

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred Senate Bill No. 131 entitled “An act relating to insurance and  
4 securities” respectfully reports that it has considered the same and recommends  
5 that the House propose to the Senate that the bill be amended by striking out all  
6 after the enacting clause and inserting in lieu thereof the following:

7 \* \* \* Insurance Regulatory Sandbox; Sunset \* \* \*

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

9 § 15a. INSURANCE REGULATORY SANDBOX; INNOVATION

10 WAIVER; SUNSET

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

16 (1) the application of the law, regulation, or bulletin would prohibit the  
17 introduction of an innovative or more efficient insurance product or service  
18 that the applicant intends to offer during the period for which the proposed  
19 waiver is granted;

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

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

3           (4) the waiver is in the public interest.

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

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

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

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

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

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

16          (6) any additional information required by the Commissioner.

17          (c)(1) An innovation waiver shall be granted for an initial period of up to  
18          12 months, as deemed appropriate by the Commissioner.

19          (2) Prior to the end of the initial waiver period, the Commissioner may  
20          grant a one-time extension for up to an additional 12 months. An extension  
21          request shall be made to the Commissioner at least 30 days prior to the end of

1 the initial waiver period and shall include the length of the extension period  
2 requested and specific reasons why the extension is necessary. The  
3 Commissioner shall grant or deny an extension request before the end of the  
4 initial waiver period.

5 (d) An innovation waiver shall include any terms, conditions, and  
6 limitations deemed appropriate by the Commissioner, including limits on the  
7 amount of premium that may be written in relation to the underlying product or  
8 service and the number of consumers that may purchase or utilize the  
9 underlying product or service; provided that in no event shall a product or  
10 service subject to an innovation waiver be purchased or utilized by more than  
11 10,000 Vermont consumers.

12 (e) A product or service offered pursuant to an innovation waiver shall  
13 include the following written disclosures to consumers in clear and  
14 conspicuous form:

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

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

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

1           (4) any additional disclosures required by the Commissioner.

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

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

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

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

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

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

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

1           (F) the application of any taxes or fees; and  
2           (G) any other law or regulation deemed ineligible by the  
3 Commissioner.

4           (2) The authority granted to the Commissioner under this section shall  
5 not be construed to allow the Commissioner to grant or extend a waiver that  
6 would abridge the recovery rights of Vermont policyholders.

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

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

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

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

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

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

21           (2) The notice requirement of this subsection may be satisfied by

1 publication on the Department's website.

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

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

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

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

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

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

14 (k) The Commissioner, by regulation, shall adopt uniform procedures for  
15 the submission, granting, denying, monitoring, and revocation of petitions for a  
16 waiver pursuant to this section. The procedures shall set forth requirements for  
17 the ongoing monitoring, examination, and supervision of, and reporting by,  
18 each person granted a waiver under this section and shall permit the  
19 Commissioner to attach reasonable conditions or limitations on the conduct  
20 permitted pursuant to a waiver. The procedures shall provide for an expedited  
21 application process for a product or service that is substantially similar to one

1 for which a waiver has previously been granted by the Commissioner. The  
2 procedures shall include an opportunity for public comment on draft waivers  
3 under consideration by the Commissioner.

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

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

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

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

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

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

20 (D) with respect to each statute to which a waiver applies, the  
21 Commissioner's recommendation as to whether such statute should be

1 continued, eliminated, or amended in order to promote innovation and  
2 establish a uniform regulatory system for all regulated entities; and

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

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

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

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

16 \* \* \* Capital and Surplus Requirements \* \* \*

17 Sec. 2. [Deleted.]

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

19 § 3366. ASSETS OF COMPANIES

20 (a)(1) Such A foreign or alien insurer authorized to do business in this State  
21 shall possess and thereafter maintain unimpaired paid-in capital or basic



1 surplus of not less than \$2,000,000.00 and, when first so authorized, shall  
2 possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

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

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

19 (b) The express purpose of subsection (a) of this section and the  
20 Commissioner's power to require the deposit of cash or marketable securities  
21 set forth therein is to protect the interests of Vermont policyholders in the

1 event of the insolvency of the insurer. Except to the extent it would contravene  
2 applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be  
3 deemed to control the funds on deposit and to have a lien on the funds for the  
4 benefit of the Vermont policyholders affected by the insolvency. The lien so  
5 created shall be superior to any lien filed by a general creditor of the insurer.

