

1 S.220

2 Introduced by Senator Mullin

3 Referred to Committee on

4 Date:

5 Subject: Employer's liability and workers' compensation; conservation and

6 development; travel and recreation policy; banking and insurance

7 Statement of purpose of bill as introduced: This bill proposes to amend the

8 workers' compensation law, establish a registry of sole contractors, increase

9 the funds available to the Department of Tourism and Marketing for

10 advertising, and regulate legacy insurance transfers.

11 An act relating to amending the workers' compensation law, establishing a
12 registry of sole contractors, increasing the funds available to the Department
13 of Tourism and Marketing for advertising, and regulating legacy insurance
14 transfers

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

16 Sec. 1. FINDINGS AND PURPOSE

17 The General Assembly finds:

18 (1) The creation of jobs and increasing investment in Vermont through
19 encouraging entrepreneurs, fostering the growth of new small businesses, and
20 facilitating the recruitment and expansion of existing businesses is of the
21 highest importance.

VT LEG #294979 v.2

1 and any reference to a worker who is a minor or incompetent shall include a
2 reference to the minor's committee, guardian, or next friend. The term
3 "worker" or "employee" does not include:

4 * * *

5 (G) An individual who performs services as a real estate broker or
6 real estate salesperson, provided:

7 (i) the individual is licensed to broker or sell real estate pursuant
8 to 26 V.S.A. chapter 41;

9 (ii) all the individual's compensation from performing real estate
10 broker or sales services is based on commissions from sales production or
11 results and is not based on time worked or an hourly wage;

12 (iii) the services are performed pursuant to a written agreement or
13 contract between the individual and the real estate sales or broker business or
14 another person with whom the individual is affiliated or associated and the
15 written agreement or contract explicitly states that the individual is not
16 considered to be an employee under this chapter and is not eligible for
17 coverage under this chapter; and

18 (iv) the individual is not treated as an employee for the purposes
19 of federal income and employment taxation with regard to the real estate
20 broker or sales services performed.

1 (H) An independent contractor if it can be demonstrated that the
2 independent contractor meets all of the following conditions:

3 (i) maintains a separate business with a separate office, equipment,
4 materials, or other facilities and has continuing recurring business liabilities or
5 obligations;

6 (ii) holds or has applied for a federal employer identification
7 number with the Internal Revenue Service or has filed business or
8 self-employment income tax returns with the federal Internal Revenue Service
9 based on that work or service in the previous year;

10 (iii) operates under a written contract that specifies that the
11 independent contractor complies with all of the following:

12 (I) will perform specific services or work for specific amounts
13 of money, and the independent contractor controls the means of performing the
14 services or work;

15 (II) incurs the main expenses related to the service or work that
16 the independent contractor performs under contract;

17 (III) is responsible for the satisfactory completion of work or
18 services that he or she contracts to perform and is liable for a failure to
19 complete the work or service;

(iv) voluntarily elected the status of independent contractor.

* * *

1 Sec. 3. 21 V.S.A. § 708 is amended to read:

2 § 708. PENALTY FOR FALSE REPRESENTATION

3 * * *

4 (c) Any penalty assessed or order issued under this chapter or 8 V.S.A.
5 § 3661 shall continue in effect against any successor employer that has one or
6 more of the same principals or corporate officers as the employer against
7 which the penalties were assessed or order issued and is engaged in the same
8 or similar business.

9 (d) Coercing an individual to sign a statement of independent contractor
10 status or to obtain other documents of such status is false representation.

11 (e) Notwithstanding the assessment of an administrative penalty under this
12 section, a person may be prosecuted under 13 V.S.A. § 2024.

13 Sec. 4. 21 V.S.A. § 1301 is amended to read:

14 § 1301. DEFINITIONS

15 The following words and phrases, as used in this chapter, shall have the
16 following meanings unless the context clearly requires otherwise:

17 * * *

18 (6)(A)(i) “Employment,” subject to the other provisions of this
19 subdivision (6), means service within the jurisdiction of this ~~state~~ State,
20 performed prior to January 1, 1978, which was employment as defined in this
21 subdivision prior to such date and, subject to the other provisions of this

1 subdivision, service performed after December 31, 1977, by an employee, as
2 defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act,
3 including service in interstate commerce, performed for wages or under any
4 contract of hire, written or oral, expressed or implied. Services partly within
5 and partly without this ~~state~~ State may by election ~~as hereinbefore provided~~ be
6 treated as if wholly within the jurisdiction of this ~~state~~ State. ~~And whenever~~
7 Whenever an employing unit ~~shall have~~ has elected to come under the
8 provisions of a similar act of a state where a part of the services of an
9 employee are performed, the ~~commissioner~~ Commissioner, ~~upon his or her~~
10 after approval of ~~said the~~ election ~~as to any such employee~~, may treat the
11 services ~~covered by said approved election~~ the employing unit as having been
12 performed wholly without the jurisdiction of this ~~state~~ State.

13 * * *

14 (B) Services performed by an individual for wages shall be deemed
15 to be employment subject to this chapter unless ~~and until it is shown to the~~
16 ~~satisfaction of the commissioner that:~~

17 ~~(i) Such individual has been and will continue to be free from~~
18 ~~control or direction over the performance of such services, both under his or~~
19 ~~her contract of service and in fact; and~~

20 ~~(ii) Such service is either outside the usual course of the business~~
21 ~~for which such service is performed, or that such service is performed outside~~

1 of all the places of business of the enterprise for which such service is
2 performed; and

3 ~~(iii) Such individual is customarily engaged in an independently~~
4 ~~established trade, occupation, profession or business~~ they are specifically
5 excluded under this chapter.

