This act summary is provided for the convenience of the public and members of the General Assembly. It is intended to provide a general summary of the act and may not be exhaustive. It has been prepared by the staff of the Office of Legislative Counsel without input from members of the General Assembly. It is not intended to aid in the interpretation of legislation or to serve as a source of legislative intent.

Act No. 25 (S.88). Insurance; banking; securities

An act relating to insurance, banking, and securities

This act makes various changes to Vermont's insurance, banking, and securities law.

Sec. 1 pertains to the regulation of debt adjusters. The amendment clarifies the titles and terms that may not be used by unlicensed entities. Under current law, an unlicensed entity may not call itself a "debt adjuster" or "budget planner." The amendment expands the prohibitions to include "words of similar import."

Secs. 2–3 pertain to the Department's general licensing provisions. The amendments eliminate a type of license; specifically, the combination license. In 2019, the General Assembly allowed companies to apply for and receive a combination of up to four license types—lender, mortgage broker, loan solicitation, or loan servicer—at a discounted fee. However, the Department has not been able to successfully implement this concept within the Nationwide Multistate Licensing System, and it has caused problems with reporting and public records requests. Eliminating the combination license will require companies to apply, as in prior years, for individual licenses.

Sec. 4 pertains to annual reporting requirements applicable to nonbank licensees, for example, licensed lenders, mortgage brokers, and loan servers. The amendment increases the penalty from $100.00 to $1,000.00 for each month the report is past due. (There is a five-day grace period before the fee applies.)

Sec. 5 eliminates mandatory annual reporting requirements for independent trust companies. Instead, such reports would be optional at the discretion of the Commissioner. Currently, the Department requests financial reports from independent trust companies on a more frequent basis and does not necessarily need the additional annual report from each company.

Secs. 6–8 pertain to mortgage loan originators and employees of other nonbank licensees. The amendments permit such workers to work from home without obtaining a branch license for their residence. As a result, they could continue to conduct operational and licensable activities remotely through a licensed business location without being physically present at that location. This change codifies practices currently permitted during the state of emergency under the Department's emergency rules. In connection with this change, the Department

intends to adopt rules requiring certain safeguards for the conduct of business from home, including cybersecurity protocols.

Sec. 9 pertains to insurance licensing requirements. The amendment eliminates the requirement that licensees personally deliver or mail suspended, revoked, or terminated licenses to the Commissioner. This is no longer necessary because the Insurance Division now maintains electronic licensing records and has not, for a number of years, required the return of paper licenses.

Sec. 10 pertains to confidentiality protections applicable to reports and records of investigations and examinations of insurance companies. The amendment applies confidentiality protections to investigations and examinations submitted under all parts of Title 8.

Currently the protections apply solely to materials submitted under parts 2 and 4 of Title 8, which apply to banks and securities entities but not insurance entities or credit unions. With respect to insurance, records and reports that are submitted pursuant to investigations and examinations are confidential under other sections of Title 8, but the logical place for this language is in section 23 of Title 8. The amendment here amends section 23 accordingly.

Secs. 11–16 apply to risk-based capital standards applicable to HMOs. The amendments make Vermont statutes consistent with the NAIC Risk-Based Capital (RBC) for Health Organizations Model Act (#315), which became effective as an accreditation standard in 2015.

Sec. 17 extends for two years the sunset applicable to the insurance regulatory sandbox. The Department explained that, to date, it has not received any applications for innovation waivers. The Department believes this may be due in part to the pandemic and the reallocation of resources from innovation to damage control. The current statutory sunset is July 1, 2023. The sunset is extended to July 1, 2025.

Sec. 18 clarifies that securities filing and registration fees are nonrefundable in all circumstances rather than solely when the filing results in a denial or withdrawal. The Department's current practice is to reject refund requests for accidental filings, which require significant time and attention by its staff. Thus, the statute would conform with current practice.

