

S.91

AN ACT RELATING TO THE DEPARTMENT OF BANKING,
INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

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

* * * Banking * * *

Sec. 1. 20 V.S.A. § 2056h is added to read:

§ 2056h. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO THE
DEPARTMENT OF BANKING, INSURANCE, SECURITIES,
AND HEALTH CARE ADMINISTRATION

(a) The department of banking, insurance, securities, and health care administration shall obtain from the Vermont criminal information center a Vermont criminal record, an out-of-state criminal record, and a record from the Federal Bureau of Investigation (FBI) or any applicant for a banking division examiner position who has given written authorization, on a release form prescribed under section 2056c of this chapter, pursuant to the provisions of this subchapter and the user's agreement filed by the commissioner of banking, insurance, securities, and health care administration with the center. The user's agreement shall require the department to comply with all federal and state statutes, rules, regulations and policies regulating the release of criminal history records, and the protection of individual privacy. The user's agreement shall be signed and kept current by the commissioner. Release of interstate

and F.B.I. criminal history records is subject to the rules and regulations of the F.B.I.'s National Crime Information Center.

(b) For purposes of this section, "banking division examiner" means employees of the state hired to perform onsite or offsite examinations of banks, credit unions, or any other entity licensed, regulated, or otherwise under the jurisdiction of the banking division of the department of banking, insurance, securities, and health care administration.

(c) The commissioner of banking, insurance, securities, and health care administration shall obtain from the Vermont criminal information center the record of Vermont convictions and pending criminal charges for any banking division examiner applicant after the applicant has received an offer of employment conditioned on the record check. Nothing herein shall automatically bar a person who has a criminal record from applying or being selected for a banking division examiner position.

(d) The commissioner of banking, insurance, securities, and health care administration, through the Vermont criminal information center, shall request the record of convictions and pending criminal charges of the appropriate criminal repositories in all states in which there is reason to believe the applicant has resided or been employed.

(e) If no disqualifying record is identified at the state level, the commissioner of banking, insurance, securities, and health care administration,

through the Vermont criminal information center, shall request from the Federal Bureau of Investigation (FBI) a national criminal history record check of the applicant's convictions and pending criminal charges. The request to the FBI shall be accompanied by a set of the applicant's fingerprints and a fee established by the Vermont criminal information center, which shall be paid by the department of banking, insurance, securities, and health care administration.

(f) The Vermont criminal information center shall send to the requester any record received pursuant to this section or inform the department of banking, insurance, securities, and health care administration that no record exists.

(g) The department of banking, insurance, securities and health care administration shall promptly provide a copy of any record of convictions and pending criminal charges to the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center.

(h) Upon completion of the application process under this section, the applicant's fingerprint card and any copies thereof shall be destroyed.

(i) No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

Sec. 2. 8 V.S.A. § 2509(b) is amended to read:

(b) A licensee under this subchapter shall submit an annual report, on or before ~~May 1~~ April 1 for the preceding calendar year, in a form and in a medium prescribed by the commissioner. The annual report shall state or contain:

(1) a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly-owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(2) the number of payment instruments and stored-value obligations sold by the licensee in this state that have not been previously included in an annual report, the monetary amount of those instruments, and the monetary amount of those instruments currently outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application that has not been previously reported to the commissioner on any required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in sections 2540 and 2541 of this title;

(5) proof that the licensee continues to maintain adequate security as required by section 2507 of this title;

(6) a list of the locations in this state where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services; and

(7) any other information the commissioner may require.

* * * Insurance * * *

Sec. 3. 8 V.S.A. § 3634a(d) and (h)(2) are amended to read:

(d) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(1)(A) files with the commissioner evidence of its submission to this state's jurisdiction;

(B) submits to this state's authority to examine its books and records;

(C) is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(D) files ~~annually~~ with the commissioner on or before March 1 of each year a copy of its annual statement filed with the insurance department of its state of domicile and files on or before June 1 of each year a copy of its most recent audited financial statement;

(E) files with the commissioner its charter, bylaws, and any other material required by the commissioner; and

(F) pays an initial fee of \$500.00 and thereafter an annual fee of \$200.00 on or before March 1 of each year; and

(2)(A) maintains a surplus for policyholders in an amount which is not less than \$20,000,000.00 and whose accreditation has not been denied by the commissioner within 90 days of its submission; or

(B) maintains a surplus for policyholders in an amount less than \$20,000,000.00 and whose accreditation has been approved by the commissioner.

