

1 S.59

2 Introduced by Senator Cummings

3 Referred to Committee on

4 Date:

5 Subject: Consumer litigation funding companies; licensed lenders; money
6 servicers; debt adjusters; loan servicers

7 Statement of purpose of bill as introduced: This bill proposes to amend and
8 establish laws pertaining to consumer litigation funding companies; licensed
9 lenders; money servicers; debt adjusters; and loan servicers.

10 An act relating to certain businesses regulated by the Department of
11 Financial Regulation

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

13 * * * Consumer Litigation Funding * * *

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

15 § 2252. REGISTRATION; FEE, FINANCIAL STABILITY

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

1 (b) A company shall submit a ~~\$600.00~~ \$200.00 fee at the time of
2 registration and at the time of each renewal. Registrations shall be renewed
3 every ~~three years~~ year on or before December 31.

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

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

13 Sec. 2. CONSUMER LITIGATION FUNDING COMPANIES; ANNUAL
14 REGISTRATION RENEWAL; APPLICATION

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

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

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

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

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

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

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

19 § 2204c. APPROVAL OF APPLICATION; ISSUANCE OF COMMERCIAL

20 LENDER LICENSE

21 * * *

1 (d) The Commissioner may waive or modify the requirements of
2 subdivision (a)(2) of this section or may permit an applicant to submit
3 substituted information in lieu of the required information.

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

5 (h) A licensed mortgage loan originator who subsequently becomes
6 unlicensed must complete the continuing education requirements for the last
7 year in which the license was held prior to issuance of a new or renewed
8 license. This subsection does not apply to an individual who is required to
9 retake 20 hours of prelicensing education pursuant to subsection 2204a(g) of
10 this title.

11 * * * Financial Responsibility; Money Servicers;
12 Debt Adjusters; Loan Servicers * * *

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

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

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

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

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

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

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

17 (iii) foreclosures within the past three years;

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

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

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

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

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

11 (2)(A) ~~the~~ The financial condition and responsibility, financial and
12 business experience, competence, character, and general fitness of the
13 applicant, and competence, experience, character, and general fitness of the
14 executive officers, managers, directors of, and persons in control of the
15 applicant indicate that it is in the interest of the public to permit the applicant
16 to engage in check cashing and currency exchange; ~~and.~~

17 (B) For purposes of this subdivision, a person has shown that he or
18 she is not financially responsible when he or she has shown a disregard in the
19 management of 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;

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

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

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

11 (iii) foreclosures within the past three years;

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

14 (3) ~~the~~ The applicant has the bond required by section 2755 of this title.

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

16 § 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

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

20 (1)(A) That the financial responsibility, experience, character, and
21 general fitness of the applicant are such as to command the confidence of the

1 community and to warrant belief that the business will be operated honestly,
2 fairly, and efficiently within the purposes of this chapter. If the applicant is a
3 partnership or association, such findings are required with respect to each
4 partner, member, and control person. If the applicant is a corporation, such
5 findings are required with respect to each officer, director, and control person.

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

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

12 (ii) current outstanding tax liens or other government liens and
13 filings;

14 (iii) foreclosures within the past three years;

15 (iv) a pattern of seriously delinquent accounts within the past
16 three years;

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

20 (3) That the applicant is licensed to engage in such business in its state
21 of domicile, and is in good standing in its state of domicile with its state

1 regulator or equivalent financial industry regulator, if such state licenses third
2 party loan servicers.

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

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

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

14 (B) at any time preceding such date of application, if such felony
15 involved an act of fraud, dishonesty, ~~or~~ a breach of trust, or money
16 laundering; and

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

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

21 * * *

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

4 * * * Money Servicers; Virtual Currency; Exclusions; Receipts and Refunds;
5 Segregated Accounts; Permissible Investments; Enforcement * * *

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

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

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

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

12 (C) may be centralized or decentralized; and

13 (D) can be exchanged for money or other convertible virtual
14 currency.

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

16 § 2501. EXCLUSIONS

17 (a) This chapter does not apply to:

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

19 (2) the sale or issuance of payment instruments or stored value, or

20 money transmission, by the U.S. Postal Service; or by a contractor on behalf of

21 the U.S. Postal Service;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) As used in this section, “fees” does not include revenue that a
20 licensee or its authorized delegate generates, in connection with a money

1 transmission, in the conversion of the money of one government into the
2 money of another government.

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

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

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

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

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

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

17 § 2536. SEGREGATED ACCOUNTS

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

1 in the conduct of the licensee's personal affairs or the licensee's business
2 affairs.

