

DFR-related Public Records Act Exemptions

Exemptions highlighted in blue are new in 2013, in green were substantively amended in 2013, and in pink were recommended by the Committee in its Jan. 2013 report to be retained in their existing form. As this document was prepared prior to the electronic issuance of the 2013 V.S.A. supplements, the text is unofficial.

A. 1 V.S.A. § 317(c)(26), (28), (36)	3
B. 8 V.S.A. § 15	4
C. 8 V.S.A. § 22	6
D. 8 V.S.A. § 23	8
E. 8 V.S.A. § 2530	9
F. 8 V.S.A. § 2561	12
G. 8 V.S.A. § 2768	13
H. 8 V.S.A. § 2923	14
I. 8 V.S.A. § 3561	15
J. 8 V.S.A. § 3571	17
K. 8 V.S.A. § 3574	18
L. 8 V.S.A. § 3577	20
M. 8 V.S.A. § 3588	25
N. 8 V.S.A. § 3683	28
O. 8 V.S.A. § 3683a	30
P. 8 V.S.A. § 3687	33
Q. 8 V.S.A. § 3839	36
R. 8 V.S.A. § 3840	37
S. 8 V.S.A. § 4089a	38
T. 8 V.S.A. § 4089f	42
U. 8 V.S.A. § 4164	45
V. 8 V.S.A. § 4488	47
W. 8 V.S.A. § 4813m	48
X. 8 V.S.A. § 6002	53
Y. 8 V.S.A. § 6008	57
Z. 8 V.S.A. § 6048o	59

AA. 8 V.S.A. § 6052(c)(2)	61
BB. 8 V.S.A. § 6074	65
CC. 8 V.S.A. § 7041(e)	66
DD. 8 V.S.A. § 7043	68
EE. 8 V.S.A. § 8308	69
FF. 9 V.S.A. § 5607	71

NOTE: 18 V.S.A. §§ 9414, 9418f, and 9457 were reviewed in fall 2012

A. 1 V.S.A. § 317(c)(26), (28), (36)

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(26) information and records provided to the department of financial regulation by an individual for the purposes of having the department assist that individual in resolving a dispute with any person or company regulated by the department, and any information or records provided by a company or any other person in connection with the individual's dispute;

* * *

(28) records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f and of mental health care service decisions pursuant to 8 V.S.A. § 4089a;

* * *

(36) anti-fraud plans and summaries submitted by insurers to the department of financial regulation for the purposes of complying with 8 V.S.A. § 4750;

* * *

B. 8 V.S.A. § 15(b)**§ 15. Rules, orders and administrative interpretations**

(a) In addition to other powers conferred by this title and chapter 221 of Title 18, the commissioner may adopt rules and issue orders as shall be authorized by or necessary to the administration of this title and of chapter 221 of Title 18, and to carry out the purposes of such titles.

(b) The commissioner may, whether or not requested by any person, issue written advisory interpretations of Part 5 of this title and regulations issued under it, including interpretations of the applicability of any provision of this title and regulations issued under it. Such interpretations shall be presumed to be correct unless found to be clearly erroneous by a court of competent jurisdiction. **The commissioner may make public all or a portion of an advisory interpretation.**

(c) The commissioner may waive the requirements of 15 V.S.A. § 795(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18. The commissioner may waive the requirements of 32 V.S.A. § 3113(b) as the commissioner deems necessary to permit the department to participate in any national licensing or registration systems with respect to any person or entity not residing in this state and subject to the jurisdiction of the commissioner under this title, Title 9, or chapter 221 of Title 18.

(d) Upon written request by the office of child support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, chapter 150 of Title 9, and chapter 221 of Title 18 if the commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For purposes of such findings, the written representation to that effect by the office of child support to the commissioner shall constitute prima facie evidence. The office of child support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the commissioner based solely upon the written

representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the department receives a certificate issued by the office of child support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001; amended 2009, No. 42, § 33a.)

C. 8 V.S.A. § 22

§ 22. Confidentiality and information sharing agreements

(a) Except as expressly provided in subsection (b) of this section, all documents, material or other information reported to, or developed or maintained by the commissioner may be used by the commissioner in the furtherance of legal or regulatory proceedings brought as a part of the commissioner's official duties.

(b) In order to assist in the performance of the commissioner's duties, the commissioner:

(1) may share documents, materials or other information, including confidential and privileged documents, materials or other information with other state, federal, or international regulatory agencies, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3 and 78q-1, other self-regulatory organizations and their affiliates or subsidiaries and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from other state, federal, and international regulatory agencies, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under 15 U.S.C. §§ 78f, 78o-3 and 78q-1, other self-regulatory organizations and their affiliates or subsidiaries and from state, federal, and international law enforcement authorities, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

(3) may enter into agreements governing sharing and use of information consistent with this section; and

(4) shall determine, prior to sharing information about an individual pursuant to subdivision (1) of this subsection, that sharing the information will substantially further the performance of the regulatory or law enforcement duties of the recipient.

(c) Any information furnished pursuant to this section by or to the commissioner that has been designated confidential by the furnisher of the information shall not be subject to public

inspection under chapter 5 of Title 1, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(d) Neither the commissioner nor any person who received documents, material, or information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, material, or information.

(e) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure or sharing as authorized under this section.

(f) The provisions of this section shall apply to information relating to persons that engage in activities that are financial in nature, or incidental or complementary to such financial activity within the meaning of 12 U.S.C. § 1843(k) and to credit unions; provided, however, this section shall apply to captives formed or licensed under the provisions of chapter 141 or 142 of this title only to the extent contemplated by 15 U.S.C. § 6716. (Added 2001, No. 71, § 1, eff. June 16, 2001; amended 2009, No. 42, § 5.)

D. 8 V.S.A. § 23**§ 23. CONFIDENTIALITY OF INVESTIGATION AND EXAMINATION REPORTS**

(a) This section shall apply to all persons licensed, authorized or registered, or required to be licensed, authorized or registered, under Parts 2 and 5 of Title 8.

(b) Regardless of source, all records of investigations, including information pertaining to a complaint by or for a consumer, and all records and reports of examinations by the commissioner, whether in the possession of a supervisory agency or another person, shall be confidential and privileged, shall not be made public, and shall not be subject to discovery or introduction into evidence in any private civil action. No person who participated on behalf of the commissioner in an investigation or examination shall be permitted or required to testify in any such civil action as to any findings, recommendations, opinions, results or other actions relating to the investigation or examination.

