

1 S.287

2 Introduced by Committee on Finance

3 Date:

4 Subject: Commerce; loan servicers; licensing; regulation

5 Statement of purpose: This bill proposes to require the licensing and
6 regulation of third party loan servicers.

7 An act relating to the licensing and regulation of loan servicers

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

9 Sec. 1. 8 V.S.A. chapter 83 is added to read:

10 CHAPTER 83. LOAN SERVICERS

11 § 2900. DEFINITIONS

12 As used in this chapter:

13 (1) “Commercial loan” means any loan or extension of credit that is
14 described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or
15 extension of credit that is secured by an owner occupied one- to four-unit
16 dwelling.

17 (2) “Commissioner” means the commissioner of banking, insurance,
18 securities, and health care administration.

19 (3) “Control” means the possession, direct or indirect, of the power to
20 direct or cause the direction of the management or policies of a person.

1 whether through the ownership of voting securities, by contract other than a
2 commercial contract for goods or nonmanagement services, or otherwise,
3 unless the power is the result of an official position with or corporate office
4 held by the person. Control shall be presumed to exist if any person, directly
5 or indirectly, owns, controls, holds with the power to vote, or holds proxies
6 representing 10 percent or more of the voting securities or other interest of any
7 other person.

8 (4) “Depository institution” has the same meaning as in Section 3 of the
9 Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank
10 and any savings association as defined in Section 3 of the Federal Deposit
11 Insurance Act. For purposes of this chapter, “depository institution” also
12 includes any credit union organized and regulated as such under the laws of the
13 United States or any state or territory of the United States.

14 (5) “Individual” means a natural person.

15 (6) “Nationwide Mortgage Licensing System and Registry” means a
16 licensing system developed and maintained by the Conference of State Bank
17 Supervisors and the American Association of Residential Mortgage
18 Regulators, or any successor to the Nationwide Mortgage Licensing System
19 and Registry.

1 (7) “Person” shall have the meaning set forth in 1 V.S.A. § 128 and
2 includes a natural person, corporation, company, limited liability company,
3 partnership, or association.

4 (8) “Servicing” means receiving a scheduled periodic payment from a
5 borrower pursuant to the terms of a loan, including amounts for escrow
6 accounts, and making the payments to the owner of the loan or other third
7 party of principal and interest and other payments with respect to the amounts
8 received from the borrower as may be required pursuant to the terms of the
9 servicing loan document or servicing contract. In the case of a home equity
10 conversion mortgage or a reverse mortgage, servicing includes making
11 payment to the borrower.

12 (9) “Third party loan servicer” means a person who engages in the
13 business of servicing a loan, directly or indirectly, owed or due or asserted to
14 be owed or due another.

15 § 2901. LICENSE REQUIRED

16 (a) No person shall act as a third party loan servicer, directly or indirectly,
17 for a loan to a Vermont borrower without first obtaining a license under this
18 chapter from the commissioner.

1 **(b) No license shall be required of:**

2 **(1) A depository institution.**

3 **(2) A lender licensed under chapter 73 of this title that retains the**
4 **servicing rights on a loan originally closed in the lender's name and**
5 **subsequently sold in whole or in part to a third party, provided that the**
6 **provisions of section 2916 (segregated accounts) and section 2922 (prohibited**
7 **acts and practices) of this chapter shall apply to such lender.**

8 **(3) A debt adjuster licensed in this state.**

9 **(4) An attorney licensed in this state when collecting a debt on behalf of**
10 **a client.**

11 **(5) bona fide nonprofit organizations, exempt from taxation under**
12 **Section 501(c) of the Internal Revenue Code, that are approved by the**
13 **Department of Housing and Urban Development as housing counseling**
14 **agencies, that have a physical location in Vermont, and that lend state or**
15 **federal funds.**

16 **(c) This chapter shall not apply to commercial loans.**

17 **§ 2902. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION**

18 **FEE**

19 **(a) Application for a license shall be in writing, under oath, and in the form**
20 **prescribed by the commissioner, and shall contain the name and the address of**
21 **the residence and place of business of the applicant, and if the applicant is a**

1 partnership or association, of every member thereof, and if a corporation, of
2 each officer, director, and control person thereof; also the county and
3 municipality with street and number, if any, where the business is to be
4 conducted and such further information as the commissioner may require.

