

1 S.154

2 Introduced by Senator Cummings

3 Referred to Committee on Finance

4 Date: March 14, 2019

5 Subject: Commerce and trade; banking

6 Statement of purpose of bill as introduced: This bill proposes miscellaneous
7 amendments to the statutes governing banking, lenders, and other financial
8 institutions.

9 An act relating to miscellaneous banking provisions

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

11 Sec. 1. 8 V.S.A. Part 2 is amended to read:

12 PART 2. ~~BANKS AND OTHER FINANCIAL INSTITUTIONS~~ FINANCIAL
13 AND RELATED SERVICES; LICENSEES

14 * * *

15 Sec. 2. 8 V.S.A. chapter 72 is added to read:

16 CHAPTER 72. GENERAL PROVISIONS

17 § 2100. APPLICATION OF CHAPTER

18 (a) Except as otherwise provided in this part, this chapter applies to a
19 person doing or soliciting business in this State as described in this part.

20 (b) This chapter does not apply to:

- 1 (1) development credit corporations subject to chapter 65 of this title;
2 (2) independent trust companies subject to chapter 77 of this title; or
3 (3) personal information protection companies subject to chapter 78 of
4 this title.

5 § 2101. DEFINITIONS

6 Except as otherwise provided in this part:

- 7 (1) “Commercial loan” means a loan or extension of credit that is
8 described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or
9 extension of credit secured in whole or in part by an owner occupied one- to
10 four-unit dwelling.
- 11 (2) “Commissioner” means the Commissioner of Financial Regulation.
- 12 (3) “Control” means the possession, direct or indirect, of the power to
13 direct or cause the direction of the management or policies of a person,
14 whether through the ownership of voting securities, by contract other than a
15 commercial contract for goods or nonmanagement services, or otherwise,
16 unless the power is the result of an official position with or corporate office
17 held by the person. Control is presumed to exist if a person, directly or
18 indirectly, owns, controls, holds with the power to vote, or holds proxies
19 representing 10 percent or more of the voting securities or other interest of any
20 other person.

1 (4) “Depository institution” has the same meaning as in 12 U.S.C.
2 § 1813 and includes any bank and any savings association as defined in
3 12 U.S.C. § 1813. The term also includes a credit union organized and
4 regulated as such under the laws of the United States or any state.

5 (5) “Dwelling” has the same meaning as in 15 U.S.C. § 1602.

6 (6) “Federal banking agencies” means the Board of Governors of the
7 Federal Reserve System, the Comptroller of the Currency, the National Credit
8 Union Administration, and the Federal Deposit Insurance Corporation or any
9 successor of any of these.

10 (7) “Holder” means:

11 (A) the person in possession of a negotiable instrument that is
12 payable either to bearer or to an identified person that is the person in
13 possession;

14 (B) the person in possession of a negotiable tangible document of
15 title if the goods are deliverable either to bearer or to the order of the person in
16 possession; or

17 (C) the person in control of a negotiable electronic document of title.

18 (8) “Immediate family member” means a spouse, child, sibling, parent,
19 grandparent, or grandchild, aunt, uncle, nephew, niece, including stepparents,
20 stepchildren, stepsiblings, step grandparents, step grandchildren, and adoptive

1 relationships. The term also includes former spouses dividing property in
2 connection with a divorce or separation.

3 (9) “Individual” means a natural person.

4 (10) “Insurance company” means an institution organized and regulated
5 as such under the laws of any state.

6 (11) “Licensee” means a person required to be licensed or registered
7 under this part.

8 (12) “Material litigation” means a litigation that according to generally
9 accepted accounting principles is deemed significant to an applicant’s or a
10 licensee’s financial health and is required to be disclosed in the applicant’s or
11 licensee’s annual audited financial statements, report to shareholders, or
12 similar records.

13 (13) “Mortgage loan” means a loan secured primarily by a lien against
14 real estate.

15 (14) “Nationwide Multistate Licensing System and Registry” or
16 “Nationwide Mortgage Licensing System and Registry” or “NMLS” means a
17 multistate licensing system developed by the Conference of State Bank
18 Supervisors and the American Association of Residential Mortgage Regulators
19 and operated by the State Regulatory Registry LLC for the licensing and
20 registration of non-depository financial service entities in participating state

1 agencies, or any successor to the Nationwide Multistate Licensing System and
2 Registry.

3 (15) “Person” has the same meaning as in 1 V.S.A. § 128.

4 (16) “Record” means information that is inscribed on a tangible medium
5 or that is stored in an electronic or other medium and is retrievable in
6 perceivable form.

7 (17) “Residential mortgage loan” means a loan primarily for personal,
8 family, or household use that is secured by a mortgage, deed of trust, or other
9 equivalent consensual security interest on either a dwelling or residential real
10 estate, upon which is constructed or intended to be constructed a dwelling.

11 (18) “Residential real estate” means real property located in this State,
12 upon which is constructed or intended to be constructed a dwelling.

13 (19) “Responsible individual” means an individual who is employed by
14 a licensee and has principal, active managerial authority over the provision of
15 services in this State.

16 (20) “State” means a state of the United States, the District of
17 Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular
18 possession subject to the jurisdiction of the United States, except that when
19 capitalized the term means the State of Vermont.

1 (21) “Unique identifier” means a number or other identifier assigned by
2 protocols established by the Nationwide Multistate Licensing System and
3 Registry.

4 (22) “Unsafe or unsound practice” means a practice or conduct by a
5 person licensed to do business in this State that creates the likelihood of
6 material loss, insolvency, or dissipation of the licensee’s assets, or otherwise
7 materially prejudices the interests of its customers.

8 § 2102. APPLICATION FOR LICENSE

9 (a)–(b) [Reserved.]

10 (c) In connection with an application for a license, the applicant, each
11 officer, director, and responsible individual of the applicant, each person in
12 control of the applicant, and any other person the Commissioner requires in
13 accordance with NMLS guidelines or other multistate agreements, shall
14 furnish to the Nationwide Multistate Licensing System and Registry
15 information concerning each person’s identity, including:

16 (1) fingerprints for submission to the Federal Bureau of Investigation,
17 and any governmental agency or entity authorized to receive such information
18 for a state, national, and international criminal history background check;

19 (2) personal history and experience in a form prescribed by the
20 Nationwide Multistate Licensing System and Registry, including the

1 submission of authorization for the Nationwide Multistate Licensing System
2 and Registry and the Commissioner to obtain:

3 (A) an independent credit report and credit score obtained from a
4 consumer reporting agency described in 15 U.S.C. § 1681a for the purpose of
5 evaluating the applicant's financial responsibility at the time of application;
6 and the Commissioner may obtain additional credit reports and credit scores to
7 confirm the licensee's continued compliance with the financial responsibility
8 requirements of this part;

9 (B) information related to any administrative, civil, or criminal
10 findings by any governmental jurisdiction; and

11 (3) any other information required by the Nationwide Multistate
12 Licensing System and Registry or the Commissioner.

13 (d) The applicant shall provide a list of any material litigation in which the
14 applicant has been involved in the 10-year period preceding the submission of
15 the application.

16 (e) If an applicant is a corporation, limited liability company, partnership,
17 or other entity, the applicant shall also provide:

18 (1) the date of the applicant's incorporation or formation and state or
19 country of incorporation or formation;

20 (2) if applicable, a certificate of good standing from the state or country
21 in which the applicant is incorporated or formed;

1 (3) a brief description of the structure or organization of the applicant,
2 including any parent or subsidiary of the applicant, and whether any parent or
3 subsidiary is publicly traded;

4 (4) the legal name, any fictitious or trade name, all business and
5 residential addresses, and the employment, in the 10-year period preceding the
6 submission of the application, of each executive officer, manager, responsible
7 individual, director of, or person in control of, the applicant;

8 (5) a list of any criminal convictions, material litigation, or disciplinary
9 actions in which any executive officer, manager, responsible individual,
10 director of, or individual in control of, the applicant has been involved in the
11 10-year period preceding the submission of the application;

12 (6) a copy of the applicant's audited financial statements for the most
13 recent fiscal year and, if available, for the two-year period preceding the
14 submission of the application;

15 (7) a copy of the applicant's unconsolidated financial statements for the
16 current year, whether audited or not, and, if available, for the two-year period
17 preceding the submission of the application;

18 (8) if the applicant is publicly traded, a copy of the most recent 10-K
19 report filed with the U.S. Securities and Exchange Commission; and

20 (9) if the applicant is a wholly owned subsidiary:

1 (A) a copy of audited financial statements for the parent company for
2 the most recent fiscal year; and

3 (B) of a corporation publicly traded in the United States, a copy of
4 the parent corporation's most recent 10-K report filed with the U.S. Securities
5 and Exchange Commission, or if the applicant is a wholly owned subsidiary of
6 a corporation publicly traded outside the United States, a copy of similar
7 documentation filed with the regulator of the parent corporation's domicile
8 outside the United States.

9 (f) If the applicant is not an individual, the name and address of the
10 applicant's registered agent in this State.

11 (g) Upon the filing of an application, the Commissioner shall investigate
12 the financial condition and responsibility, financial and business experience,
13 character, and general fitness of the applicant and any person named in the
14 application. The Commissioner may conduct an on-site investigation of the
15 applicant, the cost of which the applicant shall bear pursuant to section 18 of
16 this title.

17 (h) This section does not apply to a person applying for a commercial
18 lender license under section 2202a of this title.

1 § 2103. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

2 (a) Upon the filing of an application, payment of the required fees, and
3 satisfaction of any applicable bond and liquid asset requirements, the
4 Commissioner shall issue a license to the applicant if the Commissioner finds:

5 (1)(A) The financial responsibility, experience, character, and general
6 fitness of the applicant command the confidence of the community and
7 warrant belief that the business will be operated honestly, fairly, and efficiently
8 pursuant to the applicable chapter of this title.

9 (i) If the applicant is a partnership or association, such findings
10 are required with respect to each partner, member, and responsible individual
11 of, and each person in control of, the applicant.

12 (ii) If the applicant is a corporation, such findings are required
13 with respect to each officer, director, and responsible individual of, and each
14 person in control of, the applicant.

15 (B) For purposes of assessing whether a person is financially
16 responsible, the Commissioner may consider how the person has managed his
17 or her own financial condition, which may include factors such as whether the
18 person has:

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

1 (ii) current outstanding tax liens or other government liens and
2 filings;

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

4 (iv) a pattern of seriously delinquent accounts within the past
5 three years.

6 (2) Allowing the applicant to engage in business will promote the
7 convenience and advantage of the community in which the applicant will
8 conduct its business.

9 (3) The applicant is licensed to engage in the applicable business in its
10 state of domicile and is in good standing in its state of domicile with its
11 banking regulator or equivalent financial industry regulator.

12 (4) The applicant, each officer, director, and responsible individual of,
13 and each person in control of, the applicant, has never had a financial services
14 license or similar license revoked in any governmental jurisdiction, except that
15 a subsequent formal vacation of such revocation shall not be deemed a
16 revocation.

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

20 (A)(i) during the seven-year period preceding the date of the
21 application for licensing and registration; or

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

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

6 (6) The applicant has satisfied the applicable surety bond and liquid
7 asset requirement as follows:

8 (A) for an application for a lender license, mortgage broker license,
9 mortgage loan originator license, or loan solicitation license, the applicable
10 bond and liquid asset requirements of sections 2203 and 2203a of this title;

11 (B) for an application for a litigation funding company registration,
12 the financial stability requirement of section 2252 of this title;

13 (C) for an application for a money transmitter license, the bond and
14 net worth requirements of sections 2507 and 2510 of this title;

15 (D) for an application for a debt adjuster license, the bond
16 requirement of section 2755 of this title; and

17 (E) for an application for a loan servicer license, the bond
18 requirement of sections 2903 and 2907 of this title.

19 (7) For an application for a mortgage loan originator license, the
20 applicant has satisfied the prelicense education requirement of section 2204a

1 of this title and the preclicensing testing requirement of section 2204b of this
2 title.

3 (b)(1) If the Commissioner finds the applicant does not meet the
4 requirements of subsection (a) of this section, the Commissioner shall not issue
5 a license.

6 (2) Not later than 60 days after an applicant files a complete application,
7 the Commissioner shall notify the applicant of the denial, stating the reason or
8 reasons therefor.

9 (3) If the applicant does not file a timely request for reconsideration
10 pursuant to section 2104 of this title, the Commissioner shall:

11 (A) return to the applicant any amounts paid for the applicable bond
12 requirement and license fee; and

13 (B) retain the investigation fee to cover the costs of investigating the
14 application.

15 (c)(1) If the Commissioner finds that an applicant meets the requirements
16 of subsection (a) of this section, he or she shall issue the license not later
17 than 60 days after an applicant submits a complete application.

18 (2) Except as otherwise provided in this title, a license is valid until the
19 licensee surrenders the license or the Commissioner revokes, suspends,
20 terminates, or refuses to renew the license.

1 (d) For good cause shown and consistent with the purposes of this section,
2 the Commissioner may waive or modify the requirements of subdivisions
3 (a)(3) and (a)(4) of this section; provided, however, that the Commissioner
4 may not waive the requirement of subdivision (a)(4) of this section for
5 applicants for a mortgage loan originator license.

6 (e) If an application is incomplete and the applicant has not corresponded
7 with the Commissioner for 90 days, the Commissioner may deem the
8 application abandoned or withdrawn.

9 (f) This section does not apply to a person applying for a commercial
10 lender license under section 2202a of this title.

11 § 2104. REQUEST FOR RECONSIDERATION; REVIEW OF DENIAL OF
12 APPLICATION

13 (a)(1) If the Commissioner denies an application, not later than 15 days
14 after the date of denial the applicant may request that the Commissioner
15 reconsider the application.

16 (2) The applicant shall submit his or her request in writing and shall
17 respond specifically to the Commissioner's stated reason or reasons for denial.

18 (b)(1) The Commissioner shall reconsider the application in light of the
19 applicant's request and response and issue a decision not later than 60 days
20 after the date of the request.

21 (2) If the Commissioner finds that the applicant meets the requirements
22 of subsection 2103(a) of this title, he or she shall issue a license.

1 (3) If the Commissioner finds that the applicant does not meet the
2 requirements of subsection 2103(a) of this title, the Commissioner shall not
3 issue a license and shall:

4 (A) return to the applicant any amounts paid for the applicable bond
5 requirement and license fee; and

6 (B) retain the investigation fee to cover the costs of investigating the
7 application.

8 (c) The applicant may appeal the Commissioner's decision by filing an
9 action in the civil division of the Washington County Superior Court not later
10 than 15 days after the date the Commissioner denied the request for
11 reconsideration.

12 § 2105. CONTENTS OF LICENSE; NONTRANSFERABLE

13 (a) A license shall state the address at which a licensee will conduct its
14 business, shall state fully the name of the licensee, and, if the licensee is not an
15 individual, shall state the date and place of its organization or incorporation.

16 (b) A mortgage loan originator license shall state fully the name of the
17 individual, his or her sponsoring company, and the licensed location at which
18 he or she is employed.

19 (c) A licensee shall not transfer or assign a license.

20 (d) The Commissioner, in his or her discretion, may issue a license through
21 the NMLS.

1 § 2106. ADDITIONAL PLACE OF BUSINESS; CHANGE OF PLACE OF
2 BUSINESS

3 (a)(1) A license is required for each place of business.

4 (2) Except as otherwise provided in this title, the Commissioner may
5 issue more than one license to the same licensee for additional places of
6 business if the licensee meets the requirements for each place of business.

7 (b)(1) A licensee shall provide written notice to the Commissioner and fee
8 of \$100.00 not less than 30 days before changing or closing a place of
9 business.

10 (2) Upon receiving the notice and fee, the Commissioner shall record
11 the change of location and the date, and the licensee may operate at the new
12 location.

13 § 2107. CHANGE OF CONTROL

14 (a) A licensee shall give the Commissioner notice of a proposed change of
15 control within 30 days of the proposed change and request approval of the
16 acquisition. A money transmitter licensee shall also submit with the notice a
17 nonrefundable fee of \$500.00.

18 (b) After review of a request for approval under subsection (a) of this
19 section, the Commissioner may require the licensee to provide additional
20 information concerning the proposed persons in control of the licensee. The
21 additional information shall be limited to the same categories of information

1 required of the licensee or persons in control of the licensee as part of its
2 original license or renewal application.

3 (c) The Commissioner shall approve a request for change of control under
4 subsection (a) of this section if, after investigation, the Commissioner
5 determines that the person or group of persons requesting approval has the
6 competence, experience, character, and general fitness to operate the licensee
7 or person in control of the licensee in a lawful and proper manner, and that the
8 interests of the public will not be jeopardized by the change of control.

9 (d) The Commissioner shall approve or deny a request for change of
10 control not later than 60 days after a complete request is filed and notify the
11 licensee of the decision in a record. The Commissioner for good cause may
12 extend the review period.

13 (e) The following persons are exempt from the prefiling requirements of
14 subsection (a) of this section, but the licensee shall notify the Commissioner of
15 the change of control and request the Commissioner's approval using the
16 standards in subsection (b) of this section for a change of control:

17 (1) a person that acts as a proxy for the sole purpose of voting at a
18 designated meeting of the security holders or holders of voting interests of a
19 licensee or person in control of a licensee;

20 (2) a person that acquires control of a licensee by devise or descent;

1 (3) a person that acquires control as a personal representative,
2 custodian, guardian, conservator, or trustee, or as an officer appointed by a
3 court of competent jurisdiction or by operation of law; and

4 (4) a person that the Commissioner, by rule or order, exempts in the
5 public interest.

6 (f) Subsection (a) of this section does not apply to public offerings of
7 securities.

8 (g) Before filing a request for approval to acquire control, a person may
9 request in a record a determination from the Commissioner as to whether the
10 person would be considered a person in control of a licensee upon
11 consummation of a proposed transaction. If the Commissioner determines that
12 the person would not be a person in control of a licensee, the Commissioner
13 shall enter an order to that effect, and the proposed person and transaction is
14 not subject to the requirements of subsections (a) through (c) of this section.

15 § 2108. NOTIFICATION OF MATERIAL CHANGE

16 (a) A licensee shall notify the Commissioner in writing within 30 days of
17 any material change in the information provided in a licensee's application.

18 (b) A licensee shall notify the Commissioner in writing within 30 days of
19 any change in the list of executive officers, managers, directors, or responsible
20 individuals.

(c) A licensee shall file a report with the Commissioner within 15 business days *after the licensee has reason to know* of the occurrence of any of the following events involving the licensee, or any executive officer, manager, director, person in control, responsible individual, or equivalent of the licensee:

1 (1) the filing of a petition by or against the licensee or such person
2 under the U.S. Bankruptcy Code for bankruptcy or reorganization;

3 (2) the filing of a petition by or against the licensee for receivership, the
4 commencement of any other judicial or administrative proceeding for its
5 dissolution or reorganization, or the making of a general assignment for the
6 benefit of its creditors;

7 (3) the commencement of a disciplinary proceeding or a license denial
8 against the licensee or such person in a state or country in which the licensee
9 engages in business or is licensed, including any action by the Attorney
10 General of any state;

11 (4) the cancellation or other impairment of the licensee's bond or other
12 security;

13 (5) a charge or conviction against the licensee or such person for a
14 felony;

15 (6) a charge against or conviction of an authorized delegate for a felony;

1 (7) receiving notification of the initiation of a class action lawsuit
2 against the licensee; or

3 (8) any change in the organizational structure of the licensee or any
4 parent company of the licensee.

5 § 2109. ANNUAL RENEWAL OF LICENSE

6 (a) [Reserved.]

7 (b) A license originally issued on or after November 1 of the current year
8 is valid for the next succeeding year.

9 (c) In addition to the annual renewal fee, on or before April 1 of each year
10 a money transmission licensee shall pay the Department an annual assessment
11 equal to \$0.0001 per dollar volume of money services activity performed for,
12 or sold or issued to, Vermont customers for the most recent year ending
13 December 31, which assessment shall not be less than \$100.00 and shall not be
14 greater than \$15,000.00.