6 (C) The term “employment” ~~shall~~ does not include:

7 * * *

8 (xxii) Service performed by an independent contractor if the
9 employer can demonstrate that the independent contractor meets all of the
10 following conditions:

11 (I) maintains a separate business with his or her own office,
12 equipment, materials, or other facilities and has continuing or recurring
13 liabilities or obligations;

14 (II) holds or has applied for a federal employer identification
15 number with the federal Internal Revenue Service or has filed business or
16 self-employment income tax returns with the federal Internal Revenue Service
17 based on that work or service in the previous year;

18 (III) operates under a written contract which specifies that the
19 independent contractor;

1 (aa) will perform specific services or work for specific
2 amounts of money and under which the independent contractor controls the
3 means of performing the service or work;

4 (bb) incurs the main expenses related to the service or work
5 that he or she performs under contract;

6 (cc) is responsible for the satisfactory completion of work or
7 service that he or she contracts to perform and is liable for a failure to complete
8 the work or service;

9 (dd) receives compensation for work or service performed
10 under a written contract on a commission or per-job competitive bid basis and
11 not on any other basis; and

12 (ee) may realize a profit or suffer a loss under contracts to
13 perform work or service.

14 (IV) voluntarily elected the status of independent contractor.

15 * * *

16 Sec. 5. 21 V.S.A. § 1369 is amended to read:

17 § 1369. FALSE STATEMENTS TO AVOID UNEMPLOYMENT

18 PROGRAM OBLIGATIONS

19 A person who ~~wilfully~~ willfully makes a material false statement or
20 representation to avoid becoming or remaining subject to this chapter, or to
21 avoid or reduce a contribution or other payment required of an employer under

1 this chapter for either herself or himself or for any other person, after notice
2 and opportunity for hearing, may be assessed an administrative penalty of not
3 more than \$5,000.00. Coercing an individual to sign a statement of
4 independent contractor status or to obtain other documents of such status is
5 false representation.

6 Sec. 6. 21 V.S.A. chapter 23 is added to read:

7 CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION PROCESS

8 § 1801. PURPOSE

9 (a) An individual who seeks to work as the sole operator of his or her own
10 business and who can meet the standards and criteria set forth in this chapter
11 may voluntarily request an authorization by the Department of Labor allowing
12 him or her to operate independently and without the benefits and protections
13 afforded employees under chapters 9 and 17 of this title when working within
14 the scope of the sole contractor authorization.

15 (b) The sole contractor authorization is limited to activities that are within
16 the scope of the certification applied for by the individual. If an authorized
17 sole contractor engages in activities outside the scope of the authorization, the
18 sole contractor shall be presumed to be the statutory employee of the hiring
19 entity.

1 (c) This chapter is not intended to change the existing laws governing
2 employees and employers. The chapter applies only to individuals that have
3 received a sole contractor authorization.

4 (d) Nothing in this chapter shall prohibit an individual from working as an
5 independent contractor without the sole contractor authorization, provided the
6 individual meets the test for an independent contractor under law.

7 § 1802. DEFINITIONS

8 As used in this chapter:

9 (1) “Commissioner” means the Commissioner of Labor or designee.

10 (2) “Department” means the Department of Labor.

11 (3) “Hiring entity” means any person hiring an authorized sole
12 contractor to perform work.

13 (4) “Sole contractor” means an individual who is approved by the
14 authorization process established in section 1806 of this chapter. A sole
15 contractor may be an individual, a single-member limited liability company, or
16 a single shareholder corporation.

17 (5) “Sole Contractor Authorization Review Board” means the board
18 established pursuant to this chapter that is responsible for reviewing
19 applications from individuals seeking sole contractor status.

1 § 1803. SOLE CONTRACTOR CRITERIA

2 (a) The Sole Contractor Authorization Review Board (Board) shall
3 determine if an individual is eligible for sole contractor status. An individual
4 operating an existing business or starting a new business and seeking
5 authorization shall provide the Board with information demonstrating that he
6 or she meets the sole contractor criteria. The applicant shall provide:

7 (1) a sworn statement from the individual seeking authorization
8 affirming that he or she has not been coerced into falsely claiming to be a sole
9 contractor;

10 (2) a federal employer identification number (FEIN) that is used for
11 federal tax reporting purposes;

12 (3) a Social Security number or a work visa;

13 (4) proof of registration with the Vermont Secretary of State, either as a
14 single individual with a trade name or as a single member LLC or single
15 shareholder corporation;

16 (5) an affidavit attesting that he or she is and will be free to control and
17 direct his or her work, hours of work, and the means and manner of the
18 performance of such work, subject only to the broad framework of the project
19 goals and completion date;

20 (6) an affidavit attesting that he or she has no employees or assistants
21 and will not have any employees or assistants as a sole contractor, whether

1 paid or unpaid, and does not engage in any joint ventures or associations with
2 other sole contractors to perform work; and

3 (7) an affidavit attesting that he or she is in good standing regarding any
4 outstanding child support or taxes.

