

1 S.131

2 Introduced by Senator Cummings

3 Referred to Committee on Finance

4 Date: February 26, 2019

5 Subject: Insurance; innovation waivers; surplus lines; HIV-related tests;
6 securities; investor restitution

7 Statement of purpose of bill as introduced: This bill proposes to make various
8 amendments to Vermont's insurance and securities laws.

9 An act relating to insurance and securities

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

11 ~~*** Insurance Regulatory Sandbox ***~~

12 Sec. 1. ~~§~~ V.S.A. § 15a is added to read:

13 ~~§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION~~

14 ~~WAIVER~~

15 ~~(a) Subject to the limitations specified in subsection (d) of this section, the~~
16 ~~Commissioner may grant a variance or waiver (innovation waiver or waiver)~~
17 ~~with respect to the specific requirements of any insurance law, regulation, or~~
18 ~~bulletin, if a person subject to that law, regulation, or bulletin demonstrates to~~
19 ~~the Commissioner's satisfaction that.~~

1 ~~(1) the public policy goals of the law, regulation, or bulletin will be or~~
2 ~~have been achieved by other means;~~

3 ~~(2) the application of the law, regulation, or bulletin would either~~
4 ~~prohibit or discourage the introduction of new, innovative, or more efficient~~
5 ~~insurance products, services, or technologies; and~~

6 ~~(3) the waiver will not substantially increase any risk to consumers.~~

7 ~~(b) An innovation waiver shall be of a duration deemed appropriate by the~~
8 ~~Commissioner. The Commissioner may place limits on the scope of any~~
9 ~~wavier regarding the number of consumers that may purchase the underlying~~
10 ~~product or the amount of premium that may be written in relation to the~~
11 ~~underlying product.~~

12 ~~(c) The Commissioner's decision to grant or deny a waiver shall not be~~
13 ~~subject to the contested-case provisions of the Vermont Administrative~~
14 ~~Procedures Act.~~

15 ~~(d) Pursuant to the authority granted by this section, the Commissioner~~
16 ~~may not grant a waiver with respect to any of the following:~~

17 ~~(1) section 3304, 3366, or 6004(a)–(b) of this title or any other~~
18 ~~requirement as to the minimum amount of paid-in capital or surplus required~~
19 ~~to be possessed or maintained by any person;~~

20 ~~(2) chapter 107, 112, 129, or 131 of this title,~~

1 ~~(3) any law, regulation, or bulletin required for the Department to~~
2 ~~maintain its accreditation by the National Association of Insurance~~

3 ~~Commissioners unless said law or regulation permits variances or waivers;~~

4 ~~(4) the application of any taxes or fees.~~

5 ~~(e) A person who receives a waiver under this section shall be required to~~
6 ~~make a deposit of cash or marketable securities with the State Treasurer in an~~
7 ~~amount and subject to such conditions as the Commissioner determines~~
8 ~~necessary for the protection of consumers.~~

9 ~~(f)(1) If a waiver is granted pursuant to this section, the Commissioner~~
10 ~~shall provide public notice of the existence of the waiver, by providing the~~
11 ~~following information:~~

12 ~~(A) the specific statute, regulation, or bulletin to which the waiver~~
13 ~~applies;~~

14 ~~(B) the name of the person who applied for and received the waiver;~~

15 ~~and~~

16 ~~(C) the duration of and any other limitations of the waiver.~~

17 ~~(2) The requirements of this subsection may be satisfied by publication~~
18 ~~of a notice on the Department's website.~~

19 ~~(g) The Commissioner, by regulation, order, or bulletin, shall adopt~~
20 ~~uniform procedures for the submission, granting, denying, monitoring, and~~
21 ~~revocation of petitions for a waiver pursuant to this section. The procedures~~

1 shall set forth requirements for the ongoing monitoring, examination, and
2 supervision of, and reporting by, each person granted a waiver under this
3 section and may permit the Commissioner to attach reasonable conditions or
4 limitations on the conduct permitted pursuant to a waiver. The procedures
5 shall provide for an expedited application process for a product, service, or
6 technology that is substantially similar to one for which a waiver has
7 previously been granted by the Commissioner.

8 (h) The ability to grant a waiver under this section shall not be interpreted
9 to limit or otherwise affect the authority of the Commissioner to exercise
10 discretion to waive or enforce requirements as permitted under any other
11 section of this title or any regulation or bulletin adopted pursuant thereto.

12 (i) Biannually, beginning January 15, 2020, the Commissioner shall submit
13 a report to the General Assembly providing the following information:

14 (1) the total number of petitions for waivers that have been received,
15 granted, and denied by the Commissioner;

16 (2) for each waiver granted by the Commissioner, the information
17 specified under subsection (f) of this section;

18 (3) a list of any regulations or bulletins that have been adopted or
19 amended as a result of or in connection with a waiver granted under this
20 section.

1 ~~(4) with respect to each statute to which a waiver applies, the~~
2 Commissioner's recommendation as to whether such statute should be
3 continued, eliminated, or amended in order to promote innovation and
4 establish a uniform regulatory system for all regulated entities; and

5 (5) a list of any waivers that have lapsed or been revoked and, if
6 revoked, a description of other regulatory or disciplinary actions, if any, that
7 resulted in, accompanied, or resulted from such revocation.

8 * * * Capital and Surplus Requirements * * *

9 Sec. 2. 8 V.S.A. § 3304 is amended to read:

10 § 3304. CAPITAL AND SURPLUS REQUIREMENTS

11 (a)(1) To qualify for authority to transact the business of insurance, a stock
12 insurer seeking such authorization shall possess and thereafter maintain
13 unimpaired paid-in capital of not less than \$2,000,000.00 and, when first so
14 authorized, shall possess and maintain free surplus of not less than
15 \$3,000,000.00. ~~Such~~

16 (2) The capital and surplus shall be in the form of cash or marketable
17 securities, a portion of which may be held on deposit with the State Treasurer,
18 such securities as designated by the insurer and approved by the
19 Commissioner, in an amount and subject to ~~such~~ conditions determined by the
20 Commissioner. ~~Such~~ The conditions shall include a requirement that any
21 ~~interest or other earnings attributable to such cash or marketable securities~~

1 ~~shall insure to the benefit of the insurer until such time as the Commissioner~~
2 determines that the deposit must be used for the benefit of the policyholders of
3 the insurer or some other authorized public purpose relating to the regulation
4 of the insurer.

