

Section-by-Section Summary of H.84 – House Further Proposal of Amendment

An act relating to internet dating services

Sec. A.1: Consumer Litigation Funding

Sec. B.1: Structured Settlement Agreements

Secs. C.1–C.14: Business Registration; Enforcement

Sec. D.1: Anti-Trust Penalties

Secs. E.1–E.2: Discount Membership Programs

Secs. F.1–F.2: Nonresidential Improvement Fraud

Secs. G.1–G.3: Financial Institutions; Licensed Lender; Technical Corrections

Secs. H.1–H.2: Internet Dating Services

Sec. A.1: Consumer Litigation Funding

This section requires the Department of Financial Regulation to regulate the practice of consumer litigation funding in Vermont. Unlike a traditional loan, consumer litigation funding is a nonrecourse transaction in which a company “lends” money to a consumer – who has a legal claim and who is represented by an attorney – in return for a contingent right to receive an amount of the potential net proceeds of a settlement or judgment. If there are no net proceeds, the company does not get paid.

The proposal specifically defines “net proceeds” to include the amount recovered by a consumer less any legal and medical claims.

Under the proposal, companies are required to register with the Department of Financial Regulation, pay a \$600 fee, provide evidence of financial stability, and report annually on its activities so that the Commissioner can monitor the industry in Vermont and make recommendations to improve the regulatory framework, as needed. For example, the Commissioner may determine that a cap should be placed on a company’s charges (fees).

As a consumer protection measure, the law requires certain disclosures to be made as part of all consumer litigation funding contracts. Among other things, the contracts must clearly describe a consumer’s financial obligations, right of rescission, and protection from any personal liability if there are insufficient net proceeds to cover the funded amount and any charges imposed by the consumer litigation funding company.

In addition, the proposal prohibits consumer litigation funding companies from engaging in certain conduct or practices, such as:

- paying or receiving referral fees from law firms and health care providers;
- paying a consumer’s litigation costs or attorney’s fees;
- attempting to make decisions or provide legal advice regarding the conduct of the consumer’s legal claim; and
- assigning a contract in whole or in part to a third party, unless it’s for the purpose of obtaining financing and further provided the company remains responsible for collecting payment and administering and otherwise enforcing the contract.

Enforcement authority for violations of the new law rest with the Commissioner of Financial Regulation, as well as with the Attorney General under the Consumer Protection Act (which also provides a private right of action).

Sec. B.1: Structured Settlement Agreements

- Where a person is entitled to payments under a structured settlement agreement and wants to sell some of his or her rights for future payments in exchange for a lump sum, current law requires a court to approve the transfer of payment rights to a transferee.
- Current law also requires the transferee to provide certain information to the court and other parties about the details of the transfer.
- Sec B.1 requires an additional piece of information: the transferee must provide a description of the amount and dates of payments to which the transferor will still be entitled if the court approves a transfer of rights to future payments.

Secs. C.1–C.14: Business Registration; Enforcement

- **Sec. C.1** provides the purpose of the “C” sections:
 - (a) The purpose of 11 V.S.A. § 1637, as added in Sec. C. 2, is to protect consumers by ensuring that they have adequate public notice in the records of the Secretary of State when a person is no longer allowed to conduct business in this State.
 - (b) The purpose of Secs. C.3–C.14 is to standardize among the statutes governing business organizations authorized to conduct business in this State:
 - (1) the duty of a person to register with the Secretary of State; and
 - (2) the enforcement and penalties for failure register.
- **Sec. C.2** gives the Secretary of State the authority to terminate the registration of a business that, pursuant to a final court order or an assurance of discontinuance, is no longer authorized to conduct business in the State; includes process for reinstating registration.
- **Sec. C.3** adds the standardized penalty and enforcement provisions for a business operating under a trade name.
- **Secs. C.4–C.5** standardize the penalty and enforcement provisions for a foreign limited liability partnership
- **Secs. C.6–C.7** standardize the penalty and enforcement provisions for a foreign limited partnership
- **Secs. C.8–C.9** standardize the penalty and enforcement provisions for a foreign limited liability company
- **Sec. C.10** standardizes the penalty and enforcement provisions for a foreign corporation
- **Sec. C.11** standardizes the penalty and enforcement provisions for a foreign nonprofit corporation
- **Secs. C.12–C.14** standardize the penalty and enforcement provisions for a foreign mutual benefit enterprise

