

**No. 21. An act relating to the department of banking, insurance, securities, and health care administration.**

(H.438)

It is hereby enacted by the General Assembly of the State of Vermont:

\* \* \* Banking \* \* \*

Sec. 1. 8 V.S.A. § 2201(b) is amended to read:

(b) Each licensed mortgage loan originator must register with and maintain a valid unique identifier with the Nationwide Mortgage Licensing System and Registry and must be either:

(1) an employee actively employed at a licensed location of, and supervised and sponsored by, only one licensed lender or licensed mortgage broker operating in this state; ~~or~~

(2) an individual sole proprietor who is also a licensed lender or licensed mortgage broker; or

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

Sec. 2. 8 V.S.A. § 10602(a) is amended to read:

(a) All persons subject to this subchapter shall comply with all applicable

requirements of the Truth in Lending Act of 1968, 15 U.S.C. § 1601 et seq.  
Pub. L. No. 90-321, Title I and Regulation Z, 12 C.F.R. ~~§ 226~~ Part 226; the  
~~real estate settlement procedures act~~ Real Estate Settlement Procedures Act of  
1974, 12 U.S.C. § 2601 Pub. L. No. 93-533 and Regulation X, 24 C.F.R.  
~~§ 3500~~ Part 3500; and the Bank Secrecy Act of 1970, 13 U.S.C. § 1501 Pub. L.  
No. 91-508 and U.S. Department of Treasury Regulation, 31 C.F.R. Part 103  
Chapter X, as now or hereafter amended.

Sec. 3. REPEAL

8 V.S.A. § 10404a (registered agent for financial institutions) is repealed.

Sec. 4. 8 V.S.A. § 2224(a) is amended to read:

(a) Annually, on or before April 1, each licensed lender, mortgage broker, and sales finance company shall file a report with the commissioner giving such relevant information as the commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports. For good cause, the commissioner may extend the due date for the annual report required by this subsection. If a licensee does not file its annual report on or before April 1, or within any extension of time granted by the commissioner, the licensee shall pay to the department

\$100.00 for each month or part of a month that the report is past due.

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

§ 2405. PERIODIC REPORTS; EXAMINATIONS; COOPERATIVE  
AGREEMENTS

\* \* \*

(f) Any independent trust company that maintains one or more offices in this state ~~may~~ shall be assessed ~~and, if assessed, shall pay assessment and examination fees at a rate determined by the commissioner pursuant to sections 18 and 19 of this title~~ by the following applicable method:

(1) an independent trust company whose primary activity in the state is transactional shall pay an annual assessment equal to \$0.0001 per dollar volume of activity performed for the most recent year ending December 31, which assessment shall not be less than \$2,000.00 or greater than \$50,000.00, and which shall be paid on or before April 1 of each year; or

(2) an independent trust company whose primary activity in the state is asset management shall pay an assessment based on assets under management in this state on the preceding June 30 as provided under subsection 19(d) of this title.

(g) An independent trust company assessed pursuant to subdivision (f)(1) of this section shall pay to the department the costs and expenses of all examinations, including both regular examinations and special or expanded

scope examinations as provided under sections 18 and 19 of this title. An independent trust company assessed pursuant to subdivision (f)(2) of this section shall not be billed for regular examinations, but shall pay to the department the costs and expenses of all special or expanded scope examinations as provided under sections 18 and 19 of this title.

Sec. 6. 8 V.S.A. § 18 is amended to read:

§ 18. CHARGES FOR EXAMINATIONS, APPLICATIONS, REVIEWS,  
AND INVESTIGATIONS

Every person subject to regulation by the department shall pay the department the reasonable costs of any examination, review, or investigation that is conducted or caused to be conducted by the department of such person, or of any application or filing made by such person, or of any examination, review, or investigation of any order, decision, or certificate issued by the commissioner, at a rate to be determined by the commissioner. The department may retain experts or other persons who are independently practicing their professions to assist in such examination, review, or investigation. The department shall be reimbursed for all reasonable costs and expenses, including the reasonable costs and expenses of such persons retained by the department, by the person examined, submitting the application or filing reviewed, investigated, or subject to or under the jurisdiction of an order, decision, or certificate issued by the commissioner under this title or under

Title 18. An examination, review, or investigation subject to this section shall include, but not be limited to, an examination, review, or investigation of any application, information, rate filing, or form filing submitted, or any order, decision, or certificate issued under this title, or under Title 18. In unusual circumstances, the commissioner may waive reimbursement for the costs and expenses of any review in the interests of justice. Those institutions subject to assessment or fees for services provided under section 19 of this title, other than merchant banks established under section 12603 of this title and independent trust companies organized under chapter 77 of this title, shall not be billed for a regular examination performed under subsection 11501(a) or 30601(a) of this title or for services for which such fees under subsection 19(a) of this title have been paid. Merchant banks established under section 12603 of this title shall pay the department the costs and expenses of all examinations, including regular and special or expanded scope examinations. The authority granted to the commissioner by this section is in addition to any other authority granted to the commissioner by law.