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

7 Premium Taxation \* \* \*

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

9 § 5022. DEFINITIONS

10 \* \* \*

11 (b) As used in this chapter:

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

16 \* \* \*

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

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

21 (5) “Domestic surplus lines insurer” means a domestic insurer with

1 which insurance coverage may be placed under this chapter.

2 ~~(4)~~(6) “To export” means to place surplus lines insurance with a non-  
3 admitted insurer.

4 ~~(5)~~(7) “Home state” means, with respect to an insured:

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

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

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

16 ~~(6)~~(8) “NAIC” means the National Association of Insurance  
17 Commissioners.

18 ~~(7)~~(9) “Surplus lines broker” means an individual licensed under this  
19 chapter and chapter 131 of this title.

20 ~~(8)~~(10) “Surplus lines insurance” means coverage not procurable from  
21 admitted insurers.

1           ~~(9)~~(11) “Surplus lines insurer” means a non-admitted insurer with which  
2 insurance coverage may be placed under this chapter.

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

4           § 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

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

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

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

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

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

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

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

18           § 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

19           (a) Insurance coverage, except as described in section 5025 of this chapter,  
20 shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full  
21 amount of insurance required is not reasonably procurable from admitted

1 insurers actually transacting that kind and class of insurance in this State; and  
2 the amount of insurance exported shall be only the excess over the amount  
3 procurable from admitted insurers actually transacting and insuring that kind  
4 and class of insurance.

5 \* \* \*

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

7 § 5026. SOLVENT INSURERS REQUIRED

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

13 \* \* \*

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

1 than \$4,500,000.00.

2 \* \* \*

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

4 § 5027. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

5 (a) Where Vermont is the home state of the insured, the surplus lines  
6 broker, upon placing a domestic risk with a surplus lines insurer, either  
7 domestic or foreign, shall promptly deliver to the insured the policy issued by  
8 the surplus lines insurer, or if such policy is not then available, a certificate,  
9 cover note, or other confirmation of insurance, showing the description and  
10 location of the subject of the insurance, coverage, conditions and term of the  
11 insurance, the premium and rate charged and taxes collected from the insured,  
12 and the name and address of the insured and surplus lines insurer. If the risk is  
13 assumed by more than one insurer, the document or documents shall state the  
14 name and address and proportion of the entire risk assumed by each insurer.

15 \* \* \*

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

17 § 5028. INFORMATION REQUIRED ON CONTRACT

18 Where Vermont is the home state of the insured, each surplus lines broker  
19 through whom a surplus lines insurance coverage is procured shall endorse on  
20 the outside of the policy and on any confirmation of the insurance, his or her  
21 name, address and license number, and the name and address of the producer,

1 if any, through whom the business originated. Where such coverage is placed  
2 with an eligible surplus lines insurer there shall be stamped or written  
3 conspicuously in no smaller than 10 point boldface type of a contrasting color  
4 upon the first page of the policy and the confirmation of insurance if any, “The  
5 company issuing this policy ~~has not been licensed by the State of Vermont~~ is a  
6 surplus lines insurer and the rates charged have not been approved by the  
7 Commissioner of Financial Regulation. Any default on the part of the insurer  
8 is not covered by the Vermont Insurance Guaranty Association.”

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

10 § 5029. SURPLUS LINES INSURANCE VALID

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

15 (b) The insurance trade practices provisions of sections 4723 and 4724(1)–  
16 (7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–  
17 3883 (regarding fire and casualty policies) and 4711–4715 (regarding  
18 commercial risk policies) of this title shall apply to surplus lines insurers, both  
19 domestic and foreign.

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

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

2 § 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER  
3 FOR LOSSES AND UNEARNED PREMIUMS

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

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

13 § 5035. SURPLUS LINES TAX

14 (a) Where Vermont is the home state of the insured, gross premiums  
15 charged, less any return premiums, for surplus lines coverages placed with  
16 ~~non-admitted~~ surplus lines insurers are subject to a premium receipts tax of  
17 three percent, which shall be collected from the insured by the surplus lines  
18 broker at the time of delivery of policy or other confirmation of insurance, in  
19 addition to the full amount of the gross premium charged by the insurer for the  
20 insurance. The tax on any portion of the premium unearned at termination of  
21 insurance shall be returned to the policyholder by the surplus lines broker.



