

1 H.730

2 Introduced by Representative Botzow of Pownal

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; consumer protection

6 Statement of purpose: This bill proposes to regulate marketing and conduct of  
7 charitable sales promotions (cause-related marketing); to clarify liability for  
8 failure to follow disclosure requirements in home solicitation sales on credit; to  
9 regulate the transfer of structured legal settlements; to modify the scope of  
10 regulation of children's products under the consumer fraud chapter; to regulate  
11 unsolicited goods or services provided to businesses; and to regulate loyalty,  
12 award, or promotional gift certificates and Internet loan transactions.

13 An act relating to miscellaneous consumer protection laws

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

15 Sec. 1. REDESIGNATION

16 The office of legislative council shall redesignate 9 V.S.A. chapter 65 as a  
17 new 9 V.S.A. chapter 60 and shall redesignate the sections located within the  
18 current 9 V.S.A. chapter 65, sections 2481 through 2492, as new sections 2381  
19 through 2392 to be located within the new 9 V.S.A. chapter 60. All references

1 in statute and in administrative rules adopted pursuant to authority granted in  
2 statute shall be redesignated to reflect the changes in this section.

3 Sec. 2. 9 V.S.A. chapter 63, subchapter 5 is added to read:

4 Subchapter 5. Cause-Related Marketing

5 § 2481a. DEFINITIONS

6 In this chapter:

7 (1) “Commercial coventurer” means a person who for profit is regularly  
8 and primarily engaged in trade or commerce in this state other than in  
9 connection with the raising of funds for charitable purposes and who represents  
10 to the public that an amount per unit of goods or services purchased or used by  
11 the public or an amount based on aggregate purchases or use by the public will  
12 benefit a charitable organization or charitable purpose.

13 (2) “Charitable sales promotion” means an advertising or sales  
14 campaign conducted in this state by a commercial coventurer in which it is  
15 represented to the public that an amount per unit of goods or services  
16 purchased or used by the public or an amount based on aggregate purchases or  
17 use by the public will benefit a charitable organization or charitable purpose.

18 § 2481b. DISCLOSURE AT POINT OF SALE

19 Every commercial coventurer shall disclose the following information in a  
20 clear and conspicuous manner at the point of sale of any goods or services that  
21 are the subject of a charitable sales promotion:

1           (1) The name of the charitable organization or purpose which is to  
2           benefit from the charitable sales promotion;

3           (2) The amount per unit of goods or services purchased or used that will  
4           benefit the charitable organization or purpose or, if not known, the estimated  
5           amount, in either case expressed as a dollar amount or a percentage of the  
6           amount paid for the purchase or use, except that if the amount is based on  
7           aggregate purchases or use, that amount and how it will be calculated shall be  
8           disclosed;

9           (3) Any maximum or guaranteed minimum amount that will benefit the  
10          charitable organization or purpose; and

11          (4) The Internet website address where the disclosures required by  
12          section 2481c of this title are posted with a statement such as, "For more  
13          information on this promotion, go to [website address]."

14          § 2481c. DISCLOSURE ON WEBSITE

15          Every commercial coventurer shall disclose the following information in a  
16          clear and conspicuous manner on an Internet web page that is hyperlinked to  
17          the home page of the commercial coventurer with a description that reasonably  
18          informs the visitor that the details of the charitable sales promotion can be  
19          accessed there:

20                 (1) The name, address, telephone number, and website of the  
21                 commercial coventurer;

1           (2) The name, address, telephone number, and website of the charitable  
2           organization or a description of the charitable purpose, as applicable, that will  
3           benefit from the charitable sales promotion;

4           (3) A description of the goods or services that are the subject of the  
5           charitable sales promotion;

6           (4) The geographic location of the charitable sales promotion and, if  
7           applicable, that the promotion is conducted online.

8           (5) The amount per unit of goods or services purchased or used that will  
9           benefit the charitable organization or purpose or, if not known, the estimated  
10          amount, in either case expressed as a dollar amount or a percentage of the  
11          amount paid for the purchase or use, except that if the amount is based on  
12          aggregate purchases or use, that amount and how it will be calculated shall be  
13          disclosed;

14          (6) Any maximum or guaranteed minimum amount that will benefit the  
15          charitable organization or purpose;

16          (7) The dates of the charitable sales promotion;

17          (8) The date by which the benefit will be provided to the charitable  
18          organization or purpose;

19          (9) Whether the coventurer will make payments in excess of the  
20          amounts disclosed to the public for the use of the charitable organization's  
21          name or logo in connection with the promotion;

1           (10) Whether the charitable organization has entered into an exclusive  
2 relationship with the coventurer; and

3           (11) Such other information as the attorney general shall designate by  
4 rule.

