

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

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

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

1 § 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND  
2 RELICENSING EDUCATION REQUIREMENT

3 \* \* \*

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

10 (g) A person who has completed 20 hours of prelicensing education under  
11 12 U.S.C. § 5104(c) must retake such prelicensing education to be eligible to  
12 apply for a Vermont loan originator license if he or she:

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

16 (2) within three years of completing the prelicensing education, obtains  
17 a valid mortgage loan originator license in any state or becomes a federally  
18 registered mortgage loan originator and subsequently does not maintain an  
19 approved mortgage loan originator license in any state or an approved federal  
20 registration for a period of three years or more.



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.~~

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

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

7                   (ii) current outstanding tax liens or other government liens and  
8                   filings;

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

10                   (iv) a pattern of seriously delinquent accounts within the past three  
11                   years.

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

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

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

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

2           (2)(A) ~~the~~ The financial condition and responsibility, financial and  
3 business experience, competence, character, and general fitness of the  
4 applicant, and competence, experience, character, and general fitness of the  
5 executive officers, managers, directors of, and persons in control of the  
6 applicant indicate that it is in the interest of the public to permit the applicant  
7 to engage in check cashing and currency exchange; ~~and.~~

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

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

14                     (ii) current outstanding tax liens or other government liens and  
15 filings;

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

17                     (iv) a pattern of seriously delinquent accounts within the past three  
18 years.

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

20           Sec. 9. 8 V.S.A. § 2756(a) is amended to read:

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

4 (1) ~~the~~ The financial responsibility, experience, character, and general  
5 fitness of the applicant, and of the members, officers, directors, and persons in  
6 control of the applicant, command the confidence of the community and  
7 warrant belief that the business will be operated honestly, fairly, and efficiently  
8 within the purposes of this chapter;

9 (2)(A) ~~neither~~ Neither the applicant nor any of such members, officers,  
10 directors, or persons in control of the applicant have been convicted of a felony  
11 or ~~has~~ have had a record of having defaulted in the payment of money  
12 collected for others, including the discharge of such debts through bankruptcy  
13 proceedings; ~~and~~.

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

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

20 (ii) current outstanding tax liens or other government liens and  
21 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                    (3) ~~the~~ The applicant has paid the requisite application and license fees.

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

6                    § 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

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

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

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

11           (3) That the applicant is licensed to engage in such business in its state  
12 of domicile; and is in good standing in its state of domicile with its state  
13 regulator or equivalent financial industry regulator, if such state licenses third  
14 party loan servicers.

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



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

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

5           (C) may be centralized or decentralized; and

6           (D) can be exchanged for money or other convertible virtual  
7           currency.

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

9           § 2501. EXCLUSIONS

10          (a) This chapter does not apply to:

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

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

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

17           (4) a financial institution as defined in subdivision 11101(32) of this  
18           title, a financial institution holding company as defined in subdivision  
19           11101(33) of this title, a credit union, an office of an international banking  
20           corporation, a branch of a foreign bank, a corporation organized pursuant to  
21           the Bank Services Company Act, or a corporation organized under the Edge

1 Act under the laws of a state or the United States if the person does not issue,  
2 sell, or provide payment instruments or stored value through an authorized  
3 delegate that is not such a person;

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

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

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

14 (8) a person that provides clearance or settlement services pursuant to a  
15 registration as a clearing agency or an exemption from such registration  
16 granted under the federal securities laws to the extent of its operation as such a  
17 provider;

18 (9) an operator of a payment system that provides processing, clearing,  
19 or settlement services, between or among persons excluded by this section or  
20 licensees, in connection with wire transfers, credit card transactions, debit card

1 transactions, stored-value transactions, automated clearing house transfers, or  
2 similar funds transfers to the extent of its operation as such;

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

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

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

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

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

15 (b) The Commissioner may issue an order exempting any person from this  
16 chapter when such person is performing services for the benefit of the United  
17 States or a department, agency, or instrumentality thereof, or for the benefit of  
18 any state, county, city, or any other governmental agency or governmental  
19 subdivision within a state.

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

1     § 2511. ACTIVITIES OF MONEY TRANSMITTERS; RECEIPTS AND  
2             REFUNDS

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

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

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

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

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

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

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

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

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

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

15       § 2536. SEGREGATED ACCOUNTS

16          (a) All monetary value remitted by customers to a licensee and its  
17          authorized delegates subject to this chapter shall be maintained in a permissible  
18          investment pursuant to section 2541 of this chapter. Such account or accounts  
19          shall be segregated from all other accounts of the licensee and shall not be used  
20          in the conduct of the licensee's personal affairs or the licensee's business  
21          affairs.



