

1 Introduced by Committee on Commerce and Economic Development

2 Date:

3 Subject: Commerce and trade; consumer protection

4 Statement of purpose of bill as introduced: This bill proposes to implement
5 consumer protection provisions relating to consumer litigation funding;
6 structured settlements; business registration requirements; antitrust penalties;
7 discount membership programs; and nonresidential home improvement fraud.

8 An act relating to miscellaneous consumer protection provisions

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

10 * * * Consumer Litigation Funding * * *

11 Sec. A.1. 8 V.S.A. chapter 74 is added to read:

12 CHAPTER 74. CONSUMER LITIGATION FUNDING COMPANIES

13 § 2251. DEFINITIONS

14 As used in this chapter:

15 (1) “Charges” means the amount a consumer owes to a company in
16 addition to the funded amount and includes an administrative fee, origination
17 fee, underwriting fee, processing fee, and any other fee regardless of how the
18 fee is denominated, including amounts denominated as interest or rate.

19 (2) “Commissioner” means the Commissioner of Financial Regulation.

1 (3) “Consumer” means a natural person who is seeking or has obtained
2 consumer litigation funding for a pending legal claim, provided:

3 (A) the claim is in Vermont; or

4 (B) the person resides or is domiciled in Vermont, or both.

5 (4) “Consumer litigation funding” or “funding” means a nonrecourse
6 transaction in which a company purchases and a consumer assigns to the
7 company a contingent right to receive an amount of the potential net proceeds
8 of a settlement or judgment obtained from the consumer’s legal claim. If no
9 proceeds or net proceeds are obtained, the consumer is not required to repay
10 the company the funded amount or charges.

11 (5) “Consumer litigation funding company,” “litigation funding
12 company,” or “company” means a person that provides consumer litigation
13 funding to a consumer. The term does not include an immediate family
14 member of the consumer, as defined in subdivision 2200(10) of this title.

15 (6) “Funded amount” means the amount of monies provided to, or on
16 behalf of, the consumer pursuant to a litigation funding contract. The term
17 excludes charges.

18 (7) “Health care facility” has the same meaning as in 18 V.S.A.
19 § 9402(6).

20 (8) “Health care provider” has the same meaning as in 18 V.S.A.
21 § 9402(7).

1 (9) “Litigation funding contract” or “contract” means a contract between
2 a company and a consumer for the provision of consumer litigation funding.

3 (10)(A) “Net proceeds” means the amount recovered by a consumer as a
4 result of a legal claim less costs associated with the legal claim or the
5 underlying events giving rise to the legal claim, including:

6 (i) attorney’s fees, attorney liens, litigation costs;

7 (ii) claims or liens for related medical services **owned and asserted**
8 **by the provider of such services;**

9 (iii) claims or liens for reimbursement arising from third parties
10 who have paid related medical expenses, including claims from **health care**
11 insurers, employers with self-funded health care plans, and publicly financed
12 health care plans; and

13 (iv) liens **or claims for lost wages or for** workers’ compensation
14 benefits **paid to the consumer.**

15 (B) This definition of “net proceeds” shall in no way affect the
16 priority of claims or liens other than those for payments to the consumer
17 litigation funding company under a consumer litigation funding contract
18 subject to this chapter.

19 § 2252. REGISTRATION; FEE; FINANCIAL STABILITY

20 (a) A company shall not engage in the business of consumer litigation
21 funding without first filing a registration with the Commissioner on a form

1 prescribed by the Commissioner and submitting a registration fee and proof of
2 financial stability, as required by this section.

3 (b) A company shall submit a \$600.00 fee at the time of registration and at
4 the time of each renewal. Registrations shall be renewed every three years.

5 (c) A company shall file with the Commissioner evidence of its financial
6 stability which shall include proof of a surety bond or irrevocable letter of
7 credit issued and confirmed by a financial institution authorized by law to
8 transact business in Vermont that is equal to double the amount of the
9 company's largest funded amount in Vermont in the prior three calendar years
10 or \$50,000.00, whichever is greater.

11 § 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

12 (a) A contract shall be written in a clear and coherent manner using words
13 with common, everyday meanings to enable the average consumer who makes
14 a reasonable effort under ordinary circumstances to read and understand the
15 terms of the contract without having to obtain the assistance of a professional.

16 (b) Each contract shall include consumer disclosures on the front page.
17 The consumer disclosures shall be in a form prescribed by the Commissioner
18 and shall include:

19 (1) a description of possible alternatives to a litigation funding contract,
20 including secured or unsecured personal loans, and life insurance policies;

21 (2) notification that some or all of the funded amount may be taxable;

- 1 (3) a description of the consumer’s right of rescission;
- 2 (4) the total funded amount provided to the consumer under the contract;
- 3 (5) an itemization of charges;
- 4 (6) the annual percentage rate of return;
- 5 (7) the total amount due from the consumer, including charges, if
6 repayment is made any time after the funding contract is executed;
- 7 (8) a statement that there are no fees or charges to be paid by the
8 consumer other than what is disclosed on the disclosure form;
- 9 (9) in the event the consumer seeks more than one litigation funding
10 contract, a disclosure providing the cumulative amount due from the consumer
11 for all transactions, including charges under all contracts, if repayment is made
12 any time after the contracts are executed;
- 13 (10) a statement that the company has no right to make any decisions
14 regarding the conduct of the legal claim or any settlement or resolution thereof
15 and that the right to make such decisions remains solely with the consumer and
16 his or her attorney;
- 17 (11) a statement that, if there is no recovery of any money from the
18 consumer’s legal claim, the consumer shall owe nothing to the company and
19 that, if the net proceeds of the claim are insufficient to repay the consumer’s
20 indebtedness to the company, then the consumer shall owe the company no
21 money in excess of the net proceeds; and

1 (12) any other statements or disclosures deemed necessary or
2 appropriate by the Commissioner.

3 (c) Each contract shall include the following provisions:

4 (1) Definitions of the terms “consumer,” “consumer litigation funding,”
5 and “consumer litigation funding company.”

6 (2) A right of rescission, allowing the consumer to cancel the contract
7 without penalty or further obligation if, within five business days following the
8 execution of the contract or the consumer’s receipt of any portion of the funded
9 amount, the consumer gives notice of the rescission to the company and returns
10 any funds provided to the consumer by the company.

11 (3) A provision specifying that, in the event of litigation involving the
12 contract and at the election of the consumer, venue shall lie in the Vermont
13 Superior Court for the county where the consumer resides.

14 (4) An acknowledgment that the consumer is represented by an attorney
15 in the legal claim and has had an opportunity to discuss the contract with his or
16 her attorney.

17 § 2254. PROHIBITED ACTS

18 (a) A consumer litigation funding company shall not engage in any of the
19 following conduct or practices:

20 (1) Pay or offer to pay commissions, referral fees, or any other form of
21 consideration to any attorney, law firm, health care provider, health care

1 facility, or an employee of a law firm, health care provider, or health care
2 facility for referring a consumer to the company.

3 (2) Accept any commissions, referral fees, or any other form of
4 consideration from any attorney, law firm, health care provider, health care
5 facility, or an employee of a law firm, health care provider, or health care
6 facility.

