

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 182 entitled “An act relating to certain businesses  
4 regulated by the Department of Financial Regulation” respectfully reports that  
5 it has considered the same and recommends that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

8 \* \* \* Consumer Litigation Funding \* \* \*

9 Sec. 1. 8 V.S.A. § 2252 is amended to read:

10 § 2252. REGISTRATION; FEE, FINANCIAL STABILITY

11 (a) A company shall not engage in the business of consumer litigation  
12 funding without first filing a registration with the Commissioner on a form  
13 prescribed by the Commissioner and submitting a registration fee and proof of  
14 financial stability, as required by this section.

15 (b) A company shall submit a ~~\$600.00~~ \$200.00 fee at the time of  
16 registration and at the time of each renewal. Registrations shall be renewed  
17 every ~~three years~~ year on or before December 1.

18 (c) A company shall file with the Commissioner evidence of its financial  
19 stability which shall include proof of a surety bond or irrevocable letter of  
20 credit issued and confirmed by a financial institution authorized by law to  
21 transact business in Vermont that is equal to double the amount of the

1 company's largest funded amount in Vermont in the prior three calendar years  
2 or \$50,000.00, whichever is greater.

3 (d) The registration of a company that fails to complete a renewal, meet  
4 minimum registration requirements, or pay the renewal fee on or before  
5 December 30 shall automatically expire on December 31.

6 Sec. 2. CONSUMER LITIGATION FUNDING COMPANIES; ANNUAL  
7 REGISTRATION RENEWAL; APPLICATION

8 Notwithstanding 8 V.S.A. § 2252(b), a company that registered on or before  
9 the effective date of this act may renew its registration on or before  
10 December 1 of the third calendar year following its initial registration date and  
11 then annually thereafter.

12 \* \* \* Licensed Lenders; Substituted Information; Prelicensure Training \* \* \*

13 Sec. 3. 8 V.S.A. § 2204 is amended to read:

14 § 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

15 \* \* \*

16 (d) The Commissioner may waive or modify the requirements of  
17 subdivisions (a)(3) and (a)(4) of this section or may permit an applicant to  
18 submit substituted information in lieu of the required information.

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**Option 1**

(d) Upon a proper showing of information satisfactory to the Commissioner, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

**Option 2**

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

(e) This section does not apply to a lender making only commercial loans.

Sec. 4. 8 V.S.A. § 2204a is amended read:

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

\* \* \*

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held. This subsection does not apply to an individual who is required to retake 20 hours of prelicensing education pursuant to subsection (g) of this section.

1       (g) A person who has completed 20 hours of prelicensing education under  
2       12 U.S.C. § 5104(c) must retake such prelicensing education to be eligible to  
3       apply for a Vermont loan originator license if he or she:

4           (1) within three years of completing the prelicensing education, does not  
5       acquire a valid mortgage loan originator license in any state or does not  
6       become a federally registered mortgage loan originator; or

7           (2) within three years of completing the prelicensing education, obtains  
8       a valid mortgage loan originator license in any state or becomes a federally  
9       registered mortgage loan originator and subsequently does not maintain an  
10       approved mortgage loan originator license in any state or an approved federal  
11       registration for a period of three years or more.

12       (h) A person who has completed two hours of Vermont prelicense  
13       education as required by subdivision (a)(4) of this section must retake such  
14       prelicensing education to be eligible to apply for a Vermont mortgage loan  
15       originator license if he or she:

16           (1) does not acquire a valid Vermont mortgage loan originator license  
17       within three years of completing the prelicense education; or

18           (2) obtains a valid Vermont mortgage loan originator license and then  
19       subsequently does not maintain an approved Vermont mortgage loan originator  
20       license for a period of three years or more.

1 Sec. 5. 8 V.S.A. § 2204c is amended to read:

2 § 2204c. APPROVAL OF APPLICATION; ISSUANCE OF COMMERCIAL  
3 LENDER LICENSE

4 \* \* \*

5 (d) The Commissioner may waive or modify the requirements of  
6 subdivisions (a)(3) and (a)(4) of this section or may permit an applicant to  
7 submit substituted information in lieu of the required information.

8 **Option 1**

9 (d) Upon a proper showing of information satisfactory to the  
10 Commissioner, the Commissioner may waive or modify the requirements of  
11 subdivisions (a)(3) and (a)(4) of this section.

12 **Option 2**

13 (d) For good cause shown and consistent with the purposes of this section,  
14 the Commissioner may waive or modify the requirements of subdivisions  
15 (a)(3) and (a)(4) of this section.

16 Sec. 6. 8 V.S.A. § 2209a(h) is amended to read:

17 (h) A licensed mortgage loan originator who subsequently becomes  
18 unlicensed must complete the continuing education requirements for the last  
19 year in which the license was held prior to issuance of a new or renewed  
20 license. This subsection does not apply to an individual who is required to

1 retake 20 hours of prelicensing education pursuant to subsection 2204a(g) of  
2 this title.