(c) The commissioner may, in his or her discretion, disclose or publish or authorize the disclosure or publication of any such record or report or any part thereof in the furtherance of legal or regulatory proceedings brought as a part of the commissioner's official duties. The commissioner may, in his or her discretion, disclose or publish or authorize the disclosure or publication of any such record or report or any part thereof, to civil or criminal law enforcement authorities for use in the exercise of such authority's duties, in such manner as the commissioner may deem proper.

(d) For the purposes of this section, records of investigations and records and reports of examinations shall include joint examinations by the commissioner and any other supervisory agency. Records of investigations and reports of examinations shall also include records of examinations and investigations conducted by:

- (1) any agency with supervisory jurisdiction over the person; and
- (2) any agency of any foreign government with supervisory jurisdiction over any person subject to the jurisdiction of the department, when such records are considered confidential by such agency or foreign government and the records are in the possession of the commissioner.

(Added 2001, No. 55, § 3, eff. June 12, 2001.)

E. 8 V.S.A. § 2530(j)**§ 2530. AUTHORITY TO CONDUCT EXAMINATIONS AND INVESTIGATIONS**

(a) In addition to any authority allowed under this chapter or elsewhere and for the purpose of examination or discovering or investigating violations or complaints of or arising under this chapter or under any other applicable law, rule, order, directive, or regulation or of securing any information required or useful thereunder and for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation, the commissioner or his or her duly designated representative shall have the authority to:

(1) Conduct investigations and examinations at any time.

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

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

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

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

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

(c) Each licensee, individual, or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person. The commissioner shall have access to such books and records and may

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

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

- (1) Accounting compilations;
- (2) Information lists and data concerning transactions and business activities in a format prescribed by the commissioner; and
- (3) Such other information as the commissioner deems necessary to carry out the purposes of this chapter.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

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

- (1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

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

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

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

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

(i) Each licensee shall pay to the department all fees, costs, and expenses of any examination, review, and investigation as prescribed by section 18 of this title, and those fees, costs, and expenses shall be billed when they are incurred. The commissioner may maintain an action for the recovery of examination, review and investigation fees, costs, and expenses as prescribed in section 18 of this title in any court of competent jurisdiction.

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

F. 8 V.S.A. § 2561**§ 2561. CONFIDENTIALITY**

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

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

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

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

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

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

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

G. 8 V.S.A. § 2768**§ 2768. CONFIDENTIALITY**

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

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

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

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

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

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

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

H. 8 V.S.A. § 2923**§ 2923. CONFIDENTIALITY**

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

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

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

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

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

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

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

I. 8 V.S.A. § 3561**§ 3561. ANNUAL STATEMENT**

(a) Each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. The statement shall be prepared in accordance with the National Association of Insurance Commissioners' Instructions Handbook and Accounting Practices and Procedures Manual and shall be in such general form and context, as approved by, and shall contain any other information required by, the National Association of Insurance Commissioners with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. The statement of an alien insurer shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise. A foreign or alien company, upon withdrawing from the state of Vermont shall pay to the commissioner \$25.00 for the filing of its final financial statement.

(b)(1) At the direction of the commissioner each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner, in a manner and on forms approved by the commissioner, a statement of its market conduct performance for the purpose of permitting the participation of this state in the Market Conduct Annual Statement program of the National Association of Insurance Commissioners. The statement shall be prepared in accordance with the Market Conduct Annual Statement instructions published by the National Association of Insurance Commissioners, with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of

insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner.

(2) Subject to section 22 of this title, all market conduct annual statements and other information filed pursuant to subdivision (1) of this subsection, all records, and other information of investigations conducted by the department under this title, whether such statements, records, or information are in the possession of another regulatory or law enforcement agency, the National Association of Insurance Commissioners, or any person, shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action.

(c) The commissioner shall adopt by rule the Medical Professional Liability Closed Claim Reporting Model Law of the National Association of Insurance Commissioners, as amended from time to time, or in the commissioner's discretion a substantially similar rule. Subject to section 22 of this title, information which identifies, directly or indirectly, the closed claims of a health care facility or a health care provider shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action. (Added 1967, No. 344 (Adj. Sess.), § 1 (ch. 1, subch. 9, § 1); amended 1991, No. 101, § 5; 1991, No. 249 (Adj. Sess.), § 1; 2009, No. 42, § 6.)

J. 8 V.S.A. § 3571

§ 3571. CONFIDENTIALITY

All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and may not be disclosed by the department. (Added 1991, No. 101, § 10.)

K. 8 V.S.A. § 3574**§ 3574. EXAMINATION REPORTS**

(a) General description. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) Filing of examination report. No later than 60 days following completion of the examination, the examiner in charge shall file with the department a written report of examination under oath. Upon receipt of the report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Adoption of report on examination. Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and shall order the report adopted together with any modifications and amendments that he or she deems appropriate. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation. The company may file an administrative appeal within 30 days of the commissioner's order. Such appeal shall be heard in accordance with chapter 25 of Title 3.

(d) Publication and use.

(1) The commissioner may hold the contents of the examination report confidential for 15 days following the issuance of the commissioner's order under subsection (c) of this section.

(2) The commissioner may disclose the content of an examination report, preliminary examination report or results, or any related matter, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, as long as such agency or office receiving the report or related matters agrees in writing to hold it in a manner consistent with this section.

(3) The commissioner may refuse to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(4) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in this subsection and subsection 3573(e) of this title. The commissioner may grant access to such information to the National Association of Insurance Commissioners. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.
(Added 1991, No. 249 (Adj. Sess.), § 6.)

L. 8 V.S.A. § 3577(l)**§ 3577. REQUIREMENTS FOR ACTUARIAL OPINIONS**

(a) Each licensed insurance company shall include on or attached to its annual statement submitted under section 3561 of this title a statement of a qualified actuary, entitled "statement of actuarial opinion," setting forth an opinion on life and health policy and claim reserves and an opinion on property and casualty loss and loss adjustment expenses reserves.

(b) The "statement of actuarial opinion" shall be treated as a public document and shall conform to the Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries, the standards of the Casualty Actuarial Society, and such additional standards as the commissioner may establish by rule. The commissioner by rule shall establish minimum standards applicable to the valuation of health disability, sickness and accident plans.

(c) Opinions required by this section shall apply to all business in force, and shall be stated in form and in substance acceptable to the commissioner as prescribed by rule.