1 Nothing contained in this section will preclude a surplus lines broker from  
2 charging a fee to the purchaser of the contract sufficient to recover the amount  
3 of this tax. ~~Where the insurance covers properties, risks, or exposures located~~  
4 ~~or to be performed both in and out of this State, the sum payable shall be~~  
5 ~~computed based on gross premiums charged, less any return premiums, as~~  
6 follows:

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

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

15 \* \* \*

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

17 § 5036. DIRECT PLACEMENT OF INSURANCE

18 \* \* \*

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

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

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

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

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

16 § 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

17                   \* \* \*

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

21                   \* \* \*

1    \* \* \* HIV-Related Tests \* \* \*

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

3        § 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR  
4                                    DECEPTIVE ACTS OR PRACTICES DEFINED

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

7    \* \* \*

8                (7) Unfair discrimination; arbitrary underwriting action.

9    \* \* \*

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

18    \* \* \*

19              (iii) Making adverse underwriting decisions because medical  
20              records or a report from an insurance support organization reveal that an  
21              applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by

1 seeking counseling from health care professionals;

2 \* \* \*

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

10 \* \* \*

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

18 (I) an explanation of the test or tests to be given, including: the  
19 tests’ relationship to AIDS, the insurer’s purpose in seeking the test, potential  
20 uses and disclosures of the results, limitations on the accuracy of and the  
21 meaning of the test’s results, the importance of seeking counseling about the

1 individual's test results after those results are received, and the availability of  
2 information from and the telephone numbers of the Vermont Department of  
3 Health AIDS-hotline and the Centers for Disease Control and Prevention; and

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

10 \* \* \*

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

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

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

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

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

1 ~~opportunities for retest provided in subdivisions (F) and (G) of this subdivision~~  
2 ~~(20).~~

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

21 (D) HIV-related tests required by insurers or insurance support

1 organizations must be processed in a laboratory certified under the Clinical  
2 Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements  
3 of the federal Health Care Financing Administration under the Clinical  
4 Laboratory Improvement Amendments.

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

10 (F) If the HIV-1/2 antibody differentiation test result is  
11 indeterminate, the insurer may delay action on the application, but no change  
12 in preexisting coverage, benefits, or rates under any separate policy or policies  
13 held by the individual shall be based upon such indeterminacy. If the HIV-1  
14 NAT test result is negative, a new application for coverage shall not be denied  
15 by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall  
16 be repeated. No application for coverage shall be denied based on an  
17 indeterminate or invalid result. Any underwriting decision granting a  
18 substandard classification or exclusion based on the individual's prior HIV-  
19 related test results shall be reversed, and the company performing any previous  
20 HIV-related testing that had forwarded to a medical information bureau reports  
21 based upon the individual's prior HIV-related test results shall request the



1 medical information bureau to remove any abnormal codes listed due to such  
2 prior test results.

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

7 \* \* \*

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

12 \* \* \*

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

14 § 501b. CERTIFICATION OF LABORATORIES

15 \* \* \*

(d) Laboratory certification and approval	Annual fee shall be:
17 Drug laboratory approval	\$500.00
18 Drug laboratory alternate approval	\$300.00
19 Drug laboratory approval renewal	\$300.00
20 HIV laboratory approval	\$300.00
21 HIV laboratory alternate approval	\$100.00

1	HIV laboratory approval renewal	\$100.00
2	<del>HIV laboratory (insurance) approval</del>	<del>\$500.00</del>
3	<del>HIV laboratory (insurance) alternate approval</del>	<del>\$300.00</del>
4	<del>HIV laboratory (insurance) approval renewal</del>	<del>\$300.00</del>

5 \* \* \*

6 \* \* \* Victim Restitution Fund \* \* \*

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

8 § 5616. VERMONT VICTIM RESTITUTION FUND

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

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

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

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

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

20 (1) "Claimant" means a person who files an application for restitution  
21 assistance under this section on behalf of a victim. The claimant and the

1 victim may be the same but do not have to be the same. The term includes the  
2 named party in a restitution award in a final order, the executor of a named  
3 party in a restitution award in a final order, and the heirs and assigns of a  
4 named party in a restitution award in a final order.

5 (2) “Final order” means a final order issued by the Commissioner or a  
6 final order in a legal action initiated by the Commissioner.

7 (3) “Fund” means the Victim Restitution Special Fund created by this  
8 section.

