

## H.515 – Commerce Strike-all Amendment – Summary for Ways and Means

*Prepared by Maria Royle, February 16, 2022*

### **Secs. 1–6 comprise technical and conforming amendments.**

- Sec. 1 applies to certain transactions of insurers within an insurance holding company system that require the Commissioner’s approval. It fixes a conflict within existing law by removing “guarantees” under subdivision (f)(1). This is because guarantees are dealt with in another subdivision of the law.
- Secs. 2-3 amend the Vermont Securities Act, specifically as it relates to notice filing and registration fees. The amendments clarify that the fees are nonrefundable. This is consistent with the current policy of the Securities Division.
- Sec. 4 applies to VT financial institutions. It provides explicit authority for the Commissioner to revoke a bank’s charter if the bank ceases to exist or ceases to be eligible for a charter.
- Sec. 5 applies to the powers of VT financial institutions and removes an outdated reference to the Office of Thrift Supervision, which no longer exists, and adds references to current federal regulatory entities, such as the FDIC and the Consumer Financial Protection Bureau.
- Sec. 6 applies to consumer protection provisions applicable to financial institutions, specifically debt protection agreements. It corrects an erroneous cross reference.

**Sec. 7 applies to virtual currency kiosks**, (also known as crypto kiosks). These kiosks, which are often installed in convenience stores and other public places, allow people to buy cryptocurrency with deposited cash. The proposal requires licensees to register each kiosk with the State (none are registered currently) and imposes disclosure requirements similar to those applied to ATMs under current law. Required disclosures include information related to the owner of the kiosk and any applicable transaction fees or charges. The proposal does not require the payment of kiosk registration fees.

**Sec. 8 applies to insurance company rebates**. Under current law, insurers are generally prohibited from offering rebates as an inducement to the purchase of insurance. The proposal here provides an exception to that prohibition. It allows an insurer to offer to a consumer “value-added products and services” that relate to the insurance coverage and that generally benefit both the consumer and the insurer. For example, products or services that provide education about liability risks or that enhance health or financial wellness are permitted. All rebates, however, or subject to oversight by the Commissioner. This proposal is consistent with NAIC<sup>1</sup> Model Act #880.

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<sup>1</sup> National Association of Insurance Commissioners.

**Sec. 9 applies to the standard nonforfeiture law for individual deferred annuities.**

Specifically, it reduces the *minimum* statutory interest rate from 1 percent to 0.15 percent. The nonforfeiture law requires a deferred annuity contract to provide the contract holder with a paid-up annuity or cash surrender benefit if the contract holder stops making payments during the accumulation period.

Vermont’s statute, 8 V.S.A. § 3750, is based on a NAIC model law. In 2020, the NAIC amended its model law to reduce the interest rate floor from 1.0 percent to 0.15 percent to reflect the low interest rates on US Treasury bonds. Companies that offer annuities typically invest the money paid to them by holders of annuities in US Treasury bonds. The General Assembly considered this issue in 2021 and ultimately concluded that the matter should be studied by DFR. (See Act No. 25, Sec. 33.) DFR submitted a report to the Legislature on January 15, 2022. In that report, DFR indicated its support for lowering the interest rate as proposed in this bill.

**Secs. 10-12 apply to travel insurance.** These sections provide a complete regulatory scheme specific to travel insurance. Components of the proposed law include: licensure of travel insurance producers;<sup>2</sup> requirements for marketing and sales of travel insurance policies, including consumer protections and compliance with unfair trade practices law; and requirements related to travel insurance forms. The proposal is consistent with NAIC Model Act #632. The proposed law does not change the premium tax applicable to insurers under current law, so there is no fiscal impact on the State.

