

1 H.512

2 Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,
3 Dickinson of St. Albans Town, Kitzmiller of Montpelier,
4 Kupersmith of South Burlington, Ralston of Middlebury,
5 Russell of Rutland City, Shand of Weathersfield and Young of
6 Glover

7 Referred to Committee on

8 Date:

9 Subject: Banking; insurance; securities; health care administration

10 Statement of purpose: This bill proposes to make technical and miscellaneous
11 amendments to various statutes pertaining to banking, insurance, securities,
12 and health care administration.

13 An act relating to banking, insurance, securities, and health care
14 administration

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

1 * * * General Administrative Provisions * * *

2 Sec. 1. 3 V.S.A. § 212 is amended to read:

3 § 212. DEPARTMENTS CREATED

4 The following administrative departments are hereby created, through the
5 instrumentality of which the governor, under the constitution, shall exercise
6 such functions as are by law assigned to each department respectively:

7 * * *

8 (3) The department of ~~banking, insurance, securities, and health care~~
9 ~~administration~~ financial regulation

10 * * *

11 Sec. 2. STATUTORY REVISIONS

12 The legislative council, in its statutory revision authority under 2 V.S.A.
13 § 424, is directed to replace the term “commissioner of banking, insurance,
14 securities, and health care administration” in the Vermont Statutes Annotated
15 wherever it appears with the term “commissioner of financial regulation”; and
16 to replace the term “department of banking, insurance, securities, and health
17 care administration” wherever it appears with the term “department of
18 financial regulation.”

19 Sec. 3. 8 V.S.A. § 11(b) is amended to read:

20 (b) Conflicts of Interest.

21 * * *

1 (2) The commissioner and employees of the department shall not, during
2 their terms of office, receive directly or indirectly any payment or gratuity
3 from any institution subject to supervision or regulation by the department or
4 be engaged in the negotiation of loans for others with any such institution. The
5 prohibitions contained in this subdivision shall not be construed as prohibiting
6 a person from being a depositor, equity interest owner~~s~~, or member in any
7 financial institution~~s~~; or credit union or an insurance policyholder or equity
8 interest owner~~s~~; on the same terms as are available to the public generally.

9 (3) If the commissioner, or any employee of the department or the
10 spouse of any of them or the son or daughter of any of them residing at their
11 respective homes obtains a loan from or holds an equity interest in any
12 financial institution or credit union subject to supervision or regulation by the
13 department, the fact of the loan or of the holding, together with the appropriate
14 terms and conditions, shall be disclosed immediately to the commissioner in
15 writing by the person obtaining the loan or holding.

16 * * *

17 Sec. 4. 8 V.S.A. § 13(d) is added to read:

18 (d) In addition to any other penalties or powers, the commissioner may
19 order a person to make restitution or provide disgorgement of any sums shown
20 to have been obtained in violation of provisions of this title and 18 V.S.A.
21 chapter 221, plus interest at the legal rate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * * Banking * * *

Sec. 5. 8 V.S.A. § 18 is amended to read:

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

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

1 circumstances, the commissioner may waive reimbursement for the costs and
2 expenses of any review in the interests of justice. Those institutions subject to
3 assessment or fees for services provided under section 19 of this title, other
4 than merchant banks established under section 12603 of this title and
5 independent trust companies ~~organized under chapter 77~~ subject to assessment
6 under subdivision 2405(f)(1) of this title, shall not be billed for a regular
7 examination performed under subsection 11501(a) or 30601(a) of this title or
8 for services for which such fees under subsection 19(a) of this title have been
9 paid. Merchant banks established under section 12603 of this title and
10 independent trust companies subject to assessment under subdivision
11 2405(f)(1) of this title shall pay the department the costs and expenses of all
12 examinations, including regular and special or expanded scope examinations.
13 The authority granted to the commissioner by this section is in addition to any
14 other authority granted to the commissioner by law.

15 Sec. 6. 8 V.S.A. § 19(b) is amended to read:

16 (b) Those institutions subject to assessment under subsection (d) of this
17 section, other than merchant banks established under section 12603 of this title
18 and independent trust companies assessed as provided in subdivision
19 2405(f)(1) of this title, will not be billed for examinations performed under
20 subsection 11501(a) of this title.

1 Sec. 7. 8 V.S.A. § 19(d)(6) is amended to read:

2 (6) ~~Independent~~ In the case of independent trust companies organized
3 under chapter 77 of this title ~~shall be assessed as provided under subsection~~
4 ~~2405(f) of this title;~~

5 (A) an independent trust company whose primary activity in this state
6 is transactional shall pay an assessment calculated under subdivision
7 2405(f)(1) of this title; and

8 (B) an independent trust company whose primary activity in this state
9 is asset management shall pay an assessment based on assets under
10 management, provided the annual assessment shall not be less than \$2,000.00.

11 Sec. 8. 8 V.S.A. § 19(f) is amended to read:

12 (f) There is hereby created a fund to be known as the ~~banking~~ financial
13 institution supervision fund for the purpose of providing the financial means
14 for the commissioner of banking, insurance, securities, and health care
15 administration to administer ~~chapters 71, 73, 77, 133, and 200-210~~ Parts 2, 5,
16 and 6 of this title, ~~Part 1 and Part 3 of Title 9~~ V.S.A. Parts 1 and 3, and Title
17 9A. All fees and assessments received by the department pursuant to such
18 administration shall be deposited in this fund.

1 Sec. 9. 8 V.S.A. § 2405 is amended to read:

2 § 2405. PERIODIC REPORTS; EXAMINATIONS; COOPERATIVE
3 AGREEMENTS

4 * * *

5 (f) Any independent trust company that maintains one or more offices in
6 this state shall be assessed by the following applicable method:

7 (1) an independent trust company whose primary activity in the state is
8 transactional shall pay ~~to the commissioner~~ *to the department* an annual
9 assessment equal to \$0.0001 per dollar volume of activity performed for the
10 most recent year ending December 31, which assessment shall not be less than
11 \$2,000.00 or greater than \$50,000.00, and which shall be paid on or before
12 April 1 of each year; or

13 (2) an independent trust company whose primary activity in the state is
14 asset management shall pay ~~to the commissioner~~ *to the department* an
15 assessment based on assets under management in this state on the preceding
16 June 30 as provided under subsection 19(d) of this title.

17 (g) An independent trust company assessed pursuant to subdivision (f)(1)
18 of this section shall pay to the department the costs and expenses of all
19 examinations, including both regular examinations and special or expanded
20 scope examinations as provided under ~~sections~~ section 18 and 19 of this title.
21 An independent trust company assessed pursuant to subdivision (f)(2) of this

1 section shall not be billed for regular examinations, but shall pay to the
2 department the costs and expenses of all special or expanded scope
3 examinations as provided under sections 18 and 19 of this title.

4 Sec. 10. 8 V.S.A. § 2509(a) is amended to read:

5 (a) A licensee under this subchapter shall pay to the department an annual
6 license renewal fee of \$500.00, plus an annual renewal fee of \$25.00 for each
7 authorized delegate location, provided that the total renewal fee for all
8 authorized delegate locations shall not exceed \$3,500.00, no later than
9 December 1 for the next succeeding calendar year.

10 Sec. 11. 8 V.S.A. § 2402 is amended to read:

11 § 2402. AUTHORITY TO ORGANIZE; POWERS; LIMITATIONS;
12 PROHIBITIONS; EXEMPTIONS

13 * * *

14 (f) An independent trust company formed and authorized under this chapter
15 shall:

16 (1) Maintain its principal place of business in this state.