15 (d) An individual holding a mortgage loan originator license shall also
16 satisfy the annual continuing education requirement of section 2204c of this
17 title.

18 (e) Notwithstanding any other provision of this title, the license of a
19 mortgage loan originator who fails to pay the annual renewal fee or fails to
20 satisfy all of the minimum license renewal standards by December 1 shall
21 automatically expire on December 31.

1 (f) Notwithstanding any other provision of this title, the registration of a
2 litigation funding company that fails to pay the annual renewal fee or fails to
3 satisfy all of the minimum registration renewal requirements by December 1
4 shall automatically expire on December 31.

5 § 2110. REVOCATION, SUSPENSION, TERMINATION, OR
6 NONRENEWAL OF LICENSE; CEASE AND DESIST ORDERS

7 (a) The Commissioner may deny, suspend, terminate, revoke, condition, or
8 refuse to renew a license or order that any person or licensee cease and desist
9 in any specified conduct if the Commissioner finds:

10 (1) the licensee failed to pay the renewal of license fee or an
11 examination fee as provided in this part, or to maintain in effect the required
12 liquid assets or the bond or bonds required under the provisions of this part, or
13 to file any annual report or other report, or to comply with any lawful demand,
14 ruling, or requirement of the Commissioner;

15 (2) the licensee violated any applicable provision of this part; chapter
16 200 of this title; 9 V.S.A. chapter 4, 59, or 61; or any rule, order, or directive,
17 adopted pursuant to those provisions;

18 (3) the licensee engages in fraud, intentional misrepresentation, or gross
19 negligence;

20 (4) the licensee engages in an unsafe or unsound practice;

21 (5) the licensee is convicted of a violation of a state or federal anti-
22 money-laundering statute;

1 (6) the competence, experience, character, or general fitness of the
2 licensee, person in control of a licensee, or responsible individual of the
3 licensee indicates that it is not in the public interest to permit the person to
4 provide services in this State;

5 (7) the licensee fails to continue to meet the initial licensing
6 requirements of this title, or withholds information, or fails to cooperate with
7 an examination or investigation, or makes a material misstatement in a license
8 application, license renewal, or any document submitted to the Commissioner
9 or to the Nationwide Multistate Licensing System and Registry;

10 (8) any cause for which issuance of the license could have been refused
11 had it then existed and been known to the Commissioner at the time of
12 issuance, including unconscionable conduct that takes advantage of a
13 borrower's lack of bargaining power or lack of understanding of the terms or
14 consequences of the transaction.

15 (9) the licensee has demonstrated a pattern of failure or refusal to
16 promptly pay obligations on payment instruments or transmissions of money,
17 is insolvent, suspends payment of its obligations, or makes an assignment for
18 the benefit of its creditors; or

19 (10) a money transmission licensee does not remove an authorized
20 delegate after the Commissioner issues and serves upon the licensee a final

1 order including a finding that the authorized delegate has violated Part 2 of
2 this title.

3 (b) The Commissioner may issue orders or directives to any person:

4 (1) to cease and desist from conducting business;

5 (2) to cease any harmful activities or violations of this part; chapter 200
6 of this title; 9 V.S.A. chapter 4, 59, or 61; or any order, directive, or rule
7 adopted pursuant to those provisions;

8 (3) to cease business under a license or any conditional license if the
9 Commissioner determines that such license was erroneously granted or the
10 licensee is currently in violation of this part; chapter 200 of this title; 9 V.S.A.
11 chapter 4, 59, or 61; or any order, directive, or rule, adopted pursuant to those
12 provisions;

13 (4) enjoining or prohibiting any person from engaging in the financial
14 services industry in this State;

15 (5) to remove any officer, director, employee, responsible individual, or
16 control person; or

17 (6) regarding any other action or remedy as the Commissioner deems
18 necessary to carry out the purposes of this part.

19 (c) The Commissioner shall provide not less than 15 days' notice and an
20 opportunity to be heard before he or she issues an order or directive pursuant
21 to subsection (b) of this section. Mailing notice to the licensee's current

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

6 § 2111. REVOCATION, SUSPENSION, TERMINATION, OR
7 NONRENEWAL WHERE MORE THAN ONE PLACE OF
8 BUSINESS

9 The Commissioner may revoke, suspend, terminate, or refuse to renew only
10 the license for a particular place of business at which grounds for revocation,
11 suspension, termination, or refusal to renew may occur or exist, or if the
12 Commissioner finds that such grounds for revocation, suspension, termination,
13 or refusal to renew are of general application to all licensed places of business,
14 or to more than one licensed place of business, operated by such licensee, the
15 Commissioner shall revoke, suspend, terminate, or refuse to renew all of the
16 licenses issued to the licensee or such licenses as such grounds apply to, as the
17 case may be.

18 § 2112. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY;
19 REINSTATEMENT

20 (a) A licensee may surrender a license by delivering to the Commissioner
21 notice that the licensee surrenders the license.

22 (b) Surrender shall not affect the licensee's administrative, civil, or
23 criminal liability for acts committed prior to surrender. A revocation,

1 suspension, termination, refusal to renew, or surrender of a license does not
2 impair or affect the obligation of a preexisting lawful contract.

3 (c) The Commissioner may reinstate a revoked, suspended, terminated,
4 expired, inactive, or nonrenewed license or issue a new license to a licensee
5 whose license was revoked, suspended, terminated, expired, inactive, or
6 nonrenewed if no fact or condition then exists that would have warranted the
7 Commissioner to refuse to issue the license under this part; provided, however,
8 that the Commissioner shall not issue a new license or reinstate a license to a
9 mortgage loan originator whose license was revoked unless the revocation
10 order is vacated.

11 § 2113. APPEAL OF FINAL ORDER

12 (a) The Commissioner shall serve his or her findings and order of
13 suspension, termination, revocation, or to cease and desist in specified conduct
14 on the licensee by mail at the licensee's current address as stated on the
15 license, which shall be presumptive evidence of its receipt by the licensee.

16 (b) The licensee may appeal the Commissioner's decision by filing an
17 action in the civil division of the Washington County Superior Court not later
18 than 15 days after the date of service.

19 § 2114. RULES

20 The Commissioner may adopt rules and issue orders, rulings, demands, and
21 findings as is necessary to perform his or her duties under this part.

1 § 2115. PENALTIES

2 (a) The Commissioner may:

3 (1) impose an administrative penalty of not more than \$10,000.00, plus
4 the State's cost and expenses of investigating and prosecution of the matter,
5 including attorney's fees, for each violation upon any person who violates or
6 participates in the violation of this part; chapter 200 of this title; 9 V.S.A.
7 chapter 4, 59, or 61; or any lawful rule adopted, or directive or order issued,
8 pursuant to those sections; and

9 (2) order any person to make restitution to another person for a violation
10 of this title, chapter 200 of this title, or 9 V.S.A. chapter 4, 59, or 61.

11 (b) Each violation, or failure to comply with any directive or order of the
12 Commissioner, is a separate and distinct violation.

13 (c) It shall be a criminal offense, punishable by a fine of not more than
14 \$100,000.00, or not more than a year in prison, or both, for any person, after
15 receiving an order that directs the person to cease exercising the duties and
16 powers of a licensee and imposes an administrative penalty under this part, to
17 perform the duties or exercise the powers of a licensee until the penalty has
18 been satisfied, or otherwise satisfactorily resolved between the parties, or the
19 order is vacated by the Commissioner or by a court of competent jurisdiction.

20 (d)(1) A loan contract made in knowing and willful violation of
21 subdivision 2201(a)(1) of this title is void, and the lender shall not collect or

1 receive any principal, interest, or charges; provided, however, in the case of a
2 loan made in violation of subdivision 2201(a)(1) of this title, where the
3 Commissioner does not find a knowing and willful violation, the lender shall
4 not collect or receive any interest or charges, but may collect and receive
5 principal.

6 (2) If a person who receives an order that directs the person to cease
7 exercising the duties and powers of a licensee and imposes an administrative
8 penalty under this part continues to perform the duties or exercise the powers
9 of a licensee without satisfying the penalty, or otherwise reaching a
10 satisfactory resolution between the parties, or securing a decision vacating the
11 order by the Commissioner or by a court of competent jurisdiction, a loan
12 contract made by the person after receipt of such order is void and the lender
13 shall not collect or receive any principal, interest, or charges.

14 (e) The powers vested in the Commissioner in this part are in addition to
15 any other powers to enforce penalties, fines, or forfeitures authorized by law.

16 § 2116. ADMINISTRATIVE PROCEDURE

17 All administrative proceedings under this part shall be conducted in
18 accordance with 3 V.S.A. chapter 25 and any rules adopted by the
19 Commissioner on hearing procedure.

1 § 2117. EXAMINATIONS AND INVESTIGATIONS; EXAMINATION
2 FEES

3 (a) In addition to any authority allowed under this part or other law, and for
4 the purpose of examination, or discovering or investigating violations or
5 complaints, of or arising under this part; chapter 200, subchapter 2 of this title;
6 chapter 200 of this title; 9 V.S.A. chapter 4, 59, or 61; or a rule adopted, or an
7 order or directive issued pursuant to those sections, or securing information
8 required or useful thereunder, and for purposes of initial licensing, license
9 renewal, license suspension, license conditioning, license revocation or
10 termination, or general or specific inquiry or investigation, the Commissioner
11 or his or her representative may:

12 (1) conduct investigations and examinations;

13 (2) access, receive, and use any books, accounts, records, files,
14 documents, information, or evidence including:

15 (A) criminal, civil, and administrative history information, including
16 nonconviction data;

17 (B) personal history and experience information, including
18 independent credit reports obtained from a consumer reporting agency
19 described in 15 U.S.C. § 1681a; and

20 (C) any other documents, information, or evidence the Commissioner
21 deems relevant to the inquiry or investigation regardless of the location,
22 possession, control, or custody of such documents, information, or evidence.

1 (b)(1) The Commissioner may review, investigate, or examine any person,
2 regardless of whether the person has obtained a license under this part, as often
3 as necessary in order to carry out the purposes of this part.

4 (2) The Commissioner may direct, subpoena, or order the attendance of,
5 and examine under oath, a person whose testimony is required about the loans
6 or the business or subject matter of an examination or investigation, and may
7 direct, subpoena, or order the person to produce books, accounts, records,
8 files, and any other documents the Commissioner deems relevant to the
9 inquiry.

10 (c)(1) A person subject to this part shall make available to the
11 Commissioner upon request the books and records relating to the operations of
12 the person.

13 (2) The Commissioner shall have access to the books and records and to
14 interview the officers, principals, responsible individuals, control persons,
15 mortgage loan originators, employees, independent contractors, agents, and
16 customers of the person concerning its business.

17 (d) A person subject to this part shall make or compile reports or prepare
18 other information as directed by the Commissioner in order to carry out the
19 purposes of this section, including:

20 (1) accounting compilations;

1 (2) information lists and data concerning transactions in a format
2 prescribed by the Commissioner; and

3 (3) any other information as the Commissioner deems necessary to carry
4 out the purposes of this part.

5 (e)(1) In making any examination or investigation authorized by this part,
6 the Commissioner may control access to the documents and records of the
7 person under examination or investigation.

8 (2) The Commissioner may take possession of the documents and
9 records or place a person in exclusive charge of the documents and records in
10 the place where they are usually kept.

11 (3) During the period of control, a person shall not remove or attempt to
12 remove any of the documents and records except pursuant to a court order or
13 with the consent of the Commissioner.

14 (4) Unless the Commissioner has reasonable grounds to believe the
15 documents or records of the person have been or are at risk of being altered or
16 destroyed for purposes of concealing a violation of this part, the licensee or`
17 owner of the documents and records shall have access to the documents or
18 records as necessary to conduct its ordinary business affairs.

19 (f) In order to carry out the purposes of this part, the Commissioner may:

1 (1) retain attorneys, accountants, or other professionals and specialists
2 as examiners, auditors, or investigators to conduct or assist in the conduct of
3 examinations or investigations;

4 (2) enter into agreements or relationships with other government
5 officials or regulatory associations to improve efficiencies and reduce
6 regulatory burden by sharing resources, standardized or uniform methods or
7 procedures, and documents, records, information, or evidence obtained under
8 this section;

9 (3) use, hire, contract, or employ public or privately available analytical
10 systems, methods, or software to examine or investigate a person subject to
11 this part;

12 (4) accept and rely on examination or investigation reports made by
13 other government officials within or outside this State; or

14 (5) accept audit reports made by an independent certified public
15 accountant for the person subject to this part in the course of that part of the
16 examination covering the same general subject matter as the audit and may
17 incorporate the audit report in the report of the examination, report of
18 investigation, or other writing of the Commissioner.

19 (g) The authority of this section shall remain in effect, whether a person
20 subject to this part acts or claims to act under any licensing or registration law
21 of this State, acts without such authority, or surrenders his or her license.

1 (h) No person subject to investigation or examination under this section
2 may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any
3 books, records, computer records, or other information.

4 (i) The Commissioner may, in the case of any person subject to this part
5 who does not maintain a Vermont office, accept reports of examinations
6 prepared by another state or federal regulatory agency as substitutes if such
7 reports are available to the Commissioner and are determined to be adequate in
8 exercising his or her powers and discharging his or her responsibilities under
9 this part.

10 (j)(1) A person subject to this part shall pay to the Department all fees,
11 costs, and expenses of any examination, review, and investigation as
12 prescribed by section 18 of this title, which fees, costs, and expenses shall be
13 billed when they are incurred.

14 (2) In addition to the powers set forth in section 2110 of this title, the
15 Commissioner may maintain an action for the recovery of examination,
16 review, and investigation fees, costs, and expenses as prescribed in section 18
17 of this title in any court of competent jurisdiction.

18 (k) Information obtained during an examination or investigation under this
19 part shall be confidential and privileged and shall be treated as provided in
20 section 23 of this title.

1 § 2118. JOINT EXAMINATIONS

2 (a)(1) The Commissioner may conduct an on-site examination in
3 conjunction with representatives of other state agencies or agencies of another
4 state or of the federal government.

5 (2) Instead of an examination, the Commissioner may accept the
6 examination report of an agency of this State or of another state or of the
7 federal government or a report prepared by an independent certified public
8 accountant.

9 (b)(1) A joint examination or an acceptance of an examination report does
10 not preclude the Commissioner from conducting an examination as provided
11 by law.

12 (2) A joint report or a report accepted under this subsection is an official
13 report of the Commissioner for all purposes.

14 § 2119. RECORDS REQUIRED OF LICENSEE

15 (a)(1) A licensee shall keep, use in the licensee's business, and make
16 available to the Commissioner upon request, the books, accounts, records, and
17 data compilations as will enable the Commissioner to determine whether the
18 licensee is complying with the provisions of this part and with the rules
19 adopted by the Commissioner.

1 (2) A licensee shall preserve the books, accounts, records, and data
2 compilations in a secure manner for not less than seven years after making the
3 final entry on any loan recorded therein.

4 (3) After the seven-year retention period, the licensee shall dispose of
5 the books, accounts, records, and data compilations in accordance with
6 9 V.S.A. § 2445.

7 (b) A licensee may maintain records in any form permitted in
8 subsection 11301(c) of this title.

9 § 2120. ANNUAL REPORT, CALL REPORTS

10 (a)(1) In addition to any specific information required by the applicable
11 chapter, annually, on or before April 1, a licensee shall file a report with the
12 Commissioner to provide the information the Commissioner reasonably
13 requires concerning the business and operations conducted in this State during
14 the preceding calendar year.

15 (2) The licensee shall submit the report under oath and in the form the
16 Commissioner requires.

17 (3) For good cause, the Commissioner may extend the due date for the
18 annual report required by this subsection.

19 (4) If a licensee does not file its annual report on or before April 1, or
20 within any extension of time granted by the Commissioner, the licensee shall

1 pay to the Department \$100.00 for each month or part of a month that the
2 report is past due.

3 (b)(1) Annually, not later than 90 days after the end of its fiscal year, a
4 licensee shall file financial statements with the Commissioner in a form and
5 substance acceptable to the Commissioner, which financial statements shall
6 include a balance sheet and income statement.

7 (2) This subsection does not apply to a lender making only commercial
8 loans.

9 (c) A licensee shall submit to the Nationwide Mortgage Licensing System
10 and Registry reports of condition in a form and including the information the
11 Nationwide Multistate Licensing System and Registry requires, if applicable.

12 (d) The Commissioner may require more frequent reports from any
13 licensee.

14 § 2121. DECEPTIVE ADVERTISING

15 (a) A person subject to this part shall not advertise, print, display, publish,
16 distribute, or broadcast or cause or permit to be advertised, printed, displayed,
17 published, distributed, or broadcast, a statement or representation that is false,
18 misleading, or deceptive.

19 (b) The Commissioner may order a person to cease conduct that violates
20 this section.

1 § 2122. USE OF OTHER NAMES OR BUSINESS PLACES

2 (a) A licensee shall not conduct business or make a loan subject to
3 regulation under this part under any other name or at any other place of
4 business than as specified in its license.

5 (b) This section does not apply to a commercial loan made to a borrower
6 located outside Vermont for use outside Vermont.

7 § 2123. LICENSES MODIFIED, AMENDED, OR REPEALED BY
8 AMENDMENT TO THIS PART

9 The State of Vermont may amend or repeal this chapter so as to effect a
10 cancellation or alteration of a license or right of a licensee, provided that such
11 an amendment or repeal shall not impair or affect an obligation under a
12 preexisting lawful contract.

13 § 2124. NATIONWIDE MULTISTATE LICENSING SYSTEM AND
14 REGISTRY

15 (a) In furtherance of the Commissioner's duties under this part, the
16 Commissioner may participate in the Nationwide Multistate Licensing System
17 and Registry and may take such action regarding participation in the licensing
18 system as the Commissioner deems necessary to carry out the purposes of this
19 part, including:

20 (1) issue rules or orders, and establish procedures, to further
21 participation in the Nationwide Multistate Licensing System and Registry;

1 (2) facilitate and participate in the establishment and implementation of
2 the Nationwide Multistate Licensing System and Registry;

3 (3) establish relationships or contracts with the Nationwide Multistate
4 Licensing System and Registry or other entities designated by the Nationwide
5 Multistate Licensing System and Registry;

6 (4) authorize the Nationwide Multistate Licensing System and Registry
7 to collect and maintain records and to collect and process any fees associated
8 with licensure on behalf of the Commissioner;

9 (5) require persons engaged in activities that require a license under this
10 part to utilize the Nationwide Multistate Licensing System and Registry for
11 license applications, renewals, amendments, surrenders, and such other
12 activities as the Commissioner may require and to pay through the System all
13 fees provided for under this part;

14 (6) authorize the Nationwide Multistate Licensing System and Registry
15 to collect fingerprints on behalf of the Commissioner in order to receive or
16 conduct criminal history background checks;

17 (7) in order to reduce the points of contact which the Federal Bureau of
18 Investigation may have to maintain for purposes of this part, use the
19 Nationwide Multistate Licensing System and Registry as a channeling agent
20 for requesting information from and distributing information to the
21 Department of Justice or any governmental agency; and

1 (8) in order to reduce the points of contact that the Commissioner may
2 have to maintain for purposes of subsection 2102(c) of this chapter, use the
3 Nationwide Multistate Licensing System and Registry as a channeling agent
4 for requesting and distributing information to and from any source so directed
5 by the Commissioner.

6 (b)(1) The Commissioner may require persons engaged in activities that
7 require a license under this part to submit fingerprints, and the Commissioner
8 may utilize the services of the Nationwide Multistate Licensing System and
9 Registry to process the fingerprints and to submit the fingerprints to the
10 Federal Bureau of Investigation, the Vermont State Police, or any equivalent
11 state or federal law enforcement agency for the purpose of conducting a
12 criminal history background check.

