

1 S.56

2 Introduced by Senator Cummings

3 Referred to Committee on Finance

4 Date: January 31, 2017

5 Subject: Insurance; life; enhanced penalties; securities; Philanthropy

6 Protection Act of 1995

7 Statement of purpose of bill as introduced: This bill proposes to amend
8 Vermont law as it pertains to: life insurance policies and notices of
9 cancellation; enhanced penalties for insurance or securities violations
10 involving a vulnerable adult; penalty limitations applicable to violations of the
11 Vermont Uniform Securities Act; and the Philanthropy Protection Act of 1995.

12 ~~An act relating to life insurance policies and the Vermont Uniform~~
13 ~~Securities Act.~~

An act relating to insurance and securities

14

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

16 ~~*** Secondary Addressee for Life Insurance ***~~

17 Sec. 1. 8 V.S.A. § 3762(d) is added to read:

18 (d) No individual policy of life insurance covering an individual 64 years
19 of age or older that has been in force for at least one year shall be canceled for
20 nonpayment of premium unless, after expiration of the grace period and not
21 less than 21 days before the effective date of any such cancellation, the insurer

1 ~~has mailed a notice of impending cancellation in coverage to the policyholder~~
2 ~~and to a specified secondary addressee if such addressee has been designated~~
3 ~~by name and address in writing by the policyholder. An insurer shall notify~~
4 ~~the applicant of the right to designate a secondary addressee at the time of~~
5 ~~application for the policy on a form provided by the insurer, and annually~~
6 ~~thereafter, and the policyholder shall have the right to designate a secondary~~
7 ~~addressee, in writing, by name and address, at any time the policy is in force,~~
8 ~~by submitting such written notice to the insurer. If a life insurance policy~~
9 ~~provides a grace period longer than 51 days for nonpayment of premium, the~~
10 ~~notice of cancellation in coverage required by this subsection shall be mailed~~
11 ~~to the policyholder and to the secondary addressee not less than 21 days prior~~
12 ~~to the expiration of the grace period provided in such policies.~~

13 * * * Penalty Enhancements for

14 Violations Involving a Vulnerable Adult * * *

15 Sec. 2. 8 V.S.A. § 24 is amended to read:

16 § 24. SENIOR INVESTOR PROTECTION

17 * * *

18 (e) The Commissioner, in addition to other powers conferred on the
19 Commissioner by law, may increase the amount of an administrative penalty
20 by not more than \$5,000.00 per violation for violations involving a person
21 who is a vulnerable adult as defined in 33 V.S.A. § 6902(14).

~~*** Securities Act Penalties, Generally; Vulnerable Adults ***~~

Sec. 3. 9 V.S.A. § 5412(c) is amended to read:

(c) If the Commissioner finds that the order is in the public interest and subdivision (d)(1) through (6), (8), (9), (10), (12), or (13) of this section authorize the action, an order under this chapter may censure, impose a bar on, or impose a civil penalty on a registrant in an amount not more than \$15,000.00 for each violation ~~and not more than \$1,000,000.00 for more than one violation~~, and recover the costs of the investigation from the registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. The limitations on civil penalties contained in this subsection shall not apply to settlement agreements.

Sec. 4. 9 V.S.A. § 5603(b)(2)(C) is amended to read:

(C) imposing a civil penalty up to \$15,000.00 for each violation ~~and not more than \$1,000,000.00 for more than one violation~~; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act. The court may increase a civil penalty amount by not more than \$5,000.00 per violation for violations involving a person who is a

1 ~~vulnerable adult as defined in 33 V.S.A. § 6902(14). The limitations on civil~~
2 penalties contained in this subdivision shall not apply to settlement
3 agreements; and

4 Sec. 5. 9 V.S.A. § 5604(d) is amended to read:

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

12 * * * Securities Act Housekeeping * * *

13 Sec. 6. 9 V.S.A. § 5302 is amended to read:

14 § 5302. NOTICE FILING

15 * * *

16 (c) With respect to a security that is a federal covered security under
17 15 U.S.C. ~~§ 77r(b)(4)(E)~~ § 77r(b)(4)(F), a rule under this chapter may require
18 a notice filing by or on behalf of an issuer to include a copy of Form D,
19 including the Appendix, as promulgated by the Securities and Exchange
20 Commission, and a consent to service of process complying with section 5011
21 ~~of this chapter signed by the issuer not later than 15 days after the first sale of~~

1 ~~the federal covered security in this State and the payment of a fee as set forth~~
2 in subsection (e) of this section. The notice filing shall be effective for one
3 year from the date the notice filing is accepted as complete by the Office of the
4 Commissioner. On or before expiration, the issuer may annually renew a
5 notice filing by filing a copy of those records filed by the issuer with the
6 Securities and Exchange Commission that are required by rule or order under
7 this chapter to be filed and by paying an annual renewal fee as set forth in
8 subsection (e) of this section.