3 \* \* \* Financial Responsibility; Money Servicers;  
4 Debt Adjusters; Loan Servicers \* \* \*

5 Sec. 7. 8 V.S.A. § 2508(a) is amended to read:

6 (a) Upon the filing of an application under this subchapter, the  
7 Commissioner shall investigate the financial condition and responsibility,  
8 financial and business experience, character, and general fitness of the  
9 applicant; and any person named in the application. The Commissioner may  
10 conduct an on-site investigation of the applicant, the cost of which the  
11 applicant shall bear in accordance with section 18 of this title. The  
12 Commissioner shall issue a license to an applicant under this subchapter if the  
13 Commissioner finds that all of the following conditions have been fulfilled:

14 (1) ~~the~~ The applicant has complied with sections 2506, 2507, and 2510  
15 of this title;

16 (2)(A) ~~the~~ The financial condition and responsibility, financial and  
17 business experience, competence, character, and general fitness of the  
18 applicant, and competence, experience, character, and general fitness of the  
19 executive officers, managers, and directors of, and persons in control of the  
20 applicant indicate that it is in the interest of the public to permit the applicant  
21 to engage in money transmission; ~~and.~~

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**Option 1**

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

- (i) current outstanding judgments, except judgments solely as a result of medical expenses;
- (ii) current outstanding tax liens or other government liens and filings;
- (iii) foreclosures within the past three years; or
- (iv) a pattern of seriously delinquent accounts within the past three years.

(3) ~~the~~ The applicant has paid the requisite application and license fees.

**Option 2**

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

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

- 1                    (ii) current outstanding tax liens or other government liens and  
2 filings;  
3                    (iii) foreclosures within the past three years; or  
4                    (iv) a pattern of seriously delinquent accounts within the past three  
5 years.

6                    (3) ~~the~~ The applicant has paid the requisite application and license fees.

7                    Sec. 8. 8 V.S.A. § 2517(a) is amended to read:

8                    (a) Upon the filing of an application under this subchapter, the  
9                    Commissioner shall investigate the applicant’s financial condition and  
10                    responsibility, financial and business experience, character, and general fitness.  
11                    The Commissioner may conduct an on-site investigation of the applicant, the  
12                    cost of which the applicant shall bear in accordance with section 18 of this  
13                    title. The Commissioner shall issue a license to an applicant under this  
14                    subchapter if the Commissioner finds that all of the following conditions have  
15                    been fulfilled:

16                    (1) ~~the~~ The applicant has complied with section 2516 of this title;

17                    (2)(A) ~~the~~ The financial condition and responsibility, financial and  
18                    business experience, competence, character, and general fitness of the  
19                    applicant, and competence, experience, character, and general fitness of the  
20                    executive officers, managers, directors of, and persons in control of the



1 applicant indicate that it is in the interest of the public to permit the applicant  
2 to engage in check cashing and currency exchange; ~~and~~.

3 **Option 1**

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

8 (i) current outstanding judgments, except judgments solely as a  
9 result of medical expenses;

10 (ii) current outstanding tax liens or other government liens and  
11 filings;

12 (iii) foreclosures within the past three years; or

13 (iv) a pattern of seriously delinquent accounts within the past three  
14 years.

15 (3) ~~the~~ The applicant has paid the requisite application and license fees.

16 **Option 2**

17 (B) For purposes of assessing whether a person is financially  
18 responsible under this subdivision, the Commissioner may consider how the  
19 person has managed his or her own financial condition. A determination that a  
20 person has not shown financial responsibility may include the following:

- 1                    (i) current outstanding judgments, except judgments solely as a  
2 result of medical expenses;  
3                    (ii) current outstanding tax liens or other government liens and  
4 filings;  
5                    (iii) foreclosures within the past three years; or  
6                    (iv) a pattern of seriously delinquent accounts within the past three  
7 years.

8                    (3) ~~the~~ The applicant has paid the requisite application and license fees.  
9                    Sec. 9. 8 V.S.A. § 2756(a) is amended to read:

10                    (a) The Commissioner shall issue a license to the applicant upon the filing  
11 of the application and the payment of the fees, if the Commissioner finds upon  
12 investigation that all of the following conditions have been fulfilled:

13                    (1) ~~the~~ The financial responsibility, experience, character, and general  
14 fitness of the applicant; and of the members, officers, directors, and persons in  
15 control of the applicant; command the confidence of the community and  
16 warrant belief that the business will be operated honestly, fairly, and efficiently  
17 within the purposes of this chapter;.

18                    (2)(A) ~~neither~~ Neither the applicant nor any of such members, officers,  
19 directors, or persons in control of the applicant have been convicted of a felony  
20 or ~~has~~ have had a record of having defaulted in the payment of money

1 collected for others, including the discharge of such debts through bankruptcy  
2 proceedings; ~~and~~.

3 **Option 1**

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

8 (i) current outstanding judgments, except judgments solely as a  
9 result of medical expenses;

10 (ii) current outstanding tax liens or other government liens and  
11 filings;

12 (iii) foreclosures within the past three years; or

13 (iv) a pattern of seriously delinquent accounts within the past three  
14 years.

15 (3) ~~the~~ The applicant has paid the requisite application and license fees.

16 **Option 2**

17 (B) For purposes of assessing whether a person is financially  
18 responsible under this subdivision, the Commissioner may consider how the  
19 person has managed his or her own financial condition. A determination that a  
20 person has not shown financial responsibility may include the following:

- 1                    (i) current outstanding judgments, except judgments solely as a  
2 result of medical expenses;
- 3                    (ii) current outstanding tax liens or other government liens and  
4 filings;
- 5                    (iii) foreclosures within the past three years; or
- 6                    (iv) a pattern of seriously delinquent accounts within the past three  
7 years.

8                    (3) ~~the~~ The applicant has paid the requisite application and license fees.

