

H.515

An act relating to banking, insurance, and securities

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Insurance; Securities; Banking * * *

Sec. 1. 8 V.S.A. § 3685(f)(1) is amended to read:

(1) Sales, purchases, exchanges, loans, or extensions of credit,
~~guarantees~~, or investments, provided such transactions are equal to or exceed:

* * *

Sec. 2. 9 V.S.A. § 5302(e) is amended to read:

(e) At the time of the filing of the information prescribed in ~~subsections~~
subsection (a), (b), (c), or (d) of this section, except investment companies
subject to 15 U.S.C. § 80a-1 et seq., the issuer shall pay to the Commissioner a
fee of \$600.00. ~~If the notice filing is withdrawn or otherwise terminated, the~~
~~Commissioner shall retain the fee paid~~ The fee is nonrefundable.

Sec. 3. 9 V.S.A. § 5305(b) is amended to read:

(b) A person filing a registration statement shall pay a filing fee of \$600.00.
A person filing a registration statement in connection with the New England
Crowdfunding Initiative shall be exempt from the filing fee requirement.
Open-end investment companies shall pay a registration fee and an annual
renewal fee for each portfolio as long as the registration of those securities
remains in effect. ~~If a registration statement is withdrawn before the effective~~

~~date or a preeffective stop order is issued under section 5306 of this title, the~~
~~Commissioner shall retain the fee~~ The fee is nonrefundable.

Sec. 4. 8 V.S.A. § 11601(a)(7) is added to read:

(7) Revoke the charter of a Vermont financial institution that ceases to exist or ceases to be eligible for a charter.

Sec. 5. 8 V.S.A. § 14106 is amended to read:

§ 14106. EXPANDED POWERS OF VERMONT FINANCIAL
INSTITUTIONS

In addition to all other powers permitted under these statutes, any Vermont financial institution shall have the powers conferred under federal law administered by the Federal Reserve Board, the Office of the Comptroller of the Currency, ~~or the Office of Thrift Supervision~~ FDIC, the Consumer Financial Protection Bureau, or other federal banking regulator upon national financial institutions or their subsidiaries.

Sec. 6. 8 V.S.A. § 10405(c)(2) is amended to read:

(2) All assignments, sales, or transfers of a loan agreement or motor vehicle or retail installment contract to which a debt protection agreement relates and the related debt protection agreement, shall be to a financial institution as defined in subdivision 11101(32) of this title, a credit union, or an entity licensed under subdivision 2201(a)(1) or ~~(3)~~(4) of this title to engage in lending or sales financing.

Sec. 7. 8 V.S.A. § 2502(f) is added to read:

(f) A licensee shall register each remote access unit, commonly referred to as a “kiosk,” where a consumer may access money transmission services, including buying or selling virtual currency. Each kiosk is subject to the disclosure requirements established in section 10302 of this title. If a kiosk is owned by a person other than the licensee and the owner charges an additional fee to the consumer for access to the licensee’s services, the owner is also subject to the disclosure requirements of chapter 200 of this title.

Sec. 8. 8 V.S.A. § 4724(8) is amended to read:

(8) Rebates.

* * *

(C) Nothing in subdivision (7) or (8)(A) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:

* * *

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense ~~thereunder~~ under the group insurance policy, at the end of the first or any subsequent policy year of insurance ~~thereunder~~ under the group policy, which may be made retroactive only for such policy year;

(iv) the offer or provision by insurers, by or through employees, affiliates, or third-party representatives of value-added products or services at no or reduced cost, even when such products or services are not specified in the insurance policy, provided the product or service meets each of the following criteria:

(I) The product or service relates to the insurance coverage.

(II) The product or service is primarily designed to satisfy one or more of the following:

(aa) provide loss mitigation or loss control;

(bb) reduce claim costs or claim settlement costs;

(cc) provide education about liability risks or risk of loss to persons or property;

(dd) monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(ee) enhance health;

(ff) enhance financial wellness through items such as education or financial planning services;

(gg) provide post-loss service;

(hh) incent behavioral changes to improve health or reduce the risk of death or disability or an insured or potential insured; or

(ii) assist in the administration of the employee or retiree benefit insurance coverage.

(III) The cost to the insurer offering the product or service to any given customer is determined by the Commissioner to be reasonable in comparison to that customer's premiums or insurance coverage for the policy class.

(IV) The insurer, providing the product or service directly or through a producer, ensures that the customer is provided with contact information to assist the customer with questions regarding the product or service.

(V) The availability of the product or service is based on documented objective criteria and offered in a manner that is not unfairly discriminatory.

(VI) Within 10 days after offering or providing a product or service pursuant to subdivision (8)(C)(iv) of this section, the insurer submits to the Commissioner a description of the offer or provision, accompanied by an explanation of how each criterion in this subdivision (8)(C)(iv) of this section is met.

(D) An insurer, producer, or representative of either may not offer or provide insurance as an inducement to the purchase of another policy or

otherwise use the words “free” or “no cost” or words of similar import in an advertisement.

Sec. 9. 8 V.S.A. § 3750(d)(1)(C)(iii) is amended to read:

(iii) Where the resulting interest rate is not less than ~~one~~ 0.15 percent.

* * * Travel Insurance; Producers; Licensure * * *

Sec. 10. 8 V.S.A. chapter 148 is added to read:

CHAPTER 148. TRAVEL INSURANCE

§ 7122. SCOPE AND PURPOSE

(a) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in Vermont.

(b) The requirements of this chapter apply to travel insurance that covers any resident of this State, and is sold, solicited, negotiated, or offered in this State, and the policies and certificates of which are delivered or issued for delivery in this State. It shall not apply to cancellation fee waivers or travel assistance services, except as expressly provided ~~herein~~ in this chapter.

(c) All other applicable provisions of this State’s insurance laws shall continue to apply to travel insurance except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

§ 7123. DEFINITIONS

As used in this chapter:

(1) “Aggregator site” means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) “Blanket travel insurance” means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group.

(3) “Cancellation fee waiver” means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier’s underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) “Eligible group” means two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including any of the following:

(A) any entity engaged in the business of providing travel or travel services, including a tour operator, lodging provider, vacation property owner, hotel or resort, travel club, travel agency, property manager, cultural exchange program, or common carrier, or the operator, owner, or lessor of a means of

transportation of passengers, including to an airline, cruise line, railroad, steamship company, or public bus carrier, wherein with regard to any particular travel or type of travel or travelers, all members or customers of the group have a common exposure to risk attendant to such travel;

(B) any college, school, or other institution of learning, covering students, teachers, employees, or volunteers;

(C) any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

(D) any sports team, camp, or sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers;

(E) any religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;

(F) any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution vendors, including accountholders, credit card holders, debtors, guarantors, or purchasers;

(G) any incorporated or unincorporated association, including a labor union, having a common interest, constitution, and bylaws and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of such association covering its members;

(H) any trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers, subject to the Commissioner's permitting the use of a trust and the State's premium tax provisions in section 7125 of this chapter, of one or more associations meeting the requirements of subdivision (4)(G) of this section;

(I) any entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers;

(J) any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense, or other such volunteer group;

(K) any preschool, daycare institution for children or adults, or senior citizen club;

(L) any automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles, provided that the common carrier, the operator, owner, or lessor of a means of transportation or the automobile or truck rental or leasing company is the policyholder under a policy to which this section applies; or

(M) any other group where the Commissioner has determined that the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the policy would not be contrary to the public interest.

(5) “Fulfillment materials” means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan’s coverage and assistance details.

(6) “Group travel insurance” means travel insurance issued to any eligible group.

(7) “Limited lines travel insurance producer” means a:

(A) licensed managing general agent or third-party administrator;

(B) licensed insurance producer, including a limited lines producer, designated by an insurer as the travel insurance supervising entity as set forth in subsection 7124(f) of this title; or

(C) travel administrator.

(8) “Offer and disseminate” means to provide general information, including a description of the coverage and price, as well as to process the application and collect premiums.

(9) “Primary certificate holder” means an individual person who elects and purchases travel insurance under a group policy.