17 (2) Appoint a registered agent to accept service of process and to
18 otherwise act on its behalf in this state, provided that whenever such registered
19 agent cannot with reasonable diligence be found at the Vermont registered
20 office of the independent trust company, the secretary of state shall be an agent

1 of such independent trust company upon whom any process, notice, or demand
2 may be served.

3 (3) Hold at least one meeting of its governing body in this state each
4 year.

5 (4) Have at least one Vermont resident as a member of its governing
6 body.

7 (g) For the purposes of this chapter, a person does not engage in a trust
8 business merely by:

9 * * *

10 Sec. 12. 8 V.S.A. § 12603 is amended to read:

11 § 12603. MERCHANT BANKS

12 * * *

13 (q) A merchant bank formed and authorized under this chapter shall:

14 (1) Maintain its principal place of business in this state.

15 (2) Appoint a registered agent to accept service of process and to
16 otherwise act on its behalf in this state, provided that whenever such registered
17 agent cannot with reasonable diligence be found at the Vermont registered
18 office of the merchant bank, the secretary of state shall be an agent of such
19 merchant bank upon whom any process, notice, or demand may be served.

20 (3) Hold at least one meeting of its governing body in this state each
21 year.

1 * * *

2 (12) “Nationwide Mortgage Licensing System and Registry” means a
3 licensing system developed and maintained by the Conference of State Bank
4 Supervisors and the American Association of Residential Mortgage Regulators
5 for the licensing and registration of licensees under this chapter, or any
6 successor to the Nationwide Mortgage Licensing System and Registry, or any
7 alternative or replacement licensing system as designated by the commissioner.

8 (13) “Outstanding,” with respect to a payment instrument, means issued
9 or sold by or for the licensee and which has been reported as sold but not yet
10 paid by or for the licensee.

11 ~~(13)~~(14) “Payment instrument” means a check, draft, money order,
12 traveler’s check, or other instrument for the transmission or payment of money
13 or monetary value, whether or not negotiable. The term does not include a
14 credit card voucher, letter of credit, or instrument that is redeemable by the
15 issuer in goods or services.

16 ~~(14)~~(15) “Person” means an individual, corporation, business trust,
17 estate, trust, partnership, limited liability company, association, joint venture,
18 government, governmental subdivision, agency or instrumentality, or any other
19 legal or commercial entity.

1 ~~(15)~~(16) “Principal equity owner” means any person (or group of
2 persons acting in concert) who owns or controls ~~25 percent~~ 10 percent or more
3 of any class of equity interest in the applicant.

4 ~~(16)~~(17) “Record” means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium, and is retrievable in
6 perceivable form.

7 ~~(17)~~(18) “Responsible individual” means an individual who is employed
8 by a licensee and has principal, active managerial authority over the provision
9 of money services by the licensee in this state.

10 ~~(18)~~(19) “State” means a state of the United States, the District of
11 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
12 insular possession subject to the jurisdiction of the United States.

13 ~~(19)~~(20) “Stored value” means monetary value that is evidenced by an
14 electronic record.

15 ~~(20)~~(21) “Unsafe or unsound practice” means a practice or conduct by a
16 person licensed to engage in money transmission or an authorized delegate of
17 such a person which creates the likelihood of material loss, insolvency, or
18 dissipation of the licensee’s assets, or otherwise materially prejudices the
19 interests of its customers.

1 Sec. 15. 8 V.S.A. § 2506 is amended to read:

2 § 2506. APPLICATION FOR LICENSE

3 * * *

4 (b) A person applying for a license under this subchapter shall do so under
5 oath and in a form and in a medium prescribed by the commissioner. The
6 application shall state or contain:

7 * * *

8 (d) ~~A~~ At the time of making application, the applicant shall pay to the
9 department a nonrefundable application fee of \$1,000.00, a license fee of
10 \$500.00 for the applicant, and a license fee of \$25.00 for each authorized
11 delegate location ~~shall accompany an application for a license under this~~
12 ~~subchapter.~~ The license fee shall be refunded if the application is denied.

13 (e) In connection with an application for a license, the applicant and each
14 executive officer, manager, director, and person that has control of the
15 applicant shall furnish to the Nationwide Mortgage Licensing System and
16 Registry information concerning the applicant's identity, including:

17 (1) Fingerprints for submission to the Federal Bureau of Investigation
18 and to any other governmental agency or entity authorized to receive such
19 information for a state, national, and international criminal history background
20 check and authorization for the commissioner to obtain a criminal history
21 background check.

1 (2) Personal history and experience in a form prescribed by the
2 Nationwide Mortgage Licensing System and Registry, including the
3 submission of authorization for the Nationwide Mortgage Licensing System
4 and Registry and the commissioner to obtain:

5 (A) An independent credit report and credit score from a consumer
6 reporting agency described in subsection 603(p) of the Fair Credit Reporting
7 Act, 15 U.S.C. 1681a(p), for the purpose of evaluating the applicant's financial
8 responsibility at the time of application and additional credit reports and credit
9 scores to confirm the licensee's continued compliance with the financial
10 responsibility requirements of this chapter; and

11 (B) Information related to any administrative, civil, or criminal
12 findings by any governmental jurisdiction.

13 (3) Any other information required by the Nationwide Mortgage
14 Licensing System and Registry or the commissioner.

15 (f) The commissioner may waive one or more requirements of subsections
16 (b) and (c) of this section, or permit an applicant to submit substituted
17 information in lieu of the required information.

1 Sec. 16. 8 V.S.A. § 2516 is amended to read:

2 § 2516. APPLICATION FOR LICENSE

3 (a) A person applying for a license under this subchapter shall do so under
4 oath and in a form and in a medium prescribed by the commissioner. The
5 application shall state or contain:

6 * * *

7 (c) In connection with an application for a license, the applicant and each
8 executive officer, manager, director, and person that has control of the
9 applicant shall furnish to the Nationwide Mortgage Licensing System and
10 Registry information concerning the applicant's identity, including:

11 (1) Fingerprints for submission to the Federal Bureau of Investigation
12 and to any other governmental agency or entity authorized to receive such
13 information for a state, national, and international criminal history background
14 check and authorization for the commissioner to obtain a criminal history
15 background check.

16 (2) Personal history and experience in a form prescribed by the
17 Nationwide Mortgage Licensing System and Registry, including the
18 submission of authorization for the Nationwide Mortgage Licensing System
19 and Registry and the commissioner to obtain:

20 (A) An independent credit report and credit score from a consumer
21 reporting agency described in subsection 603(p) of the Fair Credit Reporting

1 Act, 15 U.S.C. 1681a(p), for the purpose of evaluating the applicant's financial
2 responsibility at the time of application and additional credit reports and credit
3 scores to confirm the licensee's continued compliance with the financial
4 responsibility requirements of this chapter; and

5 (B) Information related to any administrative, civil, or criminal
6 findings by any governmental jurisdiction.

7 (3) Any other information required by the Nationwide Mortgage
8 Licensing System and Registry or the commissioner.

