

Senate Calendar

WEDNESDAY, APRIL 21, 2021

SENATE CONVENES AT: 1:00 P.M.

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ACTION CALENDAR

NEW BUSINESS

Third Reading

S. 99.

An act relating to repealing the statute of limitations for civil actions based on childhood physical abuse.

H. 195.

An act relating to use of facial recognition technology by law enforcement in cases involving sexual exploitation of children.

H. 218.

An act relating to the sale of unpasteurized raw milk.

H. 366.

An act relating to 2021 technical corrections.

Second Reading

Favorable with Proposal of Amendment

H. 128.

An act relating to limiting criminal defenses based on victim identity.

Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 6566 is added to read:

§ 6566. DEFENSE BASED ON VICTIM IDENTITY PROHIBITED

In a prosecution or sentencing for any criminal offense, the following shall not be used as a defense to the defendant's criminal conduct, to establish a finding that the defendant suffered from diminished capacity, to justify the defendant's use of force against another, or to otherwise mitigate the severity of the offense:

(1) evidence of the defendant's discovery of, knowledge about, or the potential disclosure of the crime victim's actual or perceived sexual orientation or gender identity, including under circumstances in which the victim made a nonforcible, noncriminal romantic or sexual advance toward the defendant; or

(2) evidence of the defendant's perception or belief, even if inaccurate, of the gender, gender identity, or sexual orientation of a crime victim.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 10, 2021, page 291.)

House Proposal of Amendment

S. 88

An act relating to insurance, banking, and securities.

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 2760b is amended to read:

§ 2760b. PROHIBITED ACTIVITIES

* * *

(c) No person or any other entity, other than a licensee, shall use the ~~title~~ titles “debt adjuster,” “budget planner,” “licensed debt adjuster,” or “licensed budget planner” or the ~~term~~ terms “debt adjuster,” “debt reduction,” or “budget planning,” or, in each case, words of similar import in any public advertisement, business card, or letterhead.

* * *

Sec. 2. 8 V.S.A. § 2102 is amended to read:

§ 2102. APPLICATION FOR LICENSE

* * *

(b) At the time of making an application, the applicant shall pay to the Commissioner a fee for investigating the application and a license or registration fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

* * *

~~(8) For an application for any combination of lender license under chapter 73 of this title, mortgage broker license under chapter 73 of this title, loan solicitation license under chapter 73 of this title, or loan servicer license under chapter 85 of this title, \$1,500.00 as a license fee and \$1,500.00 as an application and investigation fee. [Repealed.]~~

* * *

Sec. 3. 8 V.S.A. § 2109 is amended to read:

§ 2109. ANNUAL RENEWAL OF LICENSE

(a) On or before December 1 of each year, every licensee shall renew its license or registration for the next succeeding calendar year and shall pay to the Commissioner the applicable renewal of license or registration fee. At a minimum, the licensee or registree shall continue to meet the applicable standards for licensure or registration. At the same time, the licensee or registree shall maintain with the Commissioner any required bond in the amount and of the character as required by the applicable chapter. The annual license or registration renewal fee shall be:

* * *

~~(8) For any combination of lender license under chapter 73 of this title, mortgage broker license under chapter 73 of this title, loan solicitation license under chapter 73 of this title, or loan servicer license under chapter 85 of this title, \$1,700.00. [Repealed.]~~

* * *

Sec. 4. 8 V.S.A. § 2120(a)(4) is amended to read:

(4) If a licensee does not file its annual report on or before April 1, or within any extension of time granted by the Commissioner, the licensee shall pay to the Department ~~\$100.00~~ \$1,000.00 for each month or part of a month that the report is past due, beginning on the date that is five business days after April 1 or the last date of such extension, as applicable.

Sec. 5. 8 V.S.A. § 2405(a) is amended to read:

(a) ~~Each independent trust company shall annually file a report on its financial condition with the Commissioner on or before February 15 for the preceding year ending December 31. The Commissioner may require reports from any independent trust company doing a trust business in this State, containing such information, including on its financial condition, at such times and in such format as the Commissioner may prescribe. The Commissioner may require additional reports from any independent trust company that is doing a trust business in this State. The Commissioner may accept a copy of~~

~~any report from the primary regulator of the independent trust company if the Commissioner determines that the report is substantially similar to a report required under this section.~~

Sec. 6. 8 V.S.A. § 2105 is amended to read:

§ 2105. CONTENTS OF LICENSE; NONTRANSFERABLE

(a) A license shall state the address at which a licensee will conduct its business, shall state fully the name of the licensee, and, if the licensee is not an individual, shall state the date and place of its organization or incorporation.

(b) A mortgage loan originator license shall state fully the name of the individual, his or her sponsoring company, and the licensed location ~~at~~ to which he or she is ~~employed~~ assigned.

* * *

Sec. 7. 8 V.S.A. § 2122 is amended to read:

§ 2122. USE OF OTHER NAMES OR BUSINESS PLACES

(a) A licensee shall not conduct business or make a loan subject to regulation under this part under any other name or at any other place of business than as specified in its license.

(b) Mortgage loan originators and employees of licensees may work remotely through a licensed location without being physically present at such location, provided the mortgage loan originator or employee is assigned to a licensed location, is adequately supervised by the licensee, and the licensee and the mortgage loan originator or employee meet such additional conditions as the Commissioner may require.

(c) This section does not apply to a commercial loan made to a borrower located outside Vermont for use outside Vermont.

Sec. 8. 8 V.S.A. § 2201 is amended to read:

§ 2201. LICENSES REQUIRED

* * *

(b) A licensed mortgage loan originator shall register and maintain a valid unique identifier with the Nationwide Multistate Licensing System and Registry and shall be either:

(1) An employee actively employed at or assigned to a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this State.

(2) An individual sole proprietor who is also a licensed lender or licensed mortgage broker.

(3) An employee engaged in loan modifications employed at or assigned to a licensed location of, and supervised and sponsored by, only one third-party loan servicer licensed to operate in this State pursuant to chapter 85 of this title. As used in this subsection, “loan modification” means an adjustment or compromise of an existing residential mortgage loan. The term “loan modification” does not include a refinancing transaction.

* * *

Sec. 9. 8 V.S.A. § 4806 is amended to read:

§ 4806. ~~SURRENDER OF LICENSE; LOSS OR DESTRUCTION~~
SUSPENSION, REVOCATION, OR TERMINATION OF
LICENSE

* * *

~~(c) Upon suspension, revocation, or termination of a license, the licensee shall forthwith deliver it to the Commissioner by personal delivery or by mail. [Repealed.]~~

~~(d) Any licensee who ceases to maintain his or her residency in this State as defined in subdivision 4800(3) of this title, shall deliver his or her insurance license or licenses to the Commissioner by personal delivery or by mail within 30 days after terminating his or her residency. [Repealed.]~~

~~(e) The Commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this subchapter upon an affidavit of the licensee prescribed by the Commissioner concerning the facts of the loss, theft, or destruction. [Repealed.]~~

Sec. 10. 8 V.S.A. § 23(a) is amended to read:

(a) This section shall apply to all persons licensed, authorized, or registered, or required to be licensed, authorized, or registered, under ~~Parts 2 and 4~~ of this title.

Sec. 11. 8 V.S.A. § 8301 is amended to read:

§ 8301. DEFINITIONS

As used in this chapter:

(1) “Adjusted risk based capital report” means a risk based capital report ~~which~~ that has been adjusted by the Commissioner in accordance with subsection 8302(e) of this title.

(2) “Commissioner” means the Commissioner of Financial Regulation.

(3) “Corrective order” means an order issued by the Commissioner specifying corrective actions ~~which~~ that the Commissioner has determined are required under this chapter.

(4) “Domestic insurer” means any insurance company organized in this State under subchapter 1 of chapter 101 of this title, any fraternal benefit society organized in this State under chapter 121 of this title, any health maintenance organization organized in this State under chapter 139 of this title, and any entity organized in this State under chapter 123 or 125 of this title.

(5) “Fraternal benefit society” means any insurance company licensed under chapter 121 of this title.