5 (3) The Commissioner may prescribe additional capital or surplus for all
6 stock insurers authorized to transact the business of insurance based upon the
7 type, volume, and nature of insurance business transacted. The Commissioner
8 may reduce or waive the capital and surplus amounts required by this section
9 pursuant to a plan of dissolution for the company approved by the
10 Commissioner.

11 (b) The express purpose of subsection (c) of this section and the
12 Commissioner's power to require the deposit of cash or marketable securities
13 set forth therein is to protect the interests of Vermont policyholders in the
14 event of the insolvency of the insurer. Except to the extent it would
15 contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont
16 shall be deemed to control the funds on deposit and to have a lien on the funds
17 for the benefit of the Vermont policyholders affected by the insolvency. The
18 lien so created shall be superior to any lien filed by a general creditor of the
19 insurer.

1 ~~Sec. 3-8 V.S.A. § 3366 is amended to read:~~

2 § 3366. ASSETS OF COMPANIES

3 ~~(a)(1) Such A foreign or alien insurer authorized to do business in this~~
4 State shall possess and thereafter maintain unimpaired paid-in capital or basic
5 surplus of not less than \$2,000,000.00 and, when first so authorized, shall
6 possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

7 ~~(2) The capital and surplus shall be in the form of cash or marketable~~
8 securities, a portion of which may be held on deposit with the State Treasurer,
9 such securities as designated by the insurer and approved by the
10 Commissioner, in an amount and subject to ~~such~~ conditions determined by the
11 Commissioner. ~~Such The~~ conditions shall include a requirement that any
12 interest or other earnings attributable to ~~such~~ cash or marketable securities
13 shall inure to the benefit of the insurer until such time as the Commissioner
14 determines that the deposit must be used for the benefit of the policyholders of
15 the insurer or some other authorized public purpose relating to the regulation
16 of the insurer.

17 ~~(3) The Commissioner may prescribe additional capital or surplus for all~~
18 insurers authorized to transact the business of insurance based upon the type,
19 volume, and nature of insurance business transacted. The Commissioner may
20 reduce or waive the capital and surplus amounts required by this section
21 pursuant to a plan of dissolution for the company approved by the
22 ~~Commissioner.~~

1 ~~(b) The express purpose of subsection (a) of this section and the~~
2 ~~Commissioner's power to require the deposit of cash or marketable securities~~
3 ~~set forth therein is to protect the interests of Vermont policyholders in the~~
4 ~~event of the insolvency of the insurer. Except to the extent it would~~
5 ~~contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont~~
6 ~~shall be deemed to control the funds on deposit and to have a lien on the funds~~
7 ~~for the benefit of the Vermont policyholders affected by the insolvency. The~~
8 ~~lien so created shall be superior to any lien filed by a general creditor of the~~
9 ~~insurer.~~

10 * * * Domestic Surplus Lines Insurer; Home State Surplus Lines

11 Premium Taxation * * *

12 Sec. 4. 8 V.S.A. § 5022 is amended to read:

13 § 5022. DEFINITIONS

14 * * *

15 (b) As used in this chapter:

16 (1) "Admitted insurer" means an insurer possessing a certificate of
17 authority licensed to transact business in this State issued by the Commissioner
18 pursuant to section 3361 of this title. For purposes of this chapter, "admitted
19 insurer" shall not include a domestic surplus lines insurer.

20

1 ~~(3) "Domestic insurer" means any insurer that has been chartered by~~
2 ~~incorporated, organized, or constituted within or under the laws of this State.~~

3 ~~(4) "Domestic risk" means a subject of insurance which that is resident,~~
4 ~~located, or to be performed in this State.~~

5 ~~(5) "Domestic surplus lines insurer" means a domestic insurer with~~
6 ~~which insurance coverage may be placed under this chapter.~~

7 ~~(4)(6) "To export" means to place surplus lines insurance with a non-~~
8 ~~admitted insurer.~~

9 ~~(5)(7) "Home state" means, with respect to an insured:~~

10 ~~(A)(i) the state in which an insured maintains its principal place of~~
11 ~~business or, in the case of an individual, the individual's principal residence; or~~

12 ~~(ii) if 100 percent of the insured risk is located outside the state~~
13 ~~referred to in subdivision (A)(i) of this subsection, the state to which the~~
14 ~~greatest percentage of the insured's taxable premium for that insurance~~
15 ~~contract is allocated.~~

16 ~~(B) If more than one insured from an affiliated group are named~~
17 ~~insureds on a single non-admitted insurance contract, the term "home state"~~
18 ~~means the home state, as determined pursuant to subdivision (A) of this~~
19 ~~subdivision (5)(7), of the member of the affiliated group that has the largest~~
20 ~~percentage of premium attributed to it under such insurance contract.~~

1 ~~(6)(8) "NAIC" means the National Association of Insurance~~

2 Commissioners.

3 ~~(7)(9) "Surplus lines broker" means an individual licensed under this~~
4 ~~chapter and chapter 131 of this title.~~

5 ~~(8)(10) "Surplus lines insurance" means coverage not procurable from~~
6 ~~admitted insurers.~~

7 ~~(9)(11) "Surplus lines insurer" means a non-admitted insurer with which~~
8 ~~insurance coverage may be placed under this chapter.~~

9 Sec. 5. 8 V.S.A. § 5023a is added to read:

10 § 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

11 (a) Surplus lines insurance may be procured from a domestic surplus lines
12 insurer if all of the following criteria are met:

13 (1) The board of directors of the insurer has adopted a resolution
14 seeking certification as a domestic surplus lines insurer and the Commissioner
15 has approved such certification.

16 (2) The insurer is already eligible to offer surplus lines insurance in at
17 least one other state besides Vermont.

18 (3) The insurer meets the requirements of section 5026 of this title.

19 ~~(4) All other requirements of this chapter are met.~~

1 ~~(b) The requirements of 8 V.S.A. § 80 shall not apply to domestic surplus~~
2 lines insurers. A domestic surplus lines insurer shall be deemed to be a non-
3 admitted insurer for purposes of chapter 138 of this title.

4 Sec. 6. 8 V.S.A. § 5024 is amended to read:

5 § 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

6 (a) Insurance coverage, except as described in section 5025 of this chapter,
7 shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full
8 amount of insurance required is not reasonably procurable from admitted
9 insurers actually transacting that kind and class of insurance in this State; and
10 the amount of insurance exported shall be only the excess over the amount
11 procurable from admitted insurers actually transacting and insuring that kind
12 and class of insurance.