7 (3) Advertise false or misleading information regarding its products or
8 services.

9 (4) Receive any right to nor make any decisions with respect to the
10 conduct of the consumer’s legal claim or any settlement or resolution. The
11 right to make such decisions shall remain solely with the consumer and his or
12 her attorney.

13 (5) Knowingly pay or offer to pay for court costs, filing fees, or
14 attorney’s fees either during or after the resolution of the legal claim.

15 (6) Refer a consumer to a specific attorney, law firm, health care
16 provider, or health care facility.

17 (7) Fail to provide promptly copies of contract documents to the
18 consumer or to the consumer’s attorney.

19 (8) Obtain a waiver of any remedy the consumer might otherwise have
20 against the company.

1 (9) Provide legal advice to the consumer regarding the funding or the
2 underlying legal claim.

3 **(10) Assign its rights under a contract in whole or in part to a third**
4 **party. [Proposal by Jack Kelly to strike or amend. TBD]**

5 (11) Report a consumer to a credit reporting agency if insufficient funds
6 remain from the net proceeds to repay the company.

7 (12) Require binding arbitration in the event of a dispute between the
8 consumer and the company. A consumer has the right to a trial in the event of
9 a contractual dispute.

10 (b) An attorney or law firm retained by a consumer shall not have a
11 financial interest in a company offering litigation funding to the consumer and
12 shall not receive a referral fee or other consideration from such company, its
13 employees, or its affiliates.

14 § 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

15 A communication between a consumer’s attorney and the company shall
16 not be discoverable or limit, waive, or abrogate the scope or nature of any
17 statutory or common-law privilege, including the work-product doctrine and
18 the attorney-client privilege.

19 § 2256. EXAMINATIONS; CHARGES

20 For the purpose of protecting consumer interests and determining a
21 company’s financial stability and compliance with the requirements of this

1 chapter, the Commissioner may conduct an examination of a company engaged
2 in the business of consumer litigation funding. The company shall reimburse
3 the Department of Financial Regulation all reasonable costs and expenses of
4 such examination. In unusual circumstances and in the interests of justice, the
5 Commissioner may waive reimbursement for the costs and expenses of an
6 examination under this section.

7 **§ 2257. NATIONWIDE LICENSING SYSTEM; INFORMATION**

8 **SHARING; CONFIDENTIALITY**

9 **(a) In furtherance of the Commissioner’s duties under this chapter, the**
10 **Commissioner may participate in the Nationwide Mortgage Licensing System**
11 **and Registry and may take such action regarding participation in the Registry**
12 **as the Commissioner deems necessary to carry out the purposes of this section,**
13 **including:**

14 **(1) issue rules or orders, or establish procedures, to further participation**
15 **in the Registry;**

16 **(2) facilitate and participate in the establishment and implementation of**
17 **the Registry;**

18 **(3) establish relationships or contracts with the Registry or other entities**
19 **designated by the Registry;**

1 (4) authorize the Registry to collect and maintain records and to collect
2 and process any fees associated with licensure or registration on behalf of the
3 Commissioner;

4 (5) require persons engaged in activities that require registration under
5 this chapter to use the Registry for applications, renewals, amendments,
6 surrenders, and such other activities as the Commissioner may require and to
7 pay through the Registry all fees provided for under this chapter;

8 (6) authorize the Registry to collect fingerprints on behalf of the
9 Commissioner in order to receive or conduct criminal history background
10 checks, and, in order to reduce the points of contact which the Federal Bureau
11 of Investigation may have to maintain for purposes of this subsection, the
12 Commissioner may use the Registry as a channeling agent for requesting
13 information from and distributing information to the Department of Justice or
14 any other governmental agency; and

15 (7) in order to reduce the points of contact which the Commissioner may
16 have to maintain for purposes of this chapter, use the Registry as a channeling
17 agent for requesting and distributing information to and from any source so
18 directed by the Commissioner.

19 (b) The Commissioner may require persons engaged in activities that
20 require registration under this chapter to submit fingerprints, and the
21 Commissioner may use the services of the Registry to process the fingerprints

1 and to submit the fingerprints to the Federal Bureau of Investigation, the
2 Vermont State Police, or any equivalent state or federal law enforcement
3 agency for the purpose of conducting a criminal history background check.
4 The company shall pay the cost of such criminal history background check,
5 including any charges imposed by the Registry.

6 (c) Persons engaged in activities that require registration pursuant to this
7 chapter shall pay all applicable charges to use the Registry, including such
8 processing charges as the administrator of the Registry shall establish, in
9 addition to the fees required under this chapter.

10 (d) The Registry is not intended to and does not replace or affect the
11 Commissioner's authority to grant, deny, suspend, revoke, or refuse to renew
12 registrations.

13 (e) In order to promote more effective regulation and reduce regulatory
14 burden through supervisory information sharing:

15 (1) The privacy or confidentiality of any information or material
16 provided to the Registry and any privilege arising under federal or state law
17 (including the rules of any federal or state court) with respect to such
18 information or material shall continue to apply to such information or material
19 after the information or material has been disclosed to the Registry. Such
20 information and material may be shared with all state and federal regulatory

1 officials with oversight authority without the loss of privilege or the loss of
2 confidentiality protections provided by federal law or state law.

3 (2) To carry out the purpose of this section, the Commissioner is
4 authorized to enter agreements or sharing arrangements with other
5 governmental agencies, the Conference of State Bank Supervisors, the
6 American Association of Residential Mortgage Regulators, or other
7 associations representing governmental agencies.

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

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

13 (B) subpoena or discovery or admission into evidence in any private
14 civil action or administrative process unless with respect to any privilege held
15 by the Registry with respect to such information or material the person to
16 whom such information or material pertains waives, in whole or in part, in the
17 discretion of the person, that privilege.

18 (4) This subsection shall not apply with respect to information or
19 material relating to employment history and publicly adjudicated disciplinary
20 and enforcement actions that are included in the Registry for access by the
21 public.

1 (f) In this section, “Nationwide Mortgage Licensing System and Registry”
2 or “the Registry” means a licensing system developed and maintained by the
3 Conference of State Bank Supervisors and the American Association of
4 Residential Mortgage Regulators as defined in 12 U.S.C. § 5102(6), or its
5 successor in interest, or any alternative or replacement licensing system and
6 registry designated by the Commissioner.

7 § 2258. RULES

8 The Commissioner may adopt rules he or she deems necessary for the
9 proper conduct of business and enforcement of this chapter.

10 § 2259. PENALTIES; ENFORCEMENT

11 (a) After notice and opportunity for hearing in accordance with the
12 Administrative Procedures Act, 3 V.S.A. chapter 25, the Commissioner may
13 take action to enforce the provisions of this chapter and may:

14 (1) revoke or suspend a company’s registration;

15 (2) order a company to cease and desist from further consumer litigation
16 funding;

17 (3) impose a penalty of not more than \$1,000.00 for each violation or
18 \$10,000.00 for each violation the Commissioner finds to be willful; and

19 (4) order the company to make restitution to consumers.

