

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 515 entitled “An act relating to banking, insurance,
4 and securities” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Insurance; Securities; Banking * * *

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

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

11 * * *

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

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 ~~If the notice filing is withdrawn or otherwise terminated, the~~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

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

19 (b) A person filing a registration statement shall pay a filing fee of \$600.00.
20 A person filing a registration statement in connection with the New England
21 Crowdfunding Initiative shall be exempt from the filing fee requirement.

1 Open-end investment companies shall pay a registration fee and an annual
2 renewal fee for each portfolio as long as the registration of those securities
3 remains in effect. ~~If a registration statement is withdrawn before the effective~~
4 ~~date or a preeffective stop order is issued under section 5306 of this title, the~~
5 ~~Commissioner shall retain the fee~~ The fee is nonrefundable.

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

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

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

10 § 14106. EXPANDED POWERS OF VERMONT FINANCIAL
11 INSTITUTIONS

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

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

19 (2) All assignments, sales, or transfers of a loan agreement or motor
20 vehicle or retail installment contract to which a debt protection agreement
21 relates and the related debt protection agreement, shall be to a financial

1 institution as defined in subdivision 11101(32) of this title, a credit union, or
2 an entity licensed under subdivision 2201(a)(1) or ~~(3)~~(4) of this title to engage
3 in lending or sales financing.

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

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

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

13 (8) Rebates.

14 * * *

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

18 * * *

19 (iii) readjustment of the rate of premium for a group insurance
20 policy based on the loss or expense thereunder under the group insurance
21 policy, at the end of the first or any subsequent policy year of insurance

1 ~~thereunder~~ under the group policy, which may be made retroactive only for
2 such policy year;

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

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

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

11 (aa) provide loss mitigation or loss control;

12 (bb) reduce claim costs or claim settlement costs;

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

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

17 (ee) enhance health;

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

20 (gg) provide post-loss service;

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

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

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

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

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

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

1 (D) An insurer, producer, or representative of either may not offer or
2 provide insurance as an inducement to the purchase of another policy or
3 otherwise use the words “free” or “no cost” or words of similar import in an
4 advertisement.

5 Sec. 9. 8 V.S.A. § 4085 is amended to read:

6 ~~§ 4085. REBATES AND COMMISSIONS PROHIBITED FOR NONGROUP~~
7 ~~—————AND SMALL GROUP POLICIES AND PLANS OFFERED~~
8 ~~—————THROUGH THE VERMONT HEALTH BENEFIT EXCHANGE~~

9 (a) No ~~Except as provided in subdivision 4724(8)(C) of this title, no~~ insurer
10 doing business in this State and no insurance agent or broker shall offer,
11 promise, allow, give, set off, or pay, directly or indirectly, any rebate of or part
12 of the premium payable on a plan issued pursuant to section 4080g of this title
13 or 33 V.S.A. § 1811 or earnings, profits, dividends, or other benefits founded,
14 arising, accruing or to accrue thereon or therefrom, or any special advantage in
15 date of policy or age of issue, or any paid employment or contract for services
16 of any kind or any other valuable consideration or inducement to or for
17 insurance on any risk in this State, now or hereafter to be written, or for or
18 upon any renewal of any such insurance, which is not specified in the policy
19 contract of insurance, or offer, promise, give, option, sell, purchase any stocks,
20 bonds, securities, or property or any dividends or profits accruing or to accrue
21 thereon, or other thing of value whatsoever as inducement to insurance or in

1 connection therewith, or any renewal thereof, which is not specified in the
2 plan.

3 (b) No ~~Except as provided in subdivision 4724(8)(C) of this title, no~~ person
4 insured under a plan issued pursuant to section 4080g of this title or 33 V.S.A.
5 § 1811 or party or applicant for such plan shall directly or indirectly receive or
6 accept or agree to receive or accept any rebate of premium or of any part
7 thereof, or any favor or advantage, or share in any benefit to accrue under any
8 plan issued pursuant to section 4080g of this title or 33 V.S.A. § 1811, or any
9 valuable consideration or inducement, other than such as is specified in the
10 plan.

