

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.536 Name of Bill: An act relating to Captive Insurance laws and Accreditation Standards

Agency/ Dept: Department of Financial Regulation

Author of Bill Review: Commissioner Susan Donegan

Date of Bill Review: 4/3/2014

Status of Bill: (check one):

☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both bodies

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The purpose of this bill is to update Vermont's Captive Insurance laws. The first section of the bill establishes a "dormant" status for captives. When captives outlive their usefulness, they often dissolve. In the event that a captive "re-forms," it will often reconsider its domicile. The bill creates a dormant status, which is an inexpensive way to keep the captive insurer in existence and domiciled in Vermont during years when the company is inactive. This is important so that Vermont does not lose the captive insurers domiciled here.

The bill also contains several provisions dealing with captive reciprocal insurers. The bill protects policy holders by including Risk Retention Groups within the definition of insurer under the Producer Controlled Law. DFR, in conjunction with National Association of Insurance Commissioners (NAIC), have determined that an RRG can be a producer-controlled entity, and policyholders should be afforded the protections provided by the law. The primary protections involve disclosure of the Producer/Insurer relationships, requiring written contracts between the parties, and the requirement to have independent members on the board of directors.

The bill also includes a provision granting the Commissioner discretion to exempt captive insurers from sections 4850-2852. This allows the captive insurer to be managed in accordance with its DFR approved plan of operations. The bill also provides clear language that assets of separate accounts are indeed separate, and will not be used in a delinquency liquidation proceeding except to pay claims and expenses attributable to the separate account. The bill expands incorporated cell legislation to establish cells as reciprocal insurers. The bill also corrects an omission to conform language from prior legislative sessions concerning reciprocal as a cell within a sponsored captive.

Lastly, the bill updates the requirements of Risk Based Capital for Risk Retention Groups. This provision grants the commissioner the authority to require actions of Risk Retention Groups based on certain RBC ratios. This is a statutory change, however, it merely codifies an existing DFR policy for NAIC accreditation purposes.

2. Is there a need for this bill? *Please explain why or why not.*

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Yes. The bill updates Vermont's captive insurance laws to ensure that Vermont continues to be the "gold standard" of captive regulation in the United States. Furthermore, the bill brings Vermont up to date on the accreditation standards of the NAIC. NAIC accreditation assures regulators in other states that the State of Vermont meets or exceeds the recognized standards for insurance regulation. In turn, accreditation allows Vermont domiciled insurers, as well as the Department of Financial Regulation's regulators, to operate on a reciprocal basis with their colleagues in other states. Accreditation rests on the passage of certain NAIC approved, and industry vetted, statutory and regulatory provisions. These required provisions are typically based on NAIC models that have been carefully crafted and commented on by regulators from all fifty states and by industry.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

The bill will have little or no programmatic implications for DFR. The bill merely clarifies some of the nuances associated with regulating captive insurers.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The only other department this bill touches upon is the Department of Taxes. The "dormant status" provision of the bill provides a waiver of the minimum premium tax. This amount is expected to be immaterial. Therefore, the Department of Taxes will not likely oppose the bill. This immaterial loss in tax revenue, however, will help ensure that when the captive insurer is no longer dormant, it remains in Vermont, and Vermont will receive tax revenue from the captive then. Ultimately, allowing captives to go dormant will bring more revenue to Vermont.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

This bill will allow captive insurers to more easily exercise their usefulness when appropriate and ramp down operations as demand diminishes. This will help captive insurers operate with greater economic efficiency. It will also help Vermont retain the business and jobs that captive insurers bring to the state during those times when a captive insurer is writing policies.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Captive insurers support this bill because it clarifies the applicable laws in a way that benefits captives. The NAIC also supports the bill, as it is an essential part of Vermont's accreditation.

6.2 Who else is likely to oppose the proposal and why?

There has been no opposition to the bill.

7. Rationale for recommendation: *Justify recommendation stated above.*

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DFR Supports this bill because it allows the Department to better regulate captive insurers and encourages captive insurers to stay in and form in Vermont.

8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

DFR does not recommend any modification.

~~Secretary~~/Commissioner has reviewed this document: *Susan L. Fougere* Date: *4/3/14*