9 Sec. 17. 8 V.S.A. § 2530 is amended to read:

10 § 2530. AUTHORITY TO CONDUCT EXAMINATIONS AND
11 INVESTIGATIONS

12 ~~(a) The commissioner may examine any person at any time the~~
13 ~~commissioner determines it is prudent for the protection of the residents of this~~
14 ~~state. The cost of such examination shall be borne by the licensee or by any~~
15 ~~person examined that is subject to this chapter or is required to be licensed~~
16 ~~under this chapter, in accordance with section 18 of this title. In addition to~~
17 ~~any authority allowed under this chapter or elsewhere and for the purpose of~~
18 ~~examination or discovering or investigating violations or complaints of or~~
19 ~~arising under this chapter or under any other applicable law, rule, order,~~
20 ~~directive, or regulation or of securing any information required or useful~~
21 ~~thereunder and for purposes of initial licensing, license renewal, license~~

1 suspension, license conditioning, license revocation or termination, or general
2 or specific inquiry or investigation, the commissioner or his or her duly
3 designated representative shall have the authority to:

4 (1) Conduct investigations and examinations at any time.

5 (2) Access, receive, and use any books, accounts, records, files,
6 documents, information, or evidence including:

7 (A) Criminal, civil, and administrative history information, including
8 nonconviction data;

9 (B) Personal history and experience information, including
10 independent credit reports obtained from a consumer reporting agency
11 described in subsection 603(p) of the Fair Credit Reporting Act, 15 U.S.C.
12 § 1681a(p); and

13 (C) Any other documents, information, or evidence the commissioner
14 deems relevant to the inquiry or investigation regardless of the location,
15 possession, control, or custody of such documents, information, or evidence.

16 (b) The commissioner may review, investigate, or examine any licensee,
17 individual, or person, regardless of whether such individual or person has
18 obtained a license under this chapter, as often as necessary in order to carry out
19 the purposes of this chapter. The commissioner may direct, subpoena, or order
20 the attendance of and examine under oath all persons whose testimony may be
21 required about the business or subject matter of any such examination or

1 investigation and may direct, subpoena, or order such person to produce books,
2 accounts, records, files, and any other documents the commissioner deems
3 relevant to the inquiry.

4 (c) Each licensee, individual, or person subject to this chapter shall make
5 available to the commissioner upon request the books and records relating to
6 the operations of such licensee, individual, or person. The commissioner shall
7 have access to such books and records and may interview the officers,
8 principals, control persons, employees, independent contractors, agents, and
9 customers of the licensee, individual, or person concerning their business.

10 (d) Each licensee, individual, or person subject to this chapter shall make or
11 compile reports or prepare other information as directed by the commissioner
12 in order to carry out the purposes of this section, including:

13 (1) Accounting compilations;

14 (2) Information lists and data concerning transactions and business
15 activities in a format prescribed by the commissioner; and

16 (3) Such other information as the commissioner deems necessary to
17 carry out the purposes of this chapter.

18 (e) In making any examination or investigation authorized by this chapter,
19 the commissioner may control access to any documents and records of the
20 licensee or person under examination or investigation. The commissioner may
21 take possession of the documents and records or place a person in exclusive

1 charge of the documents and records in the place where they are usually kept.
2 During the period of control, no individual or person shall remove or attempt
3 to remove any of the documents and records except pursuant to a court order or
4 with the consent of the commissioner. Unless the commissioner has
5 reasonable grounds to believe the documents or records of the licensee have
6 been or are at risk of being altered or destroyed for purposes of concealing a
7 violation of this chapter, the licensee or owner of the documents and records
8 shall have access to the documents or records as necessary to conduct its
9 ordinary business affairs.

10 (f) In order to carry out the purposes of this chapter, the commissioner
11 may:

12 (1) Retain attorneys, accountants, or other professionals and specialists
13 as examiners, auditors, or investigators to conduct or assist in the conduct of
14 examinations or investigations;

15 (2) Enter into agreements or relationships with other government
16 officials or regulatory associations in order to improve efficiencies and reduce
17 regulatory burden by sharing resources, standardized or uniform methods or
18 procedures, and documents, records, information, or evidence obtained under
19 this section;

1 (3) Use, hire, contract, or employ public or privately available analytical
2 systems, methods, or software to examine or investigate the licensee,
3 individual, or person subject to this chapter;

4 (4) Accept and rely on examination or investigation reports made by
5 other government officials within or without this state; or

6 (5) Accept audit reports made by an independent certified public
7 accountant for the licensee, individual, or person subject to this chapter in the
8 course of that part of the examination covering the same general subject matter
9 as the audit and may incorporate the audit report in the report of the
10 examination, report of investigation, or other writing of the commissioner.

11 (g) The authority of this section shall remain in effect whether such a
12 licensee, individual, or person acts or claims to act under any licensing or
13 registration law of this state, acts without such authority, or surrenders such
14 licensee's license.

15 (h) No licensee, individual, or person subject to investigation or
16 examination under this section may knowingly withhold, abstract, remove,
17 mutilate, destroy, or secrete any books, records, computer records, or other
18 information.

19 (i) Each licensee shall pay to the department all fees, costs, and expenses of
20 any examination, review, and investigation as prescribed by section 18 of this
21 title, and those fees, costs, and expenses shall be billed when they are incurred.

1 The commissioner may maintain an action for the recovery of examination,
2 review and investigation fees, costs, and expenses as prescribed in section 18
3 of this title in any court of competent jurisdiction.

4 ~~(b)~~(j) Information obtained during an examination or investigation under
5 this chapter shall be confidential and privileged, and shall be treated as
6 provided in section 23 of this title.

7 Sec. 18. 8 V.S.A. chapter 79, subchapter 9 is added to read:

8 Subchapter 9. Nationwide Licensing System

9 § 2560. NATIONWIDE LICENSING SYSTEM

10 (a) In furtherance of the commissioner's duties under this chapter, the
11 commissioner may participate in the Nationwide Mortgage Licensing System
12 and Registry and may take such action regarding participation in the licensing
13 system as the commissioner deems necessary to carry out the purposes of this
14 section, including:

15 (1) Issue rules or orders, and may establish procedures, to further
16 participation in the Nationwide Mortgage Licensing System and Registry.

17 (2) Facilitate and participate in the establishment and implementation of
18 the Nationwide Mortgage Licensing System and Registry.

19 (3) Establish relationships or contracts with the Nationwide Mortgage
20 Licensing System and Registry or other entities designated by the Nationwide
21 Mortgage Licensing System and Registry.

1 (4) Authorize the Nationwide Mortgage Licensing System and Registry
2 to collect and maintain records and to collect and process any fees associated
3 with licensure on behalf of the commissioner.

4 (5) Require persons engaged in activities that require a license under this
5 chapter to use the Nationwide Mortgage Licensing System and Registry for
6 license applications, renewals, amendments, surrenders, and such other
7 activities as the commissioner may require and to pay through the national
8 licensing system all fees provided for under this chapter.

9 (6) Authorize the Nationwide Mortgage Licensing System and Registry
10 to collect fingerprints on behalf of the commissioner in order to receive or
11 conduct criminal history background checks, and, in order to reduce the points
12 of contact which the Federal Bureau of Investigation may have to maintain for
13 purposes of this subsection, the commissioner may use the Nationwide
14 Mortgage Licensing System and Registry as a channeling agent for requesting
15 information from and distributing information to the Department of Justice or
16 any other governmental agency.

17 (7) In order to reduce the points of contact which the commissioner may
18 have to maintain for purposes of this chapter, the commissioner may use the
19 Nationwide Mortgage Licensing System and Registry as a channeling agent for
20 requesting and distributing information to and from any source so directed by
21 the commissioner.

1 (b) The commissioner may require persons engaged in activities that
2 require a license under this chapter to submit fingerprints, and the
3 commissioner may use the services of the Nationwide Mortgage Licensing
4 System and Registry to process the fingerprints and to submit the fingerprints
5 to the Federal Bureau of Investigation, the Vermont state police, or any
6 equivalent state or federal law enforcement agency for the purpose of
7 conducting a criminal history background check. The licensee or applicant
8 shall pay the cost of such criminal history background check, including any
9 charges imposed by the Nationwide Mortgage Licensing System and Registry.