1 (b) The powers vested in the Commissioner by this chapter shall be in
2 addition to any other powers of the Commissioner to enforce any penalties,
3 finances, or forfeitures authorized by law.

4 (c) A company's failure to comply with the requirements of this chapter
5 shall constitute an unfair or deceptive act in commerce enforceable under
6 9 V.S.A. chapter 63, the Consumer Protection Act.

7 (d) The powers vested in the Commissioner by this chapter shall be in
8 addition to any other powers or rights of consumers or the Attorney General or
9 others under any other applicable law or rule, including the Vermont
10 Consumer Protection Act and any applicable rules adopted thereunder,
11 provided the Commissioner's determinations concerning the interpretation and
12 administration of the provisions of this chapter and rules adopted thereunder
13 shall carry a presumption of validity.

14 § 2260. ANNUAL REPORTS

15 (a) Annually, on or before April 1, each company registered under this
16 chapter shall file a report with the Commissioner under oath and in the form
17 and manner prescribed by the Commissioner. The report shall include any
18 information the Commissioner requires concerning the company's business
19 and operations during the preceding calendar year within Vermont and, in
20 addition, shall include:

21 (1) the number of contracts entered into;

1 (2) the dollar value of funded amounts to consumers;

2 (3) the dollar value of charges under each contract, itemized and
3 including the annual rate of return;

4 (4) the dollar amount and number of litigation funding transactions in
5 which the realization to the company was as contracted; and

6 (5) the dollar amount and number of litigation funding transactions in
7 which the realization to the company was less than contracted.

8 (b) To assist the general public with more fully understanding the nature of
9 consumer litigation funding in Vermont, the Commissioner shall summarize
10 and analyze relevant data submitted under this section and publish the
11 summary and analysis on a web page maintained by the Department of
12 Financial Regulation, as well as on a web page maintained by the Office of the
13 Attorney General.

14 (c) Annually, beginning on or before October 1, 2017, the Commissioner
15 and Attorney General shall report jointly to the General Assembly on the status
16 of consumer litigation funding in Vermont and make any recommendations
17 they deem necessary to improve the regulatory framework of consumer
18 litigation funding, including a recommendation on whether Vermont should
19 limit charges imposed under a consumer litigation funding contract.

1 (B) if the transferee’s knowledge concerning the remaining payments
2 changes after the transferee submits a notice of the proposed transfer, the
3 transferee may provide updated information to the court at the hearing;

4 ~~(8)~~(9) if available to the transferee after making a good faith request of
5 the payee, the structured settlement obligor and the annuity issuer, the
6 following documents, which shall be filed under seal:

7 (A) a copy of the annuity contract;

8 (B) a copy of any qualified assignment agreement; and

9 (C) a copy of the underlying structured settlement agreement;

10 ~~(9)~~(10) either a certification from an independent professional advisor
11 establishing that the advisor has given advice to the payee on the financial
12 advisability of the transfer and the other financial options available to the
13 payee or a written request that the Court determine that such advice is
14 unnecessary pursuant to subdivision 2480dd(a)(2) of this title; and

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

1 * * * Business Registration; Enforcement * * *

2 Sec. C.1. 11 V.S.A. chapter 15 is amended to read:

3 CHAPTER 15. REGISTRATION OF BUSINESS ENTITIES

4 * * *

5 § 1626. FAILURE TO REGISTER; ENFORCING COMPLIANCE

6 ~~Upon the complaint of the secretary of state, a person, copartnership,~~
7 ~~association, limited liability company or corporation carrying on business in~~
8 ~~this state contrary to this chapter may be enjoined therefrom by a superior~~
9 ~~court and fined not more than \$100.00.~~

10 (a) A person who is not registered with the Secretary of State as required
11 under this chapter, and any successor to the person or assignee of a cause of
12 action arising out of the business of the person, may not maintain an action or
13 proceeding or raise a counterclaim, crossclaim, or affirmative defense in this
14 State until the person, successor, or assignee registers with the Secretary.

15 (b) The failure of a person to register as required under this chapter does
16 not impair the validity of a contract or act of the person or preclude it from
17 defending an action or proceeding in this State.

18 (c) An individual does not waive a limitation on his or her personal liability
19 afforded by other law solely by transacting business in this State without
20 registering with the Secretary of State as required under this chapter.

1 (1) terminate the registration of a person who, under a provision of the
2 laws of this State, or pursuant to a court order or assurance of discontinuance,
3 is not authorized to conduct business in this State; and

4 (2) amend his or her records to reflect the termination of a registration
5 pursuant to subdivision (1) of this section.

6 (b)(1) If the Secretary of State terminates the registration of a person
7 pursuant to this section, the person appoints the Secretary as his or her agent
8 for service of process in any proceeding based on a cause of action that arose
9 during the time the person was authorized to transact, or was transacting
10 without authorization, business in this State.

11 (2) Upon receipt of process, the Secretary of State shall mail a copy of
12 the process to the secretary of the terminated person at its principal office
13 shown in its most recent annual report or in any subsequent communication
14 received from the person stating the current mailing address of its principal
15 office, or, if none is on file, in its application for registration.

16 (c) If the terminated person demonstrates to the reasonable satisfaction of
17 the Secretary of State that he or she has addressed the grounds for termination
18 and pays to the Secretary a fee of \$25.00 for each year the person is delinquent,
19 the Secretary may cancel the termination and prepare a certificate of
20 reinstatement, file the original of the certificate, and serve a copy on the
21 person.

1 Sec. C.2. 11 V.S.A. § 3303 is amended to read:

2 § 3303. EFFECT OF FAILURE TO QUALIFY

3 (a)(1) A foreign limited liability partnership transacting business in this
4 ~~state~~ State may not maintain an action or proceeding or raise a counterclaim,
5 crossclaim, or affirmative defense in this ~~state~~ State unless it has in effect a
6 statement of foreign qualification.

7 (2) The successor to a foreign limited liability partnership that
8 transacted business in this State without a certificate of authority and the
9 assignee of a cause of action arising out of that business may not maintain a
10 proceeding or raise a counterclaim, crossclaim, or affirmative defense based on
11 that cause of action in any court in this State until the foreign limited liability
12 partnership or its successor or assignee obtains a certificate of authority.

13 (b) The failure of a foreign limited liability partnership to have in effect a
14 statement of foreign qualification does not impair the validity of a contract or
15 act of the foreign limited liability partnership or preclude it from defending an
16 action or proceeding in this ~~state~~ State.

17 (c) A limitation on personal liability of a partner is not waived solely by
18 transacting business in this ~~state~~ State without a statement of foreign
19 qualification.

20 (d) If a foreign limited liability partnership transacts business in this ~~state~~
21 State without a statement of foreign qualification, the ~~secretary of state~~

1 Secretary of State is its agent for service of process with respect to a right of
2 action arising out of the transaction of business in this ~~state~~ State.

3 (e) A foreign limited liability partnership that transacts business in this
4 State without a statement of foreign qualification shall be liable to the
5 State for:

6 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
7 \$10,000.00 for each year, it transacts business in this State without a statement
8 of foreign qualification;

9 (2) an amount equal to the fees due under this chapter during the
10 period it transacted business in this State without a statement of foreign
11 qualification; and

12 (3) other penalties imposed by law.