5       § 2481d. RECORD-KEEPING

6           A commercial coventurer shall, for three years following the end of a  
7 charitable sales promotion conducted in this state, keep records of the  
8 promotion, including the number or volume of goods or services purchased or  
9 used and the dollar amount of the benefit provided to the charitable  
10 organization or purpose. The commercial coventurer shall make such records  
11 available to the attorney general upon request.

12       § 2481e. VIOLATIONS

13           (a) A violation of this subchapter is deemed to be a violation of section  
14 2453 of this title. This section shall not be construed to limit a commercial  
15 coventurer's liability under any other law.

16           (b) The attorney general has the same authority to make rules, conduct civil  
17 investigations, and bring civil actions with respect to the acts and practices of a  
18 commercial coventurer as is provided under subchapter 1 of this chapter.

1 Sec. 3. 9 V.S.A. § 2463 is amended to read:

2 § 2463. CREDIT BILLING FOR CERTAIN HOME SOLICITATION

3 SALES

4 In the case of any home solicitation sale solicited or consummated by a  
5 seller in whole or in part by telephone that is paid for by means of an open-end  
6 consumer credit plan within the meaning of the federal Truth-in-Lending Act,  
7 15 U.S.C. § 1601 et seq., the issuer of the credit card on which the consumer  
8 has charged the purchase shall, for three years from the date of the sale, be  
9 subject to the claim or defense that the seller failed to comply with the  
10 disclosure requirements of section 2454(b) of this chapter, regardless of the  
11 amount of the purchase, the location of the seller, or the amount, if any,  
12 already paid by the consumer. ~~The~~ Where the consumer raises such a claim or  
13 defense, the seller's merchant bank, but not the issuer of the credit card, shall  
14 ~~not~~ be liable to and shall promptly reimburse the consumer for amounts  
15 already paid by the consumer and not already reimbursed by the seller or the  
16 seller's merchant bank. Where a consumer has raised such a claim or defense,  
17 the issuer shall not report any negative information on the purchase to any  
18 consumer reporting agency as defined in the Fair Credit Reporting Act,  
19 15 U.S.C. § 1681a(f), unless there is a judicial determination that the  
20 consumer's defense or claim is without merit, except that the issuer may report  
21 that there is a dispute with respect to the charge.

1 Sec. 4. 9 V.S.A. chapter 63, subchapter 6 is added to read:

2 Subchapter 6. Transfers of Structured Settlements

3 § 2481m. DEFINITIONS

4 In this subchapter:

5 (1) “Annuity issuer” means an insurer that has issued a contract to fund  
6 periodic payments under a structured settlement.

7 (2) “Dependents” include a payee’s spouse and minor children and all  
8 other persons for whom the payee is legally obligated to provide support,  
9 including alimony.

10 (3) “Discounted present value” means the present value of future  
11 payments determined by discounting such payments to the present using the  
12 most recently published Applicable Federal Rate for determining the present  
13 value of an annuity, as issued by the United States Internal Revenue Service.

14 (4) “Gross advance amount” means the sum payable to the payee or for  
15 the payee’s account as consideration for a transfer of structured settlement  
16 payment rights before any reductions for transfer expenses or other deductions  
17 to be made from such consideration.

18 (5) “Independent professional advice” means advice of an attorney,  
19 certified public accountant, actuary, or other licensed professional adviser  
20 meeting all of the following requirements:

1           (A) The advisor is engaged by the payee to render advice concerning  
2 the legal, tax, or financial implications of a structured settlement or a transfer  
3 of structured settlement payment rights;

4           (B) The adviser's compensation for rendering independent  
5 professional advice is not affected by occurrence or lack of occurrence of a  
6 settlement transfer; and

7           (C) A particular adviser is not referred to the payee by the transferee  
8 or its agent, except that the transferee may refer the payee to a lawyer referral  
9 service or agency operated by a state or local bar association.

10           (6) "Interested parties" means, with respect to any structured settlement,  
11 the payee, any beneficiary irrevocably designated under the annuity contract to  
12 receive payments following the payee's death, the annuity issuer, the  
13 structured settlement obligor, and any other party that has continuing rights or  
14 obligations under such structured settlement.

