

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.

~~§ 2702a. LOYALTY, AWARD, OR PROMOTIONAL GIFT CERTIFICATE~~

~~A loyalty, award, or promotional gift certificate shall clearly and legibly set forth the following disclosures, as applicable:~~

~~(1) A statement indicating that the gift certificate is issued for loyalty, award, or promotional purposes, which must be included on the front of the gift certificate;~~

~~(2) The expiration date for the underlying funds, which must be included on the front of the gift certificate;~~

~~(3) The amount of any fees that may be imposed in connection with the gift certificate and the conditions under which they may be imposed, which must be provided on or with the gift certificate; and~~

~~(4) A toll-free telephone number and, if one is maintained, a website address that a consumer may use to obtain fee information, which must be included on the gift certificate.~~

\* \* \*

§ 2707. EXEMPTION

The provisions of this chapter shall not apply to the following:

(1) A loyalty, award, or promotional gift certificate issued pursuant to an awards or loyalty program where no, provided that the gift certificate complies with section 2702a of this title and money or other thing of value is given to the issuer of the gift certificate in exchange for the gift certificate, provided



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.

*Sec. 1. REDESIGNATION*

*The office of legislative council shall redesignate 9 V.S.A. chapter 65 as a*  
*new 9 V.S.A. chapter 60 and shall redesignate the sections located within the*  
*current 9 V.S.A. chapter 65, sections 2481–2492, as new sections 2381–2392*  
*to be located within the new 9 V.S.A. chapter 60. All references in statute and*  
*in administrative rules adopted pursuant to authority granted in statute shall*  
*be redesignated to reflect the changes in this section.*

*Sec. 1a. 9 V.S.A. chapter 63 is amended to read:*

*CHAPTER 63. CONSUMER ~~FRAUD~~ PROTECTION*

*\* \* \**

*§ 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER  
~~FRAUD~~ PROTECTION*

*\* \* \**

*§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND  
PREPAID CONTRACTS*

*\* \* \**

*(d) Private right of action under consumer ~~fraud~~ protection act. In addition to the remedies set forth in sections 2458 and 2461 of this title, a home heating oil, kerosene, or liquefied petroleum gas dealer may bring an action against its heating oil, kerosene, or liquefied petroleum gas suppliers for failing to honor its contract with the home heating oil, kerosene, or liquefied petroleum gas dealer. The home heating oil, kerosene, or liquefied petroleum gas dealer bringing the action may recover all remedies available to consumers under subsection 2461(b) of this title.*

*\* \* \**

*§ 2480q. PENALTIES*

*(a) The following penalties shall apply to violations of this subchapter:*

*\* \* \**

*(3) A violation of section 2480p of this subchapter shall be deemed a violation of ~~chapter 63~~ section 2453 of this title, ~~the Consumer Fraud Act~~. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 ~~of chapter 63~~ of this ~~title~~ chapter.*

\* \* \*

*Sec. 1b. REDESIGNATION OF TERM "CONSUMER FRAUD" TO READ "CONSUMER PROTECTION"*

*(a) The legislative council, under its statutory revision authority pursuant to 2 V.S.A. § 424, is directed to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in each of the following sections: 7 V.S.A. § 1010; 8 V.S.A. §§ 2706, 2709, and 2764; 9 V.S.A. § 2471; 18 V.S.A. §§ 1511, 1512, 4086, 4631, 4633, 4634, and 9473; 20 V.S.A. § 2757; and 33 V.S.A. §§ 1923 and 2010; and in any other sections as appropriate.*

*(b) Notwithstanding the provisions of 3 V.S.A. chapter 25, the attorney general shall have the authority to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in the attorney general's rules, regulations, and procedures and shall exercise such authority upon passage of this act as he or she deems to be necessary, appropriate, and consistent with the purposes of this section.*

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

*Subchapter 5. Cause-Related Marketing*

§ 2481a. DEFINITIONS

*In this chapter:*

*(1) "Charitable sales promotion" means an advertising or sales campaign conducted in this state by a commercial coventurer in which it is represented to the public that an amount per unit of goods or services purchased or used by the public or an amount based on aggregate purchases or use by the public will benefit a charitable organization or charitable purpose. "Charitable sales promotion" does not include:*

*(A) A promotion in which 100 percent of the amount paid for the goods or services will benefit a charitable organization or charitable purpose;*

*(B) A promotion in which a commercial coventurer does not generate a net profit; or*

*(C) A promotion that does not involve the sale or lease of goods or services.*

*(2) "Commercial coventurer" means a person who for profit is regularly and primarily engaged in trade or commerce in this state other than in connection with the raising of funds for charitable purposes and who represents to the public that an amount per unit of goods or services purchased or used by the public or an amount based on aggregate purchases*

or use by the public will benefit a charitable organization or charitable purpose.