9                    Sec. 10. 8 V.S.A. § 2904 is amended to read:

10                    § 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

11                    (a) Upon the filing of the application, payment of the required fees, and  
12 approval of the bond, the Commissioner shall issue and deliver a license to the  
13 applicant upon findings by the Commissioner as follows:

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

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**Option 1**

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

- (i) current outstanding judgments, except judgments solely as a result of medical expenses;
- (ii) current outstanding tax liens or other government liens and filings;
- (iii) foreclosures within the past three years; or
- (iv) a pattern of seriously delinquent accounts within the past three years;

**Option 2**

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

- (i) current outstanding judgments, except judgments solely as a result of medical expenses;
- (ii) current outstanding tax liens or other government liens and filings;

1                   (iii) foreclosures within the past three years; or

2                   (iv) a pattern of seriously delinquent accounts within the past three  
3 years;

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

7                   (3) That the applicant is licensed to engage in such business in its state  
8 of domicile, and is in good standing in its state of domicile with its state  
9 regulator or equivalent financial industry regulator, if such state licenses third  
10 party loan servicers.

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

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

19                   (A) during the seven-year period preceding the date of the application  
20 for licensing and registration, other than a conviction for driving under the  
21 influence or a similarly titled offense in this State or in any other jurisdiction;

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

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

6 (6) That the applicant has satisfied the surety bond requirement of  
7 section 2903 of this title.

8 \* \* \*

9 ~~(d) The Commissioner may waive or modify the requirements of~~  
10 ~~subdivisions (a)(3) and (a)(4) of this section or may permit an applicant to~~  
11 ~~submit substituted information in lieu of the required information.~~

12 **Option 1**

13 (d) Upon a proper showing of information satisfactory to the  
14 Commissioner, the Commissioner may waive or modify the requirements of  
15 subdivisions (a)(3) and (a)(4) of this section.

16 **Option 2**

17 (d) For good cause shown and consistent with the purposes of this section,  
18 the Commissioner may waive or modify the requirements of subdivisions  
19 (a)(3) and (a)(4) of this section.

1       \*\*\* Money Servicers; Virtual Currency; Exclusions; Receipts and Refunds;  
2               Segregated Accounts; Permissible Investments; Enforcement \*\*\*

3       Sec. 11. 8 V.S.A. § 2500(22) is added to read:

4               (22) “Virtual currency” means stored value that:

5                       (A) can be a medium of exchange, a unit of account, or a store of  
6       value;

7                       (B) has an equivalent value in money or acts as a substitute for  
8       money;

9                       (C) may be centralized or decentralized; and

10                      (D) can be exchanged for money or other convertible virtual  
11       currency.

12       Sec. 12. 8 V.S.A. § 2501 is amended to read:

13       § 2501. EXCLUSIONS

14               (a) This chapter does not apply to:

15                      (1) the United States or a department, agency, or instrumentality thereof;

16                      (2) the sale or issuance of payment instruments or stored value, or  
17       money transmission, by the U.S. Postal Service; or by a contractor on behalf of  
18       the U.S. Postal Service;

19                      (3) a state, county, city, or any other governmental agency or  
20       governmental subdivision within a state;



1           (4) a financial institution as defined in subdivision 11101(32) of this  
2 title, a financial institution holding company as defined in subdivision  
3 11101(33) of this title, a credit union, an office of an international banking  
4 corporation, a branch of a foreign bank, a corporation organized pursuant to  
5 the Bank Services Company Act, or a corporation organized under the Edge  
6 Act under the laws of a state or the United States if the person does not issue,  
7 sell, or provide payment instruments or stored value through an authorized  
8 delegate that is not such a person;

9           (5) electronic funds transfer of governmental benefits for a federal, state,  
10 or governmental agency by a contractor on behalf of the United States or a  
11 department, agency, or instrumentality thereof, or a state or governmental  
12 subdivision, agency, or instrumentality thereof;

13           (6) a board of trade designated as a contract market under the  
14 Commodity Exchange Act or a person that, in the ordinary course of business,  
15 provides clearance and settlement services for a board of trade to the extent of  
16 its operation as or for such a board of trade;

17           (7) a registered futures commission merchant under the federal  
18 commodities laws to the extent of its operation as such a merchant;

19           (8) a person that provides clearance or settlement services pursuant to a  
20 registration as a clearing agency or an exemption from such registration

1 granted under the federal securities laws to the extent of its operation as such a  
2 provider;

3 (9) an operator of a payment system that provides processing, clearing,  
4 or settlement services, between or among persons excluded by this section or  
5 licensees, in connection with wire transfers, credit card transactions, debit card  
6 transactions, stored-value transactions, automated clearing house transfers, or  
7 similar funds transfers to the extent of its operation as such;

8 (10) a person registered as a securities broker-dealer under federal or  
9 state securities laws to the extent of its operation as such a broker-dealer;

10 (11) the sale or issuance of stored value by a school to its students and  
11 employees;

12 (12) a seller of goods or services that cashes payment instruments  
13 incidental to or independent of a sale and does not charge for cashing the  
14 payment instrument in excess of \$1.00 per instrument; or

15 (13) a debt adjuster licensed pursuant to chapter 133 of this title when  
16 engaged in the business of debt adjustment.