9 (4) “Securities violation” means a violation of this chapter and any  
10 related administrative rules.

11 (5) “Victim” means a person who was awarded restitution in a final  
12 order.

13 (6) “Vulnerable person” means:

14 (A) a person who meets the definition of vulnerable person under  
15 33 V.S.A. § 6902(14); or

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

17 (c) Eligibility.

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

20 (2) The Commissioner shall not award securities restitution assistance  
21 under this section:

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

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

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

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

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

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

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

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

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

13           (3) is an immediate family member of the person who committed the  
14 securities violation.

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

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

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

21           (3) Except as provided in subdivision (4) of this subsection, the

1 maximum award from the fund for each claimant shall be the lesser of  
2 \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final  
3 order.

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

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

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

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

20 (i) Subrogation of Rights of State.

21 (1) The State is subrogated to the rights of the person awarded

1 restitution under this chapter to the extent of the award.

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

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

6 (k) Bulletin. The Commissioner shall publish a bulletin defining the term  
7 “immediate family member” for purposes of this section

8 \* \* \* New England Equity Crowdfunding \* \* \*

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

10 § 5305. SECURITIES REGISTRATION FILINGS

11 \* \* \*

12 (b) A person filing a registration statement shall pay a filing fee of \$600.00.  
13 A person filing a registration statement in connection with the New England  
14 Crowdfunding Initiative shall be exempt from the filing fee requirement.

15 Open-end investment companies shall pay a registration fee and an annual  
16 renewal fee for each portfolio as long as the registration of those securities  
17 remains in effect. If a registration statement is withdrawn before the effective  
18 date or a preeffective stop order is issued under section 5306 of this title, the  
19 Commissioner shall retain the fee.

20 \* \* \*

21 \* \* \* Surplus Lines Insurance Compact; Repeal \* \* \*

1 Sec. 19. REPEAL

2 8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance  
3 Compact) is repealed.

4 \* \* \* Insurance Producers; Licensing Requirements; Definitions \* \* \*

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

6 § 4791. DEFINITIONS

7 As used in this chapter:

8 \* \* \*

9 (3) “Adjuster” means any person who investigates claims ~~and~~ or  
10 negotiates settlement of claims arising under policies of insurance in behalf of  
11 insurers under such policies, or who advertises or solicits business from  
12 insurers as an adjuster. Lawyers settling claims of clients shall not be  
13 considered an adjuster. A license as an adjuster shall not be required of an  
14 official or employee of a domestic fire or casualty insurance company or of a  
15 duly licensed resident insurance producer of a domestic or duly licensed  
16 foreign insurer who is authorized by such insurer to appraise losses under  
17 policies issued by such insurer.

18 (4) “Public adjuster” means any person who investigates claims ~~and~~ or  
19 negotiates settlement of claims arising under policies of insurance in behalf of  
20 the insured under such policies or who advertises or solicits business as such  
21 adjuster. Lawyers settling claims of clients shall not be deemed to be

1 insurance public adjusters.

2 \* \* \*

3 \* \* \* Fair Credit Reporting; Definition of Credit Report \* \* \*

4 Sec. 21. 9 V.S.A. § 2480a(3) is amended to read:

5 (3) “Credit report” means ~~a consumer report, as defined in 15 U.S.C.~~  
6 ~~§ 1681a, that is used or collected in whole or in part for the purpose of serving~~  
7 ~~as a factor in establishing a consumer’s eligibility for credit for personal,~~  
8 ~~family, or household purposes~~ any written, oral, or other communication of  
9 any information by a credit reporting agency bearing on a consumer’s credit  
10 worthiness, credit standing, credit capacity, character, general reputation,  
11 personal characteristics, or mode of living, including an investigative credit  
12 report. The term does not include:

13 (A) a report containing information solely as to transactions or  
14 experiences between the consumer and the person making the report; or

15 (B) an authorization or approval of a specific extension of credit  
16 directly or indirectly by the issuer of a credit card or similar device.

17 \* \* \* Effective Date \* \* \*

18 Sec. 22. EFFECTIVE DATE

19 This act shall take effect on July 1, 2019.

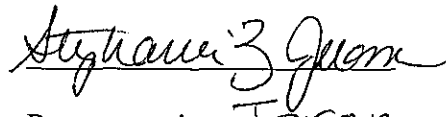
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(Committee vote: 10-0-1)



Representative Jerome

FOR THE COMMITTEE