

1 TO THE HONORABLE SENATE:

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

6 \* \* \* Insurance Regulatory Sandbox; Sunset \* \* \*

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

8 § 15a. INSURANCE REGULATORY SANDBOX; INNOVATION

9 WAIVER; SUNSET

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

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

19 (2) the public policy goals of the law, regulation, or bulletin will be or  
20 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) Pursuant to the authority granted by this section, the Commissioner may  
6 not grant a waiver with respect to any of the following:

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

10           (2) chapter 107, 112, 129, or 131 of this title or any regulations or  
11 bulletins directly relating thereto;

12           (3) any law, regulation, or bulletin required for the Department to  
13 maintain its accreditation by the National Association of Insurance  
14 Commissioners unless said law or regulation permits variances or waivers;

15           (4) the application of any taxes or fees; and

16           (5) any other law or regulation deemed ineligible by the Commissioner.

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

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

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

6                   (B) the proposed terms, conditions, and limitations of the draft  
7           waiver;

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

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

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

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

16                   (A) the specific statute, regulation, or bulletin to which the waiver  
17          applies;

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

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

1           (D) any additional information deemed appropriate by the  
2           Commissioner.

3           (2) The notice requirement of this subsection may be satisfied by  
4           publication on the Department’s website.

5           (k) The Commissioner, by regulation, shall adopt uniform procedures for  
6           the submission, granting, denying, monitoring, and revocation of petitions for a  
7           waiver pursuant to this section. The procedures shall set forth requirements for  
8           the ongoing monitoring, examination, and supervision of, and reporting by,  
9           each person granted a waiver under this section and shall permit the  
10          Commissioner to attach reasonable conditions or limitations on the conduct  
11          permitted pursuant to a waiver. The procedures shall provide for an expedited  
12          application process for a product or service that is substantially similar to one  
13          for which a waiver has previously been granted by the Commissioner.

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

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

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

3           (1) the total number of petitions for waivers that have been received,  
4       granted, and denied by the Commissioner;

5           (2) for each waiver granted by the Commissioner, the information  
6       specified under subsection (f) of this section;

7           (3) a list of any regulations or bulletins that have been adopted or  
8       amended as a result of or in connection with a waiver granted under this  
9       section;

10          (4) with respect to each statute to which a waiver applies, the  
11       Commissioner’s recommendation as to whether such statute should be  
12       continued, eliminated, or amended in order to promote innovation and  
13       establish a uniform regulatory system for all regulated entities; and

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

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

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

19                           \* \* \* Capital and Surplus Requirements \* \* \*

20       Sec. 2. 8 V.S.A. § 3304 is amended to read:

21       § 3304. CAPITAL AND SURPLUS REQUIREMENTS

1        (a)(1) To qualify for authority to transact the business of insurance, a stock  
2 insurer seeking such authorization shall possess and thereafter maintain  
3 unimpaired paid-in capital of not less than \$2,000,000.00 and, when first so  
4 authorized, shall possess and maintain free surplus of not less than  
5 \$3,000,000.00. ~~Such~~

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

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

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

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

10       § 3366. ASSETS OF COMPANIES

11       (a)(1) ~~Such~~ A foreign or alien insurer authorized to do business in this State  
12       shall possess and thereafter maintain unimpaired paid-in capital or basic  
13       surplus of not less than \$2,000,000.00 and, when first so authorized, shall  
14       possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

15       (2) The capital and surplus shall be in the form of cash or marketable  
16       securities, a portion of which may be held on deposit with the State Treasurer,  
17       such securities as designated by the insurer and approved by the  
18       Commissioner, in an amount and subject to ~~such~~ conditions determined by the  
19       Commissioner. ~~Such~~ The conditions shall include a requirement that any  
20       interest or other earnings attributable to such cash or marketable securities  
21       shall inure to the benefit of the insurer until such time as the Commissioner

1 determines that the deposit must be used for the benefit of the policyholders of  
2 the insurer or some other authorized public purpose relating to the regulation  
3 of the insurer.