17 ~~(b) The Commissioner may issue an order exempting any other person~~  
18 ~~from this chapter upon a finding that the licensing of such person is not~~  
19 ~~necessary to achieve the purposes of this chapter.~~

20 (b) The Commissioner may issue an order exempting any person from this  
21 chapter when such person is performing services for the benefit of the United

1 States or a department, agency, or instrumentality thereof, or for the benefit of  
2 any state, county, city, or any other governmental agency or governmental  
3 subdivision within a state.

4 Sec. 13. 8 V.S.A. § 2511 is added to read:

5 § 2511. ACTIVITIES OF MONEY TRANSMITTERS; RECEIPTS AND  
6 REFUNDS

7 (a) Every money transmitter licensee and its authorized delegates shall  
8 provide a receipt to the customer that clearly states the name, address, and  
9 telephone number of the licensee; the amount of money presented for  
10 transmission; and the total of any fees charged by the licensee.

11 (1) If the rate of exchange for a money transmission to be paid in the  
12 currency of another country is fixed by the licensee for that transaction at the  
13 time the money transmission is initiated, then the receipt provided to the  
14 customer shall disclose the rate of exchange for that transaction, and the  
15 duration, if any, for the payment to be made at the fixed rate of exchange so  
16 specified.

17 (2) If the rate of exchange for a money transmission to be paid in the  
18 currency of another country is not fixed at the time the money transmission is  
19 sent, the receipt provided to the customer shall disclose that the rate of  
20 exchange for the transaction will be set at the time the recipient of the money  
21 transmission picks up the funds in the foreign country.

1           (3) As used in this section, “fees” does not include revenue that a  
2           licensee or its authorized delegate generates, in connection with a money  
3           transmission, in the conversion of the money of one government into the  
4           money of another government.

5           (b) Every money transmitter licensee and its authorized delegates shall  
6           refund to the customer within 10 days of receipt of a written request for a  
7           refund all moneys received for transmittal unless any of the following occurs:

8           (1) Prior to receipt of the written request for a refund, the moneys have  
9           been transmitted and delivered to the person designated by the customer.

10           (2) Prior to receipt of a written request for a refund, instructions have  
11           been given committing an equivalent amount of money to the person  
12           designated by the customer.

13           (3) The licensee or its authorized delegate has reason to believe that a  
14           crime has occurred, is occurring, or may potentially occur as a result of  
15           transmitting the money as requested by the customer or refunding the money  
16           as requested by the customer.

17           (4) The licensee is otherwise barred by law from making a refund.

18           Sec. 14. 8 V.S.A. § 2536 is added to read:

19           § 2536. SEGREGATED ACCOUNTS

20           (a) All monetary value remitted by customers to a licensee and its  
21           authorized delegates subject to this chapter shall be maintained in a permissible

1 investment pursuant to section 2541 of this chapter. Such account or accounts  
2 shall be segregated from all other accounts of the licensee and shall not be used  
3 in the conduct of the licensee’s personal affairs or the licensee’s business  
4 affairs.

5 (b) The licensee may withdraw funds from the segregated account for:

- 6 (1) disbursement as directed by the customer;  
7 (2) fees to which it is entitled for services actually performed; and  
8 (3) customer refunds.

9 (c) The licensee shall maintain complete and accurate account records,  
10 including the source of all deposits, the nature and recipient of all  
11 disbursements, the date and amount of each transaction, and the name of the  
12 customer. All documents pertaining to account activity shall be produced upon  
13 request of the Commissioner. **These records shall be subject to the retention**  
14 **requirements of section 2534 of this title.**

15 Sec. 15. 8 V.S.A. § 2540(c) is amended to read:

16 (c) ~~Permissible investments, even if commingled with other assets of the~~  
17 ~~licensee, are~~ shall be held in trust for the benefit of the purchasers and holders  
18 of the licensee’s outstanding payment instruments and stored-value obligations  
19 in the event of bankruptcy or receivership of the licensee.

1 Sec. 16. 8 V.S.A. § 2541(a) is amended to read:

2 (a) Except to the extent otherwise limited by the Commissioner pursuant to  
3 section 2540 of this title, the following investments are permissible under  
4 section 2540 of this title:

5 (1) cash, a certificate of deposit, or a senior debt obligation of a  
6 depositary institution within the meaning of subdivision 11101(24) of this title;

7 (2) a banker's acceptance or bill of exchange that is eligible for purchase  
8 upon endorsement by a member bank of the Federal Reserve System and is  
9 eligible for purchase by a Federal Reserve Bank;

10 (3) an investment bearing a rating of one of the three highest grades, as  
11 defined by a nationally-recognized organization that rates securities;

12 (4) an investment security that is an obligation of the United States or a  
13 department, agency, or instrumentality thereof; an investment in an obligation  
14 that is guaranteed fully as to principal and interest by the United States; or an  
15 investment in an obligation of a state or a governmental subdivision, agency,  
16 or instrumentality thereof;

17 (5) receivables that are payable to a licensee from its authorized  
18 delegates, in the ordinary course of business, pursuant to contracts ~~which~~ that  
19 are not past due or doubtful of collection, if the aggregate amount of  
20 investments in receivables under this subdivision does not exceed 20 percent of  
21 the total permissible investments of a licensee and the licensee does not have at

1 one time investments in receivables under this subdivision in any one person  
2 aggregating more than 10 percent of the licensee’s total permissible  
3 investments; ~~and~~

4 (6) a share or a certificate issued by an open-end management  
5 investment company that is registered with the U.S. Securities and Exchange  
6 Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1  
7 et seq.), and whose portfolio is restricted by the management company’s  
8 investment policy to investments specified in subdivisions (1) through (4) of  
9 this subsection; and

10 (7) virtual currency owned by the licensee, but only to the extent of  
11 outstanding transmission obligations received by the licensee in identical  
12 denomination of virtual currency.