11 * * *

12 Sec. 10. 8 V.S.A. § 4085a is amended to read:

13 ~~§ 4085a. REBATES PROHIBITED FOR GROUP INSURANCE POLICIES~~

14 (a) ~~As used in this section, “group insurance” means any policy described~~
15 ~~in section 4079 of this title, except that it shall not include any small group~~
16 ~~policy issued pursuant to section 4080a or 4080g of this title or to 33 V.S.A.~~
17 ~~§ 1811.~~

18 (b) No ~~Except as provided in subdivision 4724(8)(C) of this title, no~~ insurer
19 doing business in this State and no insurance agent or broker shall offer,
20 promise, allow, give, set off, or pay, directly or indirectly, any rebate of or part
21 of the premium payable on a group insurance policy, or on any group

1 ~~insurance policy or agent's commission thereon or earnings, profits, dividends,~~
2 ~~or other benefits founded, arising, accruing or to accrue thereon or therefrom,~~
3 ~~or any special advantage in date of policy or age of issue, or any paid~~
4 ~~employment or contract for services of any kind or any other valuable~~
5 ~~consideration or inducement to or for insurance on any risk in this State, now~~
6 ~~or hereafter to be written, or for or upon any renewal of any such insurance,~~
7 ~~which that is not specified in the policy contract of insurance, or offer,~~
8 ~~promise, give, option, sell, purchase any stocks, bonds, securities, or property~~
9 ~~or any dividends or profits accruing or to accrue thereon, or other thing of~~
10 ~~value whatsoever as inducement to insurance or in connection therewith, or~~
11 ~~any renewal thereof, which that is not specified in the policy.~~

12 (e) No Except as provided in subdivision 4724(8)(C) of this title, no
13 ~~insured person under a group insurance policy or party or applicant for group~~
14 ~~insurance shall directly or indirectly receive or accept or agree to receive or~~
15 ~~accept any rebate of premium or of any part thereof or all or any part of any~~
16 ~~agent's or broker's commission thereon, or any favor or advantage, or share in~~
17 ~~any benefit to accrue under any policy of insurance, or any valuable~~
18 ~~consideration or inducement, other than such as is specified in the policy.~~

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

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

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

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

3 CHAPTER 148. TRAVEL INSURANCE

4 § 7122. SCOPE AND PURPOSE

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

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

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

17 § 7123. DEFINITIONS

18 As used in this chapter:

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

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

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

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

13 (A) any entity engaged in the business of providing travel or travel
14 services, including a tour operator, lodging provider, vacation property owner,
15 hotel or resort, travel club, travel agency, property manager, cultural exchange
16 program, or common carrier, or the operator, owner, or lessor of a means of
17 transportation of passengers, including to an airline, cruise line, railroad,
18 steamship company, or public bus carrier, wherein with regard to any
19 particular travel or type of travel or travelers, all members or customers of the
20 group have a common exposure to risk attendant to such travel;

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

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

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

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

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

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

18 (H) any trust or the trustees of a fund established, created, or
19 maintained for the benefit of and covering members, employees, or customers,
20 subject to the Commissioner's permitting the use of a trust and the State's

1 premium tax provisions in section 7125 of this chapter, of one or more
2 associations meeting the requirements of subdivision (4)(G) of this section;

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

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

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

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

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

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

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

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

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

5 (B) licensed insurance producer, including a limited lines producer,

6 designated by an insurer as the travel insurance supervising entity as set forth

7 in subsection 7124(f) of this title; or

8 (C) travel administrator.

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

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

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

16 (11) “Travel administrator” means a person who directly or indirectly
17 underwrites, collects charges, collateral, or premiums from, or adjusts or settles
18 claims on residents of this State, in connection with travel insurance, except
19 that a person shall not be considered a travel administrator if that person’s only
20 actions that would otherwise cause it to be considered a travel administrator
21 are among the following:

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

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

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

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

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

16 (12) “Travel assistance services” means noninsurance services for which
17 the consumer is not indemnified based on a fortuitous event and where
18 providing the service does not result in transfer or shifting of risk that would
19 constitute the business of insurance. Travel assistance services include the
20 provision of security advisories, destination information, vaccination and
21 immunization information services, travel reservation services, entertainment,

1 activity, or event planning, translation assistance, emergency messaging,
2 international legal and medical referrals, medical case monitoring,
3 coordination of transportation arrangements, emergency cash transfer
4 assistance, medical prescription replacement assistance, passport and travel
5 document replacement assistance, lost luggage assistance, or concierge
6 services. Travel assistance services are not insurance and not related to
7 insurance.

