

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Suitability in Annuity Transactions (Reg. I-2023-01)

/s/Kevin J. Gaffney

(signature)

, on 12/01/2023

(date)

Printed Name and Title:

Kevin J. Gaffney, Commissioner

Vermont Department of Financial Regulation

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Suitability in Annuity Transactions (Reg. I-2023-01)

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

P 23P034

3. ADOPTING AGENCY:

Department of Financial Regulation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Stan Macel, Assistant General Counsel

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Second Floor,
Montpelier, VT 05620

Telephone: 802-272-2338 Fax:

E-Mail: stan.macel@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-public-comment>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Hillary Borcherding, Assistant General Counsel

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Third Floor, Montpelier,
VT 05620

Telephone: 802-249-6512 Fax:

E-Mail: hillary.borcherding@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

8 V.S.A. §§ 10, 15(a), 3848, 4721-4728, 4804(a), 4812 and 4813c(c).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Pursuant to 8 V.S.A. § 10, the business of organizations that offer financial services and products shall be supervised by the Commissioner to protect consumers and provide consumer education. Pursuant to 8 V.S.A. § 15(a), the Commissioner may adopt rules necessary to the administration of Title 8. 8

V.S.A. § 3848, among other things, empowers the Commissioner to issue a cease and desist order for rule violations or written agreements with licensees. Pursuant to 8 V.S.A. §§ 4721-4733, the Commissioner is empowered to examine and investigate any person engaged in the business of insurance in Vermont to determine whether that person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice. Pursuant to 8 V.S.A. § 4804(a), the Commissioner may suspend, revoke, or refuse to renew a license upon certain enumerated conditions. 8 V.S.A. § 4812 empowers the Commissioner to adopt reasonable rules and regulations regarding licensing of producers.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The Department is proposing a new rule that requires producers, as defined in the rule, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The membership of the National Association of Insurance Commissioners ("NAIC") approved the model rule in February of 2020. The NAIC is the U.S. insurance standard-setting organization created and governed by the chief insurance regulators from the states, districts and territories. The NAIC believes a high degree of harmonization across regulatory platforms would be beneficial to consumers and the industry. The NAIC has provided that states need to work toward adopting the model rule by February 2025 to maintain the federal exemption of fixed and fixed indexed annuities pursuant to Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Thus, if Vermont does not enact this Rule, the State's authority to regulate the sale of fixed and fixed indexed annuities may be jeopardized. It is in the interest of the State to continue regulating the sale of fixed and fixed indexed annuities and to provide a clear standard for its annuity providers to treat customers.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The Commissioner is empowered by 8 V.S.A. § 15(a) to adopt rules necessary to the administration of Title 8. The proposed rule provides clear parameters requiring producers to act in the best interest of the consumer when making a recommendation of an annuity, and requiring insurers to implement a system to supervise recommendations to effectively address the insurance needs and financial objectives of consumers. Adoption of this Rule is necessary to maintain the federal exemption of fixed and fixed indexed annuities.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

The Department of Financial Regulation; producers offering insurance products, including annuities; insurers providing insurance products, including annuities; intermediaries that work with insurers; consumers.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The cost of implementing this rule on insurers, producers, intermediaries and, consequently, consumers is expected to be negligible because this rule codifies a requirement that is in effect in many other States. Further, since this standard is already in effect for securities, those producers that are registered under the securities rules already comply with this rule, and therefore there would be no changes for those businesses implicated by this proposed rule. In addition, there is currently a general suitability requirement in existing rules and specific requirements for annuity replacements in existing rules. See 9 V.S.A. § 4724(16) and Regulation I-2001-03 respectively. Therefore, it is likely that most producers and insurers are following these rules already.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 11/07/2023

Time: 11:00 AM

Street Address: 89 Main Street, Montpelier, VT

Zip Code: 05620

URL for Virtual:https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_ZTg3ZGE0NjgtOTI2OC00DB1LTkwMDctNWFkOTgwYjU3MWZi%40thread.v2%2F0%3Fcontext%3D%257b%2522%2Fid%2522%253a%252220b4933b-paad=433c-9c02-70edcc7559c6%2522%252c%2522oid%2522%253a%2522ae4997f3-dc62-4ae8-85ac-e472d6919848%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=dcbedalc-4ff4-499f-b498-9ae8e9041a07&directAM=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

Date:
Time: AM
Street Address:
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URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): November 15, 2023

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Annuity
Suitability
Recommendation
Best Interest of Consumer
Producer
Insurer
Insurance
Agent

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. **TITLE OF RULE FILING:**

Suitability in Annuity Transactions (Reg. I-2023-01)

2. **ADOPTING AGENCY:**

Department of Financial Regulation

3. **TYPE OF FILING** (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. **LAST ADOPTED** (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: September 11, 2023, virtually via Microsoft Teams

Members Present: Chair Sean Brown, Brendan Atwood, Jennifer Mojo, John Kessler, Diane Sherman, Michael Obuchowski, Nicole Dubuque, and Jared Adler (exited meeting at 4:00 PM)

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of [minutes](#) from the August 14 and August 30, 2023 meetings.
- No additions/deletions to agenda. Agenda approved as drafted.
- Public comment made by Jay Greene of the Office of Racial Equity regarding the 'Amyotrophic Lateral Sclerosis (ALS) Registry Rule' proposed rule by the Vermont Department of Health:
 - Suggests that the reporting mechanism also incorporate options for non-binary people to be correctly reported in their gender identity on their legal documentation to the national data set as well.
- Presentation of Proposed Rules on pages 2-6 to follow:
 1. Judicial Nominating Board Rule Amendments, Judicial Nominating Board, page 2
 2. Suitability in Annuity Transactions (Reg. I-2023-01), Department of Financial Regulation, page 3
 3. Amyotrophic Lateral Sclerosis (ALS) Registry Rule, Vermont Department of Health, page 4
 4. Reporting of Offender Information, Agency of Human Services, Department of Corrections page 5
 5. Child Support Guidelines, Agency of Human Services, Department for Children and Families, Office of Child Support, page 6
- Due to the meeting running past the scheduled time and therefore lack of quorum, the following rules were moved to the October ICAR meeting:
 6. Residential Care Home and Assisted Living Residence Licensing Regulations, Agency of Human Services, Department of Disabilities, Aging, and Independent Living
 7. Independent School Program Approval Rules, State Board of Education
 8. Vermont Low Emission Vehicle and Zero Emission Vehicle Rules, Agency of Natural Resources
 9. Investigation and Remediation of Contaminated Properties Rule (IRule), Agency of Natural Resources
- Next scheduled meeting is October 9, 2023 at 2:00 p.m.
- 4:10 p.m. meeting adjourned.

Proposed Rule: Suitability in Annuity Transactions (Reg. I-2023-01), Department of Financial Regulation

Presented By: Stan Macel and Mary Block

Motion made to accept the rule by Brendan Atwood, seconded by Nicole Dubuque, and passed unanimously except for Diane Sherman who abstained, with the following recommendations:

1. Proposed Filing – Coversheet, #9: Confirm date of year for the Dodd-Frank Wall Street Reform and Consumer Protection Act.
2. Remove the Incorporation of Reference if not applicable.
3. Proposed Rule, Section 6(B): Correct formatting.

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Suitability in Annuity Transactions (Reg. I-2023-01)

2. ADOPTING AGENCY:

Department of Financial Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

- Department of Financial Regulation - no estimated costs of compliance anticipated; benefits anticipated regarding standardization and ability to regulate.
- Producers offering insurance products, including annuities - estimated costs of compliance anticipated are negligible; benefits anticipated regarding

standardization of the standard of care across products and jurisdictions.

- Insurers providing insurance products, including annuities – estimated costs of compliance anticipated are negligible; benefits anticipated regarding standardization of the standard of care across products and jurisdictions.

- Intermediaries that work with insurers – estimated costs of compliance anticipated are negligible; benefits anticipated regarding standardization of the standard of care across products and jurisdictions.

- Consumers – estimated costs of compliance anticipated are negligible; benefits anticipated regarding standardization of the standard of care across products and jurisdictions.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No impact anticipated.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Since no impact on schools is anticipated, no means are necessary to reduce or ameliorate the costs of compliance.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

While there are some insurance producers and insurers that fall within the definition of a small business, the financial impact associated with compliance is estimated to be negligible for any size business, as noted above. Further, since this standard is already in effect for securities, those producers that are registered under the securities rules already comply with this rule, and therefore there would be no changes

for those businesses implicated by this proposed rule. In addition, there is currently a general suitability requirement in existing rules and specific requirements for annuity replacements in existing rules. See 9 V.S.A. § 4724(16) and Regulation I-2001-03 respectively.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Since any financial impact on small businesses regarding compliance is expected to be negligible, this evaluation is not relevant.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The proposed rule is based on the widely accepted and mandated NAIC model regulations. No alternative was presented nor is there an alternative if Vermont wishes to maintain regulatory authority over fixed and fixed indexed annuities pursuant to federal regulation and remain in conformity with other jurisdictions.

As noted above, any financial impact associated with compliance is estimated to be negligible. Further, the proposed rule codifies a standard that exists in many other jurisdictions, and for other products in this jurisdiction. On a national level, adoption of this rule by all states and territories will provide nationwide consistency for producers and insurers engaged in recommendations and sales of annuity products. Adoption of this Rule is necessary to maintain the federal exemption of fixed and fixed indexed annuities. Losing the federal exemption brings with it significant negative consequences, including potentially causing Vermont annuity providers and insurers to seek another state as their domicile, with negative economic consequences to the state, as well as significant damages to the reputation of the Department.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The NAIC has not performed a nationwide cost/benefit analysis with respect to the new rule as it does not believe that the specific cost for insurance companies to comply with the proposed rule and the impact on state insurance departments to enforce the rule are reasonably quantifiable. DFR staff reviewed the standard of care of various federal and state requirements and believes that adopting the rule will harmonize regulatory regimes and thus reduce the cost for firms to ensure compliance with regulatory requirements. Locally, the Department performed outreach to several providers who were fully supportive of the proposal.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. **TITLE OF RULE FILING:**

Suitability in Annuity Transactions (Reg. I-2023-01)

2. **ADOPTING AGENCY:**

Department of Financial Regulation

3. **GREENHOUSE GAS:** *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
No impact anticipated.

4. **WATER:** *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
No impact anticipated.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
No impact anticipated.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
No impact anticipated.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact anticipated.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact anticipated.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
The rule does not impact aspects of the environment and thus no environmental impacts were identified.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Suitability in Annuity Transactions (Reg. I-2023-01)

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

Prior to initiating this rulemaking the Department shared draft text of the NAIC model regulation with several providers in Vermont who indicated they fully supported the NAIC model regulation. In addition, the NAIC performed a great deal of outreach in developing the model rule. Going forward, the Department will continue to engage stakeholders and the public by participating in the required Vermont APA process. The Department held one hearing and received four comment letters. Oral and written comments, and proposed changes, are summarized in the attached Comment Response and Changes letter.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

In addition to the APA-required notice and hearing requirement, the Department continues to engage stakeholders throughout the rulemaking process, including the NAIC, and representatives from the annuity industry, including insurers and providers.

Public Input

following individuals and organizations have thus far been involved in the development of the proposed rule:

- The NAIC
- National Life Insurance Co.
- American College of Life Insurers
- Federation of Americans for Consumer Choice
- Insured Retirement Institute
- National Association of Insurance and Financial Advisors

Commissioner Kevin Gaffney
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620

October 16, 2023

Re: Comments on Proposed Regulation No. I-2023-01 (Suitability in Annuity Transactions)

Dear Commissioner Gaffney,

On behalf of the American Council of Life Insurers (ACLI), we appreciate the opportunity to comment on proposed Regulation No. I-2023-01 (Suitability in Annuity Transactions). ACLI strongly supports the proposed regulation and commends the Vermont Department of Financial Regulation for closely aligning it with the 2020 revisions to the NAIC Suitability in Annuity Transactions Model Regulation. Incorporating a best interest standard of care for annuities will significantly enhance protections for Vermont citizens contemplating the purchase of an annuity to save for their retirement futures.