- 1        (b) The licensee may withdraw funds from the segregated account for:
- 2            (1) disbursement as directed by the customer;
- 3            (2) fees to which it is entitled for services actually performed; and
- 4            (3) customer refunds.
- 5        (c) The licensee shall maintain complete and accurate account records,
- 6        including the source of all deposits, the nature and recipient of all
- 7        disbursements, the date and amount of each transaction, and the name of the
- 8        customer. All documents pertaining to account activity shall be produced upon
- 9        request of the Commissioner. **These records shall be subject to the retention**
- 10       **requirements of section 2534 of this title.**

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

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

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

- 17            (a) Except to the extent otherwise limited by the Commissioner pursuant to
- 18        section 2540 of this title, the following investments are permissible under
- 19        section 2540 of this title:

- 20            (1) cash, a certificate of deposit, or a senior debt obligation of a
- 21        depository institution within the meaning of subdivision 11101(24) of this title;

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

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

6           (4) an investment security that is an obligation of the United States or a  
7 department, agency, or instrumentality thereof; an investment in an obligation  
8 that is guaranteed fully as to principal and interest by the United States; or an  
9 investment in an obligation of a state or a governmental subdivision, agency,  
10 or instrumentality thereof;

11           (5) receivables that are payable to a licensee from its authorized  
12 delegates, in the ordinary course of business, pursuant to contracts ~~which~~ that  
13 are not past due or doubtful of collection, if the aggregate amount of  
14 investments in receivables under this subdivision does not exceed 20 percent of  
15 the total permissible investments of a licensee and the licensee does not have at  
16 one time investments in receivables under this subdivision in any one person  
17 aggregating more than 10 percent of the licensee’s total permissible  
18 investments; ~~and~~

19           (6) a share or a certificate issued by an open-end management  
20 investment company that is registered with the U.S. Securities and Exchange  
21 Commission under the Investment Company Act of 1940 (15 U.S.C. § 80a-1

1 et seq.), and whose portfolio is restricted by the management company's  
2 investment policy to investments specified in subdivisions (1) through (4) of  
3 this subsection; and

4 (7) virtual currency owned by the licensee, but only to the extent of  
5 outstanding transmission obligations received by the licensee in identical  
6 denomination of virtual currency.

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

8 § 2545. SUSPENSION, REVOCATION, AND NONRENEWAL  
9 RECEIVERSHIP

10 \* \* \*

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

15 (1) enjoining or prohibiting such person from engaging in the financial  
16 services industry in this State;

17 (2) to remove any officer, director, employee, or control person; or

18 (3) regarding any other action or remedy as the Commissioner deems  
19 necessary to carry out the purposes of this chapter.

20 (d) The licensee shall receive 15 days' notice and an opportunity to be  
21 heard before such order shall be issued. Mailing notice by certified mail to the

1 licensee’s current address as stated on the license shall be presumptive  
2 evidence of its receipt by the licensee. However, if the Commissioner finds  
3 that the public safety or welfare imperatively requires emergency action, action  
4 with no prior notice or prior opportunity to be heard may be taken, pending  
5 proceedings for revocation or other action.

6 \* \* \* Licensed Lenders; Employee Definition; Loan Solicitations; Lead  
7 Generation \* \* \*

8 Sec. 18. 8 V.S.A. § 2200 is amended to read:

9 § 2200. DEFINITIONS

10 As used in this chapter:

11 \* \* \*

12 (5)(A) “Employee” means, subject to subdivision (B) of this subdivision  
13 (5), an individual whose manner and means of work are subject to the right of  
14 control of, or are controlled by, a person; and whose compensation for federal  
15 income tax purposes is reported, or required to be reported, on a W-2 form  
16 issued by:

17 (i) the controlling person;

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

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

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

6 \* \* \*

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

9 (14) “Lead generation” means to:

10 (A) initiate consumer interest or inquiry in a loan by online  
11 marketing, direct response advertising, telemarketing, or other similar  
12 consumer contact;

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

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

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

18 (15) “Licensee” means any person subject to the provisions of section  
19 2201 of this title.

20 ~~(14)~~(16) “Loan processor or underwriter” means an individual who  
21 performs clerical or support duties as an employee at the direction of and

1 subject to the supervision and instruction of a person licensed, or exempt from  
2 licensing, under this chapter.