8 (13)(A) “Travel insurance” means insurance coverage for personal risks
9 incident to planned travel, including:

10 (i) interruption or cancellation of a trip or event;
11 (ii) loss of baggage or personal effects;
12 (iii) damages to accommodations or rental vehicles;
13 (iv) sickness, accident, disability, or death occurring during travel;
14 (v) emergency evacuation;
15 (vi) repatriation of remains; or
16 (vii) any other contractual obligations to indemnify or pay a
17 specified amount to the traveler upon determinable contingencies related to
18 travel as approved by the Commissioner.

19 (B) Travel insurance does not include major medical plans that
20 provide comprehensive medical protection for travelers with trips lasting six
21 months or longer, including, for example, those working overseas as

1 expatriates, or any other product that requires a specific insurance producer
2 license.

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

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

10 § 7124. LICENSING AND REGISTRATION

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

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

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

3 (A) a description of the material terms or the actual material terms of
4 the insurance coverage ~~prior to~~ at the time of purchase;

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

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

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

10 (2) At the time of licensure, the limited lines travel insurance producer
11 has established and maintains a register on a form prescribed by the
12 Commissioner of each travel retailer that offers travel insurance on the limited
13 lines travel insurance producer’s behalf. The register shall be maintained and
14 updated annually by the limited lines travel insurance producer and shall
15 include the name, address, and contact information of the travel retailer and an
16 officer or person who directs or controls the travel retailer’s operations, and the
17 travel retailer’s Federal Tax Identification Number. The limited lines travel
18 insurance producer shall submit such register within 30 days of request by the
19 Commissioner. The limited lines travel insurance producer shall also certify
20 that the travel retailer registered complies with 18 U.S.C. § 1033. The grounds
21 for the suspension and revocation and the penalties applicable to resident

1 insurance producers under 8 V.S.A. § 4804 shall be applicable to the limited
2 lines travel insurance producers and travel retailers.

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

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

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

15 (6) The limited lines travel insurance producer requires each employee
16 and authorized representative of the travel retailer whose duties include
17 offering and disseminating travel insurance to receive a program of instruction
18 or training, which may be subject to review by the Commissioner. The
19 training material shall, at a minimum, contain instructions on the types of
20 insurance offered, ethical sales practices, and required disclosures to
21 prospective customers.

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

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

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

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

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

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

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

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

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

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

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

18 (h) The limited lines travel insurance producer and any travel retailer
19 offering and disseminating travel insurance under a limited lines travel
20 insurance producer license shall be subject to the provisions of sections 13 and
21 4804 and chapter 129 of this title.

1 § 7125. PREMIUM TAX

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

3 § 8551, on travel insurance premiums paid by any of the following:

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

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

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

14 (b) A travel insurer shall:

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

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

21 § 7126. TRAVEL PROTECTION PLANS

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

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

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

10 (3) the fulfillment materials:

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

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

16 § 7127. SALES PRACTICES

17 (a) All persons offering travel insurance to residents of this State are
18 subject to chapter 129 of this title, except as otherwise provided in this section.

19 In the event of a conflict between this chapter and other provisions of this title
20 regarding the sale and marketing of travel insurance and travel protection
21 plans, the provisions of this chapter shall control.

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

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

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

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

13 (B) the policy or certificate may only exclude preexisting conditions
14 for which medical advice or treatment was recommended by or received from
15 a health care provider within a six-month period preceding the effective date of
16 coverage.

17 (3)(A) The fulfillment materials and the information described in
18 subdivisions 7124(b)(1)(B)–(D) of this title shall be provided to a policyholder
19 or certificate holder as soon as practicable following the purchase of a travel
20 protection plan. Unless the insured has either started a covered trip or filed a
21 claim under the travel insurance coverage, a policyholder or certificate holder

1 may cancel a policy or certificate for a full refund of the travel protection plan
2 price from the date of purchase of a travel protection plan until at least:

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

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

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

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

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

20 (d) A person offering, soliciting, or negotiating travel insurance or travel
21 protection plans on an individual or group basis may not do so by using

1 negative option or opt out, which would require a consumer to take an
2 affirmative action to deselect coverage, such as by unchecking a box on an
3 electronic form, when the consumer purchases a trip.