13 Sec. C.3. 11 V.S.A. § 3305 is amended to read:

14 § 3305. ACTION BY ATTORNEY GENERAL

15 The ~~attorney general~~ Attorney General may maintain an action in the Civil
16 Division of the Superior Court to collect the penalties imposed in section 3303
17 of this title and to restrain a foreign limited liability partnership from
18 transacting business in this ~~state~~ State in violation of this subchapter.

1 Sec. C.4. 11 V.S.A. § 3487 is amended to read:

2 § 3487. TRANSACTION OF BUSINESS WITHOUT REGISTRATION

3 (a)(1) A foreign limited partnership transacting business in this ~~state~~ State
4 may not maintain an action or proceeding or raise a counterclaim, crossclaim,
5 or affirmative defense in this ~~state~~ State until it has registered in this ~~state~~
6 State.

7 (2) The successor to a foreign limited partnership that transacted
8 business in this State without a certificate of authority and the assignee of a
9 cause of action arising out of that business may not maintain a proceeding or
10 raise a counterclaim, crossclaim, or affirmative defense based on that cause of
11 action in any court in this State until the foreign limited partnership or its
12 successor or assignee obtains a certificate of authority.

13 (b) The failure of a foreign limited partnership to register in this ~~state~~ State
14 does not impair the validity of any contract or act of the foreign limited
15 partnership or prevent the foreign limited partnership from defending any
16 action, suit, or proceeding in any court of this ~~state~~ State.

17 (c) A limited partner of a foreign limited partnership is not liable as a
18 general partner of the foreign limited partnership solely by reason of having
19 transacted business in this ~~state~~ State without registration.

20 (d) A foreign limited partnership, by transacting business in this ~~state~~ State
21 without registration, appoints the ~~secretary of state~~ Secretary of State as its

1 agent for service of process with respect to claims for relief and causes of
2 action arising out of the transaction of business in this ~~state~~ State.

3 (e) A foreign limited partnership that transacts business in this State
4 without a registration shall be liable to the State for:

5 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
6 \$10,000.00 for each year, it transacts business in this State without a
7 registration;

8 (2) an amount equal to the fees due under this chapter during the period
9 it transacted business in this State without a registration; and

10 (3) other penalties imposed by law.

11 Sec. C.5. 11 V.S.A. § 3488 is amended to read:

12 § 3488. ACTION BY ATTORNEY GENERAL

13 The ~~attorney general~~ Attorney General may bring an action in the Civil
14 Division of the Superior Court to collect the penalties imposed under section
15 3487 of this title and to restrain a foreign limited partnership from transacting
16 business in this ~~state~~ State in violation of this subchapter.

17 Sec. C.6. 11 V.S.A. § 4119 is amended to read:

18 § 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF
19 AUTHORITY

20 (a)(1) A foreign limited liability company transacting business in this State
21 may not maintain a proceeding or raise a counterclaim, cross-claim, or

1 affirmative defense in any court in this State until it obtains a certificate of
2 authority to transact business in this State.

3 (2) The successor to a foreign limited liability company that transacted
4 business in this State without a certificate of authority and the assignee of a
5 cause of action arising out of that business may not maintain a proceeding or
6 raise a counterclaim, crossclaim, or affirmative defense based on that cause of
7 action in any court in this State until the foreign limited liability company or its
8 successor or assignee obtains a certificate of authority.

9 (b) The failure of a foreign limited liability company to have a certificate of
10 authority to transact business in this State does not impair the validity of a
11 contract or act of the company or prevent the foreign limited liability company
12 from defending an action or proceeding in this State.

13 (c) A member or manager of a foreign limited liability company is not
14 liable for the debts, obligations, or other liabilities of the company solely
15 because the company transacted business in this State without a certificate of
16 authority.

17 (d) If a foreign limited liability company transacts business in this State
18 without a certificate of authority, it appoints the Secretary of State as its agent
19 for service of process for claims arising out of the transaction of business in
20 this State.

1 (e) A foreign limited liability company that transacts business in this State
2 without a certificate of authority shall be liable to the State for:

3 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
4 \$10,000.00 for each year, it transacts business in this State without a certificate
5 of authority;

6 (2) an amount equal to the fees due under this chapter during the period
7 it transacted business in this State without a certificate of authority; and

8 (3) other penalties imposed by law.

9 Sec. C.7. 11 V.S.A. § 4120 is amended to read:

10 § 4120. ACTION BY ATTORNEY GENERAL

11 The Attorney General may maintain an action in the Civil Division of the
12 Superior Court to collect the penalties imposed under section 4119 of this title
13 and to restrain a foreign limited liability company from transacting business in
14 this State in violation of this chapter.

15 Sec. C.8. 11A V.S.A. § 15.02 is amended to read:

16 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT
17 AUTHORITY

18 (a) A foreign corporation transacting business in this ~~state~~ State without a
19 certificate of authority may not maintain a proceeding or raise a counterclaim,
20 crossclaim, or affirmative defense in any court in this ~~state~~ State until it obtains
21 a certificate of authority.

1 (b) The successor to a foreign corporation that transacted business in this
2 ~~state~~ State without a certificate of authority and the assignee of a cause of
3 action arising out of that business may not maintain a proceeding or raise a
4 counterclaim, crossclaim, or affirmative defense based on that cause of action
5 in any court in this ~~state~~ State until the foreign corporation or its successor or
6 assignee obtains a certificate of authority.

7 (c) A court may stay a proceeding commenced by a foreign corporation, its
8 successor, or assignee until it determines whether the foreign corporation or its
9 successor requires a certificate of authority. If it so determines, the court may
10 further stay the proceeding until the foreign corporation or its successor obtains
11 the certificate.

12 (d) A foreign corporation that transacts business in this State without a
13 certificate of authority is liable to the ~~state~~ State for:

14 (1) a civil penalty of \$50.00 for each day, ~~but~~ not to exceed a total of
15 ~~\$1,000.00~~ \$10,000.00 for each year, it transacts business in this ~~state~~ State
16 without a certificate of authority;

17 (2) an amount equal to ~~all the fees that would have been imposed due~~
18 ~~under this chapter title during the years, or parts thereof, period~~ period it transacted
19 business in this ~~state~~ State without a certificate of authority; and

20 (3) ~~such other penalties as are imposed by law. The attorney general~~
21 ~~may collect all penalties due under this subsection.~~

1 in any court in this ~~state~~ State until the foreign corporation or its successor or
2 assignee obtains a certificate of authority.

3 (c) A court may stay a proceeding commenced by a foreign corporation, its
4 successor, or assignee until it determines whether the foreign corporation or its
5 successor requires a certificate of authority. If it so determines, the court may
6 further stay the proceeding until the foreign corporation or its successor obtains
7 the certificate.