5 (b) At the time of making application, the applicant shall pay to the
6 commissioner a \$1,000.00 fee for investigating the application and a \$1,000.00
7 license fee for a period terminating on the last day of the current calendar year.

8 (c) In connection with an application for a license, the applicant and each
9 officer, director, and control person of the applicant shall furnish to the
10 commissioner information concerning the applicant's identity, including:

11 (1) Fingerprints for submission to the Federal Bureau of Investigation,
12 and any governmental agency or entity authorized to receive such information
13 for a state, national, and international criminal history background check.

14 (2) Personal history and experience in a form prescribed by the
15 commissioner, including the submission of authorization for the Nationwide
16 Mortgage Licensing System and Registry and the commissioner to obtain
17 information related to any administrative, civil, or criminal findings by any
18 governmental jurisdiction.

19 (3) Any other information required by the Nationwide Mortgage
20 Licensing System and Registry or the commissioner.

1 § 2903. BOND

2 (a) Prior to issuance of a license, the applicant shall file with the
3 commissioner and shall keep in force thereafter for as long as the license
4 remains in effect, a bond in a form and substance to be approved by the
5 commissioner in which the applicant shall be the obligor, in the amount of
6 \$100,000.00 or in such sum as the commissioner may require. The aggregate
7 liability for any and all claims on any bond shall in no event exceed the sum
8 thereof. No surety obligation on a bond shall be terminated unless at least 60
9 days' prior written notice is given by the surety to the obligor and the
10 commissioner. When one person is issued licenses to conduct the licensed
11 activity at more than one office, the commissioner may accept a single bond
12 covering all such offices. The bond shall run to the state for the use of the state
13 and of any person or persons who may have cause of action against the obligor
14 of such bond under the provisions of this chapter. Such bond shall be
15 conditioned that the obligor will faithfully conform to and abide by the
16 provisions of this chapter and of all rules and regulations lawfully made by the
17 commissioner hereunder, and will pay to the state and to any such person or
18 persons any and all moneys that may become due or owing to the state or to
19 such person or persons from such obligor under and by virtue of the provisions
20 of this chapter.

1 (b) When an action is commenced on a licensee's bond, the commissioner
2 may require the filing of a new bond. Immediately upon recovery upon any
3 action on the bond, the licensee shall file a new bond.

4 (c) Notwithstanding subsections (a) and (b) of this section, the
5 commissioner may waive or modify the requirement for or the amount of a
6 bond or accept other appropriate means of assuring the financial responsibility
7 of a licensee.

8 § 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

9 (a) Upon the filing of the application, payment of the required fees, and
10 approval of the bond, the commissioner shall issue and deliver a license to the
11 applicant upon findings by the commissioner as follows:

12 (1) That the financial responsibility, experience, character, and general
13 fitness of the applicant are such as to command the confidence of the
14 community and to warrant belief that the business will be operated honestly,
15 fairly, and efficiently within the purposes of this chapter. If the applicant is a
16 partnership or association, such findings are required with respect to each
17 partner, member, and control person. If the applicant is a corporation, such
18 findings are required with respect to each officer, director, and control person.

19 (2) That allowing the applicant to engage in business will promote the
20 convenience and advantage of the community in which the business of the
21 applicant is to be conducted.

1 (3) That the applicant is licensed to engage in such business in its state
2 of domicile, and is in good standing in its state of domicile with its state
3 regulator or equivalent financial industry regulator, if such state licenses third
4 party loan servicers.

5 (4) That the applicant, and each officer, director, and control person of
6 the applicant, has never had a third party loan servicer license, lender license,
7 mortgage broker license, mortgage loan originator license, or similar license
8 revoked in any governmental jurisdiction, except that a subsequent formal
9 vacation of such revocation shall not be deemed a revocation.

10 (5) The applicant, and each officer, director, and control person of the
11 applicant, has not been convicted of or pled guilty or nolo contendere to a
12 felony in a domestic, foreign, or military court:

13 (A) During the seven-year period preceding the date of the
14 application for licensing and registration, other than a conviction for driving
15 under the influence or a similarly titled offense in this state or in any other
16 jurisdiction;

17 (B) At any time preceding such date of application, if such felony
18 involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

19 (C) Provided that any pardon of a conviction shall not be a conviction
20 for purposes of this subsection.