(1) In the case of property and casualty insurance companies domiciled in this state, every company that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate Property and Casualty Annual Statement Instructions of the National Association of Insurance Commissioners (NAIC) and shall be considered as a document supporting the actuarial opinion required in subsection (a) of this section. A property and casualty insurance company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(2) In the case of property and casualty insurance companies, an actuarial report and underlying work papers, as required by the appropriate Property and Casualty Annual Statement Instructions of the NAIC, shall be prepared to support each actuarial opinion. If the property and casualty insurance company fails to provide a supporting actuarial report or work papers at the request of the commissioner or if the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(3) In the case of property and casualty insurance companies, the appointed actuary shall not be liable for damages to any person other than the insurance company and the commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

(d) In the case of life insurance companies doing business in this state, the opinion shall state whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, comply with applicable laws of this state, and comply with such further standards as the commissioner may establish by rule.

(e) Every life insurance company shall annually include in the opinion required by this section an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(f) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(g) The commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

(h) In the case of life and health insurance companies, "qualified actuary" is an individual who:

- (1) is a member of good standing of the American Academy of Actuaries;
- (2) is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and

(3) is familiar with the valuation requirements applicable to life and health insurance companies.

(i) In the case of property and casualty insurance companies, "qualified actuary" is an individual who:

(1) is a member of good standing of the Casualty Actuarial Society;

(2) is qualified to sign statements of actuarial opinion for property and casualty insurance company annual statements in accordance with the Casualty Actuarial Society qualification standards for actuaries signing such statements; and

(3) is familiar with the valuation requirements applicable to property and casualty insurance companies.

(j) The commissioner, after notice and administrative hearing, may disqualify an actuary who has:

(1) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as a qualified actuary; or

(2) been found guilty of fraudulent or dishonest practices; or

(3) demonstrated his or her incompetency, lack of cooperation, or unethical behavior to act as a qualified actuary; or

(4) submitted to the commissioner during the past five years an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this section or the standards set by the Actuarial Standards Board or the Casualty Actuarial Society; or

(5) resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; or

(6) has failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under this subsection.

(k) Upon written application of any insurer, the commissioner may, in his or her discretion, grant an exemption from compliance with this section if the commissioner finds, upon review of the application, that compliance with this rule would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods.

(1) Actuarial reports, actuarial opinion summaries, work papers, and any other documents, information, or materials provided to the department in connection with the actuarial report, work papers, or actuarial opinion summary shall be confidential by law and privileged, shall not be subject to inspection and copying under 1 V.S.A. § 316, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private litigation.

(1) This subsection shall not be construed to limit the commissioner's authority to release documents to the Actuarial Board for Counseling and Discipline, provided the material is required for the purpose of professional disciplinary proceedings and further provided that procedures satisfactory to the commissioner are established for preserving the confidentiality of the documents, nor shall this subsection be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information under this subsection.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (d) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality.

(B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of the disclosure to the commissioner under this section or as a result of sharing as authorized by subdivision (3) of this subsection. (Added 1991, No. 249 (Adj. Sess.), § 9; amended 2009, No. 137 (Adj. Sess.), § 4a.)

M. 8 V.S.A. § 3588

§ 3588. CONFIDENTIALITY

(a) Documents, materials, or other information, including the summary report, in the possession of or control of the Department that are obtained by, created by, or disclosed to the Commissioner or any other person under this subchapter, is recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall be exempt from public inspection and copying under the Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Commissioner, however, is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(b) Neither the Commissioner nor any person who received documents, materials, or other ORSA related information, through examination or otherwise, while acting under the authority of the Commissioner or with whom such documents, materials, or other information are shared pursuant to this subchapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In furtherance of his or her regulatory duties, the Commissioner:

(1) may, upon request, share documents, materials, or other ORSA related information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, including proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in section 3695 of this title, with the NAIC and with any third-party consultants designated by the Commissioner, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) may receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary

and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in section 3695 of this title and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials, or information.

(3) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided under this subchapter consistent with this subsection that shall:

(A) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this subchapter, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(B) specify that ownership of information shared with the NAIC or a third-party consultant under this subchapter remains with the Commissioner and that the NAIC's or a third-party consultant's use of the information is subject to the direction of the Commissioner;

(C) prohibit the NAIC or third-party consultant from storing the information shared under this subchapter in a permanent database after the underlying analysis is completed;

(D) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant under this subchapter is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(E) require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant under this subchapter; and

(F) in the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(d) The sharing of information and documents by the Commissioner under this subchapter shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this subchapter.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other ORSA-related information shall occur as a result of disclosure of such ORSA-related information or documents to the Commissioner under this section or as a result of sharing as authorized under this subchapter.

(f) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant under this subchapter shall be confidential by law and privileged, shall be exempt from public inspection and copying under the Public Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Also see findings at 8 V.S.A. § 3581(c):

(c) The General Assembly finds and declares that the ORSA Summary Report will contain confidential and sensitive information related to an insurer's or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the General Assembly that the summary report required under this subchapter shall be a confidential document filed with the Commissioner, that it shall be shared only as stated in this subchapter and to assist the Commissioner in the performance of his or her duties, and that in no event shall the summary report be subject to public inspection and copying under the Public Records Act.

N. 8 V.S.A. § 3683(a)**§ 3683. ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER****(a) Filing requirements.**

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the Commissioner in the manner hereinafter prescribed.

(2) For purposes of this subsection, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer in any manner shall file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. **The information shall remain confidential and not subject to public inspection and copying under the Public Records Act until the conclusion of the transaction unless the Commissioner, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section.** If the statement referred to in subdivision (1) of this subsection is otherwise filed, this subdivision shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the Commissioner, which shall contain the information set forth in subdivision 3683a(c)(1). A failure to file the notification may be subject to penalties specified in subdivision 3683a(e) of this chapter.

(4) For purposes of this section, a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the Commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary broker's function, less than 20 percent of the voting securities of an insurance company or of any person which controls an insurance company.

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O. 8 V.S.A. § 3683a(c)

§ 3683a. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE COVERED

(a) Definitions. For the purposes of this section:

(1) “Acquisition” means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities and assets, bulk reinsurance, and mergers.

(2) “Highly concentrated market” is a market in which the share of the four largest insurers is 75 percent or more of the market.

(3) “Insurer” means a company licensed to do business in this State and includes any company or group of companies under common management, ownership, or control.

(4) “Involved insurer” includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(5) “Market” means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, adopted by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this State, and the relevant geographical market is assumed to be this State.

(6) “Significant trend toward increased concentration” means the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition.

(b) Covered acquisitions. Except as provided in this subsection, this section applies to any acquisition in which there is a change in control of an insurer licensed to do business in this State, but not domiciled in this State. This section shall not apply to the following:

(1) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of

control under subdivision 3681(3) of this chapter, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the Commissioner of this State.