(3) "Representation" means an advertisement, commercial, or other communication to the public in any medium.

§ 2481b. REQUIRED DISCLOSURES

Every commercial coventurer shall disclose the following information in a clear and conspicuous manner in close proximity to any representation, in connection with a charitable sales promotion, that an amount per unit of goods or services purchased or used by the public, or an amount based on aggregate purchases or use by the public, will benefit a charitable organization or charitable purpose:

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

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

(3) Any maximum amount that will benefit the charitable organization or purpose.

§ 2481c. RECORD-KEEPING

A commercial coventurer shall maintain records that are sufficient to demonstrate compliance with the requirements of this chapter and the disclosed terms of a charitable sales promotion.

§ 2481d. VIOLATIONS

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

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

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

§ 2463. CREDIT BILLING FOR CERTAIN HOME SOLICITATION  
SALES

In the case of any home solicitation sale solicited or consummated by a seller in whole or in part by telephone that is paid for by means of an open-end consumer credit plan within the meaning of the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., the issuer of the credit card on which the consumer has charged the purchase shall, for ~~three years~~ one year from the date of the sale, or within any other time period available under applicable network



operating rules in effect at the time of the sale, whichever is greater, and for the purpose of a disputed charge and reimbursement to the consumer, be subject to the claim or defense that the seller failed to comply with the disclosure requirements of section 2454(b) of this chapter and engaged in a related unfair or deceptive act or practice under subsection 2453(a) of this title, regardless of the amount of the purchase, the location of the seller ~~in the United States or Canada~~, or the amount, if any, already paid by the consumer. The issuer of the credit card shall not be liable for amounts already paid by the consumer and not reimbursed by the seller or the seller's merchant bank. Where a consumer has raised such a claim or defense, the issuer shall not report any negative information on the purchase to any consumer reporting agency as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), unless there is a judicial determination that the consumer's defense or claim is without merit, except that the issuer may report that there is a dispute with respect to the charge.

*Sec. 4. FINDINGS – REGULATION OF LEAD IN FOOD AND IN*

*VITAMINS AND OTHER SUPPLEMENTS*

The general assembly finds:

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

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

(3) The effects of lead exposure are cumulative, and a child may be harmed by ingesting very small amounts of lead.

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

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

(6) Although there is no single governmental limit on lead in food, such limits as do exist are much lower than the 100 parts per million (ppm) limit on lead in “children’s products” under Vermont law. For example, the federal Food and Drug Administration has set a 0.005 ppm limit on lead in bottled water and has recommended a 0.1 ppm limit on lead in candy.

~~(7) The attorney general should exercise his or her authority under the Consumer Fraud Act to protect the children of Vermont from the potential harm caused by lead in food, vitamins, and supplements.~~

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

§ 2470e. DEFINITIONS

As used in this subchapter:

(1) “Children’s product” means any consumer product marketed for use by children under the age of 12, or whose substantial use or handling by children under 12 years of age is reasonably foreseeable, including toys,

*furniture, jewelry, ~~vitamins and other supplements~~, personal care products,  
clothing, ~~food~~, and food containers and packaging.*

*\* \* \**

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

*§ 4401. RIGHTS OF RECIPIENT OF MERCHANDISE UNSOLICITED  
GOODS OR SERVICES; ~~DEFINITION~~; OBLIGATION OF  
BUSINESS RECIPIENT TO NOTIFY SELLER*

*(a) ~~When personal property is mailed or caused to be delivered or when  
services are rendered to another by a person who knows the property or  
services to be unsolicited merchandise or services, the person to whom the  
merchandise is sent or delivered or for whom the services are rendered may  
refuse to accept delivery of the same, or he may deem it to be a gift and may  
use it or dispose of it in any manner without obligation to the person sending  
or delivering it.~~*

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

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

*(1) refuse the unsolicited goods; or*

(2) deem the unsolicited goods to be a gift and dispose of them in any manner without obligation to the seller; provided that, in the case of a recipient who is not a natural person, before disposing of the goods, the recipient shall make a reasonable effort to notify the seller that it has received the unsolicited goods.