ACLI is committed to achieving a harmonized national best interest standard of care for annuities across all regulatory platforms. Consumers must be confident that any financial professional with whom they entrust their retirement savings will act in their best interests. With that said, we submit the following very important comment on the proposed regulation for your consideration, along with additional minor comments and technical corrections.

Insurers and producers must be permitted to use “substantially similar” forms

ACLI appreciates that the proposed rule’s appendices conform exactly to the model appendices. This is very important for uniformity and ease of administration. However, the proposed rule deviates from the model in that it would prohibit insurers and producers from utilizing substantially similar forms; rather, it would require them to file with and obtain approval from the commissioner to use forms that differ in any way from the rule’s appendices, even if the differences are not substantive.

In adopting the Suitability in Annuity Transactions Model Regulation, the NAIC specifically discussed this point and included language that permits companies and producers to use the same appendix forms across state lines so long as such forms are substantially similar to the model appendices. The proposed rule’s deviation from the model in Section 6A is a significant concern for ACLI and its members and we would respectfully urge the Department to revise the proposed rule as follows:

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

- Section 6A(2)(a). Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to the Insurance Agent (Producer) Disclosure for Annuities form attached hereto as Appendix A, ~~or other similar form approved by the Commissioner...~~
- Section 6A(4)(b). Obtain a consumer signed statement on a form substantially similar to the Consumer Refusal to Provide Information form attached here to as Appendix B, ~~or other similar form approved by the Commissioner...~~
- Section 6A(4)(c). Obtain a consumer signed statement on a form substantially similar to the Consumer Decision to Purchase an Annuity NOT Based on a Recommendation form attached here to as Appendix C, ~~or other similar form approved by the Commissioner...~~

In addition to our primary concern above, we offer the following comments.

Required consumer profile information

Section 5D(3) of the proposed rule would add “and reasonably anticipated future changes in financial situation and needs” to the required consumer profile information. In our view, the added verbiage is redundant; a person’s financial situation already considers any reasonably foreseeable changes. However, carriers or producers may interpret the added language as requiring a Vermont-specific suitability form or questionnaire, which would add unnecessary costs and administrative burden. Therefore, in the interest of uniformity and to help avoid confusion, we would respectfully request that the Department eliminate this language.

Applicable penalties and related corrective actions

Section 8B of the model regarding applicable penalties and related corrective actions has been omitted from the proposed rule and replaced with a reference to the Vermont Insurance Trade Practices Act. We would request that the Department retain the model language because it encourages insurers and producers to take timely corrective actions when compliance issues arise.

Maintaining of records

Section 9A of the proposed rule would require insurers to maintain records for audit relating to supervision duties. This provision is not included in the model regulation, and we would respectfully request that the Department consider removing it to maintain consistency and uniformity across states. The recordkeeping provision in the model is aimed more specifically at certain information pertaining to consumer communications, presumably to remove doubt as to the need to maintain such information for audit purposes. A parallel provision for supervision records is unnecessary because this information is subject to VT Ins. Regulation 99-1, “Records Retention.”

Technical edits that correct errors in the NAIC model regulation

- Section 6 A(1)(g) should state “...similar ~~product producer~~ enhancements...”
- Section 6A(2)(a)(ii)(VII) should have a period rather than a semi-colon at the end.
- Section 6E(5)(c) should remove the redundant “means” after “plan fiduciaries or fiduciaries means...”

To reiterate, ACLI strongly supports the Department's proposed Suitability in Annuity Transactions regulation, which will require a financial professional to act in the best interest of an annuity purchaser and not to put their own financial interests ahead of the consumer's interests. We appreciate your consideration of our suggested revisions. Please let me know if you have any questions or would like to discuss any of our comments.

Sincerely,

A handwritten signature in black ink, appearing to be 'JR', with a horizontal line extending to the right.

Jill Rickard
American Council of Life Insurers
Regional Vice President—State Relations
202-624-2046 t
jillrickard@acli.com

Cc: Stan Macel, DFR assistant general counsel (stan.macel@vermont.gov)
Christopher Rice, MMR, LLC (chris@mmrvt.com)

Sent via email to: stan.macel@vermont.gov

Mr. Stan Macel
Assistant General Counsel
Department of Financial Regulation
89 Main Street, Third Floor
Montpelier, VT 05620

Re: Suitability in Annuity Transactions (Reg. I-2023-01)

Dear Mr. Marcel:

The Federation of Americans for Consumer Choice (FACC) is pleased to submit the following comments relating to the above-referenced regulation.

Through this comment letter, we want to applaud the Vermont Department of Insurance for proceeding with adoption of and mostly conforming to the latest updates to the NAIC Suitability in Annuity Transactions Model Regulation. In doing so, Vermont joins nationwide efforts to update industry sales conduct standards incorporating best interest obligations while maintaining regulatory flexibility that permits diverse delivery systems to continue providing a wide range of quality products for Vermont consumers.

Except as discussed below, we appreciate the proposed regulation follows the changes to the model regulation. We believe it is important to ensure uniformity and consistency across many jurisdictions which makes implementation more cost effective for industry and ultimately benefits everyone including consumers.

With that said, we wish to comment on a handful of deviations from the NAIC model in the Department's proposed regulation.

Specifically, we notice the following:

1. Section 1.D seems unnecessary and somewhat out of place by referring to Securities regulation in an Insurance rule. We understand this is meant as some kind of reminder that Vermont has a separate regulation on what insurance agents must do to avoid giving investment advice but we think the referenced bulletin exists and speaks for itself. We think there is no need for Section 1.D. and it would be better to remove it just to avoid creating any confusion.
2. Section 5.D(3) adds "and reasonably anticipated future changes in financial situation and needs" to the required consumer profile information. In the interest of uniformity, given no other state has made this change, we would urge Vermont to remove this unnecessary deviation and help avoid confusion or any added work. In our view, the added verbiage is redundant. A person's situation already takes into account any reasonably foreseeable changes. We think any agent would already understand that to be the case in evaluating the client's situation and needs. If Vermont believes this point should be clarified or emphasized that could be done through a drafting note or bulletin. Otherwise some carriers may interpret this as requiring a Vermont



specific suitability form or questionnaire which creates unnecessary costs and administrative burdens for insurers and producers.

3. Section 6A(2)(a) and all the appendix forms say the producer must use the appendix form “or other similar form approved by the Commissioner.” This is different from the NAIC model regulation that says the producer must disclose the required information “on a form substantially similar to” the appendix form. The proposed Vermont provision will cause confusion as to what changes can be made to the form and whether or not such changes need to be filed with the Department for approval prior to use. We would strongly urge the Department to stick with the NAIC model regulation in this regard for the sake of uniformity and avoiding any unnecessary confusion or work.
4. Section 9.A is modified to include a requirement for insurers to maintain records for audit relating to supervision duties. This provision too is not in the NAIC Model Regulation and we prefer it be removed as unnecessary. We presume the NAIC did not include such language in the model regulation because it is presumed insurers are required under general recordkeeping requirements to maintain such information for audit purposes perhaps even longer than five years. This recordkeeping provision as written in the model regulation is aimed more specifically at certain information pertaining to consumer communications that is presumably set forth to remove any doubt as to the need for the availability of such information for audit purposes. We think a parallel provision is not needed for supervision records kept by an insurer and would suggest it be removed for consistency and uniformity purposes.

We again commend the Department for moving forward with this important regulation though we are asking that you give consideration to the above recommendations which would more fully align these rules with the NAIC Model Regulation which helps avoid any confusion and ultimately benefits both industry and Vermont consumers. Thank you for your consideration.

Sincerely,

Kim O'Brien, CEO

The Federation of Americans for Consumer Choice, Inc. (FACC) is a 501(c)6 non-profit organization incorporated in the state of Texas whose members are independent marketing organizations, agencies, and agents engaged in the distribution of fixed insurance and annuity products. FACC promotes public policy recognizing the value of guaranteed insurance solutions and preserving freedom of choice for consumers who seek products and services from independent agents representing multiple carriers and product options.



Electronically Submitted to stan.macel@vermont.gov

November 14, 2023

Commissioner Kevin Gaffney
Vermont Department of Financial Regulation
89 Main Street, Third Floor
Montpelier, VT 05620

Re: Suitability in Annuity Transactions (Reg I-2023-01)

Dear Commissioner Gaffney:

On behalf of our members, the Insured Retirement Institute (IRI)¹ writes in support of the proposed rulemaking entitled Suitability in Annuity Transactions (Reg I-2023-01). These rules establish the standards that must be followed by an insurance agent or insurer when recommending or selling an annuity, and the proposed rulemaking is well-aligned with the enhanced Suitability in Annuity Transactions Model Regulation approved by the National Association of Insurance Commissioners ("NAIC") in early 2020. We are pleased to support the proposed amendments, and we respectfully request that the Department consider certain changes to the proposed amendments, as outlined below.

As you know, the revised NAIC model is consistent with the heightened standards of conduct imposed by the U.S. Securities and Exchange Commission's Regulation Best Interest (Reg BI), which went into effect as of June 30, 2020. Similar to Reg BI, the revised model requires insurance producers to act in the best interest of the consumer under the circumstances known at the time a recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. In addition to the enhancements to the applicable standard of conduct and supervisory requirements, the revised model also reflects important adjustments to the training provisions and the FINRA safe harbor included in the prior version of the model.

Strong, consistent regulation is important to protect consumers and to preserve consumers' choice of financial advice and products that meet their financial and retirement planning needs.

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

This regulation is an important enhancement to the standard that applies when producers recommend annuities to their clients. We commend Vermont for undertaking to adopt the latest version of the NAIC model.

With all this in mind, we respectfully offer the following comments on the proposed amendments:

1. In **Section 5. Definitions**, we recommend that “Consumer profile information” be amended as follows to align with the NAIC Model:

D.(3) Financial situation and needs, including debts and other obligations ~~and any reasonably anticipated changes in financial situation and needs.~~

Our concern is that the current proposal language doesn’t provide clarity about what should be considered. We believe the current requirement to consider “financial situation and needs” adequately addresses the information that needs to be gathered without creating uncertainty or an over-broad requirement.

2. In **Section 6. Duties of Insurers and Producers**, we recommend the following amendment in order to better align with the NAIC Model:

A.(1)(j)(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements ~~or other transactional costs;~~

3. In **Section 6. Duties of Insurers and Producers**, subsection A.(2) “Disclosure obligation” and A.(4) “Documentation obligation” both reference forms contained in Appendices. We appreciate the Department including forms that align with the NAIC Model appendices. We would, however, request that the regulation make clear that forms “substantially similar” to the Appendices is sufficient to meet the requirements, in order to accommodate insurers and producers whose forms may not exactly align with the Appendices. As such, we recommend using the following language:

A.(2)(a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to the Insurance Agent (Producer) Disclosure for Annuities form attached hereto as Appendix A, ~~or other similar form approved by the Commissioner:~~

A.(4)(b) Obtain a consumer signed statement on a form substantially similar to the Consumer Refusal to Provide Information form attached hereto as Appendix B, ~~or other similar form approved by the Commissioner,~~ documenting:

A.(4)(c) Obtain a consumer signed statement on a form substantially similar to the Consumer Decision to Purchase an Annuity NOT Based on a Recommendation form attached hereto as Appendix C, ~~or other similar form approved by the Commissioner,~~ acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

4. In order to ensure consistency and uniformity with the Model and to encourage insurers and producers to take prompt corrective action when compliance violations are discovered, we recommend that **Section 8. Compliance Mitigation; Penalties; Enforcement** be updated to fully align with the Model. As such, we recommend inclusion of language acknowledging that any applicable penalty for a violation of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

In conclusion, we are pleased to support the proposed rulemaking, and we appreciate your consideration of our recommended changes as described above. We look forward to working with the Department on implementation of these important revisions.