(6) “Foreign insurer” means any entity licensed to transact business in this State that is required to file a risk based capital statement in the state where the entity is domiciled.

(7) “Health maintenance organization” means any entity organized in the State under chapter 139 of this title.

(8) “Life or health insurer” means ~~any an~~ an insurance company ~~who~~ that insures lives or health as defined in subdivisions 3301(a)(1) and (2) of this title, ~~any health maintenance organization organized in this State under chapter 139 of this title, any an~~ an entity organized in this State under chapter 123 or 125 of this title, or a licensed property and casualty insurer writing only accident and health insurance.

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

~~(9)~~(10) “Negative trend” means, with respect to a life or health insurer or fraternal benefit society, negative trend over a period of time as determined in accordance with the trend test calculation included in the life or fraternal risk based capital instructions.

~~(10)~~(11) “Property and casualty insurer” means any insurance company ~~who~~ that insures property or casualty as defined in subdivisions 3301(a)(3) and (7) of this title, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, ~~and~~ or title insurers.

~~(11)~~(12) “Risk based capital instructions” means the risk based capital report form and the related instructions adopted by the NAIC and approved by the Commissioner.

~~(12)~~(13) “Risk based capital level” means one of the following four levels: company action level risk based capital, regulatory action level risk based capital, authorized control level risk based capital, or mandatory control level risk based capital.

(A) “Company action level risk based capital” means, with respect to any insurer, the product of 2.0 and its authorized control level risk based capital.

(B) “Regulatory action level risk based capital” means, with respect to any insurer, the product of 1.5 and its authorized control level risk based capital.

(C) “Authorized control level risk based capital” means the number determined under the risk based capital formula in accordance with the risk based capital instructions.

(D) “Mandatory control level risk based capital” means, with respect to any insurer, the product of 0.70 and its authorized control level risk based capital.

~~(13)~~(14) “Risk based capital plan” means a comprehensive financial plan containing the elements specified in subsection 8303(b) of this title. If the Commissioner rejects the risk based capital plan and it is revised by the insurer, with or without the Commissioner’s recommendation, the plan shall be called the “revised risk based capital plan.”

~~(14)~~(15) “Risk based capital report” means the report required in section 8302 of this title.

~~(15)~~(16) “Total adjusted capital” means the sum of:

(A) the insurer’s statutory capital and surplus reported in the insurer’s annual statement under section 3561 of this title; and

(B) such other items, if any, as the risk based capital instructions may provide.

Sec. 12. 8 V.S.A. § 8302 is amended to read:

§ 8302. RISK BASED CAPITAL REPORT

* * *

(d) A property and casualty insurer's or health maintenance organization's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account and may adjust for the covariance between the following factors determined in each case by applying the factors in the manner set forth in the risk based capital instructions:

- (1) asset risk;
- (2) credit risk;
- (3) underwriting risk; and

(4) all other business risks and such other relevant risks as are set forth in the risk based capital instructions.

(e) If a domestic insurer files a risk based capital report ~~which~~ that in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the risk based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. A risk based capital report adjusted by the Commissioner under this subsection shall be referred to as an "adjusted risk based capital report."

Sec. 13. 8 V.S.A. § 8303 is amended to read:

§ 8303. COMPANY ACTION LEVEL EVENT

(a) "Company action level event" means any of the following events:

(1) The filing of a risk based capital report by an insurer ~~which~~ that indicates that:

(A) the insurer's total adjusted capital is greater than or equal to its regulatory action level risk based capital but less than its company action level risk based capital;

(B) if in the case of a life or health insurer or a fraternal benefit society, the insurer or society has total adjusted capital ~~which~~ that is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 3.0 and has a negative trend; or

(C) ~~if in the case of~~ a property and casualty insurer, the insurer has total adjusted capital ~~which that~~ is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk based capital instructions; or

(D) in the case of a health maintenance organization, the insurer has total adjusted capital that is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the health risk based capital instructions.

(2) The notification by the Commissioner to the insurer of an adjusted risk based capital report that indicates an event in subdivision (1) of this subsection, provided the insurer does not challenge the adjusted risk based capital report under section 8307 of this title.

(3) If, under section 8307 of this title, an insurer challenges an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) An insurer shall prepare and submit to the Commissioner a risk based capital plan within 45 days of filing a risk based capital report or within 45 days of a final adjusted risk based capital report showing a company action level event. The risk based capital plan shall be a comprehensive financial plan and shall:

(1) ~~identify~~ Identify the conditions in the insurer ~~which that~~ contribute to the company action level event~~;~~.

(2) ~~contain~~ Contain proposals of corrective actions ~~which that~~ the insurer intends to take that would result in the elimination of the company action level event~~;~~.

(3) ~~provide~~ Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business should include separate projections for each major line of business and separately identify each significant income, expense, and benefit component~~;~~.

(4) ~~identify~~ Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions~~; and~~.

(5) ~~identify~~ Identify the quality of, and problems associated with, the insurer's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance.

(c) The Commissioner shall notify the insurer whether the proposed risk based capital plan is approved within 60 days of its submission. If the Commissioner disapproves the plan, the notice shall set forth the reasons for the disapproval and may notify the insurer of revisions ~~which~~ that will render the risk based capital plan satisfactory to the Commissioner. Upon notice that a proposed plan is disapproved, the insurer shall prepare and submit a revised risk based capital plan within 45 days of the Commissioner's notice of disapproval or, if the Commissioner's notice of disapproval is appealed under section 8307 of this title, within 45 days of a Commissioner's determination adverse to the insurer.

(d) In the event of a notification by the Commissioner to an insurer that the insurer's risk based capital plan or revised risk based capital plan is unsatisfactory, the Commissioner may at the Commissioner's discretion, subject to the insurer's right to a hearing under section 8307 of this title, specify in the notification that the notification constitutes a regulatory action level event.

(e) Each domestic insurer required to file a risk based capital plan or revised risk based capital plan under this section shall file a copy of the plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) such state has a provision that is substantially similar to section 8308 of this title; ~~and~~ or

(2) the insurance commissioner of that state has notified the insurer of its request for the filing in writing. Plans required to be filed under this subdivision shall be filed ~~no~~ not later than the later of:

(A) 15 days after notice to file a copy of its risk based capital plan or revised risk based capital plan with the state; or

(B) the date on which the risk based capital plan or revised risk based capital plan is required to be filed under section 8304 of this title.

Sec. 14. 8 V.S.A. § 8307 is amended to read:

§ 8307. HEARINGS

Upon receipt of any notice required under ~~subsections~~ subsection 8302(e), 8303(c) ~~and or~~ (d), ~~and subdivisions~~ subdivision 8304(a)(4) ~~and or~~ (5), ~~and or~~ subsection 8304(c) of this title, any insurer aggrieved by any action taken under those sections may appeal to the Commissioner within five days of receipt of notice of the action. The hearing shall be subject to 3 V.S.A. chapter 25. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which date shall be ~~no~~ not less than 10 nor more than 30 days after the date of the insurer's request.

Sec. 15. 8 V.S.A. § 8308(a) is amended to read:

(a) All risk based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and risk based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the Commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer ~~which~~ that are filed with the Commissioner, constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential and privileged by the Commissioner. This information shall not be made available for public inspection and copying under the Public Records Act, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information for the purpose of enforcement actions taken by the Commissioner under this chapter or any other provision of the insurance laws of this State.

Sec. 16. 8 V.S.A. § 8312 is amended to read:

§ 8312. CONFIDENTIALITY OF RISK BASED CAPITAL REPORTS

All risk based capital reports concerning insurance companies that are not included in section 8308 of this title that are submitted to the Department by the ~~National Association of Insurance Commissioners~~ NAIC or by other states are confidential and ~~may~~ shall not be disclosed by the Department.

Sec. 17. 8 V.S.A. § 15a is amended to read:

§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION
WAIVER; SUNSET-

* * *

(o) No new waivers or extensions shall be granted after July 1, ~~2021~~ 2023.

(p) This section shall be repealed on July 1, ~~2023~~ 2025.

