

1 H.438

2 Introduced by Committee on Commerce and Economic Development

3 Date:

4 Subject: Department of banking, insurance, securities, and health care
5 administration

6 Statement of purpose: This bill proposes to make various amendments to the
7 Vermont statutes pertaining to matters within the jurisdiction of the department
8 of banking, insurance, securities, and health care administration.

9 An act relating to the department of banking, insurance, securities, and
10 health care administration

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

12 * * * Banking * * *

13 Sec. 1. 8 V.S.A. § 2201(b) is amended to read:

14 (b) Each licensed mortgage loan originator must register with and maintain
15 a valid unique identifier with the Nationwide Mortgage Licensing System and
16 Registry and must be either:

17 (1) an employee actively employed at a licensed location of, and
18 supervised and sponsored by, only one licensed lender or licensed mortgage
19 broker operating in this state; ~~or~~

1 (2) an individual sole proprietor who is also a licensed lender or licensed
2 mortgage broker; or

3 (3) an employee engaged in loan modifications employed at a licensed
4 location of, and supervised and sponsored by, only one third-party loan
5 servicer licensed to operate in this state pursuant to chapter 85 of this title. For
6 purposes of this subsection, “loan modification” means an adjustment or
7 compromise of an existing residential mortgage loan. The term “loan
8 modification” does not include a refinancing transaction.

9 Sec. 2. 8 V.S.A. § 10602(a) is amended to read:

10 (a) All persons subject to this subchapter shall comply with all applicable
11 requirements of the Truth in Lending Act of 1968, 15 U.S.C. § 1601 et seq.
12 Pub. L. No. 90-321, Title I and Regulation Z, 12 C.F.R. § 226 Part 226; the
13 real-estate settlement procedures act Real Estate Settlement Procedures Act of
14 1974, 12 U.S.C. § 2601 Pub. L. No. 93-533 and Regulation X, 24 C.F.R.
15 § 3500 Part 3500; and the Bank Secrecy Act of 1970, 13 U.S.C. § 1501 Pub. L.
16 No. 91-508 and U.S. Department of Treasury Regulation, 31 C.F.R. Part 103
17 Chapter X, as now or hereafter amended.

18 Sec. 3. REPEAL

19 8 V.S.A. § 10404a (registered agent for financial institutions) is repealed.

1 Sec. 4. 8 V.S.A. § 2224(a) is amended to read:

2 (a) Annually, on or before April 1, each licensed lender, mortgage broker,
3 and sales finance company shall file a report with the commissioner giving
4 such relevant information as the commissioner reasonably may require
5 concerning the business and operations during the preceding calendar year of
6 each licensed place of business conducted by such licensee within the state.
7 Such report shall be made under oath and shall be in the form prescribed by the
8 commissioner, who shall make and publish annually an analysis and
9 recapitulation of such reports. For good cause, the commissioner may extend
10 the due date for the annual report required by this subsection. If a licensee
11 does not file its annual report on or before April 1, or within any extension of
12 time granted by the commissioner, the licensee shall pay to the department
13 \$100.00 for each month or part of a month that the report is past due.

14 Sec. 5. 8 V.S.A. § 2405 is amended to read:

15 § 2405. PERIODIC REPORTS; EXAMINATIONS; COOPERATIVE
16 AGREEMENTS

17 * * *

18 (f) Any independent trust company that maintains one or more offices in
19 this state ~~may shall~~ be assessed ~~and, if assessed, shall pay assessment and~~
20 ~~examination fees at a rate determined by the commissioner pursuant to sections~~
21 ~~18 and 19 of this title~~ by the following applicable method:

1 (1) an independent trust company whose primary activity in the state is
2 transactional shall pay an annual assessment equal to \$0.0001 per dollar
3 volume of activity performed for the most recent year ending December 31,
4 which assessment shall not be less than \$2,000.00 or greater than \$50,000.00,
5 and which shall be paid on or before April 1 of each year; or

6 (2) an independent trust company whose primary activity in the state is
7 asset management shall pay an assessment based on assets under management
8 in this state on the preceding June 30 as provided under subsection 19(d) of
9 this title.

