

# Journal of the House

Thursday, April 16, 2009

**Rep. Lucy Leriche of Hardwick** in Chair.

At one o'clock in the afternoon the Speaker called the House to order.

## Devotional Exercises

Devotional exercises were conducted by Interns of the Girl Scout Council of the Green and White Mountains, Rachel Sanguinetti of Berlin and Brittnay Wieland of Georgia.

## Message from the Senate No. 39

A message was received from the Senate by Mr. Gibson, its Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part passed Senate bills of the following titles:

**S. 111.** An act relating to legislative apportionment board appointments.

**S. 126.** An act relating to digital forensic specialists.

**S. 134.** An act relating to the reduction and consolidation of certain nonstanding legislative committees.

In the passage of which the concurrence of the House is requested.

The Senate has considered bills originating in the House of the following titles:

**H. 36.** An act relating to repealing the charter of the Enosburg Falls Incorporated School District.

**H. 131.** An act relating to the codification of and approval of an amendment to the charter of Cold Brook Fire District No. 1.

And has passed the same in concurrence.

## House Bill Introduced

**H. 451**

By Reps. Wright of Burlington, Aswad of Burlington, Atkins of Winooski,

Bissonnette of Winooski, Donovan of Burlington, Larson of Burlington, Lorber of Burlington, Ram of Burlington, Weston of Burlington, Wizowaty of Burlington and Zuckerman of Burlington,

An act relating to the approval of amendments to the charter of the city of Burlington;

To the committee on Government Operations.

#### **Senate Bills Referred**

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

#### **S. 111**

Senate bill, entitled

An act relating to legislative apportionment board appointments;

Was taken up, read the first time and referred to the committee on Government Operations.

#### **S. 126**

Senate bill, entitled

An act relating to digital forensic specialists;

Was taken up, read the first time and referred to the committee on Government Operations.

#### **S. 134**

Senate bill, entitled

An act relating to the reduction and consolidation of certain nonstanding legislative committees;

Was taken up, read the first time and referred to the committee on Government Operations.

#### **Bill Referred to Committee on Appropriations**

#### **H. 446**

House bill, entitled

An act relating to renewable energy and energy efficiency

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

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**Bills Referred to Committee on Ways and Means**

Bills of the following titles, appearing on the Calendar, affecting the revenue of the state, under the rule, were referred to the Committee on Ways and Means:

**H. 222**

House bill, entitled

An act relating to senior protection and financial services;

**S. 42**

Senate bill, entitled

An act relating to the Department of Banking, Insurance, Securities, and Health Care Administration.

**Joint Resolution Placed on Calendar****J.R.H. 22**

Joint resolution honoring municipal public works employees and designating May 17–23 as Public Works Week in Vermont

Offered by: Representatives Koch of Barre Town, Adams of Hartland, Ainsworth of Royalton, Baker of West Rutland, Browning of Arlington, Canfield of Fair Haven, Clark of Vergennes, Devereux of Mount Holly, Donaghy of Poultney, Donahue of Northfield, Emmons of Springfield, Fagan of Rutland City, Flory of Pittsford, Higley of Lowell, Hooper of Montpelier, Hube of Londonderry, Hubert of Milton, Kilmartin of Newport City, Komline of Dorset, Larocque of Barnet, Lawrence of Lyndon, Lenex of Shelburne, Lewis of Derby, Macaig of Williston, Marcotte of Coventry, McAllister of Highgate, McDonald of Berlin, McFaun of Barre Town, McNeil of Rutland Town, Morrissey of Bennington, Myers of Essex, O'Donnell of Vernon, Pearce of Richford, Peaslee of Guildhall, Perley of Enosburg, Pugh of South Burlington, Reis of St. Johnsbury, Rodgers of Glover, Scheuermann of Stowe, Stevens of Shoreham, Taylor of Barre City, Till of Jericho, Townsend of Randolph, Turner of Milton, Wright of Burlington and Zenie of Colchester

Whereas, much of the highway and bridge network in Vermont is municipally owned, and the responsibility for its maintenance is assigned to local public works departments, and

Whereas, the regular duties of city and town public works departments' employees encompass general roadway and bridge maintenance on a year-round basis, and

Whereas, when extremely inclement weather strikes, such as a severe snowstorm or a thunderstorm whose elements include high velocity winds, municipal public works department crews are called upon to perform near-heroic tasks under the worst possible climatic conditions and not infrequently in the middle of the night, and

Whereas, these special but essential jobs can range from removing snow from the highway while blowing drifts are inhibiting steady progress to supporting utility crews removing trees entangled in dangerously electrified cables, and

Whereas, on May 13, the Vermont Municipal Highway Association will hold its annual field day and expo at the Barre Auditorium, and

Whereas, local public works crews from many communities will attend this much-anticipated event, and

Whereas, the Vermont Municipal Highway Association event also serves as a showcase for vendors to exhibit new products that public works staff can examine and consider purchasing, and

Whereas, May is also an important month for these dedicated municipal employees as the week of May 17–23 is being observed as Public Works Week in order to recognize these all-too-often unsung heroes who maintain highways, bridges, and other essential municipal infrastructure 365 days a year, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly honors Vermont's outstanding municipal public works employees and designates May 17–23 as Public Works Week in Vermont, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Barre Town Engineer and Municipal Highway Association Secretary-Treasurer Harry Hinrichsen.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

**Speaker Smith** in Chair.

**Third Reading; Bill Passed**

**H. 92**

House bill, entitled

An act relating to rent-to-own agreements

Was taken up, read the third time and passed.

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**Action on Bill Postponed****H. 204**

House bill, entitled

An act relating to payment of diversion program fees

Was taken up and pending the question, Shall the House concur in the Senate proposal of amendment? on motion of **Rep. French of Shrewsbury**, action on the bill was postponed until the next legislative day.

**Bill Amended; Third Reading Ordered****H. 171**

**Rep. Turner of Milton**, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to home mortgage protection for Vermonters

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. chapter 73 is amended to read:

**CHAPTER 73. LICENSED LENDERS****§ 2200. DEFINITIONS**

As used in this chapter:

~~(1) “Bank,” shall mean institutions organized and regulated as such under the laws of the United States or any state or territory of the United States and which are engaged in the business of banking, and shall also include any Vermont financial institution as defined in subdivision 11101(65) of this title, any insured depository institution as such term is defined by the Federal Deposit Insurance Act, 12 U.S.C. § 1813(e)(2), and a bank not organized within the United States, or a United States or state branch or agency thereof, which is conducting business pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq. For purposes of this chapter, “bank “ shall also include any credit unions organized and regulated as such under the laws of the United States or any state or territory of the United States.~~

~~(2)~~(1) “Commercial loan” means any loan or extension of credit that is described in section 46(1), (2) or (4) of Title 9 and that is in excess of \$25,000.00. The term does not include a loan or extension of credit for the purpose of farming, as defined in ~~section~~ subdivision 6001(22) of Title 10 and does not include a loan or extension of credit for the purpose of financing an owner occupied one- to four-unit dwelling.

~~(3)~~(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(4)(3) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities or other interest of any other person.

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

(5) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation or any successor of any of these.

(6) “Holder” shall have the meaning set forth in section 1-201(20) of Title 9A.

(7) “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(8) “Individual” means a natural person.

~~(6)~~(9) “Insurance company” shall mean an institution organized and regulated as such under the laws of the state of Vermont or any state or territory of the United States.

~~(7)~~(10) “Licensee” means any person subject to the provisions of section 2201 of this title.

(11) “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(A) For purposes of this subdivision (11), the term “clerical or support duties” may include, subsequent to the receipt of a loan application:

(i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(ii) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(B) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

~~(8)~~(12) “Mortgage broker” means any person who for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement or find mortgage loans, other than commercial loans, on real property for others. The term shall not include real estate brokers or salespersons, as defined in section 2211 of Title 26, who in connection with services performed in a prospective real estate transaction, provide mortgage information or assistance to a buyer, if such real estate broker or real estate salesperson is not compensated for providing such mortgage information or assistance in addition to the compensation received from the seller or buyer for such real estate ~~services~~ brokerage activity. The term shall not include attorneys licensed to practice law in this state acting in their professional capacity. The term shall not include persons engaged in the foregoing activities solely in connection with the sale, assignment, or other transfer of one or more previously originated loans.

~~(9)~~(13) “Mortgage loan” means a loan secured primarily by a lien against real estate.

(14) “Mortgage loan originator”:

(A) Means an individual who for compensation or gain or in the expectation of compensation or gain:

(i) Takes a residential mortgage loan application; or

(ii) Offers or negotiates terms of a residential mortgage loan;

(B) Does not include:

(i) an individual engaged solely as a loan processor or underwriter, except as otherwise provided in subsection 2201(f) of this chapter;

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(iii) a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code.

(15) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, or any successor to the Nationwide Mortgage Licensing System and Registry.

(16) “Nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(17) “Person” shall have the meaning set forth in section 128 of Title 1 and includes a natural person, corporation, company, limited liability company, partnership, or association.

(18) “Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

(A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(E) Offering to engage in any activity or act in any capacity described in subdivision (A), (B), (C), or (D) of this subdivision (18).

(19) “Registered mortgage loan originator” means any individual who:

(A) meets the definition of mortgage loan originator and is an employee of:

(i) A depository institution;

(ii) A subsidiary that is:

(I) Owned and controlled by a depository institution, as determined by a federal banking agency; and

(II) Regulated by a federal banking agency; or

(iii) An institution regulated by the Farm Credit Administration;  
and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(20) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(21) “Residential real estate” means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

~~(11)~~(22) “Sales finance company” means any person who has purchased one or more retail installment contracts, as defined in sections 2351(5) and 2401(7) of Title 9, from one or more retail sellers located in this state. Taking one or more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

(23) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

#### § 2201. LICENSES REQUIRED

(a) No person shall without first obtaining a license under this chapter from the commissioner:

(1) engage in the business of making loans of money, credit, goods or things in action and charge, contract for or receive on any such loan interest, a finance charge, discount or consideration therefore;

- (2) act as a mortgage broker;
- (3) act as a mortgage loan originator; or
- (4) act as a sales finance company.

(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 a W-2 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.

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title.

~~(e)~~(d) No lender license, mortgage broker license, or sales finance company license shall be required of:

- (1) a state agency, political subdivision, or other public instrumentality of the state;
- (2) a federal agency or other public instrumentality of the United States;
- (3) a gas or electric utility subject to the jurisdiction of the public service board engaging in energy conservation or safety loans;
- (4) a ~~bank~~ depository institution;
- (5) a pawnbroker;
- (6) an insurance company;
- (7) a seller of goods or services that finances the sale of such goods or services, other than a residential mortgage loan;
- (8) any individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
- (9) lenders that conduct their lending activities, other than residential mortgage loan activities, through revolving loan funds, that are nonprofit organizations exempt from taxation under section 501(c) of the Internal Revenue Code, and that register with the commissioner of economic development under section 690a of Title 10;
- ~~(9) lenders making only commercial loans of \$1,000,000.00 or more;~~

(10) persons who loan, other than residential mortgage loans, an aggregate of less than \$50,000.00 in any one year at rates of interest of no more than 12 percent per annum;

(11) ~~nonprofit institutions of higher education, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that make residential mortgage loans to their employees from their own funds;~~

(12) a seller who, pursuant to subdivision 2355(f)(1)(D) of Title 9, includes the amount paid or to be paid by the seller to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle in a motor vehicle retail installment sales contract, provided that the contract is purchased, assigned, or otherwise acquired by a sales finance company licensed pursuant to this title to purchase motor vehicle retail installment sales contracts or a bank depository institution;

(12)(A) a person making an unsecured commercial loan, which loan is expressly subordinate to the prior payment of all senior indebtedness of the commercial borrower regardless of whether such senior indebtedness exists at the time of the loan or arises thereafter. The loan may or may not include the right to convert all or a portion of the amount due on the loan to an equity interest in the commercial borrower;

(B) for purposes of this subdivision (12), "senior indebtedness" means:

(i) all indebtedness of the commercial borrower for money borrowed from banks depository institutions, trust companies, ~~credit unions~~, insurance companies, and licensed lenders, and any guarantee thereof; and

(ii) any other indebtedness of the commercial borrower that the lender and the commercial borrower agree shall constitute senior indebtedness;

(13) ~~nonprofit organizations established under testamentary instruments, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational costs to students and their parents, provided that the organizations provide annual accountings to the probate court pursuant to 14 V.S.A. § 2324;~~

(14) any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(e) No mortgage loan originator license shall be required of:

(1) Registered mortgage loan originators, when acting for an entity described in subdivision 2200(19) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(f) Independent contractor loan processors or underwriters. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(g) This chapter shall not apply to commercial loans of \$1,000,000.00 or more.

§ 2202. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION FEES

(a) Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the address of the residence and place of business of the applicant, and if the applicant is a partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the commissioner may require.

(b)(4) At the time of making application, the applicant shall pay to the commissioner a fee for investigating the application and a license fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

~~(A)(1) For an applicant for a lender's license, \$1,000.00 as a license fee, and \$1,000.00 as an application and investigation fee for the initial license. An additional license fee of \$100.00 shall be required of any applicant for a~~

~~lender's license who also intends to engage in mortgage brokerage. An additional license fee of \$100.00 shall be required for any applicant for a lender's license who also intends to engage in sales finance.~~

~~(B) For an applicant for a mortgage broker's license, \$250.00 as a license fee, and \$250.00 as an application and investigation fee.~~

~~(C) For an applicant for a sales finance company's license, \$300.00 as a license fee, and \$250.00 as an application and investigation fee. For each additional lender license from the same applicant, \$500.00 as a license fee and \$500.00 as an application and investigation fee.~~

(2) For an applicant for a mortgage broker's license, ~~\$350.00~~ \$500.00 as a license fee, and ~~\$350.00~~ \$500.00 as an application and investigation fee.

(3) For an applicant for a mortgage loan originator license, \$50.00 as a license fee, and \$50.00 as an application and investigation fee.

(4) For an applicant for a sales finance company's license, \$350.00 as a license fee, and \$350.00 as an application and investigation fee.