8 ~~(d) A foreign corporation is liable for a civil penalty of \$50.00 for each~~
9 ~~day, but not to exceed a total of \$1,000.00 for each year, it transacts business in~~
10 ~~this state without a certificate of authority, an amount equal to all fees that~~
11 ~~would have been imposed under this chapter during the years, or parts thereof,~~
12 ~~it transacted business in this state without a certificate of authority, and such~~
13 ~~other penalties as are imposed by law. The attorney general may collect all~~
14 ~~penalties due under this subsection.~~

15 A foreign corporation that transacts business in this State without a
16 certificate of authority is liable to the State for:

17 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
18 \$10,000.00 for each year, it transacts business in this State without a certificate
19 of authority;

20 (2) an amount equal to the fees due under this title during the period it
21 transacted business in this State without a certificate of authority; and

1 (3) other penalties imposed by law.

2 (e) The Attorney General may file an action in the Civil Division of
3 Superior Court to collect the penalties due under this subsection and to restrain
4 a foreign corporation not in compliance with this chapter from doing business
5 within this State.

6 (f) Notwithstanding subsections (a) and (b) of this section, the failure of a
7 foreign corporation to obtain a certificate of authority does not impair the
8 validity of its corporate acts or prevent it from defending any proceeding in
9 this ~~state~~ State.

10 Sec. C.10. 11C V.S.A. § 1402 is amended to read:

11 § 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

12 (a) A foreign enterprise may apply for a certificate of authority by
13 delivering an application to the Secretary of State for filing. The application
14 shall state:

15 (1) the name of the foreign enterprise and, if the name does not comply
16 with section 111 of this title, an alternative name adopted pursuant to section
17 1405 of this title;

18 (2) the name of the state or other jurisdiction under whose law the
19 foreign enterprise is organized;

20 (3) the street address and, if different, mailing address of the principal
21 office and, if the law of the jurisdiction under which the foreign enterprise is

1 organized requires the foreign enterprise to maintain another office in that
2 jurisdiction, the street address and, if different, mailing address of the required
3 office;

4 (4) the street address and, if different, mailing address of the foreign
5 enterprise's designated office in this State, and the name of the foreign
6 enterprise's agent for service of process at the designated office; and

7 (5) the name, street address and, if different, mailing address of each of
8 the foreign enterprise's current directors and officers.

9 (b) A foreign enterprise shall deliver with a completed application under
10 subsection (a) of this section a certificate of good standing or existence or a
11 similar record signed by the Secretary of State or other official having custody
12 of the foreign enterprise's publicly filed records in the state or other
13 jurisdiction under whose law the foreign enterprise is organized.

14 (c) A foreign enterprise may not transact business in this State without a
15 certificate of authority.

16 Sec. C.11. 11C V.S.A. § 1407 is amended to read:

17 § 1407. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT
18 OF FAILURE TO HAVE CERTIFICATE

19 (a) To cancel its certificate of authority, a foreign enterprise shall deliver to
20 the Secretary of State for filing a notice of cancellation. The certificate is
21 canceled when the notice becomes effective under section 203 of this title.

1 (b)(1) A foreign enterprise transacting business in this State may not
2 maintain an action or proceeding or raise a counterclaim, crossclaim, or
3 affirmative defense in this State unless it has a certificate of authority.

4 (2) The successor to a foreign enterprise that transacted business in this
5 State without a certificate of authority and the assignee of a cause of action
6 arising out of that business may not maintain a proceeding or raise a
7 counterclaim, crossclaim, or affirmative defense based on that cause of action
8 in any court in this State until the foreign enterprise or its successor or assignee
9 obtains a certificate of authority.

10 (c) The failure of a foreign enterprise to have a certificate of authority does
11 not impair the validity of a contract or act of the foreign enterprise or prevent
12 the foreign enterprise from defending an action or proceeding in this State.

13 (d) A member of a foreign enterprise is not liable for the obligations of the
14 foreign enterprise solely by reason of the foreign enterprise's having transacted
15 business in this State without a certificate of authority.

16 (e) If a foreign enterprise transacts business in this State without a
17 certificate of authority or cancels its certificate, it appoints the Secretary of
18 State as its agent for service of process for an action arising out of the
19 transaction of business in this State.

20 (f) A foreign enterprise that transacts business in this State without a
21 certificate of authority is liable to the State for:

1 than \$100,000.00 for an individual or \$1,000,000.00 for any other person for
2 each unfair method of competition in commerce;

3 * * *

4 * * * Discount Membership Programs * * *

5 Sec. E.1. 9 V.S.A. chapter 63, subchapter 1D is amended to read:

6 Subchapter 1D. Third-Party Discount Membership Programs

7 § 2470aa. DEFINITIONS

8 In this subchapter:

9 (1) “Billing information” means any data that enables a seller of a
10 third-party discount membership program to access a consumer’s credit or
11 debit card, bank, or other account, but does not include the consumer’s name,
12 e-mail address, telephone number, or mailing address. For credit card and
13 debit card accounts, billing information includes the full account number, card
14 type, and expiration date, and, if necessary, the security code. For accounts at a
15 financial institution, “billing information” includes the full account number
16 and routing number, and, if necessary, the name of the financial institution
17 holding the account.

18 (2) A “third-party discount membership program” is a program that
19 entitles consumers to receive discounts, rebates, rewards, or similar incentives
20 on the purchase of goods or services or both, in whole or in part, from any
21 third party.

1 § 2470bb. APPLICABILITY

2 (a) A third-party discount membership program is a good or service within
3 the meaning of subsection 2451a(b) of this chapter.

4 (b) This subchapter applies only to persons who are regularly and primarily
5 engaged in trade or commerce in this State in connection with offering or
6 selling third-party discount membership programs.

7 (c) This subchapter shall not apply to an electronic payment system, as
8 defined in section 2480o of this title, or to a financial institution, as defined in
9 8 V.S.A. § 11101(32).

10 § 2470cc. REQUIRED DISCLOSURES; CONSENT

11 (a) No person shall charge or attempt to charge a consumer for a third-party
12 discount membership program, or to renew a third-party discount membership
13 program beyond the term expressly agreed to by the consumer or the term
14 permitted under section 2470ff of this title, whichever is shorter, unless:

15 (1) ~~Before~~ before obtaining the consumer's billing information, the
16 person has clearly and conspicuously disclosed to the consumer all material
17 terms of the transaction, including:

18 (A) a description of the types of goods and services on which a
19 discount is available;

20 (B) the name of the third-party discount membership program and the
21 name and address of the seller of the program;

1 (C) the amount, or a good faith estimate, of the typical discount on
2 each category of goods and services;

3 (D) the cost of the program, including the amount of any periodic
4 charges, how often such charges are imposed, and the method of payment;

5 (E) the right to cancel and to terminate the program, which shall be
6 no more restrictive than as required by section 2470ee of this subchapter, and a
7 toll-free telephone number and e-mail address that can be used to cancel the
8 membership;

9 (F) the maximum length of membership, as described in section
10 2470ff of this subchapter;

11 (G) in the event that the program is offered on the Internet through a
12 link or referral from another business's website, the fact that the seller is not
13 affiliated with that business;

14 (H) the fact that periodic notices of the program billings will be
15 e-mailed or mailed to the consumer, as the case may be, consistent with section
16 2470dd of this title; and

17 (2) ~~The~~ the person has received express informed consent for the charge
18 from the consumer whose credit or debit card, bank, or other account will be
19 charged, by:

20 (A) obtaining from the consumer:

21 (i) the consumer's billing information; and

1 (ii) the consumer’s name and address and a means to contact the
2 consumer; and

3 (B) requiring the consumer to perform an additional affirmative
4 action, such as clicking on an online confirmation button, checking an online
5 box that indicates the consumer’s consent to be charged the amount disclosed,
6 or expressly giving consent over the telephone.