Sec. 18. 9 V.S.A. § 5410 is amended to read:

§ 5410. FILING FEES

(a) A person shall pay a fee of \$300.00 when initially filing an application for registration as a broker-dealer and a fee of \$300.00 when filing a renewal of registration as a broker-dealer. A separate application in writing for branch office registration or renewal, accompanied by a filing fee of \$120.00 per branch office, shall be filed in the Office of the Commissioner in such form as the Commissioner may prescribe by any broker-dealer who transacts business in this State from any place of business located within this State. ~~If the filing results in a denial or withdrawal, the Commissioner shall retain the fee~~ The fee is nonrefundable.

(b) The fee for an individual is \$120.00 when filing an application for registration as an agent, \$120.00 when filing a renewal of registration as an agent, and \$120.00 when filing for a change of registration as an agent. ~~If the filing results in a denial or withdrawal, the Commissioner shall retain the fee~~ The fee is nonrefundable.

(c) A person shall pay a fee of \$300.00 when filing an application for registration as an investment adviser and a fee of \$300.00 when filing a renewal of registration as an investment adviser. A separate application in writing for branch office registration or renewal, accompanied by a filing fee of \$120.00 per branch office, shall be filed in the Office of the Commissioner in such form as the Commissioner may prescribe by any investment adviser who transacts business in this State from any place of business located within the State. ~~If the filing results in a denial or withdrawal, the Commissioner shall retain the fee~~ The fee is nonrefundable.

(d) The fee for an individual is \$80.00 when filing an application for registration as an investment adviser representative, \$80.00 when filing a renewal of registration as an investment adviser representative, and \$80.00 when filing a change of registration as an investment adviser representative. ~~If the filing results in a denial or withdrawal, the Commissioner shall retain the fee~~ The fee is nonrefundable.

(e) A federal covered investment adviser required to file a notice under section 5405 of this title shall pay an initial fee of \$300.00 and an annual notice fee of \$300.00. A notice filing may be terminated by filing notice of such termination with the Commissioner. ~~If a notice filing results in a denial or withdrawal, the Commissioner shall retain the fee~~ The fee is nonrefundable.

Sec. 19. 8 V.S.A. § 4077 is added to read:

§ 4077. TERMINATION; COMPREHENSIVE MAJOR MEDICAL
POLICIES; GRACE PERIOD

(a) A comprehensive major medical insurance policy issued by a health insurance company, nonprofit hospital or medical service corporation, or health maintenance organization that insures employees, members, or subscribers for hospital and medical insurance on an expense-incurred, service, or prepaid basis shall:

(1) provide notice to the policyholder or other responsible party of any premium payment due on a policy at least 21 days before the due date; and

(2) provide a grace period of at least one month for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force and the issuer of the policy shall be liable for valid claims for covered losses incurred prior to the end of the grace period.

(b) If the issuer of a policy described in subsection (a) of this section does not receive payment by the due date, the issuer shall send a termination notice to the policyholder at least 21 days prior to termination notifying the policyholder that the issuer may terminate the policy if payment is not received by the termination date.

(c) The termination date of a policy described in subsection (a) of this section shall not be earlier than the day following the last day of the grace period set forth in subdivision (a)(1) of this section.

Sec. 20. 8 V.S.A. § 4089h is amended to read:

§ 4089h. CANCELLATION OR NONRENEWAL OF HEALTH
INSURANCE COVERAGE

(a) A Except as otherwise provided for comprehensive major medical insurance coverage in section 4077 of this chapter, a health insurer shall notify a policyholder of any premium payment due on a policy at least 21 days before the due date. If an insurer does not receive payment by the due date, an insurer shall send a termination notice to the policyholder notifying the policyholder that the insurer will terminate the policy effective on the due date if payment is not received within 14 days from the date of mailing of the termination notice. If an insurer does not receive payment within 14 days from the date of mailing of the termination notice an insurer may cancel coverage effective on the due date.

(b) As used in this section, “health insurer” means a health insurance company, a hospital or medical service corporation, or a health maintenance organization ~~which~~ that issues or renews any individual policy, service contract, or benefit plan in this State.

Sec. 21. 8 V.S.A. § 6002 is amended to read:

§ 6002. LICENSING; AUTHORITY

* * *

(b) No captive insurance company shall do any insurance business in this State unless:

(1) it first obtains from the Commissioner a license authorizing it to do insurance business in this State;

(2) its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers’ advisory committee holds at least one meeting each year in this State;

(3) it maintains its principal place of business in this State; and

(4) it appoints a registered agent to accept service of process and to otherwise act on its behalf in this State; provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the ~~Secretary of State~~ Commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) Before receiving a license, a captive insurance company shall:

(A) File with the Commissioner a ~~certified~~ copy of its organizational documents, ~~a statement under oath of its president and secretary showing its financial condition,~~ and any other statements or documents required by the Commissioner.

(B) Submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the Commissioner may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the Commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the Commissioner. The captive insurance company shall inform the Commissioner of any material change in rates within 30 days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the Commissioner evidence of the following:

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(C) the overall soundness of its plan of operation;

(D) the adequacy of the loss prevention programs of its insureds; and

(E) such other factors deemed relevant by the Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and remain confidential, and may not be made public by the Commissioner or an employee or agent of the Commissioner without the written consent of the company, except that:

(A) such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:

(i) the information sought is relevant to and necessary for the furtherance of such action or case;

(ii) the information sought is unavailable from other nonconfidential sources; and

(iii) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Commissioner; provided, however, that the provisions of this subdivision (3) shall not apply to any risk retention group; and

(B) the Commissioner may, in the Commissioner's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that:

(i) such public official shall agree in writing to maintain the confidentiality of such information; and

(ii) the laws of the state in which such public official serves require such information to be and to remain confidential.

* * *

(e) If the Commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this chapter, and that such captive insurance company has been duly organized, the Commissioner may grant a license authorizing it to do insurance business in this State until April 1 thereafter, which license may be renewed.

Sec. 22. 8 V.S.A. § 6004 is amended to read:

§ 6004. MINIMUM CAPITAL AND SURPLUS; LETTER OF CREDIT

(a) ~~No captive insurance company shall be issued a license unless it~~ Prior to issuing any policies of insurance or entering into any contracts of reinsurance, each captive insurance company shall possess and thereafter maintain unimpaired paid-in capital and surplus of:

(1) in the case of a pure captive insurance company, not less than \$250,000.00;

(2) in the case of an association captive insurance company, not less than \$500,000.00;

(3) in the case of an industrial insured captive insurance company, not less than \$500,000.00;

(4) in the case of an agency captive insurance company, not less than \$500,000.00;

(5) in the case of a risk retention group, not less than \$1,000,000.00; and

(6) in the case of a sponsored captive insurance company, not less than \$100,000.00.

(b) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(c) Capital and surplus may be in the form of cash, marketable securities, a trust approved by the Commissioner and of which the Commissioner is the sole beneficiary, or an irrevocable letter of credit issued by a bank approved by the Commissioner. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(d) Within 30 days after commencing business, each captive insurance company shall file with the Commissioner a statement under oath of its president and secretary certifying that the captive insurance company possessed the requisite unimpaired paid-in capital and surplus prior to commencing business.

Sec. 23. 8 V.S.A. § 6007 is amended to read:

§ 6007. REPORTS AND STATEMENTS

(a) Captive insurance companies shall not be required to make any annual report except as provided in this chapter.

(b) Prior to March 1 of each year, and prior to March 15 of each year in the case of pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, ~~or~~ industrial insured captive insurance companies, or agency captive insurance companies, each captive insurance company shall submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, statutory accounting principles, or international financial reporting standards unless the Commissioner requires, approves, or accepts the use of any other comprehensive basis of accounting, in each case with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner. As used in this section, statutory accounting principles shall mean the accounting principles codified in the NAIC Accounting Practices and Procedures Manual. Upon application for admission, a captive insurance company shall select, with explanation, an accounting method for reporting. Any change in a captive insurance company's accounting method shall require prior approval. Except as otherwise provided, each risk retention group shall file its report in the form required by subsection 3561(a) of this title, and each risk retention group shall comply with the requirements set forth in section 3569 of this title. The Commissioner shall by rule propose the forms in which pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies shall report. Subdivision 6002(c)(3) of this title shall apply to each report filed pursuant to this section, except that such subdivision shall not apply to reports filed by risk retention groups.

