

1 S.278

2 Introduced by Committee on Finance

3 Date:

4 Subject: Banking; insurance; captive insurance; securities; health care

5 Statement of purpose: This bill proposes to make miscellaneous amendments
6 to the regulatory statutes administered by the department of banking,
7 insurance, securities, and health care administration.

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

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

11 * * * Banking * * *

12 Sec. 1. 8 V.S.A. § 2403(g) is amended to read:

13 (g) At the time it commences business, an independent trust company shall
14 have unimpaired capital in an amount not less than \$250,000.00 or one-quarter
15 of one percent of ~~the first year's projected~~ its assets under management,
16 whichever is greater. Thereafter, an independent trust company shall maintain
17 unimpaired capital in an amount not less than \$250,000.00 or one-quarter of
18 one percent of ~~the first year's projected~~ its assets under management,
19 whichever is greater, up to a maximum of \$1,000,000.00. The unimpaired
20 capital and surplus of an independent trust company shall be held as security

1 for the faithful discharge of the fiduciary duties undertaken as well as for the
2 claims of other creditors. The commissioner may from time to time require or
3 allow increases or decreases to the unimpaired capital otherwise required by
4 this subsection, up to such \$1,000,000.00 maximum, as deemed necessary or
5 desirable for the protection of customers and the safety of the trust business.
6 The safety and soundness factors to be considered by the commissioner in the
7 exercise of such discretion include:

- 8 (1) the nature and type of business conducted;
- 9 (2) the nature and degree of liquidity in assets held in a corporate or
10 company capacity;
- 11 (3) the amount of fiduciary assets under management;
- 12 (4) the complexity of fiduciary duties and degree of discretion
13 undertaken; and
- 14 (5) the extent and adequacy of internal controls.

15 Sec. 2. 8 V.S.A. § 4861 is amended to read:

16 § 4861. DEFINITIONS

17 As used in this chapter:

18 * * *

19 (2) “Debt adjustment” means making a ~~contract~~ an agreement with a
20 debtor whereby the ~~debtor agrees to pay a sum or sums of money periodically~~
21 ~~and the other party to the contract distributes, supervises, coordinates,~~

1 ~~negotiates, or controls~~ debt adjuster agrees to distribute, supervise, coordinate,
2 negotiate, or control the distribution of ~~such~~ money or evidences thereof
3 among one or more of the debtor's creditors in full or partial payment of
4 obligations of the debtor and includes services as an intermediary between a
5 debtor and one or more of the debtor's creditors for the purpose of obtaining
6 concessions. Debt adjustment also includes any program or strategy in which
7 the debt adjuster furnishes services to a debtor which includes a proposed or
8 actual payment or schedule of payments to be made by or on behalf of the
9 debtor and is used to pay debt owed by the debtor. For purposes of this
10 chapter, engaging in debt adjustment in this state shall include:

11 (A) soliciting debt adjustment business from within this state,
12 whether by mail, by telephone, by electronic means, or by other means
13 regardless of whether the debtor resides within this state or outside this state;

14 (B) soliciting debt adjustment business with an individual residing in
15 this state, whether by mail, by telephone, by electronic means, or by other
16 means; ~~or~~

17 (C) entering into, or succeeding to, a debt adjustment contract with
18 an individual residing in this state; or

19 (D) providing, offering to provide, or agreeing to provide debt
20 adjustment services directly or through others.

21 * * *

1 Sec. 3. RECODIFICATION

2 8 V.S.A. Part 3, chapter 133, §§ 4861 through 4876 is recodified as

3 8 V.S.A. Part 2, chapter 83, §§ 2751 through 2766.

4 Sec. 4. 8 V.S.A. § 10404a is added to read:

5 § 10404a. REGISTERED AGENT FOR FINANCIAL INSTITUTIONS

6 DOING BUSINESS IN VERMONT

7 (a) The holder of a mortgage on an owner-occupied, one-to-four family
8 residential property in this state, or the agent or other person who services the
9 mortgage, shall maintain a registered agent in this state who shall have
10 authority to endorse insurance claims checks on behalf of the mortgage holder,
11 or to take any other action incident to the mortgage on behalf of the mortgage
12 holder. The mortgage holder or agent shall file annually with the department,
13 on a form approved by the commissioner, the name, address, and telephone
14 number of such registered agent, and shall promptly update the information
15 upon change of the registered agent.