7 (b) A person who sells third-party discount membership programs shall
8 retain evidence of a consumer’s express informed consent for at least three
9 years after the consent is given.

10 § 2470dd. PERIODIC NOTICES

11 (a) A person who periodically charges a consumer for a third-party
12 discount membership program shall send the consumer a notice of the charge
13 no less frequently than every three months from the date of initial enrollment
14 that clearly and conspicuously discloses:

15 (1) a description of the program;

16 (2) the name of the third-party discount membership program and the
17 name and address of the seller of the program;

18 (3) the cost of the program, including the amount of any periodic
19 charges, how often such charges are imposed, and the method of payment;

20 (4) the right to cancel and to terminate the program, which shall be no
21 more restrictive than as required by section 2470ee of this subchapter, and a

1 toll-free number and e-mail address that can be used to cancel the
2 membership; and

3 (5) the maximum length of membership, as described in section 2470ff
4 of this subchapter.

5 (b) The notice specified in subsection (a) of this section:

6 (1) ~~Shall~~ shall be sent:

7 (A) ~~To~~ to the consumer's last known e-mail address, if the consumer
8 enrolled in the third-party discount membership program online or by e-mail,
9 with the subject line, "IMPORTANT INFORMATION ABOUT YOUR
10 DISCOUNT PROGRAM BILLING," or substantially similar words, provided
11 that the sender takes reasonable steps to verify that the e-mail has been
12 opened; or

13 (B) ~~Otherwise~~ otherwise by first-class mail to the consumer's last
14 known mailing address, with the heading on the enclosure and outside
15 envelope, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT
16 PROGRAM BILLING," or substantially similar words; and

17 (2) ~~Shall~~ shall not include any solicitation or advertising.

18 § 2470ee. CANCELLATION AND TERMINATION

19 (a) In addition to any other right to revoke an offer, a consumer may cancel
20 the purchase of a third-party discount membership program until midnight on
21 the 30th day after the date the consumer has given express informed consent to

1 be charged for the program. If the consumer cancels within the 30-day period,
2 the seller of the third-party discount membership program shall, within 10 days
3 of receiving the notice of cancellation, provide a full refund to the consumer.

4 (b) Notice of cancellation shall be deemed given when deposited in a
5 mailbox properly addressed and postage prepaid or when e-mailed to the
6 e-mail address of the seller of the third-party discount membership program.

7 (c) In addition to the right to cancel described in this subchapter, a
8 consumer may terminate a third-party discount membership program at any
9 time by providing notice to the seller by one of the methods described in this
10 section. In that case, the consumer shall not be obligated to make any further
11 payments under the program and shall not be entitled to any discounts under
12 the program for any period of time after the last month for which payment has
13 been made.

14 (d) If the seller of a third-party discount membership program cancels the
15 program for any reason other than nonpayment by the consumer, the seller
16 shall make pro rata reimbursement to the consumer of all periodic charges paid
17 by the consumer for periods of time after cancellation. Prior to such
18 cancellation, the seller shall first provide reasonable notice and an explanation
19 of the cancellation in writing to the consumer.

1 § 2470ff. MAXIMUM LENGTH OF PLAN

2 No person shall sell, or offer for sale, a third-party discount membership
3 program lasting longer than 18 months.

4 § 2470gg. BILLING INFORMATION

5 No person who offers or sells third-party discount membership programs
6 shall obtain billing information relating to a consumer except directly from the
7 consumer.

8 § 2470hh. VIOLATIONS

9 (a) A person who violates this subchapter commits an unfair and deceptive
10 act in trade and commerce in violation of section 2453 of this title.

11 (b) The Attorney General has the same authority to make rules, conduct
12 civil investigations, enter into assurances of discontinuance, and bring civil
13 actions as is provided under subchapter 1 of this chapter.

14 (c) It is an unfair and deceptive act and practice in commerce for any
15 person to provide substantial assistance to the seller of a third-party discount
16 membership program that has engaged or is engaging in an unfair or deceptive
17 act or practice in commerce, when the person or the person's authorized agent:

18 (1) receives notice from a regulatory, law enforcement, or similar
19 governmental authority that the seller of the third-party discount membership
20 program is in violation of this subchapter;

1 (2) knows from information received or in its possession that the seller
2 of the third-party discount membership program is in violation of this
3 subchapter; or

4 (3) consciously avoids knowing that the seller of the third-party discount
5 membership program is in violation of this subchapter.

6 (d) Subject to section 2452 of this title, a person who provides only
7 incidental assistance, which does not further the sale of a third-party discount
8 membership program, to the seller of the program, or who does not receive a
9 benefit from providing assistance to the seller of a discount membership, shall
10 not be liable under this section unless the person receives notice, knows, or
11 consciously avoids knowing, pursuant to subdivision (c)(1), (2), or (3) of this
12 section, that a third-party discount membership program is in violation of this
13 chapter.

14 Sec. E.2. 9 V.S.A. chapter 63, subchapter 1E is added to read:

15 Subchapter 1E: Add-On Discount Membership Programs

16 § 2470ii. DEFINITIONS

17 In this subchapter:

18 (1) “Billing information” means any data that enables a seller of an
19 add-on discount membership program to access a consumer’s credit or debit
20 card, bank, or other account, but does not include the consumer’s name, e-mail
21 address, telephone number, or mailing address. For credit card and debit card

1 accounts, billing information includes the full account number, card type, and
2 expiration date, and, if necessary, the security code. For accounts at a financial
3 institution, “billing information” includes the full account number and routing
4 number, and, if necessary, the name of the financial institution holding the
5 account.

6 (2) An “add-on discount membership program” is a program that
7 entitles consumers to receive discounts, rebates, rewards, or similar incentives
8 on the purchase of goods or services or both, sold to a consumer during the
9 purchase of a different good or service using the same billing information.

10 § 2470jj. APPLICABILITY

11 (a) An add-on discount membership program is a good or service within
12 the meaning of subsection 2451a(b) of this title.

13 (b) This subchapter applies only to persons who are regularly engaged in
14 offering or selling add-on discount membership programs.

15 (c) This subchapter shall not apply to an electronic payment system, as
16 defined in section 2480o of this title, or to a financial institution, as defined in
17 8 V.S.A. § 11101(32).