(2) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the Commissioner in accordance with subdivision (c)(1) of this section 30 days prior to the proposed effective date of the acquisition or if the acquisition would otherwise be excluded from this section by any other provision of this subsection.

(3) The acquisition of already affiliated persons.

(4) An acquisition if, as an immediate result of the acquisition:

(A) in no market would the combined market share of the involved insurers exceed five percent of the total market;

(B) there would be no increase in any market share; or

(C) in no market would the combined market share of the involved insurers exceed 12 percent of the total market and the market share increase by more than two percent of the total market. For purposes of this subdivision, "market" means direct written insurance premium in this State for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this State.

(5) An acquisition for which a preacquisition notification would be required under this section due solely to the resulting effect on the ocean marine insurance line of business.

(6) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternatives to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the Commissioner of this State.

(c) Preacquisition notification; waiting period. An insurer involved in an acquisition covered by subsection (b) of this section shall file a preacquisition notification with the Commissioner so that the Commissioner may determine whether the proposed acquisition, if consummated, would violate the competitive standard established under subsection (d) of this section. The

Commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 3687 of this chapter.

(1) The preacquisition notification shall be in such form and contain such information as prescribed by the NAIC relating to those markets which cause the acquisition to be covered under provisions of this section. The Commissioner may require such additional material and information as deemed necessary to carry out the purposes of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(2) The waiting period required shall begin on the date the Commissioner receives a preacquisition notification and shall end on the earlier of the 30th day after the date of receipt or termination of the waiting period by the Commissioner. Prior to the end of the waiting period, the Commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after the Commissioner receives the additional information or termination of the waiting period by the Commissioner.

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P. 8 V.S.A. § 3687

§ 3687. CONFIDENTIAL TREATMENT

(a) Documents, materials, or other information in the possession or control of the Department that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to section 3686 of this title and all information reported pursuant to subdivisions 3683(b)(12) and (13), section 3684, and section 3685 of this title shall be given confidential treatment, shall not be subject to subpoena, shall not be subject to public inspection and copying under the Public Records Act, shall not be subject to discovery or admissible in evidence in any private civil action, and shall not be made public by the Commissioner or any other person. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(b) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner or with whom such documents, materials, or other information are shared pursuant to this chapter shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 3695 of this title, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document,

material, or other information and has verified in writing the legal authority to maintain confidentiality;

(2) notwithstanding subdivision (1) of this subsection, may only share confidential and privileged documents, material, or information reported pursuant to subsection 3684(m) of this chapter with commissioners of states having statutes or regulations substantially similar to subsection (a) of this section and who have agreed in writing not to disclose such information;

(3) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(4) shall enter into written agreements with the NAIC governing sharing and use of information provided under this chapter consistent with this subsection that shall:

(A) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators;

(B) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this section remains with the Commissioner and the NAIC's use of the information is subject to the direction of the Commissioner;

(C) require prompt notice be given to an insurer whose confidential information in the possession of the NAIC under this section is subject to a request or subpoena to the NAIC for disclosure or production; and

(D) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this section.

(d) The sharing of information by the Commissioner pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this section.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials, or other information in the possession or control of the NAIC pursuant to this section shall be confidential by law and privileged, shall not be subject to public inspection and copying under the Public Records Act, shall not be subject to subpoena, shall not be subject to discovery or admissible in evidence in any private civil action, and shall not be made public by the Commissioner or any other person.

Q. 8 V.S.A. § 3839**§ 3839. REPORTING REQUIREMENTS AND PRIVACY**

(a) Each life settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule or order. Information relating to life settlement transactions shall be limited to only those transactions where the policy owner is a resident of this state. Upon proper request by the filer, the commissioner shall maintain the confidentiality of trade secret information. The annual statement shall not contain individually-identifiable life settlement transaction information, but such information shall be provided to the commissioner pursuant to section 3840 of this title. If available to the provider because of the provider's business relationship or affiliation with one or more life settlement purchasers, the annual statement shall also include such information as the commissioner may prescribe by rule or by order concerning life settlement purchase agreements or similar investment contracts entered into by residents of this state.

(b) A life settlement provider, life settlement broker, insurance company, life insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's or a policy owner's identity shall be subject to the department's Regulation No. IH-2001-I "Privacy of Consumer Financial and Health Information," as amended.

R. 8 V.S.A. § 3840**§ 3840. INVESTIGATIONS AND EXAMINATIONS**

(a) The commissioner, in addition to all powers granted pursuant to chapter 1 of this title, may examine the business and affairs of any licensee or applicant for a license whenever he or she deems it to be prudent for the protection of policyholders or the public. The commissioner shall have the authority to examine any person and to order the production of any records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(b) A person required to be licensed by this subchapter shall for five years following the death of the insured retain copies of all:

(1) proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;

(2) all checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(3) all other records and documents related to the requirements of this subchapter.

(c) Except as otherwise provided in this subchapter, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination or investigation made under this subchapter or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to disclosure as a public record under section 317 of Title 1, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(d) The expense incurred in conducting any examination shall be paid by the licensee or applicant.

S. 8 V.S.A. § 4089a**§ 4089A. MENTAL HEALTH CARE SERVICES REVIEW**

(a) The purposes of this section are to:

- (1) promote the delivery of quality mental health care in a cost-effective manner;
- (2) foster the practice of mental health services review as a professional collaborative process, the primary objective of which is to enhance the effectiveness of clinical treatment;
- (3) protect clients/patients, employers and mental health care providers by ensuring that review agents are qualified to perform service review activities and to make informed decisions on the appropriateness of mental health care; and
- (4) ensure the confidentiality of clients/patients' mental health records in the performance of service review activities in accordance with applicable state and federal laws.

(b) Definitions: As used in this section:

- (1) "License" means a review agent's license granted by the commissioner.
- (2) "Mental health care provider" or "mental health care professional" means any person, corporation, facility or institution certified or licensed by this state to provide mental health care services, including but not limited to a physician, a nurse with recognized psychiatric specialties, hospital or other health care facility, psychologist, clinical social worker, mental health counselor, alcohol or drug abuse counselor, or an employee or agent of such provider acting in the course and scope of employment or an agency related to mental health care services.
- (3) "Mental health care services" mean acts of diagnosis, treatment, evaluation or advice or any other acts permissible under the health care laws of Vermont whether performed in an outpatient or institutional setting, and include alcohol and drug abuse treatment.
- (4) "Review agent" means a person or entity performing service review activities who is either affiliated with, under contract with, or acting on behalf of a business entity in this state; or a third party who provides or administers mental health care benefits to citizens of Vermont, including a health insurer, nonprofit health service plan, health insurance service organization, health maintenance organization or preferred provider organization, including organizations that rely upon primary care physicians to coordinate delivery of services, authorized to offer health insurance policies or contracts in Vermont.
- (5) "Service review" means any system for reviewing the appropriate and efficient allocation of mental health care services given or proposed to be given to a patient or group of

patients for the purpose of recommending or determining whether such services should be reimbursed, covered or provided by an insurer, plan or other entity or person and includes activities of utilization review and managed care, but does not include professional peer review which does not affect reimbursement for or provision of services.