4 (3) The Commissioner may prescribe additional capital or surplus for all  
5 insurers authorized to transact the business of insurance based upon the type,  
6 volume, and nature of insurance business transacted. The Commissioner may  
7 reduce or waive the capital and surplus amounts required by this section  
8 pursuant to a plan of dissolution for the company approved by the  
9 Commissioner.

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

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

19 Premium Taxation \* \* \*

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

21 § 5022. DEFINITIONS

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\* \* \*

(b) As used in this chapter:

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

\* \* \*

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

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

(5) “Domestic surplus lines insurer” means a domestic insurer with which insurance coverage may be placed under this chapter.

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

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

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

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the

1 greatest percentage of the insured’s taxable premium for that insurance  
2 contract is allocated.

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

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

10 ~~(7)(9)~~ “Surplus lines broker” means an individual licensed under this  
11 chapter and chapter 131 of this title.

12 ~~(8)(10)~~ “Surplus lines insurance” means coverage not procurable from  
13 admitted insurers.

14 ~~(9)(11)~~ “Surplus lines insurer” means a non-admitted insurer with which  
15 insurance coverage may be placed under this chapter.

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

17 § 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

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



1 § 5026. SOLVENT INSURERS REQUIRED

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

7 \* \* \*

8 (b) Notwithstanding the capital and surplus requirements of this section, a  
9 ~~non-admitted~~ surplus lines insurer may receive approval upon an affirmative  
10 finding of acceptability by the Commissioner. The finding shall be based upon  
11 such factors as quality of management, capital, and surplus of any parent  
12 company, company underwriting profit and investment-income trends, market  
13 availability, and company record and reputation within the industry. In no  
14 event, however, shall the Commissioner make an affirmative finding of  
15 acceptability when the surplus lines insurer's capital and surplus is less than  
16 \$4,500,000.00.

17 \* \* \*

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

19 § 5027. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

20 (a) Where Vermont is the home state of the insured, the surplus lines  
21 broker, upon placing a domestic risk with a surplus lines insurer, either

1 domestic or foreign, shall promptly deliver to the insured the policy issued by  
2 the surplus lines insurer, or if such policy is not then available, a certificate,  
3 cover note, or other confirmation of insurance, showing the description and  
4 location of the subject of the insurance, coverage, conditions and term of the  
5 insurance, the premium and rate charged and taxes collected from the insured,  
6 and the name and address of the insured and surplus lines insurer. If the risk is  
7 assumed by more than one insurer, the document or documents shall state the  
8 name and address and proportion of the entire risk assumed by each insurer.

9 \* \* \*

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

11 § 5028. INFORMATION REQUIRED ON CONTRACT

12 Where Vermont is the home state of the insured, each surplus lines broker  
13 through whom a surplus lines insurance coverage is procured shall endorse on  
14 the outside of the policy and on any confirmation of the insurance, his or her  
15 name, address and license number, and the name and address of the producer,  
16 if any, through whom the business originated. Where such coverage is placed  
17 with an eligible surplus lines insurer there shall be stamped or written  
18 conspicuously in no smaller than 10 point boldface type of a contrasting color  
19 upon the first page of the policy and the confirmation of insurance if any, “The  
20 company issuing this policy ~~has not been licensed by the State of Vermont~~ is a  
21 surplus lines insurer and the rates charged have not been approved by the

1 Commissioner of Financial Regulation. Any default on the part of the insurer  
2 is not covered by the Vermont Insurance Guaranty Association.”

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

4 § 5029. SURPLUS LINES INSURANCE VALID

5 (a) Insurance contracts procured as surplus lines insurance from ~~non-~~  
6 ~~admitted~~ surplus lines insurers in accordance with this chapter shall be valid  
7 and enforceable to the same extent as insurance contracts procured from  
8 admitted insurers.