Sincerely,

Sarah E. Wood

Sarah Wood
Director, State Policy & Regulatory Affairs
Insured Retirement Institute
swood@irionline.org



October 17, 2023

Kevin Gaffney, Commissioner
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620

RE: Suitability in Annuity Transactions (Reg. I-2023-01)

Dear Commissioner Gaffney,

NAIFA-Vermont (NAIFA-VT) and NAIFA would like to thank the Department of Financial Regulation for updating the proposed regulation regarding Suitability in Annuity Transactions and offering a public comment period. This regulation would establish the intended best interest standard of conduct with annuity recommendations and sales and align with the updated NAIC Suitability in Annuity Transactions Model Regulation.

NAIFA represents the interests of more than 20,000 licensed insurance agents and financial advisers across the country. Ninety percent of NAIFA members serve middle-income clients and lower-income individuals and families. The NAIFA-VT chapter has 47 members that serve our community.

The NAIC Suitability in Annuity Transactions Model strikes the appropriate balance between protecting consumers, promoting market competition and uniformity, and avoiding overregulation. The best interest of the client is easily understood in plain English, and the obligations and responsibilities to satisfy this requirement are clearly defined. These rules reject a fiduciary-only approach, thus safeguarding the ability of working-class savers to access financial guidance to plan for their financial futures. It protects consumers' choices, choices in competitive products, and choices in trustworthy options for retirement planning.

The proposed regulation intends to promote uniformity and enhance consumer protections for all annuity transactions. To ensure this, we humbly request the following minor changes to align Vermont's proposal with the NAIC Model Language.

- I.) Under Section 5, Provision D, Item 3, "any reasonably anticipated future changes in financial situation and needs," should be removed. The Model calls for collecting any past and current financial information only.
- II.) Under Section 6, Provision A, Item 1J, "other transactional costs," should be removed. The Model clearly defines what the consumer will be subject should an annuity be exchanged or replaced.
- III.) Under Section 8, Provision B contains no specific mention of reduced or elimination violation of corrective action as outlined in the Model. This must be included to ensure uniform compliance.
- IV.) Under Section 6, Provision A, Items 2a, 4b, and 4c, include the usage of "substantially similar" forms as outlined in the Model. This permits companies and producers to use the same appendix forms across state lines so long as such forms are substantially similar to the model appendices.

To date, 40 states have adopted this model, and we, as agents and NAIFA-VT, feel very strongly about Vermont joining this group. NAIFA members subscribe to a code of ethics that requires us to put our client's interests first. To our practice, this is the industry catching up to where we have been as people in whom clients place their trust and confidence.

NAIFA-VT supports establishing a consistent and workable best-interest standard for financial professionals. We, once again, applaud the Department of Financial Regulation for hearing our comments and allowing the opportunity to provide feedback.

Sincerely,

C. Tyler Wood
NAIFA-Vermont President
Agent, Client Centered Financial

State of Vermont
Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

For consumer assistance:
[Banking] 888-568-4547
[Insurance] 800-964-1784
[Securities] 877-550-3907
www.dfr.vermont.gov

November 29, 2023

**Re: Suitability in Annuity Transactions (Reg. I-2023-01); Comment Response
and Changes Letter**

To whom it may concern:

The Department of Financial Regulation (“Department”) submits its Final Proposed Rule titled Suitability in Annuity Transactions (Reg. I-2023-01) to the Vermont Secretary of State and the Legislative Committee on Administrative Rules (LCAR).

The Department submitted its Proposed Rule on August 10, 2023. It held a remote public hearing on November 7, 2023 via Microsoft Teams, which was attended by Chris Rice on behalf of the American Council of Life Insurers (“ACLI”), Kim O’Brien on behalf of the Federation of Americans for Consumer Choice, Inc. (“FACC”), Sarah Wood, Angelus Tammaro, and two additional persons who did not identify themselves. Mr. Rice asked a question to clarify the deadline for submitting comments, which was November 15, 2023. Ms. O’Brien commented that ACLI had submitted written comments. The deadline for comment passed on November 15, 2023. The Department received written comments from ACLI, FACC, the Insured Retirement Institute (“IRI”), and the National Association of Insurance and Financial Advisors and NAIFA-VT (“NAIFA”).

The Proposed Rule is based largely on a model regulation adopted by the National Association of Insurance Commissioners (“NAIC”). To date, approximately 40 states have adopted a rule based on the NAIC model, with proposals in 6 states, including Vermont, pending. The commenters generally appreciated the Proposed Rule’s adherence to the NAIC model rule, but provided some comments regarding instances in which the Proposed Rule differs from the NAIC model rule. Because each of the commenters made similar overlapping comments covering six areas of the Proposed Rule, the discussion below will address the comments by topic, identifying those commenters that made each comment.

All four commenters, ACLI, FACC, NAIFA and IRI, commented on provisions in the Proposed Rule regarding forms. The Proposed Rule provides in three instances that parties may use a form provided in the Rule at Appendix A “or other similar form approved by the Commissioner”. See Proposed Rule at §6(A)(2)(a), §6(A)(4)(b), and §6(A)(4)(c). The commenters noted that, as drafted, the Proposed Rule would prohibit insurers and producers from utilizing forms that are “substantially similar” (as was provided in the NAIC model rule) without prior approval from the



Department. Rather, it would require them to file with and obtain approval from the Commissioner to use forms that differ in any way from the Rule's appendices, even if the differences are not substantive. The Department is sympathetic to the commenters' concerns, which would allow insurers and producers to use the same forms in many states, as long as such forms are "substantially similar" to the model appendices. As a result, we are changing the language of the Final Proposed Rule to refer to the Form in Appendix A "or other substantially similar form" and deleting the requirement that the form be "approved by the Commissioner", which we believe addresses the commenters' concerns. The Department plans to monitor firms' use of forms in the future to ensure that such forms are "substantially similar" to the Form attached to the Proposed Rule.

The commenters (ACLI, FACC, IRI and NAIFA) also suggested a change to the description of "financial situation and needs" in the definition of "Consumer profile information" in §5(D)(3). The commenters suggested that the phrase "and reasonably anticipated future changes in financial situation and needs" was redundant and thus unnecessary. (This language was not in the NAIC model rule). The Department believes that it is useful to highlight that financial situation and needs may include reasonably anticipated future changes, and thus believes that this language should remain in the Final Proposed Rule.

Three commenters, ACLI, IRI and NAIFA, advocated deleting a reference to the Vermont Insurance Trade Practices Act in §8(B) and inserting language highlighting corrective actions. The NAIC model rule suggested that each state refer to its applicable rules regarding penalties and corrective actions. The Department believes that the reference is applicable and appropriate, and notes that in assessing penalties it can consider corrective actions. As a result, the Department believes this suggested change is unwarranted.

Two commenters, ACLI and FACC, suggested that the Department consider removing the requirement to maintain records in §9(A) as redundant, since that section refers to the requirements of Vermont Insurance Regulation 99-1. The Department believes it is important to clearly state the records maintenance requirement directly in the Final Proposed Rule and thus is declining to implement this suggested change.

Two commenters, IRI and NAIFI, suggested removing the phrase "other transactional costs" from §6(A)(1)(j) to better align with the NAIC model rule. This Section discusses what producers should consider in the event of the exchange or replacement of an annuity. The Department believes producers should take into consideration all consumer costs, including "other transactional costs" in such situations, and thus is not persuaded to make the change requested.

FACC recommended removing a reference to the Vermont Securities Bulletin in §1(D). The Department notes that this Bulletin is directly relevant based on historical activity within Vermont, and as a result declines to remove the reference.

In addition, ACLI recommended several technical typographical edits in Section 6. The Department agrees with these technical edits and is implementing these minor edits in the Final Proposed Rule.

A copy of the Final Proposed Rule showing redlined changes from the rule text as provided in the original Proposed Rule is attached hereto for ease of reference. The Department thanks members of the public who attended the public hearing and/or submitted written comments for their attention and diligence in the rulemaking process. As noted above the written comments have resulted in positive changes to the Proposed Rule.

Sincerely,

/s/ Stan Macel

Stan Macel
Assistant General Counsel
Department of Financial Regulation

Redline

REDLINE SHOWING CHANGES FROM ORIGINAL PROPOSED RULE TO
FINAL PROPOSED RULE

SUITABILITY IN ANNUITY TRANSACTIONS

RULE

DFR REGULATION NO. I-2023-01

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Section 1. Purpose

- A. The purpose of this rule is to require producers, as defined in this rule, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule or to subject a producer to civil liability under the best interest standard of care outlined in Section 6 of this rule or under standards governing the conduct of a fiduciary or a fiduciary relationship.
- C. This rule sets forth the standards for the sale of annuities in Vermont and should be read with the requirements of 8 V.S.A. § 4724(16) and other applicable Vermont laws including but not limited to the Insurance Trade Practices Act, 8 V.S.A. §§ 4721 *et seq.* Nothing precludes an insurer from exceeding the requirements of this rule.
- D. A recommendation to purchase or sell products defined as securities under the Vermont Uniform Securities Act is the offering of investment advice. A person who offers investment advice must be registered with the Vermont Securities Division. See Insurance Bulletin 198, Securities Bulletin S-2018-01.

Section 2. Scope

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This rule shall apply to any sale or recommendation of an annuity-

Section 3. Authority

This rule is issued under the authority of 8 V.S.A. §§ 10, 15(a), 3843, 4721-4728, 4804(a), 4812 and 4813c(c).

Section 4. Exemptions

Unless otherwise specifically included, this rule shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC; or
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- D. Formal prepaid funeral contracts.

Section 5. Definitions

- A. "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- C. "Commissioner" means the Commissioner of the Department of Financial Regulation.

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- D. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:
- (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including debts and other obligations and any reasonably anticipated future changes in financial situation and needs;
 - (4) Financial experience;
 - (5) Insurance needs;
 - (6) Financial objectives;
 - (7) Intended use of the annuity;
 - (8) Financial time horizon;
 - (9) Existing assets or financial products, including investment, annuity and insurance holdings;
 - (10) Liquidity needs;
 - (11) Liquid net worth;
 - (12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
 - (13) Financial resources used to fund the annuity; and
 - (14) Tax status.
- E. “Continuing education credit” or “CE credit” means one continuing education credit as required by 8 V.S.A. § 4800a.
- F. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to 8 V.S.A. § 4800a(g).
- G. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- H. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

REDLINE SHOWING CHANGES FROM ORIGINAL PROPOSED RULE TO
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- I. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.
- J. (1) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.

