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MEMORANDUM

TO: The Honorable Maxine Grad, House Committee on Judiciary
FROM: Jill Rickard, Director of Policy
SUBJECT: S.18, An act relating to consumer justice enforcement
DATE: March 21, 2019

Dear Representative Grad and committee members,

Thank you for the opportunity to provide written testimony on S.18. The bill, as passed by the Senate, contains exemptions for contracts to which one party is either (a) regulated by the Department of Financial Regulation or (b) a financial institution as defined by 8 V.S.A. § 11101(32). The Department believes these exemptions are appropriate due to the highly regulated nature of the insurance and banking industries.

Insurance

Pursuant to 8 V.S.A. § 3541, with minimal exceptions, no contract of insurance may be delivered or issued in the State of Vermont unless the form has been filed with and approved by the Department. DFR staff analyze every insurance contract issued to Vermont consumers and disapprove any form that is not compliance with statute or regulation or that is found to be misleading.

- The Department requires venues to be convenient for the policy holder, either in Vermont or a mutually acceptable location.
- The Department would not allow waivers of statutory remedies or the right to seek punitive damages, or a requirement that the policy holder pay excessive fees to bring a claim.
- 8 V.S.A. § 3663 prohibits insurance contracts from limiting actions to less than one year from an occurrence.
- Mandatory binding arbitration would not be permitted; both parties must agree to arbitration at the onset or beginning of the arbitration process.

Banking

The banking and financial services industry is highly regulated by DFR as well as several federal agencies. Though the Department does not examine every form issued by a financial institution or regulated financial entity, it does examine state-chartered banks and credit unions at least every 18 months and other licensed lenders at least every three years. If a consumer notifies DFR of an issue with a contract term, DFR would investigate the matter and, if appropriate, review documentation, conduct additional examinations of the entity, and take corrective actions.

The Federal Trade Commission Act and the Dodd Frank Act prohibit unfair and deceptive acts and practices and authorize state banking authorities to enforce federal regulations for the institutions they supervise. Unfair or deceptive acts or practices are those that are likely to cause substantial injury to consumers, cannot be reasonably avoided by consumers, and are not outweighed by countervailing benefits. At this time, DFR banking consumer services has received no complaints regarding the specific contract terms addressed by this bill.