H.643: AN ACT RELATING TO BANKING AND INSURANCE

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SEC. 1-5: PERSONAL INFORMATION PROTECTION COMPANIES

- Subject personal information protection companies to the general licensing provisions of Title 8, Chapter 72, which govern all non-depository licensees.
  - Chapter 72 includes:
    - license application & renewal requirements;
    - notification and reporting requirements;
    - exams & investigations;
    - use of NMLS;
    - Enforcement; and
    - penalties common to all licensees.
  - Fees would remain unchanged.

SEC. 6: LICENSED LENDER EXEMPTION

- Technical correction to exempt all state agencies, political subdivisions, and public instrumentalities from the requirement to obtain a lender license.
  - Reason for change: Last session "State" was capitalized (meaning the State of Vermont), creating an unintended change to the licensed lender exemption, which has historically applied to any state, not just Vermont.

SEC. 7: HOME STATE LICENSURE; TIME PERIOD FOR DEEMING APPLICATION ABANDONED

- Remove the home state licensure requirement for non-depository licensees.
  - Reason for change: NMLS and the new exam system have formalized communications channels between states, making licensure in a lender's home state unnecessary.
- Change the time period for deeming incomplete applications abandoned (from 90 to 120 days) so that it works in harmony with recent changes to the federal SAFE Act.
  - Reason for change: The SAFE Act gives certain mortgage loan originators a 120-day temporary authority period while their application is pending; temporary authority ends if the application remains incomplete for 120 days.

SEC 8-10: FINANCIAL SERVICES TECHNICAL CHANGES

- Clarify that if a license is denied, DFR returns the bond rather than the amount the applicant paid for the bond (which DFR does not hold).
- Technical correction to change the phrase "violation of this title" to "violation of this part."
  - <u>Reason for change:</u> To be consistent with other changes made in Chapter 72 (the reorganized general non-depository licensing sections).
- Correct the title of "National Multistate Licensing Service."

SEC. 11: PREPAID ACCESS CARDS; FEES

- Remove the fee cap of 10% of the face amount for prepaid access cards issued by licensed money transmitters, financial institutions, and credit unions.
  - Reasons for change:
    - Helps level the playing field for Vermont institutions.
    - Intended to provide greater consumer access to lower value cards.

SEC. 12: CREDIT FOR REINSURANCE

- Revisions are based on NAIC Model Act #785, which was updated in 2019 to conform to the covered agreement entered into between the US federal insurance office (FIO) and the EU:
  - "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance" signed September 22, 2017 and currently in force.
  - Similar covered agreement with the United Kingdom signed December 18, 2018; enters into force after Brexit.

CREDIT FOR REINSURANCE (CONT.): REINSURANCE COLLATERAL

- An insurer may recognize premiums ceded to reinsurers and losses recovered from reinsurers as assets if certain requirements are met.
- In the past, a non-US-licensed reinsurer had to post 100% collateral in the US for the ceding insurer to claim statutory credit, whereas a US-licensed reinsurer was exempt from the requirement to post collateral.
- In 2011, the NAIC revised its model law to reduce the reinsurance collateral requirements applicable to certain non-US reinsurers domiciled in "qualified" jurisdictions. Determination of qualified jurisdictions is based on a standardized process similar to the NAIC's state-based accreditation process.
- Currently three non-EU qualified jurisdictions: Bermuda, Japan, and Switzerland (NAIC reevaluates these jurisdictions every five years).

CREDIT FOR REINSURANCE (CONT.): WHAT IS A COVERED AGREEMENT?

- An agreement between the United States and a foreign government regarding prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is *substantially equivalent* to the level of protection achieved under state regulation (Dodd-Frank).
- Eliminates state-based reinsurance collateral and local presence requirements for EU reinsurers that meet the agreement's consumer protection standards:
  - Maintain minimum amount of own funds equivalent to $250 million; and
  - 100% solvency capital requirement under the EU's Solvency II insurance regulatory system.
- Allows US insurers with EU operations to avoid burdensome worldwide group capital, governance, and reporting requirements under Solvency II and EU local presence and collateral requirements.

CREDIT FOR REINSURANCE (CONT.): RECIPROCAL JURISDICTIONS

- 2019 model law revisions recognize three categories of reciprocal jurisdictions in which eligible reinsurers may be exempted from the requirement to post reinsurance collateral:
- 1. Covered agreement jurisdictions;
- 2. Qualified jurisdictions (same as 2011 law but now qualified jurisdictions must comply with additional requirements consistent with the terms of the covered agreements, including the elimination of local presence requirements for US reinsurers and recognition of the US regulatory approach to group supervision, especially with respect to group capital calculation); and
- 3. NAIC-accredited US jurisdictions.