13 (2) The licensee or applicant shall pay the cost of such criminal history
14 background check, including any charges imposed by the Nationwide
15 Multistate Licensing System and Registry.

16 (c) A person engaged in an activity that requires a license under this part
17 shall pay all applicable charges to utilize the Nationwide Multistate Licensing
18 System and Registry, including the processing charges the administrator of the
19 Nationwide Multistate Licensing System and Registry establishes, in addition
20 to the fees required under this part.

1 (d) The Nationwide Multistate Licensing System and Registry is not
2 intended to and does not replace or affect the Commissioner's authority to
3 grant, deny, suspend, terminate, revoke, or refuse to renew licenses.

4 § 2125. REPORT TO NATIONWIDE MULTISTATE LICENSING
5 SYSTEM AND REGISTRY

6 (a) Subject to State privacy and confidentiality laws, and subject to section
7 2126 of this title, the Commissioner shall report regularly violations of this
8 part, enforcement actions, and other relevant information to the Nationwide
9 Multistate Licensing System and Registry.

10 (b) A licensee may challenge information the Commissioner reports to the
11 Nationwide Multistate Licensing System and Registry in accordance with
12 3 V.S.A. chapter 25 and any rules adopted by the Commissioner on hearing
13 procedures.

14 § 2126. CONFIDENTIALITY

15 In order to promote more effective regulation and reduce regulatory burden
16 through supervisory information sharing:

17 (1)(A) The privacy or confidentiality of any information or material
18 provided to the Nationwide Multistate Licensing System and Registry, and any
19 privilege arising under federal or state law with respect to such information or
20 material, including the rules of any federal or state court, shall continue to
21 apply to the information or material after the information or material is
22 disclosed to the Nationwide Multistate Licensing System and Registry.

1 (B) The Commissioner may share the information and material with
2 state and federal regulatory officials who have oversight authority without
3 affecting the privilege or confidentiality protections provided by federal law or
4 state law.

5 (2) The Commissioner may enter agreements or sharing arrangements
6 with other governmental agencies, the Conference of State Bank Supervisors,
7 the American Association of Residential Mortgage Regulators, State
8 Regulatory Registry LLC, or other associations representing governmental
9 agencies.

10 (3) Information or material that is subject to privilege or confidentiality
11 under subdivision (1) of this section is not subject to:

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

15 (B) subpoena or discovery, or admission into evidence, in any private
16 civil action or administrative process, unless with respect to a privilege held by
17 the Nationwide Multistate Licensing System and Registry, the person to whom
18 such information or material pertains waives the privilege.

19 (4) This section does not apply to information or material relating to the
20 employment history of, and publicly adjudicated disciplinary and enforcement

1 actions against, mortgage loan originators that are included in the Nationwide
2 Multistate Licensing System and Registry for access by the public.

3 * * * Licensed Lenders, Mortgage Brokers, Mortgage Loan Originators, Sales
4 Finance Companies, and Loan Solicitation Companies;
5 8 V.S.A. Chapter 73 * * *

6 Sec. 3. 8 V.S.A. chapter 73 is amended to read:

7 CHAPTER 73: LICENSED LENDERS, MORTGAGE BROKERS,
8 MORTGAGE LOAN ORIGINATORS, SALES FINANCE COMPANIES,
9 AND LOAN SOLICITATION COMPANIES

10 § 2200. DEFINITIONS

11 As used in this chapter:

12 (1) ~~“Commercial loan” means any loan or extension of credit that is~~
13 ~~described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or~~
14 ~~extension of credit secured in whole or in part by an owner occupied one to~~
15 ~~four-unit dwelling.~~

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

17 (3) ~~“Control” means the possession, direct or indirect, of the power to~~
18 ~~direct or cause the direction of the management or policies of a person,~~
19 ~~whether through the ownership of voting securities, by contract other than a~~
20 ~~commercial contract for goods or nonmanagement services, or otherwise,~~
21 ~~unless the power is the result of an official position with or corporate office~~
22 ~~held by the person. Control shall be presumed to exist if any person, directly or~~
23 ~~indirectly, owns, controls, holds with the power to vote, or holds proxies~~

1 representing 10 percent or more of the voting securities or other interest of any
2 other person.

3 (4) “Depository institution” has the same meaning as in Section 3 of the
4 Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank
5 and any savings association as defined in Section 3 of the Federal Deposit
6 Insurance Act. For purposes of this chapter, “depository institution” also
7 includes any credit union organized and regulated as such under the laws of the
8 United States or any state or territory of the United States.

9 (5)(1)(A) “Employee” means, subject to subdivision (B) of this
10 subdivision (5)(1), an individual whose manner and means of work are subject
11 to the right of control of, or are controlled by, a person and whose
12 compensation for federal income tax purposes is reported, or required to be
13 reported, on a W-2 form issued by:

14 (i) the controlling person;

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

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

19 (B) For purposes of a registered mortgage loan originator as defined
20 in subdivision (25) of this section, the term “employee” has such binding
21 definition as may be issued by the federal banking agencies in connection with

1 their responsibilities under the federal Secure and Fair Enforcement for
2 Mortgage Licensing Act of 2008.

3 (6)(2) “Engage in the business of a mortgage loan originator” means to
4 act as, or to hold oneself out as acting as, or to represent to the public that one
5 can provide the services of a mortgage loan originator, in a commercial
6 context, and with some degree of habitualness or repetition. Habitualness or
7 repetition is met if either the individual who acts as a mortgage loan originator
8 does so with a degree of habitualness or repetition or the source of the
9 prospective financing provides such financing or performs other phases of
10 origination of residential mortgage loans with a degree of habitualness or
11 repetition. Acting in a commercial context is met if either the individual or an
12 entity for which the individual acts does so for the purpose of obtaining profit
13 rather than exclusively for governmental or family purposes.

14 (7) ~~“Federal banking agencies” means the Board of Governors of the~~
15 ~~Federal Reserve System, the Comptroller of the Currency, the Office of Thrift~~
16 ~~Supervision, the National Credit Union Administration, and the Federal~~
17 ~~Deposit Insurance Corporation or any successor of any of these.~~

18 (8) ~~“Holder” shall have the meaning set forth in 9A V.S.A. § 1-~~
19 ~~201(b)(21).~~

20 (9)(3) “Housing finance agency” means any authority:

1 (A) that is chartered by a state to help meet the affordable housing
2 needs of the residents of the state;

3 (B) that is supervised directly or indirectly by the state government;

4 (C) that is subject to audit and review by the state in which it
5 operates; and

6 (D) whose activities make it eligible to be a member of the National
7 Council of State Housing Agencies.

8 ~~(10) “Immediate family member” means a spouse, child, sibling, parent,~~
9 ~~grandparent, or grandchild, aunt, uncle, nephew, niece, including stepparents,~~
10 ~~stepchildren, stepsiblings, step-grandparents, step-grandchildren, and adoptive~~
11 ~~relationships. The term also includes former spouses dividing property in~~
12 ~~connection with a divorce or separation.~~

13 ~~(11) “Individual” means a natural person.~~

14 ~~(12) “Insurance company” shall mean an institution organized and~~
15 ~~regulated as such under the laws of the State of Vermont or any state or~~
16 ~~territory of the United States.~~

17 ~~(13)(4)~~ “Lead” means any information identifying a potential consumer
18 of a loan.

19 ~~(14)(5)~~ “Lead generation” means to:

1 (A) initiate consumer interest or inquiry in a loan by online
2 marketing, direct response advertising, telemarketing, or other similar
3 consumer contact;

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

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

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

9 ~~(15) “Licensee” means any person subject to the provisions of section~~
10 ~~2201 of this title.~~

11 ~~(16)(6)~~ “Loan processor or underwriter” means an individual who
12 performs clerical or support duties as an employee at the direction of and
13 subject to the supervision and instruction of a person licensed, or exempt from
14 licensing, under this chapter.

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

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

20 (ii) communicating with a consumer to obtain the information
21 necessary for the processing or underwriting of a loan, to the extent that such

1 communication does not include offering or negotiating loan rates or terms, or
2 counseling consumers about residential mortgage loan rates or terms.

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

9 ~~(17)(7)~~(A) "Loan solicitation" means, for compensation or gain or with
10 the expectation of compensation or gain, to:

11 (i) offer, solicit, broker, directly or indirectly arrange, place, or
12 find a loan for a prospective Vermont borrower;

13 (ii) engage in any activity intended to assist a prospective Vermont
14 borrower in obtaining a loan, including lead generation;

15 (iii) arrange, in whole or in part, a loan through a third party,
16 regardless of whether approval, acceptance, or ratification by the third party is
17 necessary to create a legal obligation for the third party, through any method,
18 including mail, telephone, Internet, or any electronic means; or

19 (iv) ~~advertise or cause to be advertised in this State~~ represent to
20 the public through advertising or other means of communicating or providing
21 information, including the use of business cards, stationery, brochures, signs,

1 rate lists, or other promotional items, that a person can or will provide a loan
2 or any of the services described in subdivisions (i)–(iii) of this
3 subdivision ~~(17)(7)~~(A).

4 (B) As used in this subdivision ~~(17)(7)~~, “loan solicitation” does not:

5 (i) apply to residential mortgage loans;

6 (ii) include a broker-dealer registered or exempt from registration
7 under 9 V.S.A. § 5401 when the broker-dealer provides the services described
8 in subdivision (A) of this subdivision ~~(17)(7)~~ and the broker-dealer is not
9 compensated by the consumer for those services;

10 (iii) include an agent registered or exempt from registration under
11 9 V.S.A. § 5402 when the agent provides the services described in
12 subdivision (A) of this subdivision ~~(17)(7)~~ and the individual agent is not
13 compensated by the consumer for those services;

14 (iv) include an insurance producer licensed under 8 V.S.A. § 4800
15 when the insurance producer provides the services described in subdivision
16 (A) of this subdivision ~~(17)(7)~~ and the individual insurance producer is not
17 compensated by the consumer for those services;

18 (v) include a seller of goods or services that provides the services
19 described in subdivision (A) of this subdivision ~~(17)(7)~~ in connection with
20 financing the sale or proposed sale of the seller’s goods or services and the

1 seller is not compensated by the consumer for the services described in
2 subdivision (A) of this subdivision ~~(17)(7)~~; or

3 (vi) include other categories of loans or service providers as
4 determined by the Commissioner by rule or order.

5 ~~(18)(8)~~ “Mortgage broker” means any person who for compensation or
6 gain, or in the expectation of compensation or gain, directly or indirectly
7 negotiates, places, assists in placement, or finds, or offers to negotiate, place,
8 assist in placement, or find mortgage loans, other than commercial loans, on
9 real property for others. The term shall not include real estate brokers or
10 salespersons, as defined in 26 V.S.A. § 2211, who in connection with services
11 performed in a prospective real estate transaction, provide mortgage
12 information or assistance to a buyer, if such real estate broker or real estate
13 salesperson is not compensated for providing such mortgage information or
14 assistance in addition to the compensation received from the seller or buyer for
15 such real estate brokerage activity. The term shall not include attorneys
16 licensed to practice law in this State acting in their professional capacity. The
17 term shall not include persons engaged in the foregoing activities solely in
18 connection with the sale, assignment, or other transfer of one or more
19 previously originated loans.

20 ~~(19)~~ “Mortgage loan” means a loan secured primarily by a lien against
21 real estate.

1 ~~(20)(9)~~ “Mortgage loan originator”:

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

4 (i) takes a residential mortgage loan application;

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

6 (iii) represents to the public, through advertising or other means
7 of communicating or providing information, including the use of business
8 cards, stationery, brochures, signs, rate lists, or other promotional items, that
9 such individual can or will perform the services described in subdivision (i) or
10 (ii) of this subdivision ~~(20)(9)~~(A).

11 (B) An individual “takes a residential mortgage loan application” if
12 the individual receives a residential mortgage loan application for the purpose
13 of facilitating a decision whether to extend an offer of residential mortgage
14 loan terms to a borrower or prospective borrower, ~~(or to accept the terms~~
15 ~~offered by a borrower or prospective borrower in response to a solicitation),~~
16 whether the application is received directly or indirectly from the borrower or
17 prospective borrower.

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

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

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

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

8 (ii) receives or expects to receive payment of money or anything
9 of value in connection with the activities described in subdivision (i) of this
10 subdivision ~~(20)~~(9)(C) or as a result of any residential mortgage loan terms
11 entered into as a result of such activities.

12 (D) Does not include:

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

16 (ii) a person or entity that only performs real estate brokerage
17 activities and is licensed or registered in accordance with Vermont law, unless
18 the person or entity is compensated by a buyer or a seller in addition to the
19 compensation received for such real estate brokerage activity or is
20 compensated by a lender, mortgage broker, or other mortgage loan originator

1 or by any agent of such lender, mortgage broker, or other mortgage loan
2 originator; ~~and~~ or

3 (iii) a person or entity solely involved in extensions of credit
4 relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D).

5 ~~(21) “Nationwide Mortgage Licensing System and Registry” means a~~
6 ~~mortgage licensing system developed and maintained by the Conference of~~
7 ~~State Bank Supervisors and the American Association of Residential Mortgage~~
8 ~~Regulators for the licensing and registration of licensed mortgage loan~~
9 ~~originators, or any successor to the Nationwide Mortgage Licensing System~~
10 ~~and Registry.~~

11 ~~(22)~~(10) “Nontraditional mortgage product” means any mortgage
12 product other than a 30-year fixed rate mortgage.

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

16 ~~(24)~~(11) “Real estate brokerage activity” means any activity that
17 involves offering or providing real estate brokerage services to the public,
18 including:

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

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

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

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

10 (E) offering to engage in any activity or act in any capacity described
11 in subdivision (A), (B), (C), or (D) of this subdivision ~~(24)~~(11).

12 ~~(25)~~(12) "Registered mortgage loan originator" means any individual
13 who:

14 (A) meets the definition of mortgage loan originator and is an
15 employee of:

16 (i) a depository institution;

17 (ii) a subsidiary that is:

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

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

1 (iii) an institution regulated by the Farm Credit Administration;

2 and

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

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

10 ~~(27)~~(13) “Residential mortgage loan application” means a request, in
11 any form, for an offer, or a response to a solicitation of an offer, of residential
12 mortgage loan terms, and information about the borrower or prospective
13 borrower that is customary or necessary in a decision on whether to make such
14 an offer.

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

17 ~~(29)~~(14) “Sales finance company” means any person who has
18 purchased one or more retail installment contracts, as defined in 9 V.S.A.
19 §§ 2351(5) and 2401(7), from one or more retail sellers located in this State.
20 Taking one or more retail installment contracts as security for a loan or loans
21 shall not be construed as purchasing for purposes of this definition.

1 (c) A person licensed pursuant to subdivision (a)(1) of this section may
2 engage in mortgage brokerage and sales finance if such person informs the
3 Commissioner in advance that he or she intends to engage in sales finance and
4 mortgage brokerage. Such person shall inform the Commissioner of his or her
5 intention on the original license application under section ~~2202~~ 2102 of this
6 title, any renewal application under sections ~~2209~~ 2109 of this title, or
7 pursuant to section ~~2208~~ 2106 of this title, and shall pay the applicable fees
8 required by subsection ~~2202(b)~~ 2102(b) of this title for a mortgage broker
9 license or sales finance company license.

10 * * *

11 (e) A mortgage loan originator license shall not be required of:

12 (1) Registered mortgage loan originators, when employed by and acting
13 for an entity described in subdivision ~~2200(25)~~ (12) of this chapter.

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

17 (3) Any individual who offers or negotiates terms of a residential
18 mortgage loan secured by a dwelling that served as the individual's residence,
19 including a vacation home, or inherited property that served as the deceased's
20 dwelling, provided that the individual does not act as a mortgage loan
21 originator or provide financing for such sales so frequently and under such

1 circumstances that it constitutes a habitual activity and acting in a commercial
2 context.

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

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

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

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

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

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

5 * * *

6 (g) Independent contractor loan processors or underwriters. A loan
7 processor or underwriter who is an independent contractor may not engage in
8 the activities of a loan processor or underwriter unless such independent
9 contractor loan processor or underwriter obtains and maintains a mortgage
10 loan originator license. Each independent contractor loan processor or
11 underwriter licensed as a mortgage loan originator must have and maintain a
12 valid unique identifier issued by the Nationwide ~~Mortgage~~ Multistate
13 Licensing System and Registry.

14 (h) This chapter shall not apply to commercial loans of \$1,000,000.00 or
15 more.

16 Sec. 5. REPEAL

17 8 V.S.A. § 2202 (application for license) is repealed.

18 Sec. 6. 8 V.S.A. § 2202a is amended to read:

19 § 2202a. APPLICATION FOR COMMERCIAL LENDER LICENSE; ~~FEES~~

20 (a) Application for a license for a lender making solely commercial loans
21 shall be in writing, under oath, and in the form prescribed by the

1 Commissioner, and shall contain the name and address of the residence and the
2 place of business of the applicant and, if the applicant is a partnership or
3 association, of every member thereof, and, if a corporation, of each officer,
4 director, and control person thereof; the county and municipality with street
5 and number, if any, where the business is to be conducted; and such further
6 information as the Commissioner may require.

7 (b) At the time of making application, the applicant shall pay to the
8 Commissioner ~~a \$500.00 fee for investigating the application and a \$500.00~~
9 ~~initial license fee for a period terminating on the last day of the current~~
10 ~~calendar year~~ an initial licensing fee and an application and investigation fee
11 pursuant to subdivision 2102(b)(2) of this title.

12 (c) In connection with an application for a commercial lender license, the
13 applicant and each officer, director, and control person of the applicant shall
14 furnish to the Nationwide Mortgage Multistate Licensing System and Registry
15 ~~(NMLSR)~~ information concerning the applicant's identity and the identity of
16 each of the applicant's officers, directors, and control persons, including:

17 (1) fingerprints for submission to the Federal Bureau of Investigation
18 and for any other governmental agency or entity authorized to receive such
19 information for a state, national, and international criminal history background
20 check;

1 (2) personal history and experience in a form prescribed by the NMLSR
2 NMLS, including the submission of authorization for the NMLSR NMLS and
3 the Commissioner to obtain information related to any administrative, civil, or
4 criminal findings by any governmental jurisdiction; and

5 (3) any other information required by the NMLSR NMLS or the
6 Commissioner.

7 Sec. 7. 8 V.S.A. § 2204c is redesignated and amended to read:

8 § ~~2204e~~ 2202b. APPROVAL OF APPLICATION; ISSUANCE OF
9 COMMERCIAL LENDER LICENSE

10 (a) Upon the filing of ~~the~~ an application and payment of the required fees,
11 the Commissioner shall issue ~~and deliver~~ a commercial lender license to the
12 applicant ~~upon findings by~~ if the Commissioner as follows finds:

13 (1) ~~That the~~ The experience, character, and general fitness of the
14 applicant ~~are such as to~~ command the confidence of the community and ~~to~~
15 warrant belief that the business will be operated honestly, fairly, and efficiently
16 within the purposes of this chapter.

17 (A) If the applicant is a partnership or association, such findings are
18 required with respect to each partner, member, and ~~control~~ person in control of
19 the applicant.

20 (B) If the applicant is a corporation, such findings are required with
21 respect to each officer, director, and ~~control~~ person in control of the applicant.

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

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

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

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

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

17 (b)(1) If the Commissioner ~~does not find as set forth in~~ finds that the
18 applicant does not meet the requirements of subsection (a) of this section, the
19 Commissioner shall not issue a license.

1 ~~(2) Within 60 days of filing of the completed application~~ Not later than
2 60 days after an applicant files a complete application, the Commissioner shall
3 notify the applicant of the denial, stating the reason or reasons therefor.

4 ~~(3) If after the allowable period, no request for reconsideration under~~
5 ~~subsection 2205(a) the applicant does not file a timely request for~~
6 reconsideration pursuant to section 2104 of this title is received from the
7 applicant, the Commissioner shall:

8 ~~(A)~~ return to the applicant the sum paid by the applicant as a license
9 fee; and

10 ~~(B) retaining~~ retain the investigation fee to cover the costs of
11 investigating the application.