(10) “Primary policyholder” means an individual person who elects and purchases individual travel insurance.

(11) “Travel administrator” means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this State, in connection with travel insurance, except

that a person shall not be considered a travel administrator if that person's only actions that would otherwise cause it to be considered a travel administrator are among the following:

(A) a person working for a travel administrator to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(B) an insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;

(C) a travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this chapter;

(D) an individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with insurance coverage; or

(E) a business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer.

(12) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event and where providing the service does not result in transfer or shifting of risk that would

constitute the business of insurance. Travel assistance services include the provision of security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity, or event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, or concierge services. Travel assistance services are not insurance and not related to insurance.

(13)(A) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including:

- (i) interruption or cancellation of a trip or event;
- (ii) loss of baggage or personal effects;
- (iii) damages to accommodations or rental vehicles;
- (iv) sickness, accident, disability, or death occurring during travel;
- (v) emergency evacuation;
- (vi) repatriation of remains; or
- (vii) any other contractual obligations to indemnify or pay a

specified amount to the traveler upon determinable contingencies related to travel as approved by the Commissioner.

(B) Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting six months or longer, including, for example, those working overseas as expatriates, or any other product that requires a specific insurance producer license.

(14) “Travel protection plan” means a plan that provides one or more of the following: travel insurance; travel assistance services; or cancellation fee waivers.

(15) “Travel retailer” means a business entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

§ 7124. LICENSING AND REGISTRATION

(a) The Commissioner may issue to an individual or a business entity that has complied with the requirements of this chapter and filed an application for such limited lines travel insurance producer license in a form and manner prescribed by the Commissioner, a limited lines travel insurance producer license, which authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed or registered, respectively.

(b) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer license only if the following conditions are met:

(1) The limited lines travel insurance producer or travel retailer provides to purchasers of travel insurance:

(A) a description of the material terms or the actual material terms of the insurance coverage at the time of purchase;

(B) a description of the process for filing a claim;

(C) a description of the review and cancellation process for the travel insurance policy; and

(D) the identity and contact information of the insurer and limited lines travel insurance producer.

(2) At the time of licensure, the limited lines travel insurance producer has established and maintains a register on a form prescribed by the Commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf. The register shall be maintained and updated annually by the limited lines travel insurance producer and shall include the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations, and the travel retailer's Federal Tax Identification Number. The limited lines travel insurance producer shall submit such register within 30 days of request by the

Commissioner. The limited lines travel insurance producer shall also certify that the travel retailer registered complies with 18 U.S.C. § 1033. The grounds for the suspension and revocation and the penalties applicable to resident insurance producers under 8 V.S.A. § 4804 shall be applicable to the limited lines travel insurance producers and travel retailers.

(3) The limited lines travel insurance producer has designated one of its employees who is a licensed individual producer as the person responsible for the limited lines travel insurance producer's compliance with the travel insurance laws, rules, and regulations of the State. This person shall be identified as the Designated Responsible Licensed Producer (DRLP).

(4) The DRLP, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations has complied with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.

(5) The limited lines travel insurance producer has paid all applicable insurance producer licensing fees as set forth in section 4800 of this title.

(6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the Commissioner. The

training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(c) Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by the travel insurer. Such materials shall include information that, at a minimum:

(1) provides the identity and contact information of the insurer and the limited lines travel insurance producer;

(2) explains that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(3) explains that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(d) A travel retailer's employee or authorized representative who is not licensed as an insurance producer may not:

(1) evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

(2) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(3) hold themselves out as a licensed insurer, licensed producer, or insurance expert.

(e) A travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this section is authorized to do so and receive related compensation for such services, upon registration by the limited lines travel insurance producer as described in subdivision (b)(2) of this section.

(f) As the insurer's designee, a limited lines travel insurance producer is responsible for the acts of each of its registered travel retailers related to the offer and dissemination of travel insurance and shall use reasonable means to ensure the travel retailer's compliance with this chapter.

(g) Any person licensed in a major line of authority as an insurance producer is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

(h) The limited lines travel insurance producer and any travel retailer offering and disseminating travel insurance under a limited lines travel

insurance producer license shall be subject to the provisions of sections 13 and 4804 and chapter 129 of this title.

§ 7125. PREMIUM TAX

(a) A travel insurer shall pay premium tax, as provided in 32 V.S.A.

§ 8551, on travel insurance premiums paid by any of the following:

(1) a primary policyholder who is a resident of this State;

(2) a primary certificate holder who is a resident of this State who elects coverage under a group travel insurance policy; or

(3) a blanket travel insurance policyholder that is a resident in or has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in this State for eligible blanket travel insurance group members, subject to any apportionment rules that apply to the insurer across multiple taxing jurisdictions or that permit the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(b) A travel insurer shall:

(1) document the state of residence or principal place of business of the policyholder or certificate holder, as required in subsection (a) of this section; and

(2) report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

§ 7126. TRAVEL PROTECTION PLANS

A travel protection plan may be offered for one price for the combined features that the travel protection plan offers in this State if:

(1) the travel protection plan clearly discloses to the consumer, at or prior to the time of purchase, that it includes travel insurance, travel assistance services, or cancellation fee waivers, as applicable, and provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each;

(2) the person offering the travel protection plan that includes a travel insurance policy complies with section 7127 of this title; and

(3) the fulfillment materials:

(A) describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and

(B) include the travel insurance disclosures and the contact information for persons providing travel assistance services and cancellation fee waivers, as applicable.

§ 7127. SALES PRACTICES

(a) All persons offering travel insurance to residents of this State are subject to chapter 129 of this title, except as otherwise provided in this section. In the event of a conflict between this chapter and other provisions of this title regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter shall control.

(b) Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under chapter 129 of this title.

(c)(1) All documents provided to consumers prior to the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, shall be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.

(2) For a travel insurance policy or certificate that contains preexisting condition exclusions:

(A) information and an opportunity to learn more about the preexisting condition exclusions shall be provided prior to the time of purchase and in the coverage's fulfillment materials; and

(B) the policy or certificate may only exclude preexisting conditions for which medical advice or treatment was recommended by or received from

a health care provider within a six-month period preceding the effective date of coverage.

(3)(A) The fulfillment materials and the information described in subdivisions 7124(b)(1)(B)–(D) of this title shall be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

(i) 15 days following the date of delivery of the travel protection plan’s fulfillment materials by U.S. mail; or

(ii) 10 days following the date of delivery of the travel protection plan’s fulfillment materials by means other than U.S. mail.

(B) As used in this subdivision, “delivery” means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by U.S. mail or electronic means to the policyholder or certificate holder.

(5) A travel insurer shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(6) Where travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it shall not be an unfair trade practice or other violation of law where an accurate summary or short description of coverage is provided on the web page, provided the consumer has access to the full provisions of the policy through electronic means.

(d) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using negative option or opt out, which would require a consumer to take an affirmative action to deselect coverage, such as by unchecking a box on an electronic form, when the consumer purchases a trip.

(e) Marketing blanket travel insurance coverage as free is an unfair trade practice under chapter 129 of this title.

(f) Where a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(1) purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or

(2) agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.

(g) For any travel insurance policy or certificate that provides coverage for sickness, sickness shall include any mental disorder as defined by the American Psychiatric Association DSM-5, or its current equivalent that is diagnosed or treated by a properly qualified medical professional.

§ 7128. TRAVEL ADMINISTRATORS

(a) A person shall not act or represent themselves as a travel administrator for travel insurance in this State unless that person:

(1) is a licensed property and casualty insurance producer in this State for activities permitted under that producer license;

(2) holds a valid managing general agent license in this State; or

(3) holds a valid third-party administrator license in this State.

(b) A travel administrator and its employees are exempt from the licensing requirements of section 4803 of this title for travel insurance it administers.

(c) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the Commissioner upon request.

§ 7129. POLICY

(a) Notwithstanding any other provision of this title to the contrary, travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance; provided, however, that travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages such as emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

(b) Travel insurance may be provided under an individual, group, or blanket policy.

