

House Calendar

Tuesday, February 04, 2014

29th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Favorable with Amendment

H. 260

An act relating to insurance notices by electronic means

Rep. Young of Glover, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Electronic Insurance Notices * * *

Sec. 1. 8 V.S.A. § 3666 is added to read:

§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS

(a) As used in this section:

(1) “Delivered by electronic means” includes:

(A) delivery to an electronic mail address at which a party has consented to receive notice; and

(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.

(2) “Party” means an applicant, an insured, or a policyholder.

(b) Subject to subsection (d) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be but is not required to be delivered by electronic means provided the process used to obtain consent of the party to have notice delivered by electronic means meets the requirements of 9 V.S.A. chapter 20 (the Uniform Electronic Transactions Act).

(c) Delivery of a notice pursuant to subsection (b) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of this title, including delivery by first-class mail, certified mail, or certificate of mailing.

(d) A notice may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) the right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(B) the right of the party to withdraw consent to have notice delivered by electronic means;

(C) whether the party's consent applies:

(i) only to the particular transaction as to which the notice must be given; or

(ii) to identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(D) how, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and

(E) the procedures the party must use to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically.

(3) The party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(B) consents electronically and confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices delivered by electronic means as to which the party has given consent.

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(ii) a revised statement required by subdivision (2) of this subsection; and

(B) the party affirmatively consents to continued delivery of notices by electronic means.

(e) Every notice delivered pursuant to subsection (b) of this section shall include the statement required by subdivision (d)(2) of this section. This section does not otherwise affect the content or timing of any notice required under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to be provided to a party expressly requires verification or acknowledgment of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt. Upon notification to the insurer that the electronic notice was not deliverable, the insurer shall send a paper copy of the notice as otherwise required by law.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

(i) A party who does not consent to delivery of notices by electronic means under subsection (b) of this section or who withdraws his or her consent shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

Sec. 2. INTERPRETATION

The delivery of notice in accordance with Sec. 1 of this act is intended and shall be construed to meet the requirements of State insurance regulation 78-01, section 1, as revised.

Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES

The Commissioner of Financial Regulation shall issue a bulletin regarding the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The

bulletin shall require insurance companies to clearly and conspicuously inform the party of the types of notices (cancellation and nonrenewal) permitted to be delivered by electronic means; the risks associated with electronic notifications and the party's assumption of those risks if he or she consents to receive electronic notifications; the party's right to receive notices by mail at no additional cost; and any other provisions the Commissioner deems necessary to protect the interests of Vermonters and otherwise carry out the purposes of this act. In addition, the bulletin shall provide guidance to insurers on the appropriate form of the electronic notices and their provisions as well as on the specific withdrawal of consent procedures required under 8 V.S.A. § 3666(d)(2)(D).

* * * Credit for Reinsurance * * *

Sec. 4. 8 V.S.A. § 3634a is amended to read:

§ 3634a. CREDIT FOR REINSURANCE

(a) It is the purpose of this section to ~~permit credit for reinsurance on the annual statement of an insurer filed under section 3561 of this title only in connection with:~~

~~(1) assuming insurers licensed in this state;~~

~~(2) accredited reinsurers;~~

~~(3) insurers licensed in a state whose reinsurance standards are substantially similar to this State; or~~

(4) insurers maintaining qualified trusts protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The General Assembly hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that State interest, the General Assembly hereby provides a mandate that upon the insolvency of a non-U.S insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The General Assembly declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded

only when the reinsurer meets the requirements of ~~subsections (c), (d), (e), or (f) of this section~~ subdivision (1), (2), (3), (4), (5) or (6) of this subsection. ~~Reinsurers meeting the requirements of subsection (e) or (f) of this section shall also meet the requirements of subsection (g) of this section.~~ Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with respect to cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (7) of this subsection have been satisfied.

~~(e)~~(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this State.