9 (d) Subject to the provisions of 15 U.S.C. § 77r(c)(2) and any rules
10 adopted thereunder, with respect to any security that is a federal covered
11 security under 15 U.S.C. § 77r(b)(3) or ~~(4)(A)-(C)~~ (4)(A)-(E) and (G) and that
12 is not otherwise exempt under sections 5201 through 5203 of this title, a rule
13 adopted or order issued under this chapter may require any or all of the
14 following with respect to such federal covered securities, at such time as the
15 Commissioner may deem appropriate:

16 * * *

17 * * * Philanthropy Protection Act; Exemption Repeal * * *

18 Sec. 7. REPEAL

19 9 V.S.A. § 5615 (exempting Vermont from the Philanthropy Protection Act
20 of 1995) is repealed.

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~~*** Effective Date ***~~

~~Sec. 8. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

**** Secondary Addressee for Life Insurance ****

Sec. 1. 8 V.S.A. § 3762(d) is added to read:

(d) No individual policy of life insurance covering an individual 64 years of age or older that has been in force for at least one year shall be canceled for nonpayment of premium unless, after expiration of the grace period and not less than 21 days before the effective date of any such cancellation, the insurer has mailed a notice of impending cancellation in coverage to the policyholder and to a specified secondary addressee if such addressee has been designated by name and address in writing by the policyholder. An insurer shall notify the applicant of the right to designate a secondary addressee at the time of application for the policy on a form provided by the insurer; and annually thereafter; and the policyholder shall have the right to designate a secondary addressee, in writing, by name and address, at any time the policy is in force, by submitting such written notice to the insurer. If a life insurance policy provides a grace period longer than 51 days for nonpayment of premium, the notice of cancellation in coverage required by this subsection shall be mailed to the policyholder and to the secondary addressee not less than 21 days prior to the expiration of the grace period provided in such policies.

**** Penalty Enhancements for Violations Involving a Vulnerable Adult ****

Sec. 2. 8 V.S.A. § 24 is amended to read:

§ 24. SENIOR INVESTOR PROTECTION

(e) The Commissioner, in addition to other powers conferred on the Commissioner by law, may increase the amount of an administrative penalty by not more than \$5,000.00 per violation for violations involving a person who is a vulnerable adult as defined in 33 V.S.A. § 6902(14).

**** Securities Act Penalties, Generally; Vulnerable Adults ****

Sec. 3. 9 V.S.A. § 5412(c) is amended to read:

(c) If the Commissioner finds that the order is in the public interest and subdivisions (d)(1) through (6), (8), (9), (10), (12), or (13) of this section authorize the action, an order under this chapter may censure, impose a bar

on, or impose a civil penalty on a registrant in an amount not more than \$15,000.00 for each violation ~~and not more than \$1,000,000.00 for more than one violation~~, and recover the costs of the investigation from the registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. The limitations on civil penalties contained in this subsection shall not apply to settlement agreements.

Sec. 4. 9 V.S.A. § 5603(b)(2)(C) is amended to read:

(C) imposing a civil penalty up to \$15,000.00 for each violation ~~and not more than \$1,000,000.00 for more than one violation~~; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act. The court may increase a civil penalty amount by not more than \$5,000.00 per violation for violations involving a person who is a vulnerable adult as defined in 33 V.S.A. § 6902(14). The limitations on civil penalties contained in this subdivision shall not apply to settlement agreements; and

Sec. 5. 9 V.S.A. § 5604(d) is amended to read:

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

** * * Securities Act Housekeeping * * **

Sec. 6. 9 V.S.A. § 5302 is amended to read:

§ 5302. NOTICE FILING

** * **

(c) With respect to a security that is a federal covered security under 15 U.S.C. ~~§ 77r(b)(4)(E)~~ § 77r(b)(4)(F), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with section 5611 of this chapter signed by the issuer not later than 15 days after the first sale of the federal covered security in this State and the payment of a fee as set forth

in subsection (e) of this section. The notice filing shall be effective for one year from the date the notice filing is accepted as complete by the Office of the Commissioner. On or before expiration, the issuer may annually renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed and by paying an annual renewal fee as set forth in subsection (e) of this section.