15           (7) "Net advance amount" means the gross advance amount less the  
16 aggregate amount of the actual and estimated transfer expenses required to be  
17 disclosed under subdivision 2481g(5) of this title.

18           (8) "Payee" means an individual who is receiving tax-free payments  
19 under a structured settlement and proposes to make a transfer of payment  
20 rights thereunder.

1           (9) “Periodic payments” includes both recurring payments and  
2           scheduled future lump sum payments.

3           (10) “Qualified assignment agreement” means an agreement providing  
4           for a qualified assignment within the meaning of section 130 of the United  
5           States Internal Revenue Code, United States Code Title 26, as amended from  
6           time to time.

7           (11) “Settled claim” means the original tort claim resolved by a  
8           structured settlement.

9           (12) “Structured settlement” means an arrangement for periodic  
10           payment of damages for personal injuries or sickness established by settlement  
11           or judgment in resolution of a tort claim but does not refer to periodic  
12           payments in settlement of a workers’ compensation claim.

13           (13) “Structured settlement agreement” means the agreement, judgment,  
14           stipulation, or release embodying the terms of a structured settlement.

15           (14) “Structured settlement obligor” means, with respect to any  
16           structured settlement, the party that has the continuing obligation to make  
17           periodic payments to the payee under a structured settlement agreement or a  
18           qualified assignment agreement.

19           (15) “Structured settlement payment rights” means rights to receive  
20           periodic payments under a structured settlement, whether from the structured  
21           settlement obligor or the annuity issuer, where:

1           (A) the payee is domiciled in or the domicile or principal place of  
2           business of the structured settlement obligor or the annuity issuer is located in  
3           this state; or

4           (B) the structured settlement agreement was approved by a court in  
5           this state; or

6           (C) the structured settlement agreement is expressly governed by the  
7           laws of this state.

8           (16) “Terms of the structured settlement” include, with respect to any  
9           structured settlement, the terms of the structured settlement agreement, the  
10           annuity contract, any qualified assignment agreement and any order or other  
11           approval of any court or other government authority that authorized or  
12           approved such structured settlement.

13           (17) “Transfer” means any sale, assignment, pledge, hypothecation, or  
14           other alienation or encumbrance of structured settlement payment rights made  
15           by a payee for consideration.

16           (18) “Transfer agreement” means the agreement providing for a transfer  
17           of structured settlement payment rights.

18           (19) “Transfer expenses” means all expenses of a transfer that are  
19           required under the transfer agreement to be paid by the payee or deducted from  
20           the gross advance amount, including, without limitation, court filing fees,  
21           attorney’s fees, escrow fees, lien recordation fees, judgment and lien search

1 fees, finders' fees, commissions, and other payments to a broker or other  
2 intermediary.

3 (20) "Transferee" means a party acquiring or proposing to acquire  
4 structured settlement payment rights through a transfer.

5 § 2481n. REQUIRED DISCLOSURES TO PAYEE

6 Not less than ten days prior to the date on which a payee signs a transfer  
7 agreement, the transferee shall provide to the payee a separate disclosure  
8 statement in bold type in a size no smaller than 14 points setting forth:

9 (1) the amounts and due dates of the structured settlement payments to  
10 be transferred;

11 (2) the aggregate amount of such payments;

12 (3) the discounted present value of the payments to be transferred,  
13 which shall be identified as the "calculation of current value of the transferred  
14 structured settlement payments under federal standards for valuing annuities,"  
15 and the amount of the Applicable Federal Rate used in calculating such  
16 discounted present value;

17 (4) the gross advance amount and the annual discount rate, compounded  
18 monthly, used to determine such figure;

19 (5) an itemized listing of all applicable transfer expenses, other than  
20 attorneys' fees and related disbursements payable in connection with the

1 transferee's application for approval of the transfer, and the transferee's best  
2 estimate of the amount of any such fees and disbursements.

3 (6) the net advance amount;

4 (7) the amount of any penalties or liquidated damages payable by the  
5 payee in the event of any breach of the transfer agreement by the payee; and

6 (8) a statement that the payee has the right to cancel the transfer  
7 agreement, without penalty or further obligation, at any time before the date on  
8 which a court enters a final order approving the transfer agreement.