~~(d)~~(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited by the Commissioner as a reinsurer in this State. An accredited reinsurer is one which:

~~(+)~~(A) files with the Commissioner evidence of its submission to this State's jurisdiction;

(B) submits to this State's authority to examine its books and records;

(C) is licensed to transact insurance or reinsurance in at least one state, or in the case of a ~~United States~~ U.S. branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(D) files with the Commissioner on or before March 1 of each year a copy of its annual statement filed with the insurance department of its state of domicile and files on or before June 1 of each year a copy of its most recent audited financial statement;

(E) files with the Commissioner its charter, bylaws, and any other material required by the Commissioner; ~~and~~

(F) pays an initial fee of \$500.00 and thereafter an annual fee of \$200.00 on or before March 1 of each year; and

(G) demonstrates to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement, provided that at the time of its application it:

~~(2)~~(A)(i) maintains a surplus for policyholders ~~which~~ that is not less

than \$20,000,000.00 and whose accreditation has not been denied by the Commissioner within 90 days of its submission; or

~~(B)~~(ii) maintains a surplus for policyholders in an amount less than \$20,000,000.00 and whose accreditation has been approved the Commissioner.

~~(e)~~(1)(3)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a ~~United States~~ U.S. branch of an alien assuming insurer is entered through, a state ~~which that~~ employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or ~~United States~~ U.S. branch of an alien assuming insurer:

~~(A)~~(i) maintains a surplus for policyholders in an amount not less than \$20,000,000.00; and

~~(B)~~(ii) submits to the authority of this State to examine its books and records.

~~(2)~~(B) The requirement of ~~subdivision (e)(1)(A) of this section~~ subdivision (3)(A)(i) of this subsection does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

~~(f)~~(1)(4)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified ~~United States~~ U.S. financial institution, ~~approved by the commissioner as defined in subdivision (d)(2) of this section,~~ for the payment of the valid claims of its ~~United States~~ U.S. policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information required by the Commissioner and substantially the same as that required to be reported on the National Association of Insurance Commissioners' Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. ~~No later than~~ On or before February 28 of each year, the trustees of the trust shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

~~(2)~~ A trust and trust instrument maintained pursuant to ~~subdivision (1) of this subsection~~ this subdivision shall:

~~(A)~~(i) be established in a form and upon such terms approved by the Commissioner;

~~(B)~~(ii) provide that contested claims shall be valid and enforceable

upon the final order of any court of competent jurisdiction in the United States;

~~(C)~~(iii) vest legal title to its assets in the trustees of the trust for its ~~United States~~ U.S. policyholders and ceding insurers, their assigns and successors in interest;

~~(D)~~(iv) be subject to examination as determined by the Commissioner; ~~and~~

~~(E)~~(v) remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and

(vi) be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

~~(3)~~(B) In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000.00, except at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

~~(4)~~(C) In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S. ceding insurers of any member of the group; the incorporated members of the group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the Commissioner an annual

certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

~~(5)(D)~~ In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in ~~subsection (d)~~ subdivision (b)(2) of this section, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, and submits to this State's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of \$10,000,000,000.00, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by ~~United States~~ U.S. ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group, plus the group shall maintain a joint trusted surplus of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S. ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subdivision.

(A) In order to be eligible for certification, the assuming insurer shall:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner under subdivision (C) of this subdivision (5);

(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commissioner by rule;

(iii) maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner by rule;

(iv) agree to submit to the jurisdiction of this State, appoint the Commissioner as its agent for service of process in this State, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;

(v) agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for

certification and on an ongoing basis; and

(vi) the assuming insurer must satisfy any other requirements for certification deemed relevant by the Commissioner.

(B) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subdivision (A) of this subdivision (5):

(i) the association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commissioner to provide adequate protection;

(ii) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(iii) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(C) The Commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commissioner as a certified reinsurer.

(i) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commissioner has determined that the jurisdiction does not adequately and promptly enforce final

U.S. judgments and arbitration awards. Additional factors may be considered in the discretion of the Commissioner.

(ii) A list of qualified jurisdictions shall be published through the NAIC committee process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification in accordance with criteria to be developed by rule.

(iii) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(iv) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(D) The Commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Commissioner by rule. The Commissioner shall publish a list of all certified reinsurers and their ratings.

(E) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection at a level consistent with its rating, as specified in rules adopted by the Commissioner.

(i) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with the provisions of subsection (c) of this section or in a multibeneficiary trust in accordance with subdivision (4) of this subsection, except as otherwise provided in this subdivision.

(ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (4) of this subsection and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions and for its obligations subject to subdivision (4) of this subsection. It shall be a condition to the grant of certification under this subdivision (5) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon

termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(iii) The minimum trustee surplus requirements provided in subdivision (4) of this subsection are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of \$10,000,000.00.