13 * * *

14 Sec. 7. 8 V.S.A. § 5026 is amended to read:

15 § 5026. SOLVENT INSURERS REQUIRED

16 (a) Where Vermont is the home state of the insured, surplus lines brokers
17 shall not knowingly place or continue surplus lines insurance with ~~non-~~
18 admitted surplus lines insurers who are insolvent or unsound financially, and in
19 no event shall any surplus lines broker place any insurance with a non-
20 admitted insurer unless such insurer:

21

1 ~~(b) Notwithstanding the capital and surplus requirements of this section, a~~
2 ~~non-admitted surplus lines insurer may receive approval upon an affirmative~~
3 ~~finding of acceptability by the Commissioner. The finding shall be based upon~~
4 ~~such factors as quality of management, capital, and surplus of any parent~~
5 ~~company, company underwriting profit and investment-income trends, market~~
6 ~~availability, and company record and reputation within the industry. In no~~
7 ~~event, however, shall the Commissioner make an affirmative finding of~~
8 ~~acceptability when the surplus lines insurer's capital and surplus is less than~~
9 ~~\$4,500,000.00.~~

10 * * *

11 Sec. 8. 8 V.S.A. § 5027 is amended to read:

12 § 5027. EVIDENCE OF THE INSURANCE CHANGES; PENALTY

13 (a) Where Vermont is the home state of the insured, the surplus lines
14 broker, upon placing a domestic risk with a surplus lines insurer, either
15 domestic or foreign, shall promptly deliver to the insured the policy issued by
16 the surplus lines insurer, or if such policy is not then available, a certificate,
17 cover note, or other confirmation of insurance, showing the description and
18 location of the subject of the insurance, coverage, conditions and term of the
19 insurance, the premium and rate charged and taxes collected from the insured,
20 ~~and the name and address of the insured and surplus lines insurer. If the risk is~~

1 ~~assumed by more than one insurer, the document or documents shall state the~~
2 name and address and proportion of the entire risk assumed by each insurer.

3 * * *

4 Sec. 9. 8 V.S.A. § 5028 is amended to read:

5 § 5028. INFORMATION REQUIRED ON CONTRACT

6 Where Vermont is the home state of the insured, each surplus lines broker
7 through whom a surplus lines insurance coverage is procured shall endorse on
8 the outside of the policy and on any confirmation of the insurance, his or her
9 name, address and license number, and the name and address of the producer,
10 if any, through whom the business originated. Where such coverage is placed
11 with an eligible surplus lines insurer there shall be stamped or written
12 conspicuously in no smaller than 10 point boldface type of a contrasting color
13 upon the first page of the policy and the confirmation of insurance if any, "The
14 company issuing this policy ~~has not been licensed by the State of Vermont~~ is a
15 surplus lines insurer and the rates charged have not been approved by the
16 Commissioner of Financial Regulation. Any default on the part of the insurer
17 is not covered by the Vermont Insurance Guaranty Association."

18 Sec. 10. 8 V.S.A. § 5029 is amended to read:

19 § 5029. SURPLUS LINES INSURANCE VALID

20 (a) Insurance contracts procured as surplus lines insurance from ~~non-~~
21 ~~admitted~~ surplus lines insurers in accordance with this chapter shall be valid

1 ~~and enforceable to the same extent as insurance contracts procured from~~
2 admitted insurers.

3 (b) The insurance trade practices provisions of sections 4723 and 4724(1)–
4 (7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–
5 3883 (regarding fire and casualty policies) and 4711–4715 (regarding
6 commercial risk policies) of this title shall apply to non-admitted insurers, both
7 domestic and foreign.

8 (c) Other provisions of this title not specifically applicable to surplus lines
9 insurers shall not apply.

10 Sec. 11. 8 V.S.A. § 5030 is amended to read:

11 § 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER
12 FOR LOSSES AND UNEARNED PREMIUMS

13 If a ~~non-admitted~~ surplus lines insurer has assumed a surplus lines coverage
14 through the intervention of a licensed surplus lines broker of this State, and if
15 the premium for that coverage has been received by that broker, then in all
16 questions thereafter arising under the coverage as between the insurer and the
17 insured, the insurer shall be deemed to have received that premium, and the
18 insurer shall be liable to the insured for losses covered by such insurance and
19 for any return premiums due on that insurance to the insured whether or not
20 ~~the broker is indebted to the insurer for such insurance or for any other cause.~~

1 ~~Sec. 12. 8 V.S.A. § 5035 is amended to read:~~

2 § 5035. SURPLUS LINES TAX

3 (a) Where Vermont is the home state of the insured, gross premiums
4 charged, less any return premiums, for surplus lines coverages placed with
5 ~~non-admitted surplus lines~~ surplus lines insurers are subject to a premium receipts tax of
6 three percent, which shall be collected from the insured by the surplus lines
7 broker at the time of delivery of policy or other confirmation of insurance, in
8 addition to the full amount of the gross premium charged by the insurer for the
9 insurance. The tax on any portion of the premium unearned at termination of
10 insurance shall be returned to the policyholder by the surplus lines broker.
11 Nothing contained in this section will preclude a surplus lines broker from
12 charging a fee to the purchaser of the contract sufficient to recover the amount
13 of this tax. ~~Where the insurance covers properties, risks, or exposures located~~
14 ~~or to be performed both in and out of this State, the sum payable shall be~~
15 ~~computed based on gross premiums charged, less any return premiums, as~~
16 ~~follows:~~

17 (1) An amount equal to three percent on that portion of the premiums
18 applicable to properties, risks, or exposures located or to be performed in
19 Vermont; plus

20 (2) An amount equal to a percentage on that portion of the premiums
21 ~~applicable to properties, risks, or exposures located or to be performed outside~~

1 ~~Vermont. Such percentage shall be determined based on the laws of the~~
2 ~~jurisdiction within which the property, risk, or exposure is located or to be~~
3 ~~performed.~~

4 * * *

5 Sec. 13. 8 V.S.A. § 5036 is amended to read:

6 § 5036. DIRECT PLACEMENT OF INSURANCE

7 * * *

8 (b) ~~If any such insurance also covers a subject located or to be performed~~
9 ~~outside this State, a proper pro rata portion of the entire premium shall be~~
10 ~~allocated to the subjects of insurance located or to be performed in this State.~~

11 (c) ~~Any insurance with a non-admitted insurer procured through~~
12 ~~negotiations or by application in whole or in part made within this State, where~~
13 ~~this State is the home state of the insured, or for which premium in whole or in~~
14 ~~part is remitted directly or indirectly from within this State, shall be deemed~~
15 ~~insurance subject to subsection (a) of this section.~~

16 (d)(c) A tax at the rate of three percent of the gross amount of premium,
17 less any return premium, ~~in respect of risks located in this State,~~ shall be levied
18 upon an insured who procures insurance subject to subsection (a) of this
19 section. Before March 1 of the year after the year in which the insurance was
20 ~~procured, continued, or renewed, the insured shall remit to the Commissioner~~

1 ~~the amount of the tax. The Commissioner before June 1 of each year shall~~

2 certify and transmit to the Commissioner of Taxes the sums so collected.