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

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

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

12 (B) An individual engaging solely in loan processor or underwriter  
13 activities shall not represent to the public, through advertising or other means  
14 of communicating or providing information, including the use of business  
15 cards, stationery, brochures, signs, rate lists, or other promotional items, that  
16 such individual can or will perform any of the activities of a mortgage loan  
17 originator.

18 ~~(15)~~(17) “Loan solicitation” means to:

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

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

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

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

10           (18) “Mortgage broker” means any person who for compensation or  
11           gain, or in the expectation of compensation or gain, directly or indirectly  
12           negotiates, places, assists in placement, or finds, or offers to negotiate, place,  
13           assist in placement, or find mortgage loans, other than commercial loans, on  
14           real property for others. The term shall not include real estate brokers or  
15           salespersons, as defined in 26 V.S.A. § 2211, who in connection with services  
16           performed in a prospective real estate transaction, provide mortgage  
17           information or assistance to a buyer, if such real estate broker or real estate  
18           salesperson is not compensated for providing such mortgage information or  
19           assistance in addition to the compensation received from the seller or buyer for  
20           such real estate brokerage activity. The term shall not include attorneys  
21           licensed to practice law in this State acting in their professional capacity. The

1 term shall not include persons engaged in the foregoing activities solely in  
2 connection with the sale, assignment, or other transfer of one or more  
3 previously originated loans.

4 ~~(16)~~(19) “Mortgage loan” means a loan secured primarily by a lien  
5 against real estate.

6 ~~(17)~~(20) “Mortgage loan originator”:

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

9 (i) takes a residential mortgage loan application;

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

11 (iii) represents to the public, through advertising or other means of  
12 communicating or providing information (including the use of business cards,  
13 stationery, brochures, signs, rate lists, or other promotional items), that such  
14 individual can or will perform the services described in subdivision (A)(i) or  
15 (A)(ii) of this ~~subdivision (17)~~ subdivision (20).

16 (B) An individual “takes a residential mortgage loan application” if  
17 the individual receives a residential mortgage loan application for the purpose  
18 of facilitating a decision whether to extend an offer of residential mortgage  
19 loan terms to a borrower or prospective borrower (or to accept the terms  
20 offered by a borrower or prospective borrower in response to a solicitation),



1 whether the application is received directly or indirectly from the borrower or  
2 prospective borrower.

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

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

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

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

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

18 (D) Does not include:

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

1           (ii) a person or entity that only performs real estate brokerage  
2 activities and is licensed or registered in accordance with Vermont law, unless  
3 the person or entity is compensated by a buyer or a seller in addition to the  
4 compensation received for such real estate brokerage activity or is  
5 compensated by a lender, a mortgage broker, or other mortgage loan originator  
6 or by any agent of such lender, mortgage broker, or other mortgage loan  
7 originator; and

8           (iii) a person or entity solely involved in extensions of credit  
9 relating to timeshare plans, as that term is defined in ~~Section~~ 11 U.S.C.  
10 § 101(53D) of Title 11, United States Code.

11           ~~(18)~~(21) “Nationwide Mortgage Licensing System and Registry” means  
12 a mortgage licensing system developed and maintained by the Conference of  
13 State Bank Supervisors and the American Association of Residential Mortgage  
14 Regulators for the licensing and registration of licensed mortgage loan  
15 originators, or any successor to the Nationwide Mortgage Licensing System  
16 and Registry.

17           ~~(19)~~(22) “Nontraditional mortgage product” means any mortgage  
18 product other than a 30-year fixed rate mortgage.

19           ~~(20)~~(23) “Person” ~~shall have~~ has the meaning set forth in 1 V.S.A. § 128  
20 and includes a natural person, corporation, company, limited liability company,  
21 partnership, or association.

1           ~~(21)~~(24) “Real estate brokerage activity” means any activity that  
2 involves offering or providing real estate brokerage services to the public,  
3 including:

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

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

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

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

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

17           ~~(22)~~(25) “Registered mortgage loan originator” means any individual  
18 who:

19           (A) meets the definition of mortgage loan originator and is an  
20 employee of:

21           (i) a depository institution;

1 (ii) a subsidiary that is:

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

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

5 (iii) an institution regulated by the Farm Credit  
6 Administration; and

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

9 ~~(23)~~(26) “Residential mortgage loan” means any loan primarily for  
10 personal, family, or household use that is secured by a mortgage, deed of trust,  
11 or other equivalent consensual security interest on a dwelling (as defined in  
12 section 103(v) of the Truth in Lending Act) or residential real estate upon  
13 which is constructed or intended to be constructed a dwelling (as so defined).