(c) Any pure captive insurance company, association captive insurance company, sponsored captive insurance company, ~~or~~ industrial insured captive insurance company, or agency captive insurance company may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted:

- (1) the annual report is due 75 days after the fiscal year-end; and

(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 of the “Vermont Captive Insurance Company Annual Report - Short Form” verified by oath of two of its executive officers.

Sec. 24. 8 V.S.A. § 6034c is amended to read:

§ 6034c. ~~PROTECTED CELL CONVERSION INTO AN INCORPORATED PROTECTED CELL~~

(a)(1) Subject to the prior written approval of the Commissioner, on application of the sponsor and with the prior consent of each participant of the affected protected cell cells or as otherwise permitted pursuant to a participation agreement and the consent of each affected incorporated protected cell, a sponsored captive insurance company or a sponsored captive insurance company licensed as a special purpose financial insurance company may convert a ~~protected cell into an incorporated protected cell pursuant to the provisions of section 6034a of this title, without affecting the protected cell’s assets, rights, benefits, obligations, and liabilities~~ one or more protected cells or incorporated protected cells into a:

(A) single protected cell or incorporated protected cell;

(B) new sponsored captive insurance company;

(C) new sponsored captive insurance company licensed as a special purpose financial insurance company;

(D) new special purpose financial insurance company;

(E) new pure captive insurance company;

(F) new risk retention group;

(G) new agency captive insurance company;

(H) new industrial insured captive insurance company; or

(I) new association captive insurance company.

(2) Any such conversion shall be subject to section 6031 and subchapters 1 and 4 of this chapter, as applicable, as well as to a plan or plans of operation approved by the Commissioner, without affecting any protected cell’s or incorporated protected cell’s assets, rights, benefits, obligations, and liabilities.

(b) Any such conversion shall be deemed for all purposes to be a continuation of the each such protected cell's or incorporated protected cell's existence together with all of its assets, rights, benefits, obligations, and liabilities, as ~~an~~ a new protected cell or incorporated protected cell of the, a licensed sponsored captive insurance company or, a sponsored captive insurance company licensed as a special purpose financial insurance company, a pure captive insurance company, a risk retention group, an industrial insured captive insurance company, or an association captive insurance company, as applicable. Any such conversion shall be deemed to occur without any transfer or assignment of any such assets, rights, benefits, obligations, or liabilities and without the creation of any reversionary interest in, or impairment of, any such assets, rights, benefits, obligations, and liabilities.

(c) Any such conversion shall not be construed to limit any rights or protections applicable to any converted protected cell or incorporated protected cell and such sponsored captive insurance company or sponsored captive insurance company licensed as a special purpose financial insurance company under this subchapter or under subchapter 4 of this chapter, as applicable, that existed immediately prior to the date of any such conversion.

(d)(1) Any protected cell converting into an incorporated protected cell pursuant to this section, or converting into a new captive insurance company or risk retention group pursuant to this section, shall perform such conversion in accordance with:

(A) the provisions of 11A V.S.A. chapter 11 if the converted entity is to be a corporation;

(B) the provisions of 11 V.S.A. chapter 25, subchapter 10 if the converted entity is to be a limited liability company; or

(C) the provisions applicable to any other type of entity permissible under Vermont law if the converted entity is to be such an entity.

(2) As used in this subdivision, a protected cell that is not an incorporated protected cell shall be considered an "organization" as that term is defined in 11A V.S.A. § 11.01 and 11 V.S.A. § 4141; an "other insurer" as that term is defined in 8 V.S.A. § 6020; and an "entity" as that term is defined in 11C V.S.A. § 102.

Sec. 25. REPEAL

8 V.S.A. § 6034e is repealed.

Sec. 26. 8 V.S.A. § 6006(j) is amended to read:

(j) The provisions of chapter 101, subchapters 3 and 3A of this title, pertaining to mergers, consolidations, conversions, mutualizations, redomestications, and mutual holding companies, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

(1) If the shareholders, members, or policyholders of the captive insurance company have unanimously approved of the merger, the procedures set forth in section 6006a of this title shall apply.

(2) The Commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of subdivision 3424(6) of this title.

~~(2)~~(3) The Commissioner may waive the requirements for public notice and hearing or, in accordance with rules ~~which~~ that the Commissioner may adopt addressing categories of transactions, modify the requirements for public notice and hearing. If a notice of public hearing is required, but no one requests a hearing ten days before the day set for the hearing, then the Commissioner may cancel the hearing.

~~(3)~~(4) The provisions of subsections 3423(f) and (h) of this title shall not apply, and the Commissioner may waive or modify the requirement of subdivision 3423(b)(4) of this title, with respect to market value of a converted company as necessary or desirable to reflect applicable restrictions on ownership of companies formed under this chapter.

~~(4)~~(5) An alien insurer may be a party to a merger authorized under this subsection; provided that the requirements for a merger between a captive insurance company and a foreign insurer under section 3431 of this title shall apply to a merger between a captive insurance company and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under section 3431 and such other jurisdictions shall be the equivalent of a state for purposes of section 3431.

~~(5)~~(6) The Commissioner may issue a certificate of general good to permit the formation of a captive insurance company that is established for the purpose of consolidating or merging with or assuming existing insurance or reinsurance business from an existing licensed captive insurance company. The Commissioner may, upon request of such newly formed captive insurance company, waive or modify the requirements of subdivisions 6002(c)(1)(B) and (2) of this title.

~~(6)~~(7) The Commissioner may waive or modify application of the provisions of chapter 132 and chapter 101, subchapters 3 and 3A of this title and the provisions of Titles 11, 11A, and 11B in order to permit mergers of a non-insurer subsidiary of a captive insurance company with and into the captive insurance company or another of its subsidiaries without approval of the shareholders, members, or subscribers of such captive insurance company and without making available to the shareholders, members, or subscribers dissenters' rights otherwise made available in such a merger; provided, however, that the board of directors, managers, or subscribers' advisory committee of each of the merging entities shall approve such merger. The Commissioner may condition any such waiver or modification upon a good faith effort by the captive insurance company to provide notice of the merger to its shareholders, members, or subscribers.

Sec. 27. 8 V.S.A. § 6006a is added to read:

§ 6006a. MERGERS

(a) Any captive insurance company meeting the qualifications set forth in subdivision 6006(j)(1) of this title may merge with any other insurer, whether licensed in this State or elsewhere, in the following manner:

(1) The board of directors of each insurer shall, by a resolution adopted by a majority vote of the members of such board, approve a joint agreement of merger setting forth:

(A) the names of the insurers proposed to merge, and the name of the insurer into which they propose to merge, which is hereafter designated as the surviving company;

(B) the terms and conditions of the proposed merger and the mode of carrying the same into effect;

(C) the manner and basis of converting the ownership interests, if applicable, in other than the surviving insurer into ownership interests or other consideration, securities, or obligations of the surviving insurer;

(D) a restatement of such provisions of the articles of incorporation of the surviving insurer as may be deemed necessary or advisable to give effect to the proposed merger; and

(E) any other provisions with respect to the proposed merger as are deemed necessary or desirable.

(2) The resolution of the board of directors of each insurer approving the agreement shall direct that the agreement be submitted to a vote of the shareholders, members, or policyholders, as the case may be, of each insurer entitled to vote in respect thereof at a designated meeting thereof, or via unanimous written consent of such shareholders, members, or policyholders in lieu of a meeting. Notice of the meeting shall be given as provided in the bylaws, charter, or articles of association, or other governance document, as the case may be, of each insurer and shall specifically reflect the agreement as a matter to be considered at the meeting.

(3) The agreement of merger so approved shall be submitted to a vote of the shareholders, members, or policyholders, as the case may be, of each insurer entitled to vote in respect thereof at the meeting directed by the resolution of the board of directors of such company approving the agreement, and the agreement shall be unanimously adopted by the shareholders, members, or policyholders, as the case may be.