10 (g) An independent trust company assessed pursuant to subdivision (f)(1)
11 of this section shall pay to the department the costs and expenses of all
12 examinations, including both regular examinations and special or expanded
13 scope examinations as provided under sections 18 and 19 of this title. An
14 independent trust company assessed pursuant to subdivision (f)(2) of this
15 section shall not be billed for regular examinations, but shall pay to the
16 department the costs and expenses of all special or expanded scope
17 examinations as provided under sections 18 and 19 of this title.

1 Sec. 6. 8 V.S.A. § 18 is amended to read:

2 § 18. CHARGES FOR EXAMINATIONS, APPLICATIONS, REVIEWS,
3 AND INVESTIGATIONS

4 Every person subject to regulation by the department shall pay the
5 department the reasonable costs of any examination, review, or investigation
6 that is conducted or caused to be conducted by the department of such person,
7 or of any application or filing made by such person, or of any examination,
8 review, or investigation of any order, decision, or certificate issued by the
9 commissioner, at a rate to be determined by the commissioner. The
10 department may retain experts or other persons who are independently
11 practicing their professions to assist in such examination, review, or
12 investigation. The department shall be reimbursed for all reasonable costs and
13 expenses, including the reasonable costs and expenses of such persons retained
14 by the department, by the person examined, submitting the application or filing
15 reviewed, investigated, or subject to or under the jurisdiction of an order,
16 decision, or certificate issued by the commissioner under this title or under
17 Title 18. An examination, review, or investigation subject to this section shall
18 include, but not be limited to, an examination, review, or investigation of any
19 application, information, rate filing, or form filing submitted, or any order,
20 decision, or certificate issued under this title, or under Title 18. In unusual
21 circumstances, the commissioner may waive reimbursement for the costs and

1 expenses of any review in the interests of justice. Those institutions subject to
2 assessment or fees for services provided under section 19 of this title, other
3 than merchant banks established under section 12603 of this title and
4 independent trust companies organized under chapter 77 of this title, shall not
5 be billed for a regular examination performed under subsection 11501(a) or
6 30601(a) of this title or for services for which such fees under subsection 19(a)
7 of this title have been paid. Merchant banks established under section 12603
8 of this title shall pay the department the costs and expenses of all
9 examinations, including regular and special or expanded scope examinations.

10 The authority granted to the commissioner by this section is in addition to any
11 other authority granted to the commissioner by law.

12 Sec. 7. 8 V.S.A. § 19(b) is amended to read:

13 (b) Those institutions subject to assessment under subsection (d) of this
14 section, other than merchant banks established under section 12603 of this title,
15 will not be billed for examinations performed under subsection 11501(a) of
16 this title.

17 Sec. 8. 8 V.S.A. § 19(d)(3) is amended to read:

18 (3) In the case of special purpose financial institutions that are not
19 permitted to accept deposits, except merchant banks established under section
20 12603 of this title, ~~and independent trust companies organized or operating~~

1 ~~under chapter 77 of this title,~~ the assessment will be based on assets under
2 management in this state on the preceding June 30.

3 Sec. 9. 8 V.S.A. § 19(d)(6) is added to read:

4 (6) Independent trust companies organized under chapter 77 of this title
5 shall be assessed as provided under subsection 2405(f) of this title.