9 § 2481o. APPROVAL OF TRANSFERS OF STRUCTURED SETTLEMENT

10 PAYMENT RIGHTS

11 (a) No direct or indirect transfer of structured settlement payment rights  
12 shall be effective and no structured settlement obligor or annuity issuer shall be  
13 required to make any payment directly or indirectly to any transferee of  
14 structured settlement payment rights unless the transfer has been approved in  
15 advance in a final court order based on express findings by such court that:

16 (1) the transfer is fair and reasonable and in the best interest of the  
17 payee, taking into account the welfare and support of the payee's dependents;

18 (2) the payee has been advised in writing by the transferee to seek  
19 independent professional advice regarding the transfer and has received such  
20 advice; and

1           (3) the transfer does not contravene any applicable statute or the order of  
2           any court or other government authority.

3           (b) In evaluating the standard in subdivision (a)(1) of this section, the court  
4           shall consider all relevant factors, including:

5                 (1) the payee's age, mental and physical capacity, financial acumen, and  
6                 maturity level;

7                 (2) the purpose for the transfer;

8                 (3) the extent to which the payee has sufficient income that is  
9                 independent of the transfer;

10                (4) the payee's capacity to provide for the welfare and support of his or  
11                her dependents;

12                (5) the potential need for future medical treatment; and

13                (6) the payee's ability to appreciate the financial terms and  
14                consequences of the proposed transfer based upon independent legal and  
15                financial advice.

16           (c) Any agreement to transfer future payments arising under a workers'  
17           compensation claim is prohibited.

18           § 2481p. EFFECTS OF TRANSFER OF STRUCTURED SETTLEMENT

19                    PAYMENT RIGHTS

20           Following a transfer of structured settlement payment rights under this  
21           subchapter:

1           (1) The structured settlement obligor and the annuity issuer shall, as to  
2           all parties except the transferee, be discharged and released from any and all  
3           liability for the transferred payments;

4           (2) The transferee shall be liable to the structured settlement obligor and  
5           the annuity issuer:

6                   (A) if the transfer contravenes the terms of the structured settlement  
7                   for any taxes incurred by such parties as a consequence of the transfer; and

8                   (B) for any other liabilities or costs, including reasonable costs and  
9                   attorney's fees, arising from compliance by such parties with the order of the  
10                  court or arising as a consequence of the transferee's failure to comply with this  
11                  subchapter;

12           (3) Neither the annuity issuer nor the structured settlement obligor may  
13           be required to divide any periodic payment between the payee and any  
14           transferee or assignee or between two or more transferees or assignees; and

15           (4) Any further transfer of structured settlement payment rights by the  
16           payee may be made only after compliance with all of the requirements of this  
17           subchapter.

18    § 2481q. PROCEDURE FOR APPROVAL OF TRANSFERS

19           (a) An application under this subchapter for approval of a transfer of  
20           structured settlement payment rights shall be made by the transferee and may  
21           be brought in the superior court, civil division, of the county in which the

1 payee resides or in which the structured settlement obligor or the annuity issuer  
2 maintains its principal place of business or in any court that approved the  
3 structured settlement agreement.

4 (b) Not less than 20 days prior to the scheduled hearing on any application  
5 for approval of a transfer of structured settlement payment rights under section  
6 2481o of this title, the transferee shall file with the court and serve on all  
7 interested parties a notice of the proposed transfer and the application for its  
8 authorization, including with such notice:

9 (1) a copy of any court order approving the settlement;

10 (2) a written description of the underlying basis for the settlement;

11 (3) a copy of the transferee's application;

12 (4) a copy of the transfer agreement;

13 (5) a copy of the disclosure statement required under section 2481n of  
14 this title;

15 (6) a listing of each of the payee's dependents, together with each  
16 dependent's age;

17 (7) a statement setting forth whether there have been any previous  
18 transfers or applications for transfer of any structured settlement payment  
19 rights of the payee and giving details of all such transfers or applications for  
20 transfer;

21 (8) a copy of the annuity contract;

1           (9) a copy of any qualified assignment agreement;

2           (10) a copy of the underlying structured settlement agreement;

3           (11) an affidavit from an independent professional advisor establishing  
4 that the advisor has given advice on the proposed transfer to the payee;

5           (12) notification that any interested party is entitled to support, oppose,  
6 or otherwise respond to the transferee's application, either in person or by  
7 counsel, by submitting written comments to the court or by participating in the  
8 hearing; and

9           (13) notification of the time and place of the hearing and notification of  
10 the manner in which and the time by which written responses to the application  
11 must be filed, which shall be not less than 15 days after service of the  
12 transferee's notice, in order to be considered by the court.