14 ~~(24)~~(27) “Residential mortgage loan application” means a request, in  
15 any form, for an offer (or a response to a solicitation of an offer) of residential  
16 mortgage loan terms, and information about the borrower or prospective  
17 borrower that is customary or necessary in a decision on whether to make such  
18 an offer.

19 ~~(25)~~(28) “Residential real estate” means any real property located in  
20 Vermont, upon which is constructed or intended to be constructed a dwelling.

1           ~~(26)~~(29) “Sales finance company” means any person who has purchased  
2           one or more retail installment contracts, as defined in 9 V.S.A. §§ 2351(5) and  
3           2401(7), from one or more retail sellers located in this State. Taking one or  
4           more retail installment contracts as security for a loan or loans shall not be  
5           construed as purchasing for purposes of this definition.

6           ~~(27)~~(30) “Unique identifier” means a number or other identifier assigned  
7           by protocols established by the Nationwide Mortgage Licensing System and  
8           Registry.

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

10          § 2201. LICENSES REQUIRED

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

13               (1) ~~engage~~ Engage in the business of making loans of money, credit,  
14               goods, or things in action and charge, contract for, or receive on any such loan  
15               interest, a finance charge, discount, or consideration therefor;

16               (2) ~~act~~ Act as a mortgage broker;

17               (3) ~~engage~~ Engage in the business of a mortgage loan originator;

18               (4) ~~act~~ Act as a sales finance company.

19               (5) Engage in the business of loan solicitation. A person licensed as a  
20               lender or mortgage broker is not required to obtain a separate loan solicitation  
21               license when acting on the person’s own behalf.

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\* \* \*

(d) ~~No~~ A lender license, mortgage broker license, ~~or~~ sales finance company license, or loan solicitation license shall not be required of:

\* \* \*

(e) ~~No~~ A mortgage loan originator license shall not be required of:

(1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision ~~2200(22)~~ 2200(25) of this chapter.

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context.

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

1 employee of the federal, State, or local government agency or housing finance  
2 agency.

3 (5) A licensed attorney who negotiates the terms of a residential  
4 mortgage loan on behalf of a client as an ancillary matter to the attorney's  
5 representation of the client, unless the attorney is compensated by a lender, a  
6 mortgage broker, or other mortgage loan originator or by any agent of such  
7 lender, mortgage broker, or other mortgage loan originator. To the extent an  
8 attorney licensed in this State undertakes activities that are covered by the  
9 definition of a mortgage loan originator, such activities do not constitute  
10 engaging in the business of a mortgage loan originator, provided that:

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

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

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

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

20 \* \* \*

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

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

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

5 § 2203. BOND; LIQUID ASSETS REQUIRED

6 \* \* \*

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

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

13 ~~(d)~~(e) Every applicant for a lender's license shall also prove, in form  
14 satisfactory to the Commissioner, that the applicant has liquid assets of  
15 \$25,000.00, or such greater amount as the Commissioner may require,  
16 available for the operation of such business at the location specified in the  
17 application. Every applicant wishing to make commercial loans shall prove  
18 liquid assets in an amount of \$50,000.00 or such greater amount as the  
19 Commissioner may require.

20 ~~(e)~~(f) Notwithstanding subsections (a) and ~~(d)~~(e) of this section, the  
21 Commissioner may waive or modify the requirement for or amount of a bond



1 or liquid asset set forth in this section, or accept other appropriate means of  
2 assuring the financial responsibility of a licensee.

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

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

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

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

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

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

14 § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

15 \* \* \*

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

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

1 (2) the mortgage broker’s activities are limited to loan processor or  
2 underwriting activities as described in subdivision ~~2200(14)~~ 2200(16) of this  
3 chapter;

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

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

11 (c) A mortgage broker that engages solely in lead generation and does not  
12 employ or sponsor any mortgage loan originators is not required to provide a  
13 mortgage broker agreement but must include clearly and conspicuously in all  
14 advertisements of loans and solicitation of leads, the following disclosure:

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

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

2 § 2220a. DISCLOSURE REQUIRED BY LOAN SOLICITATION

3 LICENSEE

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

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

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

13 § 2223. RECORDS REQUIRED OF LICENSEE

14 (a) The licensee shall keep, use in the licensee's business, and make  
15 available to the Commissioner upon request, such books, accounts, records,  
16 and data compilations as will enable the Commissioner to determine whether  
17 such licensee is complying with the provisions of this chapter and with the  
18 rules and regulations lawfully made by the Commissioner ~~hereunder~~. Every  
19 licensee shall preserve such books, accounts, records, and data compilations in  
20 a secure manner for **at least not less than** seven years after making the final  
21 entry on any loan recorded therein. Thereafter, the licensee shall dispose of

1 such books, accounts, records, and data compilations in accordance with 9  
2 V.S.A. § 2445.