Sec. 7. 8 V.S.A. § 19(b) is amended to read:

(b) Those institutions subject to assessment under subsection (d) of this section, other than merchant banks established under section 12603 of this title, will not be billed for examinations performed under subsection 11501(a) of this title.

Sec. 8. 8 V.S.A. § 19(d)(3) is amended to read:

(3) In the case of special purpose financial institutions that are not permitted to accept deposits, except merchant banks established under section 12603 of this title, ~~and independent trust companies organized or operating under chapter 77 of this title,~~ the assessment will be based on assets under management in this state on the preceding June 30.

Sec. 9. 8 V.S.A. § 19(d)(6) is added to read:

(6) Independent trust companies organized under chapter 77 of this title shall be assessed as provided under subsection 2405(f) of this title.

Sec. 10. 11 V.S.A. § 108 is amended to read:

§ 108. BANKS, TRUST AND MUTUAL INSURANCE COMPANIES

A corporation organized under the provisions of ~~chapter 21~~ chapter 202 or 203 of Title 8, to conduct the business of a ~~savings bank having no capital stock or of a trust company~~ financial institution, and a mutual insurance company organized under the provisions of chapter 101 of Title 8, may make such contributions for religious, charitable, scientific, literary, or educational purposes as are authorized by its directors or trustees to an amount not to exceed five percent of its net income for the previous calendar year computed in the manner specified by the internal revenue code in effect during the year applicable for corporations. Contributions in excess of the five percent of the net income may be made by a vote of its stockholders, depositors, or members.

Sec. 11. 8 V.S.A. § 31308 is amended to read:

§ 31308. DUTIES OF OFFICERS, DIRECTORS, AND COMMITTEE  
MEMBERS

(a) All officers, directors, and members of ~~the supervisory or credit~~ any committees of a credit union subject to the laws of this state under this title shall comply with the standards for such officers, and directors, ~~and committee members~~ established by the National Credit Union Administration (NCUA), as amended under Title 11B. Members of committees of credit unions shall comply with the same standards as directors.

(b) ~~In addition to any applicable state fines and penalties, an officer, director, or member of the supervisory or credit committee who fails to comply with the standards established by this section shall be subject to the civil penalties established by 12 U.S.C. § 1786(k)(2) and (3), as amended, as if he or she had directly violated the standards established by the NCUA.~~ All officers, directors, and members of the supervisory or credit committees of a credit union subject to the laws of this state under this title shall administer the affairs of the credit union fairly and impartially and without discrimination in favor of or against any particular member.

(c) All executive officers, directors, and committee members shall comply with the conflict of interest standards established pursuant to section 31313 of this title.

Sec. 11a. 8 V.S.A. § 12603 is amended to read:

§ 12603. MERCHANT BANKS

\* \* \*

(f) The minimum amount of initial capital for a merchant bank is ~~\$10,000,000.00~~ \$1,000,000.00, all of which at least \$5,000,000.00 shall be common stock or equity interest in the merchant bank. ~~The balance may be composed of qualifying subordinated or similar debt~~ A merchant bank may use qualified subordinated debt or senior debt as part of its capital structure above \$1,000,000.00, provided that the amount of subordinated debt or senior debt used as capital above \$1,000,000.00 is not greater than the amount of common stock or equity interest used as capital above \$1,000,000.00. The commissioner, in his or her discretion, may increase the minimum capital required for a merchant bank.

\* \* \*

(m) Any acquisition or change in control of ~~five~~ ten percent or more of the common stock or equity interests in a merchant bank shall be subject to the prior approval by the commissioner. The acquiring person shall file an application with the commissioner for approval. The application shall be subject to the provisions of subchapter 7 of chapter 201 of this title.

(n) The commissioner ~~may~~ shall examine the merchant bank and any person who controls it to the extent necessary to determine the soundness and



viability of the merchant bank in the same manner as required by subchapter 5 of chapter 201 of this title.