(c) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, provided those standards also meet the State's underwriting standards for inland marine.

§ 7130. RULEMAKING AUTHORITY

The Commissioner may adopt rules to implement the provisions of this chapter.

Sec. 11. 8 V.S.A. § 4813i(c) is amended to read:

(c) A person who applies for a limited lines travel insurance producer license ~~for travel accident or travel baggage insurance~~ under chapter 148 of this title shall not be required to be examined by the Commissioner.

Sec. 12. 8 V.S.A. § 3301(a)(11) is added to read:

(11) “Inland marine insurance” means any insurance that is defined by statute, rule, or general custom as inland marine insurance.

* * * Captive Insurance * * *

Sec. 13. 8 V.S.A. § 6007(c)(2) is amended to read:

(2) in order to provide sufficient detail to support the premium tax return, the ~~pure captive insurance company, association captive insurance company, sponsored captive insurance company, or industrial insured captive insurance company~~ shall file prior to March 15 of each year for each calendar year-end, ~~pages 1, 2, 3, and 5~~ the premium schedule of the “Vermont Captive Insurance Company Annual Report—~~Short Form~~” ~~verified by oath of two of its executive officers.~~

Sec. 14. 8 V.S.A. § 6038 is amended to read:

§ 6038. DELINQUENCY OF SPONSORED CAPTIVE INSURANCE
COMPANIES

(a) Except as otherwise provided in this section, the provisions of chapter 145 of this title shall apply in full to a sponsored captive insurance company and to each of its protected cells.

(b) Upon any order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company or any of its protected cells, the receiver shall manage the assets and liabilities of the sponsored captive insurance company or any of its protected cells pursuant to the provisions of this subchapter.

(c) Notwithstanding the provisions of chapter 145 of this title to the contrary:

(1) In connection with the conservation, rehabilitation, or liquidation of a sponsored captive insurance company or any of its protected cells, the assets and liabilities of a protected cell shall at all times be kept separate from, and shall not be commingled with, those of other protected cells and the sponsored captive insurance company.

(2) The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell.

(3) Unless the sponsor consents and the Commissioner has granted prior written approval, the assets of the sponsored captive insurance company's general account shall not be used to pay any expenses or claims attributable solely to a protected cell or protected cells of the sponsored captive insurance

company. In the event that the assets of the sponsored captive insurance company's general account are used to pay expenses or claims attributable solely to a protected cell or protected cells of the sponsored captive insurance company, the sponsor is not required to contribute additional capital and surplus to the sponsored captive insurance company's general account, notwithstanding the provisions of section 6004 of this title.

(4) A sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

(d) Notwithstanding the provisions of chapter 145 of this title or any other provision of law to the contrary, and, in addition to the provisions of this section, in the event of an insolvency of a sponsored captive insurance company or any of its protected cells where the Commissioner determines that one or more protected cells remain solvent, the Commissioner may separate such cells from the sponsored captive insurance company and, on application of the sponsor, may allow for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies, or one or more other captive insurance companies, pursuant to a plan or plans of operation approved by the Commissioner.

(e) Notwithstanding the provisions of chapter 145 of this title or any other provision of law to the contrary, and in addition to the provisions of this

section, in the event of an insolvency of one or more protected cells of a sponsored captive insurance company, the Commissioner may separate such cell or cells from the sponsored captive insurance company and may allow for the conversion of such protected cell or cells into one or more new or existing sponsored captive insurance companies, or one or more other captive insurance companies, pursuant to a plan or plans of operation approved by the Commissioner.

Sec. 15. 8 V.S.A. § 6032(7)(C) is amended to read:

(C) that insures the risks only of its participants or, subject to Commissioner approval, other parties unaffiliated with a participant, through separate participant contracts; and

Sec. 16. 8 V.S.A. § 6034 is amended to read:

§ 6034. PROTECTED CELLS

* * *

~~(7) Each sponsored captive insurance company shall annually file with the Commissioner such financial reports as the Commissioner shall require, which shall include accounting statements detailing the financial experience of each protected cell.~~

~~(8)~~(7) Each sponsored captive insurance company shall notify the Commissioner in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations.

~~(9)~~(8) No participant contract shall take effect without the Commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the business plan requiring the Commissioner's prior written approval.

~~(10)~~(9) If required by the Commissioner, in his or her discretion, the business written by a sponsored captive, with respect to each cell, shall be:

(A) Fronted by an insurance company licensed under the laws of any state.

(B) Reinsured by a reinsurer authorized or approved by the State of Vermont.

(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the Commissioner. The Commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be issued or confirmed by a bank approved by the Commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the Commissioner.

Sec. 17. 8 V.S.A. § 6034f is added to read:

§ 6034f. ANNUAL REPORT; BOOKS AND RECORDS

(a) For purposes of subsection 6007(b) of this chapter:

(1) Each sponsored captive insurance company shall annually file with the Commissioner such financial reports as the Commissioner requires, which shall include accounting statements detailing the financial experience of each protected cell.

(2) Unless otherwise approved in advance by the Commissioner, a sponsored captive insurance company shall maintain its books, records, documents, accounts, vouchers, and agreements in this State. A sponsored captive insurance company shall make its books, records, documents, accounts, vouchers, and agreements available for inspection by the Commissioner at any time. A sponsored captive insurance company shall keep its books and records in such manner that its financial condition, affairs, and operations can be readily ascertained and so that the Commissioner may readily verify its financial statements and determine its compliance with this chapter.

(3) Unless otherwise approved in advance by the Commissioner, all original books, records, documents, accounts, vouchers, and agreements shall be preserved and kept available in this State for the purpose of examination and inspection and until such time as the Commissioner approves the destruction or other disposition of such books, records, documents, accounts,

vouchers, and agreements. If the Commissioner approves the keeping of the items listed in this subdivision outside this State, the sponsored captive insurance company shall maintain in this State a complete and true copy of each such original. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically.

Sec. 18. 8 V.S.A. § 6002(a) is amended to read:

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational document, may apply to the Commissioner for a license to do any and all insurance comprised in subdivisions 3301(a)(1), (2), (3)(A)–(C), (E)–(Q), and (4)–(9) of this title and may grant annuity contracts as defined in section 3717 of this title, and may accept or transfer risk by means of a parametric contract; provided, however, that:

* * *

(10) Any captive insurance company that transfers risk by means of a parametric contract shall comply with all applicable State and federal laws and regulations. As used in this subdivision, “parametric contract” means a contract to make a payment upon the occurrence of one or more specified triggering events without proof of loss or obligation to indemnify. A parametric contract is not an insurance contract.

Sec. 19. 8 V.S.A. § 6006a(b) is amended to read:

(b) When such merger ~~or consolidation~~ has been effected as provided in this section:

* * *

* * * Vermont Insurance Data Security Law * * *

Sec. 20. 8 V.S.A. § 4728 is added to read:

§ 4728. INSURANCE DATA SECURITY

(a) Title. This section shall be known and may be cited as the “Vermont Insurance Data Security Law.”

(b) Construction.

(1) Notwithstanding any other provision of law, this section establishes the exclusive State standards applicable to licensees for data security and for the investigation of a cybersecurity event.

(2) This section shall not be construed to change any aspect of the Security Breach Notice Act, 9 V.S.A. § 2435.

(3) This section may not be construed to create or imply a private cause of action for violation of its provisions, nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this section.

(4) A licensee in compliance with N.Y. Comp. Codes R. & Regs. Title 23, section 500, Cybersecurity Requirements for Financial Services

Companies, effective March 1, 2017, shall be considered to meet the requirements of this section, provided that the licensee submits a written statement to the Commissioner certifying such compliance.

(c) Definitions. As used in this section:

(1) “Authorized person” means a person known to and screened by the licensee and determined to be necessary and appropriate to have access to the nonpublic information held by the licensee and its information systems.

(2) “Consumer” means an individual, including but not limited to an applicant, policyholder, insured, beneficiary, claimant, or certificate holder, who is a resident of this State and whose nonpublic information is in a licensee’s possession, custody, or control.

