

Memorandum

To: House Committee on Commerce and Economic Development

From: Michael Pieciak, Commissioner, Department of Financial Regulation
Jill Rickard, Director of Policy, Department of Financial Regulation

Subject: H.719, An act relating to insurance companies and trust companies

Date: January 31, 2018

The following is an outline of H.719:

*****Authority to Transact Various Kinds of Business*****

8 V.S.A. § 3362

Background: 11 V.S.A. § 762 was recently repealed. 8 V.S.A. § 3362 includes a reference to such repealed statute.

Proposal: Amend statute to remove reference to 11 V.S.A. § 762.

***** Permissible Investments for Domestic Insurance Companies *****

8 V.S.A. § 3461

Background: 8 V.S.A. § 3461 is based on NAIC Model Law No. 280 (Investments of Insurers). Revisions to this model law were adopted by the Statutory Accounting Principles Working Group at the NAIC 2017 summer meeting, to reflect the elimination of the “Class 1” concept for money market mutual funds in September 2016.

Proposal: Amend statute to conform with changes to Model Law No. 280.

*****Interest Rate for Late Payment of Insurance Claims *****

8 V.S.A. § 3665(d)

- 8 V.S.A. § 3665(c) governs the payment of interest on late payments of *life* insurance claims. Late payments shall include interest from the date of death at the greater of the rate for proceeds left on deposit and six percent.

- 8 V.S.A. § 3665(d) governs the payment of interest on late payments of all *other* types of claims, including property and casualty. Late payments shall include interest on the amount of the claim beginning 30 days after the insured files a proof of loss, but no interest rate is specified.

Proposal: Amend 8 V.S.A. § 3665(d) to specify the interest rate for late payments of non-life insurance claims is the greater of the rate for proceeds left on deposit and six percent, thereby aligning it with the rate of interest for late payments of life insurance claims in 8 V.S.A. §3665(c).

*****Property and Casualty Insurance; Unfairly Discriminatory Rates*****

8 V.S.A. § 4685

Background: Vermont law establishes three statutory standards for insurance rates. They must not be excessive, inadequate, or unfairly discriminatory. In the health care market, rates must meet all three of these statutory standards.

For property and casualty lines like automobile insurance, however, the Legislature has created an “open and competitive” market structure. The assumption underlying this statutory framework is that robust price competition will keep rates affordable for consumers without DFR having to review and approve rates, as it does for products like long-term care and Medicare supplemental insurance.

Two provisions in Title 8 conflict as to whether DFR can disapprove a property and casualty rate filing in a competitive market if the rate is unfairly discriminatory.

- 8 V.S.A. § 4685(b) states that rates in a competitive market are not excessive or *unfairly discriminatory*.
 - This provision is a deviation from NAIC’s Property & Casualty Model Law, which states only that rates in competitive market are not excessive.
- 8 V.S.A. § 4689(b) states DFR *shall* disapprove a rate in a competitive market if the rate is in adequate or *unfairly discriminatory*.

Under 8 V.S.A. § 4684, a competitive market is presumed to exist UNLESS:

- The Commissioner, after notice and hearing, determines and orders that a reasonable degree of competition does not exist in the market;
- The average annual increase in premiums or rates in the market is 25% or more; or
- An insurer uses a claims-made liability insurance policy form or endorsement.

Under 8 V.S.A. § 4685(d), unfair discrimination exists if... price differentials fail to reflect equitably the differences in expected losses and expenses.

Vermont is the only state with this ambiguity in its law. The proposed change would align Vermont's law with NAIC's Property & Casualty Model Law and make it clear that while rates in a competitive market are set by competition, the Department has the authority to intervene if a rate is unfairly discriminatory.

Proposal: Amend statute to delete the presumption that a rate in a competitive market is not unfairly discriminatory.

*****Trust Company Board Meeting Requirements*****

8 V.S.A. § 2402(f) and 8 V.S.A. § 12602(q)

Background:

- Independent trust companies (Title 8, Chapter 77; Independent Trust Companies)
 - Independent trust companies are owned by investors or their employees, and not associated with a bank.
 - There are currently two independent trust companies in Vermont, Trust Company of Vermont (TCV) and Securities Finance Trust Company (SFTC).
 - Under 8 V.S.A. § 2402(f), independent trust companies are currently required to hold at least *one* meeting of their governing bodies per year.
 - However, TCV and SFTC both confirmed to the Department that their governing bodies meet quarterly.

- Nondepository trust companies (Title 8, Chapter 202: Investor-Owned Financial Institutions)
 - Nondepository trust companies are owned by financial institutions.
 - There is currently one nondepository trust company in Vermont, Community Financial Services Group (CFSG).
 - Under 8 V.S.A. §12602(q), nondepository trust companies are currently required to hold *monthly* meetings of their governing bodies.
 - Because they don't have enough business to warrant the cost and time requirements of monthly meetings, CFSG requested that meeting requirements for the governing bodies of nondepository trust companies be changed to quarterly. Quarterly meetings would be in line with board meeting requirements for bank trust departments.

Proposal: Align requirements for independent trust companies and nondepository trust companies by:

- amending 8 V.S.A. § 2402(f) to require quarterly meetings of the governing bodies of independent trust companies, including one meeting held in Vermont; and
- amending 8 V.S.A. § 12602(q) to require quarterly meetings of the governing bodies of nondepository trust companies.