9 (b) The insurance trade practices provisions of sections 4723 and 4724(1)–  
10 (7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–  
11 3883 (regarding fire and casualty policies) and 4711–4715 (regarding  
12 commercial risk policies) of this title shall apply to surplus lines insurers, both  
13 domestic and foreign.

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

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

17 § 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER

18 FOR LOSSES AND UNEARNED PREMIUMS

19 If a ~~non-admitted~~ surplus lines insurer has assumed a surplus lines coverage  
20 through the intervention of a licensed surplus lines broker of this State, and if  
21 the premium for that coverage has been received by that broker, then in all

1 questions thereafter arising under the coverage as between the insurer and the  
2 insured, the insurer shall be deemed to have received that premium and the  
3 insurer shall be liable to the insured for losses covered by such insurance and  
4 for any return premiums due on that insurance to the insured whether or not the  
5 broker is indebted to the insurer for such insurance or for any other cause.

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

7 § 5035. SURPLUS LINES TAX

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

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







1 approved by the United States Food and Drug Administration ~~and the~~  
2 ~~Commissioner~~, included in the current Centers for Disease Control and  
3 Prevention recommended laboratory HIV testing algorithm for serum or  
4 plasma specimens, used to determine the existence of HIV antibodies or  
5 antigens in the blood, ~~urine, or oral mucosal transudate (OMT).~~

6 \* \* \*

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

14 (I) an explanation of the test or tests to be given, including: the  
15 tests' relationship to AIDS, the insurer's purpose in seeking the test, potential  
16 uses and disclosures of the results, limitations on the accuracy of and the  
17 meaning of the test's results, the importance of seeking counseling about the  
18 individual's test results after those results are received, and the availability of  
19 information from and the telephone numbers of the Vermont Department of  
20 Health AIDS hotline and the Centers for Disease Control and Prevention; and

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

7 \* \* \*

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

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

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

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

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

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

19           (D) HIV-related tests required by insurers or insurance support  
20           organizations must be processed in a laboratory certified under the Clinical  
21           Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements

1 of the federal Health Care Financing Administration under the Clinical  
2 Laboratory Improvement Amendments.

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

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

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

5 \* \* \*

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

10 \* \* \*

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

12 § 501b. CERTIFICATION OF LABORATORIES

13 \* \* \*

14	(d) Laboratory certification and approval	Annual fee shall be:
15	Drug laboratory approval	\$500.00
16	Drug laboratory alternate approval	\$300.00
17	Drug laboratory approval renewal	\$300.00
18	HIV laboratory approval	\$300.00
19	HIV laboratory alternate approval	\$100.00
20	HIV laboratory approval renewal	\$100.00
21	<del>HIV laboratory (insurance) approval</del>	<del>\$500.00</del>



1 party in a restitution award in a final order, and the heirs and assigns of a  
2 named party in a restitution award in a final order.

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

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

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

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

11 (6) “Vulnerable person” means:

12 (A) a person who meets the definition of vulnerable person under  
13 33 V.S.A. § 6902(14); or

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

15 (c) Eligibility.

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

18 (2) The Commissioner may not award securities restitution assistance  
19 under this section:

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

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

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

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

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

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

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

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

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

12          (3) is related to the person who committed the securities violation.

13          (e) Application for Restitution Assistance and Maximum Amount of  
14          Restitution Assistance Award.

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

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

19          (3) Except as provided in subdivision (4) of this subsection, the  
20          maximum award from the fund for each claimant shall be the lesser of

1 \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final  
2 order.

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

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

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

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

19 (i) Subrogation of Rights of State.

20 (1) The State is subrogated to the rights of the person awarded  
21 restitution under this chapter to the extent of the award.





1       Sec. 21. EFFECTIVE DATE

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

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4

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10       (Committee vote: \_\_\_\_\_)

11

\_\_\_\_\_

12

Senator \_\_\_\_\_

13

FOR THE COMMITTEE