10 (c) Persons engaged in activities that require licensure pursuant to this
11 chapter shall pay all applicable charges to use the Nationwide Mortgage
12 Licensing System and Registry, including such processing charges as the
13 administrator of the Nationwide Mortgage Licensing System and Registry shall
14 establish, in addition to the fees required under this chapter.

15 (d) The Nationwide Mortgage Licensing System and Registry is not
16 intended to and does not replace or affect the commissioner's authority to
17 grant, deny, suspend, revoke, or refuse to renew licenses.

18 § 2561. CONFIDENTIALITY

19 In order to promote more effective regulation and reduce regulatory burden
20 through supervisory information sharing:

1 (1) The privacy or confidentiality of any information or material
2 provided to the Nationwide Mortgage Licensing System and Registry and any
3 privilege arising under federal or state law (including the rules of any federal
4 or state court) with respect to such information or material shall continue to
5 apply to such information or material after the information or material has been
6 disclosed to the Nationwide Mortgage Licensing System and Registry. Such
7 information and material may be shared with all state and federal regulatory
8 officials with oversight authority without the loss of privilege or the loss of
9 confidentiality protections provided by federal law or state law.

10 (2) To carry out the purpose of this section, the commissioner is
11 authorized to enter agreements or sharing arrangements with other
12 governmental agencies, the Conference of State Bank Supervisors, the
13 American Association of Residential Mortgage Regulators, or other
14 associations representing governmental agencies.

15 (3) Information or material that is subject to privilege or confidentiality
16 under subdivision (1) of this section shall not be subject to:

17 (A) Disclosure under any federal or state law governing the
18 disclosure to the public of information held by an officer or an agency of the
19 federal government or the respective state; or

20 (B) Subpoena or discovery or admission into evidence in any private
21 civil action or administrative process unless with respect to any privilege held

1 by the Nationwide Mortgage Licensing System and Registry with respect to
2 such information or material the person to whom such information or material
3 pertains waives, in whole or in part, in the discretion of the person, that
4 privilege.

5 (4) This section shall not apply with respect to information or material
6 relating to employment history and publicly adjudicated disciplinary and
7 enforcement actions that are included in the Nationwide Mortgage Licensing
8 System and Registry for access by the public.

9 Sec. 19. 8 V.S.A. § 2751(4) is added to read:

10 (4) “Nationwide Mortgage Licensing System and Registry” means a
11 licensing system developed and maintained by the Conference of State Bank
12 Supervisors and the American Association of Residential Mortgage Regulators
13 for the licensing and registration of licensees under this chapter, or any
14 successor to the Nationwide Mortgage Licensing System and Registry, or any
15 alternative or replacement licensing system as designated by the commissioner.

16 Sec. 20. 8 V.S.A. § 2753 is amended to read:

17 § 2753. APPLICATION FOR LICENSE

18 * * *

19 (c) In connection with an application for a license, the applicant and each
20 executive officer, manager, director, and person that has control of the

1 applicant shall furnish to the Nationwide Mortgage Licensing System and
2 Registry information concerning the applicant's identity, including:

3 (1) Fingerprints for submission to the Federal Bureau of Investigation
4 and to any other governmental agency or entity authorized to receive such
5 information for a state, national, and international criminal history background
6 check and authorization for the commissioner to obtain a criminal history
7 background check.

8 (2) Personal history and experience in a form prescribed by the
9 Nationwide Mortgage Licensing System and Registry, including the
10 submission of authorization for the Nationwide Mortgage Licensing System
11 and Registry and the commissioner to obtain:

12 (A) An independent credit report and credit score from a consumer
13 reporting agency described in subsection 603(p) of the Fair Credit Reporting
14 Act, 15 U.S.C. § 1681a(p), for the purpose of evaluating the applicant's
15 financial responsibility at the time of application and additional credit reports
16 and credit scores to confirm the licensee's continued compliance with the
17 financial responsibility requirements of this chapter; and

18 (B) Information related to any administrative, civil, or criminal
19 findings by any governmental jurisdiction.

20 (3) Any other information required by the Nationwide Mortgage
21 Licensing System and Registry or the commissioner.

1 (d) The commissioner may waive one or more requirements of subsections
2 (a) and (b) of this section or permit an applicant to submit substituted
3 information in lieu of the required information.

4 Sec. 21. 8 V.S.A. § 2761 is amended to read:

5 § 2761. EXAMINATIONS BY COMMISSIONER

6 (a) The commissioner shall examine or cause to be examined, with or
7 without notice, the condition and affairs of each licensee at least once every
8 three years and otherwise as required or determined by the commissioner. The
9 commissioner may accept reports of examinations prepared by another state or
10 federal regulatory agency as substitutes if such reports are available to the
11 commissioner and are determined to be adequate in exercising his or her
12 powers and discharging his or her responsibilities under this chapter.

13 (b) ~~For the purpose of discovering violations of this chapter, the~~
14 ~~commissioner and his or her duly designated representatives may at any time~~
15 ~~investigate the books, accounts, records, and files used therein of every~~
16 ~~licensee and of every person whom the commissioner believes to be in the~~
17 ~~business described in this chapter, whether such person shall act or claim to act~~
18 ~~as principal or agent, or under or without the authority of this chapter.~~

19 (c) ~~In connection with any examination or investigation, the commissioner~~
20 ~~and his or her duly designated representatives shall have free access to the~~
21 ~~offices and places of business, books, accounts, papers, records, files, safes,~~

1 ~~and vaults of all such persons. The commissioner and his or her designated~~
2 ~~representatives may examine on oath any licensee, and any director, officer,~~
3 ~~employee, customer, creditor, or stockholder of a licensee, concerning the~~
4 ~~affairs and business of the licensee. The commissioner shall ascertain whether~~
5 ~~the licensee transacts its business in the manner prescribed by law and the~~
6 ~~regulations issued hereunder. The commissioner may compel the attendance~~
7 ~~of any person or the production of any books, accounts, records, and files used~~
8 ~~therein; and may examine under oath all persons in attendance pursuant~~
9 ~~thereto. In addition to any authority allowed under this chapter or elsewhere~~
10 ~~and for the purpose of examination or discovering or investigating violations or~~
11 ~~complaints of or arising under this chapter or under any other applicable law,~~
12 ~~rule, order, directive, or regulation or of securing any information required or~~
13 ~~useful thereunder and for purposes of initial licensing, license renewal, license~~
14 ~~suspension, license conditioning, license revocation or termination, or general~~
15 ~~or specific inquiry or investigation, the commissioner or his or her duly~~
16 ~~designated representative shall have the authority to:~~

17 (1) Conduct investigations and examinations at any time.

18 (2) Access, receive, and use any books, accounts, records, files,
19 documents, information, or evidence including:

20 (A) Criminal, civil, and administrative history information, including
21 nonconviction data;

1 (B) Personal history and experience information, including
2 independent credit reports obtained from a consumer reporting agency
3 described in subsection 603(p) of the Fair Credit Reporting Act, 15 U.S.C.
4 § 1681a(p); and

5 (C) Any other documents, information, or evidence the commissioner
6 deems relevant to the inquiry or investigation regardless of the location,
7 possession, control, or custody of such documents, information, or evidence.

