining to

any of the persons specified above that would customarily be treated as confidential or sensitive and the disclosure of which could result in harm or prejudice to the person to whom the information or documents pertain or unfair advantage to another person. Such information includes, but is not limited to, trade secrets, historical or projected loss data or case reserves of members of policyholders, actuarial analyses which include such data or reserves, historical or projected financial data not otherwise publicly available, and similar information or documents. The commissioner shall determine which portions specified by the applicant fall within the definition of proprietary information or documents and treat such portions as confidential. Provided, however, that nothing herein shall excuse the applicant from making any required disclosure under the RRA 1986, this chapter or chapter 141 of this title, or prohibit the commissioner from disclosing any proprietary information or documents in the furtherance of any legal or regulatory proceeding. Before using proprietary information or documents in a legal or regulatory proceeding that does not involve the applicant or any person named in the application or any amendment thereto, the commissioner shall first seek to obtain the same information from nonconfidential sources. If unavailable from nonconfidential sources, the commissioner shall seek to protect the confidential information or documents from unnecessary disclosure. Upon licensing, the commissioner shall forward to the National Association of Insurance Commissioners all information required under the RRA 1986 to be submitted to each state where the risk retention group proposes to operate and all other information not deemed confidential under this section. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of section 6053 or any other sections of this chapter. In addition, the commissioner may provide access to confidential application information with respect to risk retention groups to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

(d) The provisions of subsection 6008(c) of this title shall apply to risk retention groups chartered in this state, except that such provisions shall not apply to final examination reports relating to risk retention groups and except that the commissioner may, in the commissioner's discretion, grant access to any other examination information covered by subsection 6008(c) of this title to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

### **Section 6053. Risk retention groups not chartered in this state**

Risk retention groups chartered and licensed in states other than this state and seeking to do business, as a risk retention group in this state shall comply with the laws of this state as follows:

(1) Notice of operations and designation of secretary of state as agent. Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(A) a statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principle place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under section 6051(11) of this title;

(B) a copy of its plan of operations and feasibility study and revisions of such plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(i) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(ii) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date; and

(iii) the risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by section 6052(b) of this title at the time that such revision has become effective in its chartering state; and

(C) a statement of registration, for which a filing fee shall be determined by the commissioner, which designates the secretary of state as its agent for the purpose of receiving service of legal documents or process.

(2) Financial condition. Any risk retention group doing business in this state shall submit to the commissioner:

(A) a copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist, under criteria established by the National Association of Insurance Commissioners;

(B) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination.

(C) upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group.

(3) Taxation. Each risk retention group subject to the provisions of this section shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state as provided in section 8551 of Title 32, and shall report to the commissioner the net premiums written for risks resident or located within this state. Such risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(4) Compliance with Unfair Claims Settlement Practices Law. Any risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this state, section 4724(9) of this title.

(5) Deceptive, false, or fraudulent practices. Any risk retention group shall comply with section 4724(1) through (5) of this title regarding deceptive, false or fraudulent acts or practices.

(6) Examination regarding financial condition. Any risk retention group may be required to submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the Examiner Handbook of the National Association of Insurance Commissioners.

(7) Notice to purchasers. Risk retention groups shall be required to notify purchasers as required by 15 U.S.C., §3902(a)(1)(I).

(8) Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are hereby prohibited:

(A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

(9) Prohibition on ownership by an insurance company. No risk retention group shall be allowed to do business in this state if an insurance company, other than an affiliated risk retention group, captive or other policyholder-owned insurance company or a risk retention group all of whose members are insurance companies, is directly or indirectly a member or owner of such risk retention group.

(10) Prohibited coverage. The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy. This subsection shall not be construed to require the pre-approval of forms by the commissioner.

(11) Delinquency proceedings. After an examination under section 6052(6) of this title, a risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment within the meaning of chapter 145 of this title.

(12) Penalties. A risk retention group subject to this section that violates any provision of this chapter will be subject to the fines and the penalties including revocation of its right to do business in this state, applicable to licensed insurers generally under this title.

(13) Operation prior to enactment of this chapter. In addition to complying with the requirements of this section, any risk retention group operating in this state prior to enactment of this chapter shall, within 30 days after December 31, 1992, comply with the provision of subsection (1)(A) of this section.

### **Section 6054. Compulsory associations**

(a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by such risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtain insurance covering its members' risks from a licensed insurer, only risks resident or located in this state shall be covered by the state guaranty fund subject to chapter 112 of this title.

### **Section 6055. Purchasing groups; exemption from certain laws**

A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers shall be exempt from state laws as provided in 15 U.S.C. §3903(a)(1) through (a)(8).

### **Section 6056. Notice and registration requirements of purchasing groups**

(a) A purchasing group intending to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall:

- (1) be as provided in 15 U.S.C. §3903(d);
- (2) identify all other states in which the group intends to do business;
- (3) specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state; and
- (4) provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under subdivision 6051(9) of this title.