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

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

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

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

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

19 § 7128. TRAVEL ADMINISTRATORS

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

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

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

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

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

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

12 § 7129. POLICY

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

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

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

7 § 7130. RULEMAKING AUTHORITY

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

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

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

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

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

17 * * * Captive Insurance * * *

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

19 (2) in order to provide sufficient detail to support the premium tax
20 return, the ~~pure~~ captive insurance company, ~~association captive insurance~~
21 ~~company, sponsored captive insurance company, or industrial insured captive~~

1 ~~insurance company~~ shall file prior to March 15 of each year for each calendar
2 year-end, ~~pages 1, 2, 3, and 5~~ the premium schedule of the “Vermont Captive
3 Insurance Company Annual Report–~~Short Form~~” ~~verified by oath of two of its~~
4 ~~executive officers.~~

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

6 § 6038. DELINQUENCY OF SPONSORED CAPTIVE INSURANCE
7 COMPANIES

8 (a) Except as otherwise provided in this section, the provisions of chapter
9 145 of this title shall apply in full to a sponsored captive insurance company
10 and to each of its protected cells.

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

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

18 (1) In connection with the conservation, rehabilitation, or liquidation of
19 a sponsored captive insurance company or any of its protected cells, the assets
20 and liabilities of a protected cell shall at all times be kept separate from, and

1 shall not be commingled with, those of other protected cells and the sponsored
2 captive insurance company.

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

5 (3) Unless the sponsor consents and the Commissioner has granted prior
6 written approval, the assets of the sponsored captive insurance company's
7 general account shall not be used to pay any expenses or claims attributable
8 solely to a protected cell or protected cells of the sponsored captive insurance
9 company. In the event that the assets of the sponsored captive insurance
10 company's general account are used to pay expenses or claims attributable
11 solely to a protected cell or protected cells of the sponsored captive insurance
12 company, the sponsor is not required to contribute additional capital and
13 surplus to the sponsored captive insurance company's general account,
14 notwithstanding the provisions of section 6004 of this title.

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

18 (d) Notwithstanding the provisions of chapter 145 of this title or any other
19 provision of law to the contrary, and, in addition to the provisions of this
20 section, in the event of an insolvency of a sponsored captive insurance
21 company or any of its protected cells where the Commissioner determines that

1 one or more protected cells remain solvent, the Commissioner may separate
2 such cells from the sponsored captive insurance company and, on application
3 of the sponsor, may allow for the conversion of such protected cells into one or
4 more new or existing sponsored captive insurance companies, or one or more
5 other captive insurance companies, pursuant to a plan or plans of operation
6 approved by the Commissioner.

7 (e) Notwithstanding the provisions of chapter 145 of this title or any other
8 provision of law to the contrary, and in addition to the provisions of this
9 section, in the event of an insolvency of one or more protected cells of a
10 sponsored captive insurance company, the Commissioner may separate such
11 cell or cells from the sponsored captive insurance company and may allow for
12 the conversion of such protected cell or cells into one or more new or existing
13 sponsored captive insurance companies, or one or more other captive insurance
14 companies, pursuant to a plan or plans of operation approved by the
15 Commissioner.

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

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

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

21 § 6034. PROTECTED CELLS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

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

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

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

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

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

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

(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or

1 other arrangement that is acceptable to the Commissioner. The Commissioner
2 may require the sponsored captive to increase the funding of any security
3 arrangement established under this subdivision. If the form of security is a
4 letter of credit, the letter of credit must be issued or confirmed by a bank
5 approved by the Commissioner. A trust maintained pursuant to this
6 subdivision shall be established in a form and upon such terms approved by the
7 Commissioner.