13           (c) In addition, the transferee shall file a copy of the application with the  
14 attorney general's office and a copy of the application and the payee's social  
15 security number with the Vermont Office of Child Support.

16           (d) The payee shall attend the hearing unless attendance is excused for  
17 good cause.

18           § 2481r. GENERAL PROVISIONS; CONSTRUCTION

19           (a) The provisions of this subchapter may not be waived by any payee.

20           (b) Any transfer agreement entered into on or after the effective date of this  
21 subchapter by a payee who resides in this state shall provide that disputes

1 under such transfer agreement, including any claim that the payee has breached  
2 the agreement, shall be determined in and under the laws of this state. No such  
3 transfer agreement shall authorize the transferee or any other party to confess  
4 judgment or consent to entry of judgment against the payee.

5 (c) No transfer of structured settlement payment rights shall extend to any  
6 payments that are life-contingent unless, prior to the date on which the payee  
7 signs the transfer agreement, the transferee has established and has agreed to  
8 maintain procedures reasonably satisfactory to the annuity issuer and the  
9 structured settlement obligor for:

10 (1) periodically confirming the payee's survival; and

11 (2) giving the annuity issuer and the structured settlement obligor  
12 prompt written notice in the event of the payee's death.

13 (d) No payee who proposes to make a transfer of structured settlement  
14 payment rights shall incur any penalty, forfeit any application fee or other  
15 payment, or otherwise incur any liability to the proposed transferee or any  
16 assignee based on any failure of such transfer to satisfy the conditions of this  
17 subchapter.

18 (e) Nothing contained in this subchapter shall be construed to authorize any  
19 transfer of structured settlement payment rights in contravention of any law or  
20 to imply that any transfer under a transfer agreement entered into prior to the  
21 effective date of this subchapter is valid or invalid.

1       (f) Compliance with the requirements set forth in section 2481n of this title  
2       and fulfillment of the conditions set forth in section 2481o of this title shall be  
3       solely the responsibility of the transferee in any transfer of structured  
4       settlement payment rights, and neither the structured settlement obligor nor the  
5       annuity issuer shall bear any responsibility for or any liability arising from  
6       noncompliance with such requirements or failure to fulfill such conditions.

7       Sec. 4a. FINDINGS – REGULATION OF LEAD IN FOOD AND IN  
8               VITAMINS AND OTHER SUPPLEMENTS

9       The general assembly finds:

10       (1) Lead is highly toxic to humans, particularly to young children.

11       (2) Exposure to lead can cause irreversible damage that results in  
12       long-lasting, permanent neurological damage, such as a decrease in I.Q.

13       (3) The effects of lead exposure are cumulative, and a child may be  
14       harmed by very small exposures to lead.

15       (4) Over the years there have been public reports of lead in certain food  
16       products, including fruit juices, honey, candy, chocolate, and eggs.

17       (5) The current statutory definition of “children’s products” includes  
18       food, vitamins, and supplements.

19       (6) Although there is no single governmental limit on lead in food, such  
20       limits as do exist are much lower than the 100 parts per million (ppm) limit on  
21       lead in “children’s products” under Vermont law. For example, the federal

1 Food and Drug Administration has set a 0.005 ppm limit on lead in bottled  
2 water and has recommended a 0.1 ppm limit on lead in candy.

3 (7) To adequately protect the children and other citizens of Vermont, the  
4 100 ppm limit on lead in children's products should not apply to food,  
5 vitamins, or supplements. Instead, those products should be subject to such  
6 lower limits as the federal government or experts on a case-by-case basis deem  
7 appropriate.

8 Sec. 5. 9 V.S.A. § 2470e is amended to read:

9 § 2470e. DEFINITIONS

10 As used in this subchapter:

11 (1) "Children's product" means any consumer product marketed for use  
12 by children under the age of 12, or whose substantial use or handling by  
13 children under 12 years of age is reasonably foreseeable, including toys,  
14 furniture, jewelry, ~~vitamins and other supplements~~, personal care products,  
15 clothing, ~~food~~, and food containers and packaging.