18 § 2470kk. REQUIRED DISCLOSURES; CONSENT

19 (a) No person shall charge or attempt to charge a consumer for an add-on
20 discount membership program, or to renew an add-on discount membership
21 program beyond the term expressly agreed to by the consumer, unless:

1 (1) before obtaining the consumer’s billing information, the person has
2 clearly and conspicuously disclosed to the consumer all material terms of the
3 transaction, including:

4 (A) a description of the types of goods and services on which a
5 discount is available;

6 (B) the name of the add-on discount membership program and the
7 name and address of the seller of the program;

8 (C) the cost of the program, including the amount of any periodic
9 charges, how often such charges are imposed, and the method of payment;

10 (D) the right to cancel and to terminate the program, which shall be
11 no more restrictive than as required by section 2470ll of this title, and a
12 toll-free telephone number and e-mail address that can be used to cancel the
13 membership;

14 (2) before obtaining the consumer’s billing information, the person has
15 received express informed consent for the add-on membership program from
16 the consumer whose credit or debit card, bank, or other account will be
17 charged, by requiring the consumer to perform an additional affirmative action,
18 such as clicking on an online confirmation button, checking an online box that
19 indicates the consumer’s consent to be charged the amount disclosed, or
20 expressly giving consent over the telephone; and

1 (3) after providing the disclosures and obtaining the consent required by
2 subdivisions (1) and (2) of this subsection, obtaining from the consumer:

3 (A) the consumer’s billing information; and

4 (B) the consumer’s name and address, and a means to contact the
5 consumer.

6 (b) A person who sells an add-on discount membership program shall
7 retain evidence of a consumer’s express informed consent for at least three
8 years after the consent is given.

9 § 2470ll. CANCELLATION AND TERMINATION

10 (a) In addition to any other right to revoke an offer, a consumer may cancel
11 the purchase of an add-on discount membership program until midnight on the
12 30th day after the date the consumer has given express informed consent to be
13 charged for the program. If the consumer cancels within the 30-day period, the
14 seller of the add-on discount membership program shall, within 10 days of
15 receiving the notice of cancellation, provide a full refund to the consumer less
16 the value of any discount the has consumer received by using the add-on
17 discount membership program.

18 (b) Notice of cancellation shall be deemed given when deposited in a
19 mailbox properly addressed and postage prepaid or when e-mailed to the
20 e-mail address of the seller of the add-on discount membership program.

1 (c) In addition to the right to cancel described in this subchapter, a
2 consumer may terminate an add-on discount membership program at any time
3 by providing notice to the seller by one of the methods described in this
4 section. In that case, the consumer shall not be obligated to make any further
5 payments under the program and shall not be entitled to any discounts under
6 the program for any period of time after the last month for which payment has
7 been made.

8 (d) If the seller of an add-on discount membership program cancels the
9 program for any reason other than nonpayment by the consumer, the seller
10 shall make pro rata reimbursement to the consumer of all periodic charges paid
11 by the consumer for periods of time after cancellation. Prior to such
12 cancellation, the seller shall first provide reasonable notice and an explanation
13 of the cancellation in writing to the consumer.

14 § 2470mm. BILLING INFORMATION

15 A person who offers or sells a discount membership program may not
16 obtain billing information relating to a consumer except directly from the
17 consumer.

18 § 2470nn. VIOLATIONS

19 (a) A person who violates this subchapter commits an unfair and deceptive
20 act in trade and commerce in violation of section 2453 of this title.

1 (b) The Attorney General has the same authority to make rules, conduct
2 civil investigations, enter into assurances of discontinuance, and bring civil
3 actions as is provided under subchapter 1 of this chapter.

4 (c) It is an unfair and deceptive act and practice in commerce for any
5 person to provide substantial assistance to the seller of an add-on discount
6 membership program that has engaged or is engaging in an unfair or deceptive
7 act or practice in commerce, when the person or the person’s authorized agent:

8 (1) receives notice from a regulatory, law enforcement, or similar
9 governmental authority that the seller of the add-on discount membership
10 program is in violation of this subchapter;

11 (2) knows from information received or in its possession that the seller
12 of the add-on discount membership program is in violation of this
13 subchapter; or

14 (3) consciously avoids knowing that the seller of the add-on discount
15 membership program is in violation of this subchapter.

16 (d) Subject to section 2452 of this title, a person who provides only
17 incidental assistance, which does not further the sale of an add-on discount
18 membership program, to the seller of the program, or who does not receive a
19 benefit from providing assistance to the seller of a an add-on discount
20 membership, shall not be liable under this section unless the person receives
21 notice, knows, or consciously avoids knowing, pursuant to subdivision (c)(1),

1 (2), or (3) of this section, that an add-on discount membership program is in
2 violation of this chapter.

3 * * * Nonresidential Home Improvement Fraud * * *

4 Sec. F.1. 13 V.S.A. § 2029 is amended to read:

5 § 2029. HOME IMPROVEMENT FRAUD

6 (a) As used in this section, “home improvement” includes the fixing,
7 replacing, remodeling, removing, renovation, alteration, conversion,
8 improvement, demolition, or rehabilitation of or addition to any building or
9 land, or any portion thereof, which is used or designed to be used as a
10 residence or dwelling unit. Home improvement shall include the construction,
11 replacement, installation, paving, or improvement of driveways, roofs, and
12 sidewalks, and the limbing, pruning, and removal of trees or shrubbery and
13 other improvements to structures or upon land that is adjacent to a dwelling
14 house.

15 (b)(1) A person commits the offense of home improvement fraud when he
16 or she enters into a contract or agreement, written or oral, for \$500.00 or more,
17 with an owner for home improvement, or into several contracts or agreements
18 for \$2,500.00 or more in the aggregate, with more than one owner for home
19 improvement, and he or she knowingly:

20 (A) fails to perform the contract or agreement, in whole or in
21 part; and

1 (B) when the owner requests performance or a refund of payment
2 made, the person fails to either:

3 (i) refund the payment; or

4 (ii) make and comply with a definite plan for completion of the
5 work that is agreed to by the owner;

6 (2) misrepresents a material fact relating to the terms of the contract or
7 agreement or to the condition of any portion of the property involved;

8 (3) uses or employs any unfair or deceptive act or practice in order to
9 induce, encourage, or solicit such person to enter into any contract or
10 agreement or to modify the terms of the original contract or agreement; or

11 (4) when there is a declared state of emergency, charges for goods or
12 services related to the emergency a price that exceeds two times the average
13 price for the goods or services and the increase is not attributable to the
14 additional costs incurred in connection with providing those goods or services.

15 (c) Whenever a person is convicted of home improvement fraud or of
16 fraudulent acts related to home improvement:

17 (1) the person shall notify the Office of Attorney General;

18 (2) the court shall notify the Office of the Attorney General; and

19 (3) the Office of Attorney General shall place the person's name on the
20 Home Improvement and Nonresidential Improvement Fraud Registry.

1 (d)(1) A person who violates subsection (b) of this section shall be
2 imprisoned not more than two years or fined not more than \$1,000.00, or both,
3 if the loss to a single consumer is less than \$1,000.00.

4 (2) A person who is convicted of a second or subsequent violation of
5 subdivision (1) of this subsection shall be imprisoned not more than three years
6 or fined not more than \$5,000.00, or both.

7 (3) A person who violates subsection (b) of this section shall be
8 imprisoned not more than three years or fined not more than \$5,000.00, or
9 both, if:

10 (A) the loss to a single consumer is \$1,000.00 or more; or

11 (B) the loss to more than one consumer is \$2,500.00 or more in the
12 aggregate.