1 (6) That the applicant has satisfied the surety bond requirement of
2 section 2903 of this title.

3 (b) If the commissioner does not find as set forth in subsection (a) of this
4 section, the commissioner shall not issue a license. Within 60 days of filing of
5 the completed application, the commissioner shall notify the applicant of the
6 denial, stating the reason or reasons therefor. If after the allowable period, no
7 request for reconsideration under subsection 2905(a) of this title is received
8 from the applicant, the commissioner shall return to the applicant the bond and
9 the sum paid by the applicant as a license fee, retaining the investigation fee to
10 cover the costs of investigating the application.

11 (c) If the commissioner makes findings as set forth in subsection (a) of this
12 section, he or she shall issue the license within 60 days of filing the completed
13 application. The license shall be in full force and effect until surrendered by
14 the licensee, or revocation, termination, suspension, or refusal to renew by the
15 commissioner.

16 § 2905. REVIEW OF DENIAL OF APPLICATION

17 (a) If the application is denied, the applicant may request that the
18 commissioner reconsider the application by making such request in writing,
19 within 15 days of the denial, responding specifically to the commissioner's
20 stated reason or reasons for denial. The commissioner shall then reconsider the
21 application in light of the response stated in the request for reconsideration.

1 Within 60 days of filing the request, upon findings as set forth in section 2904
2 of this title, the commissioner shall issue the license.

3 (b) If the commissioner is unable to make findings as set forth in section
4 2904 of this chapter, the commissioner shall not issue a license. Within 60
5 days of filing of the request for reconsideration, the commissioner shall notify
6 the applicant of the denial, and return to the applicant the bond and the sum
7 paid by the applicant as a license fee, retaining the investigation fee to cover
8 the costs of investigating the application. The applicant may request review by
9 the superior court in Washington County upon action brought in the usual form
10 by an aggrieved party within 15 days after written notice of the denial of the
11 request for reconsideration.

12 § 2906. CONTENTS OF LICENSE; NONTRANSFERABLE

13 The license shall state the address at which the business is to be conducted
14 and shall state fully the name of the licensee and, if the licensee is other than
15 an individual, the date and place of its organization or incorporation. The
16 commissioner may issue an electronic license. The license or a copy of the
17 electronic license shall be kept conspicuously posted in the place of business of
18 the licensee and shall not be transferred or assigned.

19 § 2907. ADDITIONAL BOND

20 If the commissioner finds at any time that a licensee's bond is insecure,
21 exhausted, insufficient, or otherwise doubtful, the commissioner shall require

1 one or more additional bonds meeting the standards set forth in section 2903 of
2 this chapter. The licensee shall file the bond within 10 days of the
3 commissioner's written demand to do so.

4 § 2908. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF
5 BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

6 (a) Not more than one place of business shall be maintained under the same
7 license, but the commissioner may issue more than one license to the same
8 licensee upon compliance with all the provisions of this chapter governing an
9 original issuance of a license.

10 (b) Any change of location or closing of a place of business of the licensee
11 shall require 30 days' prior written notice thereof to the commissioner. Notice
12 of such change of location shall be accompanied by a fee of \$100.00. Upon
13 receipt of notice and fee, the commissioner shall attach to the license in writing
14 the commissioner's record of the change and the date thereof, which shall be
15 authority for the operation of such business under such license at such new
16 location.

17 (c) The licensee shall notify the commissioner of any change in control of
18 the licensee, and of every change in senior management personnel, and of
19 every change in membership of the board of directors or control persons of the
20 licensee within 30 days of such change.

1 § 2909. NOTICE OF CHANGE OF CONDITION

2 A licensee shall notify the commissioner immediately in writing within
3 three business days of the occurrence of any of the following significant
4 developments:

5 (1) Filing for bankruptcy or reorganization of the licensee or any
6 partner, member, officer, director, control person, principal employee, or
7 equivalent.

8 (2) Filing of a criminal indictment related in any way to the activities of
9 the licensee or related to any partner, member, officer, director, control person,
10 principal employee, or equivalent.