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

(1) The seller shall provide, within 20 days of the notification of error, for the pick-up or return shipment of any remaining portion of the unsolicited goods at the seller's expense and risk, during which time the recipient shall take reasonable care of the remaining unsolicited goods. The recipient need not tender the remaining goods at any place other than the place of delivery or the location of the remaining goods at the time of the notification of error and shall have no further obligation to accommodate the seller's schedule for pick-up or return shipment or otherwise to facilitate the recovery of the item beyond the requirements of this section. If the recipient refuses to relinquish any remaining portion of the unsolicited goods to the seller, or agrees to relinquish the remaining unsolicited goods to the seller and fails to do so, the recipient shall be liable for the cost of the unsolicited goods not relinquished to the seller.

(2) The seller may discontinue services to the recipient. The recipient shall not be liable for any services delivered or used prior to the discontinuance of service.

(c) In this section:

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

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

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

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

#### **CHAPTER 81. GIFT CERTIFICATES**

##### **§ 2701. DEFINITIONS**

*As used in this chapter:*

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

*(2) “Financial institution” means an institution as defined in subdivision 11101(32) of this title.*

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

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

(5) "Paid value" means the value of any money or other thing of value given in exchange for a gift certificate.

(6) "Promotional value" means any value shown on a gift certificate in excess of the paid value of the gift certificate.

§ 2702. EXPIRATION DATE

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

§ 2702a. LOYALTY, AWARD, OR PROMOTIONAL GIFT CERTIFICATE

A loyalty, award, or promotional gift certificate shall clearly and legibly set forth the following disclosures, as applicable:

(1) A statement indicating that the gift certificate is issued for loyalty, award, or promotional purposes, which shall be included on the front of the gift certificate;

(2) The expiration date for both the paid value of the gift certificate, if any, and the promotional value of the gift certificate, if any, which shall be included on the front of the gift certificate;

(3) The amount of any fees that may be imposed in connection with the gift certificate and the conditions under which they may be imposed, which shall be provided on or with the gift certificate; and

(4) If any fee is assessed against the gift certificate, a toll-free telephone number and, if one is maintained, a website address that a consumer may use to obtain fee information, which shall be included on the gift certificate.

\* \* \*

§ 2707. EXEMPTION

~~The~~ Except as provided in this section, the provisions of this chapter shall not apply to the following:

(1) A loyalty, award, or promotional gift certificate issued pursuant to an awards or loyalty program where no money or other thing of value is given in exchange for the gift certificate, provided that the ~~expiration date is clearly~~



~~and legibly disclosed on the gift certificate complies with section 2702a of this title.~~

~~(2) The promotional value of a loyalty, award, or promotional gift certificate issued in exchange for paid value, provided that the gift certificate complies with sections 2702 and 2702a of this title.~~

~~(3) A gift certificate donated to a charitable organization and used for fund-raising activities of a charitable organization, without any money or other thing of value being given in exchange for the gift certificate by the charitable organization, provided that the expiration date is clearly and legibly printed on the gift certificate.~~

~~(3)(4) Prepaid calling cards issued solely to provide an access number and authorization code for prepaid calling services.~~

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

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

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

\* \* \*

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

Subchapter 7. Unlicensed Loan Transactions

§ 2481w. UNLICENSED LOAN TRANSACTIONS

(a) In this subchapter:

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

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

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

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

(b) It is an unfair and deceptive act and practice in commerce for a lender directly or through an agent to solicit or make a loan to a consumer by any means unless the lender is in compliance with all provisions of 8 V.S.A.

chapter 73 or is otherwise exempt from the requirements of 8 V.S.A.

chapter 73.

(c) It is an unfair and deceptive act and practice in commerce for a processor, other than a federally insured depository institution, to process a check, draft, other form of negotiable instrument, or an electronic funds transfer from a consumer's financial account in connection with a loan solicited or made by any means to a consumer unless the lender is in compliance with all provisions of 8 V.S.A. chapter 73 or is otherwise exempt from the requirements of 8 V.S.A. chapter 73.

(d) It is an unfair and deceptive act and practice in commerce for any person, including the lender's financial institution as defined in 8 V.S.A. § 10202(5), but not including the consumer's financial institution as defined in 8 V.S.A. § 10202(5), to provide substantial assistance to a lender or processor when the person or the person's authorized agent receives notice from a regulatory, law enforcement, or similar governmental authority, or knows from its normal monitoring and compliance systems, or consciously avoids knowing that the lender or processor is in violation of subsection (b) or (c) of this section or is engaging in an unfair or deceptive act or practice in commerce.

Sec. 9. 8 V.S.A. chapter 114 is added to read:

CHAPTER 114. PORTABLE ELECTRONICS INSURANCE

§ 4257. DEFINITIONS

As used in this chapter:

(1) “Portable electronics” means electronic devices that are portable in nature, their accessories, and services related to the use of such devices.