~~(4) The license fee for an application submitted after September 30 of any year shall be prorated.~~

(c) In connection with an application for a license, the applicant and each officer, director, and control person of the applicant shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

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

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain:

(A) An independent credit report and credit score obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act for the purpose of evaluating the applicant's financial responsibility at the time of application and may obtain additional credit reports and credit scores to confirm the licensee's continued compliance with the financial responsibility requirements of this chapter; and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

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

§ 2203. BOND; LIQUID ASSETS REQUIRED

(a) Prior to issuance of a license, the applicant shall file with the commissioner, and shall keep in force thereafter for as long as the license remains in effect, a bond in a form and substance to be approved by the commissioner in which the applicant shall be the obligor, in such sum as the commissioner may require. The aggregate liability for any and all claims on any bond shall in no event exceed the sum thereof. No surety obligation on a bond shall be terminated unless at least 60 days' prior written notice is given by the surety to the obligor and the commissioner. When one person is issued licenses to conduct the licensed activity at more than one office, the commissioner may accept a single bond covering all such offices. The bond shall run to the state for the use of the state and of any person or persons who may have cause of action against the obligor of such bond under the provisions of this chapter. Such bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the commissioner hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from such obligor under and by virtue of the provisions of this chapter. The commissioner shall require that the amount of the bonds shall be based upon the dollar amount of loans originated in Vermont and, at a minimum:

~~(1) For an applicant for a lender's license, a surety bond of \$50,000.00;~~

~~(2) For an applicant for a mortgage broker's license, a surety bond of \$25,000.00;~~

(1) For licensed lenders:

(A) who annually originate \$0.00 to \$1,000,000.00 in loans, a surety bond not less than \$50,000.00;

(B) who annually originate \$1,000,000.01 to \$15,000,000.00 in loans, a surety bond not less than \$100,000.00;

(C) who annually originate \$15,000,000.01 or more in loans, a surety bond not less than \$150,000.00.

(2) For mortgage brokers:

(A) who annually originate \$0.00 to \$2,000,000.00 in mortgage loans, a surety bond not less than \$25,000.00;

(B) who annually originate \$2,000,000.01 to \$5,000,000.00 in mortgage loans, a surety bond not less than \$50,000.00;

(C) who annually originate \$5,000,000.01 to \$15,000,000.00 in mortgage loans, a surety bond not less than \$75,000.00;

(D) who annually originate \$15,000,000.01 or more in mortgage loans, a surety bond not less than \$100,000.00.

~~(3) For an applicant for a lender's license engaged in commercial lending, a surety bond of \$100,000.00.~~

(3) The commissioner may adopt regulations modifying the minimum bond requirements set forth in this subsection.

(b) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee of a person subject to this chapter, the surety bond of such licensed lender or licensed mortgage broker can be used in lieu of the mortgage loan originator's surety bond requirement, provided that the surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in this section.

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

(d) Every applicant for a lender's license shall also prove, in form satisfactory to the commissioner, that the applicant has liquid assets of \$25,000.00, or such greater amount as the commissioner may require, available for the operation of such business at the location specified in the application. Every applicant wishing to make commercial loans shall prove liquid assets in an amount of \$50,000.00 or such greater amount as the commissioner may require.

~~(e)~~(e) Notwithstanding subsections (a) and ~~(b)~~, (d) of this section, the commissioner may waive or modify the requirement for or amount of a bond or liquid asset set forth in this section, or accept other appropriate means of assuring the financial responsibility of a licensee.

#### § 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

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

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

(B) For purposes of this subsection, a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include:

(i) Current outstanding judgments, except judgments solely as a result of medical expenses;

(ii) Current outstanding tax liens or other government liens and filings;

(iii) Foreclosures within the past three years;

(iv) A pattern of seriously delinquent accounts within the past three years.

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

(3) That the applicant is licensed to engage in such business in its state of domicile and is in good standing in its state of domicile with its banking regulator or equivalent financial industry regulator.

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

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

(A) During the seven-year period preceding the date of the application for licensing and registration; or

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

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

(6) That the applicant has satisfied the surety bond and liquid asset requirement of section 2203 of this chapter.

(7) For an application for a mortgage loan originator license, the applicant has satisfied the prelicense education requirement of section 2204a of this chapter and the prelicense testing requirement of section 2204b of this chapter.

(b) If the commissioner does not find as set forth in subsection (a) of this section, the commissioner shall not issue a license. Within 60 days of filing of the completed application, the commissioner shall notify the applicant of the denial, stating the reason or reasons therefore. If after the allowable period, no request for reconsideration under ~~section~~ subsection 2205(a) of this title is received from the applicant, the commissioner shall return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application.

(c) If the commissioner makes findings as set forth in subsection (a) of this section, he or she shall issue the license within 60 days of filing the completed application. Except as provided in subsection 2209(c) of this chapter with respect to a mortgage loan originator license, the license shall be in full force and effect until surrendered by the licensee, or revocation, suspension, or refusal to renew by the commissioner.

§ 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND RELICENSING EDUCATION REQUIREMENT

(a) In order to meet the prelicensing education requirement for a mortgage loan originator, a person shall complete at least 20 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and

approval of a preclicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any preclicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Preclicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The preclicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of preclicensing education requirements in Vermont.

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

#### § 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

(a) In order to meet the written test requirement referred to in subdivision 2204(a)(6) of this chapter, an individual applying for a mortgage loan originator license shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination;

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant.

(d) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(e) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(f) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

#### § 2205. REVIEW OF DENIAL OF APPLICATION

(a) If the application is denied, the applicant may request that the commissioner reconsider the application by making such request in writing, within 15 days of the denial, responding specifically to the commissioner's stated reason or reasons for denial. The commissioner shall then reconsider the application in light of the response stated in the request for reconsideration. Within 60 days of filing the request, upon findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall issue the license.

(b) If the commissioner is unable to make findings as set forth in section ~~2204(a)~~ 2204 of this title, the commissioner shall not issue a license. Within 60 days of filing of the request for reconsideration, the commissioner shall notify the applicant of the denial, and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application. The applicant may request review by the superior court in Washington ~~county~~ County upon action brought in the usual form by an aggrieved party, within 15 days after written notice of the denial of the request for reconsideration.

#### § 2206. CONTENTS OF LICENSE; NONTRANSFERABILITY; INACTIVE STATUS

(a) The license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a ~~partnership or association, the names of the members thereof, and if a corporation, of other than an individual,~~ organization

or incorporation. The commissioner may issue an electronic license. The license or a copy of the electronic license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

(b) The mortgage loan originator license shall fully state the name of the individual and the individual's place of residence. The commissioner may issue an electronic license. The mortgage loan originator license shall not be transferable or assignable.

(c) The license of a mortgage loan originator that has satisfied all of the requirements of licensure, other than being employed by a licensed lender or licensed mortgage broker, may be placed in an approved inactive status.

§ 2207. ADDITIONAL BOND; LIQUID ASSETS TO BE MAINTAINED

(a) If the commissioner finds at any time that a licensee's bond is insecure, exhausted, insufficient, or otherwise doubtful, the commissioner shall require one or more additional bonds meeting the standards set forth in section 2203 of this title. The licensee shall file the bond within ten days of the commissioner's written demand to do so.

(b) Every licensee, except as set forth in subsection (c) of this section, shall maintain at all times assets in amounts as set forth in section 2203 of this title, or in such greater amount deemed necessary by the commissioner. Assets must be either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

(c) Every licensee making commercial loans shall maintain liquid assets in an amount deemed necessary by the commissioner, but in no event less than \$50,000.00.

§ 2208. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

(a) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same lender, mortgage broker, or sales finance company licensee upon compliance with all the provisions of this chapter governing an original issuance of a license.

(b) Any change of location or closing of a place of business of the licensee shall require 30 days' prior written notice thereof to the commissioner. ~~Any licensed lender wishing to engage in mortgage brokerage or sales finance, when such was not disclosed to the commissioner in the original application for a license to lend or in any renewal application, shall provide the commissioner 30 days' prior written notice thereof.~~ Notice of such change of

~~location or such change in activities shall be accompanied by a fee of \$100.00. Upon receipt of notice and fee, the commissioner shall attach to the license in writing the commissioner's record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location or, as the case may be, authority for the licensed lender to engage in mortgage brokerage or sales finance. No change in the place of business of a licensee to a location outside of the original state shall be permitted under the same license.~~

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

#### § 2209. RENEWAL OF LICENSE

(a) ~~On or before December 1 of each year, every licensee shall renew its license for the next succeeding calendar year and shall pay to the commissioner a renewal of license fee for the next succeeding calendar year, and shall at.~~ At a minimum, the licensee shall continue to meet the standards for license issuance under section 2204 of this title. At the same time file, the licensee shall maintain with the commissioner a bond in the ~~same~~ amount and of the ~~same~~ character as required by section 2203 of this title or as required by the commissioner under section 2207 of this title. The license renewal fee shall be:

(1) ~~For the renewal of lender's license, \$1,200.00. For a person with ten or more licensed locations, the renewal fee under this subdivision shall be no more than \$12,000.00;~~

(2) ~~For the renewal of a mortgage broker's license, \$350.00;~~ \$500.00.

(3) ~~For the renewal of a sales finance company's license, \$350.00.~~

(4) For renewal of a mortgage loan originator license, \$100.00.

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

(c) An individual holding a mortgage loan originator license must also satisfy the annual continuing education requirement of section 2209a of this title. The license of any mortgage loan originator who fails to pay the annual renewal fee or fails to satisfy all of the minimum license renewal standards by December 1 shall automatically expire on December 31.

#### § 2209a. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS

(a) In order to meet the annual continuing education requirements, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator, or any subsidiary or affiliate of the employer.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except for section 2212 of this title and subsection (i) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(g) A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be accepted as credit toward completion of continuing education requirements in Vermont.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person who otherwise meets the requirements of section 2209 of this title may make up any deficiency in continuing education as established by order, rule, or regulation of the commissioner.

§ 2210. REVOCATION, SUSPENSION OR NONRENEWAL OF LICENSE;  
CEASE AND DESIST ORDERS

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

(1) The licensee has failed to pay the renewal of license fee, or an examination fee as provided in section 2222 of this title, or to maintain in effect the required liquid assets or the bond or bonds required under the provisions of this chapter, or to file any annual report or other report, or to comply with any lawful demand, ruling, or requirement of the commissioner; or

(2) The licensee has violated any provisions of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, where applicable, or any rule, order, directive, or regulation lawfully made thereunder; or

(3) The licensee fails to meet the requirements of section 2204 or 2209 of this title, or withholds information, or fails to cooperate with an examination, or makes a material misstatement in a license application, license renewal, or any document submitted to the commissioner or to the Nationwide Mortgage Licensing System and Registry.

(4) 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, including unconscionable conduct which takes advantage of a borrower's lack of bargaining power or lack of understanding of the terms or consequences of the transaction.

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

(1) To cease and desist from conducting business;

(2) To cease any harmful activities or violations of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

(3) To cease business under a license or any conditional license if the commissioner determines that such license was erroneously granted or the licensee is currently in violation of this chapter, sections 10403 and 10404 of this title, chapter 4, 59, or 61 of Title 9, where applicable, or any order, directive, rule, or regulation lawfully made thereunder;

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

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

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

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

#### § 2211. REVOCATION, SUSPENSION, OR NONRENEWAL WHERE MORE THAN ONE PLACE OF BUSINESS

The commissioner may revoke, suspend, or refuse to renew only the particular license with respect to which grounds for revocation, suspension, or refusal to renew may occur or exist, or, if the commissioner shall find that such grounds for revocation, suspension, or refusal to renew are of general application to all offices, or to more than one office, operated by such licensee, the commissioner shall revoke, suspend, or refuse to renew all of the licenses issued to the licensee or such licenses as such grounds apply to, as the case may be.

#### § 2212. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY; REINSTATEMENT

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

(b) Surrender shall not affect the licensee's administrative, civil, or criminal liability for acts committed prior to surrender. No revocation, suspension, refusal to renew, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(c) The commissioner shall have authority to reinstate revoked, suspended, expired, inactive, or nonrenewed licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked, suspended, expired, inactive, or nonrenewed if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally to issue such license under this chapter, provided, however, that the commissioner shall not issue a new license or reinstate a license to any mortgage loan originator whose license has been revoked unless the revocation order has been vacated.

§ 2213. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

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

§ 2214. REGULATIONS

The commissioner is hereby authorized and empowered to make such general rules, orders, and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this chapter, in addition hereto and not inconsistent herewith.

§ 2215. PENALTIES

(a) The commissioner may:

(1) Impose an administrative penalty of not more than ~~\$1,000.00~~ \$10,000.00 for each violation upon any person who violates or participates in the violation of this chapter, sections 10403 and 10404 of this title or ~~chapters~~ chapter 4, 59, or 61 of Title 9, or any lawful regulation, directive, or order issued thereunder; and

(2) Order any person to make restitution to any person ~~injured as a result of a~~ for any violation of this chapter, sections 10403 and 10404 of this title, or ~~chapters~~ chapter 4, 59, or 61 of Title 9.

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

(c) It shall be a criminal offense, punishable by a fine of not more than ~~\$1,000.00~~ \$100,000.00, or not more than a year in prison, or both, for any person, after receipt of an order directing the licensee to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, to perform such duties or exercise such powers of

any licensee until the penalty has been satisfied, or otherwise satisfactorily resolved between the parties, or the order is vacated by the commissioner or by a court of competent jurisdiction.

~~(e)~~(d)(1) Any contract of loan made in knowing and willful violation of section 2201(a)(1) of this title, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever; provided, however, in the case of loans made in violation of section 2201(a)(1) of this title, where no finding of a knowing and willful violation is made, the lender shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal.

(2) In the case of any person who, after receipt of an order directing such person to cease exercising any duties and powers of a licensee, and assessing an administrative penalty under the authority of this chapter, continues to perform such duties or exercise such powers of any licensee without satisfying the penalty, or otherwise reaching a satisfactory resolution between the parties, or securing a decision vacating the order by the commissioner or by a court of competent jurisdiction, any contract of loan made by such person after receipt of such order shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

~~(d)~~(e) 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 requirements set forth herein.