(b) The purchasing group shall register with and designate the secretary of state as its agent solely for the purpose of receiving service of legal documents or process, except for any groups exempted under 15 U.S.C. §3903(e). Service shall be effected in the manner provided in section 3383 of this title.

(c) Each purchasing group that is required to give notice pursuant to subsection (a) of this section shall also furnish such information as may be required by the commissioner to:

- (1) verify that the entity qualifies as a purchasing group;
- (2) determine where the purchasing group is located; and
- (3) determine appropriate tax treatment under section 6058 of this title.

(d) Any purchasing group which was doing business in this state prior to the enactment of this chapter shall, within 30 days after December 31, 1992, furnish notice to the commissioner pursuant to the provisions of subsection (a) of this section and furnish such information as may be required pursuant to subsection (b) and (c) of this section.

### **Section 6057. Restrictions on insurance purchased by purchasing groups**

(a) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of such group which have a risk resident or located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state in writing that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

(c) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(d) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

### **Section 6058. Purchasing group taxation**

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups shall be:

- (1) imposed at the same rate and subject to the same interest, fines and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and
- (2) paid first by such insurance source, and if not by such source, by the agent or broker for the purchasing group, and if not by such agent or broker, then by the purchasing group, and if not by such purchasing group, then by each of its members.

### **Section 6059. Administrative and procedural authority regarding risk retention groups and purchasing groups**

The commissioner is authorized to make use of any of the powers established under this title to enforce the laws of this state not specifically preempted by the Risk Retention Act of 1986 including the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings or litigation, the commissioner can rely on

the procedural laws of this state. The injunctive authority of the commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

### **Section 6060. Duties of agent or brokers to obtain license**

(a) Purchasing Groups.

(1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with chapter 131 of this title.

(2) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with chapter 131 of this title.

(3) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless such person, firm, association or corporation is licensed as a surplus lines broker or excess line broker in accordance with chapter 131 of this title.

(b) For purposes of acting as an agency or broker for a purchasing group pursuant to subsection (a) of this section, the requirement of residence in this state shall not apply.

(c) Every person, firm, association or corporation licensed pursuant to the provisions of chapter 131 of this title, on business written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by section 6057(c) of this title.

### **Section 6061. Binding effect of orders issued in United States district court**

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state, or in all states or in any territory or possession of the United States, shall be enforceable in the courts of this state, upon a finding that such a group is in hazardous financial or financially impaired condition.

### **Section 6070. Application of chapter**

This chapter applies to risk retention groups domiciled in this state operating under the provisions of chapters 141 and 142 of this title and to persons serving as managing general agents for such risk retention groups.

### **Section 6071. Definitions**

As used in this chapter:

(1) (A) "Managing general agent" means any person who:

(i) manages all or part of the insurance business of a risk retention group and acts as an agent for such risk retention group, and, who, either separately or together with affiliates, underwrites gross written premium in any one-quarter or year that exceeds the greater of:

(I) 25 percent of the risk retention group's policyholder surplus or capital, or

(II) \$250,000.00; and

(ii) adjusts or pays, on behalf of the risk retention group, with settlement authority, claims in excess of \$25,000.00 per occurrence or \$250,000.00 in the aggregate.

(B) "Managing general agent" shall also mean a person who otherwise would be deemed as such, but for the fact that it underwrites gross written premium of less than the amounts specified above, but during the risk retention group's preceding fiscal year underwrote in excess of 10 percent of the risk retention group's gross written premium.

(C) Notwithstanding the provisions of subdivisions (1) (A) and (B) of this section, the following persons shall not be considered as managing general agents of a risk retention group:

(i) an officer, director or employee of the risk retention group or of any person described in subdivisions (ii) and (iii) of this subdivision (C), provided the officer or director is not individually licensed as a managing general agent hereunder;

(ii) a person affiliated with or under common control with the risk retention group;

(iii) an association, society, or other entity, or any person under common ownership or control therewith, that

has, directly or indirectly, as its owners or members, persons who are policyholders or are eligible to become policyholders of the risk retention group; and

(iv) an attorney-in-fact of a risk retention group organized as a reciprocal, or any person affiliated with or under common control with the attorney-in-fact.

(2) "Reinsurance intermediary" has the same meaning as set forth in section 4815(9) of this title.

(3) "Risk retention group" means a company referred to in section 6070 of this title domiciled in this state.

(4) "Underwrite" means the authority to accept or reject risk on behalf of the risk retention group.

### **Section 6072. Licensure**

(a) No person shall act in the capacity of managing general agent as defined in section 6071 (1)(A) of this title for a risk retention group unless such person is licensed under the provisions of this chapter. No person shall act in the capacity of managing general agent as defined in section 6071 (1)(B) of this title for a risk retention group unless within ninety (90) days of the end of the risk retention group's fiscal year in which such person became a managing general agent, such person becomes licensed under the provisions of this chapter. No officer, director or employee of a person licensed or exempt from licensure under this chapter shall be required to be licensed. The commissioner may exempt any other person upon a finding that the activities to be performed by such person on behalf of a risk retention group are not of the nature or magnitude requiring the protection of this chapter. A person shall not be required to obtain more than one license hereunder in order to serve as managing general agent for more than one risk retention group.

