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STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Senator Ann Cummings, Chair
Senate Committee on Finance

From: Maria Royle, Legislative Counsel

Date: May 21, 2020

Subject: **H.643 – Section by Section Summary**

H.643, *an act relating to banking and insurance*, incorporates legislative proposals initiated by the Department of Financial Regulation. A section-by-section summary of the bill is as follows:

Secs. 1–5 concern the regulation of personal information protection companies. These are companies that monitor activities associated with your personal information, such as credit scores, and offer protection against fraudulent transactions or identity theft.

Two years ago (2018), the General Assembly enacted a regulatory framework that applies specifically to personal information protection companies. (See chapter 78 of Title 8.)

Last year (2019), as part of the banking bill (Act No. 20), the General Assembly enacted general licensing provisions applicable to all non-depositary entities. (See chapter 72 of Title 8). Examples of non-depository entities regulated under these provisions include: consumer and commercial lenders; mortgage loan brokers and originators; sales finance companies; loan solicitors; consumer litigation funding companies; money transmitters; check cashing and currency exchange companies; debt adjusters; and loan servicers.

This bill proposes to now apply these general licensing provisions to personal information protection companies. As a result, the State will have greater regulatory oversight over personal information protection companies, and that oversight will be consistent with how other similar businesses are currently regulated in Vermont. The fees will remain unchanged. There will be no impact on existing companies, because there are currently none in Vermont.

Sec. 6 is a technical correction to Vermont's licensed lender law. (See chapter 73 of Title 8.) Under existing law, public instrumentalities are exempt from having to obtain a lender license from the Department of Financial Regulation. Last year, the word "state" was capitalized. This had the unintended consequence of only exempting *Vermont*

agencies, as opposed to any other state agencies, from the need to obtain a lender license. The proposal here fixes that. All state agencies are exempt.

<u>Secs. 7–10</u> concerns the general licensing provisions applicable to all non-depository licenses. (Referenced above; chapter 72 of Title 8.)

<u>Sec. 7</u> proposes two substantive amendments that pertain specifically to applications for a license.

- The *first* amendment removes the requirement that the Commissioner must find that the applicant is licensed in its home state and in good standing with its home-state regulator. The Department explained that this is not necessary given the new exam system and multi-state licensing platform available through the Nationwide Multistate Licensing System and Registry (NMLS).[1] The application process will be expedited by removing this requirement. The Department also noted that not all states require a company to be licensed in its home state.
- The *second* amendment permits the Commissioner to deem an application "abandoned or withdrawn" if the application remains incomplete for 120 days. Existing law has a shorter duration of 90 days. In addition, the amendment removes the condition that "the applicant has not corresponded with the Commissioner" in that time period. The Department explained that this change harmonizes Vermont law with the federal S.A.F.E. Act,[2] which gives certain mortgage loan originators a 120-day temporary authority period while their application is pending. That temporary authority ends if the application remains incomplete for 120 days.

[1] The Nationwide Multistate Licensing System ("Nationwide Mortgage Licensing System," NMLS," or the "System") is the system of record for non-depository, financial services licensing or registration in participating state agencies. In these jurisdictions, NMLS is the official system for companies and individuals seeking to apply for, amend, renew and surrender license authorities managed through NMLS. NMLS itself does not grant or deny license authority. NMLS is the sole system of licensure for mortgage companies for 58 state agencies and the sole system of licensure for Mortgage Loan Originators (MLOs) for 59 state and territorial agencies. Over three-quarters of the states also currently manage additional license types through the System in the money services business, debt, and consumer finance industries. NMLS is also the system of record for the registration of depositories, subsidiaries of depositories, and MLOs under the Consumer Financial Protection Bureau's Regulation G (S.A.F.E. Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators), published December 19, 2011. NMLS was created by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) and began operations in January 2008. It is owned and operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of CSBS. The goal of NMLS is to employ the benefits of local, state-based financial services regulation on a nationwide platform that provides for improved coordination and information sharing among regulators, increased efficiencies for industry, and enhanced consumer protection.

[2] The S.A.F.E. Act (Secure and Fair Enforcement for Mortgage Licensing Act of 2008) establishes federal registration requirements for any individual who acts as a residential mortgage loan originator (MLO) and is employed by a financial institution, and certain subsidiaries, regulated by a federal agency, such as the Federal Reserve, the OCC, and FDIC. In July 2010, these federal agencies issued jointly developed final rules that require MLOs to register with the Nationwide Mortgage and Licensing System and Registry (Registry) as required by the S.A.F.E. Act.