§ 2216. MORTGAGE LENDING; SPECIFIC REQUIREMENTS;  
EXCEPTIONS

Every licensee engaging in the making of loans secured by a lien against real estate located in this state, whether conducting its affairs as an agent or principal and whether operating from facilities within the state or by mail, telephone or by electronic means, shall comply with the general provisions of this chapter unless exempted herein. A licensee making such loans through a third person, shall only make loans through a person licensed as a mortgage broker and as a mortgage loan originator under this chapter, unless such third person is exempt from such licensing provisions. Any lender who makes such loans through a third person required to be licensed and not so licensed, in addition to being subject to all applicable penalties under Vermont law, shall be responsible for the acts or omissions of the third person as a principal is responsible for the acts and omissions of its agent. Every licensee making loans secured by a lien against real estate shall comply with sections 10403 and

10404, and subchapter 2 of chapter 200 of this title, and shall also be subject to the following specific limitations:

(1) For loans secured by a first lien, the term shall not exceed 480 months, and the licensees may not exceed the interest rate permitted by ~~section~~ subdivision 41a(b)(8) of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. The limitations on permitted charges contained in sections 2231 and 2233 of this title and sections 42, 44, and 46 of Title 9 shall not apply to any loan within the scope of 12 U.S.C. § 1735f-7a. Permitted charges shall be as specified in sections 42, 44, and 46 of Title 9 for any loan secured by a first lien on real estate that is not included within the scope of 12 U.S.C. § 1735f-7a, instead of sections 2231 and 2233 of this title.

(2) For loans secured by a subordinate lien, the term shall not exceed 360 months, and the licensees may not exceed the interest rate permitted by chapter 4 of Title 9. All such lien documents shall include a power of sale pursuant to section 4531a et seq. of Title 12. Permitted charges for loans secured by a subordinate lien shall be as specified in sections 42, 44, and 46 of Title 9, instead of sections 2231 and 2233 of this title.

(3) No licensee shall take a lien upon real estate as security for any loan made under this chapter, except such lien as is created by law upon the recording of a judgment or such lien as secures a loan in principal amount in excess of \$3,000.00 at the time of making.

(4) Interest shall be computed by the actuarial method in accordance with ~~section~~ subsection 41a(d) of Title 9.

(5) Any loan secured by a lien on real estate, except a commercial loan, which does not contain a fixed rate or substantially equal payments for full amortization within the repayment period shall conform to federal regulations on alternative mortgages where applicable by reason of federal law or action of the commissioner.

(6) This section shall not apply to commercial loans.

#### § 2217. MORTGAGE BROKERS

(a) No licensee or other person shall act as a mortgage broker in any transaction in which the licensee or such other person is acting as a mortgage lender.

(b) Each mortgage broker required to be licensed under this chapter shall retain for a minimum of six years after a contract is executed pursuant to section 2219 of this title, the original contract between the mortgage broker and the prospective borrower, a copy of the settlement statement, an account of

fees received in connection with the loan, correspondence, papers or records relating to the loan and such other documents as the commissioner may require.

(c) A mortgage broker and a mortgage loan originator shall only negotiate, place, or assist in placement of Vermont mortgage loans with lenders licensed pursuant to this chapter, or with ~~bank, savings and loan associations, credit unions, or insurance companies~~ depository institutions authorized to do such business in Vermont.

#### § 2218. SEGREGATED ACCOUNTS

(a) All permitted charges paid by loan applicants or borrowers to a lender or a mortgage broker subject to this chapter shall be deposited in one or more accounts maintained at a bank approved by the commissioner, and with respect to such funds the lender or mortgage broker shall act as a fiduciary. Such account or accounts shall be segregated from all other accounts of the lender or broker. No permitted charges shall be used in the conduct of a lender's or a broker's personal affairs, nor in a lender's or a broker's business affairs not specifically related to the applicant or borrower.

(b) Such lender or mortgage broker may withdraw funds from the segregated account for payment directly to third parties for authorized fees.

(c) Such lender or mortgage broker may withdraw funds from the segregated account for commissions to which it is entitled for services actually performed. Services are deemed to have been performed when a loan has closed, the loan applicant has withdrawn the loan application in writing, or such mortgage broker or lender has provided to the loan applicant or borrower written notice that the loan has been denied.

(d) Such lender or mortgage broker may return funds from the segregated account to the borrower if not prohibited by the application or contract.

(e) Such lender or mortgage broker shall maintain complete and accurate account records, including, at a minimum, the source of all deposits, the nature of all disbursements, the date and amount of each transaction and the name of the loan applicant or borrower. All documents pertaining to account activity shall be produced upon request of the commissioner.

#### § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

In advance of taking any fee or collecting any charges, or at the time the prospective borrower submits a signed application, a written agreement in a form approved by the commissioner shall be prepared by the mortgage broker, and shall be signed by both the mortgage broker and the prospective borrower.

The agreement shall set forth the particulars of the service to be performed by the mortgage broker, including specifics as to what shall constitute reasonable efforts on the part of the mortgage broker to perform the agreed upon services, shall state clearly that the mortgage broker shall represent the interests of the prospective borrower rather than those of any lender, and shall state the fee for the services.

§ 2220. DISCLOSURE REQUIRED BY MORTGAGE LENDER

In advance of taking any fee or collecting any charges for a mortgage loan, or at the time the prospective borrower submits a signed application, a written disclosure shall be provided by the lender to the prospective borrower setting forth all provisions relating to interest rates applicable to the loan, and specific disclosure regarding any possibility that the lender may change its role to that of a mortgage broker. This section shall not apply to commercial loans.

§ 2221. OUT-OF-STATE MORTGAGE LOANS

A mortgage loan made outside of Vermont for use outside of Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the borrower and the licensee.

§ 2222. EXAMINATIONS BY THE COMMISSIONER AND INVESTIGATIONS; EXAMINATION FEES

~~(a) For the purpose of discovering violations of this chapter, subchapter 2 of chapter 200 and sections 10403 and 10404 of this title, or chapters 4, 59 or 61 of Title 9, or securing information lawfully required thereunder, the commissioner may at any time, either personally or by a person or persons duly designated by him or her, investigate the loans and business and examine the books, accounts, records and files used therein, of every licensee and of every person whom the commissioner believes to be engaged in the business described in section 2201 of this title, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter.~~

~~(b) For that purpose the commissioner and his or her duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated by him or her shall have authority to issue subpoenas to require the attendance of and to examine under oath all persons whomsoever whose testimony he or she may require relative to such loans or such business.~~

In addition to any authority allowed under this chapter or elsewhere, and for the purpose of examination, or discovering or investigating violations or complaints, of or arising under this chapter, subchapter 2 of chapter 200, and

sections 10403 and 10404 of this title, or chapter 4, 59, or 61 of Title 9, or any rule, order, directive, or regulation lawfully made thereunder, or securing any information required or useful thereunder, and for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation, the commissioner or his or her duly designated representative shall have the authority to:

(1) Conduct investigations and examinations:

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

(A) Criminal, civil, and administrative history information, including nonconviction data;

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

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

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

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

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

(1) Accounting compilations;

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(2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

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

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

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

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

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

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

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

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

(g) The authority of this section shall remain in effect, whether such a

licensee, individual, or person acts or claims to act under any licensing or registration law of this state, acts without such authority, or surrenders such licensee's license.

(h) No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

~~(e)~~(i) The commissioner shall make an examination of the affairs, business, and records of each licensee at least once every three years. The commissioner may, in the case of those licensees who, ~~under section 2233 of this title,~~ do not maintain a Vermont office, accept reports of examinations prepared by another state or federal regulatory agency as substitutes if such reports are available to the commissioner and are determined to be adequate in exercising his or her powers and discharging his or her responsibilities under this chapter.

~~(d)~~(j) Each licensee shall pay to the department all fees, costs, and expenses of any examination, review, and investigation fees as prescribed by section 18 of this title, which fees, costs, and expenses shall be billed when they are incurred. In addition to the powers set forth in section 2210 of this title, the commissioner may maintain an action for the recovery of examination, review and investigation fees, costs, and expenses as prescribed in section 18 of this title in any court of competent jurisdiction.

#### § 2223. RECORDS REQUIRED OF LICENSEE

The licensee shall keep, use in the licensee's business, and make available to the commissioner upon request, such books, accounts, records, and data compilations as will enable the commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve such books, accounts, records, and data compilations in a secure manner for at least seven years after making the final entry on any loan recorded therein. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

#### § 2224. ANNUAL REPORT; MORTGAGE CALL REPORTS

(a) Annually, on or before April 1, each ~~licensee~~ 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

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commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

(b) Annually, within 90 days of the end of its fiscal year, each licensed lender, mortgage broker, and sales finance company shall file financial statements with the commissioner in a form and substance satisfactory to the commissioner, which financial statements must include a balance sheet and income statement.

(c) Each licensed lender, mortgage broker, and mortgage loan originator shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

§ 2225. STATEMENT OF RATES OF CHARGE

Rates of charge shall be stated fully and clearly in such manner as necessary to prevent misunderstanding thereof by prospective borrowers.

§ 2226. DECEPTIVE ADVERTISING

No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any person to desist from any conduct which the commissioner finds to be a violation of the foregoing provisions.

§ 2227. CONDUCT OF UNRELATED BUSINESS

No licensee shall conduct the business of making noncommercial loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his or her finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this chapter or of the rules and regulations lawfully made hereunder.

§ 2228. USE OF OTHER NAMES OR BUSINESS PLACES

No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. This section shall not apply to commercial loans made to a borrower located outside of Vermont for use outside of Vermont.

§ 2229. CONFESSIONS OF JUDGMENT; POWERS OF ATTORNEY;  
CONTENTS OF NOTES

No licensee shall take any confession of judgment. No licensee shall take any power of attorney excepting such as may be incorporated in a form of note approved by the commissioner for use in the financing of insurance premiums. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blank spaces are left to be filled in after execution. Notwithstanding the foregoing provisions of this section, the commissioner may by rule exempt from all or part of this section commercial loans.

§ 2230. RATE OF INTEREST

(a) Every licensee may charge, contract for, and receive thereon interest, calculated according to the actuarial method as set forth in ~~section 41a(d)(2)~~ subsection 41a(d) of Title 9, not exceeding the rates permitted by chapter 4 of Title 9, except that the rate of interest on loans secured by motor vehicles, mobile homes, travel trailers, aircraft, watercraft and farm equipment may not exceed the rate permitted by ~~section~~ subdivision 41a(b)(4) of Title 9.

(b) Interest may be charged, contracted for, and received at the single annual percentage rate that would earn the same interest as the graduated rates when the loan is paid according to its agreed terms and the calculations are made according to the actuarial method. Interest shall not be paid, deducted, received, or added to principal in advance, except that the advance collection of interest for a period not to exceed 30 days shall be permitted upon the origination of a mortgage loan. ~~The~~ Except for loans made pursuant to section 2216 of this title, the maximum interest permitted on loans made under this chapter shall be computed on the basis of the number of days actually elapsed. For the purpose of these computations a year is any period of 365 consecutive days and 366 days during a leap year.

(c) No licensee shall induce or permit any person jointly or severally to become obligated, directly or contingently or both, under more than one contract of loan made under this section at the same time, for the purpose of obtaining a higher rate of interest than would otherwise be permitted by law.

(d) This section shall not apply to commercial loans.

§ 2231. CONTRACTS TO BE REPAYABLE IN MONTHLY  
INSTALLMENTS; MAXIMUM TERM; ADDITIONAL CHARGES  
PROHIBITED; INVALIDITY OF LOAN CONTRACT

(a) Except for loans made pursuant to section 2216 of this title and in compliance with applicable regulations of the commissioner, all loan contracts made under the provisions of this chapter shall require repayment in substantially equal consecutive monthly installments of principal and interest combined.

(b) In addition to the interest and charges herein provided for no further or other charge or amount for any examination, service, brokerage, commission, expense, fee, bonus, or other thing or otherwise shall be directly or indirectly charged, contracted for or received except filing, recording, releasing or termination fees paid or to be paid to a public officer; the premium or identifiable charge for credit life or disability insurance obtained, provided or sold by the licensee subject to the provisions of sections 4101-4115 or sections 3805 and 3806 of this title and any gain or advantage to the licensee from such shall not be deemed in violation of this chapter nor an additional charge in violation of this section or section 2230 of this title. For loans subject to this subsection, if any interest, consideration, or charges in excess of those permitted by this subsection, except as the result of an accidental or bona fide error are charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

(c) This section shall not apply to commercial loans.

(d) The provisions of subsection (b) of this section shall not apply to mortgage loans.

#### § 2232a. REQUIREMENTS REGARDING THE BORROWER

(a) Each licensed lender shall deliver to the borrower at the time any loan is made a statement, showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge.

(b) Each licensed lender shall, in advance of any loan closing, deliver to each prospective borrower, based on the type of loan applied for, a full and accurate schedule of the charges to be made and the method of computing the same.

(c) Each licensed lender or holder shall give to the borrower a plain and complete statement of all payments made on account of any such loan specifying the amount applied to finance charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan. When payment is made, a licensee shall provide the borrower with a statement therefor within 30 days after the payment is received, or shall

provide, on an annual basis, statements setting forth the information required herein. Each licensed lender or holder shall provide a transaction history of the loan to the borrower upon request.

(d) Each licensed lender or holder shall permit payment to be made in advance without prepayment premium or penalty in any amount on any contract of loan at any time, but the licensee or holder may apply such payment first to all finance charges in full at the agreed rate up to the date of such payment.

(e) Each licensed lender or holder shall upon repayment of the loan in full, promptly mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Canceled," and within 30 days release any mortgage, restore any pledge, cancel and return any note, record or file any necessary release or discharge, cancel and return any assignment given to the licensee by the borrower, and refund to the borrower, in accordance with regulations promulgated by the commissioner any unearned portion of the premium for credit life or disability insurance if a premium for such insurance was disbursed on behalf of the borrower at the time the loan was originally made. The provisions of this subsection shall not affect the right of action created by section 464 of Title 27.

(f) This section shall not apply to commercial loans.

