Department of Financial Regulation
Michael S. Pieciak, Commissioner

SENATE COMMITTEE ON FINANCE
S. 145

Sen. Ann Cummings, Chair
Sen. Mark A. MacDonald, Vice Chair
April 6, 2017

VERMONT

Overview of Concerns Regarding S. 145

1. Department's Market Conduct Program Would Become Less Effective
2. Lead to Increased Premiums for Vermonters
3. Lead to Disruption in Vermont's Insurance Markets
4. Adverse Impact on Vermont's Captive Insurance Markets

Department’s Market Conduct Program Would Become Less Effective

Market regulation attempts to ensure fair and reasonable insurance prices, products and trade practices in order to protect consumers

Market conduct examinations occur on a routine basis, but also can be triggered by complaints against an insurer

These exams review agent-licensing issues, complaints, types of products sold by the company and agents, agent sales practices, proper rating, claims handling and other market-related aspects of an insurer’s operation

When violations are found, the insurance department makes recommendations to improve the company’s operations and to bring the company into compliance with state law. In addition, a company may be subject to civil penalties or license suspension or revocation

Department’s Market Conduct Program Would Become Less Effective

The Department maintains a reputation as a tough but fair regulator

Department results between 2012 – 2016:

- Department’s Consumer Services Division handled 17,968 inquiries, 2250 complaints and recovered $3,442,875 for Vermonters.
- Department’s Market Conduct Division investigations led to $1.3 million in administrative penalties and over $8 million in restitution to Vermonters.

Concerns that regulated entities would be less likely to self-report to the Department

Concerns that regulated entities would be less likely to settle matters with the Department

Lead to Increased Premiums for Vermonters

Vermont currently enjoys a competitive and low cost insurance market:

- Vermont is the 7th lowest cost market for personal automobile insurance
- Vermont is the 11th lowest cost market for homeowners insurance

Private right of action incentivizes litigation due to inclusions of attorney fees, treble damages and expanded causes of action

Increased litigation costs would be passed along to Vermonters by way of increased premiums

Increased litigation cost may also drive insurance companies out of the Vermont market thus decreasing competition and increasing premiums

Lead to Increased Premiums for Vermonters

California Case Study

- Between 1979 and 1988 California had a private right of action under its insurance trade practices act
- The California Supreme Court found the private right of action resulted in multiple litigation or coerced settlements that had resulted in higher premiums for California consumers
- The California Supreme Court found widespread agreement allowing a private right of action may result in escalating insurance costs to the general public resulting from insurers' increased expenditures to fund coerced settlements, excessive jury awards and increased attorney fees
- The increased settlement costs resulting from excessive litigation will obviously result in higher premiums

Lead to Disruption in Vermont’s Insurance Markets

The Department takes a holistic approach when assessing enforcement outcomes, has the goal of bringing regulated entities into compliance, and takes insurer solvency into account when considering penalties

This is particularly important in lines of insurance with limited competition:

- Student Health Insurance Market
- Compensative Major Medical Insurance Market

A private right of action may incentivize companies to leave the Vermont market, which in certain lines, could eliminate the available of insurance coverage altogether

Adverse Impact on Vermont's Captive Insurance Markets

- S. 145 would apply to Risk Retention Groups pursuant to 8 VSA 6059 and federal LRRA provisions permitting states to apply unfair trade practices laws
- This is particularly concerning for Vermont RRGs operating in other states (all of which fall into this category) since Vermont law governs an RRG regardless of its state of operation
- Vermont RRGs would be incentivized to move to a state with no private right of action. There are numerous National Risk Retention Association amicus briefs filed against allowing private right of action in other states