3 (e)(C) The tax shall be collectible from the insured by civil action brought
4 by the Commissioner.

5 Sec. 14. 8 V.S.A. § 5038 is amended to read:

6 § 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

7 * * *

8 (b) Each ~~non-admitted~~ surplus lines insurer ~~assuming that assumes~~
9 surplus lines coverage shall be deemed thereby to have subjected itself to this
10 chapter.

11 * * *

12 * * * HIV-Related Tests * * *

13 Sec. 15. 8 V.S.A. § 4724 is amended to read:

14 § 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR
15 DECEPTIVE ACTS OR PRACTICES DEFINED

16 The following are hereby defined as unfair methods of competition or
17 unfair or deceptive acts or practices in the business of insurance:

18 * * *

19 (C)(i) Inquiring or investigating, directly or indirectly as to an
20 applicant's, an insured's or a beneficiary's sexual orientation, or gender
21 ~~identity in an application for insurance coverage, or in an investigation~~

1 ~~conducted by an insurer, reinsurer, or insurance support organization in~~
2 connection with an application for such coverage, or using information about
3 gender, marital status, medical history, occupation, residential living
4 arrangements, beneficiaries, zip codes, or other territorial designations to
5 determine sexual orientation or gender identity;

6 * * *

7 (iii) Making adverse underwriting decisions because medical
8 records or a report from an insurance support organization reveal that an
9 applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by
10 seeking counseling from health care professionals;

11 * * *

12 (20) HIV-related tests. Failing to comply with the provisions of this
13 subdivision regarding HIV-related tests. "HIV-related test" means a test
14 approved by the United States Food and Drug Administration ~~and the~~
15 Commissioner, included in the current Centers for Disease Control and
16 Prevention recommended laboratory HIV testing algorithm for serum or
17 plasma specimens, used to determine the existence of HIV antibodies or
18 antigens in the blood, ~~urine, or oral mucosal transudate (OMT).~~

19 * * *

20 (B)(i) No person shall request or require that an individual submit to
21 ~~an HIV-related test unless he or she has first obtained the individual's written~~

1 ~~informed consent to the test. Before written, informed consent may be~~
2 granted, the individual shall be informed, by means of a printed information
3 statement ~~which~~ that shall have been read aloud to the individual by any agent
4 of the insurer at the time of application or later and then given to the individual
5 for review and retention, of the following:

6 (I) an explanation of the test or tests to be given, including: the
7 tests' relationship to AIDS, the insurer's purpose in seeking the test, potential
8 uses and disclosures of the results, limitations on the accuracy of and the
9 meaning of the test's results, the importance of seeking counseling about the
10 individual's test results after those results are received, and the availability of
11 information from and the telephone numbers of the Vermont Department of
12 Health AIDS hotline and the Centers for Disease Control and Prevention; and

13 (II) an explanation that the individual is free to consult, at
14 personal expense, with a personal physician or counselor or the State Vermont
15 Department of Health, or obtain ~~an anonymous~~ a confidential test at the
16 individual's choice and personal expense, before deciding whether to consent
17 to testing and that such delay will not affect the status of any application or
18 policy; and

19 * * *

20 (ii) In addition, before drawing blood ~~or obtaining a sample of the~~
21 ~~urine or OMT for the HIV related test or tests, the person doing so shall give~~

1 ~~the individual to be tested an informed consent form containing the~~
2 information required by the provisions of this subdivision (B), and shall then
3 obtain the individual's written informed consent. If an OMT test is
4 administered in the presence of the agent or broker, the individual's written
5 informed consent need only be obtained prior to administering the test, in
6 accordance with the provisions of this subdivision (B).

7 (C)(i) The forms for informed consent, information disclosure, and
8 test results disclosure used for HIV-related testing shall be filed with and
9 approved by the Commissioner pursuant to section 3541 of this title; and

10 (ii) ~~Any testing procedure shall be filed and approved by the~~
11 ~~Commissioner in consultation with the Commissioner of Health.~~

12 (D) ~~No laboratory may be used by an insurer or insurance support~~
13 ~~organization for the processing of HIV-related tests unless it is approved by~~
14 ~~the Vermont Department of Health. Any requests for approval under this~~
15 ~~subdivision shall be acted upon within 120 days. The Department may~~
16 ~~approve a laboratory without on-site inspection or additional proficiency data~~
17 ~~if the laboratory has been certified under the Clinical Laboratory Improvement~~
18 ~~Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health~~
19 ~~Care Financing Administration under the Clinical Laboratory Improvement~~

20 ~~Amendments.~~

1 ~~(E) The test protocol shall be considered positive only if test results~~
2 ~~are two positive ELISA tests, and a Western Blot test confirms the results of~~
3 ~~the two ELISA tests, or upon approval of any equally or more reliable~~
4 ~~confirmatory test or test protocol which has been approved by the~~
5 ~~Commissioner and the U.S. Food and Drug Administration. If the result of~~
6 ~~any test performed on a sample of urine or OMT is positive or indeterminate,~~
7 ~~the insurer shall provide to the individual, no later than 30 days following the~~
8 ~~date of the first urine or OMT test results, the opportunity to retest once, and~~
9 ~~the individual shall have the option to provide either a blood sample, a urine~~
10 ~~sample, or an OMT sample for that retest. This retest shall be in addition to the~~
11 ~~opportunities for retest provided in subdivisions (F) and (G) of this subdivision~~
12 ~~(20).~~

13 ~~(F) If an individual has at least two positive ELISA tests but an~~
14 ~~indeterminate Western Blot test result, the Western Blot test may be repeated~~
15 ~~on the same sample. If the Western Blot test result is indeterminate, the~~
16 ~~insurer may delay action on the application, but no change in preexisting~~
17 ~~coverage, benefits, or rates under any separate policy or policies held by the~~
18 ~~individual may be based upon such indeterminacy. If action on an application~~
19 ~~is delayed due to indeterminacy as described herein, the insurer shall provide~~
20 ~~the individual the opportunity to retest once after six but not later than eight~~
21 ~~months following the date of the first indeterminate test result. If the retest~~