13 Sec. 17. 8 V.S.A. § 2545 is amended to read:

14 § 2545. SUSPENSION, REVOCATION, AND NONRENEWAL

15 RECEIVERSHIP

16 \* \* \*

17 (c) If the Commissioner believes, from evidence satisfactory to him or her,  
18 that any person has violated a provision of subsection (a) of this section, the  
19 Commissioner may, in addition to any other powers, issue orders or directives  
20 to any person:





1 income tax purposes is reported, or required to be reported, on a W-2 form  
2 issued by:

3 (i) the controlling person;

4 (ii) an entity that directly or indirectly owns 100 percent of the  
5 controlling person; or

6 (iii) an entity that is directly or indirectly 100 percent owned by  
7 the same parent company as the controlling person.

8 (B) For purposes of a registered mortgage loan originator as defined  
9 in ~~subdivision (22)~~ subdivision (25) of this section, the term employee has  
10 such binding definition as may be issued by the federal banking agencies in  
11 connection with their responsibilities under the federal Secure and Fair  
12 Enforcement for Mortgage Licensing Act of 2008.

13 \* \* \*

14 (13) “Lead” means any information identifying a potential consumer of  
15 a loan.

16 (14) “Lead generation” means to:

17 (A) initiate consumer interest or inquiry in a loan by online  
18 marketing, direct response advertising, telemarketing, or other similar  
19 consumer contact;

20 (B) engage in the business of selling leads for loans;

1           (C) generate or augment leads for other persons for, or with the  
2           expectation of, compensation or gain; or

3           (D) refer Vermont borrowers to other persons for loans for, or with  
4           the expectation of, compensation or gain.

5           (15) “Licensee” means any person subject to the provisions of section  
6           2201 of this title.

7           ~~(14)~~(16) “Loan processor or underwriter” means an individual who  
8           performs clerical or support duties as an employee at the direction of and  
9           subject to the supervision and instruction of a person licensed, or exempt from  
10          licensing, under this chapter.

11          (A) For purposes of this ~~subdivision (14)~~ subdivision (16), the term  
12          “clerical or support duties” may include, subsequent to the receipt of a  
13          residential mortgage loan application:

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

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

20          (B) An individual engaging solely in loan processor or underwriter  
21          activities shall not represent to the public, through advertising or other means

1 of communicating or providing information, including the use of business  
2 cards, stationery, brochures, signs, rate lists, or other promotional items, that  
3 such individual can or will perform any of the activities of a mortgage loan  
4 originator.

5 ~~(15)~~(17) “Loan solicitation” means to:

6 (A) offer, solicit, broker, directly or indirectly arrange, place, or find  
7 a loan for a prospective Vermont borrower;

8 (B) engage in any activity intended to assist a prospective Vermont  
9 borrower in obtaining a loan, including lead generation;

10 (C) arrange, in whole or in part, a loan through a third party,  
11 regardless of whether approval, acceptance, or ratification by the third party is  
12 necessary to create a legal obligation for the third party, through any method,  
13 including mail, telephone, Internet, or any electronic means; or

14 (D) advertise or cause to be advertised in this State a loan or any of  
15 the services described in subdivisions (A) to (D) of this subdivision (17). The  
16 term does not apply to residential mortgage loans.

17 (18) “Mortgage broker” means any person who for compensation or  
18 gain, or in the expectation of compensation or gain, directly or indirectly  
19 negotiates, places, assists in placement, or finds, or offers to negotiate, place,  
20 assist in placement, or find mortgage loans, other than commercial loans, on  
21 real property for others. The term shall not include real estate brokers or

1 salespersons, as defined in 26 V.S.A. § 2211, who in connection with services  
2 performed in a prospective real estate transaction, provide mortgage  
3 information or assistance to a buyer, if such real estate broker or real estate  
4 salesperson is not compensated for providing such mortgage information or  
5 assistance in addition to the compensation received from the seller or buyer for  
6 such real estate brokerage activity. The term shall not include attorneys  
7 licensed to practice law in this State acting in their professional capacity. The  
8 term shall not include persons engaged in the foregoing activities solely in  
9 connection with the sale, assignment, or other transfer of one or more  
10 previously originated loans.

11 ~~(16)~~(19) “Mortgage loan” means a loan secured primarily by a lien  
12 against real estate.

13 ~~(17)~~(20) “Mortgage loan originator”:

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

16 (i) takes a residential mortgage loan application;

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

18 (iii) represents to the public, through advertising or other means of  
19 communicating or providing information (including the use of business cards,  
20 stationery, brochures, signs, rate lists, or other promotional items), that such

1 individual can or will perform the services described in subdivision (A)(i) or  
2 (A)(ii) of this ~~subdivision (17)~~ subdivision (20).

3 (B) An individual “takes a residential mortgage loan application” if  
4 the individual receives a residential mortgage loan application for the purpose  
5 of facilitating a decision whether to extend an offer of residential mortgage  
6 loan terms to a borrower or prospective borrower (or to accept the terms  
7 offered by a borrower or prospective borrower in response to a solicitation),  
8 whether the application is received directly or indirectly from the borrower or  
9 prospective borrower.