§ 2233. EFFECT CHARGES; LOAN SOLICITATION; SPECIALIZED FINANCING

(a) ~~No~~ Other than a mortgage broker fee pursuant to section 2219 of this title, no person who is required to be licensed under this chapter, shall directly or indirectly charge, contract for, or receive any interest, discount, consideration or charge greater than is authorized by section 41a or 46 of Title 9. No such loan for which a greater rate of interest, finance charge, consideration or charges than is authorized by section 41a or 46 of Title 9 has been charged, contracted for, or received shall be enforced in this state, and every person in any way participating therein in this state shall be subject to the provisions of this chapter. However, any loan legally made in any state which then had in effect a regulatory loan law similar in principle to this chapter may be enforced in this state only to the extent of collecting the principal amount owed and interest thereon at a rate not greater than that authorized by section 41a or 46 of Title 9.

(b) A loan solicited ~~and~~ or made by mail, telephone, or electronic means to a Vermont resident shall be subject to the provisions of this chapter notwithstanding where the loan was legally made. No person shall engage in the business of soliciting ~~and~~ or making loans by mail, telephone, or electronic

means to residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59<sub>2</sub> and 61 of Title 9, but shall not be required to have or maintain a place of business in the state.

(c) No person other than a ~~bank, savings and loan association, credit union, depository institution~~, pawnbroker, insurance company, or seller of merchandise or services shall engage in specialized financing, including ~~but not limited to~~ tuition plans or other such financing, but not including insurance premium financing, for residents of this state unless duly licensed. Such licensee shall be subject to the applicable provisions of this title and chapters 4, 59<sub>2</sub> and 61 of Title 9, but shall not be required to maintain a place of business in this state. Such financing may include more than one loan per borrower. A license granted to such lenders shall be explicit in its authority with respect to the types of business permitted.

#### § 2234. ASSIGNMENT OF WAGES

The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, for the purpose of regulation under this chapter, shall be deemed a loan secured by such assignment. The amount by which such assigned compensation exceeds the amount of such consideration actually paid, for the purposes of regulation under this chapter, shall be deemed finance charges or charges upon such loan from the date of such payment to the date such compensation is payable. Such transactions shall be governed by and subject to applicable provisions of this title and chapters 4, 59<sub>2</sub> and 61 of Title 9.

#### § 2235. REQUIREMENTS FOR ASSIGNMENT OF WAGES

No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this chapter, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution. Such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, shall not be valid unless it is in writing, signed in person by the borrower, nor shall it be valid if the borrower is married unless it is signed in person by both husband and wife. However, written assent of a spouse shall not be required if the borrower has title as a result of a court order.

#### § 2236a. EXTENT OF ASSIGNMENT; SERVICE UPON EMPLOYER

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services given as security for a

loan made by any licensee under this chapter, a sum not to exceed ten percent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or ~~his~~ the licensee's agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

§ 2237. LICENSES MODIFIED, AMENDED, OR REPEALED BY  
AMENDMENT TO CHAPTER

This chapter or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

§ 2238. OUT-OF-STATE COMMERCIAL LOANS

A commercial loan made to a borrower located outside of Vermont for use outside of Vermont shall be deemed to be made outside the state of Vermont and shall not be subject to this chapter except upon written agreement of the licensee and borrower.

§ 2239. COMMERCIAL LEASES

This chapter shall not apply to commercial leases as defined in chapters 59 and 61 of Title 9.

§ 2240. NATIONAL LICENSING SYSTEM

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

(1) Issue rules or orders, and may establish procedures, to further participation in the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

(2) Facilitate and participate in the establishment and implementation of the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry;

~~(3) Contract with the administrator of the national licensing system to collect, process, and maintain information for the department~~ Establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry;

(4) Authorize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to collect and maintain records and to collect and process any fees associated with licensure on behalf of the commissioner;

(5) Require persons engaged in activities that require a license under this chapter to utilize the ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry for license applications, renewals, amendments, surrenders, and such other activities as the commissioner may require, and to pay through the national licensing system all fees provided for under this chapter;

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

(7) In order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 2202(c) of this chapter the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(b) The commissioner may require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of a ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry to process the fingerprints and to submit the fingerprints to the Federal Bureau of Investigation, 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 ~~national licensing system~~ Nationwide Mortgage Licensing System and Registry.

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

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

#### § 2241. PROHIBITED ACTS AND PRACTICES

It is a violation of this chapter for a person or individual to:

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

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

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(7) Fail to make disclosures as required by this chapter and any other applicable state or federal law, including regulations thereunder;

(8) Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any orders or directives from the commissioner, or fail to comply with any other state or federal law, including the rules thereunder, applicable to any business authorized or conducted under this chapter;

(9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing

terms or conditions for a mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency;

(11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to account truthfully for monies belonging to a party to a mortgage loan transaction.

#### § 2242. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY

(a) Subject to state privacy and confidentiality law, the commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 2243 of this title.

(b) A licensee may challenge information the commissioner enters into the Nationwide Mortgage Licensing System and Registry in accordance with the administrative procedure act (chapter 25 of Title 3) and any rules adopted by the department on hearing procedures.

#### § 2243. CONFIDENTIALITY

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law (including the rules of any federal

or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies.

(3) Information or material that is subject to privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(A) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(4) This section shall not apply with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

#### § 2244. UNIQUE IDENTIFIER SHOWN

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.

Sec. 2. 12 V.S.A. § 4532a is added to read:

#### § 4532a. NOTICE TO COMMISSIONER OF BANKING, INSURANCE, SECURITIES, AND HEALTH CARE ADMINISTRATION

(a) At the same time the mortgage holder files an action to foreclose owner

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occupied, one-to-four-family residential property, the mortgage holder shall file a notice of foreclosure with the commissioner of the department of banking, insurance, securities, and health care administration. The commissioner may require that the notice of foreclosure be sent in an electronic format. The notice of foreclosure shall include:

- (1) the name and current mailing address of the mortgagor;
- (2) the address of the property being foreclosed;
- (3) the name of the current mortgage holder, along with the address and telephone number of the person or entity responsible for workout negotiations concerning the mortgage.
- (4) the name of the original lender, if different;
- (5) the name, address, and telephone number of the mortgage servicer, if applicable; and
- (6) any other information the commissioner may require.

(b) The court clerk shall not accept a foreclosure complaint for filing without a certification by the plaintiff that the notice of foreclosure has been sent to the commissioner of banking, insurance, securities, and health care administration in accordance with subsection (a) of this section.

### Sec. 3. TRANSITIONAL PROVISIONS

(a) Any mortgage broker or licensed lender holding a Vermont license as of the effective date of this act shall have until December 1, 2009 to comply with the bond and liquid asset requirements of 8 V.S.A. § 2203.

(b) All individuals who, on or before December 31, 2009, are employed by a mortgage broker holding a valid Vermont license and who are authorized to act as a mortgage broker under such license, or are employed by a lender holding a valid Vermont license and are acting as a lender or loan officer under such license, shall complete the prelicensing education and testing requirements and shall obtain a mortgage loan originator license required by this act no later than July 1, 2010. All other individuals must obtain a mortgage loan originator license as required by this act prior to acting as a mortgage loan originator in this state. The commissioner may extend the date for compliance with any provision of this act provided the extension is permitted or approved by the federal Department of Housing and Urban Development.

### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2009, except that Sec. 2 (notice of foreclosure) shall take effect 30 days after passage of this act.

**Rep. Condon of Colchester**, for the committee on Ways and Means, recommended the bill ought to pass when amended as recommended by the committee on Commerce and Economic Development and when further amended as follows:

First: In Sec. 1, 8 V.S.A. § 2201, by striking subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) 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.

Second: In Sec. 1, 8 V.S.A. § 2202, by striking subsection (b) in its entirety and inserting in lieu thereof a new (b) to read as follows:

~~(b)(4)~~ At the time of making application, the applicant shall pay to the commissioner a fee for investigating the application and a license fee for a period terminating on the last day of the current calendar year. The following fees are imposed on applicants:

~~(A)(1) For an applicant for a lender's license, \$1,000.00 as a license fee, and \$1,000.00 as an application and investigation fee for the initial license. An additional license fee of \$100.00 shall be required of any applicant for a lender's license who also intends to engage in mortgage brokerage. An additional license fee of \$100.00 shall be required for any applicant for a lender's license who also intends to engage in sales finance.~~

~~(B) For an applicant for a mortgage broker's license, \$250.00 as a license fee, and \$250.00 as an application and investigation fee.~~

~~(C) For an applicant for a sales finance company's license, \$300.00 as a license fee, and \$250.00~~ For each additional lender license from the same applicant, \$500.00 as a license fee and \$500.00 as an application and investigation fee.

(2) For an applicant for a mortgage broker's license, \$350.00 other than a mortgage broker that meets each of the requirements of subdivisions

(b)(3)(A)–(B), \$500.00 as a license fee, and ~~\$350.00~~ \$500.00 as an application and investigation fee.

(3) For an applicant for a mortgage broker’s license that meets each of the following requirements, \$250.00 as a license fee, and \$250.00 as an application and investigation fee:

(A) The applicant is an individual sole proprietor.

(B) No person, other than the applicant, shall be authorized to act as a mortgage broker under the applicant’s license.

(4) For an applicant for a mortgage loan originator license, \$50.00 as a license fee, and \$50.00 as an application and investigation fee.

(5) For an applicant for a sales finance company’s license, \$350.00 as a license fee, and \$350.00 as an application and investigation fee.

~~(4) The license fee for an application submitted after September 30 of any year shall be prorated.~~

Third: In Sec. 1, 8 V.S.A. § 2209, by striking (a) in its entirety and inserting in lieu thereof the following:

(a) On or before December 1 of each year, every licensee shall renew its license for the next succeeding calendar year and shall pay to the commissioner a renewal of license fee for the next succeeding calendar year, and shall at. At a minimum, the licensee shall continue to meet the standards for license issuance under section 2204 of this title. At the same time file, the licensee shall maintain with the commissioner a bond in the same amount and of the same character as required by section 2203 of this title or as required by the commissioner under section 2207 of this title. The license renewal fee shall be:

(1) For the renewal of lender’s license, \$1,200.00. ~~For a person with ten or more licensed locations, the renewal fee under this subdivision shall be no more than \$12,000.00;~~

(2) For the renewal of a mortgage broker’s license, ~~\$350.00;~~ other than a mortgage broker that meets each of the requirements of subdivision (3)(A)–(C), of this subsection, \$500.00.

(3) For the renewal of a mortgage broker’s license that meets each of the following requirements, \$250.00:

(A) The mortgage broker license is held by an individual sole proprietor.

(B) No person, other than the individual sole proprietor, is authorized to act as a mortgage broker under this license.

(C) The mortgage broker originated five or fewer loans within the last calendar year.

(4) For the renewal of a sales finance company's license, \$350.00.

(5) For the renewal of a mortgage loan originator license, \$100.00.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Commerce and Economic Development and Ways and Means agreed to and third reading ordered.

### **Bill Amended; Third Reading Ordered**

#### **H. 313**

**Rep. Kitzmiller of Montpelier**, for the committee on Commerce and Economic Development, to which had been referred House bill, entitled

An act relating to near-term and long-term economic development

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

#### Sec. 1. FINDINGS

The general assembly finds that:

(1) During the 2007 legislative session, the legislature, in No. 182 of the Acts of the 2007 Adj. Sess. (2008), instructed the commission on the future of economic development to complete a public engagement process, develop specific goals and, with input and validation by the economists of the executive and legislative branches, benchmarks.

(2) The commission sought expert testimony, reviewed numerous studies, and conducted a rigorous public engagement process to identify the elements needed for successful economic development in Vermont. The commission distilled four principal goals and identified a benchmarking process for future economic development in Vermont that are the most critical to the state's future prosperity and the welfare of its citizens.

(3) The four principal goals emerged from two and one-half years of the commission's study of Vermont's economy and the public policies that advance and impede economic development. The goals are interdependent and interconnected, and they must all be addressed if Vermont is to reach its economic development promise.

(4) The implementation of the goals is the joint task of the legislature,

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the administration, our local, regional, and state agencies, our nongovernmental organizations, and our citizens. State economists have concluded that the goals cannot be adequately evaluated with a small set of simplistic benchmarks, but rather, must be evaluated through a wide range of indicators using statistical benchmarks accompanied by a narrative that is a contextual interpretation of the data by professionals. Ultimately, consistent monitoring of credible benchmarks will provide information on both the efficacy and cost-effectiveness of our public policies and strategies so that necessary adjustments can be made to continually improve Vermont's economic prosperity.

(5) In the course of its work, the commission on the future of economic development reviewed many reports on and evaluations of economic development polices and heard many hours of testimony from a broad spectrum of Vermonters who expressed concerns about the economic challenges facing Vermonters, identified what they perceived as impediments to economic development in Vermont, spoke about Vermont's assets and strengths, and offered many good suggestions for public policies and strategies for growing our economy. The commission traveled to 12 regions of the state to hear from local business leaders, community organizations, and the public, and spoke with representatives of the public and private sectors, traditional and emerging business sectors, educators, and financial experts.

(6) The commission heard that businesses are hindered by the lack of a sufficient number of technically skilled workers, and that some educational institutions are reluctant to see themselves as engines of economic development. Existing technical training, apprenticeship opportunities, and workforce development efforts are valued, but insufficient to meet the needs of Vermont businesses in preparing workers for the workplace.

(7) Vermonters are concerned that inefficiencies in our state and local regulatory and permitting programs, including a lack of coordination between state regulatory agencies and redundancies in state and local regulatory programs that have hampered or dissuaded economic development and investment in Vermont. Navigating the permitting process can be unnecessarily difficult, time consuming, and expensive, and many potential entrepreneurs and investors simply give up.

(8) Vermonters are also very concerned over the deterioration of our physical infrastructure, in particular state transportation systems, and the reliability and cost of energy.

(9) The commission also heard that Vermonters are concerned about the current and future health of our economy and understand that our

government's policies affect our economy in both positive and negative ways. They lack confidence that Vermont's government has a clear vision of the future, and they worry that our government does not appear to have a coherent plan to overcome the challenges we face or to recognize and capitalize on our unique strengths and opportunities. Recent deterioration of state, national, and global economic conditions has given our work a greater sense of urgency.