(2) “Material conflict of interest” does not include cash compensation or non-cash compensation.
- K. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.
- L. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- M. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this rule, “producer” includes an insurer where no producer is involved.
- N. (1) “Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

(2) Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
- O. “Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:
 - (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
 - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

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- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

P. "SEC" means the United States Securities and Exchange Commission.

Section 6. Duties of Insurers and Producers

A. **Best Interest Obligations.** A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

- (1) (a) **Care Obligation.** The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
 - (i) Know the consumer's financial situation, insurance needs and financial objectives;
 - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - (iv) Communicate the basis or bases of the recommendation.
- (b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.
- (c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

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- (d) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this rule.
- (e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.
- (f) The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
- (g) The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar ~~producer~~product enhancements, if any.
- (h) The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
- (i) The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
- (j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
 - (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements or other transactional costs;
 - (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

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- (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.
 - (k) Nothing in this rule should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this rule; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.
- (2) Disclosure obligation.
- (a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on the Insurance Agent (Producer) Disclosure for Annuities form attached hereto as Appendix A, or other substantially similar form ~~approved by the Commissioner:~~
 - (i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
 - (ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:
 - (I) Fixed annuities;
 - (II) Fixed indexed annuities;
 - (III) Variable annuities;
 - (IV) Life insurance;
 - (V) Mutual funds;
 - (VI) Stocks and bonds; and
 - (VII) Certificates of deposit;
 - (iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:
 - (I) From one insurer;
 - (II) From two or more insurers; or

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- (III) From two or more insurers although primarily contracted with one insurer.
 - (iv) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and
 - (v) A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;
- (b) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:
- (i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
 - (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and
- (c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.
- (3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.
- (4) Documentation obligation. A producer shall at the time of recommendation or sale:

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- (a) Make a written record of any recommendation and the basis for the recommendation subject to this rule;
 - (b) Obtain a consumer signed statement on the Consumer Refusal to Provide Information form attached hereto as Appendix B, or other substantially similar form~~-approved by the Commissioner~~, documenting:
 - (i) A customer's refusal to provide the consumer profile information, if any; and
 - (ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and
 - (c) Obtain a consumer signed statement on the Consumer Decision to Purchase an Annuity NOT Based on a Recommendation form attached hereto as Appendix C, or other substantially similar form~~-approved by the Commissioner~~, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.
- (5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

B. Transactions not based on a recommendation.

- (1) Except as provided under paragraph (2), a producer shall have no obligation to a consumer under subsection A(1) related to any annuity transaction if:
 - (a) No recommendation is made;
 - (b) A recommendation was made and was later found to have been prepared based on ~~materially~~ inaccurate information provided by the consumer;
 - (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
 - (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

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- (2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system.

- (1) Except as permitted under subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.
- (2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including, but not limited to, the following:
 - (a) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;
 - (b) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of section 7 of this rule;
 - (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
 - (d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
 - (e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile

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information or other required information under this section after issuance or delivery of the annuity;

- (f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;
 - (g) The insurer shall establish and maintain reasonable procedures to identify and address a pattern of, or otherwise suspicious, consumer refusals to provide consumer profile information;
 - (h) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and
 - (i) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- (3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this rule regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
- (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

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- (4) An insurer is not required to include in its system of supervision:
 - (a) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or
 - (b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

- D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:
 - (1) Providing consumer profile information and truthfully responding to an insurer's request for confirmation of the consumer profile information;
 - (2) Filing a complaint; or
 - (3) Cooperating with the investigation of a complaint.

- E. Safe harbor.
 - (1) Recommendations and sales of annuities by financial professionals made in compliance with comparable standards shall satisfy the requirements under this rule. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue . However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this rule.
 - (2) Nothing in paragraph (1) shall limit the insurer's obligation to comply with Section 6C(1) of this rule, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.
 - (3) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws using information collected in the normal course of an insurer's business; and
 - (b) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws,

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information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

- (4) For purposes of this subsection, “financial professional” means a producer that is regulated and acting as:
 - (a) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;
 - (b) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or
 - (c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

- (5) For purposes of this subsection, “comparable standards” means:
 - (a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
 - (b) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities law, including but not limited to, the Form ADV and interpretations; and
 - (c) With respect to plan fiduciaries or fiduciaries, ~~means~~ the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Section 7. Producer Training

- A. A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer’s standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

- B. (1) (a) A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of

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insurance and provided by the department of insurance-approved education provider.

- (b) Producers who hold a life insurance line of authority on the effective date of this rule and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this rule. Individuals who obtain a life insurance line of authority on or after the effective date of this rule may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
- (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits but may be longer.
 - (3) The training required under this subsection shall include information on the following topics:
 - (a) The types of annuities and various classifications of annuities;
 - (b) Identification of the parties to an annuity;
 - (c) How product specific annuity contract features affect consumers;
 - (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and
 - (f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
 - (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
 - (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in 8 V.S.A. § 4800a.
 - (6) A producer who has completed an annuity training course approved by the department of insurance prior to [insert effective date of amended rule] shall, within six (6) months after [insert effective date of amended rule], complete either:
 - (a) A new four (4) credit training course approved by the department of insurance after [insert effective date of amended rule]; or

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- (b) An additional one-time one (1) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended rule.
- (7) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with 8 V.S.A. § 4800a.
- (8) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 8 V.S.A. § 4800a.
- (9) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
- (10) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.
- (11) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties; Enforcement

- A. An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this rule by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer;
 - (2) A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and
 - (3) Appropriate penalties and sanctions.
- B. A violation of this rule shall be considered to be a violation of the Insurance Trade Practices Act as set forth at 8 V.S.A. § 4721 *et seq.*
- C. The authority to enforce compliance with this rule is vested exclusively with the commissioner.

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Section 9. Recordkeeping

- A. In addition to the requirements of VT Ins. Regulation 99-1, "Records Retention," and the requirements of VT Ins. Regulation I-2001-03, "Life Insurance and Annuities Replacement Regulation," insurers, general agents, independent agencies and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions, and records demonstrating insurers' compliance with the supervision and training requirements of this rule, for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

- B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section 10. Effective Date

The amendments to this rule shall take effect [DATE TO BE INSERTED AT ADOPTION] ~~NOTE TO DRAFT: THE DATE SHOULD BE ~ 6 MONTHS AFTER THE DATE OF ADOPTION.~~

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APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)

First Name: _____

Last Name: _____

Business\Agency Name: _____

Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in Vermont: _____

CUSTOMER INFORMATION (“You”, “Your”)

First Name: _____

Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds

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- Stocks/Bonds
- Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from:	

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

- Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____.
- Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- Other (Describe): _____
_____.

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

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Customer Signature

Date

Agent (Producer) Signature

Date

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APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company needs information about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives and situation. You may lose protections under the Insurance Code of Vermont if you sign this form or provide inaccurate information.

Statement of Purchaser:

- I **REFUSE** to provide this information at this time.
- I have chosen to provide LIMITED information at this time.

Customer Signature

Date

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APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are you being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of Vermont.

Customer Signature

Date

Agent/Producer Signature

Date

New
Rule

SUITABILITY IN ANNUITY TRANSACTIONS

RULE

DFR REGULATION NO. I-2023-01

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Section 1. Purpose

- A. The purpose of this rule is to require producers, as defined in this rule, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.
- B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule or to subject a producer to civil liability under the best interest standard of care outlined in Section 6 of this rule or under standards governing the conduct of a fiduciary or a fiduciary relationship.
- C. This rule sets forth the standards for the sale of annuities in Vermont and should be read with the requirements of 8 V.S.A. § 4724(16) and other applicable Vermont laws including but not limited to the Insurance Trade Practices Act, 8 V.S.A. §§ 4721 *et seq.* Nothing precludes an insurer from exceeding the requirements of this rule.
- D. A recommendation to purchase or sell products defined as securities under the Vermont Uniform Securities Act is the offering of investment advice. A person who offers investment advice must be registered with the Vermont Securities Division. See Insurance Bulletin 198, Securities Bulletin S-2018-01.

Section 2. Scope

This rule shall apply to any sale or recommendation of an annuity-

Section 3. Authority

This rule is issued under the authority of 8 V.S.A. §§ 10, 15(a), 3843, 4721-4728, 4804(a), 4812 and 4813c(c).

Section 4. Exemptions

Unless otherwise specifically included, this rule shall not apply to transactions involving:

- A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule;
- B. Contracts used to fund:
 - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC; or
 - (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- D. Formal prepaid funeral contracts.

Section 5. Definitions

- A. “Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.
- C. “Commissioner” means the Commissioner of the Department of Financial Regulation.
- D. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:

- (1) Age;
 - (2) Annual income;
 - (3) Financial situation and needs, including debts and other obligations and any reasonably anticipated future changes in financial situation and needs;
 - (4) Financial experience;
 - (5) Insurance needs;
 - (6) Financial objectives;
 - (7) Intended use of the annuity;
 - (8) Financial time horizon;
 - (9) Existing assets or financial products, including investment, annuity and insurance holdings;
 - (10) Liquidity needs;
 - (11) Liquid net worth;
 - (12) Risk tolerance, including but not limited to, willingness to accept non-guaranteed elements in the annuity;
 - (13) Financial resources used to fund the annuity; and
 - (14) Tax status.
- E. "Continuing education credit" or "CE credit" means one continuing education credit as required by 8 V.S.A. § 4800a.
- F. "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to 8 V.S.A. § 4800a(g).
- G. "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.
- H. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- I. "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

- J. (1) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.
- (2) “Material conflict of interest” does not include cash compensation or non-cash compensation.
- K. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.
- L. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.
- M. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this rule, “producer” includes an insurer where no producer is involved.
- N. (1) “Recommendation” means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.
- (2) Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
- O. “Replacement” means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:
- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

- P. “SEC” means the United States Securities and Exchange Commission.

Section 6. Duties of Insurers and Producers

- A. **Best Interest Obligations.** A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:
- (1) (a) **Care Obligation.** The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
 - (i) Know the consumer’s financial situation, insurance needs and financial objectives;
 - (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - (iv) Communicate the basis or bases of the recommendation.
 - (b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.
 - (c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.
 - (d) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this rule.
 - (e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses

the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

- (f) The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.
- (g) The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.
- (h) The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.
- (i) The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
- (j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:
 - (i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements or other transactional costs;
 - (ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and
 - (iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.
- (k) Nothing in this rule should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this rule; provided the producer does not give advice or provide

services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(2) Disclosure obligation.

(a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on the Insurance Agent (Producer) Disclosure for Annuities form attached hereto as Appendix A, or other substantially similar form:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) An affirmative statement on whether the producer is licensed and authorized to sell the following products:

(I) Fixed annuities;

(II) Fixed indexed annuities;

(III) Variable annuities;

(IV) Life insurance;

(V) Mutual funds;

(VI) Stocks and bonds; and

(VII) Certificates of deposit.

(iii) An affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:

(I) From one insurer;

(II) From two or more insurers; or

(III) From two or more insurers although primarily contracted with one insurer.

(iv) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

- (v) A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;
 - (b) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:
 - (i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
 - (ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and
 - (c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.
- (3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.
- (4) Documentation obligation. A producer shall at the time of recommendation or sale:
- (a) Make a written record of any recommendation and the basis for the recommendation subject to this rule;
 - (b) Obtain a consumer signed statement on the Consumer Refusal to Provide Information form attached hereto as Appendix B, or other substantially similar form, documenting:
 - (i) A customer's refusal to provide the consumer profile information, if any; and
 - (ii) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

- (c) Obtain a consumer signed statement on the Consumer Decision to Purchase an Annuity NOT Based on a Recommendation form attached hereto as Appendix C, or other substantially similar form, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.
- (5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

B. Transactions not based on a recommendation.

- (1) Except as provided under paragraph (2), a producer shall have no obligation to a consumer under subsection A(1) related to any annuity transaction if:
 - (a) No recommendation is made;
 - (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - (c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
 - (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.
- (2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system.