5 (b) The applicant shall provide additional information reasonably required
6 by the Board demonstrating that he or she meets the sole contractor criteria,
7 which may include:

8 (1) a demonstrated history of having his or her own business, including
9 evidence of tax returns, recurring business expenditures such as equipment
10 purchases, shop rent, or charge accounts for supplies that establish that he or
11 she is customarily engaged in an established trade or business;

12 (2) proof that he or she works for multiple employers in the course of
13 his or her business;

14 (3) proof of past work, including written contracts or agreements,
15 invoices, or competitive bids, on a per-job basis; and

16 (4) proof that he or she is fully and solely responsible for the work
17 produced, possesses his or her own tools, equipment, and instruments of trade,
18 and normally provides materials and supplies necessary to complete the work.

19 § 1804. PRESUMPTION OF STATUS

20 (a) An individual who is authorized pursuant to this chapter shall not be
21 presumed to be an employee when operating under the provisions of this

1 chapter, and the entity hiring the sole contractor shall not be considered the
2 statutory employer of the sole contractor. Notwithstanding this presumption, if
3 the sole contractor is working for the employer or a subcontractor in a capacity
4 that does not qualify as an individual sole contractor, then all statutory
5 provisions relating to unemployment, workers' compensation, wage and hour
6 provisions, and employment practices shall apply.

7 (b) A hiring entity shall not hire multiple sole authorized contractors to do
8 the same work on a project or at a job site.

9 § 1805. COMPOSITION OF BOARD

10 A Sole Contractor Authorization Review Board is hereby established
11 consisting of 11 members, five of whom shall represent labor to be appointed
12 by the Governor, five of whom shall represent business to be appointed by the
13 Governor, and one who shall be an employee of the Department appointed by
14 the Commissioner. Nominations for members for the Board shall be solicited
15 from organizations representing employer organizations, trade associations,
16 and employee organizations and from the Commissioner of Labor, as well as
17 from a public notice conducted by the Department of Labor. The Board
18 members appointed by the Governor shall be appointed for a term of
19 two years, with no member serving more than three consecutive terms.

1 § 1806. BOARD REVIEW PROCESS

2 (a) Representatives from the Board shall meet weekly in three-member
3 panels at the direction of the Commissioner, consisting of one member each
4 representing labor and business and the Department representative. The
5 members of the panels shall rotate weekly.

6 (b) The Board shall meet to review pending applications and may schedule
7 in-person reviews with individuals seeking authorization. The Board shall
8 review documentation and information and take testimony from the applicants.
9 The Board's decision to grant authorization shall be based on the criteria
10 established in this chapter. If additional information is necessary to render a
11 decision, the applicant will be given sufficient time to submit such information.
12 Once the Board determines that it has sufficient information, it shall make a
13 recommendation to the Commissioner. The Commissioner shall review the
14 recommendation and make a decision within ten days. If additional
15 information is needed, the Commissioner may remand for additional
16 information, which shall be provided to the Commissioner within 14 days.
17 The Commissioner shall issue a decision based on the additional information
18 within five days of its receipt. The failure to render a decision within the
19 prescribed time limits shall not result in an individual receiving authorization.

1 § 1807. APPEAL

2 An applicant may appeal a decision of the Commissioner to the Supreme
3 Court within 30 days of the date of the decision.

4 § 1808. INFORMATION AND EDUCATION

5 (a) The Commissioner of Labor in consultation with the Board shall
6 conduct a comprehensive information and education campaign regarding the
7 provisions of this chapter for a period of not less than 12 months upon
8 instituting this authorization process and shall continue to provide regular
9 information to the labor and business communities about the authorization
10 program and the issues of misclassification and miscoding.

11 (b) The Commissioner shall create and maintain an on-line sole contractor
12 registry listing the names of currently authorized sole contractors and the
13 names of individuals that had previously been certified.

14 (c) The Department shall provide all employers notice and information of
15 the provisions relating to sole contractor authorization and hiring. The
16 Department shall establish a simple method for employers using sole
17 contractors to acknowledge receipt of the information, including by electronic
18 means. An employer shall not hire a sole contractor until acknowledging
19 receipt of the information with the Department. An employer hiring a sole
20 contractor shall make the acknowledgment annually.

1 § 1809. INVESTIGATION AND ENFORCEMENT

2 (a) The Commissioner is authorized to investigate and enforce the
3 provisions of this chapter, including whether a sole contractor or a hiring entity
4 is in compliance with the provisions of this title, including workers'
5 compensation, unemployment insurance compensation, wage and hour laws,
6 and employment practices.

7 (b) Upon request, a sole contractor shall provide the Department with
8 books, records, or other documentation or evidence establishing his or her
9 qualifications to be a sole contractor and evidence that all work performed as a
10 sole contractor is performed in accordance with this chapter.

11 (c) Any person or entity found to have engaged in misrepresentation or
12 fraudulent activities in relation to this chapter shall be listed on the
13 Department's website and debarment list.

14 § 1810. PENALTIES

15 (a) A person who purposefully makes a false statement or representation to
16 obtain or assist another to obtain sole contractor status may, after notice and
17 opportunity for hearing, be assessed an administrative penalty of up to
18 \$5,000.00 and may lose the authorization for up to two years.

19 (b) A sole contractor who violates the terms and conditions of his or her
20 authorization may, after notice and opportunity for hearing, be assessed an

1 administrative penalty of up to \$5,000.00 and may lose the authorization for up
2 to one year.

3 (c) Any person or entity who coerces an employee or prospective employee
4 into becoming a sole contractor for the purpose of avoiding its obligations
5 under this title or Title 32 may, after notice and opportunity for hearing, be
6 assessed an administrative penalty of up to \$5,000.00.