(c) Any person who approves or denies payment, or who recommends approval or denial of payment for mental health care services, or whose review results in approval or denial of payment for mental health services on a case by case basis, may not review such services in this state unless the commissioner has granted the person a review agent's license. On or before January 1, 1995, the commissioner shall adopt rules to implement the provisions of this section, including the procedures and standards for licensure. The rules shall differentiate between health maintenance organizations licensed to do business within this state and other forms of utilization review. The rules shall establish:

(1) A requirement that within 10 business days after request the review agent make available at no cost to its clients/patients and providers affected by its service review activities, the specific review criteria and standards, credentials of the reviewing professionals, and procedures and methods to be used in evaluating proposed or delivered mental health care services.

(2) A time period within which any determination regarding the provision or reimbursement of mental health services shall be made.

(3) A requirement that any determination regarding mental health care services rendered or to be rendered to a client/patient which may result in a denial of third-party reimbursement or a denial of pre-certification for that service shall include the evaluation, findings, and concurrence of a mental health professional whose training and expertise is at least comparable to that of the treating clinician.

(4) The type, qualifications, and number of personnel required to perform service review activities.

(5) A requirement that a determination by a review agent that care rendered or to be rendered is inappropriate shall not be made until the review agent has communicated with the patient's attending mental health professional concerning that medical care. The review shall be prospective or concurrent with the treatment.

(6) A requirement that any determination that care rendered or to be rendered is inappropriate shall include the written evaluation and findings of the review agent.

(7) A procedure for clients or patients or both, mental health professionals, or hospitals to seek prompt reconsideration before an independent review organization pursuant to section 4089f of this title of an adverse decision by a review agent. The external reviewer engaged by the independent review organization shall have training and expertise at least comparable to that of the treating clinician.

(8) Policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual mental health records are followed.

(9) Policies and procedures which ensure appropriate notification and concurrence of providers and clients/patients before client/patient interviews are conducted by the review agent.

(10) Prohibition of an agreement between the review agent and a business entity or third-party payor in which payment to the review agent includes an incentive or contingent fee arrangement based on the reduction of mental health care services, reduction of length of stay, reduction of treatment, or treatment setting selected. Nothing in this subdivision shall prohibit capitation arrangements for reimbursement for mental health services. Notwithstanding the foregoing, a clinical decision made by the attending mental health professional regarding continued treatment shall not be construed as a denial of services subject to the provisions of this section.

(d) Reviewing agents shall be subject to the provisions of chapter 129 of this title governing unfair insurance trade practices.

(e) Interim provisions: Review agents who are operating in Vermont prior to the adoption of rules pursuant to this section may continue to conduct review activities until the commissioner adopts rules and acts upon the application submitted by the review agent. Review agents operating pursuant to this subsection shall file a completed initial application within the time set forth by rule in order to continue operating until a license is granted.

(f) The commissioner shall have the authority to examine, take administrative action against and penalize review agents as provided in chapters 3, 101, and 129 of this title. A person who violates any provision of this section or who submits any false information in an application required by this section may be fined not more than \$5,000.00 for each violation.

(g) Members of the independent panel of mental health care providers shall be compensated as provided in 32 V.S.A. § 1010(b) and (c).

(h) A review agent shall pay a license fee for the year of registration and a renewal fee for each year thereafter of \$200.00. In addition, a review agent shall pay any additional expenses incurred by the commissioner to examine and investigate an application or an amendment to an application.

(i) The confidentiality of any health care information acquired by or provided to the independent panel of mental health professionals shall be maintained in compliance with any applicable state or federal laws. The independent panel shall not constitute a public agency under subsection 317(a) of Title 1, or a public body under section 310 of Title 1. Records of, and internal materials prepared for, specific reviews under this section shall be exempt from public disclosure under section 316 of Title 1.

T. 8 V.S.A. § 4089f

§ 4089F. INDEPENDENT EXTERNAL REVIEW OF HEALTH CARE SERVICE DECISIONS

(a) For the purposes of this section:

(1) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered or issued by a health insurer, as defined in 18 V.S.A. § 9402, to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(2) "Insured" means the beneficiary of a health benefit plan, including the subscriber and all others covered under the plan, and shall also mean a member of a health benefit plan not otherwise subject to the department's jurisdiction which has voluntarily agreed to use the external review process provided under this section.

(b) An insured who has exhausted all applicable internal review procedures provided by the health benefit plan shall have the right to an independent external review of a decision under a health benefit plan to deny, reduce or terminate health care coverage or to deny payment for a health care service. The independent review shall be available when requested in writing by the affected insured, provided the decision to be reviewed requires the plan to expend at least \$100.00 for the service and the decision by the plan is based on one of the following reasons:

(1) The health care service is a covered benefit that the health insurer has determined to be not medically necessary.

(2) A limitation is placed on the selection of a health care provider that is claimed by the insured to be inconsistent with limits imposed by the health benefit plan and any applicable laws and rules.

(3) The health care treatment has been determined to be experimental, investigational or an off-label drug. A health benefit plan that denies use of a prescription drug for the treatment of cancer as not medically necessary or as an experimental or investigational use shall treat any internal appeal of such denial as an emergency or urgent appeal, and shall decide such appeal within the time frames applicable to emergency and urgent internal appeals under rules adopted by the commissioner.

(4) The health care service involves a medically-based decision that a condition is preexisting.

(c) The right to review under this section shall not be construed to change the terms of coverage under a health benefit plan.

(d) The department shall adopt rules necessary to carry out the purposes of this section. The rules shall ensure that the independent external reviews have the following characteristics:

(1) The independent external reviews shall be conducted,

(A) By independent review organizations pursuant to a contract with the department, and the reviewers shall include health care providers credentialed with respect to the health care service under review and have no conflict of interest relating to the performance of their duties under this section.

(B) In accordance with standards of decision-making based on objective clinical evidence and shall resolve all issues in a timely manner and provide expedited resolution when the decision relates to emergency or urgent health care services.