Sec. 8 clarifies that, if a license is denied, the Department must return to the applicant the bond rather than the amounts paid for the bond requirement. The Department holds the bond, not the money paid for the bond, which remains with the surety agency. (Bonds are often required when a business applies for a license. They are a form of financial security. The surety is the entity that backs the bond.) Accordingly, the proposed statutory amendment is consistent with current practice.

Sec. 9 proposes to amend the section on penalties. It specifies that the Commissioner may order a person to make restitution for violations of "this part [of Title 8, i.e., banks and other financial institutions]" rather than "this title," which is how the law currently reads. The Department explained that this was a technical correction that is consistent with other amendments made to chapter 72 (the licensing sections applicable to non-depository institutions). It narrows the scope of the Commissioner's authority to order restitution in this instance to only part 2 of Title 8 rather than all of Title 8. That said, other provisions of Title 8 give the Commissioner authority to impose penalties and restitution under other parts of Title 8.

Examples of instances where the Commissioner has ordered restitution for violations of part 2 include: failure to disclose fees in a mortgage loan agreement and charging fees in excess of statutory maximums.

Sec. 10 corrects a reference to the Nationwide *Multistate* Licensing System and Registry. Existing law erroneously refers to the prior name, the Nationwide *Mortgage* Licensing System and Registry.

Sec. 11 pertains to the fees charged for prepaid access cards. Previously known as "stored value cards" these are basically prepaid debit cards that are not associated with a bank account. Under existing law, Vermont institutions (money transmitters, financial institutions, credit unions) that offer prepaid access cards are permitted to charge a one-time fee upon issuance. That fee can be 10% of the face amount of the card or $10.00, whichever is less. The amendment strikes the existing fee structure and instead specifies that the fee must be "reasonably related to the cost to the issuer of issuing the card; provided that, in no event shall the fee exceed $10.00."

The Department explained that the purpose of the amendment is twofold: first, to provide greater consumer access to lower value cards; and, second, to help level the playing field for VT institutions who are competing with federally regulated banks, which are permitted under federal law to have lower fees. The average cost to issue a card is about $4–$5. To issue a $20 card, the financial institution could only make $2 under existing law. This is not profitable.

Sec. 12 concerns credit for reinsurance. Specifically, it governs the circumstances under which a Vermont insurer can record as an asset on its balance sheet reinsurance protection obtained from another carrier. The proposal reflects a model law adopted by the National Association of Insurance Commissioners (NAIC).

The model law conforms to an international agreement entered into between the U.S. and the European Union in 2017,[3] and a substantially similar agreement between the U.S. and the United Kingdom. These "covered agreements" impose uniform rules as to the availability of credit for reinsurance across these jurisdictions; i.e., "reciprocal jurisdictions."

The U.S. has a state-based system of insurance regulation. Historically, state insurance regulators have required non-U.S. reinsurers to hold 100% collateral within the U.S. for the risks they assume from U.S. insurers. Under the covered agreements, the collateral requirements are eliminated provided certain regulatory criteria are met. States have until September 2022 to comply entirely with the collateral requirements or be subject to federal preemption. The federal government will begin conducting an assessment of non-compliant states beginning March 2021.[4] The Commissioner will need to adopt rules implementing the new law, a process that generally takes 6-7 months.

In addition to E.U. and U.K. reinsurers, the NAIC model law expands the definition of "reciprocal jurisdiction" to include NAIC-accredited jurisdictions as well as non-U.S. jurisdictions that meet requirements consistent with the covered agreements. As of now, three countries fall within this latter category: Bermuda, Japan, and Switzerland.

The amendment requires an assuming insurer to maintain minimum capital and surplus as well as a minimum solvency or capital ratio, both of which are to be established in rule. Additional provisions require the assuming insurer to:

- Submit to the jurisdiction of Vermont's courts and appoint the Commissioner of Financial Regulation as agent for service of process.
- Consent to pay all enforceable judgments.
- Post security in an amount equal to 100% of its reinsurance liabilities if it resists a judgment.
- Maintain a practice of "prompt payment of claims."

Secs. 13–18 pertain to insurance claims, specifically an insured's obligation to file proof of loss and an insurance company's obligation to pay claims in a timely manner.

<u>*Sec. 13*</u> concerns filing proof of loss. The amendment changes the terminology to be consistent with the more specific terms used in the new sections concerning the timely payment of claims. "Insured" is replaced with both "claimant" and "beneficiary," and the definitions in the new sections are cross-referenced.

<u>*Sec. 14*</u> repeals the existing section of law that pertains to the timely payment of insurance claims. Its substantive provisions are separated into three new statutes

[3] Bilateral Agreement Between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance, entered into September 2017 pursuant to the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 31 U.S.C. §§ 313 and 314. The international agreement was signed by the Federal Insurance Office (FIO) and the European Union.