**Secs. 13-19 pertain to captive insurance.**

- Sec. 13 simplifies the reporting requirements applicable to premium tax reconciliation for those captives that report on a fiscal year basis. Roughly 15% of VT captives report on a fiscal year basis.
- Sec. 14 applies to delinquency proceedings against certain captive insurers. A delinquency proceeding generally refers to a proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer. Such proceedings are used in the event of an insolvency, for example. Current law provides standards related to delinquency proceedings against *sponsored captive insurance companies*. The proposal here essentially specifies that a proceeding can be brought against the individual *protected cells within* a sponsored captive insurance company. This allows the Commissioner to deal with the affected cell without impacting the remaining solvent cells. For example, it authorizes the Commissioner to extract the insolvent cell and convert it into a standalone captive.
- Sec. 15 pertains to protected cells and unaffiliated entities. The proposal permits a protected cell to insure the risks of an unaffiliated entity, subject to Commissioner approval.

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<sup>2</sup> An “insurance producer” sells insurance products to clients on behalf of an insurance company. The term covers insurance agents and brokers alike.

- Secs. 16-17 pertain to the reporting requirements of sponsored captive insurance companies. The amendments are, in part, a statutory reorganization that provides greater clarity and, in part, enhanced reporting requirements related to individual protected cells, some of whom have owners not located in Vermont. In short, the amendments improve the Commissioner’s ability to examine and inspect relevant financial statements, which must be kept in Vermont.
- Sec. 18 allows a captive to enter into a parametric contract. A “parametric contract” is a contract to make a payment upon the occurrence of one or more specified triggering events *without proof of loss or obligation to indemnify.*” It is not an insurance contract (because loss is not required). The proposal specifies that a captive that transfers risk by means of a parametric contract must comply with all applicable State and federal laws and regulations. According to DFR, parametric risk contracts are becoming commonplace as another form of financial protection for catastrophic events. And, because organizations often use captives as a central repository for all types of risk management tools, not just insurance, it will be helpful for companies to have explicit authority for their captive to enter into parametric contracts. An example of a parametric contract is the payment of a lump sum in the event of a hurricane in a particular area, regardless of whether or not loss was incurred.
- Sec. 19 is a technical correction. It removes a reference to captive “consolidations” in a statute that applies only to “mergers.”

**Sec. 20 proposes to enact the “Vermont Insurance Data Security Law.”** It is based largely on the NAIC Data Security Model Act. As such, it establishes comprehensive standards for data security and for the investigation of cybersecurity events, specifically for insurance companies (“licensees”). Significantly, the proposal does not include the “notice” requirements of the Model Act. This is because Vermont already has a Security Breach Notice Act that applies to data collectors, generally. The proposal here specifies that insurance companies would continue to be subject to Vermont’s Security Breach Notice Act.

**Secs. 21-22 propose to enact the “Vermont Whistleblower Award and Protection Act.”** The proposal is based on the NASAA (North American Securities Administrators Association) Model Whistleblower Award and Protection Act. It pertains to violations of state or federal securities law. It protects whistleblowers from retaliation and it gives the Commissioner authority to make a whistleblower award, provided certain conditions are met. Funding comes from the existing Vermont Financial Services Education and Victim Restitution Special Fund, which is renamed the Vermont Financial Services Education, Victim Restitution, and Whistleblower Award Special Fund. (Under existing law, the Commissioner may direct a party subject to the settlement of a securities law enforcement matter to deposit a percentage of the settlement into the Fund.) The proposal expands what the Fund can be used for (whistleblower awards). However, it does not require a new or expanded funding source. Thus, it is revenue neutral to the State.

**Sec. 23 pertains to credit for reinsurance.** In 2020, as part of Act No. 103, Vermont adopted a NAIC model law that governs the circumstances under which a Vermont insurer can record as an asset on its balance sheet reinsurance protection obtained from another carrier. The law waives certain collateral requirements that historically applied to non-U.S. reinsurers, provided the reinsurer is located in a “reciprocal jurisdiction” and other conditions are met. The proposal here is to provide additional alignment and consistency with the relevant NAIC model laws, including with respect to the Commissioner’s rulemaking authority. This proposal is time sensitive. The new rules must be adopted by September 2022 to meet NAIC accreditation standards.

**Sec. 24 includes the effective dates.** It specifies that the act takes effect on passage, except that the new regulatory scheme applicable to travel insurance takes effect 90 days after enactment.