16 (b) No registered agent or filing with the commissioner shall be required
17 of:

18 (1) a financial institution as defined in subdivision 10202(5) of this title
19 that maintains a physical location in this state with one or more individuals at
20 such location who have authority to take the actions described in subsection (a)
21 of this section;

1 Sec. 6. 8 V.S.A. § 3808 is amended to read:

2 § 3808. TRUSTEE GROUPS

3 The lives of a group of individuals may be insured under a policy issued to
4 the trustees of a fund established by, adopted by, or participated in by two or
5 more employers ~~in the same industry, or in related industries,~~ or by one or
6 more labor unions, or by one or more employers and one or more labor unions,
7 which trustees shall be deemed the policyholder, to insure employees of the
8 employers or members of the unions for the benefit of persons other than the
9 employers or the unions, subject to the following requirements:

10 (1) No policy may be issued to insure employees of any employer
11 whose eligibility to participate in the fund as an employer arises out of
12 considerations directly related to the employer being a commercial
13 correspondent or business client or patron of another employer, except where
14 such other employer exercises substantial control over the business operations
15 of the participating employers.

16 (2) The persons eligible for insurance shall be all of the employees of
17 the employers or all of the members of the unions, or all of any class or classes
18 thereof determined by conditions pertaining to their employment, or to
19 membership in the unions, or to both. The policy may provide that the term
20 “employees” shall include retired employees, former employees, and the
21 individual proprietor or partners if an employer is an individual proprietor or a

1 partnership. No director of a corporate employer shall be eligible for insurance
2 under the policy unless such person is otherwise eligible as a bona fide
3 employee of the corporation by performing services other than the usual duties
4 of a director. No individual proprietor or partner shall be eligible for insurance
5 under the policy unless he or she is actively engaged in and devotes a
6 substantial part of his time to the conduct of the business of the proprietor or
7 partnership. The policy may provide that the term "employees" shall include
8 the trustees or their employees, or both, if their duties are principally connected
9 with such trusteeship.

10 (3) The premium for the policy shall be paid by the trustees wholly from
11 funds contributed by the employer or employers of the insured persons, or by
12 the union or unions, or by both, or partly from such funds and partly from
13 funds contributed by the insured persons. ~~A policy on which part of the~~
14 ~~premium is to be derived from funds contributed by the insured persons~~
15 ~~specifically for their insurance may be placed in force only if at least~~
16 ~~75 percent of the then eligible persons, excluding any as to whom evidence of~~
17 ~~insurability is not satisfactory to the insurer, elect to make the required~~
18 ~~contributions.~~ A policy on which no part of the premium is to be derived from
19 funds contributed by the insured persons specifically for their insurance must
20 insure all eligible persons, or all except any as to whom evidence of individual
21 insurability is not satisfactory to the insurer.

1 (4) The policy must cover at date of issue at least 100 persons; and it
2 must cover an average of not less than three persons per employer unit unless
3 the policy is issued to the trustees of a fund established by employers which
4 have assumed obligations through a collective bargaining agreement and are
5 participating in the fund either pursuant to those obligations with regard to one
6 or more classes of their employees which are encompassed in the collective
7 bargaining agreement or as a method of providing insurance benefits for other
8 classes of their employees, or unless the policy is issued to the trustees of a
9 fund established by one or more labor unions.

10 (5) The amount of insurance under the policy must be based upon some
11 plan precluding individual selection either by the insured persons or by the
12 policyholder, employers, or unions.

13 Sec. 7. 8 V.S.A. § 3810a(c) is added to read:

14 (c) The lives of individuals insured under a group policy authorized by this
15 subchapter may continue to be insured following termination of membership or
16 other affiliation of the individual with the group in a portability group, under
17 the same terms and conditions under which the individual was insured under
18 the group policy.

19 Sec. 8. 8 V.S.A. § 4800(4) is added to read:

20 (4) In order to assist in the performance of the commissioner's duties
21 under this chapter, the commissioner may:

1 (A) contract with nongovernmental entities, including the National
2 Association of Insurance Commissioners (“NAIC”) or any affiliates or
3 subsidiaries that the NAIC oversees, to perform any ministerial functions,
4 including the collection of fees, and the collection of system charges related to
5 producer licensing or to any other activities which require a license under this
6 chapter that the commissioner and the nongovernmental entity may deem
7 appropriate;

8 (B) participate, in whole or in part, with the NAIC, or any affiliates
9 or subsidiaries the NAIC oversees, in a centralized producer license registry to
10 effect the licensure and appointment of producers and other persons required to
11 be licensed under this chapter;