(o) A merchant bank shall include on all its advertising a prominent disclosure that deposits are not accepted by a merchant bank.

(p) For purposes of this section, “control” means that a person:

(1) directly, indirectly, or acting through another person owns, controls, or has power to vote ten percent or more of any class of equity interest of the merchant bank;

(2) controls in any manner the election of a majority of the directors of the merchant bank; or

(3) directly or indirectly exercises a controlling influence over the management or policies of the merchant bank.

\* \* \* Securities \* \* \*

Sec. 12. 9 V.S.A. § 5601 is amended to read:

§ 5601. ADMINISTRATION

\* \* \*

(d) The commissioner may develop and implement ~~investor~~ financial services education initiatives to inform the public about ~~investing in securities~~ financial services, with particular emphasis on the prevention and detection of securities, banking, and insurance fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit

organizations with an interest in ~~investor~~ financial services education. The commissioner may accept a grant or donation from a person ~~that is not affiliated with the securities industry~~ or from a nonprofit organization, regardless of whether the person or organization is affiliated with the ~~securities~~ financial services industry, to develop and implement ~~investor~~ financial services education initiatives. This subsection does not authorize the commissioner to require participation or monetary contributions of a registrant in an ~~investor~~ financial services education program.

(e) The ~~securities investor~~ financial services education and training special fund, pursuant to subchapter 5 of chapter 7 of Title 32 is created to provide funds for the purposes specified in subsection (d) of this section. All monies received by the state by reason of grant or donation for ~~investor~~ financial services education initiatives pursuant to subsection (d) of this section shall be deposited into the ~~securities investor~~ financial services education special fund. Interest earned on the fund shall be retained in the fund.

\* \* \* Insurance \* \* \*

Sec. 13. 8 V.S.A. § 4800(4)(E) is amended to read:

(E)(i) authorize the centralized producer license registry, or other third party approved by the commissioner, to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks;

(ii) use the centralized producer license registry, or other third party approved by the commissioner, as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any governmental agency, in order to reduce the points of contact which the Federal Bureau of Investigation (FBI) or the commissioner may have to maintain for purposes of this subsection; and

(iii) require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of the centralized producer license registry, or other third party approved by the commissioner, to process the fingerprints and to submit the fingerprints to the FBI, the Vermont state police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant shall pay the cost of such criminal history background check, including any charges imposed by the centralized producer licensing system or other third party approved by the commissioner, as applicable.

\* \* \* Health Care Administration \* \* \*

Sec. 14. 8 V.S.A. § 4089a(c)(7) is amended to read:

(7) A procedure for ~~clients/patients~~ clients or patients or both, mental health professionals or hospitals to seek prompt reconsideration before an independent ~~panel of mental health professionals~~ review organization pursuant

to section 4089f of this title of an adverse decision by a review agent. At least one member of the panel The external reviewer engaged by the independent review organization shall have training and expertise at least comparable to that of the treating clinician.

Sec. 14a. REPEAL

8 V.S.A. § 4089f(e) (decisions relating to mental health shall be reviewed under 8 V.S.A. § 4089a) is repealed.

Sec. 15. 8 V.S.A. § 4089f(a)(2) is amended to read:

(2) “Insured” means the beneficiary of a health benefit plan, including the subscriber and all others covered under the plan, and shall also mean a member of a health benefit plan not otherwise subject to the department’s jurisdiction which has voluntarily agreed to use the external review process provided under this section.

Sec. 16. 8 V.S.A. § 4089f(d)(2)(C) is amended to read:

(C) ~~Pay a filing fee in an amount that reflects the administrative costs of processing a request for review under this section, which shall not be more than \$25.00~~ an application fee of \$25.00 for each request for an independent external review of an appealable decision not to exceed a total of \$75.00 annually. The ~~filing~~ application fee may be waived or reduced based on a determination by the commissioner that the financial circumstances of the insured warrant a waiver or reduction. The application fee shall be paid by the

insurer, not the insured, if the independent review organization reverses an insurer's decision to deny payment for a health care service.