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

4 (1) disbursement as directed by the customer;

5 (2) fees to which it is entitled for services actually performed; and

6 (3) customer refunds.

7 (c) The licensee shall maintain complete and accurate account records,

8 including the source of all deposits, the nature and recipient of all

9 disbursements, the date and amount of each transaction, and the name of the

10 customer. All documents pertaining to account activity shall be produced upon

11 request of the Commissioner.

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

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

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

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

- 1 (1) cash, a certificate of deposit, or a senior debt obligation of a
2 depository institution within the meaning of subdivision 11101(24) of this title;
- 3 (2) a banker's acceptance or bill of exchange that is eligible for purchase
4 upon endorsement by a member bank of the Federal Reserve System and is
5 eligible for purchase by a Federal Reserve Bank;
- 6 (3) an investment bearing a rating of one of the three highest grades, as
7 defined by a nationally-recognized organization that rates securities;
- 8 (4) an investment security that is an obligation of the United States or a
9 department, agency, or instrumentality thereof; an investment in an obligation
10 that is guaranteed fully as to principal and interest by the United States; or an
11 investment in an obligation of a state or a governmental subdivision, agency,
12 or instrumentality thereof;
- 13 (5) receivables that are payable to a licensee from its authorized
14 delegates, in the ordinary course of business, pursuant to contracts ~~which~~ that
15 are not past due or doubtful of collection, if the aggregate amount of
16 investments in receivables under this subdivision does not exceed 20 percent of
17 the total permissible investments of a licensee and the licensee does not have at
18 one time investments in receivables under this subdivision in any one person
19 aggregating more than 10 percent of the licensee's total permissible
20 investments; ~~and~~

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

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

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

11 § 2545. SUSPENSION, REVOCATION, AND NONRENEWAL

12 RECEIVERSHIP

13 * * *

14 (c) If the Commissioner believes that any person has violated a provision of
15 subsection (a) of this section, the Commissioner may, in addition to any other
16 powers, issue orders or directives to any person:

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

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

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

1 (d) The licensee shall receive 15 days’ notice and an opportunity to be
2 heard before such order shall be issued. Mailing notice by certified mail to the
3 licensee’s current address as stated on the license shall be presumptive
4 evidence of its receipt by the licensee. However, if the Commissioner finds
5 that the public safety or welfare imperatively requires emergency action, action
6 with no prior notice or prior opportunity to be heard may be taken, pending
7 proceedings for revocation or other action.

8 * * * Licensed Lenders; Employee Definition; Loan Solicitations * * *

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

10 § 2200. DEFINITIONS

11 As used in this chapter:

12 * * *

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

18 (i) the controlling person;

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

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

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

8 * * *

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

11 (14) “Lead generation” means to:

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

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

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

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

20 (15) “Licensee” means any person subject to the provisions of section
21 2201 of this title.

1 ~~(14)~~(16) “Loan processor or underwriter” means an individual who
2 performs clerical or support duties as an employee at the direction of and
3 subject to the supervision and instruction of a person licensed, or exempt from
4 licensing, under this chapter.

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

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

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

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

1 ~~(15)~~(17) “Loan solicitation” means to:

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

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

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

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

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

1 assistance in addition to the compensation received from the seller or buyer for
2 such real estate brokerage activity. The term shall not include attorneys
3 licensed to practice law in this State acting in their professional capacity. The
4 term shall not include persons engaged in the foregoing activities solely in
5 connection with the sale, assignment, or other transfer of one or more
6 previously originated loans.

7 ~~(16)~~(19) “Mortgage loan” means a loan secured primarily by a lien
8 against real estate.

9 ~~(17)~~(20) “Mortgage loan originator”:

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

12 (i) takes a residential mortgage loan application;

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

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

19 (B) An individual “takes a residential mortgage loan application” if
20 the individual receives a residential mortgage loan application for the purpose
21 of facilitating a decision whether to extend an offer of residential mortgage

1 loan terms to a borrower or prospective borrower (or to accept the terms
2 offered by a borrower or prospective borrower in response to a solicitation),
3 whether the application is received directly or indirectly from the borrower or
4 prospective borrower.

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

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

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

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

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

1 (D) Does not include:

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

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

11 (iii) a person or entity solely involved in extensions of credit
12 relating to timeshare plans, as that term is defined in ~~Section 11 U.S.C.~~
13 ~~§§ 101(53D) of Title 11, United States Code.~~

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

20 ~~(19)(22)~~ “Nontraditional mortgage product” means any mortgage
21 product other than a 30-year fixed rate mortgage.