8 (c) The commissioner may review, investigate, or examine any licensee,
9 individual, or person, regardless of whether such individual or person has
10 obtained a license under this chapter, as often as necessary in order to carry out
11 the purposes of this chapter. The commissioner may direct, subpoena, or order
12 the attendance of and examine under oath all persons whose testimony may be
13 required about the business or subject matter of any such examination or
14 investigation and may direct, subpoena, or order such person to produce books,
15 accounts, records, files, and any other documents the commissioner deems
16 relevant to the inquiry.

17 (d) Each licensee, individual, or person subject to this chapter shall make
18 available to the commissioner upon request the books and records relating to
19 the operations of such licensee, individual, or person. The commissioner shall
20 have access to such books and records and may interview the officers,

1 principals, control persons, employees, independent contractors, agents, and
2 customers of the licensee, individual, or person concerning their business.

3 (e) Each licensee, individual, or person subject to this chapter shall make or
4 compile reports or prepare other information as directed by the commissioner
5 in order to carry out the purposes of this section, including:

6 (1) Accounting compilations;

7 (2) Information lists and data concerning transactions and business
8 activities in a format prescribed by the commissioner; and

9 (3) Such other information as the commissioner deems necessary to
10 carry out the purposes of this chapter.

11 (f) In making any examination or investigation authorized by this chapter,
12 the commissioner may control access to any documents and records of the
13 licensee or person under examination or investigation. The commissioner may
14 take possession of the documents and records or place a person in exclusive
15 charge of the documents and records in the place where they are usually kept.
16 During the period of control, no individual or person shall remove or attempt
17 to remove any of the documents and records except pursuant to a court order or
18 with the consent of the commissioner. Unless the commissioner has
19 reasonable grounds to believe the documents or records of the licensee have
20 been or are at risk of being altered or destroyed for purposes of concealing a
21 violation of this chapter, the licensee or owner of the documents and records

1 shall have access to the documents or records as necessary to conduct its
2 ordinary business affairs.

3 (g) In order to carry out the purposes of this chapter, the commissioner
4 may:

5 (1) Retain attorneys, accountants, or other professionals and specialists
6 as examiners, auditors, or investigators to conduct or assist in the conduct of
7 examinations or investigations;

8 (2) Enter into agreements or relationships with other government
9 officials or regulatory associations in order to improve efficiencies and reduce
10 regulatory burden by sharing resources, standardized or uniform methods or
11 procedures, and documents, records, information, or evidence obtained under
12 this section;

13 (3) Use, hire, contract, or employ public or privately available analytical
14 systems, methods, or software to examine or investigate the licensee,
15 individual, or person subject to this chapter;

16 (4) Accept and rely on examination or investigation reports made by
17 other government officials within or without this state; or

18 (5) Accept audit reports made by an independent certified public
19 accountant for the licensee, individual, or person subject to this chapter in the
20 course of that part of the examination covering the same general subject matter

1 as the audit and may incorporate the audit report in the report of the
2 examination, report of investigation, or other writing of the commissioner.

3 (h) The authority of this section shall remain in effect whether such a
4 licensee, individual, or person acts or claims to act under any licensing or
5 registration law of this state, acts without such authority, or surrenders such
6 licensee's license.

7 (i) No licensee, individual, or person subject to investigation or
8 examination under this section may knowingly withhold, abstract, remove,
9 mutilate, destroy, or secrete any books, records, computer records, or other
10 information.

11 ~~(d)~~(j) Each licensee and each person investigated shall pay to the
12 department examination, review, and investigation fees as prescribed by
13 section 18 of this title, which fees shall be billed when they are incurred. In
14 addition to the powers set forth in this chapter, the commissioner may maintain
15 an action in Washington superior court for the recovery of examination,
16 review, and investigation costs as prescribed in section 18 of this title.

17 Sec. 22. 8 V.S.A. § 2767 is added to read:

18 § 2767. NATIONWIDE LICENSING SYSTEM

19 (a) In furtherance of the commissioner's duties under this chapter, the
20 commissioner may participate in the Nationwide Mortgage Licensing System
21 and Registry and may take such action regarding participation in the licensing

1 system as the commissioner deems necessary to carry out the purposes of this
2 section, including:

3 (1) Issue rules or orders, and may establish procedures, to further
4 participation in the Nationwide Mortgage Licensing System and Registry.

5 (2) Facilitate and participate in the establishment and implementation of
6 the Nationwide Mortgage Licensing System and Registry.

7 (3) Establish relationships or contracts with the Nationwide Mortgage
8 Licensing System and Registry or other entities designated by the Nationwide
9 Mortgage Licensing System and Registry.

10 (4) Authorize the Nationwide Mortgage Licensing System and Registry
11 to collect and maintain records and to collect and process any fees associated
12 with licensure on behalf of the commissioner.

13 (5) Require persons engaged in activities that require a license under this
14 chapter to use the Nationwide Mortgage Licensing System and Registry for
15 license applications, renewals, amendments, surrenders, and such other
16 activities as the commissioner may require and to pay through the national
17 licensing system all fees provided for under this chapter.

18 (6) Authorize the Nationwide Mortgage Licensing System and Registry
19 to collect fingerprints on behalf of the commissioner in order to receive or
20 conduct criminal history background checks, and, in order to reduce the points
21 of contact which the Federal Bureau of Investigation may have to maintain for

1 purposes of this subsection, the commissioner may use the Nationwide
2 Mortgage Licensing System and Registry as a channeling agent for requesting
3 information from and distributing information to the Department of Justice or
4 any other governmental agency.

5 (7) In order to reduce the points of contact which the commissioner may
6 have to maintain for purposes of this chapter, the commissioner may use the
7 Nationwide Mortgage Licensing System and Registry as a channeling agent for
8 requesting and distributing information to and from any source so directed by
9 the commissioner.

10 (b) The commissioner may require persons engaged in activities that
11 require a license under this chapter to submit fingerprints, and the
12 commissioner may use the services of the Nationwide Mortgage Licensing
13 System and Registry to process the fingerprints and to submit the fingerprints
14 to the Federal Bureau of Investigation, the Vermont state police, or any
15 equivalent state or federal law enforcement agency for the purpose of
16 conducting a criminal history background check. The licensee or applicant
17 shall pay the cost of such criminal history background check, including any
18 charges imposed by the Nationwide Mortgage Licensing System and Registry.

19 (c) Persons engaged in activities that require licensure pursuant to this
20 chapter shall pay all applicable charges to use the Nationwide Mortgage
21 Licensing System and Registry, including such processing charges as the

1 administrator of the Nationwide Mortgage Licensing System and Registry shall
2 establish, in addition to the fees required under this chapter.

3 (d) The Nationwide Mortgage Licensing System and Registry is not
4 intended to and does not replace or affect the commissioner's authority to
5 grant, deny, suspend, revoke, or refuse to renew licenses.

6 Sec. 23. 8 V.S.A. § 2768 is added to read:

7 § 2768. CONFIDENTIALITY

8 In order to promote more effective regulation and reduce regulatory burden
9 through supervisory information sharing:

10 (1) The privacy or confidentiality of any information or material
11 provided to the Nationwide Mortgage Licensing System and Registry and any
12 privilege arising under federal or state law (including the rules of any federal
13 or state court) with respect to such information or material shall continue to
14 apply to such information or material after the information or material has been
15 disclosed to the Nationwide Mortgage Licensing System and Registry. Such
16 information and material may be shared with all state and federal regulatory
17 officials with oversight authority without the loss of privilege or the loss of
18 confidentiality protections provided by federal law or state law.