Sec. 17. 18 V.S.A. § 9456(e) is amended to read:

(e) The commissioner may establish, by rule, a process to define, on an annual basis, criteria for hospitals to meet, such as utilization and inflation benchmarks. ~~The rule shall permit the commissioner to~~ may waive one or more of the review processes listed in subsection (b) of this section, ~~but not for more than two years consecutively. Tertiary teaching hospitals shall not be eligible for a waiver.~~

Sec. 18. 18 V.S.A. § 9418a is amended to read:

§ 9418a. PROCESSING CLAIMS, DOWNCODING, AND ADHERENCE  
TO CODING RULES

\* \* \*

(k) Prior to the effective date of subsections (b) and (c) of this section, MVP Healthcare is requested to convene a work group consisting of health plans, health care providers, state agencies, and other interested parties to study the edit standards in subsection (b) of this section, the edit standards in national class action settlements, and edit standards and edit transparency standards established by other states to determine the most appropriate way to ensure that health care providers can access information about the edit standards applicable to the health care services they provide. No later than January 1,

~~2011~~ 2012, the work group is requested to report its findings and recommendations, including any recommendations for legislative changes to subsections (b) and (c) of this section, to the house committee on health care and the senate committee on health and welfare.

(l) With respect to the work group established under subsection (k) of this section and to the extent required to avoid violations of federal antitrust laws, the department shall facilitate and supervise the participation of members of the work group.

Sec. 19. Sec. 51(f) of No. 61 of the Acts of 2009 is amended to read:

(f) Sec. 30, 18 V.S.A. § 9418a(b) and (c) (edit standards); shall take effect July 1, ~~2011~~ 2012.

Sec. 19a. MEDICAL LOSS RATIOS; EMPLOYER DEFINITIONS

For purposes of medical loss ratio calculations only, pursuant to Section 10101(f) of the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), the term “small employer” means an employer with 50 or fewer employees and the term “large employer” means an employer with 51 or more employees.

\* \* \* Captive Insurance \* \* \*

Sec. 20. 8 V.S.A. § 6014 is amended to read:

§ 6014. TAX ON PREMIUMS COLLECTED

\* \* \*

(c)(1) The annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) of this section shall be \$7,500.00, ~~and the annual maximum aggregate tax shall be \$200,000.00.~~ The annual maximum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) of this section shall be \$200,000.00.

(2) The annual minimum aggregate tax to be paid by a sponsored captive insurance company shall be \$7,500.00 and shall apply to the sponsored captive insurance company as a whole and not to each protected cell; such cells shall not be subject to the minimum tax.

(3) The annual maximum aggregate tax to be paid by a protected cell shall be as calculated under subdivision (1) of this subsection. The annual maximum tax to be remitted by a sponsored captive insurance company shall apply to be the aggregate of the tax liabilities of each protected cell only and not to the sponsored captive insurance company as a whole. If a captive insurance company is a special purpose financial captive organized and licensed under subchapter 4 of this chapter and if such captive insurance

~~company is subject to subsection (e) of this section as a captive insurance company under common ownership and control with one or more other captive insurance companies (collectively, the “consolidated group”), the premium tax calculated with respect to the consolidated group under subsections (a) and (b) of this section shall be allocated to each member of the consolidated group in the same proportion that the premium allocable to such member bears to the total premium of all members. The consolidated group shall pay an aggregate premium tax equal to the greater of the sum of the premium tax allocated to the members and \$7,500.00; provided:~~

~~(1) If the total of premium tax allocated to all members of a consolidated group that are special purpose financial captives exceeds \$200,000.00, the total premium tax allocated to such members shall be \$200,000.00; and~~

~~(2) If the total of premium tax allocated to all members of the consolidated group that are not special purpose financial captive insurance companies exceeds \$200,000.00, the total of premium tax allocated to such members shall be \$200,000.00.~~

\* \* \*

(e) Subject to the provisions of subsection (c) of this section, two or more captive insurance companies that are not special purpose financial captives under common ownership and control shall be taxed as though they were a single captive insurance company; and two or more captive insurance



companies that are special purpose financial captives under common ownership and control shall be taxed as though they were a single captive insurance company. Special purpose financial captives may not be consolidated with other captives that are not special purpose financial captives for purposes of calculating premium taxes due.

\* \* \*

(g) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city, or municipality within this state, except meals and rooms taxes, sales and use taxes, and ad valorem taxes on real and personal property used in the production of income.

\* \* \*

(k) A captive insurance company first licensed under this chapter on or after ~~May 27, 2009 and on or before December 31, 2010~~, January 1, 2011 shall receive a nonrefundable credit of \$7,500.00 applied against the aggregate taxes owed for the first taxable year for which the company has liability under this section.