7 (d) An administrative penalty issued pursuant to this section may be in
8 addition to other penalties authorized by chapters 9 and 17 of this title.

9 (e) Administrative hearings shall be conducted in accordance with the
10 Administrative Procedure Act, 3 V.S.A. chapter 25. Appeals from penalty
11 assessment determinations shall be to the Vermont Supreme Court.

12 § 1811. FEES AND COSTS

13 (a) The application fee for a sole contractor authorization shall be \$100.00,
14 which shall be deposited into the Sole Contractor Registry Special Fund. The
15 authorization shall be valid for two years and may be renewed for subsequent
16 two-year periods upon reapplication and payment of the fee. The Department
17 shall use the funds to administer the sole contractor program, including for the
18 purpose of providing a per diem and mileage reimbursement for Board
19 members.

20 (b) The Commissioner is authorized to hire and employ one limited service
21 position for a term of three years for program administration. The program

1 shall be funded by the fees collected pursuant to this chapter and supplemented
2 by the General Fund when fees do not cover the full costs of the position and
3 program administration.

4 (c) There is created a Sole Contractor Registry Special Fund pursuant to
5 32 V.S.A. chapter 7, subchapter 5, to be expended by the Commissioner
6 consistent with the provisions of this section.

7 § 1812. RULEMAKING

8 The Commissioner may adopt rules to implement the provisions of this
9 chapter.

10 Sec. 7. 10 V.S.A. § 668 is added to read:

11 § 668. TOURISM FUNDING

12 (a) In addition to any other funds appropriated to the Department of
13 Tourism and Marketing, in each fiscal year, the General Assembly shall
14 appropriate to the Department of Tourism and Marketing 75 percent of the
15 amount by which the total meals and rooms tax revenue collected in the
16 immediately preceding fiscal year exceeds the total meals and rooms tax
17 revenue collected in the fiscal year two years preceding the current fiscal year.

18 (b) The additional amount appropriated in a fiscal year pursuant to this
19 section shall not exceed \$2,000,000.00.

1 Sec. 8. 8 V.S.A. chapter 147 is added to read:

2 CHAPTER 147. LEGACY INSURANCE TRANSFERS

3 § 7111. DEFINITIONS

4 As used in this chapter:

5 (1) “Assuming company” means a Vermont-domiciled company
6 established specifically to acquire a closed block under a legacy insurance
7 transfer plan approved by the Commissioner.

8 (2) “Closed block” means a block, line, or group of commercial
9 nonadmitted insurance policies or reinsurance agreements, or both:

10 (A) which a transferring insurer has ceased to offer, write, or sell to
11 new applicants;

12 (B) for which all policy periods have been fully expired for not less
13 than 60 months;

14 (C) for which active premiums are no longer being paid; and

15 (D) which are not workers’ compensation, health, life, or any other
16 personal line of insurance.

17 (3) “Comment period” means the 60-day period starting on the date
18 notice is issued by an assuming company under subsection 7112(h) of this
19 chapter. For good cause, the comment period may be extended by the
20 Commissioner up to an additional 30 days.

21 (4) “Commissioner” means the Commissioner of Financial Regulation.

1 (5) “Controlling party” means a person having “control” of an assuming
2 company or transferring insurer. “Control” shall have the same meaning as in
3 section 3681 of this title.

4 (6) “Department” means the Department of Financial Regulation.

5 (7) “Domicile regulator” means the primary insurance regulatory
6 authority of the domicile jurisdiction of a transferring insurer.

7 (8) “Inward reinsurance agreement” means a contract of reinsurance
8 between a transferring insurer and another insurance company with respect to
9 which a transferring insurer is a party as the reinsurer.

10 (9) “Inward reinsurance counterparty” means an insurance company,
11 other than the transferring insurer, that is a party to an inward reinsurance
12 agreement.

13 (10) “Legacy insurance transfer” means the transfer of a closed block in
14 accordance with the requirements of this chapter.

15 (11) “Legacy insurance transfer plan” or “plan” means a plan that sets
16 forth all provisions and includes all documentation regarding a legacy
17 insurance transfer required under subsection 7112(b) of this chapter.

18 (12) “Nonadmitted insurance” means any property and casualty
19 insurance permitted to be placed directly or through a surplus lines broker with
20 a nonadmitted insurer eligible to accept such insurance.

1 (13) “Nonadmitted insurer” means, with respect to a state, an insurer not
2 licensed to engage in the business of insurance in such state. The term does
3 not include a risk retention group or a captive insurance company.

4 (14) “Outward reinsurance agreement” means a contract of reinsurance
5 between a transferring insurer and another insurance company with respect to
6 which a transferring insurer is a party as the reinsured.

7 (15) “Outward reinsurance counterparty” means an insurance company,
8 other than the transferring insurer, that is a party to an outward reinsurance
9 agreement.

10 (16) “Party” means:

11 (A) the assuming company;

12 (B) the transferring insurer;

13 (C) with respect to any policy to be transferred under a plan, each
14 policyholder;

15 (D) with respect to any inward reinsurance agreement to be
16 transferred under a plan, each inward reinsurance counterparty; and

17 (E) any other person the Commissioner approves as a party with
18 respect to such proceeding.

19 (17) “Plan summary” means a written statement of the key terms and
20 provisions of a plan as required under subdivision 7112(b)(19) of this chapter.

1 (18) "Policy" means a contract of property and casualty insurance that is
2 not a contract of reinsurance or a personal lines insurance policy.

3 (19) "Policyholder" means the person identified as the policyholder or
4 first named in a policy.