- (1) Except as permitted under subsection B, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.
- (2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including, but not limited to, the following:

- (a) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;
- (b) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of section 7 of this rule;
- (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its producers;
- (d) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- (e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity;
- (f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;
- (g) The insurer shall establish and maintain reasonable procedures to identify and address a pattern of, or otherwise suspicious, consumer refusals to provide consumer profile information;
- (h) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office

support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

- (i) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.
- (3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this rule regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of this paragraph.
- (b) An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:
 - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- (4) An insurer is not required to include in its system of supervision:
 - (a) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or
 - (b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

D. Prohibited Practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

- (1) Providing consumer profile information and truthfully responding to an insurer's request for confirmation of the consumer profile information;
- (2) Filing a complaint; or
- (3) Cooperating with the investigation of a complaint.

E. Safe harbor.

- (1) Recommendations and sales of annuities by financial professionals made in compliance with comparable standards shall satisfy the requirements under this rule. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue . However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this rule.
- (2) Nothing in paragraph (1) shall limit the insurer's obligation to comply with Section 6C(1) of this rule, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.
- (3) For paragraph (1) to apply, an insurer shall:
 - (a) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws using information collected in the normal course of an insurer's business; and
 - (b) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.
- (4) For purposes of this subsection, "financial professional" means a producer that is regulated and acting as:
 - (a) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;
 - (b) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or
 - (c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.
- (5) For purposes of this subsection, "comparable standards" means:

- (a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
- (b) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities law, including but not limited to, the Form ADV and interpretations; and
- (c) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

Section 7. Producer Training

- A. A producer shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
- B.
 - (1)
 - (a) A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.
 - (b) Producers who hold a life insurance line of authority on the effective date of this rule and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this rule. Individuals who obtain a life insurance line of authority on or after the effective date of this rule may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
 - (2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits but may be longer.
 - (3) The training required under this subsection shall include information on the following topics:
 - (a) The types of annuities and various classifications of annuities;
 - (b) Identification of the parties to an annuity;
 - (c) How product specific annuity contract features affect consumers;

- (d) The application of income taxation of qualified and non-qualified annuities;
 - (e) The primary uses of annuities; and
 - (f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
- (4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
 - (5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to producer continuing education courses as set forth in 8 V.S.A. § 4800a.
 - (6) A producer who has completed an annuity training course approved by the department of insurance prior to [insert effective date of amended rule] shall, within six (6) months after [insert effective date of amended rule], complete either:
 - (a) A new four (4) credit training course approved by the department of insurance after [insert effective date of amended rule]; or
 - (b) An additional one-time one (1) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under this amended rule.
 - (7) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with 8 V.S.A. § 4800a.
 - (8) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 8 V.S.A. § 4800a.
 - (9) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.
 - (10) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.
 - (11) An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or

vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties; Enforcement

- A. An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:
 - (1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this rule by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer;
 - (2) A general agency, independent agency or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this rule; and
 - (3) Appropriate penalties and sanctions.
- B. A violation of this rule shall be considered to be a violation of the Insurance Trade Practices Act as set forth at 8 V.S.A. § 4721 *et seq.*
- C. The authority to enforce compliance with this rule is vested exclusively with the commissioner.

Section 9. Recordkeeping

- A. In addition to the requirements of VT Ins. Regulation 99-1, "Records Retention," and the requirements of VT Ins. Regulation I-2001-03, "Life Insurance and Annuities Replacement Regulation," insurers, general agents, independent agencies and producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions, and records demonstrating insurers' compliance with the supervision and training requirements of this rule, for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.
- B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section 10. Effective Date

The amendments to this rule shall take effect [DATE TO BE INSERTED AT ADOPTION – 6 MONTHS AFTER ADOPTION].

APPENDIX A

INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)

First Name: _____

Last Name: _____

Business\Agency Name: _____

Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

National Producer Number in Vermont: _____

CUSTOMER INFORMATION (“You”, “Your”)

First Name: _____

Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to you in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds and mutual funds, also may meet Your needs.

I offer the following products:

- Fixed or Fixed Indexed Annuities
- Variable Annuities
- Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

- Mutual Funds
- Stocks/Bonds

- Certificates of Deposits

Whose Annuities Can I Sell to You?

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One (1) Insurer	<input type="checkbox"/> Annuities from Two or More Insurers
<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from:	

How I’m Paid for My Work:

It’s important for You to understand how I’m paid for my work. Depending on the particular annuity You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I’m paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

- Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____.
- Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.
- Other (Describe): _____
_____.

If you have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called “non-cash” compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

Customer Signature

Date

Agent (Producer) Signature

Date

APPENDIX B

CONSUMER REFUSAL TO PROVIDE INFORMATION

Do Not Sign Unless You Have Read and Understand the Information in this Form

Why are you being given this form?

You're buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company needs information about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets your needs, objectives and situation. You may lose protections under the Insurance Code of Vermont if you sign this form or provide inaccurate information.

Statement of Purchaser:

- I **REFUSE** to provide this information at this time.
- I have chosen to provide LIMITED information at this time.

Customer Signature

Date

APPENDIX C

Consumer Decision to Purchase an Annuity NOT Based on a Recommendation

Do Not Sign This Form Unless You Have Read and Understand It.

Why are you being given this form? You are buying a financial product – an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about you, your financial situation, insurance needs and financial objectives.

If you sign this form, it means you know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of Vermont.

Customer Signature

Date

Agent/Producer Signature

Date

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 8 : Banking and Insurance

Chapter 001 : Policy and Administration

(Cite as: 8 V.S.A. § 10)

§ 10. Declaration of policy

It is declared to be the policy of the State of Vermont that:

(1) the business of organizations that offer financial services and products shall be supervised by the Commissioner in a manner to assure the solvency, liquidity, stability, and efficiency of all such organizations, to assure reasonable and orderly competition, thereby encouraging the development, expansion, and availability of financial services and products advantageous to the public welfare and to maintain close cooperation with other supervisory authorities;

(2) all such organizations shall be supervised in such a way as to protect consumers against unfair and unconscionable practices and to provide consumer education. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001.)

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 8 : Banking and Insurance

Chapter 001 : Policy and Administration

(Cite as: 8 V.S.A. § 15)

§ 15. Rules, orders, and administrative interpretations

(a) In addition to other powers conferred by this title and 18 V.S.A. chapter 221, the Commissioner may adopt rules and issue orders as shall be authorized by or necessary to the administration of this title and of 18 V.S.A. chapter 221, and to carry out the purposes of such titles.

(b) The Commissioner may, whether or not requested by any person, issue written advisory interpretations, advisory opinions, non-objection letters, and no action letters under this title and regulations issued under it, including interpretations of the applicability of any provision of this title and regulations issued under it. Such interpretations shall be presumed to be correct unless found to be clearly erroneous by a court of competent jurisdiction. The Commissioner may make public all or a portion of an advisory interpretation.

(c) The Commissioner may waive the requirements of 15 V.S.A. § 795(b) as the Commissioner deems necessary to permit the Department to participate in any national licensing or registration systems with respect to any person or entity subject to the jurisdiction of the Commissioner under this title, Title 9, or 18 V.S.A. chapter 221.

(d) Upon written request by the Office of Child Support and after notice and opportunity for hearing to the licensee as required under any applicable provision of law, the Commissioner may revoke or suspend any license or other authority to conduct a trade or business (including a license to practice a profession) issued to any person under this title, 9 V.S.A. chapter 150, and 18 V.S.A. chapter 221, if the Commissioner finds that the applicant or licensee is subject to a child support order and is not in good standing with respect to that order or is not in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed or as of the date of the commencement of revocation proceedings, as applicable. For

purposes of such findings, the written representation to that effect by the Office of Child Support to the Commissioner shall constitute prima facie evidence. The Office of Child Support shall have the right to intervene in any hearing conducted with respect to such license revocation or suspension. Any findings made by the Commissioner based solely upon the written representation with respect to that license revocation or suspension shall be made only for the purposes of that proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from that license revocation or suspension. Any license or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the Department receives a certificate issued by the Office of Child Support that the licensee is in good standing with respect to a child support order or is in full compliance with a plan to pay any and all child support payable under a support order. (Added 1999, No. 153 (Adj. Sess.), § 1, eff. Jan. 1, 2001; amended 2009, No. 42, § 33a; 2013, No. 73, § 58, eff. June 5, 2013; 2015, No. 63, § 3, eff. June 17, 2015; 2019, No. 20, § 106.)

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

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Title 8 : Banking and Insurance

Chapter 103 : Life Insurance Policies and Annuity Contracts

Subchapter 005B : Life Settlements

(Cite as: **8 V.S.A. § 3848**)

§ 3848. Civil remedies, penalties, and enforcement

In addition to any other civil and administrative remedies, penalties, and enforcement authority provided for by law:

(1) A violation of this subchapter or of a rule or order adopted or issued under this subchapter, including the commission of a fraudulent life settlement act, shall constitute an unfair trade practice under chapter 129 of this title (Insurance Trade Practices) and shall be subject to the remedies, penalties, and enforcement authority provided for in chapter 129 of this title. The Commissioner may report any violation of this subchapter to the Attorney General, who may prosecute therefor if he or she deems desirable.

(2) The Commissioner may issue a cease and desist order upon a person that violates any provision of this subchapter, any rule or order adopted or issued by the Commissioner, or any written agreement with a licensee entered into with the Commissioner.

(3) When the Commissioner finds that an activity in violation of this subchapter or of a rule or order adopted or issued by the Commissioner presents an immediate danger to the public that requires an immediate final order, the Commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the Commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective absent a petition by the respondent and an order by a Superior Court of Washington County vacating the Commissioner's emergency order.

(4) A Commissioner's order under this subsection may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter or to take further actions necessary to remedy violations of this subchapter. (Added 2009, No. 53, § 1, eff. Jan. 1, 2010.)

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

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Title 8: Banking and Insurance

Chapter 129: Insurance Trade Practices

§ 4721. Purpose

The purpose of sections 4721-4733 of this title is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in The McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, by defining, or providing for the determination of, practices in this State that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. (Amended 1973, No. 216 (Adj. Sess.), § 1, eff. May 1, 1974.)

§ 4722. Definitions

As used in this chapter:

(1) "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, appraisers, and adjusters. Person also means medical, dental, optometric, and hospital service plans as defined in this title. For the purposes of this title, medical, dental, optometric, and hospital service plans shall be deemed to be engaged in the business of insurance.

(2) "Commissioner" means the Commissioner of Financial Regulation.

(3) "Insurance policy" or "insurance contract" means any contract of insurance, indemnity, medical, dental, optometric, or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.

(4)(A) "Abusive litigation" means litigation or other legal action to deter, prevent, sanction, or punish any person engaging in legally protected health care activity by:

(i) filing or prosecuting any action in any other state where liability, in whole or part, directly or indirectly, is based on legally protected health care activity that occurred in this State, including any action in which liability is based on any theory of vicarious,

joint, or several liability derived therefrom; or

(ii) attempting to enforce any order or judgment issued in connection with any such action by any party to the action or any person acting on behalf of a party to the action.

(B) A lawsuit shall be considered to be based on conduct that occurred in this State if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in this State, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit.

(5) “Legally protected health care activity” has the same meaning as in 1 V.S.A. § 150. (Amended 1973, No. 216 (Adj. Sess.), § 2, eff. May 1, 1974; 1989, No. 225 (Adj. Sess.), § 25; 1995, No. 180 (Adj. Sess.), § 38; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012; 2023, No. 15, § 2, eff. May 10, 2023.)

§ 4723. Unfair methods of competition or unfair or deceptive acts or practices prohibited

No person shall engage in any trade practice that is determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. (Amended 1973, No. 216 (Adj. Sess.), § 3, eff. May 1, 1974.)

