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

Act No. 110 (H.659). An act relating to banking, insurance, and securities

Subjects: Insurance; captive insurance; banking; money transmission; virtual currency; securities

This act addresses the regulation of the following subjects: captive insurance; securities; property and casualty insurance; insurance holding company systems; pet insurance; and money services, including money transmission, check cashing, and currency exchange.

Sec. 1 pertains to sponsored captive insurance companies. It clarifies that a sponsored captive insurance company may insure only a participant's "controlled unaffiliated entity." This ensures there is some level of control between the participant and the unaffiliated entity. To further clarify, the amendment includes a definition of "controlled unaffiliated entity."

Sec. 2 enacts a new statute that explicitly allows any existing form of captive (e.g., an agency captive, an association captive, an industrial insured captive, etc.) to convert to a protected cell, which is insured by a sponsored captive insurance company. The conversion is subject to the Commissioner of Financial Regulation's approval. In addition, there are specific statutory provisions pertaining to the transfer of assets and liabilities.

Sec. 3 concerns an existing statute that allows captives to enter into parametric contracts for transferring risks. This provision was enacted in 2022 and it contains a definition of "parametric contract." That definition specifies that a parametric contract is not an insurance contract. Since then, however, it has become apparent that parametric contracts can be structured as insurance contracts. Accordingly, the proposal here deletes the existing definition of parametric contract.

Sec. 4 pertains to the minimum capital and surplus requirements of an agency captive insurance company. An agency captive insurance company is a reinsurance company controlled by an insurance agency or brokerage. The amendment reduces from $500,000.00 to $250,000.00 the minimum capital that an agency captive insurance company is required to maintain.

Sec. 5 pertains to the existing Captive Insurance Regulatory and Supervision Fund. This Fund provides the financial means for the Commissioner to administer captive insurance laws and regulations. Revenue for the Fund comes from a percentage of the premium tax collected from captive insurance companies. Last year, the General Assembly increased that percentage from 11 to 13 percent. However, a conforming change was not made to the specific provisions applicable to the Fund. The proposal here (striking "11 percent" and inserting in lieu thereof "13 percent") is therefore a conforming (not a substantive) amendment. The second amendment in Sec. 5 eliminates

the reference to the reinsurer fee and thereby conforms with the Department of Financial Regulation's practice, which has been in place since 2010.

Sec. 6 pertains to an existing law that allows a captive insurance company to take credit for reinsurance. Under prior law, the Commissioner's approval was required if the reinsurance was written by an "alien captive insurance company outside the United States." The amendment strikes that specific approval provision.

Secs. 7–18, pertain to confidentiality provisions applicable to information obtained by the Department pursuant to its regulatory authority. The amendments primarily delete specific confidentiality provisions located in numerous places throughout the captive statutes and instead cross-reference general confidentiality provisions applicable to the Department.

Sec. 19 authorizes the Commissioner to impose enhanced civil penalties for securities law violations that involve a person who is a "vulnerable adult" as defined in Title 33.

Sec. 20 changes the name of the "Vermont Financial Services Education, Victim Restitution, and Whistleblower Award Special Fund" to the "Vermont Financial Services Education and Victim Restitution Special Fund." In addition, it permits a portion of a settlement award from any Department enforcement action, not just securities settlements, to be deposited into the Fund.

Secs. 21–23 concern notices of insurance cancellation for nonpayment of premium. The amendments allow such notices to be by a first-class mail tracking method used or approved by the U.S. Postal Service, including Intelligent Mail barcode Tracing (IMb Tracing), and prohibit such notices from being delivered by a certified "bulk" mailing.

Secs. 24–27 pertain to insurance holding company systems. Specifically, the amendments bring the State into compliance with the National Association of Insurance Commissioners' (NAIC's) Holding Company Model Act and Regulations, which will likely be required for accreditation, effective on January 1, 2026. The Act as whole is intended to provide state insurance departments with a framework for insurance group supervision. The new provisions pertain to:

- Group capital calculation filing requirements, which provide solvency regulators with an additional analytical tool for conducting groupwide supervision and assist regulators in holistically understanding the financial condition of noninsurance entities. Specifically, the calculation provides financial information on the insurance group, quantifies risk across the insurance group, supports transparency into how capital is allocated, and aids in understanding whether and to what degree insurance companies are supporting the operations of noninsurance entities:
- Liquidity stress test reporting requirements, which will provide DFR with insights into macroprudential risk monitoring.
- Receivership provisions, which address the continuation of essential services through affiliated intercompany agreements in a receivership. They bring affiliate service providers deemed "integral" or "essential" to an insurer's operations under the jurisdiction of a rehabilitator, conservator, or liquidator for purposes of

interpreting, enforcing, and overseeing the affiliate's obligations under the service agreement.