6 Sec. 10. 11 V.S.A. § 108 is amended to read:

7 § 108. BANKS, TRUST AND MUTUAL INSURANCE COMPANIES

8 A corporation organized under the provisions of ~~chapter 21~~ chapter 202 or
9 203 of Title 8, to conduct the business of a ~~savings bank having no capital~~
10 ~~stock or of a trust company~~ financial institution, and a mutual insurance
11 company organized under the provisions of chapter 101 of Title 8, may make
12 such contributions for religious, charitable, scientific, literary, or educational
13 purposes as are authorized by its directors or trustees to an amount not to
14 exceed five percent of its net income for the previous calendar year computed
15 in the manner specified by the internal revenue code in effect during the year
16 applicable for corporations. Contributions in excess of the five percent of the
17 net income may be made by a vote of its stockholders, depositors, or members.

1 Sec. 11. 8 V.S.A. § 31308 is amended to read:

2 § 31308. DUTIES OF OFFICERS, DIRECTORS, AND COMMITTEE

3 MEMBERS

4 (a) All officers, directors, and members of ~~the supervisory or credit~~ any
5 committees of a credit union subject to the laws of this state under this title
6 shall comply with the standards for such officers, and directors, ~~and committee~~
7 ~~members~~ established by the National Credit Union Administration (NCUA), as
8 ~~amended~~ under Title 11B. Members of committees of credit unions shall
9 comply with the same standards as directors.

10 (b) ~~In addition to any applicable state fines and penalties, an officer,~~
11 ~~director, or member of the supervisory or credit committee who fails to comply~~
12 ~~with the standards established by this section shall be subject to the civil~~
13 ~~penalties established by 12 U.S.C. § 1786(k)(2) and (3), as amended, as if he or~~
14 ~~she had directly violated the standards established by the NCUA. All officers,~~
15 directors, and members of the supervisory or credit committees of a credit
16 union subject to the laws of this state under this title shall administer the affairs
17 of the credit union fairly and impartially and without discrimination in favor of
18 or against any particular member.

19 (c) All executive officers, directors, and committee members shall comply
20 with the conflict of interest standards established pursuant to section 31313 of
21 this title.

1 services education initiatives pursuant to subsection (d) of this section shall be
2 deposited into the ~~securities investor~~ financial services education special fund.
3 Interest earned on the fund shall be retained in the fund.

4 * * * Insurance * * *

5 Sec. 13. 8 V.S.A. § 4800(4)(E) is amended to read:

6 (E)(i) authorize the centralized producer license registry, or other
7 third party approved by the commissioner, to collect fingerprints on behalf of
8 the commissioner in order to receive or conduct criminal history background
9 checks;

10 (ii) use the centralized producer license registry, or other third
11 party approved by the commissioner, as a channeling agent for requesting
12 information from and distributing information to the U.S. Department of
13 Justice or any governmental agency, in order to reduce the points of contact
14 which the Federal Bureau of Investigation (FBI) or the commissioner may
15 have to maintain for purposes of this subsection; and

16 (iii) require persons engaged in activities that require a license
17 under this chapter to submit fingerprints, and the commissioner may utilize the
18 services of the centralized producer license registry, or other third party
19 approved by the commissioner, to process the fingerprints and to submit the
20 fingerprints to the FBI, the Vermont state police, or any equivalent state or
21 federal law enforcement agency for the purpose of conducting a criminal

1 history background check. The licensee or applicant shall pay the cost of such
2 criminal history background check, including any charges imposed by the
3 centralized producer licensing system or other third party approved by the
4 commissioner, as applicable.

5 * * * Health Care Administration * * *

6 Sec. 14. 8 V.S.A. § 4089a(c)(7) is amended to read:

(7) A procedure for ~~clients/patients~~ clients or patients or both, mental health professionals or hospitals to seek prompt reconsideration before an independent ~~panel of mental health professionals~~ review organization pursuant to section 4089f of this title of an adverse decision by a review agent. ~~At least one member of the panel shall have training and expertise at least comparable to that of the treating clinician.~~ *At least one member of the panel The external reviewer engaged by the independent review organization shall have training and expertise at least comparable to that of the treating clinician.*

7 Sec. 15. 8 V.S.A. § 4089f(a)(2) is amended to read:

8 (2) “Insured” means the beneficiary of a health benefit plan, including
9 the subscriber and all others covered under the plan, and shall also mean a
10 member of a health benefit plan not otherwise subject to the department’s
11 jurisdiction which has voluntarily agreed to use the external review process
12 provided under this section.