10 (C) An individual “offers or negotiates terms of a residential  
11 mortgage loan for compensation or gain” if the individual:

12 (i)(I) presents for consideration by a borrower or prospective  
13 borrower particular residential mortgage loan terms;

14 (II) communicates directly or indirectly with a borrower or  
15 prospective borrower for the purpose of reaching a mutual understanding about  
16 prospective residential mortgage loan terms; or

17 (III) recommends, refers, or steers a borrower or prospective  
18 borrower to a particular lender or set of residential mortgage loan terms, in  
19 accordance with a duty to or incentive from any person other than the borrower  
20 or prospective borrower; and

1 (ii) receives or expects to receive payment of money or anything  
2 of value in connection with the activities described in subdivision (C)(i) of this  
3 ~~subdivision (17)~~ subdivision (20) or as a result of any residential mortgage  
4 loan terms entered into as a result of such activities.

5 (D) Does not include:

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

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

15 (iii) a person or entity solely involved in extensions of credit  
16 relating to timeshare plans, as that term is defined in ~~Section 11 U.S.C.~~  
17 § 101(53D) of Title 11, United States Code.

18 ~~(18)(21)~~ “Nationwide Mortgage Licensing System and Registry” means  
19 a mortgage licensing system developed and maintained by the Conference of  
20 State Bank Supervisors and the American Association of Residential Mortgage  
21 Regulators for the licensing and registration of licensed mortgage loan

1 originators, or any successor to the Nationwide Mortgage Licensing System  
2 and Registry.

3 ~~(19)~~(22) “Nontraditional mortgage product” means any mortgage  
4 product other than a 30-year fixed rate mortgage.

5 ~~(20)~~(23) “Person” ~~shall have~~ has the meaning set forth in 1 V.S.A. § 128  
6 and includes a natural person, corporation, company, limited liability company,  
7 partnership, or association.

8 ~~(21)~~(24) “Real estate brokerage activity” means any activity that  
9 involves offering or providing real estate brokerage services to the public,  
10 including:

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

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

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

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

1 (E) offering to engage in any activity or act in any capacity described  
2 in subdivision (A), (B), (C), or (D) of this ~~subdivision (21)~~ subdivision (24).

3 ~~(22)~~(25) “Registered mortgage loan originator” means any individual  
4 who:

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

7 (i) a depository institution;

8 (ii) a subsidiary that is:

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

11 (II) regulated by a federal banking agency; or

12 (iii) an institution regulated by the Farm Credit  
13 Administration; and

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

16 ~~(23)~~(26) “Residential mortgage loan” means any loan primarily for  
17 personal, family, or household use that is secured by a mortgage, deed of trust,  
18 or other equivalent consensual security interest on a dwelling (as defined in  
19 section 103(v) of the Truth in Lending Act) or residential real estate upon  
20 which is constructed or intended to be constructed a dwelling (as so defined).



1           ~~(24)~~(27) “Residential mortgage loan application” means a request, in  
2           any form, for an offer (or a response to a solicitation of an offer) of residential  
3           mortgage loan terms, and information about the borrower or prospective  
4           borrower that is customary or necessary in a decision on whether to make such  
5           an offer.

6           ~~(25)~~(28) “Residential real estate” means any real property located in  
7           Vermont, upon which is constructed or intended to be constructed a dwelling.

8           ~~(26)~~(29) “Sales finance company” means any person who has purchased  
9           one or more retail installment contracts, as defined in 9 V.S.A. §§ 2351(5) and  
10          2401(7), from one or more retail sellers located in this State. Taking one or  
11          more retail installment contracts as security for a loan or loans shall not be  
12          construed as purchasing for purposes of this definition.

13          ~~(27)~~(30) “Unique identifier” means a number or other identifier assigned  
14          by protocols established by the Nationwide Mortgage Licensing System and  
15          Registry.

16          Sec. 19. 8 V.S.A. § 2201 is amended to read:

17          § 2201. LICENSES REQUIRED

18          (a) ~~No person shall without~~ Without first obtaining a license under this  
19          chapter from the Commissioner, a person shall not:



1 including a vacation home, or inherited property that served as the deceased's  
2 dwelling, provided that the individual does not act as a mortgage loan  
3 originator or provide financing for such sales so frequently and under such  
4 circumstances that it constitutes a habitual activity and acting in a commercial  
5 context.

6 (4) An individual who is an employee of a federal, State, or local  
7 government agency, or an employee of a housing finance agency, who acts as a  
8 mortgage loan originator only pursuant to his or her official duties as an  
9 employee of the federal, State, or local government agency or housing finance  
10 agency.

11 (5) A licensed attorney who negotiates the terms of a residential  
12 mortgage loan on behalf of a client as an ancillary matter to the attorney's  
13 representation of the client, unless the attorney is compensated by a lender, a  
14 mortgage broker, or other mortgage loan originator or by any agent of such  
15 lender, mortgage broker, or other mortgage loan originator. To the extent an  
16 attorney licensed in this State undertakes activities that are covered by the  
17 definition of a mortgage loan originator, such activities do not constitute  
18 engaging in the business of a mortgage loan originator, provided that:

19 (A) such activities are considered by the State governing body  
20 responsible for regulating the practice of law to be part of the authorized  
21 practice of law within this State;

1 (B) such activities are carried out within an attorney-client  
2 relationship; and

3 (C) the attorney carries them out in compliance with all applicable  
4 laws, rules, ethics, and standards.