(b) No risk retention group shall employ the services of a reinsurance intermediary to solicit, negotiate or place reinsurance on its behalf, unless such person is licensed as a reinsurance intermediary under the provisions of chapter 131 of this title or under the provisions of another state's law governing reinsurance intermediaries or is licensed as a managing general agent under this chapter and is acting as such for the risk retention group.

(c) Application for a license under this section shall be made on a form prescribed by the commissioner and accompanied by a \$30.00 fee plus the initial 12 months' licensing fee of \$150.00.

(d) The commissioner shall issue a license to any person who has complied with the requirements of this chapter, unless the commissioner determines that the applicant, anyone named in the application, or any member, principal, officer or director of the applicant, is not competent or trustworthy, or that any controlling person of such applicant is not competent or trustworthy to act as a managing general agent or that any of the foregoing persons have given cause for revocation or suspension of such license, or have failed to comply with any prerequisite for the issuance of such license.

(e) If the applicant for a license is a nonresident that has not duly registered to do business in this state, such applicant, as a condition precedent to receiving or holding a license, shall designate the secretary of state as agent for service of process in the manner, and with the same legal effect, provided for by section 3370 of this title for designation of service of process upon unauthorized insurers; and shall also furnish the secretary of state with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident licensee may be served. Such licensee shall promptly notify the secretary of state in writing of every change in its designated agent for service of process.

(f) A license issued hereunder shall continue in force not longer than 12 months, but shall expire as of 12:01 a.m. o'clock on the first day of April of the year next following date of issuance unless the licensee prior thereto has filed with the commissioner, on forms prescribed and furnished by the commissioner, a request for renewal of such license for an ensuing 12-month period. Such request must be accompanied by payment of a renewal fee equal to the initial licensing fee for such license.

### **Section 6073. Contract required**

(a) No risk retention group shall enter into a managing general agent relationship unless there is in force a written contract between the parties which sets forth the respective responsibilities of each party.

(b) The contract shall contain the following minimum provisions:

(1) The method for determining compensation and other amounts payable under the contract, and the terms for payment thereof shall be fair and reasonable.

(2) The contract may be terminated by the risk retention group for cause upon written notice.

(3) The authority to underwrite or settle claims may be suspended by the risk retention group during the pendency of any dispute regarding the cause for termination.

(4) The contract shall not result in the transfer of substantial control of the risk retention group or any of the powers vested in the members or board of directors, by statute, articles of incorporation or bylaws.

(5) Separate records of all business written under the contract shall be maintained. The risk retention group shall

have access to and the right to copy all accounts and records related to its business in a form usable by the risk retention group.

(6) The required use of underwriting, rating and claims settlement and, if applicable, reinsurance cession standards and procedures approved by the risk retention group.

(c) Within 30 days of entering into a contract with a managing general agent, the risk retention group shall provide written notification thereof to the commissioner. Such notice of appointment shall include a statement of duties which the applicant is expected to perform on behalf of the risk retention group, the lines of insurance for which the applicant is to be authorized to act, a summary of the minimum contract provisions set forth in subsection (b) of this section and any other information reasonably requested by the commissioner. Information contained in such notification shall be entitled to confidential treatment in accordance with section 6052 of this title. The risk retention group shall give the commissioner notice of termination of a contract with a managing general agent within 10 days of termination.

#### **Section 6074. Examination authority**

(a) The commissioner may examine the books and records of a managing general agent or any affiliate thereof pertaining to or arising out of transactions with a risk retention group if the commissioner reasonably believes that such examination is necessary.

(b) All examination reports, work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or any other person, except as otherwise provided in this section. The commissioner is authorized to use and make public any report, work paper or other documents, or any other information discovered or developed during the course of any examination conducted pursuant to this section in the furtherance of any legal or regulatory action.

#### **Section 6075. Hearing; penalties**

a) If the commissioner determines, after notice and hearing, that any person licensed hereunder (i) has violated any provision of this chapter or rules promulgated hereunder, or (ii) is not competent or trustworthy, or (iii) has engaged in any activity or has failed to do any act that if known at the time of licensing would have been grounds to refuse licensing, the commissioner may impose one or more of the following penalties:

(1) order the revocation, suspension or nonrenewal of the person's license;

(2) order the termination, suspension or modification of the contract between such person and the risk retention group; or

(3) impose an administrative penalty of not less than \$100.00 nor more than \$1,000.00 for each violation hereunder.

(b) In imposing any such penalty, the commissioner shall take into account the seriousness of the violation, whether or not it was willful, and the licensee's past record of compliance with this chapter.

(c) Any hearing conducted hereunder shall be conducted in accordance with chapter 25 of Title 3.