§ 4724. Unfair methods of competition or unfair or deceptive acts or practices defined

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison that:

(A) misrepresents or fails to adequately disclose the benefits, advantages, conditions, exclusions, limitations, or terms of any insurance policy; or

(B) misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(C) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(D) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(E) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(F) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or

(G) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(H) misrepresents any insurance policy as being shares of stock.

(2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her business that is untrue, deceptive, or misleading.

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature that is false, or maliciously critical of or derogatory to the financial condition of any person and which is calculated to injure such person.

(4) Boycott, coercion, and intimidation.

(A) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of trade, or monopoly in, the business of insurance.

(B) Committing any act of boycott, coercion, or intimidation in the marketing or sale of any insurance contracts.

(5) False financial statements and entries.

(A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(B) Knowingly making any false entry of a material fact in a book, report, or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person.

(C) Knowingly concealing, withholding or destroying, mutilating, altering, or by any means falsifying any documentary material in the possession, custody, or control of any person after that person:

(i) has received a complaint to which that documentary material is directly relevant; or

(ii) knows that the documentary material is relevant to an investigation or an examination of that person being made by the Commissioner.

(6) Stock operations and advisory board contracts. Permitting agents, officers, or employees to issue or deliver agency or company stock or other capital stock, or benefit certificates or share in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insure.

(7) Unfair discrimination; arbitrary underwriting action.

(A) Making or permitting any unfair discrimination between insureds of the same class and equal risk in the rates charged for any contract of insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contracts.

(B) Making or permitting unfair discrimination against an applicant or an insured, on the basis of the sex, sexual orientation, gender identity, or marital status of the applicant or insured, with regard to:

(i) underwriting standards and practices or eligibility requirements; or

(ii) rates; however, nothing in this subdivision shall prevent any person who contracts to insure another from setting rates for such insurance in accordance with reasonable classifications based on relevant actuarial data or actual cost experience in accordance with section 4686 of this title.

(C)(i) Inquiring or investigating, directly or indirectly, as to an applicant's, an insured's, or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity.

(ii) Using sexual orientation, gender identity, or beneficiary designation in the underwriting process or in the determination of insurability.

(iii) Making adverse underwriting decisions because medical records or a report from an insurance support organization reveal that an applicant or insured has demonstrated HIV-related concerns by seeking counseling from health care professionals.

(iv) Making adverse underwriting decisions on the basis of the existence of nonspecific blood code information received from the medical information bureau or a national data bank, but this prohibition shall not bar investigation in response to such a nonspecific blood code.

(v) The provisions of this subdivision (C) shall not be construed to prohibit an insurer from requesting an applicant or insured to take an HIV-related test on the basis of the health history or current condition of health of the applicant or insured in accordance with the provisions of subdivision (20) of this section.

(D) Making or permitting any unfair discrimination against any individual by conditioning insurance rates, the provision or renewal of insurance coverage, or other conditions of insurance based on medical information, including the results of genetic testing, where there is not a relationship between the medical information and the cost of the insurance risk that the insurer would assume by insuring the proposed insured. In demonstrating the relationship, the insurer can rely on actual or reasonably anticipated experience. As used in this subdivision, "genetic testing" shall be defined as the term is defined in 18 V.S.A. § 9331(7).

(E) Making or permitting unfair discrimination between married couples and parties to a civil union as defined under 15 V.S.A. § 1201, with regard to the offering of insurance benefits to a couple, a spouse, a party to a civil union, or their family. The Commissioner shall adopt rules necessary to carry out the purposes of this subdivision. The rules shall ensure that insurance contracts and policies offered to married couples, spouses, and families are also made available to parties to a civil union and their families. The Commissioner may adopt by order standards and a process to bring the forms currently on file and approved by the Department into compliance with Vermont law. The standards and process may differ from the provisions contained in chapter 101, subchapter 6, and sections 4062, 4201, 4515a, 4587, 4685, 4687, 4688, 4985, 5104, and 8005 of this title where, in the Commissioner's opinion, the provisions regarding filing and approval of forms are not desirable or necessary to effectuate the purposes of this section.

(F)(i) Discriminating against a health care provider, as defined by 18 V.S.A. § 9496, or adjusting or otherwise calculating a health care provider's risk classification or premium charges on the basis that:

- (I) the health care provider provides or assists in the provision of legally protected health care activity that is unlawful in another state;
- (II) another state's laws create potential or actual liability for that activity;
- (III) abusive litigation against a provider concerning legally protected health care activity resulted in a claim, settlement, or judgement against the provider; or
- (IV) the license of the provider has been disciplined in any way by another state based solely on the provider's provision of legally protected health care activity.

(ii) For purposes of this subdivision (F), it shall not be unfairly discriminatory nor an arbitrary underwriting action against a health care provider if the risk classifications, premium charges, or other underwriting considerations are based on

factors other than those listed in subdivision (i) of this subdivision (F).

(8) Rebates.

(A) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of insurance or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, any rebate or premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever of value not specified in the contract.

(B) Making available through any rating plan or form, property, casualty, or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious grouping of such firm, corporation, or individuals. The grouping of risks by way of membership, nonmembership, license, franchise, employment, contract, agreement, or any other method or means, when the grouping of risks have no preferred characteristic over similar risks written on an individual basis, for the purpose of insuring such grouped risks at a preferred rate or premium or on a preferred form is a "fictitious grouping." This subdivision shall not apply to life or health and disability insurance or annuity contracts.

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

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that such bonuses or abatement of premiums shall be fair, and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

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

(iv) the offer or provision by insurers, by or through employees, affiliates, or

third-party representatives of value-added products or services at no or reduced cost, even when such products or services are not specified in the insurance policy, provided the product or service meets each of the following criteria:

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

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

(aa) provide loss mitigation or loss control;

(bb) reduce claim costs or claim settlement costs;

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

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

(ee) enhance health;

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

(gg) provide post-loss service;

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

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

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

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

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

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

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

(9) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a business practice any of the following:

(A) misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue;

(B) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(C) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(D) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(E) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(F) not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(G) attempting to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made a part of the application;

(H) attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of the insured;

(I) making claim payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are made;

(J) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(K) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(L) failing to promptly settle claims where liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(M) failing to promptly provide a reasonable explanation on the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) Failure to maintain complaint handling procedures. Failure of any person to maintain a complete record of all of the complaints that it has received since the date of

its last examination under section 3563 or 3564 of this title. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, the time it took to process each complaint, and such other information as the Commissioner may require. As used in this subdivision, "complaint" shall mean any written communication primarily expressing a grievance.

(11) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurers, agent, broker, or individual.

(12) Failure of agent, broker, or insurer to act as fiduciary. Failure of any insurance agent, broker, or insurer to act as a fiduciary in regard to premiums, return premiums, or other sums of money received by him or her in his or her capacity as insurance agent, insurance broker, or insurer by failure to pay or transmit in a timely manner those sums of money to the persons to whom it is owed.

(13) Misrepresentation of services or products. Any person offering his or her or its services or insurance policies to the public in such a way as to mislead or to fail to adequately disclose to the public the true nature of the policies or the services offered.

(14) Nondisclosure of fees or charges. Failure of any agent or broker to obtain a prior written agreement with a client, policyholder, or other member of the public concerning fees or charges made by that agent or broker directly to the client, policyholder, or member of the public for that agent or broker procuring, servicing, or providing advice on insurance contracts. Commissions, expense allowances, bonuses, fees, or any other compensation received directly by agents or brokers from any legal entity engaged in the insurance business is exempt from this subdivision.

(15) Financed premiums. Misrepresenting or failing to completely disclose the terms, conditions, or benefits of financing premiums for insurance policies where the financing of the premiums constitute part of the solicitation or sale of the policy.

(16) Unsuitable policies. Soliciting, selling, or issuing an insurance policy when the person soliciting, selling, or issuing the policy has reason to know or should have reason to know that it is unsuitable for the person purchasing it.

(17) Failure to instruct or supervise representatives. Failure of an employer or principal engaged in the business of insurance to instruct or supervise any full-time agent, or full-time adjuster, or full- or part-time employee after that employer or principal has knowledge of a deceptive or unfair act or practice prohibited by this chapter that was committed by that agent, adjuster, or employee.

(18) Doing business with a person known to be committing deceptive or unfair acts or using prohibited practices. Accepting business from or contracting with or continuing

contractual relations with a person whom the other person knows or has or should have reason to know is repeatedly committing deceptive or unfair acts or practices prohibited by this title.

(19) Failure to comply with filed rates, rules, regulations, or forms. Failure to comply with any rates, rules, regulations, or forms filed with the Commissioner.

(20) HIV-related tests. Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the U.S. Food and Drug Administration, included in the current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens, used to determine the existence of HIV antibodies or antigens in the blood.

(A) No person shall request or require that a person reveal having taken HIV-related tests in the past.

(B)(i) No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement that shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention, of the following:

(I) an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont Department of Health and the Centers for Disease Control and Prevention; and

(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the Vermont Department of Health, which shall remain confidential, or to obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and

(III) a summary of the individual's rights under this subdivision (20), including subdivisions (F)-(K); and

(IV) an explanation that the person requesting or requiring the test, not the individual or the individual's health care provider, will be billed for the test, that the individual has a choice to receive the test results directly or to designate in writing prior to the administration of the test any other person through whom to receive the results, and any HIV positive test result from a test performed pursuant to this subdivision (20) shall be reported to the Vermont Department of Health pursuant to 18 V.S.A. § 1001.

(C) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the Commissioner pursuant to section 3541 of this title.

(D) HIV-related tests required by insurers or insurance support organizations must be processed in a laboratory certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.

(E) The test protocol shall be considered positive only if testing results meet the most current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm or more reliable confirmatory test or test protocol that has been approved by the U.S. Food and Drug Administration.

(F) If the HIV-1/2 antibody differentiation test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual shall be based upon such indeterminacy. If the HIV-1 NAT test result is negative, a new application for coverage shall not be denied by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall be repeated. No application for coverage shall be denied based on an indeterminate or invalid result. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing any previous HIV-related testing that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(G)(i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:

(I) once within the three-year period following the date of the most recent test; and

(II) in any event, upon updates to the Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens.

(ii) If such retest is negative, a new application for coverage shall not be denied by the insurer based upon the results of the initial test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(H) An insurer, on the basis of the individual's written informed consent as specified in subdivision (B) of this subdivision, if necessary to make underwriting decisions regarding the particular individual's application, may disclose the results of an individual's HIV-related test results to its reinsurers, or to those contractually retained medical personnel, laboratories, insurance support organizations, and insurance affiliates (but not agents or brokers) that are involved in underwriting decisions regarding the individual's particular application. Other than the disclosures permitted by this subdivision, the entities listed herein, including the insurer, shall not further disclose to anyone individually identified HIV-related test result information without a separately obtained written authorization from the individual; provided, however, that if an individual's test result is positive or indeterminate, then an insurer may report a code to the medical information bureau, provided that a nonspecific test result code is used that does not indicate that the individual was subjected to HIV-related testing.

(I) An insurer, reinsurer, contractually retained medical personnel, laboratories, medical information bureau, or other national data bank, insurance affiliate, or insurance support organizations that are obligated not to disclose any individually identifiable records of HIV-related tests pursuant to this subdivision (20) shall have no duty to disclose this information to any person except in compliance with a court order or as provided in subdivision (B) or (H) nor shall it have any liability to any person for refusing or failing to disclose such information.

(J) Any individual who sustains damage as a result of the unauthorized negligent or knowing disclosure of that individual's individually identifiable HIV-related test result information in violation of subdivision (H) of this subdivision (20) may bring an action for appropriate relief in Superior Court against any person making such a disclosure. The Court may award costs and reasonable attorney's fees to the individual who prevails in an action brought under this subdivision.