Secs. 19–20 revise and clarify the grace periods applicable to major medical health insurance policies. The new statute establishes a 30-day grace period for the payment of premiums on unsubsidized major medical insurance policies, as required under the Affordable Care Act (ACA). Billing for these policies is shifting from the Exchange to individual insurance carriers, so the statute must be updated to reflect the ACA requirement.

Secs. 21–22 pertain to the formation and capitalization of captive insurance companies. Essentially, the amendments rearrange the order of required filings

and procedures to license and capitalize a captive and also appoints the Commissioner of Financial Regulation, rather than the Secretary of State, as the agent for service of process.

Sec. 23 pertains to annual reporting requirements and clarifies that these requirements apply to agency captive insurance requirements.

Secs. 24–25 pertain to protected cell conversions. Under existing law, there is both a specific law and a general law applicable to protected cell conversions. The act repeals the specific law and further expands the general law to include all types of protected cell conversions. As a result, the amendments are a consolidation of two statutes into one more comprehensive statute.

Secs. 26–27 pertain to mergers and consolidations of captive insurance companies. According to the Department, mergers between captives are far more common than mergers of traditional insurers. In Vermont, there are several captive mergers each year. The act provides a specific law applicable only to *captive* mergers and consolidations.

Sec. 26 applies to captive mergers upon the unanimous consent of shareholders, members, or policyholders. This is the case for nearly all captive mergers.

The captive merger provisions in Sec. 27 are modeled after traditional insurance law with slight modifications. The modifications eliminate the need for the Commissioner to waive various parts of the merger rules that the traditional insurance law permits the Commissioner to waive and also deletes rules already specifically exempted in statute. The intent is to streamline the process and minimize the filing of superfluous documents.

Sec. 28 applies to the redomestication of a captive. It establishes a new redomestication statute applicable to captives that is modeled after a similar statute applicable to traditional insurance companies. In addition, it specifies that the redomesticating captive shall pay fees equivalent to a new captive. The law also incorporates the current international practice of requiring proof of acceptance, usually in the form of a conditional license, from the receiving domicile.

Secs. 29–30 apply to risk retention groups. The amendments designate the Commissioner of Financial Regulation, rather than the Secretary of State, as the designated agent for service of process for foreign risk retention groups and purchasing groups doing business in Vermont, in accordance with the federal Liability Risk Retention Act.

Sec. 31 creates a new chapter on dental insurance. It prohibits a dental or health insurer from setting or controlling the fees that dentists can charge for dental services that are not covered by the insurer's dental insurance or health insurance plan.

Sec. 32 creates an opt-in for health care providers to receive their payments from insurers by credit card. It prohibits a health insurer from requiring a health care provider, including a dentist or ambulance service provider, to accept reimbursement by credit card payment unless the provider has affirmatively elected (opted in) to receive payments in that manner. If the provider has not opted in to receiving payments by credit card, the insurer must pay the provider in another manner.

Sec. 33 amends Vermont's standard nonforfeiture law for individual deferred annuities. The standard nonforfeiture law requires that an individual deferred annuity contract provide the contract holder with a paid-up annuity or cash surrender benefits of a minimum amount if the contract holder surrenders the policy (for example, stops making payments) during the accumulation period.

The nonforfeiture amount is the deferred annuity's accumulated value minus certain charges (such as prior withdrawals and loans), based on statutory interest minimums.

The current minimum nonforfeiture interest rate in Vermont is 1.0 percent. The amendment reduces this rate to 0.15 percent. This amendment reflects a model law adopted by the National Association of Insurance Commissioners (NAIC). NAIC determined that, because market interest rates have fallen so low, the current 1.0 percent rate might jeopardize the availability of annuity products to consumers. However, the statutory minimum does not prohibit a company from guaranteeing a contract holder more than that amount.

Sec. 34 makes the act effective on passage, except that Sec. 31 takes effect on January 1, 2022.

Multiple effective dates, beginning on May 12, 2021