(4) Following the adoption of the agreement by any insurer, articles of merger shall be adopted in the following manner:

(A) Upon the execution of the agreement of merger by all of the insurers parties thereto, there shall be executed and filed, in the manner hereafter provided, articles of merger setting forth the agreement of merger, the signatures of the several insurers parties thereto, the manner of its adoption, and the vote by which adopted by each insurer.

(B) The articles of merger shall be signed on behalf of each insurer by a duly authorized officer, in such multiple copies as shall be required to enable the insurers to comply with the provisions of this subchapter with respect to filing and recording the articles of merger, and shall then be presented to the Commissioner.

(C) The Commissioner shall approve the articles of merger if he or she finds that the merger will promote the general good of the State in conformity with those standards set forth in section 3305 of this title. If he or she approves the articles of merger, he or she shall issue a certificate of approval of merger.

(5) The insurer shall file the articles of merger, accompanied by the agreement of merger and the certificate of approval of merger, with the Secretary of State and pay all fees as required by law. If the Secretary of State finds that they conform to law, he or she shall issue a certificate of merger and return it to the surviving insurer or its representatives. The merger shall take effect upon the filing of articles of merger with the Secretary of State, unless a later effective date is specified therein.

(6) The surviving insurer shall file a copy of the certificate of merger from the Secretary of State with the Commissioner.

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

(1) The several insurers parties to the agreement of merger shall be a single captive insurance company that shall be the surviving insurer a party to the agreement of merger into which it has been agreed the other insurers parties to the agreement shall be merged, which surviving insurer shall survive the merger.

(2) The separate existence of all of the insurers parties to the agreement of merger, except the surviving captive insurance company, shall cease.

(3) The single captive insurance company shall have all of the rights, privileges, immunities, and powers and shall be subject to all of the duties and liabilities of a captive insurance company organized under this chapter.

(4) The single captive insurance company shall possess all the rights, privileges, immunities, powers, and franchises of a public as well as of a private nature of each of the insurers so merged; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action and all and every other interest, of or belonging to or due to each of the insurers so merged shall be taken and deemed to be transferred to and vested in such single captive insurance company without further act or deed; and the title to any real estate, or any interest therein, under the laws of this State vested in any such insurers shall not revert or be in any way impaired by reason of the merger.

(5) The single captive insurance company shall be responsible and liable for all the liabilities and obligations of each of the insurers so merged in the same manner and to the same extent as if the single insurer had itself incurred the same or contracted therefor; and any claim existing or action or proceeding pending by or against any of the insurers may be prosecuted to judgment as if the merger had not taken place. Neither the rights of creditors nor any liens

upon the property of any insurers shall be impaired by the merger, but such liens shall be limited to the property upon which they were liens immediately prior to the time of the merger unless otherwise provided in the agreement of merger.

(6) The articles of association or other governing document of the surviving captive insurance company shall be supplanted and superseded to the extent, if any, that any provision or provisions of the articles are restated in the agreement of merger as provided in subsection (a) of this section, and such articles of association or other governing document shall be deemed to be thereby and to that extent amended.

(c)(1) In the case of a merger between a domestic and a foreign or alien insurer, the articles of merger shall be regarded as executed by the proper officers of said foreign or alien insurer when such officers are duly authorized to execute same through such action on the part of the directors, shareholders, members, or policyholders, as the case may be, of said foreign or alien insurer as may be required by the laws of the state where the same is incorporated, and upon execution, the articles of merger shall be submitted to the Insurance Commissioner or other officer at the head of the insurance department of the jurisdiction where such foreign or alien insurer is domiciled. No merger shall take effect until it has been approved by the insurance official of the jurisdiction where the foreign or alien insurer is domiciled nor until a certificate of his or her approval has been filed with the Commissioner, provided that such submission to and approval by the proper official of the other jurisdiction shall not be required unless the same are required by the laws of the foreign or alien jurisdiction. Provided, further, that the domestic captive insurance company involved in the merger shall not through anything contained in this section be relieved of any of the procedural requirements enumerated elsewhere in this section.

(2) A merger between a domestic and a foreign or alien captive insurance company shall not take effect unless and until the surviving captive insurance company, if such is a foreign or alien insurer, files with the Commissioner a power of attorney appointing the Commissioner the attorney for service of the foreign or alien insurer, upon whom all lawful process against the insurers may be served. Said power of attorney shall be irrevocable if the foreign or alien insurer has outstanding in this State any contract of insurance, or other obligation whatsoever, and shall by its terms so provide. Service upon the Commissioner shall be deemed sufficient service upon the insurer.

Sec. 28. 8 V.S.A. § 6006b is added to read:

§ 6006b. REDOMESTICATION

(a) Any foreign or alien insurer that qualifies for licensure as a captive insurance company in this State may redomesticate to this State by complying with all of the requirements of law relative to the organization and licensing of a captive insurance company and by filing with the Secretary of State its articles of association, charter, or other organization document, together with appropriate amendments thereto adopted in accordance with the laws of this State bringing such articles of association, charter, or other organizational document into compliance with the laws of this State, along with a certificate of general good issued by the Commissioner and a filing fee per section 3440 of this title. An insurer becoming a domestic captive insurance company through this redomestication process shall pay to the Commissioner such fees as would otherwise be payable by a captive insurance company organizing and becoming licensed or transacting business in this State. The Commissioner may issue a conditional license prior to the effective date of the redomestication in order to facilitate the transaction and provide notice of approval of the transaction to the outgoing jurisdiction. The domestic insurer shall be entitled to the necessary or appropriate certificates and licenses to continue its business and to transact business in this State and shall be subject to the authority and jurisdiction of this State. No insurer redomesticating into this State as a captive insurance company need merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

(b) Upon the approval of and compliance with such conditions as may be imposed by the Commissioner, any captive insurance company may transfer its domicile, in accordance with the laws thereof, to any other state or jurisdiction and upon such a transfer shall cease to be a domestic captive insurance company, and its corporate or other legal existence in this State shall cease upon the filing of articles of redomestication with the Secretary of State, or upon such later date if a delayed effective date is specified in the articles of redomestication, accompanied by a certificate of approval of redomestication issued by the Commissioner and proof of acceptance of the insurer by the Secretary of State or analogous officer of the jurisdiction to which the captive insurance company is redomesticating, and upon payment to the Secretary of State of a filing fee per section 3438 of this title. Said articles of redomestication shall contain, at a minimum, the following information:

(1) the name, organizational form, date of formation, and jurisdiction of formation of the redomesticating entity;

(2) the jurisdiction to which the redomesticating entity will be transferring its domicile and its name following the redomestication date;

(3) the registered office and agent of the redomesticating entity following the redomestication date; and

(4) a statement that the redomestication has been approved by the appropriate vote of the shareholders or other owners of the redomesticating entity.

(c) Upon redomestication in accordance with this section, the foreign or alien insurer shall become a captive insurance company organized under the laws of this State and have all the rights, privileges, immunities, and powers, and be subject to all applicable laws, duties, and liabilities, of domestic insurers of the same type. Such captive insurance company shall possess all rights that obtained prior to the redomestication to the extent permitted by the laws of this State and shall be responsible and liable for all the liabilities and obligations that obtained prior to the redomestication. The certificate of authority, agents, appointments and licenses, rates, and other items that the Commissioner allows, in his or her discretion, that are in existence at the time any insurer transfers its corporate domicile to this or any other state or jurisdiction by redomestication pursuant to this section shall continue in full force and effect upon such transfer. All outstanding policies of any transferring insurer shall remain in full force and effect.

Sec. 29. 8 V.S.A. § 6053(1) is amended to read:

(1) Notice of operations and designation of ~~Secretary of State Commissioner~~ as agent. Before offering insurance in this State, a risk retention group shall submit to the Commissioner:

(A) a statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and such other information, including information on its membership, as the Commissioner of this State may require to verify that the risk retention group is qualified under subdivision 6051(11) of this title;

(B) a copy of its plan of operations and feasibility study and revisions of such plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(i) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(ii) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date; and

(iii) the risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by subsection 6052(b) of this title at the time that such revision has become effective in its chartering state; and

(C) a statement of registration, for which a filing fee shall be determined by the Commissioner, which designates the ~~Secretary of State~~ Commissioner as its agent for the purpose of receiving service of legal documents or process.

