

S.278

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

(g) At the time it commences business, an independent trust company shall have unimpaired capital in an amount not less than \$250,000.00 or one-quarter of one percent of ~~the first year's projected~~ its assets under management, whichever is greater. Thereafter, an independent trust company shall maintain unimpaired capital in an amount not less than \$250,000.00 or one-quarter of one percent of ~~the first year's projected~~ its assets under management, whichever is greater, up to a maximum of \$1,000,000.00. The unimpaired capital and surplus of an independent trust company shall be held as security for the faithful discharge of the fiduciary duties undertaken as well as for the claims of other creditors. The commissioner may from time to time require or allow increases or decreases to the unimpaired capital otherwise required by this subsection, up to such \$1,000,000.00 maximum, as deemed necessary or desirable for the protection of customers and the safety of the trust business.

The safety and soundness factors to be considered by the commissioner in the exercise of such discretion include:

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

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

§ 4861. DEFINITIONS

As used in this chapter:

* * *

(2) "Debt adjustment" means making ~~a contract~~ an agreement with a debtor whereby the ~~debtor agrees to pay a sum or sums of money periodically and the other party to the contract distributes, supervises, coordinates, negotiates, or controls~~ debtor agrees to distribute, supervise, coordinate, negotiate, or control the distribution of ~~such~~ money or evidences thereof among one or more of the debtor's creditors in full or partial payment of obligations of the debtor and includes services as an intermediary between a debtor and one or more of the debtor's creditors for the purpose of obtaining

concessions. Debt adjustment also includes any program or strategy in which the debt adjuster furnishes services to a debtor which includes a proposed or actual payment or schedule of payments to be made by or on behalf of the debtor and is used to pay debt owed by the debtor. For purposes of this chapter, engaging in debt adjustment in this state shall include:

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

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

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

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

* * *

Sec. 3. RECODIFICATION

8 V.S.A. Part 3, chapter 133, §§ 4861 through 4876 is recodified as 8 V.S.A. Part 2, chapter 83, §§ 2751 through 2766.

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

§ 10404a. REGISTERED AGENT FOR FINANCIAL INSTITUTIONS

DOING BUSINESS IN VERMONT

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

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

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

(2) an individual who holds a residential mortgage loan to an immediate family member;

(3) an individual who holds a residential mortgage loan secured by a dwelling that serves as the individual's residence; or

(4) a state agency, political subdivision, or other public instrumentality of this state.

* * * Insurance * * *

Sec. 5. 8 V.S.A. § 3803(2) is amended to read:

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. ~~A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75 percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution.~~ A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

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

§ 3808. TRUSTEE GROUPS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 9. REPEAL

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

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

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

* * *

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

* * *

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

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

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

Sec. 12. REPEAL

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

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

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

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

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

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

§ 8301. DEFINITIONS

As used in this chapter:

* * *

(5) "Domestic insurer" means any life ~~and/or~~ or health insurance company organized in this state under subchapter 1 of chapter 101 of this title, any health maintenance organization organized in this state under chapter 139 of this title, and any hospital or medical services corporation organized in this state under chapter 123 or 125 of this title.

* * *

Sec. 15. 8 V.S.A. § 8303(a) is amended to read:

(a) ~~A risk-based~~ The following are deemed to be company action level events subject to the requirements of this section when shown in a risk-based capital report or final adjusted risk-based risk-based capital report which indicates:

(1) that the insurer's total adjusted capital is greater than or equal to its regulatory action level ~~risk-based~~ risk-based capital but less than its company action level ~~risk-based~~ risk-based capital; or

(2) that the insurer has total adjusted capital which is greater than or equal to its company action level ~~risk-based~~ risk-based capital, but less than the product of its authorized control level ~~risk-based~~ risk-based capital and 2.5 and has experienced a negative trend shall be considered a company action level event and subject to the requirements of this section. In the case of a health maintenance organization or a hospital or medical services corporation, a company action level event also shall include the filing of a report under this

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

* * * Captive Insurance * * *

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

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

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

§ 4846. SUBSCRIBERS

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

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

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

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

* * *

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

* * *

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

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

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

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

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

(b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure captive insurance companies or industrial insured captive insurance companies, 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 or other comprehensive basis of accounting, in each 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 subsection 3561(a) 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.

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

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

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

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

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

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

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

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

* * * Health Care Administration * * *

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

§ 4081. BLANKET HEALTH INSURANCE

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

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

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

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

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

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

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

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

§ 4082. BLANKET INSURANCE; POLICY CONTENTS

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

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

Sec. 26. REPEAL

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

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

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

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

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

§ 8093. DENIAL OF CLAIMS; WRITTEN EXPLANATION

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

- (1) Provide a written explanation of the reasons for the denial; and
- (2) Make available all information directly related to the denial.

(b) After completion of all internal appeals, the policyholder or certificate holder may appeal the insurer's benefit trigger determination to an independent review organization designated by the commissioner, upon payment of a filing fee of no more than \$15.00. The filing fee may be waived or reduced upon a finding by the commissioner that the financial circumstances of the insured warrant a waiver or reduction. All other costs of the independent review shall be paid by the insurer.

Sec. 29. APPLICABILITY; EFFECTIVE DATE

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

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

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