16 \* \* \*

17 Sec. 6. 9 V.S.A. § 4401 is amended to read:

18 § 4401. RIGHTS OF RECIPIENT OF ~~MERCHANDISE~~ UNSOLICITED

19 GOODS OR SERVICES; DEFINITION

20 ~~(a) When personal property is mailed or caused to be delivered or when~~  
21 ~~services are rendered to another by a person who knows the property or~~

1 ~~services to be unsolicited merchandise or services, the person to whom the~~  
2 ~~merchandise is sent or delivered or for whom the services are rendered may~~  
3 ~~refuse to accept delivery of the same, or he may deem it to be a gift and may~~  
4 ~~use it or dispose of it in any manner without obligation to the person sending~~  
5 ~~or delivering it.~~

6 ~~(b) For purposes of this section, “unsolicited merchandise or services” shall~~  
7 ~~mean any tangible personal property or services, not requested by the recipient,~~  
8 ~~which is intended for personal, family or household use, and not for~~  
9 ~~commercial, industrial, agricultural, or professional use.~~

10 (a) Except as provided in subsection (b) of this section, if a seller delivers  
11 unsolicited goods to a recipient, the recipient may:

12 (1) refuse the unsolicited goods; or

13 (2) deem the unsolicited goods to be a gift and dispose of them in any  
14 manner without obligation to the seller.

15 (b) If a seller delivers goods to a recipient in error and notifies the recipient  
16 of the error within 20 days or before the recipient has used or disposed of the  
17 unsolicited goods, whichever is sooner, then:

18 (1) The seller may provide for the pick-up or return shipment of the  
19 unsolicited goods at the seller’s expense and risk within 20 days, during which  
20 time the recipient shall take reasonable care of the unsolicited goods. The

1 recipient need not tender the goods at any place other than the place of  
2 delivery.

3 (2) If the seller does not act within 20 days or if the unsolicited goods  
4 have been used or disposed of before the seller notifies the recipient of the  
5 error, the unsolicited goods shall be deemed the property of the recipient  
6 without obligation of the recipient to pay for them.

7 (3) If the recipient agrees to return the unsolicited goods to the seller and  
8 fails to do so, the recipient shall be liable for the cost of the unsolicited goods.

9 (c) In this section:

10 (1) "Recipient" means a person who receives unsolicited goods, whether  
11 or not he or she was the intended recipient of them.

12 (2) "Seller" means a person who delivers, renders, or causes to be  
13 delivered or rendered unsolicited goods to a recipient, whether or not the seller  
14 intends to charge the recipient for the unsolicited goods.

15 (3) "Unsolicited goods" means any personal property or services  
16 delivered, rendered, or caused to be delivered or rendered by a seller to a  
17 recipient that are not requested by the recipient, whether or not the recipient  
18 and the seller have an existing business relationship.

1 Sec. 7. 8 V.S.A. chapter 81 is amended to read:

2 CHAPTER 81. GIFT CERTIFICATES

3 § 2701. DEFINITIONS

4 As used in this chapter:

5 (1) "Account" means a demand deposit or share draft (checking)  
6 account, savings account, or other comparable consumer asset account (other  
7 than an occasional or incidental credit balance in a credit plan) regularly  
8 maintained by the consumer at a financial institution or at a credit union.

9 (2) "Financial institution" means an institution as defined in subdivision  
10 11101(32) of this title.

11 (3) "Gift certificate" means a record evidencing a promise made for  
12 consideration by the seller or issuer of the record that money, goods, or  
13 services will be provided to the holder of the record for the value shown in the  
14 record. A "gift certificate" includes, but is not limited to, a record that contains  
15 a microprocessor chip, magnetic strip, or other means for the storage of  
16 information that is prefunded and for which the value is decremented upon  
17 each use; a gift card; an electronic gift card; a stored-value card or certificate; a  
18 store card; or a similar record or card. A gift certificate does not include an  
19 access device such as a debit card, code, or other means of access to a  
20 consumer's account regularly maintained at a financial institution or credit  
21 union that may be used by the consumer to access the funds in his or her

1 account to initiate a withdrawal or to initiate an electronic funds transfer from  
2 the consumer's account.

3 (4) "Loyalty, award, or promotional gift certificate" means a gift  
4 certificate that is issued on a prepaid basis primarily for personal, family, or  
5 household purposes to a consumer in connection with a loyalty, award, or  
6 promotional program and that is redeemable upon presentation to one or more  
7 merchants for goods or services or that is usable at automated teller machines.