Sec. D.1: Anti-Trust Penalties

- Increases the maximum amount of a civil penalty for each unfair method of competition in commerce—e.g., anti-competitive behavior such as antitrust violations—from \$10,000 to \$100,000 for an individual and \$1,000,000 for any other person.

Secs. E.1–E.2: Discount Membership Programs

Discount membership programs are programs that entitle a consumer who enrolls in the program to claim a discount on goods or services. Current law governs the scenario when a person buys a good a service from Seller A, and Seller B offers enrollment in a program in conjunction with the sale of the underlying good or service. Increasingly, Seller A offers a consumer both a good or service, and its own discount membership program. The “E” sections govern these two scenarios in different sections of law.

- **Sec. E.1**
 - re-designates the name under current as “third-party discount membership programs” – programs sold by a third party who is not the seller of the underlying good or service a consumer is purchasing when he or she agrees to sign up for a discount membership program
 - adds the requirement, which is also included in the next section for add-on discount membership programs, that a seller of program provide contact information for program inquiries, and certain information about the program with the receipt provided for the underlying good or service
- **Sec. E.2** adds a new subchapter of law governing “add-on discount membership programs” – these are programs actually sold by the seller of the underlying good or service.
 - Modeled on existing law for third-party programs, this section requires the seller of an add-on discount membership program to provide notice and disclosure to a consumer, and requires some affirmative action by the seller consenting to enrollment, before obtaining billing information and charging for enrollment in the program; also governs termination of a program, and governs enforcement of violations by the Attorney General

Secs. F.1–F.2: Nonresidential Improvement Fraud

- **Sec. F.1** adds a new crime of “nonresidential improvement fraud.” The new provision is modeled heavily on current 13 VSA 2029, which creates the crime of home improvement fraud, with four basic differences:
 1. The subject matter of the offense is nearly identical but applies to nonresidential property. 13 VSA 2029a(a). Current law captures fraud in the performance (or more likely non-performance) of a “home

improvement” – a term that basically includes every kind of change to a residential property you can contemplate – construction, rehabilitation, demolition to buildings, land, etc. The new language captures the same changes to “nonresidential improvement” – the same laundry list of changes to property that is used for a business, office, or government purpose. The only substantive additions to the list of property improvements in the nonresidential context are parking lots and signs.

2. The value of the contracts covered is higher. 13 VSA 2029a(b)(1). For the underlying law to apply to a contract for home improvement, the value must be \$500 or more for a single contract, or \$1000 for multiple contracts. In the new provision for nonresidential improvements, these values are increased to be \$2500/\$5000.
3. The name and content of the fraud registry is expanded to include both home improvement fraud and nonresidential improvement fraud. 13 VSA 2029a(c).
4. Conviction for either offense triggers entry onto the registry, and imposes the same penalties, consequences, and duties on the offender. 13 VSA 2029a(e)(1).

Secs. G.1–G.3: Financial Institutions; Licensed Lender; Technical Corrections

- Makes a conforming technical amendments to correct erroneous cross-references currently in statute.

Secs. H.1–H.2: Internet Dating Services

- **Sec. H.1** sets out the findings and purposes of Sec. H.2
- **Sec. H.2** adds a new subchapter to the Vermont consumer protection chapter, 9 V.S.A. chapter 63, governing internet dating services
- Bill is as passed the House in 2015, with minor changes in the definitions and the addition of subsection 2482b(d) to provide a banned Vermont member to challenge the ban with the Vermont Attorney General