(2) An insured shall:

(A) Be provided with adequate notice of their review rights under this section.

(B) Have the right to use outside assistance during the review process and to submit evidence relating to the health care service.

(C) Pay an application fee of \$25.00 for each request for an independent external review of an appealable decision not to exceed a total of \$75.00 annually. The application fee may be waived or reduced based on a determination by the commissioner that the financial circumstances of the insured warrant a waiver or reduction. The application fee shall be paid by the insurer, not the insured, if the independent review organization reverses an insurer's decision to deny payment for a health care service.

(D) Be protected from retaliation for exercising their right to an independent external review under this section.

(3) Other costs of the independent review shall be paid by the health benefit plan.

(4) The independent review organization shall issue to both parties a written review decision that is evidence-based. The decision shall be binding on the health benefit plan.

(5) The confidentiality of any health care information acquired or provided to the independent review organization shall be maintained in compliance with any applicable state or federal laws.

(6) The records of, and internal materials prepared for specific reviews by any independent review organization under this section shall be exempt from public disclosure under 1 V.S.A. § 316.

(e) [Repealed.]

(f) Decisions relating to the following health care services shall not be reviewed under this section, but shall be reviewed by the review process provided by law:

(1) Health care services provided by the Vermont Medicaid program or Medicaid benefits provided through a contracted health plan.

(2) Health care services provided to inmates by the department of corrections. (Added 1997, No. 159 (Adj. Sess.), § 1, eff. April 29, 1998; amended 2005, No. 139 (Adj. Sess.), § 2; 2011, No. 21, §§ 14a-16.)

U. 8 V.S.A. § 4164

§ 4164. MISCELLANEOUS PROVISIONS

(a) Nothing in this subchapter shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 4158 of this title. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 4165 of this title.

(c) For the purpose of carrying out its obligations under this subchapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision 4158(7) of this title. All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this subchapter. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired or insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(e) No person shall make use in any manner of the protection afforded by this subchapter as a reason for buying insurance from him or her and the license of any person violating this provision may be revoked by the commissioner.

(f)(1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the insurer on its capital stock, at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (2)-(4) of this subsection.

(2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he or she received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If two persons are liable with respect to the same distributions they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets to pay the contractual obligations of the impaired or insolvent insurer.

(5) If any person liable under subdivision (3) of this subsection is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate. (Added 1971, No. 170 (Adj. Sess.), § 2, eff. April 27, 1972; amended 1993, No. 55, § 8, eff. June 3, 1993; 2009, No. 137 (Adj. Sess.), § 7e, eff. May 29, 2010.)

V. 8 V.S.A. § 4488(5)

(5) Notice of termination of appointment of insurance agent. Every society doing business in this state shall, upon the termination of the appointment of any insurance agent licensed to represent it in this state, forthwith file with the commissioner of financial regulation, a statement, in such form as he may prescribe, of the facts relative to the termination and the cause thereof. Every statement made pursuant to this section shall be deemed a privileged communication.

W. 8 V.S.A. § 4813m(f)**§ 4813m. NOTIFICATION TO COMMISSIONER OF TERMINATION**

(a) Termination for cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the commissioner within 30 days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 4804 of this title or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section 4804 of this title. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(b) Termination without cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in section 4804 of this title shall notify the commissioner within 30 days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) Ongoing notification requirement. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (a) of this section had the insurer then known of its existence.

(d) Copy of notification to be provided to producer:

(1) Within 15 days after making the notification required by subsections (a), (b), and (c) of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in section 4804 of this title, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally-recognized carrier.

(2) Within 30 days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (f) of this section.

(e) Immunities.

(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner from an insurer or producer, or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (a) of this section was reported to the commissioner, provided the propriety of any termination for cause under

subsection (a) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under subdivision (1) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subdivision (1) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

(3) Subdivision (1) or (2) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

(f) **Confidentiality.**

(1) Any documents, materials, or other information in the control or possession of the department of financial regulation that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to 1 V.S.A. chapter 5, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(2) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (1) of this subsection.

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

(A) share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (1) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(B) receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(C) enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (3) of this subsection.

(5) Nothing in this act shall prohibit the commissioner from releasing final, adjudicated actions, including for cause terminations that are open to public inspection pursuant to 1 V.S.A.

chapter 5 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(g) Penalties for failing to report. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be assessed an administrative penalty of \$10,000.00. (Added 2001, No. 97 (Adj. Sess.), § 18; amended 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

X. 8 V.S.A. § 6002(c)(3)**§ 6002. LICENSING; AUTHORITY**

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational document, may apply to the commissioner for a license to do any and all insurance comprised in subdivisions 3301(a)(1), (2), (3)(A)-(C), (E)-(R), and (4)-(9) of this title and may grant annuity contracts as defined in section 3717 of this title; provided, however, that:

(1) no pure captive insurance company may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

(2) no association captive insurance company may insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies;

(3) no industrial insured captive insurance company may insure any risks other than those of the industrial insureds that comprise the industrial insured group, those of their affiliated companies, and those of the controlled unaffiliated business of an industrial insured or its affiliated companies;

(4) no risk retention group may insure any risks other than those of its members and owners;

(5) no captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(6) no captive insurance company may accept or cede reinsurance except as provided in section 6011 of this title;

(7) any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the federal law or laws of the state having jurisdiction over the transaction. Any captive insurance company, unless prohibited by

federal law, may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies; and

(8) any captive insurance company which insures risks described in subdivisions 3301(a)(1) and (2) of this title shall comply with all applicable state and federal laws.

(b) No captive insurance company shall do any insurance business in this state unless:

(1) it first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one meeting each year in this state;

(3) it maintains its principal place of business in this state; and

(4) 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 captive insurance company, the secretary of state shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) Before receiving a license, a captive insurance company shall:

(A) file with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(B) submit to the commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the commissioner for approval an

appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the commissioner evidence of the following:

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(C) the overall soundness of its plan of operation;

(D) the adequacy of the loss prevention programs of its insureds; and

(E) such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and remain confidential, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(A) such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

(i) the information sought is relevant to and necessary for the furtherance of such action or case;

(ii) the information sought is unavailable from other nonconfidential sources; and

(iii) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner; provided, however, that the provisions of this subdivision (3) shall not apply to any risk retention group; and

(B) the commissioner may, in the commissioner's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that:

(i) such public official shall agree in writing to maintain the confidentiality of such information; and

(ii) the laws of the state in which such public official serves require such information to be and to remain confidential.

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$500.00 for examining, investigating, and processing its application for license, and for issuing same, and the commissioner is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of section 3576 of this title shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license renewal fee for each year thereafter of \$500.00.