11 (3) Receiving notification of a license denial, cease and desist order,
12 suspension, or revocation procedure or other formal or informal regulatory
13 action in any state against the licensee, and including the reasons for such
14 action.

15 (4) Receiving notification of the initiation of any action by the attorney
16 general of this state or any other state, including the reason for such action.

17 (5) Receiving notification of the initiation of a class action lawsuit on
18 behalf of consumers against the licensee that is related to the operation of the
19 licensed business.

20 (6) Any partner, member, officer, director, control person, principal
21 employee, or equivalent being convicted of a crime.

1 § 2910. RENEWAL OF LICENSE

2 (a) On or before December 1 of each year, every licensee shall renew its
3 license for the next succeeding calendar year and shall pay to the
4 commissioner a license renewal fee of \$1,000.00. At a minimum, the licensee
5 shall continue to meet the standards for license issuance under section 2904 of
6 this chapter. At the same time, the licensee shall maintain with the
7 commissioner a bond in the amount and of the character as required by section
8 2903 of this chapter or as required by the commissioner under section 2907 of
9 this chapter.

10 (b) Any license originally issued on or after November 1 of the current year
11 shall be valid for the next succeeding year.

12 § 2911. REVOCATION, SUSPENSION, OR NONRENEWAL OF
13 LICENSE; CEASE AND DESIST ORDERS

14 (a) The commissioner may deny, suspend, revoke, condition, terminate, or
15 refuse to renew a license, or order that any person or licensee cease and desist
16 in any specified conduct if the commissioner finds that:

17 (1) The licensee has failed to pay the renewal of license fee, or an
18 examination fee as provided in section 2917 of this chapter, or to maintain in
19 effect the bond or bonds required under the provisions of this chapter, or to file
20 any annual report or other report, or to comply with any lawful demand, ruling,
21 or requirement of the commissioner; or

1 (2) The licensee has violated any provisions of this chapter, or any other
2 section of applicable law, or any rule, order, directive, or regulation lawfully
3 made thereunder; or

4 (3) The licensee fails to meet the requirements of section 2904 or 2910
5 of this chapter, or withholds information, or fails to cooperate with an
6 examination, or makes a material misstatement in a license application, license
7 renewal, or any document submitted to the commissioner or to the Nationwide
8 Mortgage Licensing System and Registry.

9 (4) Any cause for which issuance of the license could have been refused
10 had it then existed and been known to the commissioner at the time of
11 issuance, including unconscionable conduct which takes advantage of a
12 borrower's lack of bargaining power or lack of understanding of the terms or
13 consequences of the transaction.

14 (b) The commissioner may issue orders or directives to any person:

15 (1) To cease and desist from conducting business;

16 (2) To cease any harmful activities or violations of this chapter, or any
17 other section of applicable law, or any order, directive, rule, or regulation
18 lawfully made thereunder;

19 (3) To cease business under a license or any conditional license if the
20 commissioner determines that such license was erroneously granted, or the
21 licensee is currently in violation of this chapter or any other section of

1 applicable law or any order, directive, rule, or regulation lawfully made
2 thereunder;

3 (4) Enjoining or prohibiting any person from engaging in the loan
4 servicing or financial services industry in this state;

5 (5) To remove any officer, director, employee, or control person;

6 (6) Regarding any other action or remedy as the commissioner deems
7 necessary to carry out the purposes of this chapter.

8 (c) The licensee shall receive 15 days' notice and an opportunity to be
9 heard before such order shall be issued. Mailing notice to the licensee's
10 current address as stated on the license shall be presumptive evidence of its
11 receipt by the licensee. However, if the commissioner finds that the public
12 safety or welfare imperatively requires emergency action, action with no prior
13 notice or prior opportunity to be heard may be taken, pending proceedings for
14 revocation or other action.

15 § 2912. SURRENDER OF LICENSE; NO EFFECT ON LIABILITY;

16 REINSTATEMENT

17 (a) Any licensee may surrender any license by delivering to the
18 commissioner the license and notice that the licensee thereby surrenders such
19 license.