(iv) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(v) For purposes of this subdivision (5), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations.

(I) As used in this subdivision (5), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(II) If the Commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(F) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this State.

(G) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3), (4) or (5) of this subsection, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation

of that jurisdiction.

~~(g)~~(7) If the assuming insurer is not licensed or accredited or certified to transact insurance or reinsurance in this State, the credit permitted by ~~subsections (e) and (f) of this section~~ subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

~~(1)~~(A) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

~~(2)~~(B) to designate the Commissioner, the Secretary of State, or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company. This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(8) If the assuming insurer does not meet the requirements of subdivision (1), (2) or (3) of this subsection, the credit permitted by subdivision (4) or (5) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(A) Notwithstanding any other provisions in the trust instrument to the contrary, if the trust fund is inadequate because it contains an amount less than the amount required by subdivisions (4)(B)–(D) of this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the Commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the Commissioner with regulatory oversight all of the assets of the trust fund.

(B) The assets shall be distributed by and claims shall be filed with and valued by the Commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(C) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part

thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(D) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(9) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may suspend or revoke the reinsurer's accreditation or certification.

(A) The Commissioner must give the reinsurer notice and opportunity for hearing. The Commissioner may suspend or revoke a reinsurer's accreditation or certification without a hearing if:

(i) the reinsurer waives its right to hearing;

(ii) the Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (5)(F) of this subsection; or

(iii) the Commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the Commissioner's action.

(B) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (c) of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (5)(E) of this subsection or subsection (c) of this section.

(10) Concentration Risk.

(A) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders or after it is determined that reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(B) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20 percent of the ceding insurer's gross written premium in the prior calendar year or after it has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

~~(h)(c) Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A domestic insurer that does not meet the requirements of subsections (a) through (g) of this section shall be allowed a reduction in liability: An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (b) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be~~

~~(1) in an amount not exceeding the liabilities carried by the ceding insurer; and~~

~~(2) in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as collateral for the payment of obligations thereunder, if such collateral is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States U.S. financial institution approved by the Commissioner. Such collateral shall be in the form of:, as defined in subdivision (d)(2) of this section. This security may be in the form of:~~

~~(A)(1) cash;~~

~~(B)(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; or~~

~~(C)(3) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States U.S. financial institution, approved by the Commissioner as defined in subdivision (d)(1) of this section, which are effective no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability,~~

continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

~~(D)~~(4) any other form of collateral acceptable to the Commissioner.

(d)(1) For purposes of subdivision (c)(3) of this section, a “qualified U.S. financial institution” means an institution that:

(A) is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(B) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(C) has been determined by either the Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(2) A “qualified U.S. financial institution” means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that is:

(A) organized or, in the case of a U.S. branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(B) regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

~~(i)~~(e) Notwithstanding the provisions of this subsection to the contrary, the Commissioner shall allow credit for reinsurance ceded and assumed to a pooling arrangement that has the following characteristics:

(1) the majority of the pooling members are licensed to transact business in this State, or are licensed in a state that is accredited with the National Association of Insurance Commissioners, or are approved by the Commissioner;

(2) the members of the pool are subject to joint and several liability;

(3) all members of the pool agree to file with the Commissioner, annually on or before March 1, a copy of the member’s annual statement filed with the insurance department of its state of domicile; and

(4) the manager of the pool files with the Commissioner, annually on or before December 1, a request to be exempted from the provisions of

~~subdivisions (a)(1) through (4)~~ subdivisions (b)(1) through (4) of this section.

(f) The Commissioner may adopt rules implementing the provisions of this section.

(g) This section shall apply to all cessions after the effective date of this section under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after the effective date of this section.

* * * Effective Dates * * *

Sec. 5. EFFECTIVE DATES

This act is effective on passage except that Secs. 1 and 2 of this act shall take effect on January 1, 2015 and shall apply to all policies and certificates delivered, issued for delivery, or renewed in this State on or after that date.

and that after passage the title of the bill be amended to read: “An act relating to electronic insurance notices and credit for reinsurance”.

(Committee Vote: 10-0-1)

Senate Proposal of Amendment

H. 198

An act relating to the Legacy Insurance Management Act

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TITLE

This act shall be known as the “Legacy Insurance Management Act.”