13 Sec. 16. 8 V.S.A. § 4089f(d)(2)(C) is amended to read:

1 (C) ~~Pay a filing fee in an amount that reflects the administrative costs~~
2 ~~of processing a request for review under this section, which shall not be more~~
3 ~~than \$25.00~~ an application fee of \$25.00 for each request for an independent
4 external review of an appealable decision not to exceed a total of \$75.00
5 annually. ~~The filing application~~ fee may be waived or reduced based on a
6 determination by the commissioner that the financial circumstances of the
7 insured warrant a waiver or reduction. The application fee shall be paid by the
8 insurer, not the insured, if the independent review organization reverses an
9 insurer's decision to deny payment for a health care service.

10 Sec. 17. 18 V.S.A. § 9456(e) is amended to read:

11 (e) The commissioner may establish, by rule, a process to define, on an
12 annual basis, criteria for hospitals to meet, such as utilization and inflation
13 benchmarks. The rule shall permit the commissioner to waive one or more of
14 the review processes listed in subsection (b) of this section, ~~but not for more~~
15 ~~than two years consecutively. Tertiary teaching hospitals shall not be eligible~~
16 ~~for a waiver.~~

17 Sec. 18. 18 V.S.A. § 9418a is amended to read:

18 § 9418a. PROCESSING CLAIMS, DOWNCODING, AND ADHERENCE
19 TO CODING RULES

20 * * *

1 (k) Prior to the effective date of subsections (b) and (c) of this section,
2 MVP Healthcare is requested to convene a work group consisting of health
3 plans, health care providers, state agencies, and other interested parties to study
4 the edit standards in subsection (b) of this section, the edit standards in national
5 class action settlements, and edit standards and edit transparency standards
6 established by other states to determine the most appropriate way to ensure that
7 health care providers can access information about the edit standards
8 applicable to the health care services they provide. No later than January 1,
9 ~~2011~~ 2012, the work group is requested to report its findings and
10 recommendations, including any recommendations for legislative changes to
11 subsections (b) and (c) of this section, to the house committee on health care
12 and the senate committee on health and welfare.

13 (l) With respect to the work group established under subsection (k) of this
14 section and to the extent required to avoid violations of federal antitrust laws,
15 the department shall facilitate and supervise the participation of members of
16 the work group.

17 Sec. 19. Sec. 51(f) of No. 61 of the Acts of 2009 is amended to read:

18 (f) Sec. 30, 18 V.S.A. § 9418a(b) and (c) (edit standards); shall take effect
19 July 1, ~~2011~~ 2012.

20 * * * Captive Insurance * * *

21 Sec. 20. 8 V.S.A. § 6014 is amended to read:

1 § 6014. TAX ON PREMIUMS COLLECTED

2 * * *

3 (c)(1) The annual minimum aggregate tax to be paid by a captive
4 insurance company calculated under subsections (a) and (b) of this section
5 shall be \$7,500.00, ~~and the annual maximum aggregate tax shall be~~
6 ~~\$200,000.00.~~ The annual maximum aggregate tax to be paid by a captive
7 insurance company calculated under subsections (a) and (b) of this section
8 shall be \$200,000.00.

9 (2) The annual minimum aggregate tax to be paid by a sponsored
10 captive insurance company shall be \$7,500.00 and shall apply to the sponsored
11 captive insurance company as a whole and not to each protected cell; such cells
12 shall not be subject to the minimum tax.