20 (b) Surrender shall not affect the licensee's administrative, civil, or
21 criminal liability for acts committed prior to surrender. No revocation,

1 suspension, refusal to renew, or surrender of any license shall impair or affect
2 the obligation of any preexisting lawful contract.

3 (c) The commissioner shall have authority to reinstate revoked, suspended,
4 terminated, expired, inactive, or nonrenewed licenses or to issue new licenses
5 to a licensee whose license or licenses shall have been revoked, suspended,
6 terminated, expired, inactive, or nonrenewed if no fact or condition then exists
7 which clearly would have warranted the commissioner refusing originally to
8 issue such license under this chapter.

9 § 2913. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

10 The commissioner's findings and order of suspension, revocation, or to
11 cease and desist in specified conduct shall be served on the licensee. Mailing
12 to the licensee's current address as stated on the license shall constitute such
13 service and shall be presumptive evidence of its receipt by the licensee.
14 Within 15 days of service the licensee may appeal the commissioner's decision
15 to the superior court in Washington County.

16 § 2014. RULEMAKING

17 The commissioner is authorized to adopt rules, orders, and regulations and
18 make specific rulings, demands, and findings as may be necessary for the
19 proper conduct of business and enforcement of this chapter.

1 § 2915. PENALTIES

2 (a) The commissioner may:

3 (1) Impose an administrative penalty of not more than \$10,000.00 for
4 each violation upon any person who violates or participates in the violation of
5 this chapter or any other section of applicable law or any lawful regulation,
6 directive, or order issued thereunder; and

7 (2) Order any person to make restitution to any person for any violation
8 of this chapter or any other section of applicable law.

9 (b) Each violation or failure to comply with any directive or order of the
10 commissioner is a separate and distinct violation.

11 (c) It shall be a criminal offense, punishable by a fine of not more than
12 \$100,000.00 or not more than a year in prison, or both, for any person after
13 receipt of an order directing the licensee to cease exercising any duties and
14 powers of a licensee, and assessing an administrative penalty under the
15 authority of this chapter, to perform such duties or exercise such powers of any
16 licensee until the penalty has been satisfied or otherwise satisfactorily resolved
17 between the parties, or the order is vacated by the commissioner or by a court
18 of competent jurisdiction.

19 (d) The powers vested in the commissioner by this chapter shall be in
20 addition to any other powers to enforce any penalties, fines, or forfeitures
21 authorized by law with respect to the requirements set forth herein.

1 § 2916. SEGREGATED ACCOUNTS

2 (a) All amounts paid by borrowers to a licensee subject to this chapter shall
3 be deposited in one or more accounts maintained at a federally insured
4 depository institution and with respect to such funds, the licensee shall act as a
5 fiduciary. Such account or accounts shall be segregated from all other
6 accounts of the licensee. Such funds shall not be used in the conduct of the
7 licensee's personal affairs or in the licensee's business affairs.

8 (b) The licensee may withdraw funds from the segregated account for
9 payment directly to the owner of the loan or other third party of principal and
10 interest and other payments as may be required pursuant to the terms of the
11 loan document or servicing contract.

12 (c) The licensee may withdraw funds from the segregated account for
13 commissions to which it is entitled for services actually performed.

14 (d) The licensee may return funds from the segregated account to the
15 borrower if not prohibited.

16 (e) The licensee shall maintain complete and accurate account records,
17 including, at a minimum, the source of all deposits, the nature and recipient of
18 all disbursements, the date and amount of each transaction, and the name of the
19 borrower. All documents pertaining to account activity shall be produced upon
20 request of the commissioner.

1 § 2917. EXAMINATIONS; INVESTIGATIONS; EXAMINATION FEES

2 (a) In addition to any authority allowed under this chapter or elsewhere,
3 and for the purpose of examination or discovering or investigating violations or
4 complaints of or arising under this chapter or any other section of applicable
5 law, or any rule, order, directive, or regulation lawfully made thereunder, or
6 securing any information required or useful thereunder, and for purposes of
7 initial licensing, license renewal, license suspension, license conditioning,
8 license revocation or termination, or general or specific inquiry or
9 investigation, the commissioner or his or her duly designated representative
10 shall have the authority to:

11 (1) Conduct investigations and examinations.