Sec. 21. 8 V.S.A. § 6032 is amended to read:

§ 6032. DEFINITIONS

As used in this subchapter, unless the context requires otherwise:

(1) “Incorporated protected cell” means a protected cell that is established as a corporation or limited liability company separate from the sponsored captive insurance company of which it is a part.

(2) “Participant” means an entity as defined in section 6036 of this title, and any affiliates thereof, that are insured by a sponsored captive insurance company, where the losses of the participant are limited through a participant contract to such participant’s pro rata share of the assets of one or more protected cells identified in such participant contract.

~~(2)~~(3) “Participant contract” means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

~~(3)~~(4) “Protected cell” means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter, in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts, and shall include an “incorporated protected cell,” as defined in this section.

(4)(5) “Sponsor” means any entity that meets the requirements of section 6035 of this title and is approved by the commissioner to provide all or

part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

~~(5)~~(6) “Sponsored captive insurance company” means any captive insurance company:

(A) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(B) that is formed or licensed under the provisions of this chapter;

(C) that insures the risks only of its participants through separate participant contracts; and

(D) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company’s general account.

Sec. 22. 8 V.S.A. § 6034(12) is amended to read:

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

(A) fronted by an insurance company licensed under the laws of any state;

(B) reinsured by a reinsurer authorized or approved by the state of Vermont; or

(C) secured by a trust fund in the United States for the benefit of

policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. ~~The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell.~~ The commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be issued or confirmed by a bank approved by the commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the commissioner.

Sec. 23. 8 V.S.A. § 6034a is added to read:

§ 6034a. INCORPORATED PROTECTED CELLS

(a) A protected cell of a sponsored captive insurance company may be formed as an incorporated protected cell, as defined in subdivision 6032(1) of this title.

(b) The articles of incorporation or articles of organization of an incorporated protected cell shall refer to the sponsored captive insurance company for which it is a protected cell and shall state that the protected cell is incorporated or organized for the limited purposes authorized by the sponsored

captive insurance company's license. A copy of the prior written approval of the commissioner to add the incorporated protected cell, required by subdivision 6034(11) of this title, shall be attached to and filed with the articles of incorporation or the articles of organization.

(c) It is the intent of the general assembly under this section to provide sponsored captive insurance companies, including those licensed as special purpose financial captive insurance companies under section 6048 of this title, with the option to establish one or more protected cells as a separate corporation formed under Title 11A or limited liability company formed under chapter 21 of Title 11. This section shall not be construed to limit any rights or protections applicable to protected cells not established as corporations or limited liability companies.

Sec. 24. 8 V.S.A. § 6035 is amended to read:

§ 6035. QUALIFICATION OF SPONSORS

~~A sponsor of a sponsored captive insurance company shall may be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this chapter, a broker-dealer registered with the department pursuant to chapter 150 of Title 9, a financial institution as defined under subdivision 11101(32) of this title, a financial institution holding company as defined under subdivision 11101(33) of this title, including any affiliate or subsidiary~~

~~of such financial institution holding company, or any other person approved by~~  
the commissioner in the exercise of his or her discretion, ~~after finding~~ based on  
a determination that the approval of a such person as a sponsor is ~~not~~  
~~inconsistent~~ consistent with the purposes of this chapter. In evaluating the  
qualifications of a proposed sponsor, the commissioner shall consider the type  
and structure of the proposed sponsor entity, its experience in financial  
operations, financial stability and strength, business reputation, and such other  
facts deemed relevant by the commissioner. A risk retention group shall not be  
either a sponsor or a participant of a sponsored captive insurance company.

Sec. 25. 8 V.S.A. § 6052(e) is added to read:

(e) The provisions of subchapter 13 of chapter 101 of this title shall apply  
to risk retention groups chartered in this state. However, no existing rule,  
regulation, or order promulgated under section 3688 of this title shall apply to  
a risk retention group chartered in this state unless the rule, regulation, or order  
or a provision thereof is specific to risk retention groups. The commissioner  
shall establish procedures to implement the provisions of subchapter 13 of  
chapter 101 of this title as applied to risk retention groups chartered in this  
state by rule, regulation, or order.

\* \* \* Effective Dates \* \* \*

Sec. 26. EFFECTIVE DATES

This act shall take effect on July 1, 2011, except that Secs. 1 (third-party

loan servicers), 2 (federal statutory citations), 4 (annual reports of licensed lenders), 5 (assessment on nontraditional independent trust companies), 17 (uniform waiver in hospital budget process) and this section shall take effect on passage.

Approved: May 11, 2011