12 ~~(c)(1) If the Commissioner makes findings as set forth in~~ finds that an
13 applicant meets the requirements of subsection (a) of this section, he or she
14 shall issue the license ~~within~~ not later than 60 days ~~of filing the completed~~
15 ~~application~~ after the applicant submits a complete application.

16 ~~(2) Provided that~~ the licensee annually renews the license, the license
17 shall be ~~in full force and effect~~ valid until ~~surrendered by the licensee~~
18 surrenders the license or until ~~revocation, suspension, termination, or refusal to~~
19 ~~renew by the Commissioner~~ revokes, suspends terminates, or refuses to renew
20 the license.

1 (d) For good cause shown and consistent with the purposes of this section,
2 the Commissioner may waive or modify the requirements of subdivision (a)(2)
3 of this section.

4 Sec. 8. 8 V.S.A. § 2207 is redesignated to read:

5 § ~~2207~~ 2203a. ADDITIONAL BOND; LIQUID ASSETS TO BE
6 MAINTAINED

7 Sec. 9. REPEAL

8 8 V.S.A. § 2204 (approval of application and issuance of license) is
9 repealed.

10 Sec. 10. 8 V.S.A. § 2204a is amended to read:

11 § 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND
12 RELICENSING EDUCATION REQUIREMENT

13 (a) In order to meet the prelicensing education requirement for a mortgage
14 loan originator, a person shall complete at least 20 hours of education
15 approved in accordance with subsection (b) of this section, which shall include
16 at least:

17 (1) three hours of federal law and regulations;

18 (2) three hours of ethics, which shall include instruction on fraud,
19 consumer protection, and fair lending issues;

20 (3) two hours of training related to lending standards for the
21 nontraditional mortgage product marketplace; and

22 (4) two hours of Vermont law and regulations.

1 (b) For purposes of subsection (a) of this section, prelicensing education
2 courses shall be reviewed and approved by the Nationwide ~~Mortgage~~
3 Multistate Licensing System and Registry based upon reasonable standards.
4 Review and approval of a prelicensing education course shall include review
5 and approval of the course provider.

6 (c) Nothing in this section shall preclude any prelicensing education
7 course, as approved by the Nationwide ~~Mortgage~~ Multistate Licensing System
8 and Registry, that is provided by the employer of the applicant or an entity
9 which is affiliated with the applicant by an agency contract, or any subsidiary
10 or affiliate of such employer or entity.

11 (d) Prelicensing education may be offered either in a classroom, online, or
12 by any other means approved by the Nationwide ~~Mortgage~~ Multistate
13 Licensing System and Registry.

14 (e) The prelicensing education requirements approved by the Nationwide
15 ~~Mortgage~~ Multistate Licensing System and Registry in subdivisions (a)(1), (2),
16 and (3) of this section for any state shall be accepted as credit toward
17 completion of prelicensing education requirements in Vermont.

18 * * *

1 Sec. 11. 8 V.S.A. § 2204b is amended to read:

2 § 2204b. TESTING OF MORTGAGE LOAN ORIGINATORS

3 (a) ~~In order to meet the written test requirement referred to in subdivision~~
4 ~~2204(a)(7) of this title, an~~ An individual applying for a mortgage loan
5 originator license shall pass, in accordance with the standards established
6 under this section, a qualified written test developed by the Nationwide
7 ~~Mortgage~~ Multistate Licensing System and Registry and administered by a test
8 provider approved by the Nationwide ~~Mortgage~~ Multistate Licensing System
9 and Registry based upon reasonable standards.

10 (b) A written test shall not be treated as a qualified written test for purposes
11 of subsection (a) of this section unless the test adequately measures the
12 applicant's knowledge and comprehension in appropriate subject areas,
13 including:

14 (1) ethics;
15 (2) federal law and regulation pertaining to mortgage origination;
16 (3) State law and regulation pertaining to mortgage origination; and
17 (4) federal and State law and regulation, including instruction on fraud,
18 consumer protection, the nontraditional mortgage marketplace, and fair
19 lending issues.

20 (c) Nothing in this section shall prohibit a test provider approved by the
21 Nationwide ~~Mortgage~~ Multistate Licensing System and Registry from

1 providing a test at the location of the employer of the applicant or the location
2 of any subsidiary or affiliate of the employer of the applicant.

3 (d) An individual shall not be considered to have passed a qualified written
4 test unless the individual achieves a test score of not less than 75 percent
5 correct answers to questions.

6 (e) An individual may take a test three consecutive times, with each
7 consecutive test occurring at least 30 days after the preceding test. After
8 failing three consecutive tests, an individual shall wait at least six months
9 before taking the test again.

10 (f) A licensed mortgage loan originator who fails to maintain a valid
11 license for a period of five years or longer shall retake the test, not taking into
12 account any time during which such individual is a registered mortgage loan
13 originator.

14 Sec. 12. 8 V.S.A. § 2209a is redesignated and amended to read:

15 § ~~2209a~~ 2204c. CONTINUING EDUCATION FOR MORTGAGE LOAN
16 ORIGINATORS

17 (a) In order to meet the annual continuing education requirements, a
18 licensed mortgage loan originator shall complete at least eight hours of
19 education approved in accordance with subsection (b) of this section, which
20 shall include at least:

21 (1) three hours of federal law and regulations;

1 (2) two hours of ethics, which shall include instruction on fraud,
2 consumer protection, and fair lending issues; and

3 (3) two hours of training related to lending standards for the
4 nontraditional mortgage product marketplace.

5 (b) For purposes of subsection (a) of this section, continuing education
6 courses shall be reviewed and approved by the Nationwide Mortgage
7 Multistate Licensing System and Registry based upon reasonable standards.
8 Review and approval of a continuing education course shall include review
9 and approval of the course provider.

10 (c) Nothing in this section shall preclude any education course, as approved
11 by the Nationwide Mortgage Multistate Licensing System and Registry, that is
12 provided by the employer of the mortgage loan originator or an entity ~~which~~
13 that is affiliated with the mortgage loan originator, or any subsidiary or
14 affiliate of the employer.

15 (d) Continuing education may be offered either in a classroom, online, or
16 by any other means approved by the Nationwide Mortgage Multistate
17 Licensing System and Registry.

18 (e) A licensed mortgage loan originator:

19 (1) ~~except for section 2212 of this title and~~ subsection (i) of this section,
20 may only receive credit for a continuing education course in the year in which
21 the course is taken; and

1 (2) may not take the same approved course in the same or successive
2 years to meet the annual requirements for continuing education.

3 (f) A licensed mortgage loan originator who is an approved instructor of an
4 approved continuing education course may receive credit for the licensed
5 mortgage loan originator's own annual continuing education requirement at
6 the rate of two hours of credit for every one hour taught.

7 (g) A person having successfully completed the education requirements
8 approved by the Nationwide ~~Mortgage~~ Multistate Licensing System and
9 Registry in subdivisions (a)(1), (2), and (3) of this section for any state shall be
10 accepted as credit toward completion of continuing education requirements in
11 Vermont.

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

18 (i) A person who otherwise meets the requirements of ~~section 2209 of this~~
19 title for renewal of a license may make up any deficiency in continuing
20 education as established by order, or rule, or regulation of the ~~commissioner~~
21 Commissioner.

1 Sec. 13. 8 V.S.A. § 2206 is redesignated and amended to read:

2 § ~~2206~~ 2204d. CONTENTS OF MORTGAGE LOAN ORIGINATOR
3 LICENSE; NONTRANSFERABILITY; INACTIVE STATUS

4 (a) ~~The license shall state the address at which the business is to be~~
5 ~~conducted and shall state fully the name of the licensee and, if the licensee is~~
6 ~~other than an individual, the date and place of its organization or~~
7 ~~incorporation. The Commissioner may issue an electronic license. The license~~
8 ~~shall not be transferable or assignable.~~

9 (b) ~~The mortgage loan originator license shall fully state the name of the~~
10 ~~individual and the individual's place of residence. The Commissioner may~~
11 ~~issue an electronic license. The mortgage loan originator license shall not be~~
12 ~~transferable or assignable.~~

13 (c) The license of a mortgage loan originator that has satisfied all of the
14 requirements of licensure, other than being employed by a licensed lender or
15 licensed mortgage broker, may be placed in an approved inactive status.

16 Sec. 14. REPEAL

17 8 V.S.A. § 2205 (review of denial of application) is repealed.

18 Sec. 15. REPEAL

19 8 V.S.A. § 2208 (additional place of business) is repealed.

20 Sec. 16. REPEAL

21 8 V.S.A. § 2209 (renewal of license) is repealed.

22 Sec. 17. REPEAL

1 (2) the mortgage broker's activities are limited to loan processor or
2 underwriting activities as described in subdivision ~~2200(16)~~ 2200(6) 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
9 broker has already entered into a written mortgage broker agreement with the
10 prospective borrower.

11 * * *

12 Sec. 24. 8 V.S.A. § 2222 is amended to read:

13 § 2222. EXAMINATIONS AND INVESTIGATIONS; EXAMINATION
14 FEES

15 ~~(a) In addition to any authority allowed under this chapter or elsewhere,~~
16 ~~and for the purpose of examination, or discovering or investigating violations~~
17 ~~or complaints, of or arising under this chapter, subchapter 2 of chapter 200,~~
18 ~~and sections 10403 and 10404 of this title, or 9 V.S.A. chapters 4, 59, or 61, or~~
19 ~~any rule, order, directive, or regulation lawfully made thereunder, or securing~~
20 ~~any information required or useful thereunder, and for purposes of initial~~
21 ~~licensing, license renewal, license suspension, license conditioning, license~~
22 ~~revocation or termination, or general or specific inquiry or investigation, the~~

1 Commissioner or his or her duly designated representative shall have the
2 authority to:

3 (1) conduct investigations and examinations;

4 (2) access, receive, and use any books, accounts, records, files,
5 documents, information, or evidence including:

6 (A) criminal, civil, and administrative history information,
7 including nonconviction data;

8 (B) personal history and experience information, including
9 independent credit reports obtained from a consumer reporting agency
10 described in Section 603(p) of the Fair Credit Reporting Act; and

11 (C) any other documents, information, or evidence the
12 Commissioner deems relevant to the inquiry or investigation regardless of the
13 location, possession, control, or custody of such documents, information, or
14 evidence.

15 (b) The Commissioner may review, investigate, or examine any licensee,
16 individual, or person regardless of whether such individual or person has
17 obtained a license under this chapter as often as necessary in order to carry out
18 the purposes of this chapter. The Commissioner may direct, subpoena, or order
19 the attendance of and examine under oath all persons whose testimony may be
20 required about the loans or the business or subject matter of any such
21 examination or investigation, and may direct, subpoena, or order such person

1 to produce books, accounts, records, files, and any other documents the
2 Commissioner deems relevant to the inquiry.

3 (c) Each licensee, individual, or person subject to this chapter shall make
4 available to the Commissioner upon request the books and records relating to
5 the operations of such licensee, individual, or person. The Commissioner shall
6 have access to such books and records and to interview the officers, principals,
7 control persons, mortgage loan originators, employees, independent
8 contractors, agents, and customers of the licensee, individual, or person
9 concerning their business.

10 (d) Each licensee, individual, or person subject to this chapter shall make
11 or compile reports or prepare other information as directed by the
12 Commissioner in order to carry out the purposes of this section, including:

13 (1) accounting compilations;

14 (2) information lists and data concerning loan transactions in a format
15 prescribed by the Commissioner; or

16 (3) such other information as the Commissioner deems necessary to
17 carry out the purposes of this chapter.

18 (e) In making any examination or investigation authorized by this chapter,
19 the Commissioner may control access to any documents and records of the
20 licensee or person under examination or investigation. The Commissioner may
21 take possession of the documents and records or place a person in exclusive

1 charge of the documents and records in the place where they are usually kept.
2 During the period of control, no individual or person shall remove or attempt
3 to remove any of the documents and records except pursuant to a court order
4 or with the consent of the Commissioner. Unless the Commissioner has
5 reasonable grounds to believe the documents or records of the licensee have
6 been or are at risk of being altered or destroyed for purposes of concealing a
7 violation of this chapter, the licensee or owner of the documents and records
8 shall have access to the documents or records as necessary to conduct its
9 ordinary business affairs.

10 (f) In order to carry out the purposes of this chapter, the Commissioner
11 may:

12 (1) retain attorneys, accountants, or other professionals and specialists
13 as examiners, auditors, or investigators to conduct or assist in the conduct of
14 examinations or investigations;

15 (2) enter into agreements or relationships with other government
16 officials or regulatory associations in order to improve efficiencies and reduce
17 regulatory burden by sharing resources, standardized or uniform methods or
18 procedures, and documents, records, information, or evidence obtained under
19 this section;

1 ~~(3) use, hire, contract, or employ public or privately available~~
2 ~~analytical systems, methods, or software to examine or investigate the licensee,~~
3 ~~individual, or person subject to this chapter;~~

4 ~~(4) accept and rely on examination or investigation reports made by~~
5 ~~other government officials within or without this State; or~~

6 ~~(5) accept audit reports made by an independent certified public~~
7 ~~accountant for the licensee, individual, or person subject to this chapter in the~~
8 ~~course of that part of the examination covering the same general subject matter~~
9 ~~as the audit and may incorporate the audit report in the report of the~~
10 ~~examination, report of investigation, or other writing of the Commissioner.~~

11 ~~(g) The authority of this section shall remain in effect, whether such a~~
12 ~~licensee, individual, or person acts or claims to act under any licensing or~~
13 ~~registration law of this State, acts without such authority, or surrenders such~~
14 ~~licensee's license.~~

15 ~~(h) No licensee, individual, or person subject to investigation or~~
16 ~~examination under this section may knowingly withhold, abstract, remove,~~
17 ~~mutilate, destroy, or secrete any books, records, computer records, or other~~
18 ~~information.~~

19 ~~(i) The Commissioner shall make an examination of examine the affairs,~~
20 ~~business, and records of each licensee under this chapter, other than a loan~~
21 ~~solicitation company, at least once every three years. The Commissioner shall~~

1 examine the affairs, business, and records of each loan solicitation company as
2 often as the Commissioner deems necessary to carry out the purposes of this
3 part. The Commissioner may, in the case of those licensees who do not
4 maintain a Vermont office, accept reports of examinations prepared by another
5 state or federal regulatory agency as substitutes if such reports are available to
6 the Commissioner and are determined to be adequate in exercising his or her
7 powers and discharging his or her responsibilities under this chapter.

8 (j) ~~Each licensee shall pay to the Department all fees, costs, and expenses~~
9 ~~of any examination, review, and investigation as prescribed by section 18 of~~
10 ~~this title, which fees, costs, and expenses shall be billed when they are~~
11 ~~incurred. In addition to the powers set forth in section 2210 of this title, the~~
12 ~~Commissioner may maintain an action for the recovery of examination,~~
13 ~~review, and investigation fees, costs, and expenses as prescribed in section 18~~
14 ~~of this title in any court of competent jurisdiction.~~

15 Sec. 25. 8 V.S.A. § 2223 is amended to read:

16 § 2223. ADDITIONAL RECORDS REQUIRED OF LOAN
17 SOLICITATION LICENSEES

18 (a) ~~The licensee shall keep, use in the licensee's business, and make~~
19 ~~available to the Commissioner upon request, such books, accounts, records,~~
20 ~~and data compilations as will enable the Commissioner to determine whether~~
21 ~~such licensee is complying with the provisions of this chapter and with the~~
22 ~~rules and regulations lawfully made by the Commissioner. Every licensee shall~~

1 preserve such books, accounts, records, and data compilations in a secure
2 manner for not less than seven years after making the final entry on any loan
3 recorded therein. Thereafter, the licensee shall dispose of such books,
4 accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

5 (b)(1) A In addition to any records required by section 2119 of this title, a
6 licensee that engages in loan solicitation activity shall maintain the following
7 records for not less than seven years:

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

11 (B)(2) records of any contact or attempted contact with a consumer,
12 including the name, date, method, and nature of contact, and any information
13 provided to or received from the consumer; and

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

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

19 Sec. 26. REPEAL

20 8 V.S.A. § 2224 (annual report) is repealed.

21 Sec. 27. REPEAL

1 8 V.S.A. § 2226 (deceptive advertising) is repealed.

2 Sec. 28. REPEAL

3 8 V.S.A. § 2228 (use of other names) is repealed.

4 Sec. 29. REPEAL

5 8 V.S.A. § 2237 (licenses modified by amendment) is repealed.

6 Sec. 30. REPEAL

7 8 V.S.A. § 2240 (NMLS) is repealed.

8 Sec. 31. REPEAL

9 8 V.S.A. § 2242 (report to NMLS) is repealed.

10 Sec. 32. REPEAL

11 8 V.S.A. § 2243 (confidentiality) is repealed.

12 * * * Consumer Litigation Funding Companies, 8 V.S.A. Chapter 74 * * *

13 Sec. 33. 8 V.S.A. § 2251 is amended to read:

14 § 2251. DEFINITIONS

15 As used in this chapter:

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

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

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

3 (A) the claim is in Vermont; or

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

5 ~~(4)~~(3) “Consumer litigation funding” or “funding” means a nonrecourse
6 transaction in which a company purchases and a consumer assigns to the
7 company a contingent right to receive an amount of the potential net proceeds
8 of a settlement or judgment obtained from the consumer’s legal claim. If no
9 proceeds or net proceeds are obtained, the consumer is not required to repay
10 the company the funded amount or charges.

11 ~~(5)~~(4) “Consumer litigation funding company,” “litigation funding
12 company,” or “company” means a person that provides consumer litigation
13 funding to a consumer. The term does not include an immediate family
14 member of the consumer, ~~as defined in subdivision 2200(10) of this title.~~

15 ~~(6)~~(5) “Funded amount” means the amount of monies provided to, or on
16 behalf of, the consumer pursuant to a litigation funding contract. The term
17 excludes charges.

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

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

1 ~~(9)~~(8) “Litigation funding contract” or “contract” means a contract
2 between a company and a consumer for the provision of consumer litigation
3 funding.

4 ~~(10)~~(9)(A) “Net proceeds” means the amount recovered by a consumer
5 as a result of a legal claim less costs associated with the legal claim or the
6 underlying events giving rise to the legal claim, including:

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

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

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

14 (iv) liens for workers’ compensation benefits paid to the
15 consumer.

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

1 Sec. 34. 8 V.S.A. § 2252 is amended to read:

2 § 2252. REGISTRATION; ~~FE~~ FINANCIAL STABILITY

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

7 ~~(b) A company shall submit a \$200.00 fee at the time of registration and at~~
8 ~~the time of each renewal. Registrations shall be renewed every year on or~~
9 ~~before December 1.~~

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

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

1 Sec. 35. 8 V.S.A. § 2256 is amended to read:

2 § 2256. EXAMINATIONS; ~~CHARGES~~

3 For the purpose of protecting consumer interests and determining a
4 company's financial stability and compliance with the requirements of this
5 chapter, the Commissioner may conduct an examination of a company
6 engaged in the business of consumer litigation funding as often as the
7 Commissioner deems necessary. ~~The company shall reimburse the Department~~
8 ~~of Financial Regulation all reasonable costs and expenses of such examination.~~
9 ~~In unusual circumstances and in the interests of justice, the Commissioner may~~
10 ~~waive reimbursement for the costs and expenses of an examination under this~~
11 ~~section.~~

12 Sec. 36. REPEAL

13 8 V.S.A. § 2257 (nationwide licensing) is repealed.

14 Sec. 37. REPEAL

15 8 V.S.A. § 2258 (rulemaking) is repealed.