(10) Vermont is a small rural state, smaller than other states in almost every aspect. The commission found that Vermont's scale can become an asset in this fast-paced global economy that rewards flexibility and agility. However, while our government agencies are small, they are not nimble, and our policies often impede economic opportunity at the expense of Vermonters' quality of life. The commission determined that significant restructuring of agencies and policies could increase efficiency and effectiveness.

(11) Despite its small scale and accessible government, Vermont lacks a shared statewide vision of its economic future. Economic vitality in Vermont is hampered by the lack of coordination among and between state agencies, between regional economic development corporations and regional planning commissions, and between these regional entities and state agencies. As a result of these disconnects, Vermont lacks a single, holistic, integrated state plan for economic development. Additionally, coordinated regional input is imperative for an effective, nimble, and integrated statewide economic development plan. Strong regional development organizations and regional planning commissions are critical partners and resources. Our citizens and business and civic leaders consistently recognize Vermont's small scale and easy access to our government as a potential strength, but observe that we have often failed to take advantage of the opportunities that our smallness offers us.

(12) Vermonters are struggling to secure basic needs such as health care, child care, affordable housing, and quality education. These basic needs are prerequisites to, rather than the product of, economic development. Employers recognize that the health and well-being of our workforce are critical to business success. Worker recruitment, retention, and productivity depend on worker quality of life as measured by wages, health care, child care, housing, connected communities, and a healthy environment.

(13) In addition to providing for these basic needs, an essential role of government is investing in our digital, physical, and human infrastructure as the foundation for all successful economic development. Funding, building, and maintaining our state's infrastructure is one of the highest priorities for the investment of state resources.

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(14) The lack of adequate and reliable broadband and cellular infrastructure and access across the state not only impedes the growth of existing and new business in Vermont, but may induce existing businesses to relocate to other states that have better access to broadband and cellular service. Digital infrastructure benefits include government cost savings, increased productivity, and improved quality of life for Vermonters.

(15) The availability of mobile telecommunications and broadband services is essential for promoting the economic development of the state, the education of its young people and life-long learning, the delivery of cost-effective health care, the public safety, and the ability of citizens to participate fully in society and civic life.

(16) Small broadband enterprises now offering broadband service in Vermont have limited access to financial capital necessary for expansion of broadband service to unserved areas of the state.

(17) Telecommunications and broadband infrastructure in all areas of the state should continue to be upgraded to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies and services that are needed by persons, businesses, and institutions in the state.

(18) The state should continue to ensure the most efficient use of both public and private resources through state policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

(19) The Vermont telecommunications authority has made significant progress toward, and should continue going forward as the primary vehicle for, achieving the goal of realizing universal availability of adequate mobile telecommunications and broadband services, with a focus on unserved areas in the state.

(20) Vermonters' ingenuity, work ethic, and entrepreneurship have long been viewed as competitive assets. Our rapidly evolving economy requires a collaborative partnership of business people, educators, representatives from nongovernmental organizations, and government leaders to provide a skilled workforce to traditional and emerging Vermont businesses, and to enhance career opportunities to all Vermonters.

(21) The strength of our state economy is dependent upon a diversity of business sectors. Despite difficult economic conditions, the state should exercise leadership and creativity in continuing its support of traditional economic drivers such as tourism, agriculture, forestry, construction, and manufacturing, among others.

(22) Tourism has a stabilizing effect on Vermont's economy by insulating the state's residents from the inevitable ups and downs of national and global business cycles, while providing individuals and their families with a diverse set of earning possibilities and challenging occupations that fit into their lifestyle and family situation. Vermont should continue to support this critical component of its economy.

(23) State government should lead by example in supporting local- and state-based economic strategies that are not protectionist, but rather, build on the proud Vermont tradition of self-reliance. Initiatives such as Local First, the department of agriculture's Buy Local program, and state and local government procurement policies for food, goods, and services that give priority to Vermont businesses when possible, each enhance the Vermont economy through the demonstrated multiplier effects of buying local.

(24) Vermont is home to a vibrant manufacturing sector, which consists of many businesses producing specialized and innovative products. Nationwide, manufacturing accounts for the majority of product and service innovation, and businesses whose competitive advantage flows from innovative and unique products and services, rather than low-cost or high volume, enjoy significantly increased profitability and generate more job opportunities and tax revenue. State government's role should be to support this dynamic manufacturing base, and to provide the necessary training, education, and resources to cultivate a culture of innovation.

(25) In addition to traditional economic drivers, there are new, unique, and innovative Vermont businesses that are successfully competing in the global marketplace that need to be nurtured. There is broad consensus that Vermont can further leverage its brand, including its green reputation, into economic gain. Our entrepreneurial people, healthy environment, and connected communities – our quality of life – are genuine economic assets.

(26) Vermont's reputation for environmental stewardship can be turned to our advantage. Vermont businesses, government, and environmental organizations must be partners and leaders in supporting and creating a green economic sector and the use of green business practices throughout our diverse economy.

(27) Microenterprise also plays an important role in our state's economy and within the working lives of low to moderate income families. Microenterprises develop new industries, increase community assets, are important providers of goods and services in local communities, find unique solutions to local problems, and keep profits circulating locally.

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Microenterprise provides economic opportunity for low income households and is a proven wealth creation strategy for struggling communities.

(28) Microenterprises often require access to training, services, financing, and support that are different from what small businesses require in order to grow and prosper. Microenterprise financing options and business training and technical assistance are equally important and work together to support microenterprise development.

(29) Research by the Center for Rural Studies at the University of Vermont shows that microenterprise ownership, whether full time or part time, increases income for low income Vermonters, helps people move out of poverty and off public assistance, and helps low income households build assets.

(30) Individual development accounts are a proven strategy for helping low income families move out of poverty and secure an economic foothold through home purchase, business development, and education and training. The Vermont IDA program enables low income Vermonters, over 60 percent of whom have been or are currently TANF recipients, to save a part of their earned income for a first-time home, a small business, or postsecondary education or training. The Vermont IDA program helps participants increase their commitment to their communities and offers stability to their families.

(31) The legislature, administration, and myriad economic and community partners must now work together with unerring discipline to focus policies, regulations, programs, and incentives on the critical interconnection between Vermont's assets, our collective values, our capabilities, and the opportunities which will increase state revenues and the prosperity of all Vermonters.

## Sec. 2. PURPOSE; POLICY STATEMENTS FOR FEDERAL STIMULUS COLLABORATION AND FUTURE UTILIZATION OF ECONOMIC DEVELOPMENT RESOURCES

(a) The purpose of this act is to promote the economic development of the state and the prosperity of its businesses and citizens by creating a framework for near-term and long-term collaboration among and within industry sectors and government in order to achieve the four principal goals established by the commission on the future of economic development.

(b) In the near term, this act seeks to promote the most coordinated and efficient means to capitalize on federal stimulus funds. The American Reinvestment and Recovery Act of 2009 ("ARRA") provides economic development resources that are available to the state, its subdivisions, and the private sector. In order to realize the full potential of these funds, and in order

to most effectively increase the opportunities for Vermonters to benefit from the ARRA, the Director of Vermont's Office of Economic Stimulus and Recovery ("VOESR") shall coordinate efforts to obtain funds under the ARRA and shall oversee the use of those funds.

(c) Recipients of ARRA formula fund allocations and applicants for ARRA competitive grants shall collaborate to present unified proposals for funding. The VOESR shall provide support to applicants and recipients of ARRA funds to develop unified proposals, and priority shall be given to those programs that achieve multiple economic development goals simultaneously and demonstrate broad geographic benefits. Where applicable, potential beneficiaries shall use best efforts to structure programs so as to maximize eligibility for ARRA funds, and the VOESR shall give priority to those programs that are structured to maximize ARRA eligibility.

(d) The ARRA offers competitive grants to stimulate economic development in the areas of agriculture and rural development, broadband and telecommunications, energy efficiency and renewable energy, employment and training, educational technical assistance, redevelopment of abandoned and foreclosed homes, homelessness prevention and housing, and energy-saving and green retrofit investments in elderly, low income, and disability housing. In order to help Vermonters secure competitive grant funding, the VOESR, in coordination with the appropriate agencies of the state, shall be responsible for identifying competitive grant programs relating to the department's or agency's jurisdiction. Each agency shall provide technical and logistical support to the VOESR as necessary, and shall connect grant applicants with grant-writing and additional resources and services available from both the VOESR and related public and private resources as appropriate.

(e) In the long term, this act seeks to build a foundation for economic development through collaboration and cooperation among Vermonters for their mutual gain. It is the intent of the general assembly to channel these collaborative efforts for economic development through the principal goals and benchmarks for economic development identified by the commission on the future of economic development, utilizing both new and existing resources from the state and federal levels to increase prosperity for all Vermonters.

Sec. 3. 10 V.S.A. chapter 1 is amended to read:

CHAPTER 1. VERMONT DEVELOPMENT BOARD THE FUTURE OF  
ECONOMIC DEVELOPMENT

\* \* \*

§ 3. ECONOMIC DEVELOPMENT; LONG-TERM GOALS; REVIEW AND ASSESSMENT

(a) For purposes of the Vermont Statutes Annotated and state economic development programs and assistance, “economic development” means the process of generating economic wealth and vitality, security, and opportunity for all Vermonters.

(b) There are established the following four principal, interrelated goals for future economic development in Vermont:

(1) Vermont’s businesses, educators, nongovernmental organizations, and government form a collaborative partnership that results in a highly skilled multigenerational workforce to support and enhance business vitality and individual prosperity.

(2) Vermont invests in its digital, physical, and human infrastructure as the foundation for all economic development.

(3) Vermont state government takes advantage of its small scale to create nimble, efficient, and effective policies and regulations that support business growth and the economic prosperity of all Vermonters.

(4) Vermont leverages its brand and scale to encourage a diverse economy that reflects and capitalizes on our rural character, entrepreneurial people, and reputation for environmental quality.

(c)(1) The four principal goals shall be used to guide the design and implementation of each economic development program, policy, or initiative that is sponsored or financially supported by the state, its subdivisions, agencies, authorities, or private partners.

(2) Each legislative or executive act that creates or modifies an economic development program, policy, initiative, or grant of assistance shall promote the principal economic development goals. The enacting authority shall state clear and measurable goals for the program, and shall also demonstrate how the program will promote the four principal goals. The enacting authority shall collaborate with other agencies or entities as necessary to ensure the economic development program, policy, initiative, or grant of assistance promotes the four principal goals.

(d) The department of economic development, department of housing and community affairs, department of tourism and marketing, and the administrative division within the agency of commerce and community development; the agency of agriculture, food and markets; the office of economic opportunity within the department for children and families; the department of finance and management and the department of information and

innovation within the agency of administration; the department of labor; the department of public service; the department of taxes; the Vermont economic development agency; the Vermont economic progress council shall:

(1) By January 15, 2010, identify its own goals, benchmarks, and priorities for promoting economic development that are consistent with and serve to promote the four principal goals.

(2) By January 15 of each year, report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic development, housing and general affairs, on the status of the agency or department's progress in setting and achieving its goals, benchmarks, and priorities and on how the programs, policies, and initiatives undertaken in the previous year have promoted the principal goals. The format for each agency or department report shall be uniform and shall be substantially the same as the model graph presented in the next generation goals and measures report.

(e)(1) The commission on the future of economic development shall work with the economists of the executive and legislative branches and the joint fiscal office to adopt benchmarks for the four principal goals.

(2) Beginning no later than January 15, 2010, and thereafter at least biannually until January 15, 2012, the commission on the future of economic development shall review the principal goals and any benchmarks adopted and shall assess the effectiveness of the goals and benchmarks in promoting economic development.

(3) The commission shall also review and assess the adequacy and success of the specific goals and benchmarks adopted by the agencies and departments required under subsection (d) of this section.

(4) The commission shall annually report to the house committee on commerce and economic development, the senate committee on finance, and the senate committee on economic development, housing and general affairs, concerning its review of the goals, benchmarks, and agency progress pursuant to this subsection.

(5) On or before January 15, 2012, the commission shall recommend to the senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and economic development, the house committee on ways and means, and the governor on whether it would promote the best interests of Vermont for the commission to continue biannual review of the goals and benchmarks, or if a successor to that responsibility should be designated. Notwithstanding any

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recommendation, the commission shall continue to perform the biannual review unless and until a successor is designated by legislation approved by the legislature and the governor.

\* \* \* Workforce Development \* \* \*

Sec. 4. FINDINGS AND ARRA WORKFORCE DEVELOPMENT PRIORITIES

(a) The general assembly recognizes numerous hurdles that inhibit workforce opportunities for working families in need of adequate child care, for low income persons, for the disabled, and for the elderly. The department of labor, and other agencies where applicable, shall use ARRA funds allocated to workforce development, including funds for childcare services, to expand employment opportunities to the unemployed, to dislocated workers, to working families, and to low income, disabled, and elderly Vermonters.

(b) The general assembly recognizes the opportunities available to the next generation of Vermonters to secure well-paying and secure jobs in emerging sectors such as energy efficiency and health care, including health care information technology. The department of education, the department of labor, and other agencies where applicable, shall use ARRA funds allocated to education and workforce development to promote education and job opportunities in these emerging sectors.

(c) Current economic conditions may present an opportunity for unemployed or dislocated workers to innovate and develop new businesses or products. Where appropriate, the departments of labor and education should use ARRA funds for training and education to aid unemployed or dislocated workers in pursuing product innovations and new business pursuits.

(d) Prior to expending ARRA funds for workforce development or for expenditures that will require additional workforce capacity, the government authority seeking funding shall certify that the workforce capacity currently exists, or alternatively, how much capacity will be necessary to implement a program or project. To the extent allowable under the ARRA, the relevant agency shall prioritize expenditures first for training that is necessary to maintain current employment, second for hiring or training unemployed and dislocated workers, and third for promoting new hiring. Priority for workforce training funds shall be given to programs or training that will result in increased worker remuneration or job promotion.