12 (2) Access, receive, and use any books, accounts, records, files,
13 documents, information, or evidence, including:

14 (A) Criminal, civil, and administrative history information, including
15 nonconviction data.

16 (B) Personal history and experience information, including
17 independent credit reports obtained from a consumer reporting agency
18 described in Section 603(p) of the Fair Credit Reporting Act.

19 (C) Any other documents, information, or evidence the commissioner
20 deems relevant to the inquiry or investigation regardless of the location,
21 possession, control, or custody of such documents, information, or evidence.

1 (b) The commissioner may review, investigate, or examine any licensee,
2 individual, or person regardless of whether such individual or person has
3 obtained a license under this chapter as often as necessary in order to carry out
4 the purposes of this chapter. The commissioner may direct, subpoena, or order
5 the attendance of and examine under oath all persons whose testimony may be
6 required about the loans or the business or subject matter of any such
7 examination or investigation, and may direct, subpoena, or order such person
8 to produce books, accounts, records, files, and any other documents the
9 commissioner deems relevant to the inquiry.

10 (c) Each licensee, individual, or person subject to this chapter shall make
11 available to the commissioner upon request the books and records relating to
12 the operations of such licensee, individual, or person. The commissioner shall
13 have access to such books and records and to interview the officers, principals,
14 control persons, employees, independent contractors, agents, and customers of
15 the licensee, individual, or person concerning the business.

16 (d) Each licensee, individual, or person subject to this chapter shall make or
17 compile reports or prepare other information as directed by the commissioner
18 in order to carry out the purposes of this section, including:

19 (1) Accounting compilations.

20 (2) Information lists and data concerning loans in a format prescribed by
21 the commissioner.

1 (3) Such other information as the commissioner deems necessary to
2 carry out the purposes of this chapter.

3 (e) In making any examination or investigation authorized by this chapter,
4 the commissioner may control access to any documents and records of the
5 licensee or person under examination or investigation. The commissioner may
6 take possession of the documents and records or place a person in exclusive
7 charge of the documents and records in the place where they are usually kept.
8 During the period of control, no individual or person shall remove or attempt
9 to remove any of the documents and records except pursuant to a court order or
10 with the consent of the commissioner. Unless the commissioner has
11 reasonable grounds to believe the documents or records of the licensee have
12 been or are at risk of being altered or destroyed for purposes of concealing a
13 violation of this chapter, the licensee or owner of the documents and records
14 shall have access to the documents and records as necessary to conduct its
15 ordinary business affairs.

16 (f) In order to carry out the purposes of this chapter, the commissioner
17 may:

18 (1) Retain attorneys, accountants, or other professionals and specialists
19 as examiners, auditors, or investigators to conduct or assist in the conduct of
20 examinations or investigations;

1 (2) Enter into agreements or relationships with other government
2 officials or regulatory associations in order to improve efficiencies and reduce
3 regulatory burden by sharing resources, standardized or uniform methods or
4 procedures, and documents, records, information, or evidence obtained under
5 this section;

6 (3) Use, contract for, or employ public or privately available analytical
7 systems, methods, or software to examine or investigate the licensee,
8 individual, or person subject to this chapter;

9 (4) Accept and rely on examination or investigation reports made by
10 other government officials within or without this state; or

11 (5) Accept audit reports made by an independent certified public
12 accountant for the licensee, individual, or person subject to this chapter in the
13 course of that part of the examination covering the same general subject matter
14 as the audit and may incorporate the audit report in the report of the
15 examination, report of investigation, or other writing of the commissioner.

16 (g) The authority of this section shall remain in effect whether such
17 licensee, individual, or person acts or claims to act under any licensing or
18 registration law of this state, acts without such authority, or surrenders such
19 licensee's license.

20 (h) No licensee, individual, or person subject to investigation or
21 examination under this section may knowingly withhold, abstract, remove,

1 mutilate, destroy, or secrete any books, records, computer records, or other
2 information.

3 (i) The commissioner shall make an examination of the affairs, business,
4 and records of each licensee at least once every three years. The commissioner
5 may, in the case of those licensees who do not maintain a Vermont office,
6 accept reports of examinations prepared by another state or federal regulatory
7 agency as substitutes if such reports are available to the commissioner and are
8 determined to be adequate in exercising his or her powers and discharging his
9 or her responsibilities under this chapter.