13 (4) A person who is convicted of a second or subsequent violation of
14 subdivision (3) of this subsection shall be imprisoned not more than five years
15 or fined not more than \$10,000.00, or both.

16 (5) A person who violates subsection (c) or (e) of this section shall be
17 imprisoned for not more than two years or fined not more than \$1,000.00,
18 or both.

19 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
20 this section, subdivision of 2029a(d)(2), (3), or (4) of this title, or convicted of

1 fraudulent acts related to home improvement, may engage in home
2 improvement activities for compensation only if:

3 (1) the work is for a company or individual engaged in home
4 improvement activities or nonresidential improvement activities, and the
5 person first notifies the company or individual of the conviction and notifies
6 the Office of Attorney General of the person's current address and telephone
7 number; the name, address, and telephone number of the company or
8 individual for whom the person is going to work; and the date on which the
9 person will start working for the company or individual; or

10 (2) the person notifies the Office of Attorney General of the intent to
11 engage in home improvement activities or nonresidential improvement
12 activities, and that the person has filed a surety bond or an irrevocable letter of
13 credit with the Office in an amount of not less than \$50,000.00, and pays on a
14 regular basis all fees associated with maintaining such bond or letter of credit.

15 (f) The Office of Attorney General shall release the letter of credit at such
16 time when:

17 (1) any claims against the person relating to home improvement fraud or
18 nonresidential improvement fraud have been paid;

19 (2) there are no pending actions or claims against the person for home
20 improvement fraud or nonresidential improvement fraud; and

1 (3) the person has not been engaged in home improvement activities or
2 nonresidential improvement activities for at least six years and has signed an
3 affidavit so attesting.

4 (g) [Reserved.]

5 (h) [Repealed.]

6 Sec. F.2. 13 V.S.A. § 2029a is added to read:

7 § 2029a. NONRESIDENTIAL IMPROVEMENT FRAUD

8 (a) As used in this section, “nonresidential improvement” includes the
9 fixing, replacing, remodeling, removing, renovation, alteration, conversion,
10 improvement, demolition, or rehabilitation of or addition to any building or
11 land, or any portion thereof, which is used or designed to be used as a business,
12 office, or municipal building or unit. Nonresidential improvement shall
13 include the construction, replacement, installation, paving, or improvement of
14 driveways, parking lots, signs, roofs, and sidewalks, and the limbing, pruning,
15 and removal of trees or shrubbery and other improvements to structures or
16 upon land that is adjacent to a business, office, or municipal building or unit.

17 (b)(1) A person commits the offense of nonresidential improvement fraud
18 when he or she enters into a contract or agreement, written or oral, for
19 \$1,000.00 or more, with an owner for nonresidential improvement, or into
20 several contracts or agreements for \$5,000.00 or more in the aggregate, with

1 more than one owner for nonresidential improvement, and he or she
2 knowingly:

3 (A) fails to perform the contract or agreement, in whole or in
4 part; and

5 (B) when the owner requests performance or a refund of payment
6 made, the person fails to either:

7 (i) refund the payment; or

8 (ii) make and comply with a definite plan for completion of the
9 work that is agreed to by the owner;

10 (2) misrepresents a material fact relating to the terms of the contract or
11 agreement or to the condition of any portion of the property involved;

12 (3) uses or employs any unfair or deceptive act or practice in order to
13 induce, encourage, or solicit such person to enter into any contract or
14 agreement or to modify the terms of the original contract or agreement; or

15 (4) when there is a declared state of emergency, charges for goods or
16 services related to the emergency a price that exceeds two times the average
17 price for the goods or services and the increase is not attributable to the
18 additional costs incurred in connection with providing those goods or services.

19 (c) Whenever a person is convicted of nonresidential improvement fraud:

20 (1) the person shall notify the Office of Attorney General;

21 (2) the court shall notify the Office of the Attorney General; and

1 (3) the Office of Attorney General shall place the person’s name on the
2 Home Improvement and Nonresidential Improvement Fraud Registry.

3 (d)(1) A person who violates subsection (b) of this section shall be
4 imprisoned not more than two years or fined not more than \$1,000.00, or both,
5 if the loss to a single consumer is less than \$1,000.00.

6 (2) A person who is convicted of a second or subsequent violation of
7 subdivision (1) of this subsection shall be imprisoned not more than three years
8 or fined not more than \$5,000.00, or both.

9 (3) A person who violates subsection (b) of this section shall be
10 imprisoned not more than three years or fined not more than \$5,000.00, or
11 both, if:

12 (A) the loss to a single consumer is \$1,000.00 or more; or

13 (B) the loss to more than one consumer is \$2,500.00 or more in the
14 aggregate.

15 (4) A person who is convicted of a second or subsequent violation of
16 subdivision (3) of this subsection shall be imprisoned not more than five years
17 or fined not more than \$10,000.00, or both.

18 (5) A person who violates subsection (c) or (e) of this section shall be
19 imprisoned for not more than two years or fined not more than \$1,000.00,
20 or both.

1 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
2 this section or subdivision 2029(d)(2), (3), or (4) of this title may engage in
3 home improvement activities or nonresidential improvement activities for
4 compensation only if:

5 (1) the work is for a company or individual engaged in home
6 improvement activities or nonresidential improvement activities, and the
7 person first notifies the company or individual of the conviction and notifies
8 the Office of Attorney General of the person's current address and telephone
9 number; the name, address, and telephone number of the company or
10 individual for whom the person is going to work; and the date on which the
11 person will start working for the company or individual; or

12 (2) the person notifies the Office of Attorney General of the intent to
13 engage in home improvement activities or nonresidential improvement
14 activities, and that the person has filed a surety bond or an irrevocable letter of
15 credit with the Office in an amount of not less than \$50,000.00, and pays on a
16 regular basis all fees associated with maintaining such bond or letter of credit.

17 (f) The Office of Attorney General shall release the letter of credit at such
18 time when:

19 (1) any claims against the person relating to home improvement fraud or
20 nonresidential improvement fraud have been paid;

1 (2) there are no pending actions or claims against the person for home
2 improvement fraud or nonresidential improvement fraud; and

3 (3) the person has not been engaged in home improvement activities or
4 nonresidential improvement activities for at least six years and has signed an
5 affidavit so attesting.

6 * * * Financial Institutions; Licensed Lender; Technical Corrections * * *

7 G.1. 8 V.S.A. § 10101 is amended to read:

8 § 10101. APPLICATION OF CONSUMER PROTECTION CHAPTER

9 Except as otherwise provided in this chapter, the provisions of this chapter
10 shall apply to all financial institutions, as defined in subdivision 11101(32) of
11 this title, licensed lenders, mortgage brokers, mortgage loan originators, sales
12 finance companies, independent trust companies, money service providers,
13 debt adjusters, loan servicers, credit unions, and any other person doing or
14 soliciting business in this State as described in Part 2, 4, or 5, ~~or 6~~ of this title,
15 in addition to any other applicable consumer protection or remedy section not
16 contained in this chapter, unless such consumer protection or remedy section is
17 expressly made exclusive.

18 G.2. 8 V.S.A. § 10601 is amended to read:

19 § 10601. APPLICATION