(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this chapter, the commissioner may grant a license authorizing it to do insurance business in this state until April 1 thereafter, which license may be renewed.

Y. 8 V.S.A. § 6008(c)**§ 6008. EXAMINATIONS AND INVESTIGATIONS**

(a) At least once in three years, and whenever the commissioner determines it to be prudent, the commissioner shall personally, or by some competent person appointed by the commissioner, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The commissioner may enlarge the aforesaid three-year period to five years, provided said captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner. The expenses and charges of the examination shall be paid to the state by the company or companies examined and the commissioner of finance and management shall issue his or her warrants for the proper charges incurred in all examinations.

(b) The provisions of section 3576 of this title shall apply to examinations conducted under this section.

(c) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner may, in the commissioner's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this state or any other state or agency of the federal

government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

Z. 8 V.S.A. § 6048o

§ 6048o. CONFIDENTIALITY

(a) All documents, materials, or other information, including confidential and privileged documents, examination reports, preliminary examination reports or results, working papers, recorded information, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under this subchapter are confidential and shall not be:

- (1) subject to subpoena;
- (2) subject to public inspection and copying under the Public Records Act; or
- (3) discoverable or admissible in evidence in any private civil action.

(b) In furtherance of his or her regulatory duties, the Commissioner may:

(1) share documents, materials, or other information, including those that are confidential and privileged, with other state, federal, or international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under [15 U.S.C. §§ 78f, 78o-3 and 78q-1](#), and other self-regulatory organizations and their affiliates or subsidiaries, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information;

(2) receive documents, materials, or information, including those that are confidential and privileged, from other state, federal, and international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under [15 U.S.C. §§ 78f, 78o-3 and 78q-1](#), and other self-regulatory organizations and their affiliates or subsidiaries and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

(3) enter into written agreements with other state, federal, and international regulatory agencies and law enforcement authorities, the National Association of Insurance Commissioners, the North American Securities Administrators Association, self-regulatory organizations organized under [15 U.S.C. §§ 78f, 78o-3 and 78q-1](#), and other self-regulatory organizations and their affiliates or subsidiaries governing sharing and use of information consistent with this

section, including agreements providing for cooperation between the Commissioner and other agencies in relation to the activities of a supervisory college; and

(4) participate in a supervisory college for any special purpose financial insurer that is part of an affiliated group with international operations in order to assess the insurer's compliance with Vermont laws and regulations, as well as to assess the business strategy, financial condition, risk exposure, risk management, governance processes, and legal and regulatory position.

(5) Prior to sharing information under this subsection, the Commissioner shall determine that sharing the information will substantially further the performance of the regulatory or law enforcement duties of the recipient and may not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except to the extent provided in this subsection.

AA. 8 V.S.A. § 6052(c)(2)**§ 6052. RISK RETENTION GROUPS CHARTERED IN THIS STATE**

(a) Pursuant to the provisions of chapter 141 of this title, a risk retention group shall be chartered and licensed to write only liability insurance pursuant to this chapter, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state under chapter 141 of this title, and with subdivisions 6053(4), (5), (7), and (8) of this title. A risk retention group chartered in this state may provide coverage for payment of punitive damages, the multiplied portion of multiple damages, or other penalties in the nature of compensatory damages, and any such coverage shall be enforceable against such risk retention group in accordance with its terms.

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation and feasibility study which includes a description of the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer, together with such additional information as the commissioner may reasonably require. In considering and approving the risk retention group's plan of operation and any subsequent amendments thereto, the commissioner may limit the net amount of risk retained by a risk retention group. The risk retention group shall submit for approval by the commissioner an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, including any material change in the information called for in subsection (c) of this section, but excluding the identity of policyholders and any changes in rates or rating classification systems. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of such plan or study is approved by the commissioner. The risk retention

group shall inform the commissioner of any material changes in rates or rating classification systems, within 30 days of the adoption of such change.

(c)(1) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(A) the identity of the initial policyholders or members of the group or if the identity is not known or cannot be determined, a description of who is eligible to be a policyholder or a member;

(B) the identity of the persons that organized the group;

(C) the identity of any persons that will act as a managing general agent or reinsurance intermediary for, provide other significant administrative services to, or otherwise influence or control the activities of, the group;

(D) summary descriptions of the services, described in subdivision (C) of this subsection, and of any contracts under which the services are to be performed, including the method of compensation therefor;

(E) the amount and nature of initial capitalization;

(F) plans for the payment of dividends or other distributions of members' capital and surplus; and

(G) the states in which the group intends to file.

(2) The applicant may bind separately any portions of the application or any amendment thereto that contain proprietary information or documents, and request confidential treatment of such portions. For the purposes of this section, "proprietary information or documents" means certain information or documents furnished by or pertaining to any of the persons specified above that would customarily be treated as confidential or sensitive and the disclosure of which

could result in harm or prejudice to the person to whom the information or documents pertain or unfair advantage to another person. Such information includes, but is not limited to, trade secrets, historical or projected loss data or case reserves of members or policyholders, actuarial analyses which include such data or reserves, historical or projected financial data not otherwise publicly available, and similar information or documents. The commissioner shall determine which portions specified by the applicant fall within the definition of proprietary information or documents and treat such portions as confidential. Provided, however, that nothing herein shall excuse the applicant from making any required disclosure under the RRA 1986, this chapter or chapter 141 of this title, or prohibit the commissioner from disclosing any proprietary information or documents in the furtherance of any legal or regulatory proceeding. Before using proprietary information or documents in a legal or regulatory proceeding that does not involve the applicant or any person named in the application or any amendment thereto, the commissioner shall first seek to obtain the same information from nonconfidential sources. If unavailable from nonconfidential sources, the commissioner shall seek to protect the confidential information or documents from unnecessary disclosure. Upon licensing, the commissioner shall forward to the National Association of Insurance Commissioners all information required under the RRA 1986 to be submitted to each state where the risk retention group proposes to operate and all other information not deemed confidential under this section. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of section 6053 or any other sections of this chapter. In addition, the commissioner may provide access to confidential application information with respect to risk retention groups to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as

the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

(d) The provisions of subsection 6008(c) of this title shall apply to risk retention groups chartered in this state, except that such provisions shall not apply to final examination reports relating to risk retention groups and except that the commissioner may, in the commissioner's discretion, grant access to any other examination information covered by subsection 6008(c) of this title to representatives of the National Association of Insurance Commissioners to inspect (but not copy) such information in connection with accreditation examinations, so long as the National Association of Insurance Commissioners agrees in writing to maintain the confidentiality of such information.