Sec. 2. FINDINGS AND PURPOSE

(a) The Vermont General Assembly finds:

(1) Vermont is a competitive location for highly successful financial services firms as a result of its leadership in the field of captive insurance. Vermont’s ability to modernize key aspects of its insurance laws has been a key to the State’s success.

(2) The management of closed blocks of commercial insurance policies and reinsurance agreements has been a productive and successful sector of the insurance industry for decades in other jurisdictions.

(3) Vermont’s respected, sophisticated, and experienced insurance regulatory apparatus makes it an ideal jurisdiction to establish a non-admitted insurance and reinsurance management industry.

(4) A new non-admitted insurance and reinsurance management

industry has the potential to attract investment, create well-paying jobs, and generate tax revenue for Vermont.

(b) The purpose of this act is to regulate the receipt and management by solvent Vermont companies of closed blocks of non-admitted commercial insurance policies and reinsurance agreements.

Sec. 3. 8 V.S.A. chapter 147 is added to read:

CHAPTER 147. LEGACY INSURANCE TRANSFERS

§ 7111. DEFINITIONS

As used in this chapter:

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

(2) “Closed block” means a block, line, or group of commercial non-admitted insurance policies or reinsurance agreements or both:

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

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

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

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

(3) “Comment period” means the 60-day period starting on the date notice is issued by an assuming company under subsection 7112(h) of this chapter. The Commissioner may, in his or her discretion, extend the comment period for up to an additional 30 days.

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

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

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

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

(8) “Inward reinsurance agreement” means a contract of reinsurance between a transferring insurer and another insurance company with respect to

which a transferring insurer is a party as the reinsurer.

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

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

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

(12) “Non-admitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a non-admitted insurer eligible to accept such insurance.

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

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

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

(16) “Party” means:

(A) the assuming company;

(B) the transferring insurer;

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

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

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

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

(18) “Policy” means a contract of property and casualty insurance that is neither a contract of reinsurance nor a contract of workers’ compensation, health, life, or any other personal line of insurance.

(19) “Policyholder” means the person identified as the policyholder or first named in a policy.

(20) “Reinsurance agreement” means an inward reinsurance agreement or an outward reinsurance agreement.

(21) “Reinsurance agreement counterparty” means an inward reinsurance agreement counterparty or an outward reinsurance counterparty.

(22) “Transferring insurer” means a non-admitted insurer that is transferring a closed block to an assuming company under a legacy insurance transfer plan.

§ 7112. APPLICATION; FEE; PLAN

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

(b) A plan shall include the following:

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

(2) A list of all outward reinsurance agreements attaching to policies or inward reinsurance agreements in the closed block.

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

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

(5) Certificates issued by the domicile regulator of the transferring insurer and, if applicable, of any controlling party that is a regulated insurance company, in each case attesting to the good standing of the transferring insurer and the controlling party under the insurance regulatory laws of the jurisdiction of their respective domiciles; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of the transferring insurer or the controlling party, as applicable, attesting to the foregoing, verified by oath of two of its executive officers.

(6) A letter of no objection, or the equivalent, from the domicile regulator of the transferring insurer confirming that the regulator has no objection to the transfer of the closed block under the plan; or, if any such certificate is not obtainable under the laws or practices of a domicile regulator, a certificate of the transferring insurer or the controlling party, as applicable, attesting to the foregoing, verified by oath of two of its executive officers.

(7) A list of policies and inward reinsurance agreements in the closed block to be transferred under the plan, if any, which by their terms and conditions prohibit assignment and assumption of the rights, liabilities, and obligations of the transferring insurer without the prior written consent of the respective policyholder or inward reinsurance counterparty, together with a statement describing such terms and conditions of any such policy or inward reinsurance agreement.

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

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

(10) A statement of the outward reinsurance agreement assets, if any, attaching to any policy or inward reinsurance agreement in the closed block.

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

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

(13) The form of notice to be provided under the plan to any policyholder or inward reinsurance counterparty in connection with any policy or inward reinsurance agreement in the closed block and how such notice shall be provided.

(14) The form of notice to be provided under the plan to any outward reinsurance counterparty attaching to any policy or inward reinsurance agreement in the closed block and how such notice shall be provided.