10 (j) Each licensee shall pay to the department all fees, costs, and expenses of
11 any examination, review, and investigation as prescribed by section 18 of this
12 title, which fees, costs, and expenses shall be billed when they are incurred. In
13 addition to the powers set forth in section 2910 of this chapter, the
14 commissioner may maintain an action for the recovery of examination, review
15 and investigation fees, costs, and expenses as prescribed in section 18 of this
16 title in any court of competent jurisdiction.

17 § 2918. RECORDS REQUIRED OF LICENSEE

18 The licensee shall keep, use in the licensee's business, and make available
19 to the commissioner upon request such books, accounts, records, and data
20 compilations as will enable the commissioner to determine whether such
21 licensee is complying with the provisions of this chapter and with the rules and

1 regulations lawfully made by the commissioner hereunder. Every licensee
2 shall preserve such books, accounts, records, and data compilations in a secure
3 manner for at least seven years after making the final entry on any loan
4 recorded therein. Thereafter, the licensee shall dispose of such books,
5 accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

6 § 2919. ANNUAL REPORT; FINANCIAL STATEMENTS

7 (a) Annually, on or before April 1, each licensee shall file a report with the
8 commissioner giving such relevant information as the commissioner
9 reasonably may require concerning the business and operations during the
10 preceding calendar year of each licensed place of business. Such report shall
11 be made under oath and shall be in the form prescribed by the commissioner.

12 (b) Annually, within 90 days of the end of its fiscal year, each licensee
13 shall file financial statements with the commissioner in a form and substance
14 satisfactory to the commissioner, which financial statements must include a
15 balance sheet and income statement.

16 § 2920. USE OF OTHER NAMES OR BUSINESS PLACES

17 No licensee shall transact such business under any other name or at any
18 other place of business than that named in its license or licenses.

1 § 2921. NATIONAL MORTGAGE LICENSING SYSTEM AND
2 REGISTRY

3 (a) In furtherance of the commissioner's duties under this chapter, the
4 commissioner may participate in the Nationwide Mortgage Licensing System
5 and Registry and may take such action regarding participation in the licensing
6 system as the commissioner deems necessary to carry out the purposes of this
7 section, including:

8 (1) Issue rules or orders, and may establish procedures, to further
9 participation in the Nationwide Mortgage Licensing System and Registry.

10 (2) Facilitate and participate in the establishment and implementation of
11 the Nationwide Mortgage Licensing System and Registry.

12 (3) Establish relationships or contracts with the Nationwide Mortgage
13 Licensing System and Registry or other entities designated by the Nationwide
14 Mortgage Licensing System and Registry.

15 (4) Authorize the Nationwide Mortgage Licensing System and Registry
16 to collect and maintain records and to collect and process any fees associated
17 with licensure on behalf of the commissioner.

18 (5) Require persons engaged in activities that require a license under this
19 chapter to utilize the Nationwide Mortgage Licensing System and Registry for
20 license applications, renewals, amendments, surrenders, and such other

1 activities as the commissioner may require, and to pay through the national
2 licensing system all fees provided for under this chapter.

3 (6) Authorize the Nationwide Mortgage Licensing System and Registry
4 to collect fingerprints on behalf of the commissioner in order to receive or
5 conduct criminal history background checks, and in order to reduce the points
6 of contact which the Federal Bureau of Investigation may have to maintain for
7 purposes of this subsection, the commissioner may use the Nationwide
8 Mortgage Licensing System and Registry as a channeling agent for requesting
9 information from and distributing information to the Department of Justice or
10 any governmental agency.

11 (7) In order to reduce the points of contact which the commissioner may
12 have to maintain for purposes of this chapter, the commissioner may use the
13 Nationwide Mortgage Licensing System and Registry as a channeling agent for
14 requesting and distributing information to and from any source so directed by
15 the commissioner.