(e) When pursuing competitive grant funds for workforce development under Title VIII of the ARRA, the VOESR shall coordinate with appropriate government agencies, nonprofit organizations, private businesses, and

individuals to secure the maximum amount of resources available to promote workforce development and opportunity for Vermonters.

Sec. 5. Sec. 6 of No. 46 of the Acts of 2007 is amended to read:

Sec. 6. WORKFORCE DEVELOPMENT LEADER; ~~LEADERSHIP COMMITTEE; CREATED~~

(a) The commissioner of labor shall be the leader of workforce development strategy and accountability. The commissioner of labor shall consult with ~~and chair a subcommittee of the workforce development council consisting of the secretary of human services, the commissioner of economic development, the commissioner of education, four business members appointed by the governor, and a higher education member appointed by the governor. Membership on the subcommittee shall be coincident with the members' terms on the workforce development council~~ the workforce development council executive committee in developing the strategy, goals, and accountability measures. The workforce development council shall provide administrative support. The ~~subcommittee executive committee~~ shall assist the leader. The duties of the leader include all the following:

(1) developing a limited number of overarching goals and challenging measurable criteria for the workforce development system that supports the creation of good jobs to build and retain a strong, appropriate, and sustainable economic environment in Vermont;

(2) reviewing reports submitted by each entity that receives funding under Act 46 of the Acts of 2007. The reports shall be submitted on a schedule determined by the executive committee and shall include all the following information:

\* \* \*

(4) issuing an annual report to the governor and the general assembly on or before December 1, which shall include a systematic evaluation of the accomplishments of the system and the participating agencies and institutions and all the following:

(A) a compilation of the systemwide accomplishments made toward achieving the overarching goals, specific notable accomplishments, innovations, collaborations, grants received, or new funding sources developed by participating agencies, institutions, and other education and training organizations;

(B) ~~an evaluation~~ identification of each provider's contributions toward achieving the overarching goals;

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(b) Entities receiving grants through the workforce education and training fund (WETF) and the Vermont training program (VTP) shall provide the Social Security number of each individual who has successfully completed a training program funded through the WETF and the VTP within 30 days. On or before July 1 of each year, the department of labor shall process the information received within the most recent 12 months and prepare the report required in subdivision (a)(4) of this section. The report shall include a table that sets forth quarterly wage information received pursuant to 21 V.S.A. § 1314a at least 18 months following the date on which the individuals completed the program of study. The table shall include the number of individuals completing the program, the number of those individuals who are employed in Vermont, and the median quarterly income of those individuals.

(c) Other entities, including public and private institutions of higher education, postsecondary and secondary programs, and other training providers who wish to participate in the process under subsection (b) of this section may do so by making a request in writing to the commissioner of labor who shall make a decision regarding inclusion of such programs and the process for the collection of the necessary data.

(d) Confidentiality. Notwithstanding any other provision of law, the department of labor shall collect the Social Security numbers of students for the purposes of this section. Access to the Social Security numbers provided to the department of labor shall be limited to those department individuals creating the table required in subsection (b) of this section and shall be confidential. The departments shall prepare the table in a way that ensures the confidentiality of all trainee and employer information. A department employee who intentionally communicates or otherwise makes available to the general public a Social Security number collected pursuant to this section or who otherwise disseminates the number for purposes other than those specified in this section shall be subject to the penalties of the Social Security Number Protection Act, subchapter 3 of chapter 62 of Title 9.

Sec. 6. Sec. 7(a)(3) of No. 46 of the Acts of 2007 (career and alternative workforce education) is amended to read:

(3) Career And Alternative Workforce Education. The amount of \$900,000 is appropriated to the department of labor. Of this appropriation, \$450,000 is from the fiscal year 2007 monies transferred to the next generation initiative fund, and \$450,000 is from the fiscal year 2008 monies transferred to the next generation initiative fund. This appropriation shall be to support

out-of-school youth, youth at risk, and youth at risk of remaining unemployed with outcomes that lead to employment or continued education ~~as follows:~~

~~(A) Forty five percent (45%).~~ At least 25 percent of this appropriation shall be for grants to regional technical centers, comprehensive high schools, and other programs for career exploration programs for students entering grades 7 through 12-, and at least 25 percent

~~(B) Fifty five percent (55%)~~ shall be for grants to regional technical centers, comprehensive high schools, the community high school of Vermont, and non-profit organizations, designated by the workforce development council, for alternative and intensive vocational/academic programs for secondary students in order to earn necessary credits toward graduation.

#### Sec. 7. REPEAL

The following are repealed.

- (1) Sec. 7(d) of No. 46 of the Acts of 2007 (accountability);
- (2) 10 V.S.A. § 543(g) (accountability); and
- (3) Sec. 5.801.1 of No. 192 of the Acts of the 2007 Adj. Sess. (2008).

\* \* \* Energy Efficiency \* \* \*

#### Sec. 8. ENERGY EFFICIENCY

In order to deliver thousands of additional building energy efficiency improvements and create green jobs, Vermont will need to expand the available workforce trained and ready to make these building improvements. To ensure the availability and adequate training of the workforce necessary to provide comprehensive energy efficiency services to Vermont homes, businesses, and institutions, and to ensure that the funding provided by the ARRA, as well as the longer-term energy needs of the state are met, the commissioner of the department of labor and the state's energy efficiency utility shall convene the Green Workforce Collaborative, bringing parties interested and involved in high-quality green workforce development to identify appropriate labor and resources needs that would meet the increased opportunities generated by the ARRA and, in the long term, to enhance the economic and environmental vitality of the state. The convening parties shall report to the house committee on commerce and economic development, and any other appropriate committees of the general assembly, with an interim status and needs assessment by April 15, 2009, and then again by no later than January 30, 2010, to evaluate the long-term needs of the green workforce strategy for the state of Vermont.

\* \* \* Broadband and Telecommunications \* \* \*

Sec. 9. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR MULTIPLE COMMUNICATIONS FACILITIES

(a) Notwithstanding any other provision of law, if the applicant ~~in a single application~~ seeks approval for the construction or installation ~~within three years of three or more~~ telecommunications facilities ~~as part of an interconnected network~~ which are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

(b) For the purposes of this section:

(1) “Telecommunications facility” means ~~any a communications facility~~ that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure extending more than 50 feet above the ground that is proposed for construction or installation which is primarily for communications purposes and which supports facilities that transmit and receive communications signals for commercial, industrial, municipal, county, or state purposes, and any ancillary improvements which are proposed for construction or installation and which are primarily intended to serve the communications facilities or support structure.

(2) ~~Telecommunications facilities are “part of an interconnected network” if those facilities would allow one or more communications services to be provided throughout a contiguous area of coverage created by means of the proposed facilities or by means of the proposed facilities in combination with other facilities already in existence~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to a preexisting structure.

(c) Before the public service board issues a certificate of public good under this section, it shall find that, ~~in the aggregate:~~

(1) the proposed facilities will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the

relevant criteria specified in subsection 1424a(d) and subdivisions 6086(a)(1) through (8) and (9)(K) of Title 10; and

(2) unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal and regional planning commissions regarding the municipal and regional plans, respectively.

(d) When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) No less than 45 days prior to filing a petition for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the commissioner of the department of public service and its director for public advocacy; and the landowners of record of property adjoining the project sites, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(f) Unless the public service board identifies that an application raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If the board rules that an application raises a substantial issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 180 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(g) Nothing in this section shall be construed to prohibit an applicant from executing a letter of intent or entering into a contract before the issuance of a

certificate of public good under this section, provided that the obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) An applicant using the procedures provided in this section shall not be required to obtain a ~~local zoning~~ permit or a permit amendment under the provisions of Title 24, including chapters 83 and 117, or chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit amendment under the provisions of Title 24 (including chapters 83 and 117) or chapter 151 of Title 10 for the construction of a telecommunications facility may not apply for approval from the board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) ~~Effective July 1, 2010, no new applications for certificates of public good under this section may be considered by the board. [Repealed.]~~

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the board finds that such facilities will be of limited size and scope, and the petition does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the petition.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition, and provide notice and a copy of the petition, proposed certificate of public good, and proposed findings of fact to the commissioner of the department of public service and its director for public advocacy, the secretary of the agency of natural resources, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. The applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites, unless the board determines that good cause exists to waive or modify the notice

requirement with respect to such landowners and any other person which the board has directed by rule or order to receive such notices. Such notice shall request comment to the board within 21 days of the notice on the question of whether the petition raises a substantial issue with respect to the substantive criteria of this section.

(B) If a party makes a request under the procedures authorized by this subsection and if the board does not find that the petition raises a substantial issue, the board shall issue a final determination on an application filed pursuant to this section within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

(C) If the board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and to have been made 45 days after receipt by the board for purposes of subsections (e) and (f) of this section.

(k) The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate, and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that a petition raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

\* \* \* Motion Picture Industry; Motion Picture Credit\* \* \*

#### Sec. 10. SOLICITATION OF MOTION PICTURE INDUSTRY

By July 1, 2009, the agency of commerce and community development shall develop a strategy for marketing Vermont as a potential permanent site for businesses associated with the motion picture industry. The agency shall present its strategy and potential costs and benefits to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

Sec. 11. 32 V.S.A. chapter 151, subchapter 11K is added to read:

#### Subchapter 11K. Other Tax Credits

§ 5930gg. MOTION PICTURE INDUSTRY TAX CREDIT

(a) As used in this section:

(1) “Commission” means the Vermont film commission.

(2) “Director” means the director of the Vermont film commission.

(3) “Eligible expense” means preproduction, production, and postproduction expenditures directly incurred in Vermont in the taxable year by an eligible production company for the production of a qualified motion picture. This term includes wages and salaries paid to individuals employed in Vermont in the production of the motion picture, but does not include wages or salaries in excess of \$1,000,000.00 for any one individual for any one motion picture; and includes expenditures for the following activities: set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up, and accessories, film processing, transfer, mixing, special and visual effects, music, screenplay purchase, location fees, purchase or rental of facilities and equipment, or any other production expense incurred in Vermont that may be determined by the commission to be an eligible expense. This term does not include expenses incurred for marketing or advertising a motion picture or any amounts paid to persons as a result of their participation in profits from the exploitation of the production.

(4) “Eligible production company” means a company, including its subsidiaries, engaged in the business of producing qualified motion pictures; but shall not include any company which is in default, or which is affiliated with, or owned or controlled, in whole or in part, by any person in default, on taxes owed to the state or on a loan made or guaranteed by the state.

(5) “Principal photography” means the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

(6) “Qualified motion picture” means a feature-length film, video, digital media project, video game, television series of 22 or more episodes, pilot, video on demand, or commercial made in whole or in part in Vermont, for commercial distribution, theatrical or television viewing, or mobile or wireless platforms. “Qualified motion picture” does not mean a television production featuring news, current events, weather, financial market reports, a sporting event, an award show, a production solely for fundraising, a long-form production primarily intended to market a product or service, or a production containing obscene material.

(7) “Secretary” means the secretary of the agency of commerce and community development.

(8) “State-certified production” means a qualified motion picture certified by the Vermont film commission, pursuant to rules adopted by the commission, and produced by an eligible production company that has signed a viable distribution plan with either a major theatrical exhibitor, a television network, or a cable television program.

(b)(1) Qualified motion picture payroll credit. A taxpayer engaged in the making of a qualified motion picture shall be allowed a transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title for the employment of persons within the state in connection with the filming or production of one or more qualified motion pictures in the state within any consecutive 12-month period when total production costs incurred in the state within a taxable year equal or exceed \$50,000.00 and such payments for employment constitute Vermont source income. The credit shall be:

(A) equal to 25 percent of the total aggregate payroll paid by an eligible production company for employees not residents of this state; and

(B) equal to 30 percent of the total aggregate payroll paid by an eligible production company for employees who are residents of this state.

(2) For purposes of this subsection, the term “total aggregate payroll” shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.00.

(3) Dollar limit on qualified motion picture tax credit. Transferable tax credits available under this subchapter shall not exceed \$9,000,000.00 in any one taxable year and the awards shall be made for state-certified productions chronologically in the order in which they qualify for the credits, until the \$9,000,000.00 is fully awarded; and credits earned in any year which exceed the \$9,000,000.00 may not be transferred or carried forward.

(c) Qualified motion picture expense credit. A taxpayer shall be allowed an additional transferable credit against the taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title equal to 30 percent of all Vermont production expenses, not including the payroll expenses used to claim a credit pursuant to subsection (b) of this section, where the motion picture is also eligible for a credit pursuant to subsection (b) and either Vermont production expenses exceed 50 percent of the total production expenses for a motion picture, or at least 50 percent of the total principal photography days of the film take place in the state.

(d) The director of the commission shall determine by rule criteria for state-certified productions.

(e) Upon completion of a state-certified production, the secretary shall review the production expenses and certify the amount of expenses qualified for credit under this section.

(f) Any taxpayer applying for a credit of \$100,000.00 or more shall hire a third-party certified public accountant and such accountant shall use Agreed Upon Procedures, as defined by the Auditing Standards Board of the American Institute of Certified Public Accountants, to certify the taxpayer's credit to the secretary.

(g) The transferable tax credit shall be taken only against taxes imposed under parts 3, 4, and 5 of subtitle 2 of this title and shall be refundable to the extent provided for in subsection (i) of this section. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer or its transferee, buyer, or assignee to any of the five subsequent taxable years.

(h)(1) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold, or assigned to another taxpayer only once. Any tax credit that is transferred, sold, or assigned and taken against taxes imposed by parts 3, 4, and 5 of subtitle 2 of this title shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer, or assignee to any of the three subsequent taxable years from which a certificate is initially issued by the commissioner.

(2) An owner or transferee desiring to make a transfer, sale, or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale, or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell, or assign the tax credit. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the state for any prior taxable year. A tax credit shall not be transferred, sold, or assigned without a certificate.

(i)(1) At the written election of a taxpayer entitled to a credit under subsection (b) of this section, the commissioner shall apply the credit against the liability of the taxpayer as determined on its return, as first reduced by any other available credits, and shall then refund to the taxpayer 90 percent of the balance of the credits.