1 ~~Western Blot test result is again indeterminate or is negative, the test result~~
2 ~~shall be considered as negative, and a new application for coverage shall not~~
3 ~~be denied by the insurer based upon the results of either test. Any~~
4 ~~underwriting decision granting a substandard classification or exclusion based~~
5 ~~on the individual's prior HIV-related test results shall be reversed, and the~~
6 ~~company performing a retest which had forwarded to a medical information~~
7 ~~bureau reports based upon the individual's prior HIV-related test results shall~~
8 ~~request the medical information bureau to remove any abnormal codes listed~~
9 ~~due to such prior test results.~~

10 (D) HIV-related tests required by insurers or insurance support
11 organizations must be processed in a laboratory certified under the Clinical
12 Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the
13 requirements of the federal Health Care Financing Administration under the
14 Clinical Laboratory Improvement Amendments.

15 (E) The test protocol shall be considered positive only if testing
16 results meet the most current Centers for Disease Control and Prevention
17 recommended laboratory HIV testing algorithm or more reliable confirmatory
18 test or test protocol that has been approved by the United States Food and
19 Drug Administration.

20 (F) If the HIV-1/2 antibody differentiation test result is
21 ~~indeterminate, the insurer may delay action on the application, but no change~~

1 ~~in preexisting coverage, benefits or rates under any separate policy or policies~~
2 held by the individual may be based upon such indeterminacy. If the HIV-1
3 NAT test result is negative, a new application for coverage shall not be denied
4 by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall
5 be repeated. No application for coverage may be denied based on an
6 indeterminate or invalid result. Any underwriting decision granting a
7 substandard classification or exclusion based on the individual's prior HIV-
8 related test results shall be reversed, and the company performing any previous
9 HIV-related testing that had forwarded to a medical information bureau reports
10 based upon the individual's prior HIV-related test results shall request the
11 medical information bureau to remove any abnormal codes listed due to such
12 prior test results.

13 (G)(i) Upon the written request of an individual for a retest, an
14 insurer shall retest, at the insurer's expense, any individual who was denied
15 insurance, or offered insurance on any other than a standard basis, because of
16 the positive results of an HIV-related test:

17 * * *

18 (II) ~~in any event, upon the approval by the Commissioner of an~~
19 ~~alternative test or test protocol for the presence of HIV antibodies or antigens~~
20 updates to the Centers for Disease Control and Prevention recommended
21 laboratory HIV testing algorithm for serum or plasma specimens

1 (1) were awarded restitution in a final order issued by the Commissioner
2 or were awarded restitution in the final order in a legal action initiated by the
3 Commissioner;

4 (2) have not received the full amount of restitution ordered before the
5 application for restitution assistance is due; and

6 (3) demonstrate to the Commissioner's satisfaction that there is no
7 reasonable likelihood that they will receive the full amount of restitution in the
8 future.

9 (b) Definitions. As used in this section,

10 (1) "Claimant" means a person who files an application for restitution
11 assistance under this section on behalf of a victim. The claimant and the
12 victim may be the same but do not have to be the same. The term includes the
13 named party in a restitution award in a final order, the executor of a named
14 party in a restitution award in a final order, and the heirs and assigns of a
15 named party in a restitution award in a final order.

16 (2) "Final order" means a final order issued by the Commissioner or a
17 final order in a legal action initiated by the Commissioner.

18 (3) "Fund" means the Victim Restitution Special Fund created by this
19 section.

20 (4) "Securities violation" means a violation of this chapter and any
21 related administrative rules.

1 ~~(5) "Victim" means a person who was awarded restitution in a final~~
2 ~~order.~~

3 (c) "Vulnerable person" means:

4 (A) a person who meets the definition of vulnerable person under
5 33 V.S.A. § 6902(14); or

6 (B) a person who is at least 60 years of age.

7 (c) Eligibility.

8 (1) A natural person who was a resident of Vermont at the time of the
9 alleged fraud is eligible for restitution assistance.

10 (2) The Commissioner may not award securities restitution assistance
11 under this section:

12 (A) to more than one claimant per victim;

13 (B) unless the person ordered to pay restitution has not paid the full
14 amount of restitution owed to the victim before the application for restitution
15 assistance from the fund is due;

16 (C) if there was no award of restitution in the final order; or

17 (D) to a claimant who has not exhausted his or her appeal rights.

18 (d) Denial of Assistance. The Commissioner may not award restitution
19 assistance if the victim:

20 (1) sustained the monetary injury as a result of:

21 (A) participating or assisting in the securities violation; or

1 ~~(B) attempting to commit or committing the securities violation;~~

2 ~~(2) profited or would have profited from the securities violation; or~~

3 ~~(3) is related to the person who committed the securities violation.~~

4 ~~(e) Application for Restitution Assistance and Maximum Amount of~~
5 ~~Restitution Assistance Award.~~

6 ~~(1) The Commissioner may adopt procedures and forms for application~~
7 ~~for restitution assistance under this section.~~

8 ~~(2) An application must be received by the Department within two years~~
9 ~~after the deadline for payment of restitution established in the final order.~~

10 ~~(3) Except as provided in subdivision (4) of this subsection, the~~
11 ~~maximum award from the fund for each claimant shall be the lesser of~~
12 ~~\$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final~~
13 ~~order.~~

14 ~~(4) If the claimant is a vulnerable person, the maximum award from the~~
15 ~~fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid~~
16 ~~restitution awarded in the final order~~

17 ~~(f) Victim Restitution Fund. The Victim Restitution Special Fund,~~
18 ~~pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for~~
19 ~~the purposes specified in this section. All monies received by the State by~~
20 ~~reason of grant or donation for use in providing uncompensated victims~~

1 ~~restitution shall be deposited into the Victim Restitution Special Fund. Interest~~
2 earned on the fund shall be retained in the Fund.

3 (g) Award Not Subject to Execution, Attachment, or Garnishment. An
4 award made by the Commissioner under this section is not subject to
5 execution, attachment, garnishment, or other process.

6 (h) State's Liability for Award. The Commissioner shall have the
7 discretion to suspend applications and awards based on the solvency of the
8 fund. The State shall not be liable for any determination made under this
9 section.

10 (i) Subrogation of Rights of State

11 (1) The State is subrogated to the rights of the person awarded
12 restitution under this chapter to the extent of the award.

13 (2) The subrogation rights are against the person who committed the
14 securities violation or a person liable for the pecuniary loss.