(e) The provisions of subchapter 13 of chapter 101 of this title shall apply to risk retention groups chartered in this state. However, no existing rule, regulation, or order promulgated under section 3688 of this title shall apply to a risk retention group chartered in this state unless the rule, regulation, or order or a provision thereof is specific to risk retention groups. The commissioner shall establish procedures to implement the provisions of subchapter 13 of chapter 101 of this title as applied to risk retention groups chartered in this state by rule, regulation, or order. (Added 1991, No. 249 (Adj. Sess.), § 23, eff. Dec. 31, 1992; amended 1993, No. 235 (Adj. Sess.), § 9i, eff. June 21, 1994; 1997, No. 49, § 17, eff. June 26, 1997; 1999, No. 38, § 20, eff. May 20, 1999; 2009, No. 42, §§ 29, 30, eff. May 27, 2009; 2011, No. 21, § 25; 2011, No. 78 (Adj. Sess.), § 41, eff. April 2, 2012.)

BB. 8 V.S.A. § 6074

(a) The commissioner may examine the books and records of a managing general agent or any affiliate thereof pertaining to or arising out of transactions with a risk retention group if the commissioner reasonably believes that such examination is necessary.

(b) All examination reports, work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or any other person, except as otherwise provided in this section. The commissioner is authorized to use and make public any report, work paper or other documents, or any other information discovered or developed during the course of any examination conducted pursuant to this section in the furtherance of any legal or regulatory action.

CC. 8 V.S.A. § 7041(e)**§ 7041. COMMISSIONER'S SUMMARY ORDERS AND SUPERVISION PROCEEDINGS**

(a) Whenever the commissioner has reasonable cause to believe, and determines after a hearing held under subsection (e) of this section, that any domestic insurer has committed or engaged in, or is about to commit or engage in, any act, practice, or transaction that would subject it to delinquency proceedings under this chapter, he or she may make and serve upon the insurer and any other persons involved, such orders as are reasonably necessary to correct, eliminate or remedy such conduct, condition or ground.

(b) If upon examination or at any other time the commissioner has reasonable cause to believe and determines that any domestic insurer is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such domestic insurer gives its consent, then the commissioner shall:

- (1) notify the insurer of the determination; and
- (2) furnish to the insurer a written list of the commissioner's requirements to abate the determination.

(c) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (a) or (b) of this section, he or she shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise such insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsections (a) and (b) of this section and may also require that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or his or her supervisor:

- (1) dispose of, convey or encumber any of the insurer's assets or its business in force;
- (2) withdraw from any of the insurer's bank accounts;
- (3) lend any of the insurer's funds;
- (4) invest any of the insurer's funds;
- (5) transfer any of the insurer's property;
- (6) incur any debt, obligation or liability;
- (7) merge or consolidate with another company;
- (8) enter into any new reinsurance contract or treaty; or
- (9) restrict the writing of new or renewal business.

(d) An insurer subject to an order under this section shall comply with the lawful requirements of the commissioner and, if placed under supervision, shall have 60 days from the date the supervision order is served within which to comply with the requirements of the commissioner. In the event of the insurer's failure to comply with the supervision order, the commissioner may institute proceedings under section 7051 or 7056 of this title to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(e) The notice of hearing held under subsection (a) of this section and any order issued pursuant to subsection (a) shall be served upon the insurer pursuant to the provisions of 3 V.S.A. chapter 25. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner may base his or her order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than 30 days after notice is served and shall be held at the offices of the department of financial regulation or in some other place convenient to the parties as determined by the commissioner. Hearings under subsection (a) of this section shall be private and shall not be subject to the provisions of 1 V.S.A. chapter 5, subchapters 2 and 3 (public information and access to public records), unless the insurer requests a public hearing.

* * *

DD. 8 V.S.A. § 7043

Administrative and judicial proceedings under sections 7041 and 7042 of this title, all records of the insurer, other documents, and all department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance with orders of the commissioner or the court, unless the superior court of Washington County, after privately hearing arguments from the parties in chambers, shall order otherwise; or unless the insurer requests that the matter be made public. Until a court order permitting the matter to be made public issues, or the insurer requests that the matter be made public, all papers filed with the superior court of Washington county shall be held in a confidential file.

EE. 8 V.S.A. § 8308

§ 8308. CONFIDENTIALITY AND PROHIBITION ON ANNOUNCEMENTS

(a) All risk based capital reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and risk based capital plans (including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to any domestic insurer or foreign insurer which are filed with the Commissioner, constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential and privileged by the Commissioner. This information shall not be made available for public inspection and copying under the Public Records Act, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information for the purpose of enforcement actions taken by the Commissioner under this chapter or any other provision of the insurance laws of this State.

(b) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In furtherance of his or her duties under this chapter, the Commissioner may:

(1) share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(e) Except as otherwise required under this chapter, the making, publishing, disseminating, circulating or placing before the public, directly or indirectly in any manner, the risk based capital levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business is prohibited. Any person violating this section shall be subject to an administrative penalty of up to \$500.00.

(f) The Commissioner may, in his or her discretion, permit the correction of any material misstatement published by a party unrelated to the insurer concerning any aspect of the insurer's risk based capital level or any component thereof. A correction permitted under this section may be used solely to rebut the material misstatement.

FF. 9 V.S.A. § 5607**§ 5607. Public records; confidentiality**

(a) Except as otherwise provided in subsection (b) of this section, records obtained by the commissioner or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination and copying under the Public Records Act or under subsection (a) of this section:

(1) a record obtained by the commissioner in connection with an audit or inspection under subsection 5411(d) of this chapter or an investigation under section 5602 of this chapter;

(2) a part of a record filed in connection with a registration statement under sections 5301 and 5303 through 5305 of this chapter or a record under subsection 5411(d) of this chapter that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the commissioner or filed under this chapter and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in subsection 5608(a) of this chapter;

(5) any Social Security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed;

(6) a record obtained by the commissioner through a designee of the commissioner that a rule or order under this chapter determines has been:

(A) expunged from the commissioner's records by the designee; or

(B) determined to be nonpublic or nondisclosable by that designee if the commissioner finds the determination to be in the public interest and for the protection of investors;

(7) records relating to the notice requirement in subsection 5602(f) of this title; and

(8) records otherwise exempt from public disclosure pursuant to 1 V.S.A. § 317(c).

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in subsection 5608(a) of this chapter, the commissioner

may disclose a record obtained in connection with an audit or inspection under subsection 5411(d) of this chapter or a record obtained in connection with an investigation under section 5602 of this chapter.