CREDIT FOR REINSURANCE (CONT.): IMPORTANT DATES

- The FIO will begin evaluating potential preemption determinations 42 months after the signature of the covered agreement (March 1, 2021) and ***must*** complete any necessary preemption determinations 60 months after signature (September 1, 2022).
  - Dodd-Frank requires state insurance laws to be "consistent" with the covered agreement, so the NAIC recommends states adopt revisions in close to identical form to the model law.
- **NAIC revised Model Act #785 will become an accreditation standard as of September 2022.**

SEC. 13-18: INSURANCE CLAIMS; ANNUITY DEATH BENEFITS; INTEREST PAYMENTS

- Reorganize a confusing section by separating it into three: one for property & casualty insurance claims; one for life insurance and annuity death benefit claims; and one for common damages provisions.
- Incorporate existing laws and regulations for timely payments.
  - Incorporate Regulation I-1979-02 time periods for payments of P&C claims.
  - Fix discrepancy in 8 V.S.A. § 3731 (which allowed an insurer to specify a longer period in a policy).
- Eliminate the unintended 30-day grace period for judgment interest on P&C claims.
- Add a provision requiring the payment of interest on annuity death benefit claims.
  - This would harmonize Vermont law with Interstate Insurance Product Regulation Committee standards and with existing law for life insurance benefits.

INSURANCE CLAIMS; ANNUITY DEATH BENEFITS; INTEREST PAYMENTS (CONTINUED)

P&C claims

- Claims under policies other than surety and title insurance must be paid within 10 business days after the date the claim is agreed upon between the insurer & the claimant (Regulation I-1979-02).
- Surety & title insurance claims must be paid within 30 days.
- Contested claims must be paid within 30 days after non-appealable judgment, arbitration decision, or settlement agreement.
- If an insurer fails to pay a claim within these time periods, it must pay interest thereafter at the statutory judgment rate (12%).

INSURANCE CLAIMS; ANNUITY DEATH BENEFITS; INTEREST PAYMENTS (CONTINUED)

<u>Life insurance & annuity death benefit claims</u>

- Interest is payable from the date of death at the greater of 6% and the rate for proceeds left on deposit (except some annuities that are subject to SEC rules governing liquidation of account values).
- Uncontested claims must be paid within 30 days after proof of loss is received by the insurer.
- Contested claims must be paid within 30 days after non-appealable judgment, arbitration decision, or settlement agreement.
- If an insurer fails to pay a claim within these time periods, it must pay interest thereafter at the statutory judgment rate (12%).

SEC. 19: PUBLIC HOLDING COMPANY ACQUISITIONS; PUBLIC HEARINGS

- Make public hearings on insurance holding company mergers and acquisitions discretionary rather than mandatory.
  - If the Commissioner determines a hearing is not necessary, DFR will publish notice of the proposed transaction and consider public comments received.
- Provide the Commissioner with 60 days (rather than 30 days) to hold a hearing after receiving notice of proposed transaction.

SEC. 20-22: CONFORM CROSS-REFERENCES

- 8 V.S.A. § 3684 amended generally in 2013.
- 8 V.S.A. §§ 3741-3749 repealed and re-codified in 2015.
- 8 V.S.A. § 4656 was repealed and re-codified in 1984.

SEC. 23-24: HOSPITAL AND MEDICAL SERVICE CORPORATIONS; ANNUAL REPORT DEADLINE

- Revise annual report filing deadlines for hospital and medical service corporations (from March 15 to March 1).
  - Reasons for change:
    - Resolves a statutory conflict with NAIC filing requirements, which were revised in 2013.
    - Conforms to the current practice of BC/BS and Delta Dental.

SEC. 25: ASSOCIATION HEALTH PLANS

- Clarify that the bans on enrollment of new employer members in existing association health plans and formation of new association health plans apply to "pathway 2" AHPs only-- AHPs that formed or could have form under ERISA and Dept. of Labor guidance in effect as of 1/19/2017.
  - "Pathway 1" AHPs (or *bona fide* AHPs) are considered single employers under ERISA.
    - Members must have a common interest (such as being in the same trade or industry) or close economic connection and a representational nexus to the association (i.e. not based solely on geographic proximity).
  - "Pathway 2" AHPs were permitted to form under DOL's 2018 regulations. The D.C. district court found these regulations violated ERISA; DOL has appealed.

SEC. 26-27: REQUIRED POLICY PROVISIONS

- Clarify that ACA protections incorporated into Vermont law do not apply to certain limited benefit policies (specified diseases, retirees only, etc.).
  - Protections include a prohibition on preexisting condition exclusions, annual limitations on cost sharing, ban on annual and lifetime limits, and prohibition on cost sharing.
- Tie to definition of "group health plan" in federal regulation, which is subject to certain "excepted benefits."

SEC. 28: SECURITIES; FILING FEES; FEDERAL COVERED FIRMS

- Delete the requirement to provide information on, pay a $120 fee with respect to, each branch office of a federal covered investment adviser.
- Under NSMIA, a state cannot require any state registration of branches of a federally covered firm; it can only require a copy of what the firm files with the SEC.
- DFR does not enforce this section.