15 (j) Rulemaking Authority. The Commissioner may adopt rules to
16 implement this section.

17 * * * New England Equity Crowdfunding * * *

18 Sec. 18. 9 V.S.A. § 5305 is amended to read:

19 § 5305. SECURITIES REGISTRATION FILINGS

20

1 ~~(b) A person filing a registration statement shall pay a filing fee of~~
2 ~~\$600.00. A person filing a registration statement in connection with the New~~
3 ~~England Crowdfunding Initiative shall be exempt from the filing fee~~
4 ~~requirement. Open-end investment companies shall pay a registration fee and~~
5 ~~an annual renewal fee for each portfolio as long as the registration of those~~
6 ~~securities remains in effect. If a registration statement is withdrawn before the~~
7 ~~effective date or a preeffective stop order is issued under section 5306 of this~~
8 ~~title, the Commissioner shall retain the fee.~~

9 * * *

10 Sec. 19. REPEAL

11 8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance
12 Compact) is repealed.

13 Sec. 20. EFFECTIVE DATE

14 ~~This act shall take effect on July 1, 2019.~~

** * * Insurance Regulatory Sandbox; Sunset * * **

Sec. 1. 8 V.S.A. § 15a is added to read:

§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION
WAIVER; SUNSET

(a) Subject to the limitations specified in subsection (g) of this section, the
Commissioner may grant a variance or waiver (innovation waiver or waiver)
with respect to the specific requirements of any insurance law, regulation, or
bulletin if a person subject to that law, regulation, or bulletin demonstrates to
the Commissioner's satisfaction that:

(1) the application of the law, regulation, or bulletin would prohibit the
introduction of a new, innovative, or more efficient insurance product or
service that the applicant intends to offer during the period for which the

proposed waiver is granted;

(2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;

(3) the waiver will not substantially or unreasonably increase any risk to consumers; and

(4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

(1) the identity of the person applying for the waiver;

(2) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;

(3) an explanation of the potential benefits to consumers of the product or service;

(4) an explanation of the potential risks to consumers posed by the product or service and how the applicant proposes to mitigate such risks;

(5) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service; and

(6) any additional information required by the Commissioner.

(c)(1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.

(2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.

(d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 Vermont consumers.

(e) A product or service offered pursuant to an innovation waiver shall

include the following written disclosures to consumers in clear and conspicuous form:

(1) the name and contact information of the person providing the product or service;

(2) that the product or service is authorized pursuant to an innovation waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;

(3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and

(4) any additional disclosures required by the Commissioner.

(f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the Vermont Administrative Procedures Act.

(g)(1) Pursuant to the authority granted by this section, the Commissioner may not grant a waiver with respect to any of the following:

(A) Any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under Title 8;

(B) section 3304, 3366, or 6004(a)–(b) of this title or any other requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any person;

(C) chapter 107 (concerning health insurance), 112 (concerning the Vermont Life and Health Insurance Guaranty Association Act), 117 (concerning workers' compensation insurance), 129 (concerning insurance trade practices), or 131 (concerning licensing requirements), and chapter 154 (concerning long-term care insurance) of this title or any regulations or bulletins directly relating thereto;

(D) section 4211 (concerning volunteer drivers) of this title;

(E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless said law or regulation permits variances or waivers;

(F) the application of any taxes or fees; and

(G) any other law or regulation deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that

would abridge the recovery rights of Vermont policyholders.

(h) A person who receives a waiver under this section shall be required to make a deposit of cash or marketable securities with the State Treasurer in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers.

(i)(1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:

(A) the specific statute, regulation, or bulletin to which the draft waiver applies;

(B) the proposed terms, conditions, and limitations of the draft waiver;

(C) the proposed duration of the draft waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(j)(1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:

(A) the specific statute, regulation, or bulletin to which the waiver applies;

(B) the name of the person who applied for and received the waiver;

(C) the duration of and any other terms, conditions, or limitations of the waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited

application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

(l) Upon expiration of an innovation waiver, the person who obtained the waiver shall cease all activities that were permitted only by the waiver and comply with all generally applicable laws and regulations.

(m) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation or bulletin adopted pursuant thereto.

(n)(1) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(A) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(B) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(C) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(D) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(E) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(2) In the report submitted to the General Assembly on or before January 15, 2020, the Commissioner shall include a recommendation on whether there are any opportunities for the State to monetize its role in developing innovative insurance products and services that are subsequently offered in other jurisdictions. The Commissioner's recommendation shall ensure that any regulatory financial incentives under a monetization proposal would not conflict with the best interests of Vermont policyholders or the public good of the State.

(o) No new waivers or extensions shall be granted after July 1, 2021.

(p) This section shall be repealed on July 1, 2023.

** * * Capital and Surplus Requirements * * **

Sec. 2. 8 V.S.A. § 3304 is amended to read:

§ 3304. CAPITAL AND SURPLUS REQUIREMENTS

(a)(1) To qualify for authority to transact the business of insurance, a stock insurer seeking such authorization shall possess and thereafter maintain unimpaired paid-in capital of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) ~~The~~ The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer, such securities as designated by the insurer and approved by the Commissioner, in an amount and subject to ~~such~~ conditions determined by the Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all stock insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

Sec. 3. 8 V.S.A. § 3366 is amended to read:

§ 3366. ASSETS OF COMPANIES

(a)(1) ~~Such~~ A foreign or alien insurer authorized to do business in this State shall possess and thereafter maintain unimpaired paid-in capital or basic surplus of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer, such securities as designated by the insurer and approved by the Commissioner; in an amount and subject to such conditions determined by the Commissioner. Such The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

** * * Domestic Surplus Lines Insurer; Home State Surplus Lines
Premium Taxation * * **

Sec. 4. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

** * **

(b) As used in this chapter:

(1) "Admitted insurer" means an insurer ~~possessing a certificate of authority licensed to transact business in this State issued by the Commissioner pursuant to section 3361 of this title.~~ For purposes of this chapter, "admitted insurer" shall not include a domestic surplus lines insurer.

** * **

(3) "Domestic insurer" means any insurer that has been chartered by, incorporated, organized, or constituted within or under the laws of this State.

(4) “Domestic risk” means a subject of insurance ~~which~~ that is resident, located, or to be performed in this State.

(5) “Domestic surplus lines insurer” means a domestic insurer with which insurance coverage may be placed under this chapter.

(4)(6) “To export” means to place surplus lines insurance with a non-admitted insurer.