13 (3) The annual maximum aggregate tax to be paid by a protected cell
14 shall be as calculated under subdivision (1) of this subsection. The annual
15 maximum tax to be remitted by a sponsored captive insurance company shall
16 apply to be the aggregate of the tax liabilities of each protected cell only and
17 not to the sponsored captive insurance company as a whole. If a captive
18 insurance company is a special purpose financial captive organized and
19 licensed under subchapter 4 of this chapter and if such captive insurance
20 company is subject to subsection (e) of this section as a captive insurance
21 company under common ownership and control with one or more other captive

1 insurance companies (collectively, the “consolidated group”), the premium tax
2 calculated with respect to the consolidated group under subsections (a) and (b)
3 of this section shall be allocated to each member of the consolidated group in
4 the same proportion that the premium allocable to such member bears to the
5 total premium of all members. The consolidated group shall pay an aggregate
6 premium tax equal to the greater of the sum of the premium tax allocated to the
7 members and \$7,500.00; provided:

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

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

15 * * *

16 (e) Subject to the provisions of subsection (c) of this section, two or more
17 captive insurance companies that are not special purpose financial captives
18 under common ownership and control shall be taxed as though they were a
19 single captive insurance company; and two or more captive insurance
20 companies that are special purpose financial captives under common
21 ownership and control shall be taxed as though they were a single captive

1 insurance company. Special purpose financial captives may not be
2 consolidated with other captives that are not special purpose financial captives
3 for purposes of calculating premium taxes due.

4 * * *

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

11 * * *

12 (k) A captive insurance company first licensed under this chapter on or
13 after ~~May 27, 2009 and on or before December 31, 2010~~, January 1, 2011 shall
14 receive a nonrefundable credit of \$7,500.00 applied against the aggregate taxes
15 owed for the first taxable year for which the company has liability under this
16 section.

17 Sec. 21. 8 V.S.A. § 6032 is amended to read:

18 § 6032. DEFINITIONS

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

1 (1) “Incorporated protected cell” means a protected cell that is
2 established as a corporation or limited liability company separate from the
3 sponsored captive insurance company of which it is a part.

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

9 ~~(2)~~(3) “Participant contract” means a contract by which a sponsored
10 captive insurance company insures the risks of a participant and limits the
11 losses of each such participant to its pro rata share of the assets of one or more
12 protected cells identified in such participant contract.

13 ~~(3)~~(4) “Protected cell” means a separate account established by a
14 sponsored captive insurance company formed or licensed under the provisions
15 of this chapter, in which assets are maintained for one or more participants in
16 accordance with the terms of one or more participant contracts to fund the
17 liability of the sponsored captive insurance company assumed on behalf of
18 such participants as set forth in such participant contracts, and shall include an
19 “incorporated protected cell,” as defined in this section.

20 ~~(4)~~(5) “Sponsor” means any entity that meets the requirements of
21 section 6035 of this title and is approved by the commissioner to provide all or

1 part of the capital and surplus required by applicable law and to organize and
2 operate a sponsored captive insurance company.

3 ~~(5)~~(6) “Sponsored captive insurance company” means any captive
4 insurance company:

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

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

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

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

14 Sec. 22. 8 V.S.A. § 6034(12) is amended to read:

15 (12) ~~The~~ If required by the commissioner, in his or her discretion, the
16 business written by a sponsored captive, with respect to each cell, shall be:

17 (A) fronted by an insurance company licensed under the laws of any
18 state;

19 (B) reinsured by a reinsurer authorized or approved by the state of
20 Vermont; or

1 (C) secured by a trust fund in the United States for the benefit of
2 policyholders and claimants or funded by an irrevocable letter of credit or
3 other arrangement that is acceptable to the commissioner. ~~The amount of~~
4 ~~security provided shall be no less than the reserves associated with those~~
5 ~~liabilities which are neither fronted nor reinsured, including reserves for losses,~~
6 ~~allocated loss adjustment expenses, incurred but not reported losses and~~
7 ~~unearned premiums for business written through the participant's protected~~
8 ~~cell.~~ The commissioner may require the sponsored captive to increase the
9 funding of any security arrangement established under this subdivision. If the
10 form of security is a letter of credit, the letter of credit must be issued or
11 confirmed by a bank approved by the commissioner. A trust maintained
12 pursuant to this subdivision shall be established in a form and upon such terms
13 approved by the commissioner.