16 Sec. 38. 8 V.S.A. § 2259 is amended to read:

17 § 2259. ~~PENALTIES; ENFORCEMENT~~ VIOLATIONS AN UNFAIR OR
18 DECEPTIVE ACT

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

22 (1) ~~revoke or suspend a company's registration;~~

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

3 ~~(3) impose a penalty of not more than \$1,000.00 for each violation or~~
4 ~~\$10,000.00 for each violation the Commissioner finds to be willful; and~~

5 ~~(4) order the company to make restitution to consumers.~~

6 ~~(b) The powers vested in the Commissioner by this chapter shall be in~~
7 ~~addition to any other powers of the Commissioner to enforce any penalties,~~
8 ~~finer, or forfeitures authorized by law.~~

9 ~~(e) A company's failure to comply with the requirements of this part,~~
10 ~~including this chapter, shall constitute an unfair or deceptive act in commerce~~
11 ~~enforceable under 9 V.S.A. chapter 63, the Consumer Protection Act.~~

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

1 Sec. 39. 8 V.S.A. § 2260 is amended to read:

2 § 2260. ANNUAL REPORTS

3 (a) Annually, on or before April 1, each company registered under this
4 chapter shall file a report with the Commissioner under oath and in the form
5 and manner prescribed by the Commissioner. ~~The~~ In addition to information
6 required by section 2120 of this title, the report shall include any information
7 the Commissioner requires concerning the company's business and operations
8 during the preceding calendar year within Vermont and, in addition, shall
9 include:

10 (1) the number of contracts entered into;

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

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

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

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

18 (b) To assist the general public with more fully understanding the nature of
19 consumer litigation funding in Vermont, the Commissioner shall summarize
20 and analyze relevant data submitted under this section and publish the
21 summary and analysis on a web page maintained by the Department of

1 Financial Regulation, as well as on a web page maintained by the Office of the
2 Attorney General.

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

9 * * * Money Services; 8 V.S.A. Chapter 79 * * *

10 Sec. 40. 8 V.S.A. § 2500 is amended to read:

11 § 2500. DEFINITIONS

12 ~~The definitions in section 11101 of this title shall apply to this chapter,~~
13 ~~unless the context clearly indicates otherwise.~~ As used in this chapter, the
14 following terms shall have the following meanings:

15 (1) ~~“Applicant” means a person that files an application for a license~~
16 ~~under this chapter.~~

17 (2)(1) “Authorized delegate” means a person located in this State that a
18 licensee designates to provide money services on behalf of the licensee.

19 (3)(2) “Check cashing” means receiving at least \$500.00 compensation
20 within a 30-day period for taking payment instruments or stored value prepaid
21 access, other than traveler’s checks, in exchange for money, payment

1 instruments, or ~~stored value~~ prepaid access delivered to the person delivering
2 the payment instrument or ~~stored value~~ prepaid access at the time and place of
3 delivery without any agreement specifying when the person taking the
4 payment instrument will present it for collection.

5 (4)(3) “Currency exchange” means receipt of revenues equal to or
6 greater than five percent of total revenues from the exchange of money of one
7 government for money of another government.

8 (5) ~~“Licensee” means a person licensed under this chapter.~~

9 (6)(4) “Limited station” means private premises where a check casher is
10 authorized to engage in check cashing for ~~no~~ not more than two days of each
11 week solely for the employees of the particular employer or group of
12 employers specified in the check ~~casher’s~~ casher license application.

13 (7)(5) “Mobile location” means a vehicle or a movable facility where
14 check cashing occurs.

15 (8)(6) “Monetary value” means a medium of exchange, whether or not
16 redeemable in money.

17 (9)(7) “Money” means a medium of exchange that is authorized or
18 adopted by the United States or a foreign government. The term includes a
19 monetary unit of account established by an intergovernmental organization or
20 by agreement between two or more governments.

1 ~~(10)~~(8) “Money services” means money transmission, check cashing, or
2 currency exchange.

3 ~~(11)~~(9) “Money transmission” means to engage in the business of
4 selling or issuing payment instruments, selling or issuing stored value prepaid
5 access, or receiving money or monetary value for transmission to a location
6 within or outside the United States.

7 ~~(12)~~ “~~Nationwide Mortgage Licensing System and Registry~~” means a
8 ~~licensing system developed and maintained by the Conference of State Bank~~
9 ~~Supervisors and the American Association of Residential Mortgage Regulators~~
10 ~~for the licensing and registration of licensees under this chapter, or any~~
11 ~~successor to the Nationwide Mortgage Licensing System and Registry, or any~~
12 ~~alternative or replacement licensing system as designated by the~~
13 ~~Commissioner.~~

14 ~~(13)~~(10) “Outstanding,” with respect to a payment instrument, means
15 issued or sold by or for the licensee and which has been reported as sold but
16 not yet paid by or for the licensee.

17 ~~(14)~~(11) “Payment instrument” means a check, draft, money order,
18 traveler’s check, or other instrument for the transmission or payment of money
19 or monetary value, whether or not negotiable. The term does not include a
20 credit card voucher, letter of credit, or instrument that is redeemable by the
21 issuer in goods or services.

(12) “Prepaid access” means funds or monetary value represented in digital electronic format, *including virtual currency*, whether or not specially encrypted, that are stored or capable of storage on electronic media and are retrievable and transferable electronically.

1 ~~(15) “Person” means an individual, corporation, business trust, estate,~~
2 ~~trust, partnership, limited liability company, association, joint venture,~~
3 ~~government, governmental subdivision, agency or instrumentality, or any other~~
4 ~~legal or commercial entity.~~

5 ~~(16) “Principal equity owner” means any person (or group of persons~~
6 ~~acting in concert) who owns or controls 10 percent or more of any class of~~
7 ~~equity interest in the applicant.~~

8 ~~(17) “Record” means information that is inscribed on a tangible medium~~
9 ~~or that is stored in an electronic or other medium, and is retrievable in~~
10 ~~perceivable form.~~

11 ~~(18) “Responsible individual” means an individual who is employed by a~~
12 ~~licensee and has principal, active managerial authority over the provision of~~
13 ~~money services by the licensee in this State.~~

14 ~~(19) “State” means a state of the United States, the District of Columbia,~~
15 ~~Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession~~
16 ~~subject to the jurisdiction of the United States.~~

1 ~~(20)~~ “Stored value” means monetary value that is evidenced by an
2 electronic record.

3 ~~(21)~~ “Unsafe or unsound practice” means a practice or conduct by a
4 person licensed to engage in money transmission or an authorized delegate of
5 such a person which creates the likelihood of material loss, insolvency, or
6 dissipation of the licensee’s assets, or otherwise materially prejudices the
7 interests of its customers.

~~(22)~~(13) “Virtual currency” means ~~stored value~~ prepaid access *a digital*
representation of 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. 41. 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
19 thereof;

1 (2) the sale or issuance of payment instruments or prepaid access ~~stored~~
2 ~~value~~, or money transmission, by the U.S. Postal Service or by a contractor on
3 behalf of the U.S. Postal Service;

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

6 (4) a financial institution as defined in subdivision 11101(32) of this
7 title, a financial institution holding company as defined in subdivision
8 11101(33) of this title, a credit union, an office of an international banking
9 corporation, a branch of a foreign bank, a corporation organized pursuant to
10 the Bank Services Company Act, an independent trust company organized
11 under chapter 77 of this title or an entity organized under the laws of another
12 state that is regulated by its home state in an equivalent manner to an
13 independent trust company, or a corporation organized under the Edge Act
14 under the laws of a state or the United States if the person does not issue, sell,
15 or provide payment instruments or ~~stored value~~ prepaid access through an
16 authorized delegate that is not such a person;

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

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

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

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

11 (9) a person:

12 (A) ~~an operator of~~ operating a payment system that provides
13 processing, clearing, or settlement services, between or among persons
14 excluded by this section or licensees, in connection with wire transfers, credit
15 card transactions, debit card transactions, ~~stored value~~ prepaid access
16 transactions, automated clearing house transfers, or similar funds transfers to
17 the extent of its operation as such;

18 (B) that is a contracted service provider of an entity in subsection (4)
19 of this section that provides processing, clearing, or settlement services in
20 connection with wire transfers, credit card transactions, debit card transactions,

1 prepaid access transactions, automated clearinghouse transfers, or similar
2 funds transfers; or

3 (C) that facilitates payment for goods or services, not including
4 money transmission itself, or bill payment through a clearance and settlement
5 process using institutions regulated under the Bank Secrecy Act pursuant to a
6 written contract with the payee and either payment to the person facilitating
7 the payment processing satisfies the payor's obligation to the payee or that
8 obligation is otherwise extinguished;

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

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

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

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

18 (b) The Commissioner may issue an order exempting any person from this
19 chapter when such person is performing services for the benefit of the United
20 States or a department, agency, or instrumentality thereof, or for the benefit of

1 any state, county, city, or any other governmental agency or governmental
2 subdivision within a state.

3 Sec. 42. 8 V.S.A. § 2506 is amended to read:

4 § 2506. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

5 (a) ~~As used in this section, “material litigation” means any litigation that~~
6 ~~according to generally accepted accounting principles is deemed significant to~~
7 ~~an applicant’s or a licensee’s financial health, and would be required to be~~
8 ~~disclosed in the applicant’s or licensee’s annual audited financial statements,~~
9 ~~report to shareholders, or similar records.~~

10 (b) ~~A person applying for a license under this subchapter shall do so under~~
11 ~~oath and in a form and in a medium prescribed by the Commissioner. The In~~
12 ~~addition to the information required by section 2102 of this title, an application~~
13 ~~for a license under this subchapter shall state or contain:~~

14 (1) ~~the legal name and residential and business addresses of the applicant~~
15 ~~and any fictitious or trade name used by the applicant in conducting its~~
16 ~~business;~~

17 (2) ~~a list of any criminal convictions of the applicant and any material~~
18 ~~litigation in which the applicant has been involved in the 10-year period next~~
19 ~~preceding the submission of the application;~~

1 ~~(3)~~(1) a description of any money services previously provided by the
2 applicant and the money services that the applicant seeks to provide in this
3 State;

4 ~~(4)~~(2) a list of the applicant's proposed authorized delegates, and the
5 locations in this State where the applicant and its authorized delegates propose
6 to engage in money transmission or provide other money services;

7 ~~(5)~~(3) a list of other states in which the applicant is licensed to engage
8 in money transmission or provide other money services and information
9 concerning any bankruptcy or receivership proceedings affecting the licensee,
10 ~~and any license revocations, suspensions, or any criminal or disciplinary action~~
11 ~~taken against the applicant in other states;~~

12 ~~(6)~~(4) a sample form of contract for authorized delegates, if applicable,
13 and a sample form of payment instrument or instrument upon which ~~stored~~
14 ~~value~~ prepaid access is recorded if applicable;

15 ~~(7)~~(5) the name and address of any financial institution through which
16 the applicant's payment instruments and ~~stored value~~ prepaid access
17 obligations will be paid; and

18 ~~(8)~~(6) a description of the source of money and credit to be used by the
19 applicant to provide money services; ~~and~~

20 ~~(9)~~ ~~any other information the Commissioner requires with respect to the~~
21 ~~applicant.~~

1 (c) If an applicant is a corporation, limited liability company, partnership,
2 or other entity, the applicant shall also provide:

3 (1) the date of the applicant's incorporation or formation, and state or
4 country of incorporation or formation;

5 (2) if applicable, a certificate of good standing from the state or country
6 in which the applicant is incorporated or formed;

7 (3) a brief description of the structure or organization of the applicant,
8 including any parent or subsidiary of the applicant, and whether any parent or
9 subsidiary is publicly traded;

10 (4) the legal name, any fictitious or trade name, all business and
11 residential addresses, and the employment, in the 10-year period next
12 preceding the submission of the application of each executive officer, manager,
13 director of, or person that has control of, the applicant;

14 (5) a list of any criminal convictions, material litigation, or disciplinary
15 actions in which any executive officer, manager, director of, or individual in
16 control of, the applicant has been involved in the 10-year period next
17 preceding the submission of the application;

18 (6) a copy of the applicant's audited financial statements for the most
19 recent fiscal year and, if available, for the two-year period next preceding the
20 submission of the application;

1 ~~(7) a copy of the applicant's unconsolidated financial statements for the~~
2 ~~current year, whether audited or not, and, if available, for the two-year period~~
3 ~~next preceding the submission of the application;~~

4 ~~(8) if the applicant is publicly traded, a copy of the most recent 10-K~~
5 ~~report filed with the U.S. Securities and Exchange Commission;~~

6 ~~(9) if the applicant is a wholly owned subsidiary:~~

7 ~~(A) a copy of audited financial statements for the parent corporation~~
8 ~~for the most recent fiscal year; and~~

9 ~~(B) of a corporation publicly traded in the United States, a copy of the~~
10 ~~parent corporation's most recent 10-K report filed with the U.S. Securities and~~
11 ~~Exchange Commission, or if the applicant is a wholly owned subsidiary of a~~
12 ~~corporation publicly traded outside the United States, a copy of similar~~
13 ~~documentation filed with the regulator of the parent corporation's domicile~~
14 ~~outside the United States;~~

15 ~~(10) if the applicant is a corporation, the name and address of the~~
16 ~~applicant's registered agent in this State; and~~

17 ~~(11) any other information the Commissioner requires with respect to the~~
18 ~~applicant.~~

19 ~~(d) At the time of making application, the applicant shall pay to the~~
20 ~~Department a nonrefundable application fee of \$1,000.00, a license fee of~~

1 \$500.00 for the applicant, and a license fee of \$25.00 for each authorized
2 delegate location. The license fee shall be refunded if the application is denied.

3 (e) In connection with an application for a license, the applicant and each
4 executive officer, manager, director, and person that has control of the
5 applicant shall furnish to the Nationwide Mortgage Licensing System and
6 Registry information concerning the applicant's identity, including:

7 (1) fingerprints for submission to the Federal Bureau of Investigation
8 and to any other governmental agency or entity authorized to receive such
9 information for a state, national, and international criminal history background
10 check and authorization for the Commissioner to obtain a criminal history
11 background check;

12 (2) personal history and experience in a form prescribed by the
13 Nationwide Mortgage Licensing System and Registry, including the
14 submission of authorization for the Nationwide Mortgage Licensing System
15 and Registry and the Commissioner to obtain:

16 (A) an independent credit report and credit score from a consumer
17 reporting agency described in subsection 603(p) of the Fair Credit Reporting
18 Act, 15 U.S.C. 1681a(p), for the purpose of evaluating the applicant's financial
19 responsibility at the time of application and additional credit reports and credit
20 scores to confirm the licensee's continued compliance with the financial
21 responsibility requirements of this chapter; and

1 ~~(B) information related to any administrative, civil, or criminal~~
2 ~~findings by any governmental jurisdiction; and~~

3 ~~(3) any other information required by the Nationwide Mortgage~~
4 ~~Licensing System and Registry or the Commissioner.~~

5 ~~(f)(b)~~ The Commissioner may waive one or more requirements of
6 ~~subsections (b) and (c)~~ of this section, or permit an applicant to submit
7 substituted information in lieu of the required information.

8 Sec. 43. 8 V.S.A. § 2507 is amended to read:

9 § 2507. SECURITY

10 (a) Except as otherwise provided in subsection (b) of this section, the
11 following rules apply:

12 (1) A surety bond, letter of credit, or other similar security acceptable to
13 the Commissioner of not less than \$100,000.00 shall accompany an application
14 for a license.

15 (2) If an applicant proposes to provide money services at more than one
16 location through authorized delegates or otherwise, the amount of the security
17 shall be increased by \$10,000.00 per location, not exceeding a total of
18 \$500,000.00.

19 (b) The Commissioner may increase the amount of security required to a
20 maximum of \$2,000,000.00 based upon the financial condition of a licensee,

1 as evidenced by reduction of net worth, financial losses, or other relevant
2 criteria.

3 (c) Security shall be in a form satisfactory to the Commissioner, and
4 payable to the State for use of the State and for the benefit of any claimant
5 against the licensee and its authorized delegates to secure the faithful
6 performance of the obligations of the licensee and its authorized delegates with
7 respect to money transmission.

8 (d) The aggregate liability on a surety bond may not exceed the principal
9 sum of the bond. A claimant against a licensee or its authorized delegate may
10 maintain an action directly against the bond, or the Commissioner may
11 maintain an action on behalf of the claimant against the bond. The power
12 vested in the Commissioner by this subsection shall be in addition to any other
13 powers of the Commissioner under this chapter.

14 (e) A surety bond shall cover claims effective for as long as the
15 Commissioner specifies, but for at least five years after the licensee ceases to
16 provide money services in this State. However, the Commissioner may permit
17 the amount of security to be reduced or eliminated before the expiration of that
18 time to the extent the amount of the licensee's payment instruments or stored
19 ~~value~~ prepaid access obligations outstanding in this State is reduced. The
20 Commissioner may permit a licensee to substitute another form of security

1 acceptable to the Commissioner for the security effective at the time the
2 licensee ceases to provide money services in this State.

3 (f) In lieu of the security prescribed in this section, an applicant for a
4 license or a licensee may provide security in a form otherwise permitted by the
5 Commissioner.

6 Sec. 44. REPEAL

7 8 V.S.A. § 2508 (issuance of license) is repealed.

8 Sec. 45. REPEAL

9 8 V.S.A. § 2509 (renewal of license) is repealed.

10 Sec. 46. 8 V.S.A. § 2516 is amended to read:

11 § 2516. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

12 ~~(a) A person applying for a license under this subchapter shall do so under~~
13 ~~oath and in a form and in a medium prescribed by the Commissioner. The~~
14 ~~application~~ In addition to the information required by section 2102 of this title,
15 an application for a license under this subchapter shall state or contain:

16 (1) ~~the legal name and residential and business addresses of the~~
17 ~~applicant, if the applicant is an individual and, if the applicant is not an~~
18 ~~individual, the name of each partner, executive officer, manager, director, and~~
19 ~~principal equity owner and the business address of the applicant;~~

20 (2) ~~the location of the principal office of the applicant;~~

1 ~~(3)~~ complete addresses of ~~other~~ locations in this State where the
2 applicant proposes to engage in check cashing or currency exchange, including
3 all limited stations and mobile locations; and

4 ~~(4)~~(2) a description of the source of money and credit to be used by the
5 applicant to engage in check cashing services and currency exchange; and

6 ~~(5)~~ other information the Commissioner requires with respect to the
7 applicant.

8 ~~(b)~~ A nonrefundable application fee of \$500.00 and a license fee of
9 \$500.00 shall accompany an application for a license under this subchapter.
10 The license fee shall be refunded if the application is denied.

11 ~~(c)~~ In connection with an application for a license, the applicant and each
12 executive officer, manager, director, and person that has control of the
13 applicant shall furnish to the Nationwide Mortgage Licensing System and
14 Registry information concerning the applicant's identity, including:

15 ~~(1)~~ fingerprints for submission to the Federal Bureau of Investigation
16 and to any other governmental agency or entity authorized to receive such
17 information for a state, national, and international criminal history background
18 check and authorization for the Commissioner to obtain a criminal history
19 background check;

20 ~~(2)~~ personal history and experience in a form prescribed by the
21 Nationwide Mortgage Licensing System and Registry, including the

1 ~~submission of authorization for the Nationwide Mortgage Licensing System~~
2 ~~and Registry and the Commissioner to obtain:~~

3 (A) ~~an independent credit report and credit score from a consumer~~
4 ~~reporting agency described in subsection 603(p) of the Fair Credit Reporting~~
5 ~~Act, 15 U.S.C. 1681a(p), for the purpose of evaluating the applicant's financial~~
6 ~~responsibility at the time of application and additional credit reports and credit~~
7 ~~scores to confirm the licensee's continued compliance with the financial~~
8 ~~responsibility requirements of this chapter; and~~

9 (B) ~~information related to any administrative, civil, or criminal~~
10 ~~findings by any governmental jurisdiction; and~~

11 (3) ~~any other information required by the Nationwide Mortgage~~
12 ~~Licensing System and Registry or the Commissioner.~~

13 Sec. 47. REPEAL

14 8 V.S.A. § 2517 (issuance of license) is repealed.