5 (20) "Reinsurance agreement" means an inward reinsurance agreement
6 or an outward reinsurance agreement.

7 (21) "Reinsurance agreement counterparty" means an inward
8 reinsurance agreement counterparty or an outward reinsurance counterparty.

9 (22) "Transferring insurer" means a nonadmitted insurer that is
10 transferring a closed block to an assuming company under a legacy insurance
11 transfer plan.

12 § 7112. APPLICATION; FEE; PLAN

13 (a) An assuming company shall file a plan with the Commissioner and, at
14 the time of filing, shall pay to the Commissioner the fee described in
15 subdivision 7116(a)(1) of this chapter.

16 (b) A plan shall include the following:

17 (1) A list of all policies and inward reinsurance agreements in the closed
18 block to be transferred under the plan.

19 (2) A list of all outward reinsurance agreements attaching to the closed
20 block.

1 (3) A list of all policyholders and inward reinsurance counterparties to
2 policies and inward reinsurance agreements in the closed block to be
3 transferred under the plan.

4 (4) The identities of the transferring insurer and the assuming company
5 and their respective controlling parties, if any.

6 (5) Certificates issued by the domicile regulator of the transferring
7 insurer and, if applicable, by any controlling party that is a regulated insurance
8 company attesting to the good standing of the transferring insurer and the
9 controlling party under the insurance regulatory laws of the jurisdiction of their
10 respective domiciles; or, if any such certificate is not obtainable under the laws
11 or practices of a domicile regulator, a certificate of an officer of the
12 transferring insurer or the controlling party, as applicable, attesting to the
13 foregoing.

14 (6) A letter of no objection, or the equivalent, from the domicile
15 regulator of the transferring insurer confirming that the regulator has no
16 objection to the transfer of the closed block under the plan; or, if any such
17 certificate is not obtainable under the laws or practices of a domicile regulator,
18 a certificate of an officer of the transferring insurer or the controlling party, as
19 applicable, attesting to the foregoing.

20 (7) A statement describing the terms and conditions, if any, of any
21 policy or inward reinsurance agreement in the closed block prohibiting

1 assignment and assumption of the rights, liabilities, and obligations of the
2 transferring insurer without the prior written consent of the respective
3 policyholder or inward reinsurance counterparty.

4 (8) The most recent audited financial statements and annual reports of
5 the transferring insurer filed with its domicile regulator and such other
6 financial information as the Commissioner may reasonably require with
7 respect to a controlling party, if any.

8 (9) An actuarial study or opinion in a form satisfactory to the
9 Commissioner that quantifies the liabilities to be transferred to the assuming
10 company under the policies or inward reinsurance agreements in the closed
11 block.

12 (10) A statement of outward reinsurance agreement assets attaching to
13 the closed block.

14 (11) Three years of pro-forma financial statements demonstrating the
15 solvency of the assuming company.

16 (12) Officer's certificates of the transferring insurer and the assuming
17 company attesting that each has obtained all required internal approvals and
18 authorizations regarding the plan and has completed all necessary and
19 appropriate actions relating thereto.

1 (13) The form of notice to be provided under the plan to any
2 policyholder or inward reinsurance counterparty in the closed block and how
3 such notice shall be provided.

4 (14) The form of notice to be provided under the plan to any outward
5 reinsurance counterparty attaching to the closed block and how such notice
6 shall be provided.

7 (15) A statement describing any pending dispute between the
8 transferring insurer and any policyholder or inward reinsurance counterparty or
9 any disputed claim by a third party with respect to any policy or inward
10 reinsurance agreement in the closed block.

11 (16) A statement describing the assuming company's proposed
12 investment policies, officers, directors, key employees, and other arrangements
13 regarding matters such as:

14 (A) any contemplated third-party claims management and
15 administration arrangements;

16 (B) operations, management, and solvency relating to the closed
17 block; and

18 (C) a detailed plan for annual or other periodic financial reporting to
19 the Commissioner, including an annual financial audit with actuarial opinion.

20 (17) A statement from the assuming company consenting to the
21 jurisdiction of the Commissioner with regard to ongoing oversight of

1 operations, management, and solvency relating to the closed block, including
2 the authority of the Commissioner to conduct examinations under section 7117
3 of this chapter and to set reasonable standards for oversight of the assuming
4 company, including:

5 (A) material transactions with affiliates;

6 (B) adequacy of surplus; and

7 (C) dividends and other distributions, including limitations on
8 extraordinary dividends.

9 (18) A statement from the assuming company submitting to the
10 jurisdiction and authority of the Commissioner of Financial Regulation, or the
11 equivalent regulatory authority, in states in which policyholders or reinsurance
12 counterparties reside, for the purposes of implementing each such state's
13 Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's
14 market conduct statutory framework. Notwithstanding any provision to the
15 contrary in such act, the submission under this subdivision shall not confer a
16 private cause of action upon any policyholder or reinsurance counterparty
17 against the assuming company, even if the applicable Unfair Claims Settlement
18 Practices Act, or equivalent, purports to provide a private cause of action.

19 (19) A plan summary which includes all information regarding the plan
20 as reasonably required by the Commissioner.

1 (20) The statement described in subsection (c) of this section regarding
2 the information and documents submitted as part of or with respect to a plan
3 which are confidential.

4 (21) Any other information the Commissioner may reasonably require
5 with respect to the plan in the exercise of his or her discretion.