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

(16) A statement describing the assuming company's proposed investment policies, officers, directors, key employees, and other arrangements

regarding matters such as:

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

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

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

(17) A statement from the assuming company consenting to the jurisdiction of the Commissioner with regard to ongoing oversight of operations, management, and solvency relating to the closed block, including the authority of the Commissioner to conduct examinations under section 7117 of this chapter and to set reasonable standards for oversight of the assuming company, including oversight standards relating to:

(A) material transactions with affiliates;

(B) adequacy of surplus; and

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

(18) A statement from the assuming company submitting to the jurisdiction and authority of the Commissioner of Insurance, or the equivalent regulatory authority, in states in which policyholders or reinsurance counterparties reside, for the purposes of implementing each such state's Unfair Claims Settlement Practices Act, or its equivalent, if any, in such state's market conduct statutory framework; and confirmation of the delivery of such statements of submission.

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

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

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

(c)(1) Information in the plan identifying policyholders and reinsurance counterparties shall be exempt from public inspection and copying under the Public Records Act.

(2) The plan shall include a statement of the information and documentation included in the plan that the assuming company or the

transferring insurer requests be given confidential treatment. The Commissioner shall determine whether information designated in the statement, including any information designated as trade secrets, is exempt from public inspection and copying under the Public Records Act. If such information is exempt, it shall not be subject to subpoena and shall not be made public by the Commissioner or by any other person; provided, however, the Commissioner may in his or her discretion grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, to public officers of a foreign or alien financial regulatory authority, or to state or federal law enforcement officers pursuant to a validly issued subpoena or search warrant; provided that such officers receiving the information agree in writing to hold it in a manner consistent with this subsection.

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

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

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

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

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

- (1) comply with the plan and the provisions of 3 V.S.A. § 809(b);
- (2) include the plan summary;

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

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

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

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

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

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

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

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

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

(i) During the comment period:

(1) any party may file written comments on the plan with the Commissioner;

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

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

(j) In the event that, prior to the expiration of the comment period, any policyholder or inward reinsurance counterparty provides express written notice that he or she objects to the plan and specifies the policy or agreement with respect to which such objection is made, the assuming company shall, not later than 15 days after the end of the comment period, submit to the Commissioner either:

(1) an amended list of policies and reinsurance agreements in the plan, excluding such policyholder or inward reinsurance counterparty and its

respective policy or inward reinsurance agreement from the plan; or

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

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

(l) Notwithstanding any provision of this chapter to the contrary, if a policy or inward reinsurance agreement contains a provision prohibiting the transfer of the policy or inward reinsurance agreement without the consent of the policyholder or inward reinsurance counterparty, then such policy or inward reinsurance agreement shall not be transferred under this chapter unless the applicable policyholder or inward reinsurance counterparty provides written consent to the proposed transfer.

(m) The hearing on the plan shall be held not later than 60 days after the end of the comment period. In his or her discretion, the Commissioner may postpone the hearing for an additional 10 days. With the written consent of the assuming company, the hearing may be postponed beyond 70 days. Each party participating in the hearing shall bear his or her own costs and attorney's fees.

§ 7113. PLAN REVIEW

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

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

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

(2) the adequacy of the assuming company's proposals described in the

statement required under subdivision 7112(b)(16) of this chapter;

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

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

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

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

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

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

§ 7114. ORDER

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

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

(A) material transactions with affiliates;

(B) adequacy of surplus; and

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

(2) set forth the tax payable by the assuming company under subsection

7116(b) of this chapter, which tax shall be payable not later than 14 days after the date of such order;

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

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

(1) sufficient assets to meet its liabilities;

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

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

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

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

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

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

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

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

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

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

(h) At any time before the Commissioner issues the order described in subsection (a) of this section, the assuming company may withdraw the plan without prejudice. Upon such withdrawal, however, the Commissioner shall issue an order setting forth the amount of fees payable by the assuming company under subdivision 7116(a)(2) of this chapter, payable not later than 14 days after the date of such order.

§ 7115. JURISDICTION; APPEALS

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

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

§ 7116. FEE; COSTS; TRANSFER TAX

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

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

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

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

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

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

(c) All fees and payments received by the Department under subsection (a) of this section and 10 percent of the transfer tax under subsection (b) of this section shall be credited to the insurance regulatory and supervision fund under section 80 of this title. The remaining 90 percent of the transfer tax shall be deposited directly into the general fund.