16 (b) The commissioner may require persons engaged in activities that
17 require a license under this chapter to submit fingerprints, and the
18 commissioner may utilize the services of a Nationwide Mortgage Licensing
19 System and Registry to process the fingerprints and to submit the fingerprints
20 to the Federal Bureau of Investigation, the Vermont state police, or any
21 equivalent state or federal law enforcement agency for the purpose of

1 conducting a criminal history background check. The licensee or applicant
2 shall pay the cost of such criminal history background check, including any
3 charges imposed by the Nationwide Mortgage Licensing System and Registry.

4 (c) Persons engaged in activities that require licensure pursuant to this
5 chapter shall pay all applicable charges to utilize the Nationwide Mortgage
6 Licensing System and Registry, including such processing charges as the
7 administrator of the Nationwide Mortgage Licensing System and Registry shall
8 establish, in addition to the fees required under this chapter.

9 (d) The Nationwide Mortgage Licensing System and Registry is not
10 intended to and does not replace or affect the commissioner's authority to
11 grant, deny, suspend, revoke, terminate, or refuse to renew licenses.

12 § 2922. PROHIBITED ACTS AND PRACTICES

13 (a) It is a violation of this chapter for a person to:

14 (1) Directly or indirectly employ any scheme, device, or artifice to
15 defraud or mislead borrowers or lenders or to defraud any person.

16 (2) Engage in any unfair or deceptive practice toward any person.

17 (3) Obtain property by fraud or misrepresentation.

18 (4) Use any unfair or unconscionable means in servicing a loan.

19 (5) Knowingly misapply or recklessly apply loan payments to the
20 outstanding balance of a loan.

1 (6) Knowingly misapply or recklessly apply payments to escrow
2 accounts.

3 (7) Require the unnecessary forced placement of insurance, when
4 adequate insurance is currently in place.

5 (8) Fail to provide loan payoff information within the time period set
6 forth in 27 V.S.A. § 464.

7 (9) Charge excessive or unreasonable fees to provide loan payoff
8 information.

9 (10) Fail to manage and maintain escrow accounts in accordance with
10 section 10404 of this title.

11 (11) Knowingly or recklessly provide inaccurate information to a credit
12 bureau, thereby harming a consumer's creditworthiness.

13 (12) Fail to report both the favorable and unfavorable payment history
14 of the consumer to a nationally recognized consumer credit bureau at least
15 annually if the servicer regularly reports information to a credit bureau.

16 (13) Collect private mortgage insurance beyond the date for which
17 private mortgage insurance is no longer required.

18 (14) Knowingly or recklessly facilitate the illegal foreclosure of real
19 property collateral.

20 (15) Knowingly or recklessly facilitate the illegal repossession of chattel
21 collateral.

1 (16) Fail to respond to consumer complaints in a timely manner.

2 (17) Conduct any business covered by this chapter without holding a
3 valid license as required under this chapter, or assist or aid and abet any person
4 in the conduct of business under this chapter without a valid license as required
5 under this chapter.

6 (18) Fail to comply with any federal or state law, rule, or other legally
7 binding authority relating to the evaluation of loans for modification purposes
8 or the modification of loans.

9 (19) Fail to comply with this chapter or rules adopted under this chapter,
10 or fail to comply with any orders or directives from the commissioner, or fail
11 to comply with any other state or federal law, including the rules thereunder,
12 applicable to any business authorized or conducted under this chapter.

13 (b) A violation of this section is an unfair and deceptive act or practice
14 under 9 V.S.A. § 2453, provided that the commissioner's determinations
15 concerning the interpretation and administration of the provisions of this
16 chapter and any rules adopted thereunder shall carry a presumption of validity.
17 Prior to initiating an action for a violation of this chapter, the attorney general
18 shall consult with the commissioner regarding the proposed action.

19 Sec. 2. 10 V.S.A. § 611(k) is amended to read:

20 (k) Notwithstanding any general or special law to the contrary, the
21 provisions of ~~chapter~~ chapters 73 and 83 of Title 8 shall not apply to the

1 agency or to any loan heretofore or hereafter made or serviced by the agency in
2 accordance with this title.

3 Sec. 3. 16 V.S.A. § 2821(c) is added to read:

4 (c) Notwithstanding any general or special law to the contrary, the
5 provisions of chapter 83 of Title 8 shall not apply to the corporation or to any
6 loan heretofore or hereafter made or serviced by the corporation in accordance
7 with this title.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on January 1, 2011.