(3) “Cybersecurity event” means an event resulting in unauthorized access to or disruption or misuse of an information system or nonpublic information stored on such information system. The term “cybersecurity event” does not include:

(A) the unauthorized acquisition of encrypted nonpublic information if the encryption, process, or key is not also acquired, released, or used without authorization; or

(B) an event with regard to which the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed.

(4) “Encrypted” means the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key.

(5) “Information security program” means the administrative, technical, and physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle nonpublic information.

(6) “Information system” means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic information, as well as any specialized system such as an industrial/process controls system, telephone switching and private branch exchange system, or environmental control system.

(7) “Licensee” means a person licensed, authorized to operate, or registered or required to be licensed, authorized, or registered pursuant to the insurance laws of this State, but shall not include:

(A) a captive insurance company;

(B) a purchasing group or risk retention group chartered; or

(C) a licensee domiciled in a jurisdiction other than this State or a person that is acting as an assuming insurer for a licensee domiciled in this State.

(8) “Multi-factor authentication” means authentication through verification of at least two of the following types of authentication factors:

(A) a knowledge factor, such as a password;

(B) a possession factor, such as a token or text message on a mobile phone; or

(C) an inherence factor, such as a biometric characteristic.

(9) “Nonpublic information” means information that is not publicly available information and is:

(A) business-related information of a licensee, the tampering with which, or unauthorized disclosure, access, or use of which would cause a material adverse impact to the business, operations, or security of the licensee;

(B) information concerning a consumer that, because of name, number, personal mark, or other identifier, can be used to identify such consumer, in combination with any one or more of the following data elements:

(i) Social Security number;

(ii) driver’s license number or nondriver identification card number;

(iii) individual taxpayer identification number;

(iv) passport number;

(v) military identification card number;

(vi) financial account number or credit or debit card number;

(vii) security code, access code, or password that would permit access to a consumer's financial account; or

(viii) biometric record;

(C) information or data, except age or gender, in any form or medium created by or derived from a health care provider or a consumer, that relates to:

(i) the past, present, or future physical, mental, or behavioral health or condition of any consumer or a member of the consumer's family;

(ii) the provision of health care to any consumer; or

(iii) payment for the provision of health care to any consumer.

(10)(A) "Publicly available information" means information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media, or disclosures to the general public that are required to be made by federal, state, or local law.

(B) As used in this subdivision, a licensee has a "reasonable basis to believe" that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) that the information is of the type that is available to the general public; and

(ii) whether a consumer can direct that the information not be made available to the general public and, if so, that the consumer has not done so.

(11) “Risk assessment” means the risk assessment that each licensee is required to conduct under subdivision (d)(3) of this section.

(12) “Third-party service provider” means a person, not otherwise defined as a licensee, that contracts with a licensee to maintain, process, or store nonpublic information or is otherwise permitted access to nonpublic information through its provision of services to the licensee.

(d) Information security program.

(1) Commensurate with the size and complexity of the licensee, the nature and scope of the licensee’s activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee’s possession, custody, or control, each licensee shall develop, implement, and maintain a comprehensive written information security program that is based on the licensee’s risk assessment and contains administrative, technical, and physical safeguards for the protection of nonpublic information and the licensee’s information system.

(2) A licensee’s information security program shall be designed to:

(A) protect the security and confidentiality of nonpublic information and the security of the information system;

(B) protect against any threats or hazards to the security or integrity of nonpublic information and the information system;

(C) protect against unauthorized access to or use of nonpublic information and minimize the likelihood of harm to any consumer; and

(D) define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.

(3) The licensee shall:

(A) designate one or more employees, an affiliate, or an outside vendor designated to act on behalf of the licensee to be responsible for the information security program;

(B) identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, alteration, or destruction of nonpublic information, including the security of information systems and nonpublic information that are accessible to or held by third-party service providers;

(C) assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the nonpublic information;

(D) assess the sufficiency of policies, procedures, information systems, and other safeguards in place to manage these threats, including

consideration of threats in each relevant area of the licensee's operations,

including:

(i) employee training and management;

(ii) information systems, including network and software design,

as well as information classification, governance, processing, storage,

transmission, and disposal; and

(iii) detecting, preventing, and responding to attacks, intrusions, or

other systems failures; and

(E) implement information safeguards to manage the threats

identified in its ongoing assessment and, not less than annually, assess the

effectiveness of the safeguards' key controls, systems, and procedures.

(4) Based on its risk assessment, the licensee shall:

(A) Design its information security program to mitigate the identified risks, commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody, or control.

(B) Determine which security measures listed below are appropriate and implement such security measures:

(i) place access controls on information systems, including controls to authenticate and permit access only to authorized persons to protect against the unauthorized acquisition of nonpublic information;

(ii) identify and manage the data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes in accordance with their relative importance to business objectives and the organization's risk strategy;

(iii) restrict physical access to nonpublic information to authorized persons only;

(iv) protect by encryption or other appropriate means all nonpublic information while being transmitted over an external network and all nonpublic information stored on a laptop computer or other portable computing or storage device or media;

(v) adopt secure development practices for in-house developed applications utilized by the licensee and procedures for evaluating, assessing, or testing the security of externally developed applications utilized by the licensee;

(vi) modify the information system in accordance with the licensee's information security program;

(vii) utilize effective controls, which may include multi-factor authentication procedures, for any individual accessing nonpublic information;

(viii) regularly test and monitor systems and procedures to detect actual and attempted attacks on or intrusions into information systems;

(ix) include audit trails within the information security program designed to detect and respond to cybersecurity events and reconstruct material financial transactions sufficient to support normal operations and obligations of the licensee;

(x) implement measures to protect against destruction, loss, or damage of nonpublic information due to environmental hazards, such as fire and water damage or other catastrophes or technological failures; and

(xi) develop, implement, and maintain procedures for the secure disposal of nonpublic information in any format.

(C) Include cybersecurity risks in the licensee's enterprise risk management process.

(D) Stay informed regarding emerging threats and vulnerabilities and utilize reasonable security measures when sharing information relative to the character of the sharing and the type of information shared.

(E) Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in the risk assessment.

(5)(A) If the licensee has a board of directors, the board or an appropriate committee of the board shall, at a minimum:

(i) require the licensee's executive management or its delegates to develop, implement, and maintain the licensee's information security program;

(ii) require the licensee's executive management or its delegates to report in writing at least annually the following information:

(I) the overall status of the information security program and the licensee's compliance with this section; and

(II) material matters related to the information security program, addressing issues such as risk assessment; risk management and control decisions; third-party service provider arrangements; results of testing, cybersecurity events, or violations and management's responses thereto; and recommendations for changes in the information security program.

(B) If executive management delegates any of its responsibilities under subsection (d) of this section, it shall oversee the development, implementation, and maintenance of the licensee's information security program prepared by the delegate or delegates and shall receive a report from the delegate or delegates complying with the requirements of the report to the board of directors.

(6)(A) A licensee shall exercise due diligence in selecting its third-party service provider.

(B) A licensee shall require a third-party service provider to implement appropriate administrative, technical, and physical measures to

protect and secure the information systems and nonpublic information that are accessible to or held by the third-party service provider.

(7) A licensee shall monitor, evaluate, and adjust, as appropriate, the information security program consistent with any relevant changes in technology, the sensitivity of its nonpublic information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to information systems.

(8)(A) As part of its information security program, a licensee shall establish a written incident response plan designed to promptly respond to and recover from any cybersecurity event that compromises the confidentiality, integrity, or availability of nonpublic information in its possession; the licensee's information systems; or the continuing functionality of any aspect of the licensee's business or operations.

(B) The incident response plan shall address the following areas:

(i) the internal process for responding to a cybersecurity event;

(ii) the goals of the incident response plan;

(iii) the definition of clear roles, responsibilities, and levels of decision-making authority;

(iv) external and internal communications and information sharing;

(v) identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;

(vi) documentation and reporting regarding cybersecurity events and related incident response activities; and

(vii) the evaluation and revision as necessary of the incident response plan following a cybersecurity event.