15 Sec. 48. REPEAL

16 8 V.S.A. § 2518 (renewal of license) is repealed.

17 Sec. 49. 8 V.S.A. § 2530 is amended to read:

18 § 2530. ~~AUTHORITY TO CONDUCT EXAMINATIONS AND~~
19 ~~INVESTIGATIONS~~

20 (a) ~~In addition to any authority allowed under this chapter or elsewhere and~~
21 ~~for the purpose of examination or discovering or investigating violations or~~
22 ~~complaints of or arising under this chapter or under any other applicable law,~~

1 rule, order, directive, or regulation or of securing any information required or
2 useful thereunder and for purposes of initial licensing, license renewal, license
3 suspension, license conditioning, license revocation or termination, or general
4 or specific inquiry or investigation, the Commissioner or his or her duly
5 designated representative shall have the authority to:

6 (1) conduct investigations and examinations at any time;

7 (2) access, receive, and use any books, accounts, records, files, documents,
8 information, or evidence, including:

9 (A) criminal, civil, and administrative history information,
10 including nonconviction data;

11 (B) personal history and experience information, including
12 independent credit reports obtained from a consumer reporting agency
13 described in subsection 603(p) of the Fair Credit Reporting Act, 15 U.S.C.
14 § 1681a(p); and

15 (C) any other documents, information, or evidence the
16 Commissioner deems relevant to the inquiry or investigation regardless of the
17 location, possession, control, or custody of such documents, information, or
18 evidence.

19 (b) The Commissioner may review, investigate, or examine any licensee,
20 individual, or person, regardless of whether such individual or person has
21 obtained a license under this chapter, as often as necessary in order to carry out

1 the purposes of this chapter. The Commissioner may direct, subpoena, or order
2 the attendance of and examine under oath all persons whose testimony may be
3 required about the business or subject matter of any such examination or
4 investigation and may direct, subpoena, or order such person to produce
5 books, accounts, records, files, and any other documents the Commissioner
6 deems relevant to the inquiry.

7 (c) Each licensee, individual, or person subject to this chapter shall make
8 available to the Commissioner upon request the books and records relating to
9 the operations of such licensee, individual, or person. The Commissioner shall
10 have access to such books and records and may interview the officers,
11 principals, control persons, employees, independent contractors, agents, and
12 customers of the licensee, individual, or person concerning their business.

13 (d) Each licensee, individual, or person subject to this chapter shall make
14 or compile reports or prepare other information as directed by the
15 Commissioner in order to carry out the purposes of this section, including:

16 (1) accounting compilations;

17 (2) information lists and data concerning transactions and business
18 activities in a format prescribed by the Commissioner; and

19 (3) such other information as the Commissioner deems necessary to
20 carry out the purposes of this chapter.

1 ~~(e) In making any examination or investigation authorized by this chapter,~~
2 ~~the Commissioner may control access to any documents and records of the~~
3 ~~licensee or person under examination or investigation. The Commissioner may~~
4 ~~take possession of the documents and records or place a person in exclusive~~
5 ~~charge of the documents and records in the place where they are usually kept.~~
6 ~~During the period of control, no individual or person shall remove or attempt~~
7 ~~to remove any of the documents and records except pursuant to a court order~~
8 ~~or with the consent of the Commissioner. Unless the Commissioner has~~
9 ~~reasonable grounds to believe the documents or records of the licensee have~~
10 ~~been or are at risk of being altered or destroyed for purposes of concealing a~~
11 ~~violation of this chapter, the licensee or owner of the documents and records~~
12 ~~shall have access to the documents or records as necessary to conduct its~~
13 ~~ordinary business affairs.~~

14 ~~(f) In order to carry out the purposes of this chapter, the Commissioner~~
15 ~~may:~~

16 ~~(1) retain attorneys, accountants, or other professionals and specialists~~
17 ~~as examiners, auditors, or investigators to conduct or assist in the conduct of~~
18 ~~examinations or investigations;~~

19 ~~(2) enter into agreements or relationships with other government~~
20 ~~officials or regulatory associations in order to improve efficiencies and reduce~~
21 ~~regulatory burden by sharing resources, standardized, or uniform methods or~~

1 ~~procedures, and documents, records, information, or evidence obtained under~~
2 ~~this section;~~

3 ~~(3) use, hire, contract, or employ public or privately available~~
4 ~~analytical systems, methods, or software to examine or investigate the licensee,~~
5 ~~individual, or person subject to this chapter;~~

6 ~~(4) accept and rely on examination or investigation reports made by~~
7 ~~other government officials within or without this State; or~~

8 ~~(5) accept audit reports made by an independent certified public~~
9 ~~accountant for the licensee, individual, or person subject to this chapter in the~~
10 ~~course of that part of the examination covering the same general subject matter~~
11 ~~as the audit and may incorporate the audit report in the report of the~~
12 ~~examination, report of investigation, or other writing of the Commissioner.~~

13 ~~(g) The authority of this section shall remain in effect whether such a~~
14 ~~licensee, individual, or person acts or claims to act under any licensing or~~
15 ~~registration law of this State, acts without such authority, or surrenders such~~
16 ~~licensee's license.~~

17 ~~(h) No licensee, individual, or person subject to investigation or~~
18 ~~examination under this section may knowingly withhold, abstract, remove,~~
19 ~~mutilate, destroy, or secrete any books, records, computer records, or other~~
20 ~~information.~~

1 ~~(i) Each licensee shall pay to the Department all fees, costs, and expenses~~
2 ~~of any examination, review, and investigation as prescribed by section 18 of~~
3 ~~this title, and those fees, costs, and expenses shall be billed when they are~~
4 ~~incurred. The Commissioner may maintain an action for the recovery of~~
5 ~~examination, review, and investigation fees, costs, and expenses as prescribed~~
6 ~~in section 18 of this title in any court of competent jurisdiction.~~

7 ~~(j) Information obtained during an examination or investigation under this~~
8 ~~chapter shall be confidential and privileged, and shall be treated as provided in~~
9 ~~section 23 of this title. The Commissioner shall examine the affairs, business,~~
10 ~~and records of each licensee under this chapter as often as the Commissioner~~
11 ~~deems necessary to carry out the purposes of this part.~~

12 Sec. 50. REPEAL

13 8 V.S.A. § 2531 (joint examinations) is repealed.

14 Sec. 51. REPEAL

15 8 V.S.A. § 2532 (reports) is repealed.

16 Sec. 52. REPEAL

17 8 V.S.A. § 2533 (change of control) is repealed.

1 Sec. 53. 8 V.S.A. § 2534 is amended to read:

2 § 2534. RECORDS

(a) A In addition to the records required by section 2119 of this title, a
licensee shall maintain records for determining the licensee's compliance with
this chapter. ~~A licensee shall maintain the following for at least five seven~~

~~years:~~

(1) ~~a record of each payment instrument or stored value prepaid access~~
obligation sold;

3 (2) a general ledger posted at least monthly containing all asset, liability,
4 capital, income, and expense accounts;

5 (3) bank statements and bank reconciliation records;

6 (4) records of outstanding payment instruments and prepaid access
7 ~~stored value~~ obligations;

8 (5) records of each payment instrument and ~~stored value~~ prepaid access
9 obligation paid within the ~~five-year~~ seven-year period;

10 (6) a list of the last known names and addresses of all of the licensee's
11 authorized delegates; and

12 ~~(7) any other records the Commissioner requires by rule.~~

A licensee shall maintain its records the following for at least five years, which records shall include:

(1) a record of each payment instrument or stored-value prepaid access obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value prepaid access obligations;

(5) records of each payment instrument and stored-value prepaid access obligation paid within the five-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the Commissioner requires by rule.

1 ~~(b) The items specified in subsection (a) of this section may be maintained~~
2 ~~in any form of a record as permitted in subsection 11301(c) of this title.~~

3 ~~(c) The licensee shall keep, use in the licensee's business, and make~~
4 ~~available to the Commissioner upon request, such books, accounts, records,~~
5 ~~and data compilations as will enable the Commissioner to determine whether~~
6 ~~such licensee is complying with the provisions of this chapter and with the~~
7 ~~rules and regulations lawfully made by the Commissioner hereunder.~~

8 ~~(d) All records maintained by the licensee as required in subsections (a)~~
9 ~~through (c) of this section are open to inspection by the Commissioner~~
10 ~~pursuant to section 2530 of this title.~~

1 Sec. 54. 8 V.S.A. § 2540 is amended to read:

2 § 2540. MAINTENANCE OF PERMISSIBLE INVESTMENTS

3 (a) A licensee shall maintain at all times permissible investments that have
4 a market value computed in accordance with generally accepted accounting
5 principles of not less than the aggregate amount of all of its outstanding
6 payment instruments and ~~stored-value~~ prepaid access obligations issued or sold
7 and money transmitted by the licensee or its authorized delegates.

8 (b) The Commissioner, with respect to any licensee, may limit the extent to
9 which a type of investment within a class of permissible investments may be
10 considered a permissible investment, except for money and certificates of
11 deposit issued by a depository institution within the meaning of subdivision
12 11101(24) of this title. The Commissioner, by rule, may prescribe or by order
13 allow other types of investments that the Commissioner determines to have a
14 safety substantially equivalent to other permissible investments.

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

19 Sec. 55. REPEAL

20 8 V.S.A. § 2545 (suspension; revocation) is repealed.

21 Sec. 56. 8 V.S.A. § 2546 is amended to read:

1 § 2546. TERMINATION OR SUSPENSION OF AUTHORIZED
2 DELEGATE ACTIVITY

3 ~~(a) Sections 2110 and 2545 of this title apply to authorized delegates.~~

(a) Section 2110 of this title applies to authorized delegates.

4 (b) The Commissioner may issue an order suspending or barring any
5 authorized delegate or any responsible individual, director, officer, member,
6 manager, partner, or ~~principal equity owner~~ person in control of such
7 authorized delegate, from continuing to be or becoming an authorized delegate
8 of any licensee during the period for which such order is in effect, or may
9 order that an authorized delegate cease and desist in any specified conduct, if
10 the Commissioner finds that:

11 ~~(1) the authorized delegate has violated this chapter or applicable State~~
12 ~~or federal law or a lawful order of the Commissioner under this chapter;~~

13 ~~(2) the authorized delegate does not cooperate with an examination or~~
14 ~~investigation by the Commissioner;~~

15 ~~(3) the authorized delegate engages in fraud, intentional~~
16 ~~misrepresentation, or gross negligence;~~

17 ~~(4) the authorized delegate is convicted of any act involving fraud or~~
18 ~~dishonesty;~~

19 ~~(5) the competence, experience, character, or general fitness of the~~
20 ~~authorized delegate or a person in control of the authorized delegate indicates~~

1 that it is not in the public interest to permit the authorized delegate to provide
2 money services;

3 (6) the authorized delegate is engaging in an unsafe or unsound
4 practice; or

5 (7) the authorized delegate is convicted of a violation of a State or
6 federal anti-money-laundering statute.

7 (b) In determining whether an authorized delegate is engaging in an unsafe
8 or unsound practice, the Commissioner may consider the volume and
9 condition of the authorized delegate's provision of money services, the
10 magnitude of the loss, the gravity of the violation of this chapter, and the
11 previous conduct of the authorized delegate.

12 (c) Any authorized delegate or other person to whom an order is issued
13 under this section may apply to the Commissioner to modify or rescind such
14 order. The Commissioner shall not grant such application unless the
15 Commissioner finds that it is in the public interest to do so, and that it is
16 reasonable to believe that such person will, if and when such person is
17 permitted to resume being an authorized delegate of a licensee, comply with
18 all applicable provisions of this chapter and of any regulation or order issued
19 under this title.

20 (d)(c) The authorized delegate shall receive 15 days' notice and an
21 opportunity to be heard before such order shall be issued. Mailing notice by

1 certified mail to the authorized delegate's current address as stated on the
2 license shall be presumptive evidence of its receipt by the authorized delegate.
3 The licensee shall be sent, by certified mail, copies of all notices sent to any of
4 its authorized delegates pursuant to this section. However, if the Commissioner
5 finds that the public safety or welfare imperatively requires emergency action,
6 action with no prior notice or prior opportunity to be heard may be taken,
7 pending proceedings for suspension or other action. Upon issuance of a
8 suspension or bar order, the licensee shall terminate its relationship with such
9 authorized delegate according to the terms of the order.

10 Sec. 57. REPEAL

11 8 V.S.A. § 2547 (orders to cease and desist) is repealed.

12 Sec. 58. REPEAL

13 8 V.S.A. § 2548 (administrative penalties) is repealed.

14 Sec. 59. REPEAL

15 8 V.S.A. § 2549 (criminal penalties) is repealed.

16 Sec. 60. REPEAL

17 8 V.S.A. § 2550 (administrative procedures) is repealed.

18 Sec. 61. REPEAL

19 8 V.S.A. § 2551 (hearings) is repealed.

20 Sec. 62. REPEAL

21 8 V.S.A. § 2560 (NMLS) is repealed.

1 Sec. 63. REPEAL

2 8 V.S.A. § 2561 (confidentiality) is repealed.

3 * * * Gift Certificates, 8 V.S.A. Chapter 81 * * *

4 Sec. 64. 8 V.S.A. § 2701 is amended to read:

5 § 2701. DEFINITIONS

6 As used in this chapter:

7 * * *

8 (3) “Gift certificate” means a record evidencing a promise made for
9 consideration by the seller or issuer of the record that money, goods, or
10 services will be provided to the holder of the record for the value shown in the
11 record. A “gift certificate” includes a record that contains a microprocessor
12 chip, magnetic strip, or other means for the storage of information that is
13 prefunded and for which the value is decremented upon each use; a gift card;
14 an electronic gift card; a ~~stored-value~~ prepaid access card or certificate; a store
15 card; or a similar record or card. A gift certificate does not include an access
16 device such as a debit card, code, or other means of access to a consumer’s
17 account regularly maintained at a financial institution or credit union that may
18 be used by the consumer to access the funds in his or her account to initiate a
19 withdrawal or to initiate an electronic funds transfer from the consumer’s
20 account.

21 * * *

1 Sec. 65. 8 V.S.A. § 2703 is amended to read:

2 § 2703. PROHIBITED FEES

3 (a) Dormancy fees, latency fees, issuance fees, redemption fees, or any
4 other administrative fees or service charges in connection with a gift certificate
5 are prohibited.

6 (b) Notwithstanding subsection (a) of this section, a money transmitter
7 licensed under chapter 79 of this title, financial institution, or credit union may
8 charge a one-time fee upon the issuance of a prepaid access stored value card
9 equal to the lesser of:

10 (1) 10 percent of the face amount purchased or added to the prepaid
11 access stored value card; or

12 (2) \$10.00.

13 * * * Debt Adjusters, 8 V.S.A. Chapter 83 * * *

14 Sec. 66. 8 V.S.A. § 2751 is amended to read:

15 § 2751. DEFINITIONS

16 As used in this chapter:

17 (1) ~~“Control” means the possession, direct or indirect, of the power to~~
18 ~~direct or cause the direction of the management or policies of a licensee,~~
19 ~~whether through the ownership of voting securities, by contract, or otherwise.~~
20 Control shall be presumed to exist if any person, directly or indirectly, owns,

1 controls, holds with the power to vote, or holds proxies representing, ten
2 percent or more of the voting securities or other interest of any other licensee.

3 (2) “Debt debt adjustment” means making an agreement with a debtor
4 whereby the debt adjuster agrees to distribute, supervise, coordinate, negotiate,
5 or control the distribution of money or evidences thereof among one or more
6 of the debtor’s creditors in full or partial payment of obligations of the debtor
7 and includes services as an intermediary between a debtor and one or more of
8 the debtor’s creditors for the purpose of obtaining concessions. Debt
9 adjustment also includes any program or strategy in which the debt adjuster
10 furnishes services to a debtor which includes a proposed or actual payment or
11 schedule of payments to be made by or on behalf of the debtor and is used to
12 pay debt owed by the debtor. For purposes of this chapter, engaging in debt
13 adjustment in this State shall include:

14 (A)(1) soliciting debt adjustment business from within this State,
15 whether by mail, by telephone, by electronic means, or by other means
16 regardless of whether the debtor resides within this State or outside this State;

17 (B)(2) soliciting debt adjustment business with an individual residing
18 in this State, whether by mail, by telephone, by electronic means, or by other
19 means;

20 (C)(3) entering into, or succeeding to, a debt adjustment contract
21 with an individual residing in this State; or

1 ~~(D)~~(4) providing, offering to provide, or agreeing to provide debt
2 adjustment services directly or through others.

3 (3) ~~“Material litigation” means any litigation that according to generally~~
4 ~~accepted accounting principles is deemed significant to an applicant’s or a~~
5 ~~licensee’s financial health, and would be required to be disclosed in the~~
6 ~~applicant’s or licensee’s annual audited financial statements, report to~~
7 ~~shareholders, or similar records.~~

8 ~~(4) “Nationwide Mortgage Licensing System and Registry” means a~~
9 ~~licensing system developed and maintained by the Conference of State Bank~~
10 ~~Supervisors and the American Association of Residential Mortgage Regulators~~
11 ~~for the licensing and registration of licensees under this chapter, or any~~
12 ~~successor to the Nationwide Mortgage Licensing System and Registry, or any~~
13 ~~alternative or replacement licensing system as designated by the~~
14 ~~Commissioner.~~

15 Sec. 67. 8 V.S.A. § 2753 is amended to read:

16 § 2753. APPLICATION FOR LICENSE; ADDITIONAL INFORMATION

17 (a) A person applying for a license under this chapter shall do so under oath
18 and in a form and manner prescribed by the Commissioner. The In addition to
19 the information required by section 2102 of this title, an application for a
20 license under this chapter shall state or contain:

1 ~~(1)~~ The legal name and business address of the applicant, and any
2 ~~fictitious or trade name used by the applicant in conducting its business.~~

3 ~~(2)~~ A list of any criminal convictions of the applicant and any
4 ~~material litigation in which the applicant has been involved in the ten-year~~
5 ~~period next preceding the submission of the application.~~

6 ~~(3)~~(1) A description of any debt adjustment and related services
7 previously provided by the applicant.

8 ~~(4)~~(2) The debt adjustment and related services that the applicant seeks
9 to provide in this State.

10 ~~(5)~~(3) A description of how the applicant will market its services, along
11 with copies of all scripts, mailings, advertisements, and other marketing
12 materials, provided that submission of these materials shall not waive any legal
13 claim the State may have with respect to the content or use of the materials.

14 ~~(6)~~(4) A description of the nature and amount of the fees, or the method
15 of calculating the fees, charged to the debtor.

16 ~~(7)~~(5) A list of the applicant's locations in this State and outside this
17 State where the applicant proposes to engage Vermont residents in debt
18 adjustment services.

19 ~~(8)~~(6) A list of other states in which the applicant is licensed to engage
20 in debt adjustment services and information concerning any bankruptcy or
21 receivership proceedings affecting the licensee, and any license revocations,

1 suspensions, or criminal or disciplinary action taken against the applicant in
2 other states.

3 (9)(7) A blank copy of the contract the applicant intends to use. The
4 applicant shall notify the Commissioner of all changes and amendments
5 thereto. The terms and conditions of all contracts shall be subject to prior
6 approval by the Commissioner.

7 (10)(8) The name and address of the federally insured financial
8 institution through which the applicant maintains a separate account for the
9 benefit of debtors.