§ 7117. EXAMINATIONS

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

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

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

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

§ 7118. APPLICABLE LAWS

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

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

(c) A proposed legacy insurance transfer shall be a "contested case" under 3 V.S.A. chapter 25, except that a "party" shall be limited as defined in subdivision 7111(16) of this chapter.

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

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

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

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

(3) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this State; provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the assuming company, the Secretary of State shall be an agent of such assuming company upon whom any process, notice, or demand may be served.

§ 7120. POSTING OF PLANS ON WEBSITE

The Commissioner shall require that all plans filed with the Department are

posted on the Department's website, along with any other notice or other information the Commissioner deems appropriate, excluding any information designated as confidential under subsection 7112(c) of this chapter.

§ 7121. REGULATION OF ASSUMING COMPANIES AND SERVICE PROVIDERS

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

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

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

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

(b) An assuming company shall not be subject to the requirements of chapter 101, subchapter 9 (Property and Casualty Insurance Guaranty Association) of this title.

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

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

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal 4/9/2013 & 4/11/2013)

NOTICE CALENDAR

Favorable with Amendment

H. 578

An act relating to administering State funds for loans to individuals for replacement of failed wastewater systems and potable water supplies

Rep. Carr of Brandon, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the

enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

(a) There is hereby established a series of special funds to be known as:

* * *

(10) The Vermont Wastewater and Potable Water Revolving Loan Fund which shall be used to provide loans to individuals, in accordance with section ~~4763a~~ 4763b of this title, for the design and construction of repairs to or replacement of wastewater systems and potable water supplies when the wastewater system or potable water supply is a failed system or supply as defined in 10 V.S.A. § 1972. The amount of \$275,000.00 from the fees collected pursuant to 3 V.S.A. § 2822(j)(4) shall be deposited on an annual basis into this Fund.

(b) Each of such funds shall be established and held separate and apart from any other funds or moneys of State and shall be used and administered exclusively for the purpose of this chapter with the exception of transferring funds from the Vermont Drinking Water Planning Loan Fund and the Vermont Drinking Water Source Protection Fund to the Vermont Environmental Protection Agency (EPA) Drinking Water State Revolving Fund, and from the Vermont Pollution Control Revolving Fund to the Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund, when authorized by the Secretary. These funds shall be administered by the Bond Bank on behalf of the State, except that: ~~the fund Fund~~ shall be administered by VEDA concerning loans to privately owned water systems under subdivision (a)(3) of this section; and the Fund may be administered by a community development credit union, as that term is defined in 8 V.S.A. § 3010(3) or another financial institution, as that term is defined in 8 V.S.A. § 11101, that is contracted with by the State for the purpose of providing loans to individuals for failed wastewater systems and potable water supplies under subdivision (a)(10) of this section. The funds shall be invested in the same manner as permitted for investment of funds belonging to the State or held in the Treasury. The funds shall consist of the following:

(1) Such sums as may be appropriated or transferred thereto from time to time by the General Assembly, the State Emergency Board or the Joint Fiscal Committee during such times as the General Assembly is not in session.

(2) Principal and interest received from the repayment of loans made from each of such funds.

(3) Capitalization grants and awards made to the State by the United

States of America for any of the purposes for which such funds have been established.

(4) Interest earned from the investment of fund balances.

(5) Private gifts, bequests, and donations made to the State for any of the purposes for which such funds have been established.

(6) Other funds from any public or private source intended for use for any of the purposes for which such funds have been established.

* * *

Sec. 2. 24 V.S.A. § 4757 is amended to read:

§ 4757. REVOLVING LOAN FUNDS; ADDITIONAL USES

In addition to providing a source of funds from which loans may be made to municipalities under this chapter, each fund created under section 4753 of this chapter may be used for one or more of the following purposes:

(1) to make loans, to refund bonds or notes of a municipality issued after March 7, 1985 for sewerage works, or after July 1, 1993 for water supply systems for the purpose of financing the construction of any capital improvements or management program described in section 4753 and certified under section 4756 of this title;

(2) to guarantee or insure, directly or indirectly, the payment of notes or bonds issued or to be issued by a municipality for the purpose of financing the construction of any capital improvement or management program described in section 4754 of this title and certified under section 4756;