Sec. 28 concerns pet insurance. It is based on an NAIC model law and establishes a new chapter under Title 8 pertaining specifically to pet insurance. The new regulatory framework addresses preexisting conditions, required disclosures, waiting periods, sales practices related to wellness programs, and insurance producer training.

Secs. 29–49 update Vermont's money transmission services laws to, in part, conform with the model act endorsed by the Conference of State Bank Supervisors (CSBS). The model law is designed to provide greater consistency, stronger regulation, and reduced administrative burden for the rapidly growing and changing money transmission industry. Money transmitters are financial services companies that receive, hold, and/or send money for customers. Examples of money transmitters include payment processors such as Paypal and Venmo, payroll processing companies, and virtual currency related businesses. The industry has greatly expanded in recent years due to advances in fintech and the need for global payments. Some of the changes in the model act are relocations or restructuring of existing law. In addition, there are amendments to general provisions that apply to all licensed financial entities, not just money transmitters.

Of note, Sec. 48 establishes a new subchapter in 8 V.S.A. chapter 79 that creates a variety of specific requirements for companies that engage in virtual-currency business activity, including virtual currency exchanges, custodians, sellers of virtual currency, and certain virtual currency issuers. Subchapter 10 differs substantively from the model law provisions on virtual currency. The model law's virtual currency provisions were offered as optional by CSBS rather than final recommendations and are primarily aimed at states not yet regulating companies engaged in the transmission of virtual currency. As the Department of Financial Regulation has been regulating these companies under the current statutes for over six years, the new laws contain changes to the model law language to better align with current Vermont policy and the remainder of the money transmitter requirements in 8 V.S.A. chapter 79. Included in these changes are a limited number of provisions establishing policies new to Vermont aimed at addressing specific issues regarding virtual currency companies that the Department has observed in its recent regulatory and enforcement efforts.

The specific provisions in 8 V.S.A. § 2575 concern property interests and entitlements to virtual currency and, in part, address some of the recent illegal transactions involving virtual currency. In particular, this statute:

- Requires that a business that holds custody or control of virtual currency on behalf of customers maintain custody and control of virtual currency in an identical type and amount sufficient to satisfy customer entitlements.
- Specifies that, when a customer deposits a particular virtual currency with a licensee, the licensee cannot satisfy their custodial obligations by holding virtual currency derivatives, digital depository receipts, or nonnative "wrapped" or "bridged" tokens (which often carry different security risks and liquidity profiles from native assets).

- Requires that title to all virtual currency be in the name of the customer and prohibits customer virtual currency from being subject to the liens or claims of a licensee's creditors.
- Prohibits a licensee from pledging, hypothecating, lending, or otherwise using its customers' virtual currency. Such practices led to the multi-billion-dollar bankruptcies of FTX, Celsius Network, Voyager Digital, BlockFi, Genesis, and others.
- Prohibits a licensee from using an unlicensed custodian to hold customer virtual currency to prevent the risky practice of entrusting customer virtual currency to unregulated entities.
- Gives the Commissioner the power to implement additional rules and requirements as may be necessary for consumer protection. Regulatory best practices, technology, and issues of concern are constantly evolving in the virtual currency industry. This authority is intended to allow the Commissioner to respond to and address emerging issues and threats to consumers.

8 V.S.A. § 2576 allows the Commissioner to establish limitations to, and the method by which, virtual currency and virtual currency-denominated assets can be included in the calculation of a company's net worth. This provision is largely in response to the failures of FTX and Celsius Network, which purported to capitalize themselves with holdings of their own tokens and other speculative cryptocurrencies. In addition, the section duplicates the antifraud provisions of the securities laws and applies to any offer or sale of virtual currencies. The antifraud provisions prohibit a broad array of fraudulent practices that have long been prohibited in securities markets, including misstatements, insider trading, and market manipulation. Although the securities laws already apply to many virtual currencies, this provision allows the Department to take action against fraudsters without first litigating whether the virtual currency in question meets the definition of a "security" under the Vermont Securities Act. Finally, the section requires virtual currency businesses to comply with all applicable states and federal laws, including securities and commodities laws. A licensee that breaches other laws and regulation applicable to the licensee's business will be in violation of this act and subject to suspension or revocation of the licensee's license and other enforcement actions.

8 V.S.A. § 2577 pertains specifically to virtual-currency kiosk operators and is intended to reduce the utility of virtual-currency kiosks to scammers and criminals. In particular, the new statute limits cash transactions at virtual-currency kiosks to $1,000.00 per customer, per day, per licensee. It also caps the fees that virtual-currency kiosk operators may charge to $5.00 or three percent of the transaction value, whichever is greater, and requires virtual-currency kiosk operators to disclose all fees and markups. Finally, the law imposes a one-year moratorium on new kiosks in the State and requires the Commissioner of Financial Regulation to report back to the General Assembly on or before January 15, 2025, on whether additional consumer protections are warranted.

Multiple effective dates, beginning on July 1, 2024