19 (2) To carry out the purpose of this section, the commissioner is
20 authorized to enter agreements or sharing arrangements with other
21 governmental agencies, the Conference of State Bank Supervisors, the

1 American Association of Residential Mortgage Regulators, or other
2 associations representing governmental agencies.

3 (3) Information or material that is subject to privilege or confidentiality
4 under subdivision (1) of this section shall not be subject to:

5 (A) Disclosure under any federal or state law governing the
6 disclosure to the public of information held by an officer or an agency of the
7 federal government or the respective state; or

8 (B) Subpoena or discovery or admission into evidence in any private
9 civil action or administrative process unless with respect to any privilege held
10 by the Nationwide Mortgage Licensing System and Registry with respect to
11 such information or material the person to whom such information or material
12 pertains waives, in whole or in part, in the discretion of the person, that
13 privilege.

14 (4) This section shall not apply with respect to information or material
15 relating to employment history and publicly adjudicated disciplinary and
16 enforcement actions that are included in the Nationwide Mortgage Licensing
17 System and Registry for access by the public.

18 Sec. 24. 8 V.S.A. § 10101 is amended to read:

19 § 10101. APPLICATION OF CONSUMER PROTECTION CHAPTER

20 Except as otherwise provided in this chapter, the provisions of this chapter
21 shall apply to all financial institutions, as defined in subdivision 11101(32) of

1 this title, licensed lenders, mortgage brokers, mortgage loan originators, sales
2 finance companies, independent trust companies, money service providers,
3 debt adjusters, loan servicers, ~~and~~ credit unions, and any other person doing or
4 soliciting business in this state as described in Part 2, 5, or 6 of this title, in
5 addition to any other applicable consumer protection or remedy section not
6 contained in this chapter, unless such consumer protection or remedy section is
7 expressly made exclusive.

8 Sec. 25. 8 V.S.A. § 11101(66) is added to read:

9 (66) “Derivative transaction” means any transaction that is a contract,
10 agreement, swap, warrant, note, or option that is based, in whole or in part, on
11 the value of any interest in or any quantitative measure or the occurrence of
12 any event relating to one or more commodities, securities, currencies, interest,
13 or other rates, indices, or other assets.

14 Sec. 26. 8 V.S.A. § 14301 is amended to read:

15 § 14301. LOAN AUTHORITY

16 (a) General loan authority. Unless otherwise prohibited by state law, a
17 Vermont financial institution may make, sell, purchase, arrange, participate in,
18 invest in, or otherwise deal in loans, derivative transactions, or extensions of
19 credit for any lawful purpose.

1 (b) Written loan policy.

2 (1) A financial institution's governing body shall establish a written
3 loan, credit, and derivative transaction policy, as applicable to the activities of
4 the financial institution, which shall be reviewed and ratified at least annually,
5 that addresses at a minimum, the following:

6 (A) Loan portfolio mix and diversification standards, and, if
7 applicable, derivative transaction portfolio mix and diversification standards;

8 (B) Prudent underwriting standards, including loan-to-value limits
9 that are clear and measurable;

10 (C) Loan administration procedures, including delegation and
11 individual lending officer authority; and

12 (D) Documentation and approval requirements to monitor
13 compliance with lending policies.

14 (2) The ~~lending~~ policies adopted pursuant to this section shall be
15 consistent with safe and sound banking practices and appropriate to the size of
16 the institution and nature and scope of its operations.

17 (c) Interest on loans. Financial institutions may demand and receive interest
18 and charges on their loans in accordance with 9 V.S.A. chapter 4 ~~of Title 9~~ or
19 as otherwise provided by law.

20 (d) Limitations. A Vermont financial institution may not make loans,
21 derivative transactions, or extensions of credit outstanding at one time to a

1 borrower in excess of 20 percent of its capital. Total loans, derivative
2 transactions, or other extensions of credit in excess of 10 percent of capital
3 shall be approved by a majority of the governing body or the executive
4 committee of that institution or organization.

5 (1) Loans, derivative transactions, or extensions of credit to one person
6 will be attributed to another person and each person shall be deemed a
7 borrower as follows:

8 (A) In the case of obligations of one person, the proceeds ~~of a loan or~~
9 ~~extension of credit to a person~~ will be deemed to be used for the direct benefit
10 of another person and will be attributed to the other person when the proceeds,
11 or assets purchased with the proceeds, are transferred to another person, other
12 than a bona fide arm's length transaction where the proceeds are used to
13 acquire property, goods, or services.

14 * * *

15 Sec. 27. 8 V.S.A. § 2902(c) is amended to read:

16 (c) In connection with an application for a license, the applicant and each
17 officer, director, and control person of the applicant shall furnish to the
18 ~~commissioner~~ Nationwide Mortgage Licensing System and Registry
19 information concerning the applicant's identity, including:

1 (1) Fingerprints for submission to the Federal Bureau of Investigation,
2 and any governmental agency or entity authorized to receive such information
3 for a state, national, and international criminal history background check.

4 (2) Personal history and experience in a form prescribed by the
5 commissioner, including the submission of authorization for the Nationwide
6 Mortgage Licensing System and Registry and the commissioner to obtain:

7 (A) an independent credit report and credit score obtained from a
8 consumer reporting agency described in subsection 603(p) of the Fair Credit
9 Reporting Act, 15 U.S.C. § 1681a(p), for the purpose of evaluating the
10 applicant's financial responsibility at the time of application, and additional
11 credit reports and credit scores to confirm the licensee's continued compliance
12 with the financial responsibility requirements of this chapter; and

13 (B) information related to any administrative, civil, or criminal
14 findings by any governmental jurisdiction.

15 (3) Any other information required by the Nationwide Mortgage
16 Licensing System and Registry or the commissioner.

17 Sec. 28. 8 V.S.A. § 2921 is amended to read:

18 § 2921. ~~NATIONAL~~ NATIONWIDE MORTGAGE LICENSING SYSTEM
19 AND REGISTRY

20 (a) In furtherance of the commissioner's duties under this chapter, the
21 commissioner may participate in the Nationwide Mortgage Licensing System

1 and Registry and may take such action regarding participation in the licensing
2 system as the commissioner deems necessary to carry out the purposes of this
3 ~~section~~ chapter, including:

4 * * *

5 (7) In order to reduce the points of contact which the commissioner may
6 have to maintain for purposes of this chapter, including section 2902 of this
7 chapter, the commissioner may use the Nationwide Mortgage Licensing
8 System and Registry as a channeling agent for requesting and distributing
9 information to and from any source so directed by the commissioner.

10 * * *

11 Sec. 29. 8 V.S.A. § 2923 is added to read:

12 § 2923. CONFIDENTIALITY

13 In order to promote more effective regulation and reduce regulatory burden
14 through supervisory information sharing:

15 (1) The privacy or confidentiality of any information or material
16 provided to the Nationwide Mortgage Licensing System and Registry and any
17 privilege arising under federal or state law (including the rules of any federal
18 or state court) with respect to such information or material shall continue to
19 apply to such information or material after the information or material has been
20 disclosed to the Nationwide Mortgage Licensing System and Registry. Such
21 information and material may be shared with all state and federal regulatory

1 officials with oversight authority without the loss of privilege or the loss of
2 confidentiality protections provided by federal law or state law.

3 (2) To carry out the purpose of this section, the commissioner is
4 authorized to enter agreements or sharing arrangements with other
5 governmental agencies, the Conference of State Bank Supervisors, the
6 American Association of Residential Mortgage Regulators, or other
7 associations representing governmental agencies.