(9) Annually, each insurer domiciled in this State shall submit to the Commissioner a written statement on or before April 15, certifying that the insurer is compliant with the requirements established in subsection (d) of this section. Each insurer shall maintain for examination by the Commissioner all records, schedules, and data supporting this certificate for a period of five years. To the extent an insurer has identified areas, systems, or processes that require material improvement, updating, or redesign, the insurer shall document the identification and the remedial efforts planned and underway to address such areas, systems, or processes. Such documentation shall be available for inspection by the Commissioner.

(e) Investigation of a cybersecurity event.

(1) If the licensee learns that a cybersecurity event has or may have occurred, the licensee or an outside vendor or service provider, or both, designated to act on behalf of the licensee shall conduct a prompt investigation.

(2) During the investigation, the licensee or an outside vendor or service provider, or both, designated to act on behalf of the licensee shall, at a minimum, make the best effort to:

(A) determine whether a cybersecurity event has occurred;

(B) assess the nature and scope of the cybersecurity event;

(C) identify any nonpublic information that may have been involved in the cybersecurity event; and

(D) perform or oversee reasonable measures to restore the security of the information systems compromised in the cybersecurity event in order to prevent further unauthorized acquisition, release, or use of nonpublic information in the licensee's possession, custody, or control.

(3) The licensee shall maintain records concerning all cybersecurity events for a period of at least five years from the date of the cybersecurity event and shall produce those records upon demand of the Commissioner.

(f) Power of Commissioner.

(1) The Commissioner shall have power to examine and investigate into the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this section. This power is in addition to the powers the Commissioner has under section 4726 of this title and 9 V.S.A. § 2435(h)(2). Any such investigation or examination shall be conducted pursuant to section 4726 of this title.

(2) Whenever the Commissioner has reason to believe that a licensee has been or is engaged in conduct in this State that violates this section, the Commissioner may take action that is necessary or appropriate to enforce the provisions of this section.

(g) Confidentiality.

(1) Any documents, materials or other information in the control or possession of the Commissioner that are furnished by a licensee or an employee or agent thereof acting on behalf of the licensee pursuant to subdivision (d)(8) of this section, or that are obtained by the Commissioner in an investigation or examination pursuant to subsection (f) of this section, shall be confidential by law and privileged, shall not be subject to 1 V.S.A. §§ 315–320, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner’s duties.

(2) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (g)(1) of this section.

(3) To assist in the performance of the Commissioner's duties under this section, the Commissioner may:

(A) share documents, materials, or other information, including confidential and privileged documents, materials, or information subject to subdivision (g)(1) of this section, with other state, federal, and international regulatory agencies, the National Association of Insurance Commissioners, its affiliates or subsidiaries, and state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information shared;

(B) receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;

(C) share documents, materials, or other information subject to subdivision (g)(1) of this section with a third-party consultant or vendor, provided that the consultant agrees in writing to maintain the confidentiality

and privileged status of the document, material, or other information shared;

and

(D) enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in any document, material, or information shall occur as a result of its disclosure to the Commissioner under this section or as a result of sharing as authorized in subdivision (g)(3) of this section.

(5) Nothing in this section shall prohibit the Commissioner from releasing final adjudicated actions that are open to public inspection pursuant to 1 V.S.A. §§ 315–320 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(h) Exceptions.

(1) The following exceptions apply to this section:

(A) A licensee with fewer than 20 employees, including any independent contractors, is exempt from subsection (d) of this section.

(B) A licensee that is in possession of protected health information subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104–191, 110 Stat. 1936, that has established and maintains an information security program pursuant to such statutes and the

rules, regulations, procedures, or guidelines established under HIPAA, is considered to meet the requirements of subsection (d) of this section, provided that the licensee is compliant with, and annually submits a written statement to, the Commissioner certifying its compliance with such program. As used in this section, the definition of “protected health information” is as set forth in HIPAA and the regulations promulgated under HIPAA and shall be considered to be a subset of nonpublic information.

(C) An employee, agent, representative, or designee of a licensee, who is also a licensee, is exempt from subsection (d) of this section and need not develop its own information security program to the extent that the employee, agent, representative, or designee is covered by the information security program of the other licensee.

(D) A licensee that is affiliated with a financial institution, as defined in subdivision 11101(32) of this title, or a credit union, as defined in subdivision 30101(5) of this title, that has established and maintains an information security program in compliance with the interagency guidelines establishing standards for safeguarding customer information as set forth in section 501(b) of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., is considered to meet the requirements of subsection (d) of this section, provided that the licensee produces, upon request, documentation satisfactory to the Commissioner that independently validates the affiliated financial institution’s

or credit union's adoption of an information security program that satisfies the interagency guidelines.

(2) In the event that a licensee ceases to qualify for an exception, such licensee shall have 180 days to comply with this section.

(i) Penalties. In the case of a violation of this section, a licensee may be penalized in accordance with section 3661 or 4726 of this title, as appropriate.

(j) Effective date. This section shall take effect on January 1, 2023. A licensee shall have one year from the effective date of this section to implement subsection (d) of this section, other than subdivision (d)(6) of this section. A licensee shall have two years from the effective date of this section to implement subdivision (d)(6) of this section.

* * * Vermont Whistleblower Award and Protection Act * * *

Sec. 21. 9 V.S.A. § 5616 is amended to read:

§ 5616. VERMONT FINANCIAL SERVICES EDUCATION AND VICTIM
RESTITUTION SPECIAL FUND

(a) Purpose. The purpose of this section is to provide:

(1) funds for the purposes specified in subsection 5601(d) of this title;

and

(2) restitution assistance to victims of securities violations who:

(A) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(B) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(C) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future; and

(3) funds for the purposes specified in section 5617 of this title.

* * *

(f) Vermont Financial Services Education, ~~and~~ Victim Restitution, and Whistleblower Award Special Fund. The Vermont Financial Services Education, ~~and~~ Victim Restitution, and Whistleblower Award Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section, ~~and~~ in subsection 5601(d) of this title, and in section 5617 of this title. All monies received by the State for use in financial services education initiatives pursuant to subsection 5601(d) of this title, ~~or~~ in providing uncompensated victims restitution pursuant to this section, or in providing whistleblower awards pursuant to section 5617 of this title shall be deposited into the Fund. The Commissioner may direct a party to deposit a sum not to exceed 15 percent of the total settlement amount into the Fund in

conjunction with settling a State securities law enforcement matter. Interest earned on the Fund shall be retained in the Fund.

* * *

Sec. 22. 9 V.S.A. § 5617 is added to read:

§ 5617. VERMONT WHISTLEBLOWER AWARD AND PROTECTION

ACT

(a) Purpose. The purpose of this section is to provide:

(1) protection from retaliation for whistleblowers and internal reporters who comply with the requirements in this section; and

(2) monetary awards to whistleblowers who voluntarily provide original information that leads to the successful enforcement of an administrative or judicial action under chapter 150 of this title.

(b) Definitions. As used in this section,

(1) “Monetary sanction” means any monies, including penalties, disgorgement, and interest ordered to be paid as a result of an administrative or judicial action.

(2) “Original information” means information that is:

(A) derived from the independent knowledge or analysis of a whistleblower;

(B) not already known to the Commissioner from any other source, unless the whistleblower is the original source of the information;

(C) not exclusively derived from an allegation made in an administrative or judicial hearing; in a governmental report, hearing, audit, or investigation; or from the news media, unless the whistleblower is the source of the information; and

(D) provided to the Commissioner for the first time after the date of the enactment of this section.

(3) “Whistleblower” means an individual who, alone or jointly with others, provides the State or other law enforcement agency with information pursuant to the provisions set forth in this section, and the information relates to a possible violation of state or federal securities laws, including any rules or regulations adopted or promulgated under such laws, that has occurred, is ongoing, or is about to occur.

(c) Authority to make a whistleblower award. Subject to the provisions of this section, the Commissioner may award an amount to one or more whistleblowers who voluntarily provide, in writing, in the form and manner required by the Commissioner, original information that leads to the successful enforcement of an administrative or judicial action under chapter 150 of this title.