(2) The commissioner may require substantiation of a taxpayer's claim for refund under this subsection before payment of the refund.

Notwithstanding any law to the contrary, no interest shall accrue on the refund before the commissioner's receipt of the substantiation he or she requested.

(3) The commissioner may adopt regulations or other guidelines as he or she deems necessary to implement this subsection.

(j) A film production company which receives a credit under this section shall acknowledge the state of Vermont in the end credits of the film.

(k) The commissioner, in consultation with the secretary and the director, shall adopt regulations necessary for the administration of this subchapter.

Sec. 12. 32 V.S.A. § 9701(45) is added to read:

(45) Manufacturing: shall not include motion picture or film production for which a credit has been or will be granted under subchapter 11K of chapter 151 of this title.

Sec. 13. 10 V.S.A. § 650h is added to read:

§ 650h. FEE

Each taxpayer, transferee, buyer, or assignee of tax credits granted under subchapter 11K of Title 32 shall pay a fee equal to two percent of the aggregate value of such credits to the program fund created by section 650g of this title.

\* \* \* Funding Infusion for Travel and Tourism \* \* \*

Sec. 14. APPROPRIATION

For fiscal year 2010, a supplemental appropriation in the amount of \$500,000.00 is appropriated from the general fund to the department of tourism and marketing, which shall be expended on direct promotional activities to increase tourism throughout Vermont and shall not be used for administrative or overhead costs of the department.

Sec. 15. APPROPRIATION

For fiscal year 2010, a supplemental appropriation in the amount of \$100,000.00 is appropriated from the general fund to the Vermont convention bureau.

\* \* \* Capitalization on Federal Stimulus Funding for Smart Grid, Additional State Energy Grants, and Rural Electrification Grants \* \* \*

Sec. 16. FEDERAL FUNDING FOR SMART GRID AND ENERGY GRANTS; STATE COLLABORATION

It is the intent of the legislature that the department of public service, Vermont utilities, and other interested parties work collaboratively to ensure that Vermont capitalizes on all available funding allocated for research, workforce development, and projects relating to energy efficiency and electric generation, transmission, and distribution under Titles I and IV of Division A of the American Recovery and Reinvestment Act of 2009. Accordingly, to ensure that Vermont accesses and utilizes federal resources under the ARRA to the fullest extent possible:

(1) The department of public service shall investigate and pursue the opportunities for funding of electricity delivery and energy reliability research and projects to implement smart grid technologies, activities, and workforce training made available under Title IV of the ARRA.

(2) The department of public service shall generate a list of projects that are eligible for federal loan and grant funding available from the United States Departments of Agriculture and of Energy under the ARRA, identify the source of the grant funding, and identify the necessary steps for securing grant funds. The department shall work collaboratively with private utilities, additional government entities as necessary and appropriate, and other interested persons to design and submit grant applications that best position the state to capitalize on available funds.

(3) The governor, the department of public service, the public service board, and relevant state and local governmental entities shall take any and all steps necessary to implement the measures required under section 410 of the American Recovery and Reinvestment Act of 2009 to ensure that Vermont will receive the maximum amount of additional state energy grants available from the United States Department of Energy under part D of Title III of the Energy Policy and Conservation Act.

\* \* \* Digital Business \* \* \*

#### Sec. 17. LEGISLATIVE INTENT

The purpose of the following sections of this act concerning Digital Business is to build on the momentum created by Secs. 74 through 100 of No. 190 of the Acts of the 2007 Adj. Sess. (2008), which provided for Vermont companies to conduct much of their statutorily required corporate affairs using electronic media, including e-mail, facsimile, and web-based filings.

Sec. 18. 32 V.S.A. § 5811(26) is added to read:

(26) “Digital business entity” means a business entity which, during the entire taxable year:

(A) was not a member of an affiliated group or engaged in a unitary business with one or more members of an affiliated group that is subject to Vermont income taxation; did not perform any activities in this state which would constitute doing business for purposes of income taxation, other than activities described in subdivisions (15)(C)(i) of this section (fulfillment operations) and (C)(ii) (web page, or Internet site maintenance); and

(B) used mainly computer, electronic, and telecommunications technologies in its formation and in the conduct of its business meetings, in its interaction with shareholders, members, and partners, in executing any other formal requirements.

Sec. 19. 32 V.S.A. § 5832(2) is amended to read:

(2)(A) \$75.00 for small farm corporations. “Small farm corporation” means any corporation organized for the purpose of farming, which during the taxable year is owned solely by active participants in that farm business and receives less than \$100,000.00 gross receipts from that farm operation, exclusive of any income from forest crops; or

(B) An amount determined in accordance with section 5832a of this title for a corporation which qualifies as and has elected to be taxed as a digital business entity for the taxable year; or

(C) \$250.00 for all other corporations.

Sec. 20. 32 V.S.A. § 5911 is amended to read:

§ 5911. TAXATION OF AN S CORPORATION AND ITS SHAREHOLDERS

(a) An S corporation shall not be subject to the tax imposed by section 5832 of this title, except to the extent of income taxable to the corporation under the provisions of the Internal Revenue Code.

(b) For the purposes of section 5823 of this title, each shareholder’s pro rata share of the S corporation’s income attributable to Vermont and each resident shareholder’s pro rata share of the S corporation’s income not attributable to Vermont shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(c) An S corporation and its shareholders shall not be subject to the tax imposed by section 5832 of this title or to the provisions of this subchapter if the S corporation qualifies as and elects to be taxed as a digital business for the taxable year.

Sec. 21. 32 V.S.A. § 5921a is added to read:

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§ 5921a. DIGITAL BUSINESS ENTITY ELECTION

A corporation, partnership, or limited liability company and its shareholders, partners, or members shall not be subject to the tax imposed by section 5832 of this title or to provisions of this subchapter if the corporation, partnership, or company qualifies as and elects to be taxed as a digital business entity for the taxable year.

Sec. 22. 32 V.S.A. § 5832a is added to read:

§ 5832a. DIGITAL BUSINESS ENTITY FRANCHISE TAX

(a) There is imposed upon every business entity which qualifies as and has elected to be taxed as a digital business entity an annual franchise tax equal to:

(1) the greater of 0.02 percent of the current value of the tangible and intangible assets of the company or \$250.00, but in no case more than \$500,000.00; or

(2) where the authorized capital stock does not exceed 5,000 shares, \$250.00; where the authorized capital stock exceeds 5,000 shares but is not more than 10,000 shares, \$500.00; and the further sum of \$250.00 on each 10,000 shares or part thereof.

(b) In no case shall the tax on any corporation for a full taxable year, whether computed under subdivision (a)(1) or (2) of this section, be more than \$500,000.00 or less than \$250.00.

(c) In the case of a corporation that has not been in existence during the whole year, the amount of tax due, at the foregoing rates and as provided, shall be prorated for the portion of the year during which the corporation was in existence.

(d) In the case of a corporation changing during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated pursuant to subdivision (a)(2) of this section as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect.

(e) For the purpose of computing the taxes imposed by this section, the authorized capital stock of a corporation shall be considered to be the total number of shares that the corporation is authorized to issue without regard to whether the number of shares that may be outstanding at any one time is limited to a lesser number.

(f) The franchise tax under this section shall be reported and paid in the same manner as the tax under subdivision 5832(2)(B) of this title.

\* \* \* Small Business Loan Program; Bonding;  
Technology Loan Program \* \* \*

Sec. 23. STATE PLEDGE ON BEHALF OF SMALL BUSINESSES

An amount not to exceed \$500,000.00 of the full faith and credit of the state pledged for the support of the activities of the Vermont economic development authority under section 223 of Title 10 is authorized to be used by the authority for loss reserves in the Vermont small business loan program until July 1, 2012.

Sec. 24. 10 V.S.A. § 221(a) is amended to read:

(a) Upon application of the proposed mortgagee, the authority may insure mortgage payments required to repay loans made by the mortgagee for the purpose of financing the costs of a project, upon such terms and conditions as the authority may prescribe; provided, however, that the total principal obligations of all mortgages insured under this subsection and under subsection (c) of this section outstanding at any one time shall not exceed ~~\$15,000,000.00~~ \$9,000,000.00. Before insuring any mortgage payments hereunder, the authority shall determine and incorporate each of the findings established by this subsection in its minutes. Such findings, when adopted by the authority shall be conclusive.

Sec. 25. 10 V.S.A. § 223 is amended to read:

§ 223. CREDIT OF THE STATE PLEDGED

The full faith and credit of the state is pledged to the support of the activities of the authority under this subchapter. In furtherance of the pledge, the state treasurer is authorized and directed to transfer to the fund, without further approval, first from the indemnification fund and then from available cash in the treasury or from the proceeds of bonds or notes issued under this section, such additional amounts as may be requested from time to time by the authority to enable it to perform all insurance contracts punctually and in accordance with their terms. The authority shall request such transfers from time to time as additional amounts are required for such purposes. The treasurer is authorized and directed, without further approval, to issue full faith and credit bonds of the state, from time to time, in amounts necessary to support the activities of the authority under this subchapter and subchapter 8 of this chapter, but not to exceed an aggregate of ~~\$35,000,000.00~~ \$10,000,000.00 at any one time outstanding, and to borrow upon notes of the state in anticipation of the proceeds of such bonds. Any bonds under this subchapter shall be issued pursuant to the provisions of chapter 13 of Title 32, except that

the approval of the governor shall not be required previous to their issuance by the treasurer.

Sec. 26. 10 V.S.A. § 279b(a) is amended to read:

(a) Upon registration by the authority of an eligible loan, the full faith and credit of the state shall be pledged in an amount equal to the reserve premium payment deposited to the fund by the participating bank in connection with such loan. The aggregate amount of the credit of the state which may be pledged pursuant to the provisions of this subchapter shall not exceed ~~\$2,000,000.00~~ \$1,000,000.00 at any time.

Sec. 27. 10 V.S.A. chapter 12, subchapter 12 is added to read:

Subchapter 12. Technology Loan Program

§ 280aa. FINDINGS AND PURPOSE

(a) Technology-based companies are a vital source of innovation, employment, and economic growth in Vermont. The continued development and success of this increasingly important sector of Vermont's economy is dependent upon the availability of flexible, risk-based capital. Because the primary assets of technology-based companies sometimes consist almost entirely of intellectual property, such companies frequently do not have access to conventional means of raising capital, such as asset-based bank financing.

(b) To support the growth of technology-based companies and the resultant creation of high-wage employment in Vermont, a technology loan program is established under this subchapter.

§ 280bb. TECHNOLOGY LOAN PROGRAM

There is created a technology (TECH) loan program to be administered by the Vermont economic development authority. The program shall seek to meet the working capital and capital-asset financing needs of technology-based companies. The Vermont economic development authority shall establish such policies and procedures for the program as are necessary to carry out the purposes of this subchapter.

§ 280cc. CREDIT OF THE STATE PLEDGED

An amount not to exceed \$1,000,000.00 of the full faith and credit of the state is pledged and authorized to be used by the authority for loss reserves in the TECH loan program established under this subchapter until July 1, 2012.

\* \* \* Microbusiness and Entrepreneurship \* \* \*

Sec. 28. APPROPRIATIONS; USE OF FEDERAL FUNDS

(a) It is the intent of the general assembly that the individual development account program and the microbusiness development program currently administered by the office of economic opportunity continue to be funded with amounts from the general fund in the 2009 budget as passed in May of 2008.

(b) There is appropriated from the general fund for fiscal year 2010 a supplemental appropriation in the amount of \$66,000.00 to the office of economic opportunity to fund state matching contributions to individual development accounts.

(c) There is appropriated from the general fund for fiscal year 2010 a supplemental appropriation in the amount of \$60,000.00 to the office of economic opportunity to fund the microbusiness development program.

(d) The supplemental amounts appropriated in this section shall to the greatest extent possible be funded through federal allocations and competitive grants under Title VIII of the ARRA.

#### Sec. 29. REPORTING REQUIREMENT

On or before January 15 of each year all microenterprise development programs, individual development account matched savings programs, and financial education programs that receive state funding allocations shall prepare and deliver to the house committee on commerce and economic development a report to ensure that funding is serving low income Vermonters and meeting economic development and human service goals. Annual reports should comply with nationally and state-recognized microenterprise outcomes metrics established by the Association for Enterprise Opportunity, FIELD at the Aspen Institute, or the Center for Rural Studies at the University of Vermont.

#### Sec. 30. ECONOMIC OPPORTUNITY STUDIES AND COLLABORATION

(a) The office of economic opportunity and the department of economic development shall conduct a joint study of possible tools to promote the success of individual development accounts and the microbusiness development program. The study shall evaluate:

(1) Innovative microenterprise development funding models to identify ways to fill existing gaps in start-up capital.

(2) A guarantee program or interest buy-down program that encourages private banks to make longer-term, lower-interest fixed rate loans to Community Development Financial Institutions (CDFIs).

(3) A tax credit to business and individuals that donate funds to microenterprise development programs or IDA matched savings and financial

education programs, under which the department of economic development would administer tax credits totaling 75 percent of the value of each donation to recognized qualified organizations with an annual statewide maximum for tax credits of \$500,000.00 for contributions.

(4) A policy for collaboration with the Vermont treasurer's office to utilize financial education funding for credit counseling and education.

(5) The feasibility of a first-year tax credit to microenterprises, and a credit or grant to self-employed persons for first-time employee hiring to ease the worker's compensation burden.

(b) The department of economic development (DED) shall designate an employee to serve as a microbusiness liaison to the department of education and the office of economic opportunity. The liaison shall be aware of the resources, tools, and capital needs of microenterprises and Vermont's microenterprise development organizations. The liaison shall assist microentrepreneurs in accessing growth opportunities, new markets, and relevant microenterprise programs and resources much in the way DED economic development specialists currently assist larger-scale businesses. The liaison may also lead collaborative efforts to ensure Vermont's state agencies and nongovernmental organizations function effectively and efficiently to support microenterprises.

\* \* \* ARRA Appropriation for the Vermont Economic  
Development Authority \* \* \*

#### Sec. 31. APPROPRIATION

The amount of \$1,000,000.00 is appropriated from the State Fiscal Stabilization Fund under Title XIV of the ARRA to the Vermont Economic Development Authority for the purpose of providing interest rate subsidies.