12 (C) adopt, by rule, any uniform standards and procedures as are
13 necessary to participate in a centralized registry. Such rules may include the
14 central collection of all fees and system charges for license or appointments
15 that are processed through the registry, and the establishment of uniform
16 license and appointment renewal dates; and

17 (D) require persons engaged in activities which require a license
18 under this chapter to make any filings with the department in a digital,
19 electronic manner approved by the commissioner for applications, renewal,
20 amendments, notifications, reporting, appointments, terminations, the payment
21 of fees and system charges, and such other activities relating to licensure under

1 this chapter as the commissioner may require, subject to such hardship
2 circumstances demonstrated by the applicant or licensee which the
3 commissioner deems appropriate for the utilization of the central registry in a
4 nondigital and nonelectronic manner.

5 Sec. 9. REPEAL

6 8 V.S.A. § 4813g(d) (centralized producer licensing registry) is repealed.

7 Sec. 10. 8 V.S.A. § 4803(a) is amended to read:

8 (a) Qualifications. For the protection of the people of this state the
9 commissioner shall not issue, continue or permit to exist any license as an
10 adjuster, a workers' compensation adjuster, public adjuster, or appraiser except
11 in compliance with this section, or as to any individual not qualified therefor as
12 follows:

13 * * *

14 (3) must pass any written examination required for the license under this
15 subchapter. This subsection shall not apply to multiperil crop insurance
16 adjusters certified in accordance with subsection (f) of this section; and

17 * * *

18 Sec. 11. 8 V.S.A. § 4803(f) is added to read:

19 (f) The commissioner may require a multiperil crop insurance adjuster to
20 be certified as having passed a proficiency examination approved by the
21 federal Risk Management Agency as a condition of obtaining an adjuster's

1 license or license renewal under this chapter, or another proficiency
2 examination approved by the commissioner. Upon request of the
3 commissioner, a multiperil crop insurance adjuster licensee shall furnish to the
4 commissioner proof of such certification satisfactory to the commissioner.

5 Sec. 12. REPEAL

6 8 V.S.A. § 4813i(d) and (e) (chartered life and property and casualty
7 underwriters; exemption from examination) are repealed.

8 Sec. 13. 8 V.S.A. § 8018(e) is amended to read:

9 (e) The fund shall be subject to an annual independent audit. The
10 independent audit may be filed and submitted in accordance with one of the
11 following methods:

12 (1) An audited financial statement of the fund shall be included as a
13 separate schedule of supplementary information in the provider's audited
14 annual statement required under subsection 8002(g) of this title; or

15 (2) An audited financial statement of the fund shall be submitted
16 annually to the residents and the commissioner.

17 Sec. 14. 8 V.S.A. § 8301 is amended to read:

18 § 8301. DEFINITIONS

19 As used in this chapter:

20 * * *

1 chapter in which the insurer has total adjusted capital which is greater than or
2 equal to its company action level risk-based capital but less than the product of
3 its authorized control level risk-based capital and 3.0 and triggers the trend test
4 determined in accordance with the trend test calculation included in the
5 risk-based capital instructions for a health maintenance organization or a
6 hospital or medical services corporation.

7 * * * Captive Insurance * * *

8 Sec. 16. 8 V.S.A. § 4838(a) is amended to read:

9 (a) The rights and powers of the attorney of a reciprocal insurer shall be as
10 provided in the power of attorney given it by the subscribers. A valid power of
11 attorney shall be in writing, executed by the subscriber, and duly executed by
12 the attorney-in-fact.

13 Sec. 17. 8 V.S.A. § 4846 is amended to read:

14 § 4846. SUBSCRIBERS

15 ~~Individuals, partnerships, and corporations~~ Any individual or entity which is
16 duly organized under the laws of this state or the laws of another jurisdiction
17 may make application, enter into agreement for and hold policies or contracts
18 in or with and be a subscriber of any domestic, foreign, or alien reciprocal
19 insurer. Any corporation organized under the laws of this state, including
20 nonprofit corporations organized under the provisions of Title 11B of the
21 Vermont Statutes Annotated, shall, in addition to the rights, powers, and

1 franchises specified in its articles of incorporation, have full power and
2 authority as a subscriber to exchange insurance contracts through such
3 reciprocal insurer. The right to exchange such contracts is declared to be
4 incidental to the purposes for which such corporations are organized and to be
5 as fully granted as the rights and powers expressly conferred upon such
6 corporations. Government or governmental agencies, state or political
7 subdivisions thereof, boards, associations, estates, trustees, or fiduciaries are
8 authorized to exchange nonassessable reciprocal interinsurance contracts with
9 each other and with individuals, ~~partnerships and corporations~~ and lawful
10 entities to the same extent that individuals, ~~partnerships and corporations~~ and
11 lawful entities are herein authorized to exchange reciprocal interinsurance
12 contracts. Any officer, representative, trustee, receiver, or legal representative
13 of any such subscriber shall be recognized as acting for or on its behalf for the
14 purpose of such contract but shall not be personally liable upon such contract
15 by reason of acting in such representative capacity.