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

9 § 6034f. ANNUAL REPORT; BOOKS AND RECORDS

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

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

15 (2) Unless otherwise approved in advance by the Commissioner, a
16 sponsored captive insurance company shall maintain its books, records,
17 documents, accounts, vouchers, and agreements in this State. A sponsored
18 captive insurance company shall make its books, records, documents, accounts,
19 vouchers, and agreements available for inspection by the Commissioner at any
20 time. A sponsored captive insurance company shall keep its books and records
21 in such manner that its financial condition, affairs, and operations can be

1 readily ascertained and so that the Commissioner may readily verify its
2 financial statements and determine its compliance with this chapter.

3 (3) Unless otherwise approved in advance by the Commissioner, all
4 original books, records, documents, accounts, vouchers, and agreements shall
5 be preserved and kept available in this State for the purpose of examination
6 and inspection and until such time as the Commissioner approves the
7 destruction or other disposition of such books, records, documents, accounts,
8 vouchers, and agreements. If the Commissioner approves the keeping of the
9 items listed in this subdivision outside this State, the sponsored captive
10 insurance company shall maintain in this State a complete and true copy of
11 each such original. Books, records, documents, accounts, vouchers, and
12 agreements may be photographed, reproduced on film, or stored and
13 reproduced electronically.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

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

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

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

* * *

* * * Vermont Insurance Data Security Law * * *

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

§ 4728. INSURANCE DATA SECURITY

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

(b) Construction.

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

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

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

7 (4) A licensee in compliance with N.Y. Comp. Codes R. & Regs.
8 Title 23, section 500, Cybersecurity Requirements for Financial Services
9 Companies, effective March 1, 2017, shall be considered to meet the
10 requirements of this section, provided that the licensee submits a written
11 statement to the Commissioner certifying such compliance.

12 (c) Definitions. As used in this section:

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

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

20 (3) “Cybersecurity event” means an event resulting in unauthorized
21 access to or disruption or misuse of:

1 ~~(A)~~ an information system; or

2 ~~(B)~~ nonpublic information ~~in the possession, custody, or control of a~~
3 ~~licensee or authorized person~~ stored on such information system. ~~The term~~
4 ~~“cybersecurity event” does not include:~~

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

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

11 (4) “Encrypted” means the transformation of data into a form ~~in which~~
12 ~~the data is rendered unreadable or unusable~~ that results in a low probability of
13 ~~assigning meaning~~ without the use of a ~~confidential protective~~ process or key.

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

18 (6) “Information system” means a discrete set of electronic information
19 ~~resources organized for the collection, processing, maintenance, use, sharing,~~
20 ~~dissemination, or disposition of electronic information, as well as any~~
21 ~~specialized system such as an industrial/process controls system, telephone~~

1 switching and private branch exchange system, or environmental control
2 system.

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

6 (A) a captive insurance company;

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

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

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

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

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

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

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

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

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

5 (i) Social Security number;

6 (ii) driver’s license number or nondriver **State** identification card
7 number;

8 (iii) individual taxpayer identification number;

9 (iv) passport number;

10 (v) military identification card number;

11 (vi) **other identification number that originates from a government**
12 identification document that is commonly used to verify identity for a
13 **commercial transaction;**

14 **(vii)** financial account number or credit or debit card number;

15 **(vii)** security code, access code, or password that would permit

16 access to a consumer’s financial account; or

17 **(viii)** biometric record **or genetic information;**

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

20 (i) the past, present, or future physical, mental, or behavioral

21 health or condition of any consumer or a member of the consumer’s family;

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

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

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

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

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

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

16 (11) “Risk assessment” means the risk assessment that each licensee is
17 required to conduct under subdivision (d)(4)(3) of this section.

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

1 (d) Information Security **System Program**.

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

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

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

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

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

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

20 (3) The licensee shall:

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

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

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

11 (D) assess the sufficiency of policies, procedures, information
12 systems, and other safeguards in place to manage these threats, including
13 consideration of threats in each relevant area of the licensee’s operations,
14 including:

15 (i) employee training and management;

16 (ii) information systems, including network and software design,
17 as well as information classification, governance, processing, storage,
18 transmission, and disposal; and

19 (iii) detecting, preventing, and responding to attacks, intrusions, or
20 other systems failures; and

1 (E) implement information safeguards to manage the threats
2 identified in its ongoing assessment and, not less than annually, assess the
3 effectiveness of the safeguards' key controls, systems, and procedures.