10 (11) ~~Any other information the Commissioner requires with respect to~~
11 ~~the applicant.~~

12 (b) ~~If an applicant is a corporation, nonprofit corporation, limited liability~~
13 ~~company, partnership, or other entity, the applicant shall also provide:~~

14 (1) ~~the date of the applicant's incorporation or formation and state or~~
15 ~~country of incorporation or formation;~~

16 (2) ~~if applicable, a certificate of good standing from the state or country~~
17 ~~in which the applicant is incorporated or formed and a certificate of authority~~
18 ~~to transact business in the State of Vermont;~~

19 (3) ~~a brief description of the structure or organization of the applicant,~~
20 ~~including any parent, subsidiary, or affiliate of the applicant, and whether any~~
21 ~~parent, subsidiary, or affiliate is publicly traded;~~

1 ~~(4) the legal name, any fictitious or trade name, all business and~~
2 ~~residential addresses, and the employment, in the 10-year period next~~
3 ~~preceding the submission of the application of each executive officer, manager,~~
4 ~~director of, or person that has control of, the applicant;~~

5 ~~(5) a list of any criminal convictions, material litigation, or disciplinary~~
6 ~~actions in which any executive officer, manager, director of, or individual in~~
7 ~~control of, the applicant has been involved in the 10-year period next~~
8 ~~preceding the submission of the application;~~

9 ~~(6) a copy of the applicant's audited financial statements, and a copy of~~
10 ~~the audited financial statements of any person in control of the applicant, for~~
11 ~~the most recent fiscal year and, if available, for the two-year period next~~
12 ~~preceding the submission of the application;~~

13 ~~(7) a copy of the applicant's unconsolidated financial statements, and a~~
14 ~~copy of the unconsolidated financial statements of any person in control of the~~
15 ~~applicant for the current year, whether audited or not, and, if available, for the~~
16 ~~two-year period next preceding the submission of the application;~~

17 ~~(8) a copy of the applicant's federal tax returns for the two-year period~~
18 ~~next preceding the submission of the application;~~

19 ~~(9) if the applicant or any person in control of the applicant is publicly~~
20 ~~traded, a copy of the most recent 10-K report filed with the U.S. Securities and~~
21 ~~Exchange Commission;~~

1 ~~(10) if the applicant is a wholly owned subsidiary:~~

2 ~~(A) a copy of the federal tax return for the parent company for the~~
3 ~~most recent year;~~

4 ~~(B) a copy of audited financial statements for the parent corporation~~
5 ~~for the most recent fiscal year; and~~

6 ~~(C) of a corporation publicly traded in the United States, a copy of the~~
7 ~~parent corporation's most recent 10-K report filed with the U.S. Securities and~~
8 ~~Exchange Commission or, if the applicant is a wholly owned subsidiary of a~~
9 ~~corporation publicly traded outside the United States, a copy of similar~~
10 ~~documentation filed with the regulator of the parent corporation's domicile~~
11 ~~outside the United States;~~

12 ~~(11) the name and address of the applicant's registered agent in this~~
13 ~~State; and~~

14 ~~(12) any other information the Commissioner requires with respect to~~
15 ~~the applicant or any person in control of the applicant.~~

16 ~~(c) In connection with an application for a license, the applicant and each~~
17 ~~executive officer, manager, director, and person that has control of the~~
18 ~~applicant shall furnish to the Nationwide Mortgage Licensing System and~~
19 ~~Registry information concerning the applicant's identity, including:~~

20 ~~(1) fingerprints for submission to the Federal Bureau of Investigation and to~~
21 ~~any other governmental agency or entity authorized to receive such~~

1 information for a state, national, and international criminal history background
2 check and authorization for the Commissioner to obtain a criminal history
3 background check;

4 (2) personal history and experience in a form prescribed by the Nationwide
5 Mortgage Licensing System and Registry, including the submission of
6 authorization for the Nationwide Mortgage Licensing System and Registry and
7 the Commissioner to obtain:

8 (A) an independent credit report and credit score from a consumer
9 reporting agency described in subsection 603(p) of the Fair Credit Reporting
10 Act, 15 U.S.C. § 1681a(p), for the purpose of evaluating the applicant's
11 financial responsibility at the time of application and additional credit reports
12 and credit scores to confirm the licensee's continued compliance with the
13 financial responsibility requirements of this chapter; and

14 (B) information related to any administrative, civil, or criminal
15 findings by any governmental jurisdiction; and

16 (3) any other information required by the Nationwide Mortgage
17 Licensing System and Registry or the Commissioner.

18 (d)(b) The Commissioner may waive one or more requirements of
19 subsections (a) and (b) of this section or permit an applicant to submit
20 substituted information in lieu of the required information.

1 Sec. 68. REPEAL

2 8 V.S.A. § 2754 (fees) is repealed.

3 Sec. 69. REPEAL

4 8 V.S.A. § 2756 (qualification of applicant) is repealed.

5 Sec. 70. REPEAL

6 8 V.S.A. § 2757 (continuing license; fee) is repealed.

7 Sec. 71. 8 V.S.A. § 2757a is amended to read:

8 § 2757a. ANNUAL REPORT; ADDITIONAL INFORMATION

9 ~~(a) A licensee under this subchapter shall submit an annual report on or~~
10 ~~before April 1 for the preceding calendar year in a form and manner prescribed~~
11 ~~by the Commissioner. The~~ In addition to the information required by section
12 2120 of this title, the annual report shall state or contain:

13 ~~(1) a copy of the licensee's most recent audited annual financial~~
14 ~~statement or, if the licensee is a wholly owned subsidiary of another~~
15 ~~corporation, the most recent audited consolidated annual financial statement of~~
16 ~~the parent corporation or the licensee's most recent audited consolidated~~
17 ~~annual financial statement;~~

18 ~~(2)~~ the number of new debt adjustment contracts entered into with
19 Vermont residents during the preceding year, the number of Vermont residents
20 that have completed the debt adjustment contract during the preceding year,
21 the number of Vermont residents that have cancelled their debt adjustment

1 contract during the preceding year, and the licensee's total number of debt
2 adjustment contracts with Vermont residents; and

3 ~~(3) a description of each material change in information submitted by the~~
4 ~~licensee in its original license application that has not been previously reported~~
5 ~~to the Commissioner on any required report;~~

6 ~~(4)(2) a list of the locations in this State and outside this State where the~~
7 ~~licensee engages in debt adjustment activities with Vermont residents; and~~

8 ~~(5) any other information the Commissioner may require.~~

9 ~~(b) If a licensee does not file an annual report on or before April 1 or pay its~~
10 ~~renewal fee by December 1 or within any extension of time granted by the~~
11 ~~Commissioner, the Commissioner shall send the licensee a notice of~~
12 ~~suspension. The licensee's license shall be suspended ten calendar days after~~
13 ~~the Commissioner sends the notice of suspension. The licensee has 20 days~~
14 ~~after its license is suspended in which to file an annual report or pay the~~
15 ~~renewal fee, plus \$100.00 for each day after suspension that the Commissioner~~
16 ~~does not receive the annual report or the renewal fee. The Commissioner for~~
17 ~~good cause may grant an extension of the due date of the annual report or the~~
18 ~~renewal date.~~

19 ~~(c) The Commissioner may require more frequent reports from any licensee~~
20 ~~for the purpose of determining the adequacy of the licensee's security.~~

1 Sec. 72. REPEAL

2 8 V.S.A. § 2757b (additional places of business) is repealed.

3 Sec. 73. REPEAL

4 8 V.S.A. § 2758 (revocation or suspension of license) is repealed.

5 Sec. 74. REPEAL

6 8 V.S.A. § 2758a (surrender of license) is repealed.

7 Sec. 75. REPEAL

8 8 V.S.A. § 2761 is amended to read:

9 § 2761. EXAMINATIONS BY COMMISSIONER

10 (a) The Commissioner shall examine or cause to be examined, with or
11 without notice, the condition and affairs of each licensee under this chapter at
12 least once every three years and otherwise as required or determined by the
13 Commissioner. ~~The Commissioner may accept reports of examinations~~
14 ~~prepared by another State or federal regulatory agency as substitutes if such~~
15 ~~reports are available to the Commissioner and are determined to be adequate in~~
16 ~~exercising his or her powers and discharging his or her responsibilities under~~
17 ~~this chapter.~~

18 (b) ~~In addition to any authority allowed under this chapter or elsewhere and~~
19 ~~for the purpose of examination or discovering or investigating violations or~~
20 ~~complaints of or arising under this chapter or under any other applicable law,~~
21 ~~rule, order, directive, or regulation or of securing any information required or~~

1 ~~useful thereunder and for purposes of initial licensing, license renewal, license~~
2 ~~suspension, license conditioning, license revocation or termination, or general~~
3 ~~or specific inquiry or investigation, the Commissioner or his or her duly~~
4 ~~designated representative shall have the authority to:~~

5 ~~(1) conduct investigations and examinations at any time; and~~

6 ~~(2) access, receive, and use any books, accounts, records, files,~~
7 ~~documents, information, or evidence including:~~

8 ~~(A) criminal, civil, and administrative history information, including~~
9 ~~nonconviction data;~~

10 ~~(B) personal history and experience information, including~~
11 ~~independent credit reports obtained from a consumer reporting agency~~
12 ~~described in subsection 603(p) of the Fair Credit Reporting Act, 15 U.S.C.~~
13 ~~§ 1681a(p); and~~

14 ~~(C) any other documents, information, or evidence the Commissioner~~
15 ~~deems relevant to the inquiry or investigation regardless of the location,~~
16 ~~possession, control, or custody of such documents, information, or evidence.~~

17 ~~(e) The Commissioner may review, investigate, or examine any licensee,~~
18 ~~individual, or person, regardless of whether such individual or person has~~
19 ~~obtained a license under this chapter, as often as necessary in order to carry out~~
20 ~~the purposes of this chapter. The Commissioner may direct, subpoena, or order~~
21 ~~the attendance of and examine under oath all persons whose testimony may be~~

1 required about the business or subject matter of any such examination or
2 investigation and may direct, subpoena, or order such person to produce
3 books, accounts, records, files, and any other documents the Commissioner
4 deems relevant to the inquiry.

5 (d) Each licensee, individual, or person subject to this chapter shall make
6 available to the Commissioner upon request the books and records relating to
7 the operations of such licensee, individual, or person. The Commissioner shall
8 have access to such books and records and may interview the officers,
9 principals, control persons, employees, independent contractors, agents, and
10 customers of the licensee, individual, or person concerning their business.

11 (e) Each licensee, individual, or person subject to this chapter shall make or
12 compile reports or prepare other information as directed by the Commissioner
13 in order to carry out the purposes of this section, including:

14 (1) accounting compilations;

15 (2) information lists and data concerning transactions and business
16 activities in a format prescribed by the Commissioner; and

17 (3) such other information as the Commissioner deems necessary to
18 carry out the purposes of this chapter.

19 (f) In making any examination or investigation authorized by this chapter,
20 the Commissioner may control access to any documents and records of the
21 licensee or person under examination or investigation. The Commissioner may

1 take possession of the documents and records or place a person in exclusive
2 charge of the documents and records in the place where they are usually kept.
3 During the period of control, no individual or person shall remove or attempt
4 to remove any of the documents and records except pursuant to a court order
5 or with the consent of the Commissioner. Unless the Commissioner has
6 reasonable grounds to believe the documents or records of the licensee have
7 been or are at risk of being altered or destroyed for purposes of concealing a
8 violation of this chapter, the licensee or owner of the documents and records
9 shall have access to the documents or records as necessary to conduct its
10 ordinary business affairs.

11 (g) In order to carry out the purposes of this chapter, the Commissioner
12 may:

13 (1) retain attorneys, accountants, or other professionals and specialists as
14 examiners, auditors, or investigators to conduct or assist in the conduct of
15 examinations or investigations;

16 (2) enter into agreements or relationships with other government
17 officials or regulatory associations in order to improve efficiencies and reduce
18 regulatory burden by sharing resources, standardized or uniform methods or
19 procedures, and documents, records, information, or evidence obtained under
20 this section;

1 ~~(3) use, hire, contract, or employ public or privately available analytical~~
2 ~~systems, methods, or software to examine or investigate the licensee,~~
3 ~~individual, or person subject to this chapter;~~

4 ~~(4) accept and rely on examination or investigation reports made by~~
5 ~~other government officials within or without this State; or~~

6 ~~(5) accept audit reports made by an independent certified public~~
7 ~~accountant for the licensee, individual, or person subject to this chapter in the~~
8 ~~course of that part of the examination covering the same general subject matter~~
9 ~~as the audit and may incorporate the audit report in the report of the~~
10 ~~examination, report of investigation, or other writing of the Commissioner.~~

11 ~~(h) The authority of this section shall remain in effect whether such a~~
12 ~~licensee, individual, or person acts or claims to act under any licensing or~~
13 ~~registration law of this State, acts without such authority, or surrenders such~~
14 ~~licensee's license.~~

15 ~~(i) No licensee, individual, or person subject to investigation or examination~~
16 ~~under this section may knowingly withhold, abstract, remove, mutilate,~~
17 ~~destroy, or secrete any books, records, computer records, or other information.~~

18 ~~(j) Each licensee and each person investigated shall pay to the Department~~
19 ~~examination, review, and investigation fees as prescribed by section 18 of this~~
20 ~~title, which fees shall be billed when they are incurred. In addition to the~~
21 ~~powers set forth in this chapter, the Commissioner may maintain an action in~~

1 ~~Washington Superior Court for the recovery of examination, review, and~~
2 ~~investigation costs as prescribed in section 18 of this title.~~

3 Sec. 76. 8 V.S.A. § 2764 is amended to read:

4 § 2764. PENALTIES PRIVATE RIGHT OF ACTION AND CONSUMER
5 PROTECTION ACT

6 (a) ~~Any person, partnership, association, or corporation and the several~~
7 ~~members, officers, directors, agents, and employees thereof, who shall violate~~
8 ~~or participate in the violation of any of the provisions of this chapter, shall be~~
9 ~~imprisoned not more than two years or fined not more than \$1,500.00, or both.~~

10 (b) ~~The Commissioner may impose an administrative penalty of not more~~
11 ~~than \$1,500.00 per violation upon any person who violates any provision of~~
12 ~~this chapter, plus the State's costs and expenses for the investigation and~~
13 ~~prosecution of the matter, including attorney's fees.~~

14 (c) ~~The Commissioner may order any person to make restitution to any~~
15 ~~person as a result of a violation of this chapter. Additionally, a A consumer~~
16 ~~may bring a private action against a such licensee, or any such person that~~
17 ~~should have been licensed under this chapter, for restitution because of a~~
18 ~~violation of this chapter.~~

19 (d) ~~The powers vested in the Commissioner by this chapter shall be in~~
20 ~~addition to any other powers of the Commissioner to enforce any penalties,~~
21 ~~finer, or forfeitures authorized by law.~~

1 (e)(b) The powers vested in the Commissioner by this chapter shall be in
2 addition to any other powers or rights of consumers or the Attorney General or
3 others under any other applicable law or rule, including without limitation the
4 Vermont Consumer Protection Act and any applicable rules issued in
5 connection therewith, provided that the Commissioner's determinations
6 concerning the interpretation and administration of the provisions of this
7 chapter and any rules adopted thereunder shall carry a presumption of validity.

8 Sec. 77. REPEAL

9 8 V.S.A. § 2765 (administrative procedures) is repealed.

10 Sec. 78. REPEAL

11 8 V.S.A. § 2766 (rules) is repealed.

12 Sec. 79. REPEAL

13 8 V.S.A. § 2767 (NMLS) is repealed.

14 Sec. 80. REPEAL

15 8 V.S.A. § 2768 (confidentiality) is repealed.

16 * * * Loan Servicers, 8 V.S.A. Chapter 85 * * *

17 Sec. 81. 8 V.S.A. § 2900 is amended to read:

18 § 2900. DEFINITIONS

19 As used in this chapter:

20 (1) "~~Commercial loan~~" means any loan or extension of credit that is

21 ~~described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or~~

1 extension of credit that is secured by an owner occupied one to four-unit
2 dwelling.

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

4 (3) “Control” means the possession, direct or indirect, of the power to
5 direct or cause the direction of the management or policies of a person,
6 whether through the ownership of voting securities, by contract other than a
7 commercial contract for goods or nonmanagement services, or otherwise,
8 unless the power is the result of an official position with or corporate office
9 held by the person. Control shall be presumed to exist if any person, directly or
10 indirectly, owns, controls, holds with the power to vote, or holds proxies
11 representing 10 percent or more of the voting securities or other interest of any
12 other person.

13 (4) “Depository institution” has the same meaning as in Section 3 of the
14 Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank
15 and any savings association as defined in Section 3 of the Federal Deposit
16 Insurance Act. For purposes of this chapter, “depository institution” also
17 includes any credit union organized and regulated as such under the laws of the
18 United States or any state or territory of the United States.

19 (5) “Dwelling” has the same meaning as in subsection 103(v) of the
20 Truth in Lending Act, 15 U.S.C. § 1602(v).

21 (6) “Individual” means a natural person.

1 ~~(7)~~(1) “Loan” means a residential mortgage loan.

2 ~~(8)~~ “Nationwide Mortgage Licensing System and Registry” means a
3 licensing system developed and maintained by the Conference of State Bank
4 Supervisors and the American Association of Residential Mortgage
5 Regulators, or any successor to the Nationwide Mortgage Licensing System
6 and Registry.

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

10 ~~(10)~~ “Residential mortgage loan” means any loan primarily for personal,
11 family, or household use that is secured by a mortgage, deed of trust, or other
12 equivalent consensual security interest on either a dwelling or residential real
13 estate, upon which is constructed or intended to be constructed a dwelling.

14 ~~(11)~~ “Residential real estate” means any real property located in
15 Vermont, upon which is constructed or intended to be constructed a dwelling.

16 ~~(12)~~(2) “Servicing” means receiving a scheduled periodic payment from
17 a borrower pursuant to the terms of a loan, including amounts for escrow
18 accounts, and making the payments to the owner of the loan or other third
19 party of principal and interest and other payments with respect to the amounts
20 received from the borrower as may be required pursuant to the terms of the
21 servicing loan document or servicing contract. In the case of a home equity

1 conversion mortgage or a reverse mortgage, servicing includes making
2 payment to the borrower.

3 (13)(3) “Third party loan servicer” means a person who engages in the
4 business of servicing a loan, directly or indirectly, owed or due or asserted to
5 be owed or due another.

6 Sec. 82. REPEAL

7 8 V.S.A. § 2902 (application for license) is repealed.

8 Sec. 83. REPEAL

9 8 V.S.A. § 2904 (approval of license) is repealed.

10 Sec. 84. REPEAL

11 8 V.S.A. § 2905 (review of denial) is repealed.

12 Sec. 85. REPEAL

13 8 V.S.A. § 2906 (contents of license) is repealed.

14 Sec. 86. REPEAL

15 8 V.S.A. § 2908 (additional places of business) is repealed.

16 Sec. 87. REPEAL

17 8 V.S.A. § 2909 (notice of change of condition) is repealed.

18 Sec. 88. REPEAL

19 8 V.S.A. § 2910 (renewal of license) is repealed.

20 Sec. 89. REPEAL

21 8 V.S.A. § 2911 (revocation of license) is repealed.

1 Sec. 90. REPEAL

2 8 V.S.A. § 2912 (surrender of license) is repealed.

3 Sec. 91. REPEAL

4 8 V.S.A. § 2913 (review of suspension) is repealed.

5 Sec. 92. REPEAL

6 8 V.S.A. § 2914 (rulemaking) is repealed.

7 Sec. 93. REPEAL

8 8 V.S.A. § 2915 (penalties) is repealed.