8 § 2702. EXPIRATION DATE

9 A gift certificate sold or offered to be sold shall be valid for not less than  
10 ~~three~~ five years after its date of issuance or after the date funds were last  
11 loaded onto the gift certificate, whichever is later. The date of issuance and the  
12 expiration date shall be clearly identified on its face, or, if an electronic card  
13 with a banked dollar value, clearly printed upon a sales receipt transferred to  
14 the purchaser of the electronic card upon the completed transaction, or  
15 otherwise made available to the purchaser or holder of the electronic card  
16 through means of an internet site or a toll free information telephone line. A  
17 gift certificate not clearly marked with an expiration date or for which the  
18 expiration date is not otherwise made available as provided in this section shall  
19 be deemed to have no expiration date. Following the expiration date of the gift  
20 certificate, the unused portion of the gift certificate shall be returned to the  
21 holder of the gift certificate, if requested.



1 ~~that the expiration date is clearly and legibly disclosed on the gift certificate is~~  
2 worth less than the face value of the gift certificate.

3 \* \* \*

4 (4) ~~A gift certificate for a food product, provided the expiration date is~~  
5 ~~clearly and legibly printed on the front or the face of the gift certificate or~~  
6 ~~printed on the back of the gift certificate in at least 10 point font.~~

7 (5) A season pass, a discount ski card, or a record sold for admission to  
8 any seasonal recreational activity.

9 (6)(5) A payroll card account issued pursuant to and in full compliance  
10 with 21 V.S.A. § 342(c).

11 \* \* \*

12 Sec. 8. 9 V.S.A. chapter 63, subchapter 7 is added to read:

13 Subchapter 7. Internet Loan Transactions

14 § 2481w. INTERNET LOAN TRANSACTIONS

15 (a) In this subchapter:

16 (1) “Financial account” means a checking, savings, share, stored value,  
17 prepaid, payroll card, or other depository account.

18 (2) “Lender” means a person engaged in the business of making loans of  
19 money, credit, goods, or things in action and charging, contracting for, or  
20 receiving on any such loan interest, a finance charge, a discount, or  
21 consideration.

1           (3) “Process” or “processing” includes printing a check, draft, or other  
2 form of negotiable instrument drawn on or debited against a consumer’s  
3 financial account, formatting or transferring data for use in connection with the  
4 debiting of a consumer’s account by means of such an instrument or an  
5 electronic funds transfer, or arranging for such services to be provided to a  
6 telemarketer or lender.

7           (4) “Processor” means a person who engages in processing, as defined  
8 in subdivision (3) of this subsection.

9           (b) It is an unfair and deceptive act and practice in commerce for a lender  
10 directly or through an agent to solicit or make a loan to a consumer by mail,  
11 telephone, or electronic means unless the lender is in compliance with all  
12 provisions of 8 V.S.A. chapter 73 or is otherwise exempt from the  
13 requirements of 8 V.S.A. chapter 73.

14           (c) It is an unfair and deceptive act and practice in commerce for a lender to  
15 process a check, draft, other form of negotiable instrument or an electronic  
16 funds transfer from a consumer’s financial account in connection with a loan  
17 solicited or made by mail, telephone, or electronic means to a consumer unless  
18 the processor is in compliance with all provisions of 8 V.S.A. chapter 73 or is  
19 otherwise exempt from the requirements of 8 V.S.A. chapter 73.

20           (d) In addition to the legal liability described in subsections (b) and (c) of  
21 this section, it is an unfair and deceptive act and practice in commerce for any

1 person, including the lender's processor or the lender's financial institution as  
2 defined in 8 V.S.A. § 10202(5), but not including the consumer's financial  
3 institution as defined in 8 V.S.A. § 10202(5), to provide substantial assistance  
4 to a lender or processor who is in violation of subsection (b) or (c) of this  
5 section or when the person or the person's authorized agent knows or  
6 consciously avoids knowing that the lender or processor is engaging in an  
7 unfair or deceptive act or practice in commerce.

8 Sec. 9. EFFECTIVE DATE

9 This act shall take effect on passage, except that Sec. 4 (transfer of  
10 structured settlements) shall apply to a transfer of structured settlement  
11 payment rights under a transfer agreement entered into on or after the 30th day  
12 following the date of enactment of this act; provided, however, that nothing  
13 contained herein shall imply that a transfer under a transfer agreement reached  
14 prior to that date is either effective or ineffective.