(2) “Portable electronics insurance” means insurance which may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy that provides coverage for the repair or replacement of portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. The term does not include a service contract governed by subchapter 4 of chapter 113 of this title, a policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty, or a homeowner’s, renter’s, private passenger automobile, commercial multi-peril, or similar policy.

(3) “Portable electronics vendor” means a person in the business of selling or leasing portable electronics directly or indirectly.

§ 4258. PREMIUM BILLINGS

The charges for portable electronics insurance coverage may be billed and collected by a portable electronics vendor. Any charge to a customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the customer’s bill. If the portable electronics insurance coverage is included with the purchase or

lease of portable electronics, a portable electronics vendor shall clearly and conspicuously disclose to the customer that the portable electronics insurance coverage is included with the portable electronics. A portable electronics vendor billing and collecting such charges shall not be required to maintain such funds in a segregated account, provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the insurer or the producer appointed by the insurer to supervise the administration of a portable electronics insurance program within 60 days of receipt. All funds received by a portable electronics vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Portable electronics vendors may receive compensation for billing and collection services.

§ 4259. TERMINATION AND MODIFICATION REQUIREMENTS

Notwithstanding any other provision of law, the terms for the termination or modification of a policy of portable electronics insurance shall be as set forth in the policy.

§ 4260. NOTICE REQUIREMENTS

(a) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to the policy or is otherwise required by law, it shall be in writing. Notwithstanding any other provision of

law, notices and correspondence may be sent either by mail or by electronic means as set forth in this section. If the notice or correspondence is mailed, it shall be sent to the portable electronics vendor at the vendor's mailing address specified for such purpose and to its affected customers' last known mailing address on file with the insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the portable electronics vendor at the vendor's electronic mail address specified for such purpose and to its affected customers' last known electronic mail address as provided by each customer to the insurer or vendor of portable electronics.

~~For purposes of this subsection, a customer's provision of an electronic mail address to the insurer or vendor of portable electronics shall be deemed consent to receive notices and correspondence by electronic means. A customer is deemed to consent to receive notice and correspondence by electronic means if the insurer or vendor first discloses to the customer that by providing an electronic mail address the customer consents to receive electronic notice and correspondence at the address, and, the customer provides an electronic mail address. The insurer or vendor of portable electronics shall maintain proof that the notice or correspondence was sent.~~

(b) Notice or correspondence required pursuant to a policy of portable electronics insurance or otherwise required by law may be sent on behalf of the insurer or vendor by an insurance producer appointed by the insurer to supervise the administration of a portable electronics insurance program.

§ 4261. RULEMAKING; LICENSING; CLAIMS; SALES

The commissioner shall adopt rules establishing a business entity limited lines producer license for the sale of portable electronics insurance as well as requirements for the sale of portable electronics insurance by a vendor and its employees and authorized representatives and standards for the adjusting of claims under a policy of portable electronics insurance by a supervising entity.

Sec. 10. 8 V.S.A. § 4813a is amended to read:

§ 4813a. DEFINITIONS

*For purposes of this subchapter:*

\* \* \*

(10) “Portable electronics insurance” shall have the same meaning as in subdivision 4257(2) of this title.

(11) “Portable electronics vendor” shall have the same meaning as in subdivision 4257(3) of this title.

(12) “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

~~(H)~~(13) *“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.*

~~(H)~~(14) *“Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.*

~~(H)~~(15) *“Uniform Application” means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.*

~~(H)~~(16) *“Uniform Business Entity Application” means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.*

*Sec. 11. 8 V.S.A. § 4813d is amended to read:*

*§ 4813d. EXCEPTIONS TO LICENSING*

*(a) Nothing in this subchapter shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.*

*(b) A license as an insurance producer shall not be required of the following:*

*\* \* \**



(8) A person selling or offering portable electronics insurance who is an employee or authorized representative of a portable electronics vendor licensed as a limited lines insurance producer to sell, solicit, or negotiate portable electronics insurance in accordance with rules adopted by the commissioner pursuant to section 4261 of this title.

\* \* \*

*Sec. 12. PROTECTION OF OLDER CONSUMERS*

On or before January 15, 2013, in collaboration with appropriate state agencies, including the department of disabilities, aging, and independent living; advocacy organizations; and other interested persons and commercial entities, the attorney general shall submit legislative and policy recommendations and rationales to the house committee on commerce and economic development on the advisability and appropriate age limits for establishing appropriate consumer protections to protect older Vermonters.