16 Sec. 18. 8 V.S.A. § 6004(a) is amended to read:

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

19 * * *

20 (2) in the case of an association captive insurance company, not less
21 than ~~\$750,000.00~~ \$500,000.00;

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Sec. 19. 8 V.S.A. § 6006(i)(2) and (5) are amended to read:

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

* * *

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

* * *

(5) the commissioner may issue a certificate of general good to permit the formation of a captive insurance company that is established for the purpose of consolidating or merging with or assuming existing insurance or reinsurance business from an existing licensed captive insurance company. The commissioner may, upon request of such newly formed captive insurance

1 company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and
2 (2) of this title.

3 Sec. 20. 8 V.S.A. § 6006(o) is added to read:

4 (o) In the case of a captive insurance company formed as a limited liability
5 company, a reciprocal insurance company or mutual insurance company, any
6 proxy executed by the members, subscribers, and policyholders of each shall
7 be valid if executed and transmitted in compliance with section 7.22 of Title
8 11A.

9 Sec. 21. 8 V.S.A. § 6007(b) and (c) are amended to read:

10 (b) Prior to March 1 of each year, and prior to March 15 of each year in the
11 case of pure captive insurance companies or industrial insured captive
12 insurance companies, each captive insurance company shall submit to the
13 commissioner a report of its financial condition, verified by oath of two of its
14 executive officers. Each captive insurance company shall report using
15 generally accepted accounting principles, unless the commissioner requires,
16 approves, or accepts the use of statutory accounting principles or other
17 comprehensive basis of accounting, in each case with any appropriate or
18 necessary modifications or adaptations thereof required or approved or
19 accepted by the commissioner for the type of insurance and kinds of insurers to
20 be reported upon, and as supplemented by additional information required by
21 the commissioner. Except as otherwise provided, each association captive

1 insurance company and each risk retention group shall file its report in the
2 form required by subsection 3561(a) of this title, and each risk retention group
3 shall comply with the requirements set forth in section 3569 of this title. The
4 commissioner shall by rule propose the forms in which pure captive insurance
5 companies and industrial insured captive insurance companies shall report.
6 Subdivision 6002(c)(3) of this title shall apply to each report filed pursuant to
7 this section, except that such subdivision shall not apply to reports filed by risk
8 retention groups.

9 (c) Any pure captive insurance company or an industrial insured captive
10 insurance company may make written application for filing the required report
11 on a fiscal year-end. If an alternative reporting date is granted:

12 (1) the annual report is due ~~60~~ 75 days after the fiscal year-end; and

13 (2) in order to provide sufficient detail to support the premium tax
14 return, the pure captive insurance company or industrial insured captive
15 insurance company shall file prior to March ~~4~~ 15 of each year for each
16 calendar year-end, pages 1, 2, 3, and 5 of the "Captive Annual Statement; Pure
17 or Industrial Insured," verified by oath of two of its executive officers.

18 Sec. 22. 8 V.S.A. § 6020(a) is amended to read:

19 (a) An association captive insurance company, risk retention group, ~~or~~
20 industrial insured captive insurance company formed as a stock or mutual
21 corporation, or other insurer approved by the commissioner may be converted

1 to or merged with and into a reciprocal insurer in accordance with a plan
2 therefore and the provisions of this section.

3 Sec. 23. 8 V.S.A. § 6031(b) is amended to read:

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

8 * * * Health Care Administration * * *

9 Sec. 24. 8 V.S.A. § 4081 is amended to read:

10 § 4081. BLANKET HEALTH INSURANCE

11 (a) Blanket health insurance is hereby declared to be that form of health
12 insurance covering special groups of persons set forth as follows:

13 (1) Under a policy or contract issued to any common carrier, which shall
14 be deemed the policyholder, covering a group defined as all persons who may
15 become passengers on such common carrier;

16 ~~(2) Under a policy or contract issued to an employer, who shall be~~
17 ~~deemed the policyholder, covering any group of employees defined by~~
18 ~~reference to exceptional hazards incident to such employment;~~

19 ~~(3)~~(2) Under a policy or contract issued to a college, school, or other
20 institution of learning or to the head or principal thereof, who or which shall be
21 deemed the policyholder, covering students ~~or teachers~~;

1 ~~(4)~~(3) Under a policy or contract issued in the name of any volunteer
2 fire department, first aid, or other such volunteer group, which shall be deemed
3 the policyholder, covering all of the members of such department or group in
4 connection with their department or group activities; or

5 ~~(5)~~(4) Under a policy or contract issued to any other substantially
6 similar group which, in the discretion of the commissioner and after the prior
7 approval by the commissioner of the group, and the policy or contract, may be
8 subject to the issuance of a blanket health policy or contract.