6 (c) The plan shall include a statement of the information and
7 documentation included in the plan that the assuming company or the
8 transferring insurer may request be given confidential treatment, which in all
9 cases shall include all information identifying policyholders and reinsurance
10 counterparties and which may include any information that qualifies as a trade
11 secret or other confidential research, development, or commercial information
12 of the transferring insurer or the assuming company. The Commissioner,
13 subject to the exercise of his or her reasonable discretion, shall determine
14 whether the information designated in such statement qualifies for confidential
15 treatment and therefore shall be exempt from public inspection and copying
16 under the Public Records Act. Any information qualifying for confidential
17 treatment shall not be subject to subpoena and shall not be made public by the
18 Commissioner or by any other person; provided, however, the Commissioner
19 may in his or her discretion grant access to such information to public officers
20 having jurisdiction over the regulation of insurance in any other state or
21 country, to public officers of a foreign or alien financial regulatory authority.

1 or to state or federal law enforcement officers pursuant to a validly issued
2 subpoena or search warrant; provided that such officers receiving the
3 information agree in writing to hold it in a manner consistent with this section.

4 (d) Within 10 business days of the date the application is filed and the fee
5 payable under subsection (a) of this section is paid in full, the Commissioner
6 shall notify the assuming company whether the plan is complete. In his or her
7 discretion, the Commissioner may extend the 10-business-day application
8 review period for an additional 10 business days. With the written consent of
9 the assuming company, the application review period may be extended beyond
10 20 business days.

11 (e) Upon submission of a plan, the assuming company shall have a
12 continuing obligation to notify the Commissioner promptly and in a full and
13 accurate manner of any material change to information in the plan.

14 (f) If the Commissioner notifies the assuming company that the plan is not
15 complete, the Commissioner shall specify any modifications, supplements, or
16 amendments to the plan that are required, and any additional information or
17 documentation with respect to the plan that must be provided to the
18 Commissioner before the Commissioner issues the notice under subsection (d)
19 of this section.

1 (g) If the Commissioner notifies the assuming company that the plan is
2 complete, the Commissioner shall set a date, time, and place for a hearing on
3 the plan as required under subsection (m) of this section.

4 (h) Within 30 days of the date the Commissioner notifies the assuming
5 company under subsection (g) of this section that the plan is complete, the
6 assuming company shall cause notice to be provided, in the form and manner
7 specified in the plan, to all policyholders and reinsurance counterparties listed
8 in the plan. The notice shall:

9 (1) comply with the plan and the provisions of 3 V.S.A. § 809(b);

10 (2) include the plan summary;

11 (3) describe the effect of the plan and the transfer on each policyholder
12 and reinsurance counterparty and on his or her respective policy or reinsurance
13 agreement, as applicable;

14 (4) state the right of each policyholder or inward reinsurance
15 counterparty to:

16 (A) accept or object to the plan, together with a description of the
17 means by which a policyholder or inward reinsurance counterparty may
18 expressly accept or object to the plan and the effect of such acceptance or
19 objection;

20 (B) file written comments on the plan with the Commissioner; and

21 (C) appear and present evidence on the plan at the hearing;

1 (5) describe the terms and conditions under which a policyholder or
2 inward reinsurance counterparty shall be deemed to have accepted the plan;

3 (6) specify the date, time, and place of the hearing on the plan;

4 (7) include all other information reasonably required by the
5 Commissioner; and

6 (8) be published in two newspapers of general nationwide circulation on
7 two separate occasions, as determined by the Commissioner.

8 (i) During the comment period:

9 (1) Any party may file written comments on the plan with the
10 Commissioner.

11 (2) Any policyholder or inward reinsurance counterparty may, by
12 delivery of such notice in accordance with the terms and conditions of the plan
13 and prior to the expiration of the comment period, provide an express written
14 notice that he or she accepts or objects to the plan.

15 (3) The assuming company shall file with the Commissioner such
16 additional documentation and information regarding the plan as the
17 Commissioner may reasonably require.

18 (j) In the event that, prior to the expiration of the comment period, any
19 policyholder or inward reinsurance counterparty provides express written
20 notice that he or she objects to the plan and specifies the policy or agreement
21 with respect to which such objection is made, the assuming company shall, not

1 later than 15 days after the end of the comment period, submit to the
2 Commissioner either:

3 (1) an amended list of policies and reinsurance agreements in the plan,
4 excluding such policyholder or inward reinsurance counterparty and its
5 respective policy or inward reinsurance agreement from the plan; or

6 (2) an express written notice from such policyholder or inward
7 reinsurance counterparty accepting the plan and consenting to the transfer
8 having the full force and effect of a statutory novation of its respective policy
9 or reinsurance agreement, as applicable, and withdrawing and rescinding its
10 prior notice of objection.

11 (k) Except as provided in subsection 7114(f) of this chapter, any
12 policyholder or inward reinsurance counterparty that, prior to the expiration of
13 the comment period, has not provided express written notice objecting to the
14 plan shall be deemed to have accepted the plan, and the transfer shall have the
15 full force and effect of a statutory novation of his or her respective policy or
16 inward reinsurance agreement, as applicable.

17 (l) Notwithstanding any provision of this chapter to the contrary, if a policy
18 or inward reinsurance agreement contains a provision prohibiting the transfer
19 of the policy or inward reinsurance agreement without the consent of the
20 policyholder or inward reinsurance counterparty, then such policy or inward
21 reinsurance agreement shall not be transferred under this chapter unless the

1 applicable policyholder or inward reinsurance counterparty provides written
2 consent to the proposed transfer.