(3) to guarantee or insure, directly or indirectly, funds established by municipalities for the purpose of financing construction of any capital improvement described in section 4754 of this title;

(4) to invest available fund balances, and to credit the net interest income thereon to the particular fund providing investment funds; ~~and~~

(5) to pay the costs of the ~~bond bank~~ Bond Bank, VEDA, and the agency associated with the administration of each fund; provided, however, that no more than four percent of the aggregate of the highest fund balances in any fiscal year shall be used for such purposes, and that a separate account be established outside the ~~drinking water state revolving fund~~ Drinking Water State Revolving Fund for such purposes. As used in this subsection, costs shall include fiscal, clerical, administrative, and issuance expenditures directly attributable and allocated to the maintenance implementation and administration of the loan funds created under this chapter; and

(6) to pay from the Vermont Wastewater and Potable Water Revolving Loan Fund the costs of administration of loans awarded under subdivision 4753(a)(10) of this title.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 11-0-0)

Favorable

H. 612

An act relating to Gas Pipeline Safety Program penalties

Rep. Bouchard of Colchester, for the Committee on **Commerce and Economic Development**, recommends the bill ought to pass.

(Committee Vote: 8-0-3)

Public Hearings

Monday, February 10, 2014, 4:00 - 6:30 p.m. – The House and Senate Committees on Appropriations will hold a joint public hearing on Vermont Interactive Technologies (V.I.T.) to give Vermonters throughout the state an opportunity to express their views about the state budget for fiscal year 2015. All 13 V.I.T. sites will be available for the hearing: Bennington, Brattleboro, Johnson, Lyndonville, Middlebury, Montpelier, Newport, Randolph Center, Rutland, Springfield, St. Albans, White River Junction and Williston. V.I.T.'s web site has an up-to-date location listing, including driving directions, addresses and telephone numbers, <http://www.vitlink.org/>.

The budget hearing will be VIEWABLE via the Internet if your computer has Flash-based streaming capabilities. Some mobile devices may require additional software.

Go to www.vitlink.org/streamingmedia/vtcevitenopen.php.

The Governor's budget proposal can be viewed at the Department of Finance's website: http://finance.vermont.gov/state_budget/rec. For information about the format of this event or to submit written testimony, call the House Appropriations Committee office at 802/828-5767 or email tutton@leg.state.vt.us. Requests for interpreters should be made to the office by 3:00 p.m. on Monday, January 27, 2014.

February 6, 2014 - House Chamber – 6:00-8:00pm - H112 GMO Labeling – Senate Agriculture and Senate Judiciary

February 13, 2014 - House Chamber - 7:00-9:00 pm - H. 586 - Improving the Quality of State Waters - House Agriculture and Forest Products

February 19, 2014 - Room 11 - 7:00p,- 8:30pm - Judicial retention - Joint Committee on Judicial Retention

PUBLIC HEARING

Public Hearing on the Governor's Proposed Fiscal Year 2015 State Budget

For Advocates

House Committee on Appropriations

Tuesday, February 18, 2014, 11:00 a.m. - 12:00 p.m. or Friday, February 21, 2014, 1:00 – 2:30 p.m. – The House Committee on Appropriations will hold a public hearing for advocates in room 11 of the State House on the Governor's proposed FY2015 state budget. Please sign up in advance, with Theresa Utton-Jerman at (802) 828-5767 or tutton@leg.state.vt.us or in room 40.

The Governor's budget proposal can be viewed at the Department of Finance & Management's website:
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Individual department budgets that have been made available can be viewed at the Joint Fiscal Office's website:
http://www.leg.state.vt.us/jfo/dept_budgets_fy_2015.aspx.

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Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(b) of the Rules and Orders of the Vermont House of Representatives, during the second year of the biennium, except with the prior consent of the Committee on Rules, no member may introduce a bill into the House drafted in standard form after the last day of January.

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March (March 31, 2014). The Committees on Appropriations and Ways and Means bill may be drafted in standard form at any time, and Government Operations bills pertaining to city or town charters, may be drafted in standard form at any time.

Joint Assembly

February 20, 2014 - 10:30 A.M. – Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than February 13, 2014 , by 4:30 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions. Do not use pink mail to deliver notification to the Secretary of State. Hand delivery is the best method to insure notification has been received.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.