9 (b) Blanket health insurance shall not include nongroup health insurance
10 policies, disability insurance policies, long-term care insurance policies, dental
11 policies, policies that supplement the Civilian Health and Medical Program of
12 the Uniformed Services, Medicare supplemental policies, accident or
13 indemnity expense policies, or limited benefit policies.

14 Sec. 25. 8 V.S.A. § 4082 is amended to read:

15 § 4082. BLANKET INSURANCE; POLICY CONTENTS

16 No such policy shall contain any provision relative to notice of claim,
17 proofs of loss, time of payment of claims, ~~or~~ time within which legal action
18 must be brought upon the policy, or any other provision not in compliance with
19 a requirement applicable to large group health insurance policies, which, in the
20 opinion of the commissioner, is less favorable to the persons insured than
21 would be permitted by the provisions set forth in section 4065 of this title, or

1 any other provision of this title applicable to large group health insurance
2 policies. As used in this section, “large group health insurance” means any
3 group health insurance except for small group health insurance, industrial
4 health insurance, and franchise health insurance. An individual application
5 shall not be required from a person covered under a blanket health policy or
6 contract, nor shall it be necessary for the insurer to furnish each person a
7 certificate. All benefits under any blanket health policy shall, unless for
8 hospital and physician service or surgical benefits, be payable to the person
9 insured, or to his or her designated beneficiary or beneficiaries, or to his or her
10 estate, except that if the person insured be a minor, such benefits may be made
11 payable to his or her parent, guardian, or other person actually supporting him
12 or her. Nothing contained in this section or section 4081 of this title shall be
13 deemed to affect the legal liability of policyholders for the death of, or injury
14 to, any such members of such group.

15 Sec. 26. REPEAL

16 8 V.S.A. § 4089b(e) (mental health parity; benefit plan network) is
17 repealed.

18 Sec. 27. 8 V.S.A. § 4089k(a)(1) is amended to read:

19 (a)(1) Beginning October 1, 2009 and annually thereafter, each health
20 insurer shall pay a fee into the health IT fund established in section 10301 of
21 Title 32 in the amount of 0.199 of one percent of all health insurance claims

1 paid by the health insurer for its Vermont members in the previous fiscal year
2 ending June 30. The annual fee shall be paid in quarterly installments on
3 October 1, January 1, ~~March 1~~ April 1, and July 1.

4 Sec. 28. 8 V.S.A. § 8093 is amended to read:

5 § 8093. DENIAL OF CLAIMS; WRITTEN EXPLANATION

6 (a) If a claim under a long-term care insurance contract is denied, the issuer
7 shall, within 60 days of the date of a written request by the policyholder or
8 certificate holder, or a representative thereof:

9 (1) Provide a written explanation of the reasons for the denial; and

10 (2) Make available all information directly related to the denial.

11 (b) After completion of all internal appeals, the policyholder or certificate
12 holder may appeal the insurer's benefit trigger determination to an independent
13 review organization designated by the commissioner, upon payment of a filing
14 fee of no more than \$25.00. The filing fee may be waived or reduced upon a
15 finding by the commissioner that the financial circumstances of the insured
16 warrant a waiver or reduction. All other costs of the independent review shall
17 be paid by the insurer.

18 Sec. 29. APPLICABILITY; EFFECTIVE DATE

19 (a) This act shall take effect on July 1, 2010, except that Secs. 16 through
20 23 (captive insurance companies) and Sec. 27 (health information technology
21 assessment) shall take effect on passage.

1 (b) Sec. 2 (debt adjusters) and Secs. 24 and 25 (blanket insurance) of this
2 act are intended to clarify existing law.

3 (c) The enactment of Sec. 16 of this act (power of attorney of a reciprocal
4 insurance company) shall not affect the validity and binding effect of a power
5 of attorney, according to its terms, which has been duly executed before the
6 effective date of this act.