(d) Subject to the provisions of 15 U.S.C. § 77r(c)(2) and any rules adopted thereunder; with respect to any security that is a federal covered security under 15 U.S.C. § 77r(b)(3) or ~~(4)(A)-(C)~~ (4)(A)-(E) and (G) and that is not otherwise exempt under sections 5201 through 5203 of this title, a rule adopted or order issued under this chapter may require any or all of the following with respect to such federal covered securities, at such time as the Commissioner may deem appropriate:

** * **

** * * Philanthropy Protection Act; Exemption Repeal * * **

Sec. 7. REPEAL

9 V.S.A. § 5615 (exempting Vermont from the Philanthropy Protection Act of 1995) is repealed.

** * * Cooperative Insurance; Bylaws * * **

Sec. 8. 8 V.S.A. § 3925 is amended to read:

§ 3925. BYLAWS; COMPULSORY PROVISIONS

The bylaws of a cooperative insurance corporation to which a certificate of authority is issued shall include substantially the following provisions:

(1) The corporate powers of such corporation shall be exercised by a board of directors, who shall be not less than five in number. Such directors shall be divided into classes and a portion only elected each year. They shall be elected for a term of not more than four years each and shall choose ~~from their number~~ a president, a secretary, and such other officers as may be deemed necessary. After the first year, the directors shall be chosen at an annual meeting to be held on the second Tuesday of January, unless some other day is designated in such bylaws, at which meeting each person insured shall have one vote and may be entitled to vote by proxy under such rules and regulations as may be prescribed by the bylaws.

(2) Such corporation shall keep proper books, including a policy register, in which the secretary shall enter the complete record of all its transactions and those of the board of directors and executive committee. Such

books shall at all times show fully and truly the condition, affairs, and business of such corporation and shall be open for inspection by every person insured, each day from nine o'clock in the forenoon to four o'clock in the afternoon, Saturdays, Sundays, and legal holidays excepted.

(3) If authorized as an assessment cooperative insurance corporation as outlined in subsection 3920(a) of this title, such corporation may assess for the purposes specified in section 3927 of this title, and the bylaws shall specify the manner of giving notice of such assessments, which may be either personal or by mail, and, if by mail, shall be deemed complete if such notice is deposited, postage prepaid, in the post office at the place where the principal office of the corporation is located, directed to the person insured at his or her last known place of residence or business. A person insured who neglects or refuses to pay his or her assessments, for that reason or for any other reason satisfactory to the board of directors or its executive committee, may be excluded from such corporation and, when thus excluded, the secretary shall cancel or withdraw his or her policy or policies, subject to the cancellation provisions in sections 3879 through 3882 and chapter 113, subchapter 2 of this title, provided that such person shall remain liable for his or her pro rata share of losses and expenses incurred on or before the date of his or her exclusion and for the penalty herein provided, in case an action is brought against him or her. If a member of such corporation is so excluded and his or her policy so canceled, the secretary shall forthwith enter such cancellation and the date thereof on the records kept in the office of the corporation and serve notice of such cancellation on the person so excluded, as provided herein for the service of notice of assessment. However, in such event, the person so excluded or whose policy is so canceled shall be entitled to the repayment of an equitable portion of the unearned paid premium on such policy. The officers of such corporation shall proceed to collect all assessments within 30 days after the expiration of the notice to pay the same. Neglect or refusal on their part so to proceed or to perform any of the duties imposed on them by law shall render them individually liable for the amount lost to any person, due to such neglect or refusal, and an action may be maintained by such person against such officers to collect such amount. An action may be brought by the corporation against a person insured therein to recover all assessments which he or she may neglect or refuse to pay, and there may be recovered from him or her in such action both the amount so assessed, with lawful interest thereon, and, as a penalty for such neglect or refusal, 50 percent of such assessment in addition thereto.

(4) Any person insured by an assessment cooperative insurance corporation may withdraw therefrom at any time by giving written notice to the corporation, stating the date of withdrawal, paying his or her share of all

claims then existing against such corporation, and surrendering his or her policy or policies.