* * *

(h) Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A domestic insurer that does not meet the requirements of subsections (a) through (g) of this section shall be allowed a reduction in liability:

* * *

(2) in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as collateral for the payment of obligations thereunder, if such collateral is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case

of a trust, held in a qualified United States financial institution approved by the commissioner. Such collateral shall be in the form of:

(A) cash;

(B) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; or

(C) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States institution, approved by the commissioner, which are effective no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(D) any other form of collateral acceptable to the commissioner.

Sec. 4. 8 V.S.A. § 3579(a) is amended to read:

(a) A certified public accountant retained to perform audits of an insurer under section 3578 of this title ~~shall~~:

(1) shall be a member in good standing of the American Institute of Certified Public Accountants and in all states in which the accountant is licensed, or, for a Canadian or British company, be a chartered accountant;

(2) shall be independent with respect to the insurer;

(3) shall conform to the standards of the profession as contained in the code of professional ethics of the American Institute of Certified Public Accountants and of the Vermont board of public accountancy or similar codes governing such accountant's professional conduct or ethics;

(4) shall not directly or indirectly enter into an agreement of indemnification or release from liability with respect to the insurer being audited where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives; and

(5) may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration; provided, however, in the event of a delinquency proceeding commenced against the insurer under chapter 145 of this title, the mediation or arbitration provisions shall operate at the option of the statutory successor.

Sec. 5. 8 V.S.A. § 3504 is amended to read:

§ 3504. PENSION SYSTEM

An insurance company now or hereafter organized and doing business under the laws of this state, in addition to all other powers granted to it by law, may provide a pension in pursuance of the terms of a retirement plan, adopted by its board of directors and approved by the commissioner, for any person who is or has been an employee of such company, and who shall retire by reason of age or disability, and may further provide that, if such employee shall contribute to a retirement fund established under such retirement plan, and shall thereafter retire from the service of the company for reasons other than age or disability, ~~he~~ the employee may withdraw from such fund the amount of ~~his~~ the employee's contribution thereto with interest thereon at such rate, if any, and subject to such rules and regulations, as may be provided by the board of directors. However, such a company shall not grant a pension after the death of an officer, director, or trustee thereof, to a member of his or her family, or to his or her estate or to any other person for the benefit thereof. For the purposes of this section, the word "employee" shall include a salaried officer or an employee of such company and, in the case of a life insurance company, a soliciting or general agent of such company and an employee of such general agent, whether or not the person for whom such pension is to be provided is or shall be deemed for any other purpose an employee of such company.

Sec. 6. REPEAL

8 V.S.A. § 3551 (legislative oversight of the National Association of Insurance Commissioners) is repealed.

Sec. 7. 8 V.S.A. § 5026(a)(1) is amended to read:

(a) Surplus lines brokers shall not knowingly place or continue surplus lines insurance with nonadmitted insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a nonadmitted insurer unless such insurer:

(1) has paid to the commissioner an initial fee of \$100.00 and an annual listing fee of \$300.00, payable before ~~April 1~~ March 1 of each year;

* * * Captive Insurance * * *

Sec. 8. 8 V.S.A. § 6001(2), (3), (6), (9), (10), and (13) are amended to read:

§ 6001. DEFINITIONS

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

* * *

(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 ~~their~~

affiliated companies that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.

(6) “Controlled unaffiliated business” means any ~~company~~ 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 ~~company~~ 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.

(9) “Industrial insured captive insurance company” means any company that insures risks of the industrial insureds that comprise the industrial insured group, and ~~their affiliated companies~~ 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.

(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) membership 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.

Sec. 9. 8 V.S.A. § 6002(a)(2) and (3) are amended to read:

(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:

* * *

(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 ~~their~~ 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, and those of their affiliated companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies;

* * *

Sec. 10. 8 V.S.A. § 6007(b) is amended to read:

(b) Prior to March 1 of each year, 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, in either 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 section 3561 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.

Sec. 11. 8 V.S.A. § 6014(f) is amended to read:

(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:

~~(1)(A)~~ in the case of a stock corporation, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of

~~two or more corporations by the same shareholder or shareholders; and the~~
corporation.

~~(2)(B) in the case of a mutual or nonprofit corporations~~ corporation, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of ~~two or more corporations by the same member or members~~ 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.