\* \* \* Enhanced VEGI Program for IT Solutions \* \* \*

Sec. 32. 32 V.S.A. § 5930b(h) is added to read:

(h) Employment growth incentive for information technology solutions business.

(1) For purposes of this subsection, an "information technology solutions business" means a business that is subject to income taxation in Vermont and whose current or prospective economic activity in Vermont for which incentives are sought under this section is certified by the secretary of commerce and community development to be primarily in software development, implementation, and utilization, including:

(A) Research, development, design, marketing, and publication of computer software such as operating systems, user applications, and network applications.

(B) Custom computer software development such as software programming services, software analysis and design services, custom software support services, custom webpage design and development services, web application development, and custom database systems and solutions.

(C) Consultation, implementation, integration, or customization of computer software systems, computer systems, computer networks, or database systems using computer programming services, custom networking technologies, or computer software analysis and design services.

(2) Any application for a Vermont employment growth incentive under this section for a software development business shall be considered and administered pursuant to all provisions of this section, except that:

(A) the “incentive ratio” pursuant to subdivision (a)(11) of this section shall be set at 100 percent; and

(B) the “payroll threshold” pursuant to subdivision (a)(17) of this section shall be deemed to be zero percent of the expected average industry payroll growth as determined by the cost-benefit model.

\* \* \* Research and Development Tax Credit \* \* \*

Sec. 33. 32 V.S.A. chapter 151 subchapter 11K is added to read:

Subchapter 11K. Research and Development Tax Credit

§ 5930gg. RESEARCH AND DEVELOPMENT TAX CREDIT

(a) A credit against the income tax liability imposed under this chapter for the taxable year shall be an amount equal to 30 percent of the amount of the federal tax credit received for the same taxable year for eligible research and development expenses under 26 U.S.C. § 41(a).

(b) Any excess credit under this subchapter not used for the taxable year in which the credit is earned may be carried forward for up to ten years.

(c) For purposes of this section, “eligible research and development expenses” means expenditures:

(1) made within the state of Vermont;

(2) that meet the definition contained in 26 U.S.C. § 41(b); and

(3) that have been claimed as eligible expenditures for the same taxable year for a federal tax credit under 26 U.S.C. § 41(a), provided that the taxable year begins on or after January 1, 2010.

\* \* \* Buy Local Initiatives \* \* \*

Sec. 34. ENDORSEMENT OF BUY LOCAL AND VERMONT FIRST ECONOMIC DEVELOPMENT INITIATIVES

The general assembly expresses its strong support for local and state-based initiatives, such as Local First, Buy Local, community-based initiatives sponsored by local chambers of commerce, and local and state government procurement policies that give priority to locally produced goods and services. These initiatives create a multiplier effect whereby dollars spent by Vermonters within their own communities remain within and significantly strengthen Vermont communities. State and local government should lead by example to promote Vermont based business.

Sec. 35. DEVELOPMENT OF STATEWIDE STRATEGIES TO BENEFIT FROM BUY LOCAL AND IN-STATE INITIATIVES

On or before January 15, 2010 the department of agriculture and the agency of commerce and community development shall collaborate and provide a summary report to the house committee on commerce and economic development, the senate committees on finance, and the senate committee on economic development, housing, and general affairs, concerning potential statewide strategies to realize the economic development benefits of buy-local and in-state initiatives, including recommendations for aligning government procurement policies with these strategies.

Sec. 36. EFFECTIVE DATE

This act shall be effective upon passage, except that Secs. 11 through 13 of this act (motion picture tax credit) shall apply to qualified motion picture projects begun on or after July 1, 2009 as certified by the secretary of commerce and community development; and that Secs. 17 through 22 of this act (digital business) shall apply to taxable years beginning on or after January 1, 2010.

**Rep. Clarkson of Woodstock**, for the committee on Ways and Means, recommended the bill ought to pass when amended as recommended by the committee on Commerce and Economic Development and when further amended as follows:

First: By striking Secs. 11, 12, and 13 in their entirety

Second: By striking Secs. 17, 18, 19, 20, 21, and 22, in their entirety

Third: In Sec. 32, 32 V.S.A. § 5930b(h), by striking subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) Any application for a Vermont employment growth incentive under this section for an information technology solutions business shall be given priority for authorization equal to priority given to environmental technology business applicants in this section and shall be considered and administered pursuant to all provisions of this section.

Fourth: By striking Sec. 33 in its entirety and inserting in lieu thereof a new Sec. 33 to read:

**Rep. Manwaring of Wilmington**, for the committee on Appropriations, recommended the bill ought to pass when amended as recommended by the committees on Commerce and Economic Development and Ways and Means.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the report of the committees on Commerce and Economic Development, Ways and Means and Appropriations agreed to.

Pending the question, Shall the bill be read the third time? **Rep. Shand of Weathersfield** moved to amend the bill as follows:

First: In Sec. 2, by deleting subsections (b)-(d) in their entirety and inserting in lieu thereof new subsections (b)-(d) to read as follows:

(b) In the near term, this act seeks to promote the most coordinated and efficient means to capitalize on federal stimulus funds. The American Reinvestment and Recovery Act of 2009 (“ARRA”) provides economic development resources that are available to the state, its subdivisions, and the private sector. In order to realize the full potential of these funds, and in order to most effectively increase the opportunities for Vermonters to benefit from the ARRA, the director of Vermont’s office of economic stimulus and recovery (“VOESR”) shall, to the extent possible: coordinate efforts to obtain funds under the ARRA; oversee the use of those funds received by or through the state; and, collect information on the use of funds awarded to Vermont recipients.

(c) Recipients of ARRA formula fund allocations and applicants for ARRA competitive grants shall collaborate to the extent possible to present unified proposals for funding. The VOESR shall provide support to applicants and recipients of ARRA funds to develop unified proposals, and priority shall be given to those programs that achieve multiple economic development goals simultaneously and demonstrate broad geographic benefits. Where applicable, potential beneficiaries shall use best efforts to structure programs so as to

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maximize eligibility for ARRA funds, and the VOESR shall give priority to those programs that are structured to maximize ARRA eligibility.

(d) The ARRA offers competitive grants to stimulate economic development in the areas of agriculture and rural development, broadband and telecommunications, energy efficiency and renewable energy, employment and training, educational technical assistance, redevelopment of abandoned and foreclosed homes, homelessness prevention and housing, and energy-saving and green retrofit investments in elderly, low income, and disability housing. In order to help Vermonters secure competitive grant funding, the VOESR, in coordination with the appropriate agencies of the state, shall be responsible for identifying competitive grant programs relating to the department's or agency's jurisdiction. Each agency shall provide technical and logistical information and support to the VOESR as necessary, and shall connect grant applicants with grant-writing and additional resources and services available from both the VOESR and related public and private resources as appropriate.

Second: In Sec. 4, by deleting subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) Prior to expending ARRA funds for workforce development or for expenditures that will require additional workforce capacity, the government authority seeking funding shall collaborate with the department of labor to determine that the workforce capacity currently exists, or alternatively, how much capacity will be necessary to implement a program or project. To the extent allowable under the ARRA, the relevant agency shall prioritize expenditures first for training that is necessary to maintain current employment, second for hiring or training unemployed and dislocated workers, and third for promoting new hiring. Priority for workforce training funds shall be given to programs or training that will result in increased worker remuneration or job promotion to the extent allowable.

Third: In Sec. 8, by striking "April 15" and inserting in lieu thereof "June 1"

Fourth: In Sec. 1, by deleting subdivision (7) in its entirety and inserting in lieu thereof the following:

(7) The commission heard that Vermonters are concerned over perceived inefficiencies and redundancies in our state and local regulatory and permitting programs and a lack of coordination between state regulatory agencies. It is the legislature's intent to promote a nimble and efficient permitting process that is both protective of Vermont's natural and aesthetic resources and responsive to the needs of potential entrepreneurs and investors.

Fifth: In Sec. 9, 30 V.S.A. § 248a(e), at the end of the first sentence, by striking: “, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners”

Sixth: In Sec. 9, 30 V.S.A. § 248a, by striking subsection (h) in its entirety and inserting in lieu thereof a new subsection (h) to read:

(h) An applicant using the procedures provided in this section shall not be required to obtain a local zoning permit or a permit under the provisions of chapter 151 of Title 10 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to subdivision 2291(19) of Title 24 or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the public service board, subject to appeal as provided by section 12 of this title.

Seventh: In Sec. 9, 30 V.S.A. § 248a, by striking subsection (i) in its entirety and inserting in lieu thereof a new subsection (i) to read:

(i) Effective July 1, 2011, no new application for a certificate of public good under this section may be considered by the board.

Eighth: In Sec. 9, 30 V.S.A. § 248a(j)(2)(A), at the end of the second sentence, by striking: “, unless the board determines that good cause exists to waive or modify the notice requirement with respect to such landowners and any other person which the board has directed by rule or order to receive such notices”; and, in the last sentence, by striking the word “substantial” and inserting in lieu thereof the word “significant”; and, after the last sentence, by inserting a new sentence to read: “If the board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.”

Ninth: In Sec. 28, by striking all after the section catchline and inserting in lieu thereof the following:

It is the intent of the general assembly to enhance the individual development account program and the microbusiness development program currently administered by the office of economic opportunity using funds available through federal allocations and competitive grants available under Title VIII of the ARRA.

Tenth: By striking Sec. 29 in its entirety, and by re-numbering Sec. 30 as Sec. 29.

Eleventh: In Sec. 29, subsection (a), by striking “(a)”; and by striking the first sentence in its entirety and inserting in lieu thereof a new sentence to read: “The office of economic opportunity, the department of economic development, and a designee of the community action agency directors’ association shall conduct a joint study of possible tools to promote the success of individual development accounts and the microbusiness development program.”; and after subdivision (5), by inserting two new subdivisions to read as follows:

(6) The most effective strategy to link the department of education with other public and private efforts to develop and support microbusiness.

(7) The most effective means for reporting to the house committee on commerce and economic development, the house committee on human services, and other committees as appropriate, to ensure sufficient oversight by the legislature over whether funding is serving low income Vermonters and meeting stated economic development and human service goals.

and by striking subsection (b) in its entirety

Twelfth: By adding a new Sec. 30. to read as follows:

Sec. 30. 10 V.S.A. § 291(a) is amended to read:

(a) The Vermont economic development authority shall cause to be formed a private investment equity fund to be named “the Vermont seed capital fund” or “the fund” ~~is authorized~~ for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion. The authority may contract with one or more persons for the operation of the fund as fund manager. The contract with the fund manager shall contain the terms and conditions pursuant to which the fund shall be managed to meet the fund’s objective of providing seed capital to Vermont firms.

Thirteenth: By striking Sec. 31 in its entirety and inserting in lieu thereof a new Sec. 31 to read as follows:

\* \* \* Transfers to the Vermont Economic Development Authority \* \* \*

Sec. 31. APPROPRIATIONS

(a) The amount of \$5,000,000.00 of general funds reserved under Sec. B.1101(a)(1)(A) of H.441 of 2009 shall be transferred to the Vermont seed capital fund, established under 10 V.S.A. § 291, to provide venture capital to Vermont small businesses in the areas of technology, green energy, and agriculture to expand their workforce.

(b) The amount of \$1,000,000.00 of general funds reserved under Sec. B.1101(a)(1)(B) of H.441 of 2009 shall be transferred to the Vermont Economic Development Authority for the purpose of providing interest rate subsidies.

Which was agreed to and third reading was ordered.

**Bill Amended; Third Reading Ordered**

**H. 444**

**Rep. Maier of Middlebury** spoke for the committee on Health Care.

**Rep. Masland of Thetford**, for the committee on Ways and Means, to which had been referred House bill, entitled

An act relating to health care reform;

Reported in favor of its passage.

**Rep. Larson of Burlington**, for the committee on Appropriations, recommended the bill be amended as follows:

First: By adding Sec. 21a to read:

Sec. 21a. REPORT; IMPACT OF INCOME ELIGIBILITY CHANGE

No later than January 15, 2010, the office of Vermont health access shall report to the house committees on appropriations and on health care and the senate committees on appropriations and on health and welfare on the financial impact of modifying the income eligibility rules to allow depreciation as a business expense effective February 1, 2010. The report shall include an analysis of estimated increases in enrollment, impacts on the premium amounts paid by the enrollees, and increases in federal funds due to the rule change.

Second: By adding Sec. 43a to read:

Sec. 43a. ADJUSTMENT TO FY10 SPENDING AUTHORITY FOR GLOBAL COMMITMENT

(a) In order to provide for increased costs to the Catamount Health assistance program due to the expansion of the definition of "uninsured" and the modification of the preexisting condition exclusion in Sec. 18 of this act and the modification of the income calculation rules in Sec. 21 of this act, the appropriations for public health and Medicaid for fiscal year 2010 shall be those set forth in H.441 as passed by the House, except as provided for in this subsection. Of the Catamount funds appropriated in Sec. B. 312, Health - public health, \$77,000 shall be transferred to Sec. B.301, Secretary's office - Global Commitment. The reduction in Sec. B.312 shall reduce the

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Catamount funds for the immunization program under 18 V.S.A. § 1130 as amended by Sec. 43 of this act. In Sec. B.301, these funds shall be combined with matching federal funds estimated to be \$121,000 to provide a total increase of \$198,000 in funding in Sec. B.307, Office of Vermont health access - Medicaid program - Global Commitment, to fund the costs of Secs. 18 and 21 of this act.

(b) The provisions of this section shall take precedence over any other funding provision related to these appropriations enacted for fiscal year 2010.

Third: In Sec. 44, by striking subsection (c) and inserting a new subsection (c) to read:

(c) Sec. 21 (rulemaking on depreciation) shall take effect for the purposes of the rulemaking process on July 1, 2009, but the rule shall not take effect earlier than February 1, 2010.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the report of the committees on Ways and Means and Appropriations agreed to and third reading was ordered.

#### **Adjournment**

At four o'clock and fifty minutes in the afternoon, on motion of **Rep. McDonald of Berlin**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.