* * *

Sec. 30. 8 V.S.A. § 6056(b) is amended to read:

(b) The purchasing group shall register with and designate the ~~Secretary of State~~ Commissioner as its agent solely for the purpose of receiving service of legal documents or process, except for any groups exempted under 15 U.S.C. § 3903(e). Service shall be effected in the manner provided in section 3383 of this title.

Sec. 31. 8 V.S.A. chapter 110 is added to read:

CHAPTER 110. DENTAL INSURANCE

§ 4121. DEFINITIONS

As used in this chapter:

(1) “Covered individual” means an individual covered under a dental insurance plan or a health insurance plan.

(2) “Covered service” means a dental service for which reimbursement is available under a covered individual’s dental insurance plan or health insurance plan or for which reimbursement would be available but for the application of contractual limitations such as deductibles, co-payments, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments, or other limitations.

(3) “Dental insurance plan” means a stand-alone dental plan or policy that provides coverage for dental services separately from a health insurance plan.

(4) “Dental insurer” means any health or dental insurance company, including a nonprofit dental service corporation, that offers a dental insurance plan for sale.

(5) “Dentist” means an individual licensed to practice dentistry under 26 V.S.A. chapter 12.

(6) “Health insurance plan” means any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this State by a health insurer. The term does not include benefit plans providing coverage for a specific disease or other limited benefit coverage.

(7) “Health insurer” has the same meaning as in 18 V.S.A. § 9402.

§ 4122. FEES FOR COVERED DENTAL SERVICES

(a) No dental insurer, health insurer, or other similar entity that covers dental services and is subject to regulation by the Department of Financial Regulation, and no contract or participating provider agreement with a dentist, shall require, directly or indirectly, that a dentist who is a participating provider provide dental services to a covered individual at a fee set by, or subject to the approval of, the insurer or other regulated entity unless the dental services are covered services.

(b) No person providing third-party administrator services shall make available to any customers a plan that sets dental fees for providers in its provider network for any dental services other than covered services.

(c) Fees for covered services shall be set in good faith and shall not be nominal.

(d) The Commissioner of Financial Regulation shall enforce the provisions of this section pursuant to the Commissioner’s authority under this title.

Sec. 32. 18 V.S.A. § 9422 is added to read:

§ 9422. CREDIT CARD PAYMENTS OPTIONAL FOR PROVIDERS

(a) As used in this section:

(1) “Credit card payment” means a type of electronic funds transfer in which a health insurer or its contracted vendor issues a single-use series of numbers associated with payment for health care services delivered by a health care provider and chargeable for a predetermined dollar amount and in which the health care provider is responsible for processing the payment using a credit card terminal or Internet portal. The term includes virtual or online

credit card payments in which no physical credit card is presented to the health care provider and the single-use credit card number expires upon payment processing.

(2) “Health care provider” has the same meaning as in section 9402 of this title.

(3) “Health insurer” means an insurance company that provides health insurance as defined in 8 V.S.A. § 3301(a)(2), a nonprofit hospital or medical service corporation, a managed care organization, a health maintenance organization, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by a public or private entity, as well as any entity offering a policy for specific disease, accident, injury, hospital indemnity, dental care, disability income, long-term care, or other limited benefit coverage.

(b) A health insurer or its contracted vendor shall not require a health care provider, including a dentist or ambulance service provider, to accept reimbursement by credit card payment unless the health care provider has affirmatively elected to receive payments in this manner. If a health care provider, including a dentist or ambulance service provider, does not affirmatively elect to receive reimbursement by credit card payment, the health insurer or its contracted vendor shall make payments to the provider in another manner.

Sec. 33. 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.

Sec. 33a. REPORT; MINIMUM NONFORFEITURE INTEREST RATE

On or before January 15, 2022, the Commissioner of Financial Regulation shall submit to the House Committee on Commerce and Economic Development and the Senate Committee on Finance a report containing his or her findings and recommendations regarding Sec. 33 of this act, which decreases the current statutory minimum nonforfeiture interest rate applicable to individual deferred annuities from 1 percent to 0.15 percent.

Sec. 34. SEPARATING THE INDIVIDUAL AND SMALL GROUP
HEALTH INSURANCE MARKETS FOR PLAN YEAR 2022

(a) Purpose. The purpose of this section is to allow for separate individual and small group health insurance markets for plan year 2022 in light of the increased opportunities for federal premium assistance available through the American Rescue Plan Act of 2021, Pub. L. No. 117-2, to eligible households purchasing qualified health benefit plans in the individual market.

(b) Definitions. As used in this section, “health benefit plan,” “registered carrier,” and “small employer” have the same meanings as in 33 V.S.A. § 1811.

(c) Separate plans and community rating. Notwithstanding any provision of 33 V.S.A. § 1811 to the contrary, for plan year 2022, a registered carrier shall:

(1) offer separate health benefit plans to individuals and families in the individual market and to small employers in the small group market;

(2) apply community rating in accordance with 33 V.S.A. § 1811(f) to determine the premiums for the carrier’s plan year 2022 individual market plans separately from the premiums for its small group market plans; and

(3) file premium rates with the Green Mountain Care Board pursuant to 8 V.S.A. § 4062 separately for the carrier’s individual market and small group market plans.

Sec. 35. EFFECTIVE DATES; APPLICATION

This act shall take effect on passage, except that:

(1) Sec. 31 (8 V.S.A. chapter 110; dental insurance) shall take effect on January 1, 2022 and shall apply to all contracts and participating provider agreements between a dental insurer or third-party administrator and a dentist that are entered into on or after that date and to all dental insurance plans issued on and after January 1, 2022 on such date as a dental insurer offers, issues, or renews the plan, but in no event later than January 1, 2023;

(2) Sec. 32 (18 V.S.A. § 9422; credit card payments optional for providers) shall take effect on January 1, 2022; and

(3) Sec. 33 (8 V.S.A. § 3750(d)(1)(C)(iii); minimum nonforfeiture interest rate for individual deferred annuities) shall take effect on July 1, 2022.

NOTICE CALENDAR

Second Reading

Favorable

H. 199.

An act relating to validating legal instruments used in connection with the conveyance of real estate.

Reported favorably by Senator Nitka for the Committee on Judiciary.

(Committee vote: 5-0-0)

(No House amendments)

Favorable with Proposal of Amendment

H. 145.

An act relating to amending the standards for law enforcement use of force.

Reported favorably with recommendation of proposal of amendment by Senator Benning for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 4, 13 V.S.A. § 2305, in its entirety and inserting in lieu thereof the following:

Sec. 4. 13 V.S.A. § 2305 is amended to read:

§ 2305. JUSTIFIABLE HOMICIDE

If a person kills or wounds another under any of the circumstances enumerated below, he or she shall be guiltless:

(1) in the just and necessary defense of ~~his or her~~ the person's own life or the life of ~~his or her husband, wife~~ the person's spouse, parent, child, brother, sister, master, mistress, servant sibling, guardian, or ward; or

(2) if the person reasonably believed that he or she was in imminent peril and that it was necessary to repel that peril with deadly force, in the forceful or violent suppression of a person attempting to commit murder, sexual assault, aggravated sexual assault, burglary, or robbery, ~~with force or violence;~~ or

(3) ~~in the case of a civil officer; or a military officer or private soldier when lawfully called out to suppress riot or rebellion, or to prevent or suppress invasion, or to assist in serving legal process, in suppressing opposition against him or her in the just and necessary discharge of his or her duty~~ law enforcement officer as defined in 20 V.S.A. § 2351(a) using force in compliance with 20 V.S.A. § 2368(b)(1)–(2), and (5) or deadly force in compliance with 20 V.S.A. § 2368(c)(1)–(4) and (6).

Second: In Sec. 8, effective dates, in subsection (b), by striking out the word “September” and inserting in lieu thereof the word October

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 17, 2021, pages 355-361.)