8 (3) Information or material that is subject to privilege or confidentiality
9 under subdivision (1) of this section shall not be subject to:

10 (A) Disclosure under any federal or state law governing the
11 disclosure to the public of information held by an officer or an agency of the
12 federal government or the respective state; or

13 (B) Subpoena or discovery or admission into evidence in any private
14 civil action or administrative process unless with respect to any privilege held
15 by the Nationwide Mortgage Licensing System and Registry with respect to
16 such information or material the person to whom such information or material
17 pertains waives, in whole or in part, in the discretion of the person, that
18 privilege.

19 (4) This section shall not apply with respect to information or material
20 relating to employment history and publicly adjudicated disciplinary and

1 enforcement actions that are included in the Nationwide Mortgage Licensing
2 System and Registry for access by the public.

3 * * * Health insurance * * *

4 Sec. 30. 8 V.S.A. § 4088d(a) is amended to read:

5 (a) A health insurance plan shall provide coverage for medically necessary
6 health care services covered by the plan when provided by a naturopathic
7 physician licensed in this state for treatment within the scope of practice
8 described in ~~chapter 81 of Title 26 V.S.A. chapter 81.~~ V.S.A. chapter 81. Health care services
9 provided by naturopathic physicians may be subject to reasonable deductibles,
10 co-payment and co-insurance amounts, fee or benefit limits, practice
11 parameters, cost-effectiveness and clinical efficacy standards, and utilization
12 review consistent with any applicable regulations published by the department
13 of banking, insurance, securities, and health care administration. Any
14 amounts, limits, standards, and review shall not function to direct treatment in
15 a manner unfairly discriminative against naturopathic care, and collectively
16 shall be no more restrictive than those applicable under the same policy to care
17 or services provided by other primary care physicians, but may allow for the
18 management of the benefit consistent with variations in practice patterns and
19 treatment modalities among different types of health care providers. A health
20 insurance plan may require that the naturopathic physician's services be
21 provided by a licensed naturopathic physician under contract with the insurer

1 or shall be covered in a manner consistent with out-of-network provider
2 reimbursement practices for primary care physicians; however, this shall not
3 relieve a health insurance plan from compliance with the applicable ~~Rule 10~~
4 Rule H-2009-03 network adequacy requirements adopted by the commissioner.
5 Nothing contained herein shall be construed as impeding or preventing either
6 the provision or the coverage of health care services by licensed naturopathic
7 physicians, within the lawful scope of naturopathic practice, in hospital
8 facilities on a staff or employee basis.

9 Sec. 31. 8 V.S.A. § 4089b(g)(1) is amended to read:

10 (1) A report card on the health insurance plan's performance in relation
11 to quality measures for the care, treatment, and treatment options of mental
12 health and substance abuse conditions covered under the plan, pursuant to
13 standards and procedures adopted by the commissioner by rule, and without
14 duplicating any reporting required of such companies pursuant to ~~Rule 10~~ Rule
15 H-2009-03 of the division of health care administration, "~~Quality Assurance~~
16 ~~Standards and Consumer Protections for Managed Care Plans,~~" and regulation
17 95-2, "Mental Health Review Agents," of the division of insurance, as
18 amended, including:

19 * * *

1 registration fee computed in the same manner as the filing fee required
2 pursuant to subsection (b) of this section for any additional securities being
3 offered. A posteffective amendment relates back to the date of the offering of
4 the additional securities being registered if, within one year after the date of the
5 sale, the amendment is filed, and the additional registration fee is paid 30 days
6 after filing unless the commissioner has issued a stop order.

7 Sec. 34. 9 V.S.A. § 5604(d) is amended to read:

8 (d) In a final order under subsection (b) or (c) of this section, the
9 commissioner may impose a civil penalty of not more than \$15,000.00 for each
10 violation and not more than \$1,000,000.00 for more than one violation. The
11 commissioner may also require a person to make restitution or provide
12 disgorgement of any sums shown to have been obtained in violation of this
13 chapter, plus interest at the legal rate. The limitations on civil penalties
14 contained in this subsection shall not apply to settlement agreements.

15 * * * Captives * * *

16 Sec. 35. 8 V.S.A. § 6032(1) is amended to read:

17 (1) “Incorporated protected cell” means a protected cell that is
18 established as a corporation, mutual corporation, nonprofit corporation with
19 one or more members, or limited liability company separate from the
20 sponsored captive insurance company of which it is a part.

1 Sec. 36. 8 V.S.A. § 6034a(c) is amended to read:

2 (c) It is the intent of the general assembly under this section to provide
3 sponsored captive insurance companies, including those licensed as special
4 purpose financial captive insurance companies under ~~section 6048 of this title~~
5 subchapter 4 of this chapter, with the option to establish one or more protected
6 cells as a separate corporation ~~formed under Title 11A~~, mutual corporation,
7 nonprofit corporation, or limited liability company ~~formed under chapter 21 of~~
8 ~~Title 11~~. This section shall not be construed to limit any rights or protections
9 applicable to protected cells not established as corporations, mutual
10 corporations, nonprofit corporations, or limited liability companies.

11 Sec. 37. 8 V.S.A. § 6004(c) is amended to read:

12 (c) Capital and surplus may be in the form of cash, a trust approved by the
13 commissioner and of which the commissioner is the sole beneficiary, or an
14 irrevocable letter of credit issued by a bank approved by the commissioner.

15 Sec. 38. 8 V.S.A. § 6007(b) is amended to read:

16 (b) Prior to March 1 of each year, and prior to March 15 of each year in the
17 case of pure captive insurance companies or industrial insured captive
18 insurance companies, each captive insurance company shall submit to the
19 commissioner a report of its financial condition, verified by oath of two of its
20 executive officers. Each captive insurance company shall report using
21 generally accepted accounting principles, unless the commissioner requires,

1 approves, or accepts the use of statutory accounting principles or other
2 comprehensive basis of accounting, in each case with any appropriate or
3 necessary modifications or adaptations thereof required or approved or
4 accepted by the commissioner for the type of insurance and kinds of insurers to
5 be reported upon, and as supplemented by additional information required by
6 the commissioner. Except as otherwise provided, each ~~association captive~~
7 ~~insurance company and each~~ risk retention group shall file its report in the
8 form required by subsection 3561(a) of this title, and each risk retention group
9 shall comply with the requirements set forth in section 3569 of this title. The
10 commissioner shall by rule propose the forms in which pure captive insurance
11 companies, association captive insurance companies, and industrial insured
12 captive insurance companies shall report. Subdivision 6002(c)(3) of this title
13 shall apply to each report filed pursuant to this section, except that such
14 subdivision shall not apply to reports filed by risk retention groups.

15 Sec. 39. 8 V.S.A. § 6035 is amended to read:

16 § 6035. QUALIFICATION OF SPONSORS

17 A sponsor of a sponsored captive insurance company may be any person
18 approved by the commissioner in the exercise of his or her discretion, based on
19 a determination that the approval of such person as a sponsor is consistent with
20 the purposes of this chapter. In evaluating the qualifications of a proposed
21 sponsor, the commissioner shall consider the type and structure of the

1 proposed sponsor entity, its experience in financial operations, financial
2 stability and strength, business reputation, and such other facts deemed
3 relevant by the commissioner. A risk retention group shall not be ~~either a~~
4 sponsor ~~or a participant~~ of a sponsored captive insurance company.

5 Sec. 40. 8 V.S.A. § 6036(a) is amended to read:

6 (a) Associations, corporations, limited liability companies, partnerships,
7 trusts, risk retention groups, and other business entities may be participants in
8 any sponsored captive insurance company formed or licensed under this
9 chapter.