[4] <u>*The Dodd-Frank Act provides that state insurance laws can be preempted if the Director of the FIO determines the laws are inconsistent with a covered agreement or result in less favorable treatment to reinsurers from covered agreement jurisdictions*</u>.

concerning: (1) property and casualty, surety, and title insurance claims; (2) life insurance and annuity death benefits; and (3) damages, as follows:

- *For comparison*, existing law, § 3665 requires:
    - Payment within 30 days after beneficiary has provided a properly executed proof of loss to the insurer.
    - For uncontested claims that are not timely paid, interest accrues from 30 days after proof of loss at rate on proceeds left on deposit or 6%, whichever is greater. Interest rate increases to judgment rate (12%) after 60 days.
    - For contested claims, payment is due within 30 days after judgment, and interest accrues from 30 days after proof of loss filed at the judgement rate (12%).
    - For life insurance, interest accrues from date of death at the rate paid on proceeds left on deposit or 6%, whichever is greater.
- *Sec. 15* pertains to property and casualty, surety, and title insurance.
    - The new law specifies that it does not apply to workers' compensation insurance, which is governed under Title 21.
    - P&C claims must be paid within 10 days after agreed-upon settlement. (This is consistent with existing DFR regulations.)
    - Surety and title claims must be paid within 30 days after agreed-upon settlement.
    - Contested claims must be paid within 30 days after entry of final judgment.
    - If unpaid after applicable time period passes, interest is charged at judgment rate (12%) and accrues from proof of loss.
- *Sec. 16* pertains to life insurance and annuity death benefits.
    - Life insurance claims must be paid within 30 days from proof of loss. Interest accrues from date of death at the rate paid on proceeds left on deposit or 6%, whichever is greater. (Same as current law.)
    - Claims for death benefits under an annuity contract [new] must be paid within 30 days of proof of loss filing. Interest is at the rate paid for proceeds left on deposit or 6%, whichever is greater. Interest accrues as follows:
        - For variable annuity contracts subject to SEC rules, on the 8th day following proof of loss filing.
        - For all other annuity contracts, from the date of death, unless contract specifies otherwise.
    - Contested claims must be paid within 30 days after entry of judgment.
    - If unpaid after applicable time period passes, interest is charged at judgment rate (12%), which accrues from 30 days after proof of loss is filed.
- *Sec. 17* pertains to consequential damages caused by improper payment delays, and it mirrors existing law but in a new, stand-alone statute.

Sec. 18 amends existing law to be consistent with the above time periods. Existing law, § 3731(10), which concerns payment of life insurance and annuity benefits,

allows insurers to extend the payment period up to <u>two months</u> from proof of loss filing. The proposed amendment reduces that statutory period to 30 days.

The Department explained that the above amendments are intended to create uniformity across all lines of benefits by incorporating existing laws and regulations, removing statutory inconsistencies, and harmonizing VT requirements with Interstate Insurance Product Regulation Commission standards for life insurance, created in 2000 by the NAIC as a clearinghouse for form filings.

Sec. 19 concerns insurance holding company mergers and acquisitions and gives the Commissioner discretion on whether or not to hold a public hearing. Existing law requires the Commissioner to hold a public hearing, even if there are no Vermont policyholders. The proposal here requires a hearing only if the Commissioner determines that either the filings do not comply with VT standards or the acquisition of control is likely to be hazardous or prejudicial to the insurance buying public or if a hearing is requested by the acquiring party. If a hearing is not required, notice of the transaction must be published, and there is 14-day comment period, after which the Commissioner may hold a hearing in response to comments received.

The proposal also extends from 30 to 60 the number of days the Commissioner has to hold a hearing after receiving notice of the proposed transaction.

Secs. 20–22 are all conforming cross-references. They do not make substantive changes to Vermont law.

<u>**Secs. 23–27**</u> are health care provisions that were reviewed by the House Committee on Health Care.

Sec. 28 pertains to notice filings (registrations) under Vermont's Securities Act. The State is preempted from requiring a federal covered investment advisor to "notice file" (i.e., register) the firm's *branch* offices in Vermont. [A federal covered investment advisor is an advisory that has more than $30 million in assets under management.] Accordingly, the existing conflicting state requirement is repealed. The corresponding fee is repealed; however, because it has not been enforced since 2015 (when it was challenged by applicable investment firms), there is no loss of revenue to the State.

Sec. 29 makes the act effective on July 1, 2020, except that Sec. 12 (credit for reinsurance) shall take effect on January 1, 2021.

<u>**Committee Vote to Concur:**</u> 7-0-0