(K) In addition to any other remedy or sanction provided by law, after notice and opportunity for hearing, the Commissioner may assess an administrative penalty in an amount not to exceed \$2,000.00 for each violation against any person who violates any provision of this subdivision (20) or subdivision (7)(C) of this section.

(21) Automobile glass services. In the case of claims for damage to automobile glass under a policy of insurance covering, in whole or in part, motor vehicles:

(A) Failing to inform an insured, at the time a claim is made, of the right of the insured to choose freely any company or location for providing automobile glass services.

(B) Intimidating, coercing, threatening, or misinforming an insured for the purpose of inducing the insured to use a particular company or location to provide automobile glass services.

(22) Genetic testing.

(A) Conditioning insurance rates, the provision or renewal of insurance coverage or benefits or other conditions of insurance for any individual on:

(i) any requirement or agreement of the individual to undergo genetic testing;
or

(ii) the results of genetic testing of a member of the individual's family unless the results are contained in the individual's medical record.

(B) As used in this subdivision, "genetic testing" shall be defined as the term is defined in 18 V.S.A. § 9331(7).

(ii) In addition, before drawing blood, the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then obtain the individual's written informed consent. (Amended 1967, No. 186, eff. April 17, 1967; 1973, No. 216 (Adj. Sess.), § 4, eff. May 1, 1974; 1975, No. 180 (Adj. Sess.); 1979, No. 28, § 5; 1987, No. 194 (Adj. Sess.), §§ 1, 2; 1991, No. 135 (Adj. Sess.), § 7; 1991, No. 194 (Adj. Sess.); 1997, No. 160 (Adj. Sess.), § 5a, eff. Jan. 1, 1999; 1999, No. 91 (Adj. Sess.), § 17, eff. Jan. 1, 2001; 2001, No. 23, § 1; 2007, No. 41, § 9; 2007, No. 73, § 3, eff. April 1, 2008; 2019, No. 57, § 15; 2019, No. 103 (Adj. Sess.), § 22; 2021, No. 139 (Adj. Sess.), § 8, eff. May 27, 2022; 2023, No. 15, § 2, eff. May 10, 2023.)

§ 4725. Favored agent or insurer; coercion of debtors

(a) No person may:

(1) require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(2) unreasonably disapprove the insurance policy provided by a borrower for the protection of property securing the credit or lien; for the purpose of this subdivision, this disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and service of an insurer; these standards shall not discriminate against a particular type of insurer, nor shall these standards call for the disapproval of an insurance policy because the policy contains coverage in addition to that required;

(3) require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge to substitute the insurance policy of one insurer for that of another. This subdivision does not include the interest that may be charged on premium loans or premium advancements in accordance with the security instrument;

(4) use or disclose information resulting from a requirement that a borrower,

mortgagor, or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when this information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent of broker complying with this request.

(b) The Commissioner may investigate any person to whom this section applies to determine whether such person has violated this section. (Amended 1973, No. 216 (Adj. Sess.), § 5, eff. May 1, 1974.)

§ 4726. Power of Commissioner; enforcement

(a) The Commissioner shall have the power to examine and investigate any person engaged in the business of insurance in this State in order to determine whether that person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice.

(b) Any person violating any of the provisions of this chapter may be subject to an administrative penalty of not more than \$1,000.00 for each violation. The Commissioner may impose an administrative penalty of not more than \$10,000.00 each for those violations the Commissioner finds were willful. The Commissioner may suspend or revoke the license of any insurer or organization for any violation of this chapter or the failure to comply with an order of the Commissioner issued under this chapter.

(c) The powers vested in the Commissioner by this chapter shall be in addition to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices hereby declared to be unfair or deceptive. (Amended 1973, No. 216 (Adj. Sess.), § 6, eff. May 1, 1974; 1979, No. 28 § 6; 1995, No. 167 (Adj. Sess.), § 19, eff. May 15, 1996; 2021, No. 105 (Adj. Sess.), § 225, eff. July 1, 2022.)

§ 4727. Personal insurance; use of credit information

(a) Purpose. The purpose of this section is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of such information.

(b) Scope. This section applies to personal insurance and not to commercial insurance. As used in this section, “personal insurance” means private passenger automobile, homeowners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies. Such policies must be underwritten for personal, family, or household use. No other types of insurance shall be included as personal insurance for the purpose of this section.

(c) Definitions. As used in this section:

(1) “Adverse action” means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of

personal insurance.

(2) “Affiliate” means any company that controls, is controlled by, or is under common control with another company.

(3) “Applicant” means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) “Consumer” means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.

(5) “Consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) “Credit information” means any credit related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit related shall not be considered “credit information,” regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) “Credit report” means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) “Insurance score” means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

(d) Use of credit information. An insurer authorized to do business in this State that uses credit information to underwrite or rate risks shall not:

(1) Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subdivision (1) of this subsection.

(3) Base an insured’s renewal rates for personal insurance solely upon credit information without consideration of any other applicable factor independent of credit information.

(4) Take an adverse action against a consumer solely because he or she does not have a credit card account without consideration of any other applicable factor independent of credit information.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(A) treats the consumer as otherwise approved by the Commissioner if the insurer presents information that such an absence or inability relates to the risk for the insurer;

(B) treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or

(C) excludes the use of credit information as a factor and uses only other underwriting criteria.

(6) Take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date the policy is first written or renewal is issued.

(7) Use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection:

(A) At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and re-rate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(B) The insurer shall have the discretion to obtain current credit information upon any renewal before the 36 months if consistent with its underwriting guidelines.

(C) No insurer need obtain current credit information for an insured, despite the requirements of subdivision (A) of this subdivision (7), if one of the following applies:

(i) The insurer is treating the consumer as otherwise approved by the Commissioner.

(ii) The insured is in the most favorably priced tier of the insurer within a group of affiliated insurers. However, the insurer shall have the discretion to order such report if consistent with its underwriting guidelines.

(iii) Credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal if consistent with its underwriting guidelines.

(iv) The insurer reevaluates the insured beginning not later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(8) Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(A) credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information;

(B) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(C) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(D) multiple lender inquiries if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another unless only one inquiry is considered; and

(E) multiple lender inquiries if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another unless only one inquiry is considered.

(e) Extraordinary life circumstances.

(1) Notwithstanding any other law or rule to the contrary, an insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:

(A) a catastrophic event, as declared by the federal or State government;

(B) a serious illness or injury or a serious illness or injury to an immediate family member;

(C) the death of a spouse, child, or parent;

(D) divorce or involuntary interruption of legally owed alimony or support payments;

(E) identity theft;

(F) the temporary loss of employment for a period of three months or more if it results from involuntary termination;

(G) military deployment overseas; or

(H) other events as determined by the insurer.

(2) If an applicant or insured submits a request for an exception as set forth in subdivision (1) of this subsection, an insurer may, in its sole discretion, but is not mandated to:

(A) require the consumer to provide reasonable written and independently verifiable documentation of the event;

(B) require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information;

(C) require such request be made not more than 60 days from the date of the application for insurance or the policy renewal;

(D) grant an exception despite the consumer not providing the initial request for an exception in writing; or

(E) grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.

(3) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(4) The insurer shall provide notice to consumers that reasonable exceptions are available and information about how the consumer may inquire further.

(5) Within 30 days following the insurer's receipt of sufficient documentation of an event described in subdivision (1) of this subsection, the insurer shall inform the consumer of the outcome of the request for a reasonable exception. Such communication shall be in writing or provided to an applicant in the same medium as the request.

(f) Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer within 30 days following receiving the notice. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(g) Initial notification.

(1) If an insurer writing personal insurance uses credit information in underwriting or

rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.

(2) Use of the following example disclosure statement constitutes compliance with this section: “In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.”

(h) Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of this subsection. Such insurer shall:

(1) Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681m(a).

(2) Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take an adverse action. Such notification shall include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as “poor credit history,” “poor credit rating,” or “poor insurance score” does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this section.

(i) Plain language. In any written communication or notification to a consumer pursuant to this section, an insurer shall use clear and plain language that is understandable to the average consumer.

(j) Filing. Insurers that use insurance scores to underwrite and rate risks must file their scoring models, or other scoring processes, with the Department of Financial Regulation. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information. Any filing relating to credit information is considered a trade secret and is not subject to disclosure under Vermont’s Public Records Act.

(k) Indemnification. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of a producer who obtains or uses credit information or insurance scores, or both, for an insurer, provided the producer follows the instructions of or procedures

established by the insurer and complies with any applicable law or rule. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(l) Sale of policy term information by consumer reporting agency. A consumer reporting agency shall not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage. The restrictions provided in this subsection do not apply to data or lists the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer's affiliates or holding companies. Nothing in this section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report. (Added 2017, No. 179 (Adj. Sess.), § 6, eff. May 28, 2018.)

§ 4728. Insurance data security

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

(b) Construction.

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

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

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

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

(c) Definitions. As used in this section:

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

(2) "Consumer" means an individual, including an applicant, policyholder, insured,

beneficiary, claimant, or certificate holder, who is a resident of this State and whose nonpublic information is in a licensee's possession, custody, or control.

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

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

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

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

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

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

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

(A) a captive insurance company;

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

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

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

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

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

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

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

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

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

(i) Social Security number;

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

(iii) individual taxpayer identification number;

(iv) passport number;

(v) military identification card number;

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

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

(viii) biometric record;

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

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

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

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

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

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

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

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

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

(12) "Third-party service provider" means a person, not otherwise defined as a

licensee, that contracts with a licensee to maintain, process, or store nonpublic information or is otherwise permitted access to nonpublic information through its provision of services to the licensee.

(d) Information security program.

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

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

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

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

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

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

(3) The licensee shall:

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

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

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

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

(i) employee training and management;

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) include audit trails within the information security program designed to

detect and respond to cybersecurity events and reconstruct material financial transactions sufficient to support normal operations and obligations of the licensee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the internal process for responding to a cybersecurity event;
- (ii) the goals of the incident response plan;
- (iii) the definition of clear roles, responsibilities, and levels of decision-making authority;
- (iv) external and internal communications and information sharing;
- (v) identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;
- (vi) documentation and reporting regarding cybersecurity events and related incident response activities; and
- (vii) the evaluation and revision as necessary of the incident response plan following a cybersecurity event.

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

(e) Investigation of a cybersecurity event.

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

the licensee shall conduct a prompt investigation.

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

(A) determine whether a cybersecurity event has occurred;

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

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

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

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

(f) Power of Commissioner.

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

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

(g) Confidentiality.

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

(2) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be

permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (1) of this subsection.

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

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

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

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

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

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

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

(h) Exceptions.

(1) The following exceptions apply to this section:

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

(B) A licensee that is in possession of protected health information subject to the

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

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

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

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

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

(j) Effective date. This section shall take effect on January 1, 2023. A licensee shall have one year from the effective date of this section to implement subsection (d) of this section, other than subdivision (d)(6) of this section. A licensee shall have two years from the effective date of this section to implement subdivision (d)(6) of this section. (Added 2021, No. 139 (Adj. Sess.), § 20, eff. May 27, 2022; amended 2023, No. 32, § 2, eff. July 1, 2023.)

§§ 4729-4738. Repealed. 1973, No. 216 (Adj. Sess.), § 7, eff. May 1, 1974.