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

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

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

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

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

19 (iii) restrict physical access at physical locations containing to
20 nonpublic information only to authorized persons only;

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

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

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

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

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

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

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

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

3 (C) Include cybersecurity risks in the licensee’s enterprise risk
4 management process.

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

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

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

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

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

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

19 (II) material matters related to the information security
20 program, addressing issues such as risk assessment; risk management and
21 control decisions; third-party service provider arrangements; results of testing,

1 cybersecurity events, or violations and management’s responses thereto; and
2 recommendations for changes in the information security program.

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

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

11 (B) A licensee shall require a third-party service provider to
12 implement appropriate administrative, technical, and physical measures to
13 protect and secure the information systems and nonpublic information that are
14 accessible to or held by the third-party service provider.

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

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

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

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

9 (ii) the goals of the incident response plan;

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

12 (iv) external and internal communications and information
13 sharing;

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

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

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

20 (9) Annually, each insurer domiciled in this State shall submit to the
21 Commissioner a written statement on or before April 15, certifying that the

1 insurer is compliant with the requirements established in subsection (d) of this
2 section. Each insurer shall maintain for examination by the Commissioner all
3 records, schedules, and data supporting this certificate for a period of five
4 years. To the extent an insurer has identified areas, systems, or processes that
5 require material improvement, updating, or redesign, the insurer shall
6 document the identification and the remedial efforts planned and underway to
7 address such areas, systems, or processes. Such documentation shall be
8 available for inspection by the Commissioner.

9 (e) Investigation of a Cybersecurity Event.

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

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

16 (A) determine whether a cybersecurity event has occurred;

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

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

20 (D) perform or oversee reasonable measures to restore the security of
21 the information systems compromised in the cybersecurity event in order to

1 prevent further unauthorized acquisition, release, or use of nonpublic
2 information in the licensee’s possession, custody, or control.

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

6 (f) Power of Commissioner.

7 (1) The Commissioner shall have power to examine and investigate into
8 the affairs of any licensee to determine whether the licensee has been or is
9 engaged in any conduct in violation of this section. This power is in addition
10 to the powers the Commissioner has under section 4726 of this title and
11 9 V.S.A. § 2435(h)(2). Any such investigation or examination shall be
12 conducted pursuant to section 4726 of this title.

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

17 (g) Confidentiality.

18 (1) Any documents, materials or other information in the control or
19 possession of the Commissioner that are furnished by a licensee or an
20 employee or agent thereof acting on behalf of the licensee pursuant to
21 subdivision (d)(8) of this section, or that are obtained by the Commissioner in

1 an investigation or examination pursuant to subsection (f) of this section, shall
2 be confidential by law and privileged, shall not be subject to 1 V.S.A. §§ 315–
3 320, shall not be subject to subpoena, and shall not be subject to discovery or
4 admissible in evidence in any private civil action. However, the Commissioner
5 is authorized to use the documents, materials, or other information in the
6 furtherance of any regulatory or legal action brought as a part of the
7 Commissioner’s duties.

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

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

15 (A) share documents, materials, or other information, including
16 confidential and privileged documents, materials, or information subject to
17 subdivision (g)(1) of this section, with other state, federal, and international
18 regulatory agencies, the National Association of Insurance Commissioners, its
19 affiliates or subsidiaries, and state, federal, and international law enforcement
20 authorities, provided that the recipient agrees in writing to maintain the

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

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

11 (C) share documents, materials, or other information subject to
12 subdivision (g)(1) of this section with a third-party consultant or vendor,
13 provided that the consultant agrees in writing to maintain the confidentiality
14 and privileged status of the document, material, or other information shared;
15 and

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

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

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

6 (h) Exceptions.

7 (1) The following exceptions apply to this section:

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

10 (B) A licensee that is in possession of protected health information
11 subject to the Health Insurance Portability and Accountability Act of 1996
12 (HIPAA), Pub. L. No. 104–191, 110 Stat. 1936, that has established and
13 maintains an information security program pursuant to such statutes and the
14 rules, regulations, procedures, or guidelines established thereunder under
15 HIPAA, is considered to meet the requirements of subsection (d) of this
16 section, provided that the licensee is compliant with, and annually submits a
17 written statement to, the Commissioner certifying its compliance with such
18 program. As used in this section, the definition of “protected health
19 information” is as set forth in HIPAA and the regulations promulgated
20 thereunder under HIPAA and shall be considered to be a subset of nonpublic
21 information.