9 Sec. 94. 8 V.S.A. § 2917 is amended to read:

10 § 2917. EXAMINATIONS, INVESTIGATIONS; EXAMINATION FEES

11 ~~(a) In addition to any authority allowed under this chapter or elsewhere, and~~
12 ~~for the purpose of examination or discovering or investigating violations or~~
13 ~~complaints of or arising under this chapter or any other section of applicable~~
14 ~~law, or any rule, order, directive, or regulation lawfully made thereunder, or~~
15 ~~securing any information required or useful thereunder, and for purposes of~~
16 ~~initial licensing, license renewal, license suspension, license conditioning,~~
17 ~~license revocation or termination, or general or specific inquiry or~~
18 ~~investigation, the Commissioner or his or her duly designated representative~~
19 ~~shall have the authority to:~~

20 (1) ~~conduct investigations and examinations;~~

1 ~~(2) access, receive, and use any books, accounts, records, files,~~
2 ~~documents, information, or evidence, including:~~

3 ~~(A) criminal, civil, and administrative history information, including~~
4 ~~nonconviction data;~~

5 ~~(B) personal history and experience information, including~~
6 ~~independent credit reports obtained from a consumer reporting agency~~
7 ~~described in Section 603(p) of the Fair Credit Reporting Act; and~~

8 ~~(C) any other documents, information, or evidence the Commissioner~~
9 ~~deems relevant to the inquiry or investigation regardless of the location,~~
10 ~~possession, control, or custody of such documents, information, or evidence.~~

11 ~~(b) The Commissioner may review, investigate, or examine any licensee,~~
12 ~~individual, or person regardless of whether such individual or person has~~
13 ~~obtained a license under this chapter as often as necessary in order to carry out~~
14 ~~the purposes of this chapter. The Commissioner may direct, subpoena, or order~~
15 ~~the attendance of and examine under oath all persons whose testimony may be~~
16 ~~required about the loans or the business or subject matter of any such~~
17 ~~examination or investigation, and may direct, subpoena, or order such person~~
18 ~~to produce books, accounts, records, files, and any other documents the~~
19 ~~Commissioner deems relevant to the inquiry.~~

20 ~~(c) Each licensee, individual, or person subject to this chapter shall make~~
21 ~~available to the Commissioner upon request the books and records relating to~~

1 ~~the operations of such licensee, individual, or person. The Commissioner shall~~
2 ~~have access to such books and records and to interview the officers, principals,~~
3 ~~control persons, employees, independent contractors, agents, and customers of~~
4 ~~the licensee, individual, or person concerning the business.~~

5 ~~(d) Each licensee, individual, or person subject to this chapter shall make or~~
6 ~~compile reports or prepare other information as directed by the Commissioner~~
7 ~~in order to carry out the purposes of this section, including:~~

8 ~~(1) accounting compilations;~~

9 ~~(2) information lists and data concerning loans in a format prescribed by~~
10 ~~the Commissioner; and~~

11 ~~(3) such other information as the Commissioner deems necessary to~~
12 ~~carry out the purposes of this chapter.~~

13 ~~(e) In making any examination or investigation authorized by this chapter,~~
14 ~~the Commissioner may control access to any documents and records of the~~
15 ~~licensee or person under examination or investigation. The Commissioner may~~
16 ~~take possession of the documents and records or place a person in exclusive~~
17 ~~charge of the documents and records in the place where they are usually kept.~~
18 ~~During the period of control, no individual or person shall remove or attempt~~
19 ~~to remove any of the documents and records except pursuant to a court order~~
20 ~~or with the consent of the Commissioner. Unless the Commissioner has~~
21 ~~reasonable grounds to believe the documents or records of the licensee have~~

1 ~~been or are at risk of being altered or destroyed for purposes of concealing a~~
2 ~~violation of this chapter, the licensee or owner of the documents and records~~
3 ~~shall have access to the documents and records as necessary to conduct its~~
4 ~~ordinary business affairs.~~

5 ~~(f) In order to carry out the purposes of this chapter, the Commissioner~~
6 ~~may:~~

7 ~~(1) retain attorneys, accountants, or other professionals and specialists as~~
8 ~~examiners, auditors, or investigators to conduct or assist in the conduct of~~
9 ~~examinations or investigations;~~

10 ~~(2) enter into agreements or relationships with other government~~
11 ~~officials or regulatory associations in order to improve efficiencies and reduce~~
12 ~~regulatory burden by sharing resources, standardized or uniform methods or~~
13 ~~procedures, and documents, records, information, or evidence obtained under~~
14 ~~this section;~~

15 ~~(3) use, contract for, or employ public or privately available analytical~~
16 ~~systems, methods, or software to examine or investigate the licensee,~~
17 ~~individual, or person subject to this chapter;~~

18 ~~(4) accept and rely on examination or investigation reports made by~~
19 ~~other government officials within or without this State; or~~

20 ~~(5) accept audit reports made by an independent certified public~~
21 ~~accountant for the licensee, individual, or person subject to this chapter in the~~

1 ~~course of that part of the examination covering the same general subject matter~~
2 ~~as the audit and may incorporate the audit report in the report of the~~
3 ~~examination, report of investigation, or other writing of the Commissioner.~~

4 (g) ~~The authority of this section shall remain in effect whether such~~
5 ~~licensee, individual, or person acts or claims to act under any licensing or~~
6 ~~registration law of this State, acts without such authority, or surrenders such~~
7 ~~licensee's license.~~

8 (h) ~~No licensee, individual, or person subject to investigation or~~
9 ~~examination under this section may knowingly withhold, abstract, remove,~~
10 ~~mutilate, destroy, or secrete any books, records, computer records, or other~~
11 ~~information.~~

12 (i) ~~The Commissioner shall make an examination of~~ examine ~~the affairs,~~
13 ~~business, and records of each licensee~~ under this chapter ~~at least once every~~
14 ~~three years. The Commissioner may, in the case of those licensees who do not~~
15 ~~maintain a Vermont office, accept reports of examinations prepared by another~~
16 ~~state or federal regulatory agency as substitutes if such reports are available to~~
17 ~~the Commissioner and are determined to be adequate in exercising his or her~~
18 ~~powers and discharging his or her responsibilities under this chapter.~~

19 (j) ~~Each licensee shall pay to the Department all fees, costs, and expenses of~~
20 ~~any examination, review, and investigation as prescribed by section 18 of this~~
21 ~~title, which fees, costs, and expenses shall be billed when they are incurred. In~~

1 addition to the powers set forth in section 2910 of this chapter, the
2 Commissioner may maintain an action for the recovery of examination, review
3 and investigation fees, costs, and expenses as prescribed in section 18 of this
4 title in any court of competent jurisdiction.

5 Sec. 95. REPEAL

6 8 V.S.A. § 2918 (records) is repealed.

7 Sec. 96. REPEAL

8 8 V.S.A. § 2919 (annual report) is repealed.

9 Sec. 97. REPEAL

10 8 V.S.A. § 2920 (other names or places of business) is repealed.

11 Sec. 98. REPEAL

12 8 V.S.A. § 2921 (NMLS) is repealed.

13 Sec. 99. REPEAL

14 8 V.S.A. § 2923 (confidentiality) is repealed.

15 * * * Financial and Related Institutions, Consumer Protection, 8 V.S.A.
16 Chapter 200 * * *

17 Sec. 100. 8 V.S.A. § 10206 is amended to read:

18 § 10206. ~~TRIGGER LEAD~~ LEAD SOLICITATIONS FOR MORTGAGE
19 LOANS

20 (a) ~~In~~ As used in this section:

21 (1) “~~Consumer~~ consumer” means a natural person residing in this State.

1 (2) “Trigger lead” means information about a consumer, including the
2 consumer’s name, address, telephone number, and an identification of the
3 amount, terms, or conditions of credit for which the consumer has applied, that
4 is:

5 (A) ~~a consumer report obtained pursuant to section 604(c)(1)(B) of~~
6 the federal Fair Credit Reporting Act, 15 U.S.C. § 1681b, where the issuance
7 of the report is triggered by an inquiry made with a consumer reporting agency
8 in response to an application for a mortgage loan; and

9 (B) ~~furnished by the consumer reporting agency to a third party that~~
10 ~~is not affiliated with the financial institution or the credit reporting agency. A~~
11 ~~trigger lead does not include information about a consumer obtained by a~~
12 ~~lender that holds or services the existing mortgage indebtedness of the~~
13 ~~consumer who is the subject of the information.~~

14 (3) “Trigger lead solicitation” means a written or verbal offer or
15 attempt to sell any property, rights, or services to a consumer based on a
16 trigger lead.

17 (b) A person shall not use the name, trade name, or trademark of any
18 financial institution in any written or oral advertisement or solicitation to a
19 specifically identified consumer, or which contains specific information on the
20 account or loan of a specifically identified consumer, for products or services,
21 without the express written consent of the financial institution.

1 ~~(b)(c)~~ A person conducting a trigger lead solicitation shall disclose to a
2 consumer in the initial phase of the solicitation shall not include a loan
3 number, loan amount, or any other specific loan information that is publicly
4 available and relative to a specifically identified consumer in any written or
5 oral solicitation for products or services unless the solicitation clearly and
6 conspicuously states on the front page of the correspondence in bold-face type
7 and in a type size at least equal to the body of the correspondence:

8 (1) that the person is not affiliated with or sponsored by the financial
9 institution ~~to which the consumer has submitted an application for credit;~~

10 (2) that the solicitation is not authorized by the financial institution;

11 ~~(2)(3)~~ that the financial institution to which the consumer has submitted
12 an application for credit has not supplied the person with any loan information
13 or personal or financial information referenced in the solicitation; and

14 ~~(3)(4)~~ the name, address, and telephone number of the person who paid
15 for the ~~trigger lead~~ solicitation.

16 (d) The statements required by subsection (c) of this section shall also be
17 given at the time of any oral solicitation to a specifically identified consumer.

18 (e) In addition to any other authority provided elsewhere, the
19 Commissioner may enforce violations of the section against any person and
20 may impose penalties as set forth in sections 2110 and 2115 of this title; may
21 recover costs and attorneys' fees, including court costs; may order any person

1 to cease violating this section; and may take such other actions as the
2 Commissioner deems necessary and appropriate. All administrative
3 proceedings shall be conducted in accordance with 3 V.S.A. chapter 25 and
4 any rules adopted by the Commissioner on hearing procedures.

5 (e)(f) A financial institution ~~which~~ that has had its name, trade name, or
6 trademark misrepresented in a ~~trigger-lead~~ solicitation in violation of this
7 section may, in addition to any other remedy provided by law, bring an action
8 in Superior Court in the county of its primary place of business, or if its
9 primary place of business is located outside Vermont, in Washington Superior
10 Court. The ~~Court~~ court shall award damages for each violation in the amount
11 of actual damages demonstrated by the financial institution or \$5,000.00,
12 whichever is greater. In any successful action for injunctive relief or for
13 damages, the ~~Court~~ court shall award the financial institution reasonable
14 attorney's fees and costs, including ~~Court~~ court costs.

15 (g) A person's failure to comply with the requirements of this section shall
16 constitute an unfair and deceptive act in commerce enforceable under 9 V.S.A.
17 chapter 63.

18 (h) For purposes of this section, each solicitation sent to each consumer
19 constitutes a separate violation.

1 Sec. 101. 8 V.S.A. § 10302 is amended to read:

2 § 10302. AUTOMATED TELLER MACHINES

3 (a) The owner of an automated teller machine or other remote service unit,
4 including a cash dispensing machine, located or employed in this State shall
5 prominently and conspicuously disclose on or at the location of each such
6 machine or on the first screen of each such machine the identity, address, and
7 telephone number of the owner and the availability of consumer assistance.

8 The owner shall also disclose on the screen of such machine or on a paper
9 notice issued from the machine the amount of the fees or charges which the
10 owner will assess to the consumer for the use of that machine. The amount of
11 the fees or charges shall be disclosed before the consumer is irrevocably
12 committed to completing the transaction. The Commissioner shall approve the
13 form, content, timing, and location of such disclosures and any amendments
14 thereto prior to use. The Commissioner shall act on any submission made
15 under this section within 30 days of receipt. If the Commissioner determines
16 that any disclosures do not provide adequate consumer protection, the
17 Commissioner may by order or by rule specify minimum disclosure standards,
18 including the form, content, timing, and location of such disclosures. The
19 Commissioner may impose on the owner of an automated teller machine or
20 other remote service unit an administrative penalty of not more than \$1,000.00
21 for each day's failure of the owner to apply to the Commissioner for approval

1 of disclosures required under this section, for each day's failure of the owner
2 to use disclosures approved by the Commissioner, or for each day's continuing
3 violation of an order of the Commissioner relating to the disclosures required
4 by this section.

5 (b) The owner of an automated teller machine or other remote service unit,
6 including a cash dispensing machine, located or employed in this State shall
7 notify the Commissioner of the location of each terminal at least 30 days prior
8 to the activation of such terminal. The owner shall notify the Commissioner of
9 the deactivation of any terminal within 30 days after the deactivation of such
10 terminal.

11 (b)(c) In addition to an automated teller machine or other remote service
12 unit owned by a financial institution or credit union, the provisions of this
13 section shall apply to any automated teller machine or other remote service
14 unit not owned by a financial institution or credit union, except it shall not
15 include a point-of-sale terminal owned or operated by a merchant who does
16 not charge a fee for the use of the point-of-sale terminal. The activities of an
17 automated teller machine or other remote service unit whose owner is not a
18 financial institution shall be limited to cash dispensing or the offer or sale of
19 nonbanking services and products.

20 Sec. 102. REPEAL

21 8 V.S.A. § 10503 (quarterly survey on basic banking) is repealed.

1 Sec. 103. 8 V.S.A. § 10602 is amended to read:

2 § 10602. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

3 (a) All persons subject to this subchapter shall comply with all applicable
4 requirements of the Truth in Lending Act of 1968, Pub. L. No. 90-321, Title I
5 and Regulation Z, 12 C.F.R. Part ~~226~~ 1026; the Real Estate Settlement
6 Procedures Act of 1974, Pub. L. No. 93-533 and Regulation X, ~~24~~ 12 C.F.R.
7 Part ~~3500~~ 1024; and the Bank Secrecy Act of 1970, Pub. L. No. 91-508 and
8 31 C.F.R. Chapter X, as now or hereafter amended.

9 (b) The Commissioner may make such investigations and examinations to
10 enforce the provisions of this subchapter as the Commissioner deems
11 necessary or appropriate and may take any appropriate actions against any
12 person whom the Commissioner has reason to believe has violated or is in
13 violation of this subchapter.

14 * * * Interest; 9 V.S.A. Chapter 4 * * *

15 Sec. 104. 9 V.S.A. § 47 is amended to read:

16 § 47. APPLICATION OF PAYMENTS

17 (a) On a note, bill, or other similar obligation, payable on demand or at a
18 specified time, with interest, when a payment is made, the payment shall be
19 applied: first, to liquidate the interest accrued at the time of the payment; and
20 second, to extinguish the principal.

1 (b) Notwithstanding any other provision of the chapter to the contrary,
2 payments shall be applied to interest, principal, and escrow charges, if any,
3 before any portion of the payment is applied to late fees, delinquency charges,
4 deferral charges, or any similar fees or charges.

5 * * * Foreclosure of Mortgage; 12 V.S.A. Chapter 172 * * *

6 Sec. 105. REPEAL

7 12 V.S.A. § 4933 (notice to Commissioner) is repealed.

8 * * * Policy and Administration; 8 V.S.A. Chapter 1 * * *

9 Sec. 106. 8 V.S.A. § 15 is amended to read:

10 § 15. RULES, ORDERS, AND ADMINISTRATIVE INTERPRETATIONS

11 (a) In addition to other powers conferred by this title and 18 V.S.A.
12 chapter 221, the Commissioner may adopt rules and issue orders as shall be
13 authorized by or necessary to the administration of this title and of 18 V.S.A.
14 chapter 221, and to carry out the purposes of such titles.

15 (b) The Commissioner may, whether or not requested by any person, issue
16 written advisory interpretations, advisory opinions, non-objection letters, and
17 no action letters under ~~of Part 4 of~~ this title and regulations issued under it,
18 including interpretations of the applicability of any provision of this title and
19 regulations issued under it. Such interpretations shall be presumed to be
20 correct unless found to be clearly erroneous by a court of competent

1 jurisdiction. The Commissioner may make public all or a portion of an
2 advisory interpretation.

3 * * *

4 Sec. 107. 8 V.S.A. § 19 is amended to read:

5 § 19. FEES AND DEPARTMENTAL EXPENSES

6 (a) The Commissioner shall charge each financial institution or financial
7 institution applicant for Department services rendered. Charges for
8 Department services shall be billed as follows:

9 (1) New financial institution application or new independent trust
10 company application, \$5,000.00.

11 (2) Interim reorganization application, \$2,000.00.

12 (3) Merger, change in control, or other reorganization, share exchange,
13 consolidation, or acquisition, \$2,000.00.

14 (4) Conversion of a charter, \$2,500.00.

15 (5) Establishment of a branch in the State, \$500.00.

16 (6) Establishment of a remote service unit, \$250.00. Where more than
17 one remote service unit performing identical services on single premises are
18 petitioned at the same time, the total charge shall be \$250.00. This fee shall
19 not apply if the remote service unit is placed at an existing branch.

20 (7) Relocation of main office, branch, or remote service unit, \$250.00.

- 1 (8) For trust powers subsequent to the granting of the authority as
2 financial institution, \$2,000.00.
- 3 (9) Sale of branch, \$500.00.
- 4 (10) Sale, lease, or exchange of all an institution's assets, \$5,000.00.
- 5 (11) Voluntary dissolution or liquidation of an institution, \$5,000.00.
- 6 (12) Establishment of a special purpose financial institution,
7 \$5,000.00.
- 8 (13) Establishment of a temporary agency, \$150.00.
- 9 (14) Activity at a school, \$250.00.
- 10 (15) Establishment of a loan production office or engaging in loan
11 production activity in the State, \$750.00.
- 12 (16) Permit a foreign exchange activity, \$500.00.
- 13 (17) Purchase or establish a subsidiary or service corporation,
14 \$2,500.00.
- 15 (18) Certificate (good standing), \$100.00.
- 16 (19) Establish a development credit corporation, \$1,000.00.
- 17 (20) Permission to use "bank" in name, \$100.00.
- 18 (21) ~~Letter of non-objection~~ Advisory interpretations, advisory
19 opinions, non-objection letters, and no action letters, \$250.00, plus expenses.
- 20 (22) Increase or reduction in permanent capital, \$250.00.

1 (23) New credit union application, new credit union service
2 organization application, or new corporate credit union application, \$2,500.00.

3 (24) Extension of a certificate of general good or extension of a
4 certificate of approval, \$50.00.

5 (25) Contract with another financial institution as agent, \$500.00.

6 (26) Any other corporate organizational changes not covered in this
7 subsection, \$250.00 plus expenses. No petition or application shall be
8 considered by the Commissioner until payment for the enumerated charge has
9 been received.

10 * * *

11 * * * Land Use Change Tax Lien * * *

12 Sec. 108. 32 V.S.A. § 3757(f) is amended to read:

13 (f)(1)(A) When the application for use value appraisal of agricultural land
14 and forestland has been approved by the State, the State shall record a notice
15 of contingent lien against the enrolled land in the land records of the
16 municipality ~~that shall constitute a lien to secure payment of the land use~~
17 ~~change tax to the State upon development.~~

18 (B) The landowner shall bear the recording cost.

19 (C) The notice of contingent lien shall constitute notice to all
20 interested parties that a lien against the enrolled land will be created upon the

1 recording in the land records of a determination that development of that land,
2 as defined in section 3752 of this title, has occurred.

3 (D) The lien created by the recording of the notice of development
4 shall be for the amount of the land use change tax then due, as specified in the
5 notice of development.

6 (E) A lien recorded in the land records of a municipality under this
7 section on or after April 17, 1978 shall be deemed to be a contingent lien.

8 (2) The land use change tax and any obligation to repay benefits paid in
9 error shall not constitute a personal debt of the person liable to pay the same,
10 but shall constitute a lien ~~which~~ that shall run with the land. All of the
11 administrative provisions of chapter 151 of this title, including those relating
12 to collection and enforcement, shall apply to the land use change tax. The
13 Director shall release the lien when notified that:

14 (A) the land use change tax is paid;

15 (B) the land use change tax is abated pursuant to this section;

16 (C) the land use change tax is abated pursuant to subdivision 3201(5)
17 of this title;

18 (D) the land is exempt from the levy of the land use change tax
19 pursuant to this section and the owner requests release of the lien; or

20 (E) the land is exempt from the levy of the land use change tax
21 pursuant to this section and the land is developed.