(5)(7) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision (5)(7), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(6)(8) “NAIC” means the National Association of Insurance Commissioners.

(7)(9) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

(8)(10) “Surplus lines insurance” means coverage not procurable from admitted insurers.

(9)(11) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 5. 8 V.S.A. § 5023a is added to read:

§ 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

(a) Surplus lines insurance may be procured from a domestic surplus lines insurer if all of the following criteria are met:

(1) The board of directors of the insurer has adopted a resolution seeking certification as a domestic surplus lines insurer and the Commissioner has approved such certification.

(2) The insurer is already eligible to offer surplus lines insurance in at least one other state besides Vermont.

(3) The insurer meets the requirements of section 5026 of this title.

(4) All other requirements of this chapter are met.

(b) The requirements of 8 V.S.A. § 80 shall not apply to domestic surplus lines insurers. A domestic surplus lines insurer shall be deemed to be a non-admitted insurer for purposes of chapter 138 of this title.

Sec. 6. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this State; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

* * *

Sec. 7. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with ~~non-admitted~~ surplus lines insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a non-admitted insurer unless such insurer:

* * *

(b) Notwithstanding the capital and surplus requirements of this section, a ~~non-admitted~~ surplus lines insurer may receive approval upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital, and surplus of any parent company, company underwriting profit and investment-income trends, market availability, and company record and reputation within the industry. In no event, however, shall the Commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

* * *

Sec. 8. 8 V.S.A. § 5027 is amended to read:

§ 5027. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

(a) Where Vermont is the home state of the insured, the surplus lines broker,

upon placing a domestic risk with a surplus lines insurer; either domestic or foreign, shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

* * *

Sec. 9. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number; and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, “The company issuing this policy has not been licensed by the State of Vermont is a surplus lines insurer and the rates charged have not been approved by the Commissioner of Financial Regulation. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association.”

Sec. 10. 8 V.S.A. § 5029 is amended to read:

§ 5029. SURPLUS LINES INSURANCE VALID

(a) Insurance contracts procured as surplus lines insurance from ~~non-~~admitted surplus lines insurers in accordance with this chapter shall be valid and enforceable to the same extent as insurance contracts procured from admitted insurers.

(b) The insurance trade practices provisions of sections 4723 and 4724(1)–(7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–3883 (regarding fire and casualty policies) and 4711–4715 (regarding commercial risk policies) of this title shall apply to surplus lines insurers, both domestic and foreign.

(c) Other provisions of this title not specifically applicable to surplus lines insurers shall not apply.

Sec. 11. 8 V.S.A. § 5030 is amended to read:

*§ 5030. ~~LIABILITY OF NON-ADMITTED SURPLUS LINES INSURER
FOR LOSSES AND UNEARNED PREMIUMS~~*

If a ~~non-admitted surplus lines~~ insurer has assumed a surplus lines coverage through the intervention of a licensed surplus lines broker of this State, and if the premium for that coverage has been received by that broker, then in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received that premium and the insurer shall be liable to the insured for losses covered by such insurance and for any return premiums due on that insurance to the insured whether or not the broker is indebted to the insurer for such insurance or for any other cause.

Sec. 12. 8 V.S.A. § 5035 is amended to read:

§ 5035. SURPLUS LINES TAX

(a) Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with ~~non-admitted surplus lines~~ insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. ~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this State, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:~~

(1) ~~An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus~~

(2) ~~An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.~~

* * *

Sec. 13. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

** * **

(b) If any such insurance also covers a subject located or to be performed outside this State, a proper pro rata portion of the entire premium shall be allocated to the subjects of insurance located or to be performed in this State.

(e) Any insurance with a non-admitted insurer procured through negotiations or by application in whole or in part made within this State, where this State is the home state of the insured, or for which premium in whole or in part is remitted directly or indirectly from within this State, shall be deemed insurance subject to subsection (a) of this section.

(d)(c) A tax at the rate of three percent of the gross amount of premium, less any return premium, in respect of risks located in this State, shall be levied upon an insured who procures insurance subject to subsection (a) of this section. Before March 1 of the year after the year in which the insurance was procured, continued, or renewed, the insured shall remit to the Commissioner the amount of the tax. The Commissioner before June 1 of each year shall certify and transmit to the Commissioner of Taxes the sums so collected.

(e)(d) The tax shall be collectible from the insured by civil action brought by the Commissioner.

Sec. 14. 8 V.S.A. § 5038 is amended to read:

§ 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

** * **

(b) Each non-admitted surplus lines insurer assuming that assumes a surplus lines coverage shall be deemed thereby to have subjected itself to this chapter.

** * **

** * * HIV-Related Tests * * **

Sec. 15. 8 V.S.A. § 4724 is amended to read:

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

** * **

(7) Unfair discrimination; arbitrary underwriting action.

* * *

(C)(i) *Inquiring or investigating, directly or indirectly as to an applicant's, an insured's or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage, or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity;*

* * *

(iii) *Making adverse underwriting decisions because medical records or a report from an insurance support organization reveal that an applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by seeking counseling from health care professionals;*

* * *

(20) *HIV-related tests. Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the United States Food and Drug Administration ~~and the Commissioner,~~ included in the current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens, used to determine the existence of HIV antibodies or antigens in the blood, urine, or oral mucosal transudate (OMT).*

* * *

(B)(i) *No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement ~~which~~ that shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention, of the following:*

(I) *an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont Department of Health ~~AIDS hotline~~ and the Centers for Disease Control and Prevention; and*

(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the State Vermont Department of Health, which shall remain confidential, or to obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and

** * **

(ii) In addition, before drawing blood or obtaining a sample of the urine or OMT for the HIV-related test or tests, the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then obtain the individual's written informed consent. If an OMT test is administered in the presence of the agent or broker, the individual's written informed consent need only be obtained prior to administering the test, in accordance with the provisions of this subdivision (B).

(C)(i) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the Commissioner pursuant to section 3541 of this title; and

(ii) Any testing procedure shall be filed and approved by the Commissioner in consultation with the Commissioner of Health.

(D) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is approved by the Vermont Department of Health. Any requests for approval under this subdivision shall be acted upon within 120 days. The Department may approve a laboratory without on-site inspection or additional proficiency data if the laboratory has been certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.