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

4 ~~(21)~~(24) “Real estate brokerage activity” means any activity that
5 involves offering or providing real estate brokerage services to the public,
6 including:

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

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

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

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

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

20 ~~(22)~~(25) “Registered mortgage loan originator” means any
21 individual who:

1 (A) meets the definition of mortgage loan originator and is an
2 employee of:

3 (i) a depository institution;

4 (ii) a subsidiary that is:

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

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

8 (iii) an institution regulated by the Farm Credit
9 Administration; and

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

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

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

1 ~~(25)~~(28) “Residential real estate” means any real property located in
2 Vermont, upon which is constructed or intended to be constructed a dwelling.

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

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

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

12 § 2201. LICENSES REQUIRED

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

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

18 (2) ~~act~~ Act as a mortgage broker; ~~or~~

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

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

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

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

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

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

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

1 liquid assets in an amount of \$50,000.00 or such greater amount as the
2 Commissioner may require.

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

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

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

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

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

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

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

18 § 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

19 * * *

20 (b) A mortgage broker who acts as an independent contractor loan
21 processor or an underwriter who performs loan processing or underwriting

1 activities for a licensed or exempt mortgage broker or lender is not required to
2 provide a mortgage broker agreement to the prospective borrower, provided:

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

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

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

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

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

19 **THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE**
20 **NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL**
21 **BE SHARED WITH ONE OR MORE THIRD PARTIES IN**

1 **CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY**
2 **NOT BE SUBJECT TO ALL VERMONT LENDING LAWS.**

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

4 § 2220a. **DISCLOSURE REQUIRED BY LOAN SOLICITATION**

5 **LICENSEE**

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

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

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

14 § 2223. **RECORDS REQUIRED OF LICENSEE**

15 (a) The licensee shall keep, use in the licensee's business, and make
16 available to the Commissioner upon request, such books, accounts, records,
17 and data compilations as will enable the Commissioner to determine whether
18 such licensee is complying with the provisions of this chapter and with the
19 rules and regulations lawfully made by the Commissioner ~~hereunder~~. Every
20 licensee shall preserve such books, accounts, records, and data compilations in
21 a secure manner for at least seven years after making the final entry on any

1 loan recorded therein. Thereafter, the licensee shall dispose of such books,
2 accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

3 (b) A licensee that engages in loan solicitation activity shall maintain the
4 following records for seven years:

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

8 (2) 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 (3) the name, address, and, if applicable, unique identifier of any person
12 who received, requested, or contracted for leads or referrals and any fees or
13 consideration charged or received for such services.

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

15 § 2224. ANNUAL REPORT, MORTGAGE CALL REPORTS

16 (a) Annually, on or before April 1, each licensed lender, mortgage broker,
17 ~~and~~ sales finance company, and loan solicitation licensee shall file a report
18 with the Commissioner giving such relevant information as the Commissioner
19 reasonably may require concerning the business and operations during the
20 preceding calendar year of each licensed place of business conducted by ~~such~~
21 the licensee within the State. Such report shall be made under oath and shall

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

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

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

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

20 § 2241. PROHIBITED ACTS AND PRACTICES

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

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

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

4 (3) obtain property by fraud or misrepresentation;

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

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

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

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

20 (8) fail to comply with this chapter or rules adopted under this chapter,
21 or fail to comply with any orders or directives from the Commissioner, or fail

1 to comply with any other State or federal law, including the rules thereunder,
2 applicable to any business authorized or conducted under this chapter;

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

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

14 (11) make any payment, threat, or promise, directly or indirectly, to any
15 person for the purposes of influencing the independent judgment of the person
16 in connection with a residential mortgage loan, or make any payment, threat, or
17 promise, directly or indirectly, to any appraiser of a property, for the purposes
18 of influencing the independent judgment of the appraiser with respect to the
19 value of the property;

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

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

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

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

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

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

17 (b) The unique identifier issued by the Nationwide Mortgage Licensing
18 System and Registry of any person engaging in the business of lending or
19 acting as a mortgage broker, sales finance company, or loan solicitation
20 licensee shall be clearly shown on all loan application forms, solicitations, or

1 advertisements, including business cards and websites, and any other
2 documents as established by rule or order of the Commissioner.

3 * * * Banking Housekeeping; Vermont Student Assistance Corporation * * *

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

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

9 * * * Effective Date * * *

10 Sec. 31. EFFECTIVE DATE

11 This act shall take effect on passage.