10 Sec. 41. 8 V.S.A. § 6052(b) is amended to read:

11 (b) Before it may offer insurance in any state, each risk retention group
12 shall also submit for approval to the insurance commissioner of this state a
13 plan of operation and feasibility study which includes a description of the
14 coverages, deductibles, coverage limits, rates, and rating classification systems
15 for each line of insurance the group intends to offer, together with such
16 additional information as the commissioner may reasonably require. The
17 commissioner may limit the net amount of risk retained by a risk retention
18 group for an individual risk. The risk retention group shall submit for approval
19 by the commissioner an appropriate revision in the event of any subsequent
20 material change in any item of the plan of operation or feasibility study,
21 including any material change in the information called for in subsection (c) of

1 this section, but excluding the identity of policyholders and any changes in
2 rates or rating classification systems. The group shall not offer any additional
3 kinds of liability insurance, in this state or in any other state, until a revision of
4 such plan or study is approved by the commissioner. The risk retention group
5 shall inform the commissioner of any material changes in rates or rating
6 classification systems, within 30 days of the adoption of such change.

7 * * * Miscellaneous * * *

8 ~~Sec. 42. 18 V.S.A. § 9420 is amended to read:~~

9 ~~§ 9420. CONVERSION OF NONPROFIT HOSPITALS~~

10 ~~(a) Policy and purpose. The state has a responsibility to assure that the~~
11 ~~assets of nonprofit entities, which are impressed with a charitable trust, are~~
12 ~~managed prudently and are preserved for their proper charitable purposes.~~

13 ~~(b) Definitions. As used in this section:~~

14 ~~* * *~~

15 ~~(9) "Qualifying amount" means an amount that is at least \$1 million and~~
16 ~~represents at least 40 percent of the value of the affected charitable assets of~~
17 ~~the nonprofit hospital, or that vests control of the nonprofit hospital in another~~
18 ~~person or entity. For purposes of determining whether the threshold~~
19 ~~requirements of this subdivision have been or will be met, related conversions~~
20 ~~shall be aggregated.~~

21 ~~* * *~~

1 ~~(f) Completion and contents of application.~~

2 (1) Within 30 days of receipt of the application, or within 10 days of
3 receipt of any amendment thereto, whichever is longer, the attorney general,
4 with the commissioner's agreement, shall determine whether the application is
5 complete. The attorney general shall promptly notify the parties of the date the
6 application is deemed complete, or of the reasons for a determination that the
7 application is incomplete. A complete application shall include the following:

8 * * *

9 (F) a detailed description of all assets of the nonprofit hospital,
10 including the value of the assets and the basis for that valuation. For charitable
11 assets included in or otherwise affected by the conversion, the following
12 information is also to be included:

13 * * *

14 (I) a detailed description of the structure and functions of any
15 charitable foundation that will receive proceeds of the conversion, including a
16 description of its assets, its mission, the purposes of the foundation, the
17 expected charitable uses of the charitable assets, how it will be broadly based
18 in, and represent, the community affected by the conversion, and how proceeds
19 from the conversion will be controlled;

20 * * *

1 ~~(n) Use of converted charitable assets or proceeds of a conversion approved~~
2 pursuant to this section. If at any time following a conversion, the attorney
3 general has reason to believe that converted charitable assets or the proceeds of
4 a conversion are not being held or used in a manner consistent with
5 information provided to the attorney general, the commissioner, or a court in
6 connection with any application or proceedings under this section, the attorney
7 general may investigate the matter pursuant to procedures set forth generally in
8 9 V.S.A. § 2460 and may bring an action in Washington superior court or in
9 the superior court of any county where one of the parties has a principal place
10 of business. The court may order appropriate relief in such circumstances,
11 including avoidance of the conversion or transfer of the converted assets or
12 proceeds or the amount of any private inurement to a person or party for use
13 consistent with the purposes for which the assets were held prior to the
14 conversion, and the award of costs of investigation and prosecution under this
15 subsection, including the reasonable value of legal services.

16 * * *

17 (p) Conversion of less than a qualifying amount of assets.

18 (1) The attorney general may conduct an investigation relating to a
19 conversion pursuant to the procedures set forth generally in 9 V.S.A. § 2460 if
20 the attorney general has reason to believe that a nonprofit hospital has

1 converted or is about to convert less than a qualifying amount of its charitable
2 assets in such a manner that would:

3 (A) if it met the qualifying amount threshold, require an application
4 under subsection (e) of this section; and

5 (B) constitute a conversion that does not meet one or more of the
6 standards set forth in subsection (j) of this section.

7 (2) The attorney general, in consultation with the commissioner, may
8 bring an action with respect to any conversion of less than a qualifying amount
9 of charitable assets, according to the procedures set forth in subsection (n) of
10 this section. The attorney general shall notify the commissioner of any action
11 commenced under this subsection. The commissioner shall be permitted to
12 investigate and determine whether the transaction satisfies the criteria
13 established in subdivision (g)(2) of this section, and to request that the court
14 consider the commissioner's recommendation in its decision under this
15 subsection. In such an action, the superior court may enjoin or void any
16 transaction and may award any other relief as provided under subsection (n) of
17 this section.

18 * * *

Sec. 42. STUDY REGARDING THE CONVERSION OF NONPROFIT

HOSPITALS

(a) The commissioner of banking, insurance, securities, and health care administration, in consultation with the attorney general or designee, a representative from the Vermont Association of Hospitals and Health Systems, and any other interested parties the commissioner deems appropriate, shall conduct a study of Vermont's law pertaining to the conversion of nonprofit hospitals, 18 V.S.A. § 9420. The commissioner shall determine:

(1) whether the definition of "qualifying amount" should be clarified or amended in any manner. For example, the commissioner shall consider whether the "assets" reviewed in making threshold determinations should be further defined or qualified, not only in terms of the amount but also the type of assets subject to jurisdiction under 18 V.S.A. § 9420; or, more broadly, whether a new standard, such as a materiality standard, should apply;

(2) whether the definition of "convert" should be clarified or amended in any manner. For example, the commissioner shall consider whether the sale of securities, bequests, buildings, and equipment, and contracts with physician and management groups should be specifically excluded from the term;

(3) whether the term "related conversions," as it applies to conversions that must be aggregated for purposes of whether the threshold requirements have been met, should be further defined or clarified in any manner. For example, the commissioner shall consider whether a specific "look back"

provision pertaining to prior conversions should be included in the statute and, if so, to what extent;

(4) whether nonprofit hospitals should provide prior written notice to the commissioner and the attorney general of conversions of less than the qualifying amount of assets. In making this determination, the commissioner shall consider the administrative burden and costs that a hospital would incur in complying with such a requirement;

(5) if the conversion also meets the threshold requirements of the certificate of need process, whether parallel investigations are necessary and, if so, whether the investigations can be conducted in a more coordinated manner to diminish the administrative burden on the applicable hospital, while not compromising the state's existing regulatory objectives;

(6) whether existing or new exemptions are appropriate; and

(7) whether other amendments to the subject law would serve the general good of the state.

(b) The commissioner shall report his or her findings and recommendations to the house committee on commerce and economic development and the senate committee on finance not later than December 1, 2012. If the commissioner proposes any statutory amendments, he or she shall provide a detailed rationale for each such proposal.

(c) It is the intent of the general assembly that there be sufficient state supervision of and involvement in any work group established under this section, consistent with federal and state antitrust laws.

1 Sec. 43. EFFECTIVE DATE

2 This act shall take effect on passage.