(d) Anonymous whistleblower complaints. Any individual who anonymously makes a claim for a whistleblower award shall be represented by counsel if the individual anonymously submits the information upon which the

claim is based. Prior to the payment of an award, a previously anonymous whistleblower shall disclose the whistleblower's identity and provide such other information as the Commissioner may require, directly or through counsel for the whistleblower. Failure to provide such information shall be a basis to deny compensation under this section.

(e) Amount of a whistleblower award. If the Commissioner determines to make one or more awards under this section, the aggregate amount of awards that may be awarded in connection with an administrative or judicial action may not be less than 10 percent nor more than 30 percent of the monetary sanctions imposed and collected in the related administrative or judicial action.

(f) Discretion to determine the amount of a whistleblower award. The determination of the amount of an award made under this section shall be in the discretion of the Commissioner consistent with subsections (e) and (h) of this section.

(g) Source of payment of whistleblower award. Any whistleblower awards paid under this section shall be paid from the fund established in section 5616 of this title.

(h) Factors used to determine the amount of a whistleblower award. In determining the amount of an award under this section, the Commissioner shall consider:

(1) the significance of the original information provided by the whistleblower to the success of the administrative or judicial action;

(2) the degree of assistance provided by the whistleblower in connection with the administrative or judicial action;

(3) the programmatic interest of the Commissioner in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws; and

(4) any other factors the Commissioner considers relevant.

(i) Disqualification from award. The Commissioner shall not provide an award to a whistleblower under this section if the whistleblower:

(1) is convicted of a crime in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award;

(2) acquires the original information through the performance of an audit of financial statements required under the securities laws and for whom providing the original information violates 15 U.S.C. § 78j-1;

(3) fails to timely submit information to the Commissioner in such form as the Commissioner may prescribe;

(4) knowingly or recklessly makes a false, fictitious, or fraudulent statement or representation as part of, or in connection with, the original

information provided or the administrative or judicial proceeding for which the original information was provided;

(5) in the whistleblower's submission, its other dealings with the Commissioner, or in its dealings with another authority in connection with a possible violation or related action, knowingly or recklessly makes any false, fictitious, or fraudulent statement or representation or uses or provides any false writing or document knowing that or having a reckless disregard as to whether it contains any false, fictitious, or fraudulent statement or entry;

(6) has a legal duty to report the original information to the Commissioner;

(7) is, or was at the time the whistleblower acquired the original information submitted to the Commissioner, a member, officer, or employee of the Department of Financial Regulation, the Securities and Exchange Commission, any other state securities regulatory authority, a self-regulatory organization, the Public Company Accounting Oversight Board, or any law enforcement organization;

(8) is, or was at the time the whistleblower acquired the original information submitted to the Commissioner, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in 15 U.S.C. § 78c(a)(52);

(9) is the spouse, parent, child, or sibling of, or resides in the same household as, the Commissioner or an employee of the Department of Financial Regulation; or

(10) directly or indirectly acquires the original information provided to the Commissioner from a person:

(A) who is subject to subdivision (i)(2) of this section, unless the information is not excluded from that person's use, or provides the Commissioner with information about possible violations involving that person;

(B) who is a person described in subdivision (i)(7), (8), or (9) of this section; or

(C) with the intent to evade any provision of this section.

(j) Protection of whistleblowers and internal reporters.

(1) No employer may terminate, discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner retaliate against, an individual because of any lawful act done by the individual:

(A) in providing information to the State or other law enforcement agency concerning a possible violation of state or federal securities laws, including any rules or regulations adopted or promulgated under such laws, that has occurred, is ongoing, or is about to occur;

(B) in initiating, testifying in, or assisting in any investigation or administrative or judicial action of the Commissioner or other law enforcement agency based upon or related to such information;

(C) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7201 et seq.), the Securities Act of 1933 (15 U.S.C. § 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), 18 U.S.C. § 1513(e), any other law, rule, or regulation subject to the jurisdiction of the Securities and Exchange Commission, or chapter 150 of this title or a rule adopted under chapter 150 of this title; or

(D) in making disclosures to a person with supervisory authority over the employee or to such other person working for the employer who has the authority to investigate, discover, or terminate misconduct regarding matters subject to the jurisdiction of the Commissioner or the Securities and Exchange Commission.

(2) Notwithstanding subdivision (j)(1) of this section, an individual is not protected under this section if:

(A) the individual knowingly or recklessly makes a false, fictitious, or fraudulent statement or representation as part of, or in connection with, the original information provided or the administrative or judicial proceeding for which the original information was provided; or

(B) the individual, in its dealings with its supervisor, the State, law enforcement, or any other authority in connection with a possible violation or related action, knowingly or recklessly makes any false, fictitious, or fraudulent statement or representation or uses or provides any false writing or document knowing that or having a reckless disregard as to whether it contains any false, fictitious, or fraudulent statement or entry.

(3) An individual who alleges any act of retaliation in violation of subdivision (j)(1) of this section may bring an action for the relief provided in subdivision (j)(6) of this section in the court of original jurisdiction for the county or state where the alleged violation occurs, the individual resides, or the person against whom the action is filed resides or has a principal place of business.

(4) A subpoena requiring the attendance of a witness at a trial or hearing conducted under subdivision (j)(3) of this section may be served at any place in the United States.

(5) An action under subdivision (j)(3) of this section may not be brought more than the latest of:

(A) six years after the date on which the violation of subdivision (j)(1) of this section occurred;

(B) three years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subdivision (j)(1) of this section;

(C) but in no event more than 10 years after the date on which the violation occurs.

(6) A court may award as relief for an individual prevailing in an action brought under this subsection:

(A) reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;

(B) two times the amount of back pay otherwise owed to the individual, with interest;

(C) compensation for litigation costs, expert witness fees, and reasonable attorneys' fees;

(D) actual damages;

(E) an injunction to restrain a violation; or

(F) any combination of these remedies.

(7) Information that could reasonably be expected to reveal the identity of a whistleblower is exempt from public disclosure under 1 V.S.A. § 316.

This subsection does not limit the ability of any person to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(8) No person may take any action to impede an individual from communicating directly with the Commissioner or the Commissioner's staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except with respect to:

(A) agreements concerning communications covered by the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney under applicable state attorney conduct rules or otherwise; and

(B) information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission for the individual's own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to applicable state attorney conduct rules or otherwise.

(9) The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(10) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any individual under any federal or state law, or under any collective bargaining agreement.

(k) The Commissioner may adopt such rules as may be necessary or appropriate to implement the provisions of this section consistent with its purpose.

* * * Credit for Reinsurance * * *

Sec. 23. 8 V.S.A. § 3634a is amended to read:

§ 3634a. CREDIT FOR REINSURANCE

(a) Purpose. It is the purpose of this section to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The General Assembly hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that State interest, the General Assembly hereby provides a mandate that upon the insolvency of a non-U.S. insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance Commissioner with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The General Assembly declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

(b) Credit allowed a domestic ceding insurer. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a ~~deduction~~ reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivision (1), (2), (3), (4), (5), (6), or (7) of this subsection (b), provided that the Commissioner may adopt by rule or regulation pursuant to subdivision (e)(2) of this section specific additional requirements relating to any or all of the following: the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in subdivision (e)(2) of this section, or the circumstances pursuant to which credit will be reduced or eliminated. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection (b) only with respect to cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection (b) only if the applicable requirements of subdivision (8) of this subsection (b) have been satisfied.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Commissioner as a reinsurer in this State. An accredited reinsurer is one that:

(A) files with the Commissioner evidence of its submission to this State's jurisdiction;

(B) submits to this State's authority to examine its books and records;

(C) is licensed to transact insurance or reinsurance in at least one state or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(D) files annually with the Commissioner ~~on or before March 1 of each year~~ a copy of its annual statement filed with the insurance department of its state of domicile and ~~files on or before June 1 of each year~~ a copy of its most recent audited financial statement;

(E) files with the Commissioner its charter, bylaws, and any other material required by the Commissioner;

(F) pays an initial fee of \$500.00 and thereafter an annual fee of \$200.00 on or before March 1 of each year; and

(G) demonstrates to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer

is deemed to meet this requirement, provided that at the time of its application it:

(i) maintains a surplus for policyholders that is not less than \$20,000,000.00 and whose accreditation has not been denied by the Commissioner within 90 days ~~of~~ following its submission; or

(ii) maintains a surplus for policyholders in an amount less than \$20,000,000.00 and whose accreditation has been approved the Commissioner.