5 (6) A person who makes no more than three mortgage loans in any  
6 consecutive three-year period beginning on or after July 1, 2011.

7 \* \* \*

8 Sec. 20. 8 V.S.A. § 2202(b)(6) is added to read:

9 (6) For an applicant for a loan solicitation license, \$500.00 as a license  
10 fee, and \$500.00 as an application and investigation fee.

11 Sec. 21. 8 V.S.A. § 2203 is amended to read:

12 § 2203. BOND; LIQUID ASSETS REQUIRED

13 \* \* \*

14 (c) A loan solicitation licensee shall maintain a surety bond in an amount  
15 not less than \$25,000.00 or in such other amount as the Commissioner may  
16 require.

17 (d) When an action is commenced on a licensee's bond, the Commissioner  
18 may require the filing of a new bond. Immediately upon recovery upon any  
19 action on the bond, the licensee shall file a new bond.

20 ~~(d)~~(e) Every applicant for a lender's license shall also prove, in form  
21 satisfactory to the Commissioner, that the applicant has liquid assets of

1       \$25,000.00, or such greater amount as the Commissioner may require,  
2       available for the operation of such business at the location specified in the  
3       application. Every applicant wishing to make commercial loans shall prove  
4       liquid assets in an amount of \$50,000.00 or such greater amount as the  
5       Commissioner may require.

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

10       ~~(f)~~(g) This section does not apply to a lender making only commercial  
11       loans.

12       Sec. 22. 8 V.S.A. § 2208(a) is amended to read:

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

18       Sec. 23. 8 V.S.A. § 2209(a)(7) is added to read:

19       (7) For the renewal of a loan solicitation license, \$500.00.

1 Sec. 24. 8 V.S.A. § 2219 is amended to read:

2 § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

3 \* \* \*

4 (b) A mortgage broker who acts as an independent contractor loan  
5 processor or an underwriter who performs loan processing or underwriting  
6 activities for a licensed or exempt mortgage broker or lender is not required to  
7 provide a mortgage broker agreement to the prospective borrower, provided:

8 (1) the mortgage broker is acting as an independent contractor loan  
9 processor or underwriter as described in subsection 2201(g) of this chapter;

10 (2) the mortgage broker's activities are limited to loan processor or  
11 underwriting activities as described in subdivision ~~2200(14)~~ 2200(16) of this  
12 chapter;

13 (3) the mortgage broker is paid a fee solely by the licensed or exempt  
14 mortgage broker or lender, is not paid by the prospective borrower, and is not  
15 paid a commission based upon the dollar amount of the loan; and

16 (4) if the mortgage broker is acting as an independent contractor loan  
17 processor or underwriter on behalf of a mortgage broker, such mortgage broker  
18 has already entered into a written mortgage broker agreement with the  
19 prospective borrower.

20 (c) A mortgage broker that engages solely in lead generation and does not  
21 employ or sponsor any mortgage loan originators is not required to provide a

1 mortgage broker agreement but must include clearly and conspicuously in all  
2 advertisements of loans and solicitation of leads, the following disclosure:

3 **THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE**  
4 **NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL**  
5 **BE SHARED WITH ONE OR MORE THIRD PARTIES IN**  
6 **CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY**  
7 **NOT BE SUBJECT TO ALL VERMONT LENDING LAWS. THE**  
8 **LENDER MAY BE SUBJECT TO FEDERAL LENDING LAWS.**

9 Sec. 25. 8 V.S.A. § 2220a is added to read:

10 § 2220a. DISCLOSURE REQUIRED BY LOAN SOLICITATION

11 LICENSEE

12 Each loan solicitation licensee shall include clearly and conspicuously in all  
13 advertisements of loans and solicitations of leads, the following statement:

14 **THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE**  
15 **NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL**  
16 **BE SHARED WITH ONE OR MORE THIRD PARTIES IN**  
17 **CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY**  
18 **NOT BE SUBJECT TO ALL VERMONT LENDING LAWS. THE**  
19 **LENDER MAY BE SUBJECT TO FEDERAL LENDING LAWS.**

1 Sec. 26. 8 V.S.A. § 2223 is amended to read:

2 § 2223. RECORDS REQUIRED OF LICENSEE

3 (a) The licensee shall keep, use in the licensee’s business, and make  
4 available to the Commissioner upon request, such books, accounts, records,  
5 and data compilations as will enable the Commissioner to determine whether  
6 such licensee is complying with the provisions of this chapter and with the  
7 rules and regulations lawfully made by the Commissioner ~~hereunder~~. Every  
8 licensee shall preserve such books, accounts, records, and data compilations in  
9 a secure manner for **at least not less than** seven years after making the final  
10 entry on any loan recorded therein. Thereafter, the licensee shall dispose of  
11 such books, accounts, records, and data compilations in accordance with 9  
12 V.S.A. § 2445.

13 (b)(1) A licensee that engages in loan solicitation activity shall maintain  
14 the following records for **not less than** seven years:

15 (A) copies of all solicitation materials used in its business, regardless  
16 of medium, including business cards, telephone scripts, mailers, electronic  
17 mail, and radio, television, and Internet advertisements;

18 (B) records of any contact or attempted contact with a consumer,  
19 including the name, date, method, and nature of contact, and any information  
20 provided to or received from the consumer; and



1           (C) the name, address, and, if applicable, unique identifier of any  
2           person who received, requested, or contracted for leads or referrals and any  
3           fees or consideration charged or received for such services.

