

1 S.131

2 Introduced by Senator Cummings

3 Referred to Committee on

4 Date:

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. 8 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 may  
16           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 to  
19           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 inure 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 (a) 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 contravene  
15 applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be  
16 deemed to control the funds on deposit and to have a lien on the funds for the  
17 benefit of the Vermont policyholders affected by the insolvency. The lien so  
18 created shall be superior to any lien filed by a general creditor of the 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 State  
4 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

1 pursuant to a plan of dissolution for the company approved by the  
2 Commissioner.

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

11 \* \* \* Domestic Surplus Lines Insurer; Home State Surplus Lines

12 Premium Taxation \* \* \*

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

14 § 5022. DEFINITIONS

15 \* \* \*

16 (b) As used in this chapter:

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

21 \* \* \*

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) 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 the  
20 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 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 (e) 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)~~(d) 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 a  
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 unfair  
17 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 granted,  
2 the individual shall be informed, by means of a printed information statement  
3 ~~which~~ that shall have been read aloud to the individual by any agent of the  
4 insurer at the time of application or later and then given to the individual for  
5 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 the  
14 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 Care  
19 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 any~~  
6           ~~test performed on a sample of urine or OMT is positive or indeterminate, the~~  
7           ~~insurer shall provide to the individual, no later than 30 days following the date~~  
8           ~~of the first urine or OMT test results, the opportunity to retest once, and the~~  
9           ~~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 be~~  
3 ~~denied by the insurer based upon the results of either test. Any underwriting~~  
4 ~~decision granting a substandard classification or exclusion based on the~~  
5 ~~individual's prior HIV related test results shall be reversed, and the company~~  
6 ~~performing a retest which had forwarded to a medical information bureau~~  
7 ~~reports based upon the individual's prior HIV related test results shall request~~  
8 ~~the medical information bureau to remove any abnormal codes listed due to~~  
9 ~~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 requirements  
13 of the federal Health Care Financing Administration under the Clinical  
14 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 Drug  
19 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 \* \* \*

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

3 § 501b. CERTIFICATION OF LABORATORIES

4 \* \* \*

5	(d) Laboratory certification and approval	Annual fee shall be:
6	Drug laboratory approval	\$500.00
7	Drug laboratory alternate approval	\$300.00
8	Drug laboratory approval renewal	\$300.00
9	HIV laboratory approval	\$300.00
10	HIV laboratory alternate approval	\$100.00
11	HIV laboratory approval renewal	\$100.00
12	<del>HIV laboratory (insurance) approval</del>	<del>\$500.00</del>
13	<del>HIV laboratory (insurance) alternate approval</del>	<del>\$300.00</del>
14	<del>HIV laboratory (insurance) approval renewal</del>	<del>\$300.00</del>

15 \* \* \*

16 \* \* \* Victim Restitution Fund \* \* \*

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

18 § 5616. VERMONT VICTIM RESTITUTION FUND

19 (a) Purpose. The purpose of this section is to provide restitution assistance

20 to victims of securities violations who:

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           (6) “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 \$600.00.

2 A person filing a registration statement in connection with the New England

3 Crowdfunding Initiative shall be exempt from the filing fee requirement.

4 Open-end investment companies shall pay a registration fee and an annual

5 renewal fee for each portfolio as long as the registration of those securities

6 remains in effect. If a registration statement is withdrawn before the effective

7 date or a preeffective stop order is issued under section 5306 of this title, the

8 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.