House Proposal of Amendment

S. 53

An act relating to exempting feminine hygiene products from the Vermont Sales and Use Tax.

The House proposes to the Senate to amend the bill as follows:

First: Before Sec. 1, exemption statutory purpose, by inserting a reader assistance heading to read as follows:

* * * Sales and Use Tax; Feminine Hygiene Products * * *

Second: By striking out Sec. 3, effective date, in its entirety and inserting in lieu thereof:

* * * Corporate Income Tax * * *

Sec. 3. 32 V.S.A. § 5811 is amended to read:

§ 5811. DEFINITIONS

~~The following definitions shall apply throughout this chapter unless the context requires otherwise~~ As used in this chapter:

* * *

(22) “Affiliated group” means a group of two or more corporations in which more than 50 percent of the voting stock of each member corporation is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations, but shall exclude ~~overseas business organizations or~~ foreign corporations and corporations taxable under 8 V.S.A. § 6014.

(23) “Unitary business” means one or more related business organizations engaged in business activity both within and outside the State among which there exists a unity of ownership, operation, and use; or an interdependence in their functions.

(24) ~~“Overseas business organization” means a business organization that ordinarily has 80 percent or more of its payroll and property outside the 50 states and the District of Columbia.~~ [Repealed.]

* * *

Sec. 4. 32 V.S.A. § 5832(2)(C)–(E) are amended to read:

(C) For C corporations with Vermont gross receipts from \$0–~~\$2,000,000.00~~ \$100,000.00, the greater of the amount determined under subdivision (1) of this section or ~~\$300.00~~ \$250.00; or

(D) For C corporations with Vermont gross receipts from \$100,001.00–\$1,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$500.00; or

(E) For C corporations with Vermont gross receipts from \$1,000,001.00–\$5,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$2,000.00; or

(F) For C corporations with Vermont gross receipts from \$2,000,001.00–\$5,000,000.00 \$5,000,001.00–\$300,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$500.00 \$6,000.00; or

(E)(G) For C corporations with Vermont gross receipts greater than \$5,000,000.00 \$300,000,000.00, the greater of the amount determined under subdivision (1) of this section or \$750.00 \$100,000.00.

Sec. 5. 32 V.S.A. § 5833 is amended to read:

§ 5833. ALLOCATION AND APPORTIONMENT OF INCOME

(a) If the income of a taxable corporation is derived from any trade, business, or activity conducted entirely within this State, the Vermont net income of the corporation shall be allocated to this State in full. If the income of a taxable corporation is derived from any trade, business, or activity conducted both within and outside this State, the amount of the corporation's Vermont net income that shall be apportioned to this State, so as to allocate to this State a fair and equitable portion of that income, shall be determined by multiplying that Vermont net income by ~~the arithmetic average of the following factors, with the sales factor described in subdivision (3) of this subsection double-weighted:~~

~~(1) The average of the value of all the real and tangible property within this State (A) at the beginning of the taxable year and (B) at the end of the taxable year (but the Commissioner may require the use of the average of such value on the 15th or other day of each month, in cases where he or she determines that such computation is necessary to more accurately reflect the average value of property within Vermont during the taxable year), expressed as a percentage of all such property both within and outside this State;~~

~~(2) The total wages, salaries, and other personal service compensation paid during the taxable year to employees within this State, expressed as a percentage of all such compensation paid whether within or outside this State;~~

~~(3) The the amount of gross sales, or charges for services performed, within this State, expressed as a percentage of such sales or charges whether within or outside this State.~~

~~(A)(1)~~ Sales of tangible personal property are made in this State if:

~~(i)~~ the property is delivered or shipped to a purchaser, other than the U.S. government, who takes possession within this State, regardless of f.o.b. point or other conditions of sale; ~~or~~

~~(ii)~~ the property is shipped from an office, store, warehouse, factory, or other place of storage in this State; and

~~(I)~~ the purchaser is the U.S. government; or

~~(II)~~ the corporation is not taxable in the State in which the purchaser takes possession.

~~(B)(2)~~ Sales, other than the sale of tangible personal property, are in this State if the taxpayer's market for the sales is in this State. The taxpayer's market for sales is in this State:

~~(i)(A)~~ in the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State;

~~(ii)(B)~~ in the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State;

~~(iii)(C)~~ in the case of sale of a service, if and to the extent the service is delivered to a location in this State; and

~~(iv)(D)~~ in the case of intangible property:

~~(i)~~ that is rented, leased, or licensed, if and to the extent the property is used in this State, provided that intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State; and

~~(ii)~~ that is sold, if and to the extent the property is used in this State, provided that:

~~(I)~~ a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State;

~~(II)~~ receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under subdivision ~~(iv)(I)(D)(i)~~ of this subdivision ~~(B)(2)~~; and

~~(ee)~~(III) all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

~~(C)~~(3) If the state or states of assignment under subdivision ~~(B)~~(2) of this subsection cannot be determined, the state or states of assignment shall be reasonably approximated.

~~(D)~~(4) If the taxpayer is not taxable in a state to which a receipt is assigned under subdivision ~~(B)~~(2) or ~~(C)~~(3) of this subsection, or if the state of assignment cannot be determined under subdivision ~~(B)~~(2) of this subsection or reasonably approximated under subdivision ~~(C)~~(3) of this subsection, such receipt shall be excluded from the denominator of the receipts factor.

~~(E)~~(5) The Commissioner of Taxes shall adopt regulations as necessary to carry out the purposes of this section.

(6) A taxable corporation subject to apportionment under this section shall report to the Commissioner of Taxes:

(A) the average of the value of all the real and tangible property within this State at the beginning of the taxable year and at the end of the taxable year, provided the Commissioner may require the use of the average of such value on the 15th or other day of each month in cases where the Commissioner determines that such computation is necessary to more accurately reflect the average value of property within Vermont during the taxable year, expressed as a percentage of all such property both within and outside this State; and

(B) the total wages, salaries, and other personal service compensation paid to employees within this State during the taxable year, expressed as a percentage of all such compensation paid, whether within or outside this State.

* * *

Sec. 6. 32 V.S.A. § 5862(d) is amended to read:

(d) A taxable corporation which that is part of an affiliated group engaged in a unitary business shall be treated as a single taxpayer and shall file a group return containing the combined net income of the affiliated group and such other informational returns as the Commissioner shall require by rule. A unitary combined return shall include the income and apportionment factors of any taxable corporation incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States and in a unitary relationship with the taxpayer. The income, gain, or losses from members of a combined group shall be combined to the extent allowed under the Internal Revenue Code for consolidated filing as if the combined group was a consolidated filing group, provided that a state tax

credit shall not be combined and shall be limited to the member to which the credit is attributed.

Sec. 7. TRANSITION FROM JOYCE TO FINNIGAN METHOD

(a) For taxable years beginning on and after January 1, 2022, for purposes of determining whether sales are in Vermont and are included in the numerator of the sales apportionment factor, if the activities of any member of a unitary group create nexus with this State, then sales of tangible personal property into Vermont from outside the State by all members of the unitary group shall be included in the Vermont sales factor numerator.

(b) For taxable years beginning on January 1, 2022 and before January 1, 2023:

(1) If any member of a unitary group is taxable in another state, then sales of tangible personal property from a Vermont location into that state by any member of the unitary group shall be excluded from the Vermont sales factor numerator.

(2) If no member of a unitary group is taxable in another state, then sales of tangible personal property from a Vermont location into that state by all members of the unitary group shall be included in the Vermont sales factor numerator.

Sec. 8. RULEMAKING; REPORT

The Department of Taxes shall adopt rules relating to the unitary combined reporting requirements imposed under this act. The rules required under this section shall include a change from the *Joyce* to the *Finnigan* approach to applying Vermont jurisdiction to corporations within a unitary group. The Department shall report to the House Committee on Ways and Means and the Senate Committee on Finance, on or before January 15, 2023, on the Department's proposed rules and any recommendations for legislation with respect to unitary combined reporting.