(E) The test protocol shall be considered positive only if test results are two positive ELISA tests, and a Western Blot test confirms the results of the two ELISA tests, or upon approval of any equally or more reliable confirmatory test or test protocol which has been approved by the Commissioner and the U.S. Food and Drug Administration. If the result of any test performed on a sample of urine or OMT is positive or indeterminate, the insurer shall provide to the individual, no later than 30 days following the date of the first urine or OMT test results, the opportunity to retest once, and the individual shall have the option to provide either a blood sample, a urine sample, or an OMT sample for that retest. This retest shall be in addition to

~~the opportunities for retest provided in subdivisions (F) and (G) of this subdivision (20).~~

~~(F) If an individual has at least two positive ELISA tests but an indeterminate Western Blot test result, the Western Blot test may be repeated on the same sample. If the Western Blot test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If action on an application is delayed due to indeterminacy as described herein, the insurer shall provide the individual the opportunity to retest once after six but not later than eight months following the date of the first indeterminate test result. If the retest Western Blot test result is again indeterminate or is negative, the test result shall be considered as negative, and a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.~~

~~(D) HIV-related tests required by insurers or insurance support organizations must be processed in a laboratory certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.~~

~~(E) The test protocol shall be considered positive only if testing results meet the most current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm or more reliable confirmatory test or test protocol that has been approved by the United States Food and Drug Administration.~~

~~(F) If the HIV-1/2 antibody differentiation test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If the HIV-1 NAT test result is negative, a new application for coverage shall not be denied by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall be repeated. No application for coverage may be denied based on an indeterminate or invalid result. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing any previous~~

HIV-related testing that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(G)(i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:

* * *

(II) in any event, upon the approval by the Commissioner of an alternative test or test protocol for the presence of HIV antibodies or antigens updates to the Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens.

* * *

Sec. 16. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

* * *

<i>(d) Laboratory certification and approval</i>	<i>Annual fee shall be:</i>
<i>Drug laboratory approval</i>	<i>\$500.00</i>
<i>Drug laboratory alternate approval</i>	<i>\$300.00</i>
<i>Drug laboratory approval renewal</i>	<i>\$300.00</i>
<i>HIV laboratory approval</i>	<i>\$300.00</i>
<i>HIV laboratory alternate approval</i>	<i>\$100.00</i>
<i>HIV laboratory approval renewal</i>	<i>\$100.00</i>
<i>HIV laboratory (insurance) approval</i>	<i>\$500.00</i>
<i>HIV laboratory (insurance) alternate approval</i>	<i>\$300.00</i>
<i>HIV laboratory (insurance) approval renewal</i>	<i>\$300.00</i>

* * *

* * * Victim Restitution Fund * * *

Sec. 17. 9 V.S.A. § 5616 is added to read:

§ 5616. VERMONT VICTIM RESTITUTION FUND

(a) Purpose. The purpose of this section is to provide restitution assistance to victims of securities violations who:

(1) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(2) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(3) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future.

(b) Definitions. As used in this section,

(1) "Claimant" means a person who files an application for restitution assistance under this section on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order; the executor of a named party in a restitution award in a final order; and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Final order" means a final order issued by the Commissioner or a final order in a legal action initiated by the Commissioner.

(3) "Fund" means the Victim Restitution Special Fund created by this section.

(4) "Securities violation" means a violation of this chapter and any related administrative rules.

(5) "Victim" means a person who was awarded restitution in a final order.

(6) "Vulnerable person" means:

(A) a person who meets the definition of vulnerable person under 33 V.S.A. § 6902(14); or

(B) a person who is at least 60 years of age.

(c) Eligibility.

(1) A natural person who was a resident of Vermont at the time of the alleged fraud is eligible for restitution assistance.

(2) The Commissioner may not award securities restitution assistance under this section:

(A) to more than one claimant per victim;

(B) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution

assistance from the fund is due;

(C) if there was no award of restitution in the final order; or

(D) to a claimant who has not exhausted his or her appeal rights.

(d) Denial of Assistance. The Commissioner may not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation;

(2) profited or would have profited from the securities violation; or

(3) is related to the person who committed the securities violation.

(e) Application for Restitution Assistance and Maximum Amount of Restitution Assistance Award.

(1) The Commissioner may adopt procedures and forms for application for restitution assistance under this section.

(2) An application must be received by the Department within two years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subdivision (4) of this subsection, the maximum award from the fund for each claimant shall be the lesser of \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid restitution awarded in the final order

(f) Victim Restitution Fund. The Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section. All monies received by the State by reason of grant or donation for use in providing uncompensated victims restitution shall be deposited into the Victim Restitution Special Fund. Interest earned on the fund shall be retained in the Fund.

(g) Award Not Subject to Execution, Attachment, or Garnishment. An award made by the Commissioner under this section is not subject to execution, attachment, garnishment, or other process.

(h) State's Liability for Award. The Commissioner shall have the discretion to suspend applications and awards based on the solvency of the fund. The State shall not be liable for any determination made under this section.

(i) Subrogation of Rights of State.

(1) The State is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(2) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

(j) Rulemaking Authority. The Commissioner may adopt rules to implement this section.

**** New England Equity Crowdfunding ****

Sec. 18. 9 V.S.A. § 5305 is amended to read:

§ 5305. SECURITIES REGISTRATION FILINGS

(b) A person filing a registration statement shall pay a filing fee of \$600.00. A person filing a registration statement in connection with the New England Crowdfunding Initiative shall be exempt from the filing fee requirement. Open-end investment companies shall pay a registration fee and an annual renewal fee for each portfolio as long as the registration of those securities remains in effect. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 5306 of this title, the Commissioner shall retain the fee.

**** Surplus Lines Insurance Compact; Repeal ****

Sec. 19. REPEAL

8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance Compact) is repealed.

**** Insurance Producers; Licensing Requirements; Definitions ****

Sec. 20. 8 V.S.A. § 4791 is amended to read:

§ 4791. DEFINITIONS

As used in this chapter:

(3) “Adjuster” means any person who investigates claims and or negotiates settlement of claims arising under policies of insurance in behalf of insurers under such policies, or who advertises or solicits business from insurers as an adjuster. Lawyers settling claims of clients shall not be considered an adjuster. A license as an adjuster shall not be required of an

official or employee of a domestic fire or casualty insurance company or of a duly licensed resident insurance producer of a domestic or duly licensed foreign insurer who is authorized by such insurer to appraise losses under policies issued by such insurer.

(4) "Public adjuster" means any person who investigates claims and or negotiates settlement of claims arising under policies of insurance in behalf of the insured under such policies or who advertises or solicits business as such adjuster. Lawyers settling claims of clients shall not be deemed to be insurance public adjusters.

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** * * Effective Date * * **

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2019.