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 8 : Banking and Insurance

Chapter 131 : Licensing Requirements

Subchapter 001 : Producers

(Cite as: **8 V.S.A. § 4804**)

§ 4804. License denial; nonrenewal; or termination causes

(a) The Commissioner may suspend, revoke, or refuse to continue or renew any license issued under this chapter if, after notice to the licensee and to the insurer represented, and opportunity for hearing, he or she finds as to the licensee any one or more of the following conditions:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance;
- (3) Violation of, or noncompliance with, any insurance laws, or for violation of any lawful rule, regulation, subpoena, or order of the Commissioner or of a commissioner of another state;
- (4) Obtaining or attempting to obtain any license through misrepresentation or fraud;
- (5) Improperly withholding, misappropriating, or converting to his or her own use any monies belonging to policyholders, insurers, beneficiaries or others received in the course of his or her insurance business;
- (6) Misrepresentation of the terms of any actual or proposed insurance contract;
- (7) Conviction of a felony or misdemeanor involving moral turpitude;
- (8) The licensee has committed any unfair trade practice or fraud as defined in this title. It shall be an unfair practice under this section for a licensee to:

(A)(i) Sell, solicit, or negotiate the purchase of health insurance in this State through an advertisement that makes use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance, and that contact will be made by an insurance agent or insurance company.

(ii) Use an appointment that was made to discuss Medicare products or to solicit the sale of Medicare products to solicit sales of any other insurance products unless the consumer requests the solicitation, and the products to be discussed are clearly identified to the consumer in writing at least 48 hours in advance of the appointment.

(iii) Solicit the sale of Medicare products door-to-door prior to receiving an invitation from a consumer.

(B) As used in this subdivision, the term “Medicare products” includes Medicare Part A, Medicare Part B, Medicare Part C, Medicare Part D, and Medicare supplement plans;

(9) In the conduct of his or her affairs, the licensee has used fraudulent, coercive, or dishonest practices or has shown himself or herself to be incompetent, untrustworthy, or financially irresponsible;

(10) His or her license has been suspended or revoked in any other state, province, district, or territory;

(11) The licensee has forged another’s name to an application for insurance or to any document related to an insurance transaction;

(12) The applicant has been found to have been cheating on an examination for an insurance license;

(13) Knowingly accepting insurance business from a person who is not licensed;

(14) Failing to comply with an administrative or court order imposing a child support obligation; or

(15) Failing to pay State income tax or comply with any administrative or court order directing payment of State income tax.

(b) The license of a business entity may be suspended, revoked, or refused if the Commissioner finds, after notice and opportunity for a hearing, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers, directors, or managers acting on behalf of the business entity, and the violation was neither reported to the Commissioner nor corrective action taken.

(c) In the event that the action by the Commissioner is to not renew or to deny an application for a license, he or she shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reasons for the denial or nonrenewal of the

applicant's or licensee's license. The applicant or licensee may make written demand upon the Commissioner within a reasonable time for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall be held within 30 days from the date of receipt of the written demand by the applicant and shall be held pursuant to 3 V.S.A. chapter 25.

(d) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this subchapter may, after hearing, be subject to an administrative penalty of not less than \$500.00 nor more than \$2,500.00. (Amended 1973, No. 217 (Adj. Sess.), § 14; 1995, No. 167 (Adj. Sess.), § 20; 2001, No. 97 (Adj. Sess.), § 12; 2007, No. 80, § 22.)

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Title 8 : Banking and Insurance

Chapter 131 : Licensing Requirements

Subchapter 001 : Producers

(Cite as: 8 V.S.A. § 4812)

§ 4812. Rules and regulations

The Commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this chapter. (Added 1973, No. 217 (Adj. Sess.), § 22; amended 1989, No. 225 (Adj. Sess.), § 25; 1995, No. 180 (Adj. Sess.), § 38; 2001, No. 97 (Adj. Sess.), § 17; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012; 2021, No. 105 (Adj. Sess.), § 229, eff. July 1, 2022.)

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Title 8 : Banking and Insurance

Chapter 131 : Licensing Requirements

Subchapter 001A : Producer Licensing Requirements

(Cite as: 8 V.S.A. § 4813c)

§ 4813c. Duties

(a) A person not duly licensed as an insurance producer or limited lines producer who sells, solicits, or negotiates insurance policies on behalf of an insurer shall be deemed a producer acting as the agent of such insurer within the intent of this subchapter, and shall be liable for all the duties, requirements, liabilities, and penalties to which an insurance producer or limited lines producer is subject, and the insurer, by compensating the person through any of its officers, agents, or employees for soliciting policies of insurance, shall accept and acknowledge that person as its agent in such a transaction.

(b) A person not licensed as an insurance producer or limited lines producer who sells, solicits, or negotiates insurance on behalf of others or transmits for others an application for a policy of insurance to or from an insurer, or offers or assumes to act in the negotiations of insurance, shall be a producer within the intent of this subchapter, and shall be liable for all the duties, requirements, liabilities, and penalties to which licensed insurance producers or limited lines producers are subject.

(c) Every insurance producer or limited lines producer acting as an agent of an insurer who sells, solicits, or negotiates insurance of any kind shall, in any controversy between the insured or his or her beneficiary and the insurer, be regarded as representing the insurer and not the insured or his or her beneficiary for whose acts the insurer will be responsible.

(d) Every insurance producer or limited lines producer, not acting as the agent of an insurer, who sells, solicits, or negotiates insurance of any kind shall, in any controversy between the insured and his or her beneficiary and the insurer issuing any policy of

insurance, be regarded as representing the insured or his or her beneficiary and not the insurer, except any insurer that directly or through its agents delivers in this State to any producer a policy or contract for insurance pursuant to the application or request of the producer, acting for an insured other than himself or herself, shall be deemed to have authorized the producer to receive on its behalf payment of any premium that is due on the policy, or contract for insurance at the time of its issuance or delivery. (Added 2001, No. 97 (Adj. Sess.), § 18.)



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Nov 14, 2023

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	23P034
Title:	Suitability in Annuity Transactions (Reg. I-2023-01).
Type:	Standard
Status:	Proposed
Agency:	Department of Financial Regulation
Legal Authority:	8 V.S.A. §§ 10, 15(a), 3848, 4721-4728, 4804(a), 4812 and 4813c(c).
Summary:	The Department is proposing a new rule that requires producers, as defined in the rule, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to

Persons Affected: supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed. The Department of Financial Regulation; producers offering insurance products, including annuities; insurers providing insurance products, including annuities; intermediaries that work with insurers; consumers.

Economic Impact: The cost of implementing this rule on insurers, producers, intermediaries and, consequently, consumers is expected to be negligible because this rule codifies a requirement that is in effect in many other States. Further, since this standard is already in effect for securities, those producers that are registered under the securities rules already comply with this rule, and therefore there would be no changes for those businesses implicated by this proposed rule. In addition, there is currently a general suitability requirement in existing rules and specific requirements for annuity replacements in existing rules. See 9 V.S.A. § 4724(16) and Regulation I-2001-03 respectively. Therefore, it is likely that most producers and insurers are following these rules already.

Posting date: Sep 27,2023

Hearing Information

Information for

Hearing date: 11-07-2023 11:00 AM [ADD TO YOUR CALENDAR](#)

Location: Virtual via MS Teams

Address: Meeting ID: 251 181 289 640 Passcode: ZB3DHW

City: Call in (audio only) +1 802-828-7667,479243333# United States, Montpelier

State: VT

Zip: n/a

Link: https://teams.microsoft.com/dl/launcher/launcher.html?url2F_232F12Frjoin2F193Ameeting_ZTg3ZGE0NjgtOTI2OC00ODBILTkWMDctNWFkOTgbaad-433c-9c02-70edcc7559c62522252c2522Oid2522253a2522ae4997f3-dcjoin&deeplinkIddcbdea1c-4ff4-499f-b498-9ae8e9041a07&directDltrue&msI

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS OF THE RULE.

Level: Primary
Name: Stan Macel, Assistant General Counsel
Agency: Department of Financial Regulation
Address: 89 Main Street, Third Floor
City: Montpelier
State: VT
Zip: 05620
Telephone: 802-272-2338
Fax: 802-828-5593
Email: stan.macel@vermont.gov

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Website Address: [https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules-and-
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Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF THE RULES WERE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FROM THE PRIMARY CONTACT PERSON.

Level: Secondary
Name: Hillary Borcharding, Assistant General Counsel
Agency: Department of Financial Regulation
Address: 89 Main Street, Third Floor
City: Montpelier
State: VT
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Telephone: 802-249-6512
Fax:
Email: hillary.borcharding@vermont.gov

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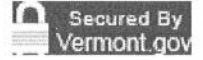
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	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA

Date of Fax: December 5, 2023

RE: The "Proposed State Rules " ad copy to run on

October 5, 2023

PAGES INCLUDING THIS COVER MEMO:

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If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Reporting of Offender Information.

Vermont Proposed Rule: 23P033

AGENCY: Agency of Human Services, Department of Corrections

CONCISE SUMMARY: The Vermont Department of Corrections (DOC) is proposing the repeal of the Reporting of Offender Information Rule, APA #96-18/CVR #13-130-017 because it is no longer the guiding document for this subject matter. DOC policy, #251.01, Offender/Inmate Records and Access to Information, dated 8/18/2019, and its associated guidance documents, and APA Rule #19-035/ CVR 13-130-036, describe the procedures that the DOC shall follow when releasing, or permitting the inspection of, a record belonging to individual under the custody or supervision of the DOC.

FOR FURTHER INFORMATION, CONTACT: Christopher Antoine, Staff Attorney, Agency of Human Services, Department of Corrections 280 State Drive, Waterbury, VT 05671 Tel: 802-241-2442 Fax: 802-241-0020 Email: christopher.antoine@vermont.gov URL: www.doc.vermont.gov <http://www.doc.vermont.gov>.

FOR COPIES: Ana Burke, Senior Policy & Implementation Analyst, Agency of Human Services, Department of Corrections 280 State Drive, Waterbury, VT 05671 Tel: 802-241-2442 Fax: 802-241-0020 Email: ana.burke@vermont.gov.

Suitability in Annuity Transactions (Reg. I-2023-01).

Vermont Proposed Rule: 23P034

AGENCY: Department of Financial Regulation

CONCISE SUMMARY: The Department is proposing a new rule that requires producers, as defined in the rule, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.

FOR FURTHER INFORMATION, CONTACT: Stan Macel, Assistant General Counsel, Department of Financial Regulation, 89 Main Street, Third Floor, Montpelier, VT 05620 Tel: 802-272-2338 Fax: 802-828-5593 Email: stan.macel@vermont.gov URL: <https://dfr.vermont.gov/about-us/legal-general-counsel/proposed-rules->

and-public-comment.

FOR COPIES: Hillary Borcharding, Assistant General Counsel, Department of Financial Regulation, 89 Main Street, Third Floor, Montpelier, VT 05620 Tel: 802-249-6512 Email: hillary.borcharding@vermont.gov.

Manufactured Food Rule.

Vermont Proposed Rule: 23P035

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: The purpose of the rule is to provide the requirements for the safe and sanitary manufacturing, packing, holding, and distributing of human food offered for sale in Vermont. This rulemaking does the following: (1) Updates the rule for consistency with Title 21 Chapter I of the C.F.R. (2) Reformats, reorganizes, and clarifies the federal regulations cited in the Incorporation by Reference section. (3) Defines the scope of the Department of Health issued food manufacturing license. Specifically, the rule clarifies the prohibition of manufacturing of food containing THC under the Department of Health license. (4) Updates the information required on food labels manufactured by license exempt food manufacturers and license exempt bakeries. (5) Modifies the rule for clarity.

FOR FURTHER INFORMATION, CONTACT: Meg McCarthy, Department of Health, 108 Cherry St, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email: ahs.vdhrules@vermont.gov URL: <http://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: Natalie Weill, Department of Health, 108 Cherry St, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email: ahs.vdhrules@vermont.gov.