Sec. 12. 8 V.S.A. § 6018 is amended to read:

§ 6018. DELINQUENCY

Except as otherwise provided in this chapter, the terms and conditions set forth in chapter 145 of this title, ~~pertaining to insurance reorganizations, receiverships and injunctions,~~ shall apply in full to captive insurance companies formed or licensed under this chapter.

Sec. 13. 8 V.S.A. § 6019 is amended to read:

§ 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 ~~the~~ 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 or an industrial insured captive insurance company.

* * * Securities * * *

Sec. 14. 8 V.S.A. § 6001(4) is amended to read:

(4) “Captive insurance company” means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, ~~or~~ 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.

Sec. 15. 8 V.S.A. § 6014(c) and (e) are amended to read:

(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 if 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 premium tax allocated to a member that is a special purpose financial captive exceeds \$200,000.00, the premium tax allocated to such member 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.

* * *

(e) Two 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.

Sec. 16. 8 V.S.A. § 6035 is amended to read:

§ 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, ~~or~~ 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 inconsistent 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.

Sec. 17. Subchapter 4 of chapter 141 of Title 8 is added to read:

Subchapter 4. Special Purpose Financial Captive Insurance Companies

§ 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.

§ 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 6048d(b) with respect to such captive insurance company.

§ 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 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. § 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.

§ 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 makes 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 regulator 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.

§ 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.

§ 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.

§ 6048g. MINIMUM 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.

§ 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.

§ 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 subdivisions (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.

§ 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.

§ 6048k. ANNUAL REPORT; BOOKS AND RECORDS

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

(1) The commissioner shall, by 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, in either case with any appropriate or necessary modifications or adaptations thereof 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 film, or stored and reproduced electronically.

§ 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. § 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. § 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 order 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.

§ 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) Notwithstanding subdivision 6034(1) of this chapter, the special purpose financial captive insurance company may issue securities to any person approved in advance by the commissioner.

(5) 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.

(6) 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.

(7) 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 a disclosure in a form and content satisfactory to the commissioner to the effect that the holder of such security and any counterparty to such contract or obligation have no right or recourse against the special purpose financial

captive insurance company and its assets other than against assets properly attributable to such protected cell. Notwithstanding the requirements of this subdivision (7) 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 or against the assets of any other protected cell.

(8) 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 with the intent of facilitating an insurance securitization. A separate protected cell shall be established with respect to each such ceding insurer, provided that a separate protected cell shall be established with respect to each reinsurance contract or contracts that are funded in whole or in part by a 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.

(9) 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.

(10) 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.

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

(A) The provisions of chapter 145 of this title shall apply to each protected cell of the special purpose financial captive. Any proceeding or action taken by the commissioner pursuant to chapter 145 of this title with respect to a protected cell of a special purpose financial captive shall not be the sole basis for a proceeding pursuant to chapter 145 of this title with respect to any other protected cell of such special purpose financial captive insurance company or the special purpose financial captive insurance company’s general account.

(B) The receiver of a special purpose financial captive insurance company shall ensure that the assets attributable to one protected cell are not applied to the liabilities attributable to another protected cell or to the special purpose financial captive insurance company’s general account 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.

(C) The insolvency of a protected cell shall not be the sole basis for the commissioner to prohibit payments by the special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security or reinsurance contract with respect to any other protected cell or to prohibit any action required to make such payments.

Sec. 18. 8 V.S.A. § 11(a)(1) is amended to read:

(a) General. The department of banking, insurance, securities, and health care administration created by section 212 of Title 3, shall have jurisdiction over and shall supervise:

(1) Financial institutions, credit unions, licensed lenders, mortgage brokers, insurance companies, insurance agents, broker-dealers, investment advisors, and other similar persons subject to the provisions of this title and chapters 59, 61, and ~~134~~ 150 of Title 9.

* * *

Sec. 19. 8 V.S.A. § 13(a) is amended to read:

(a) In addition to any other penalties, and in order to enforce this title, ~~chapter~~ chapters 131 and 150 of Title 9, Title 9A, and Title 18, chapter 221, the commissioner may issue subpoenas, examine persons, administer oaths and

require production of papers and records. Any subpoena or notice to produce may be served by registered or certified mail or in person by an agent of the commissioner. Service by registered or certified mail shall be effective three business days after mailing. Any subpoena or notice to produce shall provide at least six business days' time from service within which to comply, except that the commissioner may shorten the time for compliance for good cause shown. Any subpoena or notice to produce sent by registered or certified mail, postage prepaid, shall constitute service on the person to whom it is addressed. Each witness who appears before the commissioner under subpoena shall receive a fee and mileage as provided for witnesses in civil cases in superior courts; provided, however, any person subject to regulation under this title shall not be eligible to receive fees or mileage under this section.