4           (2) Thereafter, the licensee shall dispose of such records in accordance  
5           with 9 V.S.A. § 2445.

6           Sec. 27. 8 V.S.A. § 2224 is amended to read:

7           § 2224. ANNUAL REPORT, MORTGAGE CALL REPORTS

8           (a) Annually, on or before April 1, each licensed lender, mortgage broker,  
9           ~~and~~ sales finance company, and loan solicitation licensee shall file a report  
10           with the Commissioner giving such relevant information as the Commissioner  
11           reasonably may require concerning the business and operations during the  
12           preceding calendar year of each licensed place of business conducted by ~~such~~  
13           the licensee within the State. Such report shall be made under oath and shall  
14           be in the form prescribed by the Commissioner, who shall make and publish  
15           annually an analysis and recapitulation of such reports. For good cause, the  
16           Commissioner may extend the due date for the annual report required by this  
17           subsection. If a licensee does not file its annual report on or before April 1, or  
18           within any extension of time granted by the Commissioner, the licensee shall  
19           pay to the Department \$100.00 for each month or part of a month that the  
20           report is past due.

1 (b) Annually, within 90 days of the end of its fiscal year, each licensed  
2 lender, mortgage broker, ~~and~~ sales finance company, and loan solicitation  
3 licensee shall file financial statements with the Commissioner in a form and  
4 substance satisfactory to the Commissioner, which financial statements must  
5 include a balance sheet and income statement. This subsection does not apply  
6 to a lender making only commercial loans.

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

12 Sec. 28. 8 V.S.A. § 2241 is amended to read:

13 § 2241. PROHIBITED ACTS AND PRACTICES

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

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

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

18 (3) obtain property by fraud or misrepresentation;

19 (4) solicit or enter into a contract with a borrower that provides in

20 substance that the person or individual may earn a fee or commission through

1 “best efforts” to obtain a loan even though no loan is actually obtained for the  
2 borrower;

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

6 (6) conduct any business covered by this chapter without holding a valid  
7 license as required under this chapter, ~~or to~~ assist or aid and abet any person in  
8 the conduct of business under this chapter without a valid license as required  
9 under this chapter, or to refer a person to, or receive a fee from, any person  
10 who must be licensed but was not licensed as of the time the licensee’s  
11 services were provided;

12 (7) fail to make disclosures as required by this chapter and any other  
13 applicable State or federal law, including regulations thereunder;

14 (8) fail to comply with this chapter or rules adopted under this chapter,  
15 or fail to comply with any orders or directives from the Commissioner, or fail  
16 to comply with any other State or federal law, including the rules thereunder,  
17 applicable to any business authorized or conducted under this chapter;

18 (9) make, in any manner, any false or deceptive statement or  
19 representation, including with regard to the rates, points, or other financing  
20 terms or conditions for a mortgage loan, ~~or to~~ engage in bait and switch  
21 advertising, or to represent to the public that the licensee is able to perform an

1 activity requiring licensure unless such licensee is duly licensed or is exempt  
2 from licensure;

3 (10) negligently make any false statement or knowingly and willfully  
4 make any omission of material fact in connection with any information or  
5 reports filed with a governmental agency or the Nationwide Mortgage  
6 Licensing System and Registry or in connection with any investigation  
7 conducted by the Commissioner or another governmental agency;

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

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

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

19 (14) fail to account truthfully for monies belonging to a party to a  
20 mortgage loan transaction;

1           (15) fail to clearly and conspicuously identify the licensee and the  
2           purpose of the contact in its written and oral communications with a  
3           consumer; or

4           (16) fail to provide the ability to opt out of any unsolicited  
5           advertisement communicated to a consumer via an e-mail address; to initiate  
6           an unsolicited advertisement via e-mail to a consumer more than 10 business  
7           days after the receipt of a request from such consumer to opt out of such  
8           unsolicited advertisements; or to sell, lease, exchange or otherwise transfer or  
9           release the e-mail address or telephone number of a consumer who has  
10           requested to opt out of future solicitations.

11       Sec. 29. 8 V.S.A. § 2244(b) is amended to read:

12           (b) The unique identifier issued by the Nationwide Mortgage Licensing  
13           System and Registry of any person engaging in the business of lending or  
14           acting as a mortgage broker, sales finance company, or loan solicitation  
15           licensee shall be clearly shown on all loan application forms, solicitations, or  
16           advertisements, including business cards and websites, and any other  
17           documents as established by rule or order of the Commissioner.

18           \*\*\* Banking Housekeeping; Vermont Student Assistance Corporation \*\*\*

19       Sec. 30. 16 V.S.A. § 2821(c) is amended to read:

20           (c) Notwithstanding any general or special law to the contrary, the  
21           provisions of 8 V.S.A. chapter ~~83~~ 73 shall not apply to the Corporation or to

1 any loan heretofore or hereafter made or serviced by the Corporation in  
2 accordance with this title.

3 \* \* \* Effective Date \* \* \*

4 Sec. 31. EFFECTIVE DATE

5 This act shall take effect on passage.

6

7

8 (Committee vote: \_\_\_\_\_)

9

10

\_\_\_\_\_  
Representative \_\_\_\_\_

11

FOR THE COMMITTEE