3 (m) The hearing on the plan shall be held on or before 60 days after the end
4 of the comment period. In his or her discretion, the Commissioner may
5 postpone the hearing for an additional 10 days. With the written consent of the
6 assuming company, the hearing may be postponed beyond 70 days. Each party
7 participating in the hearing shall bear his or her own costs and attorney's fees.

8 § 7113. PLAN REVIEW

9 (a) The Commissioner may retain an actuary to conduct an actuarial study
10 quantifying the liabilities under insurance policies and reinsurance agreements
11 to be transferred to the assuming company under the plan and is authorized to
12 retain any other legal, financial, and examination services from outside the
13 Department necessary to assist in plan review.

14 (b) In reviewing the plan, the Commissioner shall take into account all
15 written comments filed with respect to the plan, all evidence taken at the
16 hearing, and any other factors the Commissioner reasonably deems relevant
17 with respect to the plan. In all cases, the Commissioner shall make findings
18 with respect to each of the following:

19 (1) the solvency of the assuming company before and after the
20 implementation of the proposed plan;

1 (2) the adequacy of the assuming company's proposals described in the
2 statement required under subdivision 7112(b)(16) of this chapter;

3 (3) the adequacy of the assuming company's consent to jurisdiction
4 required under subdivision 7112(b)(17) of this chapter;

5 (4) the ability of the assuming company to comply with all requirements
6 of the policies and inward reinsurance agreements, including the capacity of
7 the assuming company regarding the administration of claims in process on or
8 after the effective date of the transfer;

9 (5) whether any outward reinsurance agreement relating to any policy or
10 policies in the closed block will be adversely affected by the transfer;

11 (6) whether the plan materially adversely affects the interests of any
12 party or outward reinsurance counterparty, including the interests of any
13 policyholder or inward reinsurance counterparty who has accepted or been
14 deemed to have accepted the plan;

15 (7) whether policyholders or inward reinsurance counterparties, together
16 with their respective insurance policies and inward reinsurance agreements,
17 have been excluded from the plan as required under subsections 7112(j) and (l)
18 of this chapter; and

19 (8) the fairness of the plan to all parties.

1 § 7114. ORDER

2 (a) Within 30 days of the date the hearing is held on the plan, the
3 Commissioner shall issue an order setting forth the amount of fees payable by
4 the assuming company under subdivision 7116(a)(2) of this chapter, payable
5 on or before 14 days after the date of such order. Upon receipt of such
6 payment, the Commissioner shall within five days issue an order approving or
7 disapproving the plan in whole or in part. Whenever it is not practicable to
8 issue an order within 30 days, the Commissioner may extend such time up to
9 an additional 30 days. If the order approves the plan, the order shall:

10 (1) include the terms and conditions of the Commissioner's oversight
11 with regard to ongoing oversight of the operations, management, and solvency
12 relating to the closed block and any specific standards that the assuming
13 company will be required to comply with, including standards relating to:

14 (A) material transactions with affiliates;

15 (B) adequacy of surplus; and

16 (C) dividends and other distributions, including limitations on
17 dividends;

18 (2) set forth the tax payable by the assuming company under subsection
19 7116(b) of this chapter, which tax shall be payable on or before 14 days after
20 the date of such order; and

1 (3) not be effective until such time as the costs and transfer tax
2 described in this subsection have been paid in full.

3 (b) The Commissioner shall not approve a plan unless the Commissioner
4 finds that the assuming company has:

5 (1) sufficient assets to meet its liabilities;

6 (2) sufficient procedures in place for the handling of claims;

7 (3) consented to sufficient regulatory oversight by the Department; and

8 (4) excluded from the plan any policy or agreement required to be
9 excluded under subsections 7112(j) and (l) of this chapter.

10 (c) An order issued under subsection (a) of this section approving the plan
11 shall have the full force and effect of a statutory novation with respect to all
12 policyholders and reinsurance counterparties and their respective policies and
13 reinsurance agreements under the plan and shall provide that the transferring
14 insurer shall have no further rights, obligations, or liabilities with respect to
15 such policies and reinsurance agreements, and that the assuming company shall
16 have all such rights, obligations, and liabilities as if it, instead of the
17 transferring insurer, were the original party to such policies and reinsurance
18 agreements.

19 (d) The Commissioner may issue any other orders he or she reasonably
20 deems necessary to implement fully an order issued under subsection (a) of
21 this section.

1 (e) No order issued under subsection (a) or (d) of this section shall be
2 construed to modify or amend the terms of a policy or reinsurance agreement,
3 other than with respect to matters specifically subject to modification or
4 amendment under this chapter.

5 (f) If a policyholder or inward reinsurance counterparty provides express
6 written notice that he or she objects to the plan after the comment period has
7 expired, and provides evidence reasonably satisfactory to the Commissioner
8 that he or she was not provided notice of the plan in the form and manner
9 previously approved by the Commissioner, or if an outward reinsurance
10 counterparty or other party provides express written notice that he or she
11 objects to a plan, the Commissioner may not approve the plan with respect to
12 such party unless the Commissioner determines that the plan:

13 (1) does not materially adversely affect the objecting party; and

14 (2) otherwise complies with the requirements of this chapter.

15 (g) At any time before the Commissioner issues the order described in
16 subsection (a) of this section, the assuming company may file an amendment to
17 the plan, subject to the Commissioner's approval.

