

To: Senate Finance
From: Vermont Association for Justice
Date: March 19, 2019
Re: S.131; Insurance Sandbox proposal

Public policy around rate regulation and solvency and transparency are a big deal. VTAJ acknowledges that is a space the Legislature is being asked to embrace a flexible performance-based outcome approach from your regulatory agency. Those areas, while paramount to public protection, are generally beyond our purview.

We also recognize the area of consumer notifications of policy rights may be moving from paper to e-commerce, for example, which is a nerve-racking thing for all sides of the table in these transactions, that may—or may not—warrant some innovation in service delivery.

In assessing this proposed bill, VTAJ is focused on the consumer protection interactions in these laws; the places we see 1st and 3rd party benefit recovery rights on the line.

Why? People look to insurance in a time of crisis and need after unexpected and costly events overcome them. That is when the fine print comes into play and coverage status, exclusions from coverage, reconciliation terms, and insureds' rights meet decades of insurance lawyers crafting fine print tailored to maximize stockholder profits.

Does “better products” mean more choices but less coverage? More e-notification but less consumer awareness? The leading values in the bill are about “new, innovative and more efficient” products. What that will mean all hangs on a subjective interpretation of what the regulator feels as the “purpose” of a law. The bill sets a broad zone of discretion for the regulator.

VTAJ appreciates the exclusion of Chapter 129, the Unfair Insurance Practices statute. That is the Red Zone for consumers.

Chapter 117, workers comp, should be excluded from this experimental regulation phase. The workers compensation insurance system is a sensitive section of the law as well. It involves a forced “compact” where workers' traditional rights to recovery for harm caused by employer negligence are abridged in exchange for guaranteed, partial recovery rights. This is not a willing seller, willing buyer marketplace because there is a third-party intermediary between the worker and the insurance benefits she deserves.

Title 23 automobile insurance laws should be excluded from the bill. The current draft does not seem to expressly limit the waiver powers to Title 8?

Chapter 105 Fire Insurance has a provision, section 3868, that triggers recovery rights if payment is delayed that should not be at risk.

Chapter 113 Liability Insurance is largely about rate regulation and forms but there are several sections that impact recovery rights, which is concerning. 4205 governs the effect of misstatements on policy applications. 4211 protects volunteer drivers from rate hikes. 4225 governs the very important area of insurer notice of non-renewal.

Chapter 127 relates to auto insurance surcharges.

Chapter 128 relates to property and casualty insurance rates. This is generally about rate setting and governance but section 4711 relates to the important notice of cancellation of commercial risk insurance.

Also, the bill does not provide for public input on proposed insurance law waivers. It requires public notification but does not provide for an opportunity for public input into DFR's decisions.