~~(H) Credit for reinsurance ceded to a certified reinsurer shall be permitted only for reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer by the Commissioner.~~

(3)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~which~~ that is domiciled and licensed in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or U.S. branch of an alien assuming insurer:

(i) maintains a surplus for policyholders in an amount not less than \$20,000,000.00; and

(ii) submits to the authority of this State to examine its books and records.

(B) The requirement of subdivision (3)(A)(i) of this subsection (b) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(4)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer ~~which~~ that maintains a trust fund in a qualified U.S. financial institution, as defined in subdivision (d)(2) of this section, for the payment of the valid claims of its U.S. ~~policyholders and~~ ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the Commissioner information required by the Commissioner and substantially the same as that required to be reported on the National Association of Insurance Commissioners' Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. ~~On or before February 28 of each year, the trustees of the trust shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31. A trust and trust instrument maintained pursuant to this subdivision shall:~~

(i) ~~be established in a form and upon such terms approved by the Commissioner;~~

~~(ii) provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States;~~

~~(iii) vest legal title to its assets in the trustees of the trust for its U.S. policyholders and ceding insurers, their assigns and successors in interest;~~

~~(iv) be subject to examination as determined by the Commissioner;~~

~~(v) remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and~~

~~(vi) be filed with the Commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of the examination.~~

(B)(i) Credit for reinsurance shall not be granted under this subsection (b) unless the form of the trust and any amendments to the trust have been approved by:

(I) the commissioner of the state where the trust is domiciled;

or

(II) the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(ii) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner.

(iii) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. Not later than February 28 of each year the trustee of the trust shall report to the Commissioner in writing the balance of the trust and a list of the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(C) The following requirements shall apply to the following categories of assuming insurer:

(i) In the case of a single assuming insurer, the trust fund shall consist of a ~~trustee account~~ funds in trust in an amount not less than ~~representing~~ the assuming insurer's liabilities attributable to ~~business written in~~

~~the United States~~ reinsurance ceded by U.S. ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.00, except at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the ~~Commissioner~~ commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

~~(C)(ii)(I)~~ In the case of a group including incorporated and individual unincorporated underwriters, ~~the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which~~

~~\$100,000,000.00 shall be held jointly for the benefit of U.S. ceding insurers of any member of the group; the incorporated members of the group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants:~~

(aa) for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusted account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

(bb) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(cc) in addition to the trusts specified in subdivisions (aa) and (bb) of this subdivision (C)(ii)(I), the group shall maintain in trust a

trusted surplus of which \$100,000,000.00 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group for all years of the account.

(II) The incorporated members of the group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Commissioner an annual certification of the solvency of each underwriter member by the group's domiciliary regulator or, if certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

~~(D)(iii)~~ In the case of a group of incorporated insurers under common administration ~~which complies with the filing requirements contained in subdivision (b)(2) of this section and which has,~~ the group shall:

(I) have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, ~~and submits to this State's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of \$10,000,000,000.00, the trust shall be in an~~

~~amount equal to the group's several liabilities attributable to business ceded by U.S. ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group, plus the group shall maintain a joint trusteed surplus of which \$100,000,000.00 shall be held jointly for the benefit of U.S. ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant;~~

(II) maintain aggregate policyholders' surplus of at least \$10,000,000,000.00;

(III) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group;

(IV) maintain a joint trusteed surplus of which \$100,000,000.00 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group as additional security for liabilities; and

(V) within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Commissioner an annual certification of each underwriter member's solvency

by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by an independent public accountant.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subdivision.

(A) In order to be eligible for certification, the assuming insurer shall:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner under subdivision (C) of this subdivision (5);

(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commissioner by rule or regulation;

(iii) maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner by rule or regulation;

(iv) agree to submit to the jurisdiction of this State, appoint the Commissioner as its agent for service of process in this State, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;

(v) agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(vi) ~~the assuming insurer must~~ satisfy any other requirements for certification deemed relevant by the Commissioner.

(B) An ~~Association~~ association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subdivision (A) of this subdivision (5):

(i) The ~~Association~~ association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the ~~Association~~ association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the ~~Association~~ association or any of its members, in an amount determined by the Commissioner to provide adequate protection.

(ii) The incorporated members of the ~~Association~~ association shall not be engaged in any business other than underwriting as a member of the ~~Association~~ association and shall be subject to the same level of regulation and solvency control by the ~~Association's~~ association's domiciliary regulator as are the unincorporated members.

(iii) Within 90 days after its financial statements are due to be filed with the ~~Association's~~ association's domiciliary regulator, the ~~Association~~ association shall provide to the Commissioner an annual certification by the ~~Association's~~ association's domiciliary regulator of the solvency of each underwriter member; or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the ~~Association~~ association.

(C) The Commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commissioner as a certified reinsurer.

(i) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commissioner has

determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards. Additional factors may be considered in the discretion of the Commissioner.

(ii) A list of qualified jurisdictions shall be published through the NAIC committee process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification in accordance with criteria to be developed by rule or regulation.

(iii) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(iv) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(D) The Commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Commissioner by rule or regulation. The Commissioner shall publish a list of all certified reinsurers and their ratings.

(E) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection (b) at a level consistent with its rating, as specified in rules or regulations adopted by the Commissioner.

(i) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with the provisions of subsection (c) of this section or in a multibeneficiary trust in accordance with subdivision (4) of this subsection (b), except as otherwise provided in this subdivision.

(ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (4) of this subsection (b) and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection (b) or comparable laws of other U.S. jurisdictions and for its obligations subject to subdivision (4) of this subsection. It shall be a condition to the grant of certification under this subdivision (5) of this subsection (b) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the Commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of

the remaining surplus of such trust any deficiency of any other such trust account.

(iii) The minimum trustee surplus requirements provided in subdivision (4) of this subsection (b) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this ~~subsection~~ subdivision (5)(E), except that such trust shall maintain a minimum trustee surplus of \$10,000,000.00.

(iv) With respect to obligations incurred by a certified reinsurer under this ~~subsection~~ subdivision (5)(E), if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(v) For purposes of this subdivision (5), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations.

(I) As used in this subdivision (5), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(II) If the Commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply

to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(F) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this State.

(G) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection (b), and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(6)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below:

(i) The assuming insurer shall have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. As used in this section, "reciprocal jurisdiction" means a jurisdiction that meets one of the following:

(I) a non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority; or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. As used in this ~~subsection~~ subdivision (b)(6), a “covered agreement” means an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

(II) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(III) a qualified jurisdiction, as determined by the Commissioner pursuant to subdivision (5)(C) of this subsection (b), that is not otherwise described in subdivision (6)(A)(i)(I) or (6)(A)(i)(II) of this subsection (b) and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the Commissioner in rule or regulation.

(ii) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to

the methodology of its domiciliary jurisdiction, in an amount to be set forth in rule or regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in rule or regulation.

(iii) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, ~~that~~ which will be set forth in rule or regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(iv) The assuming insurer must agree and provide adequate assurance to the Commissioner, in a form specified in rule or regulation by the Commissioner, of the following:

(I) The assuming insurer must provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in subdivision (6)(A)(ii) or (6)(A)(iii) of this subsection;

(b) or if any regulatory action is taken against it for serious noncompliance with applicable law.

(II) The assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the appointment of the Commissioner as agent for service of process. The Commissioner may require that consent for service of process be provided to the Commissioner and included in each reinsurance agreement. Nothing in this ~~subsection~~ subdivision (6)(A)(iv)(II) shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(III) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained.

(IV) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it

was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

(V) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement that involves this State's ceding insurers, and agree to notify the ceding insurer and the Commissioner and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subdivision (b)(5) and subsection (c) of this section and as specified by the Commissioner in rule or regulation.