Sec. 20. 8 V.S.A. § 16 is amended to read:

§ 16. JUDICIAL REVIEW

Any person aggrieved and directly affected by an order of the commissioner may appeal to the supreme court of Vermont, except as otherwise expressly provided in this title or in chapters 131 and 150 of Title 9. The filing of an appeal for review or injunctive relief shall not stay enforcement of an order, but the court may order a stay on such terms as it deems proper. The court may affirm the order of the commissioner, may direct him or her to take the action withheld or may reverse or modify the order if it:

- (1) was issued pursuant to unconstitutional statutory provisions;
- (2) was in excess of statutory authority;
- (3) was issued on unlawful procedure; or
- (4) is not supported by substantial evidence in the record.

Sec. 21. 8 V.S.A. § 17 is amended to read:

§ 17. LIABILITY FOR ACTS

A person serving in any official capacity under this title, chapter 131 or 150 of Title 9, or chapter 221 of Title 18, including the commissioner and any officer, employee, or agent of the department, shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office. No person may be subjected to any civil or criminal liability for any act or omission to act done in good faith in reliance on a subsisting order, regulation, or rule of the commissioner, notwithstanding a subsequent decision by a court invalidating the order, regulation or rule.

Sec. 22. 9 V.S.A. § 5408(b) is amended to read:

(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a

notice under section 5405 of this chapter and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 5405 of this chapter; then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of subsection 5406(a) of this chapter and payment of the filing fee required under section 5410 of this chapter, the registration of the agent or investment adviser representative is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's ~~Investment Adviser~~ Central Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's ~~Investment Adviser~~ Central Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.

Sec. 23. 9 V.S.A. § 5613 is added to read:

§ 5613. COLLECTION AND DISPOSITION OF FEES

(a) The fees provided for in this chapter shall be collected by the commissioner and covered into the state treasury except as provided in subsections (b) and (e) of this section.

(b) There is hereby created a fund to be known as the securities regulation and supervision fund. The fund shall be used for the purpose of providing the commissioner the means to administer the provisions of this chapter, and for the support of the corporate records division and other corporate regulatory activities of the office of the secretary of state and the activities of the department of economic development. All agent and investment adviser representative fees received pursuant to subsections 5410(b) and (d) of this title, and all examination fees and investigation expenses received pursuant to section 5614 of this title shall be transmitted to the state treasurer and credited to this fund. All payments from the securities 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. The fund shall be administered pursuant to subchapter 5 of chapter 7 of Title 32.

(c) At the end of each fiscal year, the balance in the securities regulatory and supervision fund shall be transferred to the general fund.

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

(e) In any fiscal year in which revenues deposited in the banking supervision fund established by subsection 19(f) of Title 8 are insufficient to support the annual appropriation to the banking division, the commissioner may transfer no more than a sum necessary to meet the shortfall from the fund established by this section to the banking supervision fund.

Sec. 24. 9 V.S.A. § 5614 is added to read:

§ 5614. RECOVERY OF EXPENSES

(a) Whenever it is necessary for the commissioner to incur any expense in connection with any application, notification, registration, license, investigation, or administrative proceeding, the commissioner may require that any person who is the subject of such application, notification, registration, license, investigation, or administrative proceeding pay the reasonable costs incurred by the department.

(b) The commissioner may impose a reasonable fee for the expense of conducting an examination, audit, or inspection under this chapter, including, but not limited to reimbursement to the commissioner for actual traveling and

lodging expenses of the commissioner or employee in connection with such examination, audit, or inspection.

(c) The provisions of this section are in addition to, and not in limitation of, any other provision of this chapter regarding fees and recovery of expenses.

Sec. 25. 9 V.S.A. § 5615 is added to read:

§ 5615. PHILANTHROPY PROTECTION ACT OF 1995

The state of Vermont is hereby declared to be exempt from the provisions of the Philanthropy Protection Act of 1995 (P.L. 104-62, Section 6(c)).