18 (h) At any time before the Commissioner issues the order described in
19 subsection (a) of this section, the assuming company may withdraw the plan
20 without prejudice. Upon such withdrawal, however, the Commissioner shall
21 issue an order setting forth the amount of fees payable by the assuming

1 company under subdivision 7116(a)(2) of this chapter, payable on or before
2 14 days after the date of such order.

3 § 7115. JURISDICTION; APPEALS

4 (a) The Commissioner shall have exclusive regulatory jurisdiction with
5 respect to the review and approval or denial of any plan.

6 (b) Any party aggrieved by a final order of the Commissioner may appeal
7 that order to the Vermont Supreme Court under 3 V.S.A. § 815.

8 § 7116. FEE; COSTS; TRANSFER TAX

9 (a) To cover the costs of processing and reviewing a plan under this
10 chapter, the assuming company shall pay to the Commissioner the following
11 nonrefundable fees at the times set forth in subsections 7112(a) and 7114(a) of
12 this chapter:

13 (1) an administrative fee in the amount of \$30,000.00; and

14 (2) the reasonable costs of persons retained by the Commissioner under
15 subsection 7113(a) of this chapter.

16 (b) When a plan is approved, the assuming company shall pay the
17 Commissioner a transfer tax equal to the sum of:

18 (1) one percent of the first \$100,000,000.00 of the gross liabilities
19 transferred, including direct and assumed unpaid claims, losses, and loss
20 adjustment expenses with no reductions for amounts ceded; and

1 (2) 0.5 percent of the gross liabilities transferred that exceed
2 \$100,000,000.00, including direct and assumed unpaid claims, losses, and loss
3 adjustment expenses with no reductions for amounts ceded.

4 (c) All fees and payments received by the Department under subsection (a)
5 of this section and 10 percent of the transfer tax under subsection (b) of this
6 section shall be credited to the Insurance Regulatory and Supervision Fund
7 under section 80 of this title. The remaining 90 percent of the transfer tax shall
8 be deposited directly into the General Fund.

9 § 7117. EXAMINATIONS

10 (a) The Commissioner has the authority to order any assuming company to
11 produce any records, books, and papers in the possession of the assuming
12 company or its affiliates necessary to ascertain the financial condition or
13 legality of conduct of the assuming company.

14 (b) The Commissioner shall exercise his or her authority under subsection
15 (a) of this section only if he or she has reason to believe the interests of the
16 assuming company's policyholders may be adversely affected under the plan.

17 (c) The Commissioner may retain, at the assuming company's expense,
18 attorneys, actuaries, accountants, and other experts not otherwise a part of the
19 Commissioner's staff reasonably necessary to assist with an examination under
20 this section. Any persons so retained shall be under the direction and control
21 of the Commissioner and shall act in a purely advisory capacity.

1 (d) Each assuming company that produces records, books, and papers for
2 examination under this section shall pay the expense of such examination.

3 § 7118. APPLICABLE LAWS

4 (a) Chapter 157 (transfer and novation of insurance contracts) of this title
5 shall not apply to any legacy insurance transfer under this chapter.

6 (b) In the event of any conflict between a provision of this chapter and any
7 other provision of this title, such provision of this chapter shall control.

8 (c) A proposed legacy insurance transfer shall be a “contested case” under
9 3 V.S.A. chapter 25, except that a “party” shall be limited as defined in
10 subdivision 7111(15) of this chapter.

11 § 7119. ASSUMING COMPANY; BOARD; PRINCIPAL PLACE OF
12 BUSINESS; REGISTERED AGENT

13 No assuming company shall be a party to a legacy insurance transfer under
14 this chapter unless:

15 (1) its board of directors or committee of managers holds at least one
16 meeting each year in this State;

17 (2) it maintains its principal place of business in this State; and

18 (3) it appoints a registered agent to accept service of process and to
19 otherwise act on its behalf in this State; provided that whenever such registered
20 agent cannot with reasonable diligence be found at the registered office of the

1 assuming company, the Secretary of State shall be an agent of such assuming
2 company upon whom any process, notice, or demand may be served.

3 § 7120. POSTING OF PLANS ON WEBSITE

4 The Commissioner shall require that all plans filed with the Department are
5 posted on the Department's website, along with any other notice or other
6 information the Commissioner deems appropriate, excluding any information
7 designated as confidential under subsection 7112(c) of this chapter.

8 § 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE

9 PROVIDERS

10 (a) An assuming company shall be subject to all rules adopted by the
11 Commissioner under this chapter and also shall be subject to:

12 (1) chapter 145 (supervision, rehabilitation, and liquidation of insurers)
13 of this title;

14 (2) the market conduct and unfair trade practices provisions of
15 chapter 129 (insurance trade practices) of this title, as deemed applicable by
16 the Commissioner; and

17 (3) in addition to the initial transfer tax required under subsection
18 7116(b) of this chapter, an annual renewal fee of \$300.00.

19 (b) An assuming company shall not be subject to the requirements of
20 chapter 101, subchapter 9 (property and casualty insurance guaranty
21 association) of this title.

1 (c) The Commissioner may adopt rules regarding the provision of services
2 to an assuming company by persons other than any director, officer, or
3 employee of the assuming company with respect to the administration of
4 policies and reinsurance agreements assumed by the assuming company under
5 a legacy insurance transfer, including licensing or other requirements.

6 (d) The Commissioner may adopt any other rules necessary or appropriate
7 to carry out the provisions of this chapter.

8 Sec. 9. EFFECTIVE DATE

9 This act shall take effect on July 1, 2014.