(5) Any person insured by a nonassessment cooperative insurance corporation may withdraw from it at any time by giving written notice to the corporation stating the date of withdrawal and surrendering his or her policy or policies.

(6) Persons residing or owning property within ~~the state of Vermont~~ any state where the corporation is authorized to do business may be insured upon the same terms and conditions as original members and such other terms as may be prescribed in the bylaws of the corporation.

~~(7) Nonresidents owning property within the state of Vermont may be insured therein and shall have all the rights and privileges of the corporation and be accountable as are other persons insured therein, but shall not be eligible to hold office in the corporation;~~

~~(8) The bylaws of such corporation may be amended at any time.~~

** * * Group Life Insurance; Employee Pay All * * **

Sec. 9. [DELETED.]

Sec. 10. [DELETED.]

Sec. 11. [DELETED.]

Sec. 12. [DELETED.]

Sec. 13. [DELETED.]

Sec. 14. [DELETED.]

Sec. 15. [DELETED.]

** * * Assistant Medical Examiners; Liability Protections * * **

Sec. 16. 18 V.S.A. § 511 is added to read:

§ 511. ACTIONS AGAINST MEDICAL EXAMINERS

Actions taken by any person given authority under this chapter, including an assistant medical examiner, shall be considered to be actions taken by a State employee for the purposes of 3 V.S.A. chapter 29 and 12 V.S.A. chapter 189 if such actions occurred within the scope of such person's duties.

** * * Portable Electronics Insurance; Notice Requirements * * **

Sec. 17. 8 V.S.A. § 4260 is amended to read:

§ 4260. NOTICE REQUIREMENTS

(a) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to the policy or is otherwise required by law, it shall be in writing. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this section. If the notice or correspondence is mailed, it shall be sent to the portable electronics vendor at the vendor's mailing address specified for such purpose and to its affected customers' last known mailing address on file with the insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the U.S. Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the portable electronics vendor at the vendor's electronic mail address specified for such purpose and to its affected customers' last known electronic mail address as provided by each customer to the insurer or vendor of portable electronics. ~~A customer is deemed to consent to receive notice and correspondence by electronic means if the insurer or vendor first discloses to the customer that by providing an electronic mail address the customer consents to receive electronic notice and correspondence at the address, and the customer provides an electronic mail address~~ customer's provision of an electronic mail address to the insurer or vendor of portable electronics is deemed consent to receive notices and correspondence by electronic means at such address if notice of that consent is provided to the customer within 30 calendar days. The insurer or vendor of portable electronics shall maintain proof that the notice or correspondence was sent.

* * *

** * * Workers' Compensation; High-Risk Occupations and Industries * * **

*Sec. 18. WORKERS' COMPENSATION; INDUSTRIES AND
OCCUPATIONS WITH HIGH RISK, HIGH PREMIUMS, AND
FEW POLICY HOLDERS; STUDY; REPORT*

(a) The Commissioner of Financial Regulation, in consultation with the Commissioner of Labor, the National Council on Compensation Insurance, and other interested stakeholders, shall identify and study industries and occupations in Vermont that experience a high risk of workplace and on-the-job injuries and whose workers' compensation insurance is characterized by high premiums and few policy holders in the insurance pool. The industries and occupations addressed in the study shall include, among others, logging and log hauling, as well as arborists, roofers, and occupations in saw mills and wood manufacturing operations. In particular, the Commissioner shall:

(1) examine difference in the potential for loss, premium rates, and experience and participation in the workers' compensation marketplace

between the industries and occupations identified, and the average for all industries and occupations in Vermont;

(2) study potential methods for reducing workers' compensation premium rates and costs for high-risk industries and occupations, including risk pooling between multiple high-risk industries or occupations, creating self-insured trusts; creating voluntary safety certification programs, and programs or best practices employed by other states; and

(3) model the potential impact on workers' compensation premiums and costs from each of the methods identified pursuant to subdivision (2) of this subsection.

(b) On or before January 15, 2018, the Commissioner of Financial Regulation shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance regarding his or her findings and any recommendations for legislative action to reduce the workers' compensation premium rates and costs for the industries identified in the study.

** * * Workers' Compensation; Short-term and Seasonal Policies; Studies * * **

Sec. 19. [DELETED.]