*Sec. 13. 33 V.S.A. § 2607 is amended to read:*

*§ 2607. PAYMENTS TO FUEL SUPPLIERS*

*(a) The secretary of human services or designee shall certify fuel suppliers, excluding firewood and wood pellet suppliers, to be eligible to participate in the home heating fuel assistance program. Beneficiaries may use their seasonal fuel assistance benefit to obtain home heating fuel or energy only from a fuel supplier certified by the director, except that beneficiaries who heat*

*with firewood or wood pellets may obtain their firewood or wood pellets from any supplier they choose.*

*(b) Certified fuel suppliers shall agree to conduct reasonable efforts in order to inform and assist beneficiaries in their service areas, maintain records of amounts and costs of all fuel deliveries, send periodic statements to customers receiving home heating fuel assistance informing them of their account's credit or debit balance as of the last statement, deliveries or usage since that statement and the charges for such, payments made or applied, indicating their source, since that statement, and the ending credit or debit balance. Certified fuel suppliers shall also agree to provide the secretary of human services or designee such information deemed necessary for the efficient administration of the program, ~~including information required to pay the beneficiary's benefits to the certified supplier after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.~~*

*(c) Certified fuel suppliers shall not disclose the beneficiary status of recipients of home heating fuel assistance benefits, the names of recipients, or other information pertaining to recipients to anyone, except for purposes directly connected with administration of the home heating fuel assistance program or when required by law.*

*(d) Certified fuel suppliers shall also agree to enter into budget agreements with beneficiaries for annualized monthly payments for fuel supplies provided the beneficiary meets accepted industry credit standards, and shall grant program beneficiaries such cash discounts, preseason delivery savings, automatic fuel delivery agreements, and any other discounts granted to any other heating fuel customer or as the secretary of human services or designee may negotiate with certified fuel suppliers.*

*(e) The secretary of human services or designee shall provide each certified fuel supplier with a list of the households who are its customers and have been found eligible for annual home heating fuel assistance for the current year, the total amount of annual home heating fuel assistance that has been authorized for each household, and how the total amount has been allocated over the heating season. Each authorized amount shall function as a line of credit for each eligible household. The secretary or designee shall disburse authorized home heating fuel assistance benefits to certified fuel suppliers on behalf of eligible households ~~after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.~~ Authorized benefits for oil, propane, kerosene, dyed diesel, and coal shall be paid after fuel is delivered and invoiced to the secretary or designee. Authorized benefits for electricity and natural gas shall be paid in full and*

credited to the eligible household's account at the same time benefit notices are issued to the eligible household.

*(f) The secretary of human services or designee shall negotiate with one or more certified fuel suppliers to obtain the most advantageous pricing and, payment terms, and delivery methods possible for eligible households.*

(g)(1) The public service board shall require natural gas suppliers subject to regulation under 30 V.S.A § 203 to provide a discount program to customers with incomes no greater than 200 percent of the federal poverty level or who meet the department for children and families' means test of eligibility for LIHEAP crisis fuel assistance. Eligibility for the discount shall be verified by the department for children and families.

(2) In implementing the discount program, the board shall consider:

(A) Low income discount programs, rates, and cost structures of other Vermont regulated utilities.

(B) Low income discount programs, rates, and cost structures for gas customers in other states.

(C) Options for allocating the costs of the discount program that avoid or reduce the cost impact of the program on ineligible ratepayers, including consideration of each of the following:

(i) Use of any revenues collected from ratepayers that are in excess of the revenue requirement most recently determined by the board.

(ii) Use of revenues collected from ratepayers to fund system expansions that have not been placed in service.

(3) On or before January 15, 2013, the board shall:

(A) implement this subsection by order to each natural gas company subject to its jurisdiction; and

(B) report to the house committees on commerce and economic development and on human services, and to the senate committees on health and welfare and on economic development, housing and general affairs on its implementation of this subsection, including its consideration of the matters described in subdivision (2) of this subsection and the results of that consideration.

**Sec. 13a. STUDY; RESIDENTIAL SPRINKLER SYSTEMS**

The department of public safety, in consultation with the department of financial regulation, home builders, and insurance carriers, as well as other interested parties, shall study the costs of requiring sprinklers in new residential construction, including whether fire insurance carriers should be required to absorb all of the costs of sprinkler installation by offsetting premiums until the cost is paid in full and the reduction in premiums is not otherwise recovered in premiums charged to other insureds. The department shall report its findings and any recommendations regarding the cost of installing and paying for residential sprinkler systems to the senate committee

on economic development, housing and general affairs and the house committee on general, housing and military affairs on or before January 15, 2013.

*Sec. 14. EFFECTIVE DATES*

*This act shall take effect on passage, except that Sec. 3 (credit billing for certain home solicitation sales) shall take effect one year from the date of passage.*