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

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

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

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

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

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

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

8 § 5616. VERMONT FINANCIAL SERVICES EDUCATION AND VICTIM
9 RESTITUTION SPECIAL FUND

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

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

12 ~~and~~

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

14 (A) were awarded restitution in a final order issued by the

15 Commissioner or were awarded restitution in the final order in a legal action

16 initiated by the Commissioner;

17 (B) have not received the full amount of restitution ordered before

18 the application for restitution assistance is due; and

19 (C) demonstrate to the Commissioner's satisfaction that there is no

20 reasonable likelihood that they will receive the full amount of restitution in the

21 future; and

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

2 * * *

3 (f) Vermont Financial Services Education, ~~and~~ Victim Restitution, and
4 Whistleblower Award Special Fund. The Vermont Financial Services
5 Education, ~~and~~ Victim Restitution, and Whistleblower Award Special Fund,
6 pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for
7 the purposes specified in this section, ~~and~~ in subsection 5601(d) of this title,
8 and in section 5617 of this title. All monies received by the State for use in
9 financial services education initiatives pursuant to subsection 5601(d) of this
10 title, ~~or~~ in providing uncompensated victims restitution pursuant to this section,
11 or in providing whistleblower awards pursuant to section 5617 of this title shall
12 be deposited into the Fund. The Commissioner may direct a party to deposit a
13 sum not to exceed 15 percent of the total settlement amount into the Fund in
14 conjunction with settling a State securities law enforcement matter. Interest
15 earned on the Fund shall be retained in the Fund.

16 * * *

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

18 § 5617. VERMONT WHISTLEBLOWER AWARD AND PROTECTION

19 ACT

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

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

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

6 (b) Definitions. As used in this section,

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

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

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

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

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

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

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

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

13 (d) Anonymous whistleblower complaints. Any individual who
14 anonymously makes a claim for a whistleblower award shall be represented by
15 counsel if the individual anonymously submits the information upon which the
16 claim is based. Prior to the payment of an award, a previously anonymous
17 whistleblower shall disclose the whistleblower’s identity and provide such
18 other information as the Commissioner may require, directly or through
19 counsel for the whistleblower. Failure to provide such information shall be a
20 basis to deny compensation under this section.

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

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

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

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

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

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

20 (3) the programmatic interest of the Commissioner in deterring
21 violations of the securities laws by making awards to whistleblowers who

1 provide original information that leads to the successful enforcement of such
2 laws; and

3 (4) any other factors the Commissioner considers relevant.

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

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

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

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

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

17 (5) in the whistleblower's submission, its other dealings with the
18 Commissioner, or in its dealings with another authority in connection with a
19 possible violation or related action, knowingly or recklessly makes any false,
20 fictitious, or fraudulent statement or representation or uses or provides any

1 false writing or document knowing that or having a reckless disregard as to
2 whether it contains any false, fictitious, or fraudulent statement or entry;

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

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

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

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

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

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

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

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

8 (j) Protection of whistleblowers and internal reporters.

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

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

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

19 (C) in making disclosures that are required or protected under the
20 Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7201 et seq.), the Securities Act of
21 1933 (15 U.S.C. § 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C.

1 § 78a et seq.), 18 U.S.C. § 1513(e), any other law, rule, or regulation subject to
2 the jurisdiction of the Securities and Exchange Commission, or chapter 150 of
3 this title or a rule adopted ~~thereunder~~ under chapter 150 of this title; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (D) actual damages;

8 (E) an injunction to restrain a violation; or

9 (F) any combination of these remedies.

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

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

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

20 (A) agreements concerning communications covered by the attorney-
21 client privilege, unless disclosure of that information would otherwise be

1 permitted by an attorney under applicable state attorney conduct rules or
2 otherwise; and

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

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

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

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

18 * * * Effective Dates * * *

19 Sec. 23. EFFECTIVE DATES

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

1

2

3

4

5

6

7 (Committee vote: _____)

8

9

Representative _____

10

FOR THE COMMITTEE