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

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

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

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

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

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

17 § 2224. ANNUAL REPORT, MORTGAGE CALL REPORTS

18 (a) Annually, on or before April 1, each licensed lender, mortgage broker,  
19 ~~and~~ sales finance company, and loan solicitation licensee shall file a report  
20 with the Commissioner giving such relevant information as the Commissioner  
21 reasonably may require concerning the business and operations during the

1 preceding calendar year of each licensed place of business conducted by ~~such~~  
2 the licensee within the State. Such report shall be made under oath and shall  
3 be in the form prescribed by the Commissioner, who shall make and publish  
4 annually an analysis and recapitulation of such reports. For good cause, the  
5 Commissioner may extend the due date for the annual report required by this  
6 subsection. If a licensee does not file its annual report on or before April 1, or  
7 within any extension of time granted by the Commissioner, the licensee shall  
8 pay to the Department \$100.00 for each month or part of a month that the  
9 report is past due.

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

16 (c) Each licensed lender, mortgage broker, ~~and~~ mortgage loan originator  
17 and loan solicitation licensee shall submit to the Nationwide Mortgage  
18 Licensing System and Registry reports of condition, which shall be in such  
19 form and shall contain such information as the Nationwide Mortgage  
20 Licensing System and Registry may require.

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

2 § 2241. PROHIBITED ACTS AND PRACTICES

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

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

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

7 (3) obtain property by fraud or misrepresentation;

8 (4) solicit or enter into a contract with a borrower that provides in  
9 substance that the person or individual may earn a fee or commission through  
10 “best efforts” to obtain a loan even though no loan is actually obtained for the  
11 borrower;

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

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

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

3 (8) fail to comply with this chapter or rules adopted under this chapter,  
4 or fail to comply with any orders or directives from the Commissioner, or fail  
5 to comply with any other State or federal law, including the rules thereunder,  
6 applicable to any business authorized or conducted under this chapter;

7 (9) make, in any manner, any false or deceptive statement or  
8 representation, including with regard to the rates, points, or other financing  
9 terms or conditions for a mortgage loan, ~~or to~~ engage in bait and switch  
10 advertising, or to represent to the public that the licensee is able to perform an  
11 activity requiring licensure unless such licensee is duly licensed or is exempt  
12 from licensure;

13 (10) negligently make any false statement or knowingly and willfully  
14 make any omission of material fact in connection with any information or  
15 reports filed with a governmental agency or the Nationwide Mortgage  
16 Licensing System and Registry or in connection with any investigation  
17 conducted by the Commissioner or another governmental agency;

18 (11) make any payment, threat, or promise, directly or indirectly, to any  
19 person for the purposes of influencing the independent judgment of the person  
20 in connection with a residential mortgage loan, or make any payment, threat, or  
21 promise, directly or indirectly, to any appraiser of a property, for the purposes

1 of influencing the independent judgment of the appraiser with respect to the  
2 value of the property;

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

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

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

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

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

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



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

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

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

9 (c) Notwithstanding any general or special law to the contrary, the  
10 provisions of 8 V.S.A. chapter ~~83~~ 73 shall not apply to the Corporation or to  
11 any loan heretofore or hereafter made or serviced by the Corporation in  
12 accordance with this title.

13 **Sec. 31. VERMONT STUDENT ASSISTANCE CORPORATION; LOANS;**

14 **LICENSE EXEMPTION; RETROACTIVE APPLICATION**

15 Notwithstanding 1 V.S.A. §§ 213 and 214(b), Sec. 30 of this act applies

16 retroactively to January 1, 2011.

17 \* \* \* Effective Dates \* \* \*

18 Sec. 32. EFFECTIVE DATES

19 This act shall take effect on passage, except that Secs. 13 (money

20 transmitter receipts and refunds), 14 (money transmitter segregated accounts).

1 24 (lead generator disclosure requirement), and 25 (loan solicitor disclosure  
2 requirement) shall take effect July 1, 2017.

3

4

5 (Committee vote: \_\_\_\_\_)

6

\_\_\_\_\_

7

Representative \_\_\_\_\_

8

FOR THE COMMITTEE