*Sec. 20. SHORT-TERM WORKERS' COMPENSATION POLICIES;
STUDY; REPORT*

The Commissioner of Financial Regulation, in consultation with the Commissioner of Labor, shall examine potential measures to encourage the creation of affordable seasonal and short-term workers' compensation policies and measures to reduce the cost of workers' compensation insurance coverage for small employers in seasonal occupations. On or before January 15, 2018, the Commissioner shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance regarding his or her finding and any recommendations for legislative action.

Sec. 21. REGIONAL ASSIGNED RISK POOL; STUDY; REPORT

The Commissioner of Financial Regulation shall examine potential mechanisms for joining with neighboring states to create a regional assigned risk pool for workers' compensation insurance and whether the creation of a regional assigned risk pool could reduce the cost of administering Vermont's assigned risk pool. On or before January 15, 2018, the Commissioner shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance with his or her findings and any recommendations for legislative action related to the implementation of a regional assigned risk pool for workers' compensation insurance.

*Sec. 22. ADMINISTRATION OF ASSIGNED RISK POOL; STUDY;
REPORT*

The Commissioner of Financial Regulation shall examine whether any premium savings or reductions in costs could be realized if the assigned risk pool for workers' compensation was administered directly by the Department of Financial Regulation rather than through a third-party. On or before January 15, 2018, the Commissioner shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance with his or her findings and any recommendations for legislative action.

Sec. 23. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

** * **

(11) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of that employment.

** * **

(1)(i) In the case of police officers, rescue or ambulance workers, or firefighters, post-traumatic stress disorder that is diagnosed by a mental health professional shall be presumed to have been incurred during service in the line of duty and shall be compensable, unless it is shown by a preponderance of the evidence that the post-traumatic stress disorder was caused by nonservice-connected risk factors or nonservice-connected exposure.

(ii) A police officer, rescue or ambulance worker, or firefighter who is diagnosed with post-traumatic stress disorder within three years of the last active date of employment as a police officer, rescue or ambulance worker, or firefighter shall be eligible for benefits under this subdivision (11).

(iii) As used in this subdivision (11)(I):

(I) "Firefighter" means a firefighter as defined in 20 V.S.A. § 3151(3) and (4).

(II) "Mental health professional" means a person with professional training, experience, and demonstrated competence in the treatment and diagnosis of mental conditions, who is certified or licensed to provide mental health care services and for whom diagnoses of mental conditions are within his or her scope of practice, including a physician, nurse

with recognized psychiatric specialties, psychologist, clinical social worker, mental health counselor, or alcohol or drug abuse counselor.

(III) "Police officer" means a law enforcement officer who has been certified by the Vermont Criminal Justice Training Council pursuant to 20 V.S.A. chapter 151.

(IV) "Rescue or ambulance worker" means ambulance service, emergency medical personnel, first responder service, and volunteer personnel as defined in 24 V.S.A. § 2651.

(J)(i) A mental condition resulting from a work-related event or work-related stress shall be considered a personal injury by accident arising out of and in the course of employment and be compensable if it is demonstrated by the preponderance of the evidence that:

(I) the work-related event or work-related stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee across all occupations; and

(II) the work-related event or work-related stress, and not some other event or source of stress, was the predominant cause of the mental condition.

(ii) A mental condition shall not be considered a personal injury by accident arising out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.

* * *

Sec. 24. EMERGENCY PERSONNEL POST-TRAUMATIC STRESS
DISORDER; STUDY OF EXPERIENCE AND COSTS; REPORT

(a) The Commissioner of Labor, in consultation with the Secretary of Administration, the Commissioner of Financial Regulation, the Vermont League of Cities and Towns, and the National Council on Compensation Insurance, shall examine claims for workers' compensation made pursuant to 21 V.S.A. § 601(11)(I) and (J) between July 1, 2017 and January 1, 2020, including:

(1) the number of claims made;

(2) the cost of the workers compensation benefits provided for those claims; and

(3) any changes in administrative and premium costs associated with those claims.

(b) On or before January 15 of each year from 2018 through 2020, the Commissioner shall report to the House Committees on Appropriations, on Commerce and Economic Development, and on Health Care, and the Senate Committees on Appropriations, on Finance, and on Health and Welfare regarding its findings and any recommendations for legislative changes.

** * * Effective Date; Application * * **

Sec. 25. EFFECTIVE DATE; APPLICATION

(a) This act shall take effect on July 1, 2017.

(b) Sec. 17 shall apply to portable electronics insurance policies issued or renewed on or after July 1, 2017.