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Vermont's New Captive Legislation to Revise Some Capital Requirement Rules

By Young Ha | May 6, 2015

Vermont officials announced that Gov. Peter Shumlin will sign new legislation passed in April that would bring several changes to the state's captive insurance rules — including changes to the investment guideline to allow "marketable securities" along with cash, trusts and letters of credit to meet the minimum capital requirement.

Shumlin will hold a ceremonial signing of the bill alongside captive insurance industry professionals on Thursday, May 7, in Burlington, officials said.
"These improvements in Vermont's law may seem technical," said Shumlin, "but taken as a whole they continue to advance Vermont's standing as the 'Gold Standard' for domiciles and will provide greater flexibility and clarity going forward for our companies."

Vermont officials said expanding the investment guidelines for the minimum capital requirement is a significant change that has already attracted considerable interest. This change is consistent with current investment guidelines for Vermont's traditional insurance companies and will increase the liquidity options for companies, officials said.

"The legislation makes Vermont's captive law more attractive and sends a strong message to the industry that we are committed to our leadership role," said David Provost, deputy commissioner of captive insurance in Vermont.

"We're delighted to have the continued support of the governor and the legislature in keeping pace with the changing needs of the industry," said Richard Smith, president of the Vermont Captive Insurance Association, which lobbied for the changes. "We're especially proud to implement the new investment guideline for minimum capital requirements making Vermont the first domicile to do so."

The new law also modifies the minimum capital for cell companies to $250,000 which is consistent with the current marketplace. It also adopts the National Association of Insurance Commissioners (NAIC) governance standards for risk retention groups (RRGs) and portions of NAIC Protected Cell Company Model Act.

A summary of the changes in the law include the following:

Number of incorporators – The number of incorporators required to sign a captive company's incorporation documents was reduced from three individuals to one individual to be consistent with most other incorporations under Vermont law.
Cell companies capital requirements — The change reduces the minimum capital requirement from $500,000 to $250,000 for cell captive companies.
Structure on capital requirement for all captive companies – The new law allows captives to have greater flexibility with their required minimum capital to now include "marketable securities" along with allowing cash, trust and letters of credit to meet the minimum capital requirement. The Vermont Department of Financial Regulation will issue further guidance to define what constitute marketable securities.
Definitions and protected cells — The law amends the sponsored cell law to make it easier to read by moving sections of the law to improve clarity.
Naming conventions for incorporated cells — The law adds a requirement that incorporated protected cells have their own distinct names and designations, which in the case of incorporated protected cells should include the words 'Incorporated Cell' or the abbreviation 'IC'.
Delinquency of sponsored captives and adoption of the National Association of Insurance Commissioners (NAIC) Protected Cell Company Model Act – Vermont now adopts portions of the NAIC Protected Cell Company Model Act language regarding the segregation of assets and liabilities, contracting by/for individual cells, treatment of cells in case of delinquency, and the reach of creditors.
Risk retention groups (RRGs) governance — Vermont now adopts the NAIC Model Governance Standards for risk retention groups.
The law would become effective upon the governor's signature, except for the governance standards applicable to risk retention groups. While those provisions would still apply immediately to risk retention groups first licensed on or after the effective date of the law, they would apply to all other risk retention groups one year after the effective date, giving existing companies one year to come into compliance.

Captive insurance has been a part of the Vermont insurance industry since 1981 when Vermont passed the Special Insurer Act. Captive insurance companies are typically used for corporate lines of insurance such as property, general liability, products liability, or professional liability.

Vermont captive licenses totaled 1,029 (including 48 of the Fortune 100 and 18 of the companies that make up the Dow 30) with 581 active captive insurers at the end of 2014. Vermont is the largest captive insurance domicile in the U.S. and the third-largest in the world, behind Bermuda and Cayman Islands, in terms of the number of captives.