(v) The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, certain documentation to the Commissioner, as specified by the Commissioner in rule or regulation.

(vi) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rule or regulation.

(vii) The assuming insurer's supervisory authority must confirm to the Commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that

the assuming insurer complies with the requirements set forth in subdivisions (6)(A)(ii) and (6)(A)(iii) of this subsection (b).

(viii) Nothing in this subdivision (b)(6)(A) precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

(B) The Commissioner shall timely create and publish a list of reciprocal jurisdictions.

(i) A list of reciprocal jurisdictions is published through the NAIC committee process. The Commissioner's list shall include any reciprocal jurisdiction as defined under subdivisions (6)(A)(i)(I) and (6)(A)(i)(II) of this subsection (b) and shall consider any other reciprocal jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance with criteria to be developed in rules or regulations adopted by the Commissioner.

(ii) The Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rules or regulations adopted by the Commissioner, except that the Commissioner shall not remove from the list a reciprocal jurisdiction as defined under subdivisions (6)(A)(i)(I) and (6)(A)(i)(II) of this subsection (b). Upon removal of a reciprocal jurisdiction from this list, credit for

reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section.

(C) The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this ~~subsection~~ subdivision (b)(6) and to which cessions shall be granted credit in accordance with this ~~subsection~~ subdivision. The Commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the Commissioner as required under subdivision (6)(A)(iv) of this subsection (b) and complies with any additional requirements that the Commissioner may impose by rule or regulation, except to the extent that they conflict with an applicable covered agreement.

(D) If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this ~~subsection~~ subdivision (b)(6), the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this ~~subsection~~ subdivision in accordance with procedures set forth in rule or regulation.

(i) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of

the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subsection (c) of this section.

(ii) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of subsection (c) of this section.

(E) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(F) Nothing in this ~~subsection~~ subdivision (b)(6) shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law ~~or~~ rule, or regulation.

(G)(i) Credit may be taken under this subsection (b) only for reinsurance agreements entered into, amended, or renewed on or after January 1, 2021; and only with respect to losses incurred and reserves reported on or after the later of:

(I) the date on which the assuming insurer has met all eligibility requirements pursuant to ~~subdivision (6)(A) of this subsection~~ subdivision (b)(6)(A) of this section; and

(II) the effective date of the new reinsurance agreement, amendment, or renewal.

(ii) This subdivision (b)(6)(G) does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this ~~subsection~~ subdivision (b)(6), ~~as long as provided~~ the reinsurance qualifies for credit under any other applicable provision of this section.

(iii) Nothing in this ~~subsection~~ subdivision (b)(6) shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(iv) Nothing in this ~~subsection~~ subdivision (b)(6) shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(7) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3), (4), (5), or (6) of this subsection (b), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(8) If the assuming insurer is not licensed or accredited or certified to transact insurance or reinsurance in this State, the credit permitted by subdivisions (3) and (4) of this subsection (b) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A)(i) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal.

~~(B)~~(ii) To designate the Commissioner, ~~the Secretary of State~~, or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(B) This ~~provision~~ subdivision (b)(8) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(9) If the assuming insurer does not meet the requirements of subdivision (1), (2), (3), or (6) of this subsection (b), the credit permitted by subdivision (4) or (5) of this subsection (b) shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(A) Notwithstanding any other provisions in the trust instrument to the contrary, if the trust fund is inadequate because it contains an amount less than the amount required by subdivisions (4)(B)–(D) of this subsection (b) or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the ~~Commissioner~~ commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the ~~Commissioner~~ commissioner with regulatory oversight all of the assets of the trust fund.

(B) The assets shall be distributed by and claims shall be filed with and valued by the ~~Commissioner~~ commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(C) If the ~~Commissioner~~ commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the ~~Commissioner~~ commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(D) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this ~~provision~~ subdivision (b)(9).

(10) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may suspend or revoke the reinsurer's accreditation or certification.

(A) The Commissioner must give the reinsurer notice and opportunity for hearing. The Commissioner may suspend or revoke a reinsurer's accreditation or certification without a hearing if:

(i) the reinsurer waives its right to hearing;

(ii) the Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (5)(F) of this subsection (b); or

(iii) the Commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the Commissioner's action.

(B) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (c) of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (5)(E) of this subsection (b) or subsection (c) of this section.

(11) Concentration risk.

(A) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders or after it is determined that reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is

likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(B) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20 percent of the ceding insurer's gross written premium in the prior calendar year or after it has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) Asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (b) of this section. An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (b) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer, provided that the Commissioner may adopt by rule or regulation pursuant to subdivision (e)(2) of this section specific additional requirements relating to or setting forth any or all of the following: the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in subdivision (e)(2) of

this section, and the circumstances pursuant to which credit will be reduced or eliminated. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as collateral for the payment of obligations thereunder, if such collateral is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified U.S. financial institution, as defined in subdivision (d)(2) of this section. This security may be in the form of:

(1) ~~Cash~~ cash;

(2) ~~Securities~~ securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3) ~~Clean~~ clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified U.S. financial institution as defined in subdivision (d)(1) of this section, which are effective ~~no~~ not later than December 31 ~~in~~ respect of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement;

(4) ~~Letters~~ letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall,

notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

~~(4)~~(5) ~~Any~~ any other form of collateral acceptable to the Commissioner.

(d) Qualified U.S. financial institutions.

(1) ~~For purposes of~~ As used in subdivision (c)(3) of this section, a "qualified U.S. financial institution" means an institution that:

(A) is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(B) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(C) has been determined by either the Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(2) A "qualified U.S. financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that is:

(A) organized or, in the case of a U.S. branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(B) regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

~~(e) Notwithstanding the provisions of this subsection to the contrary, the Commissioner shall allow credit for reinsurance ceded and assumed to a pooling arrangement that has the following characteristics:~~

~~(1) the majority of the pooling members are licensed to transact business in this State, or are licensed in a state that is accredited with the National Association of Insurance Commissioners, or are approved by the Commissioner;~~

~~(2) the members of the pool are subject to joint and several liability;~~

~~(3) all members of the pool agree to file with the Commissioner, annually on or before March 1, a copy of the member's annual statement filed with the insurance department of its state of domicile; and~~

~~(4) the manager of the pool files with the Commissioner, annually on or before December 1, a request to be exempted from the provisions of subdivisions (b)(1) through (4) of this section.~~

~~(f) Rules and regulations.~~

(1) The Commissioner may adopt rules or regulations implementing the provisions of this section.

(2)(A) The Commissioner may adopt rules or regulations applicable to reinsurance agreements. Such rules or regulations may apply only to reinsurance relating to:

(i) life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) variable annuities with guaranteed death or living benefits;

(iv) long-term care insurance policies; or

(v) such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(B) A rule or regulation adopted pursuant to subdivision (2)(A)(i) or (ii) of this subsection (e) may apply to any treaty that contains:

(i) policies issued on or after January 1, 2015; or

(ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015; or both.

(3) A rule or regulation adopted pursuant to subdivision (2) of this subsection (e) may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.

(4) A rule or regulation adopted pursuant to subdivision (2) of this subsection (e) shall not apply to cessions to an assuming insurer that:

(A) meets the conditions set forth in subdivision (b)(6) of this section;

(B) is certified in this State; or

(C) maintains at least \$250,000,000.00 in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is:

(i) licensed in at least 26 states; or

(ii) licensed in at least 10 states and licensed or accredited in a total of at least 35 states.

(5) The authority to adopt rules or regulations pursuant to subdivision (2) of this subsection (e) does not limit the Commissioner's general authority to adopt rules or regulations pursuant to subdivision (1) of this subsection (e).

~~(g)~~(f) Reinsurance agreements affected. This section shall apply to all cessions after the effective date of this section under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after the effective date of this section.

* * * Effective Dates * * *

Sec. 24. EFFECTIVE DATES

This act shall take effect on passage except that Secs. 10 and 11 (travel insurance) shall take effect 90 days after enactment.