* * * Sales and Use Tax; Prewritten Computer Software * * *

Sec. 9. 32 V.S.A. § 9701(60) is added to read:

(60) "Vendor-hosted prewritten computer software" means prewritten computer software that is accessed through the Internet or a vendor-hosted server or platform, including where possession of the software is maintained by the vendor or a third party, regardless of:

(A) the method of delivery or transfer, including whether any downloading occurs;

(B) whether the access is permanent or temporary; and

(C) whether the charge for the right of access and for the service is on a per use, per user, per license, subscription, or some other basis.

Sec. 10. 32 V.S.A. § 9771 is amended to read:

§ 9771. IMPOSITION OF SALES TAX

Except as otherwise provided in this chapter, there is imposed a tax on retail sales in this State. The tax shall be paid at the rate of six percent of the sales price charged for but in no case shall any one transaction be taxed under more than one of the following:

* * *

(7) tangible personal property to an advertising agency for its use in providing advertising services or creating advertising materials for transfer in conjunction with the delivery of advertising service; ~~or~~

(8) specified digital products transferred electronically to an end user regardless of whether for permanent use or less than permanent use and regardless of whether or not conditioned upon continued payment from the purchaser; or

(9) vendor-hosted prewritten computer software and the right to access and use vendor-hosted prewritten computer software to perform data processing services.

Sec. 11. 32 V.S.A. § 9773 is amended to read:

§ 9773. IMPOSITION OF COMPENSATING USE TAX

Unless property or telecommunications service has already been or will be subject to the sales tax under this chapter, there is imposed on every person a use tax at the rate of six percent for the use within this State, except as otherwise exempted under this chapter:

* * *

(4) specified digital products transferred electronically to an end user; ~~and~~

(5) telecommunications service except coin-operated telephone service, private telephone service, paging service, private communications service, or value-added non-voice data service; and

(6) vendor-hosted prewritten computer software and the right to access and use vendor-hosted prewritten computer software to perform data processing services.

Sec. 12. REPEAL

2015 Acts and Resolves No. 51, Sec. G.8 (prewritten software accessed remotely) is repealed.

* * * Fees * * *

Sec. 13. 9 V.S.A. § 5302(f) is amended to read:

(f) Investment companies subject to 15 U.S.C. § 80a-1 et seq. shall pay to the Commissioner an initial notice filing fee of \$2,000.00 and an annual renewal fee of ~~\$1,500.00~~ \$1,750.00 for each portfolio or class of investment company securities for which a notice filing is submitted.

* * * Income Tax; Military Retirement Exclusion * * *

Sec. 14. 32 V.S.A. § 5811(21)(B) is amended to read:

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

* * *

(iii) recapture of State and local income tax deductions not taken against Vermont income tax; ~~and~~

(iv) the portion of federally taxable benefits received under the federal Social Security Act that is required to be excluded under section 5830e of this chapter; ~~and~~

(v) [Reserved.]

(vi) the first \$10,000.00 of federally taxable U.S. military retirement pay; and

* * *

Sec. 15. 32 V.S.A. § 5813(y) is added to read:

(y) The statutory purpose of the exclusion of the first \$10,000.00 of federally taxable U.S. military retirement pay in subdivision 5811(21)(B)(vi) of this title is to recognize the military service of Vermonters who derive part of their income from military retirement pay.

* * * Effective Dates * * *

Sec. 16. EFFECTIVE DATES

This act shall take effect on July 1, 2021, except:

(1) Secs. 3 (80/20 rule definitions), 4 (minimum corporate income tax), 5 (single sales factor and repeal of throwback), and 6–7 (Finnigan method and 80/20 rule) shall take effect on January 1, 2022 and apply to taxable years beginning on and after January 1, 2022.

(2) Secs. 9–12 (prewritten computer software) shall take effect on June 1, 2022.

(3) Notwithstanding 1 V.S.A. § 214, Secs. 14–15 (military retirement exemption) shall take effect on January 1, 2021 and shall apply to taxable years beginning on and after January 1, 2021.

Third: And that after passage the title of the bill be amended to read:

An act relating to tax changes affecting corporations, menstrual products, military retirement income, and prewritten computer software, and investment security company fees.

ORDERED TO LIE

S. 100.

An act relating to universal school breakfast and lunch for all public school students and to creating incentives for schools to purchase locally produced foods.

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Cory G. Gustafson of Montpelier – Commissioner, Department of Vermont Health Access – By Sen. Cummings for the Committee on Health and Welfare. (4/6/21)

Dr. Jessica Holmes of Cornwall – Member, Green Mountain Care Board – By Sen. Hardy for the Committee on Health and Welfare. (4/7/21)

Mark A. Levine, MD of Shelburne – Commissioner, Department of Health – By Sen. Hardy for the Committee on Health and Welfare. (4/7/21)

John J. Quinn III of Berlin – Secretary, Agency of Digital Services – By Sen. Ram for the Committee on Government Operations. (4/14/21)

June Tierney of Randolph – Commissioner, Department of Public Service – By Sen. Cummings for the Committee on Finance. (4/14/21)

Craig Bolio of Essex Junction – Commissioner, Department of Taxes – By Sen. MacDonald for the Committee on Finance. (4/20/21)

Julia S. Moore of Middlesex – Secretary, Agency of Natural Resources – By Sen. Bray for the Committee on Natural Resources and Energy. (4/21/21)

Julie Hulburd of Colchester – Member, Cannabis Control Board – By Sen. Ram for the Committee on Government Operations. (4/22/21)

James Pepper of Montpelier – Chair, Cannabis Control Board – By Sen. White for the Committee on Government Operations. (4/22/21)

PUBLIC HEARINGS

Joint public hearing to hear Vermont's unemployment insurance issues for employees and employers during the COVID pandemic

On Tuesday, May 4, 2021 from 5:00 p.m. to 7:00 p.m. the House Committee on Commerce and Economic Development and the House Committee on Government Operations will hold a joint public hearing to listen to employees and employers in Vermont about the issues faced with unemployment insurance during the COVID pandemic. The public is invited to register to speak at the hearing or submit written testimony.

To register as a speaker at the hearing, please sign up here: <https://legislature.vermont.gov/links/public-hearing-unemployment>

Registrations will be accepted on a first-come, first-served basis, and testimony time will be limited to two minutes per person.

To submit written testimony, please email an MS Word or PDF file to testimony@leg.state.vt.us

The hearing will be live streamed on the Legislature's Joint Committees YouTube channel here:

<https://legislature.vermont.gov/committee/streaming/shared-joint-committees>

JFO NOTICE

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3):

JFO #3043 - \$4,284,369 from the US Dept of Education to the VT Agency of Education for assistance to VT's approved and recognized non-profit independent schools to address educational disruptions caused by COVID-19. Funds will be managed by the VT Agency of Education. *[NOTE: Funds will be used with the GEER EANS program: Governor's Emergency Education Relief (GEER) Emergency Assistance to Non-public Schools (EANS). This program is replacing Equitable Services in ESSER II and III. Please see this overview of how the funds will be used by the AOE to support independent schools.]*

[JFO received 4/5/2021]

JFO #3044 – One (1) limited service position to the VT Dept. of Disabilities, Aging and Independent Living to develop a Northeast Network of mental health counselors familiar with farmer related stressors. Total first year amount of \$146,766 from the U.S. Department of Agriculture. Position has been approved for 1 year and is expected to be approved for 2 additional years.

[JFO received 4/5/2021]

JFO #3045 - 48 (forty-eight) limited-service positions to carry out the ongoing work for an effective public health response to COVID-19. *[NOTE: Positions to be funded through ongoing CDC grants #2254 (Immunization) and #2478 (Epidemiology and Laboratory Capacity) previously approved in 2006 and 2010, respectively.]*

[JFO received 4/13/2021]

FOR INFORMATION ONLY

CROSSOVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 12, 2021**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day – Committee bills must be voted out of Committee by Friday March 12, 2021.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 19, 2021**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

Note: The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

Exceptions to the foregoing deadlines include the major money bills (the general Appropriations bill (“The Big Bill”), the Transportation Capital bill, the Capital Construction bill and the Fee/Revenue bills).