14 Sec. 23. 8 V.S.A. § 6034a is added to read:

15 § 6034a. INCORPORATED PROTECTED CELLS

16 (a) A protected cell of a sponsored captive insurance company may be
17 formed as an incorporated protected cell, as defined in subdivision 6032(1) of
18 this title.

19 (b) The articles of incorporation or articles of organization of an
20 incorporated protected cell shall refer to the sponsored captive insurance
21 company for which it is a protected cell and shall state that the protected cell is

1 incorporated or organized for the limited purposes authorized by the sponsored
2 captive insurance company's license. A copy of the prior written approval of
3 the commissioner to add the incorporated protected cell, required by
4 subdivision 6034(11) of this title, shall be attached to and filed with the articles
5 of incorporation or the articles of organization.

6 (c) It is the intent of the general assembly under this section to provide
7 sponsored captive insurance companies, including those licensed as special
8 purpose financial captive insurance companies under section 6048 of this title,
9 with the option to establish one or more protected cells as a separate
10 corporation formed under Title 11A or limited liability company formed under
11 chapter 21 of Title 11. This section shall not be construed to limit any rights or
12 protections applicable to protected cells not established as corporations or
13 limited liability companies.

14 Sec. 24. 8 V.S.A. § 6035 is amended to read:

15 § 6035. QUALIFICATION OF SPONSORS

16 A sponsor of a sponsored captive insurance company ~~shall~~ may be ~~an~~
17 ~~insurer licensed under the laws of any state, a reinsurer authorized or approved~~
18 ~~under the laws of any state, a captive insurance company formed or licensed~~
19 ~~under this chapter, a broker-dealer registered with the department pursuant to~~
20 ~~chapter 150 of Title 9, a financial institution as defined under subdivision~~
21 ~~11101(32) of this title, a financial institution holding company as defined~~

1 ~~under subdivision 11101(33) of this title, including any affiliate or subsidiary~~
2 ~~of such financial institution holding company, or any other person approved by~~
3 the commissioner in the exercise of his or her discretion, ~~after finding based on~~
4 a determination that the approval of a such person as a sponsor is ~~not~~
5 ~~inconsistent~~ consistent with the purposes of this chapter. In evaluating the
6 qualifications of a proposed sponsor, the commissioner shall consider the type
7 and structure of the proposed sponsor entity, its experience in financial
8 operations, financial stability and strength, business reputation, and such other
9 facts deemed relevant by the commissioner. A risk retention group shall not be
10 either a sponsor or a participant of a sponsored captive insurance company.

11 Sec. 25. 8 V.S.A. § 6052(e) is added to read:

12 (e) The provisions of subchapter 13 of chapter 101 of this title shall apply
13 to risk retention groups chartered in this state. However, no existing rule,
14 regulation, or order promulgated under section 3688 of this title shall apply to
15 a risk retention group chartered in this state unless the rule, regulation, or order
16 or a provision thereof is specific to risk retention groups. The commissioner
17 shall establish procedures to implement the provisions of subchapter 13 of
18 chapter 101 of this title as applied to risk retention groups chartered in this
19 state by rule, regulation, or order.

20 * * * Effective Dates * * *

21 Sec. 26. EFFECTIVE DATES

1 This act shall take effect on July 1, 2011, except that Secs. 1 (third-party
2 loan servicers), 2 (federal statutory citations), 4 (annual reports of licensed
3 lenders), 5 (assessment on nontraditional independent trust companies),
4 17 (uniform waiver in hospital budget process) and this section shall take
5 effect on passage.