Sec. 26. 9 V.S.A. § 5401(b) is amended to read:

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) a broker-dealer without a place of business in this state if its only transactions effected in this state are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state, and the person is registered as a broker-dealer under 15 U.S.C. § 78a et seq. or not required to be registered under 15 U.S.C. § 78a et seq. and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:

(i) the broker-dealer is registered under 15 U.S.C. § 78a et seq. or not required to be registered under 15 U.S.C. § 78a et seq. and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three customers in this state during the previous 12 months, in addition to those customers specified in subdivisions (A) through (F) and under subdivision (H) of this subdivision, if the broker-dealer is registered under 15 U.S.C. § 78a et seq. or not required to be registered under 15 U.S.C. § 78a et seq. and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this chapter; ~~and~~

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision; and

(3) any other person exempted by rule adopted or order issued under this chapter.

Sec. 27. 9 V.S.A. § 5305(k) is added to read:

(k) At the time of filing a request for exemption from registration, the applicant shall pay a fee of \$200.00.

Sec. 28. 9 V.S.A. § 5302 is amended to read:

§ 5302. NOTICE FILING

(a) With respect to a federal covered security, as defined in 15 U.S.C. § 77r(b)(2), that is not otherwise exempt under sections 5201 through 5203 of

this chapter, a rule adopted or an order issued under this chapter may require the filing of any or all of the following records:

(1) before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. § 77a et seq. and a consent to service of process complying with section 5611 of this chapter signed by the issuer and the payment of a registration fee as set forth in subsection ~~(d)~~(e) of this section;

(2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. § 77a et seq.; and

(3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state in such form and at such time as the commissioner may prescribe if the state-specific sales data are not included and available in records filed with the Securities and Exchange Commission.

(b) A notice filing under subsection (a) of this section is effective for one year from the date the notice filing is accepted as complete by the office of the commissioner. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and

Exchange Commission that are required by rule or order under this chapter to be filed and by paying an annual renewal fee as set forth in subsection ~~(d)~~(e) of this section. A previously filed consent to service of process complying with section 5611 of this chapter may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under 15 U.S.C. § 77r(b)(4)(D), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with section 5611 of this chapter signed by the issuer not later than 15 days after the first sale of the federal covered security in this state and the payment of a fee as set forth in subsection ~~(d)~~(e) of this section.

(d) Subject to the provisions of 15 U.S.C. § 77r(c)(2) and any rules adopted thereunder, with respect to any security that is a federal covered security under 15 U.S.C. § 77r(b)(3) or (4)(A)–(C) and that is not otherwise exempt under sections 5201 through 5203 of this chapter, a rule adopted or order issued under this chapter may require any or all of the following with respect to such federal covered securities, at such time as the commissioner may deem appropriate:

(1) the filing of documents as deemed appropriate by the commissioner;
(2) the filing of a consent to service of process complying with section 5611 of this chapter; and
(3) the payment of fees as set forth in subsection (e) of this section, including but not limited to fees for renewal of a notice filing, as appropriate.
The notice filing shall be effective for one year from the date the notice filing is accepted as complete by the office of the commissioner.

(e) At the time of the filing of the information prescribed in subsections (a), (b), ~~or (c)~~, or (d) of this section, the issuer shall pay to the commissioner a fee of \$1.00 for each \$1,000.00 of the aggregate amount of the offering of the securities to be sold in this state for which the issuer is seeking to perfect a notice filing under this section, but in no case shall such fee be less than \$400.00 nor more than \$1,250.00. If the notice filing is withdrawn or otherwise terminated, the commissioner shall retain the fee paid. Open-end investment companies subject to 15 U.S.C. § 80a-1 et seq. shall pay an initial notice filing fee and annual renewal fee for each portfolio or class of investment company securities for which a notice filing is submitted.

~~(e)~~(f) Nothing in this section shall be construed to require the notice filing or payment of notice filing fees with respect to variable annuities or variable life insurance products.

~~(f)~~(g) Except with respect to a federal covered security under 15 U.S.C.

§ 77r(b)(1), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2007, except that:

(1) This section shall take effect on passage; and

(2) Secs. 18, 19, 20, 21, 23, and 25 clarify the intent of the general assembly in the enactment of chapter 150 of Title 9, and shall therefore take effect retroactively and apply on and after July 1, 2006.