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MEMORANDUM

TO: Representative Kimbell
FROM: Department of Financial Regulation
SUBJECT: S. 154 - Banking Division Bill – Floor Notes
DATE: April 9, 2019

Overview

This bill revises and consolidates the common provisions in the Title 8, Part 2, license chapters into a new general chapter. Specifically, it consolidates the common provisions in Chapter 73 (Licensed Lenders), Chapter 74 (Consumer Litigation Funding Companies), Chapter 79 (Money Services), Chapter 83 (Debt Adjusters), and Chapter 85 (Loan Servicers) into a new Chapter 72 (General Provisions) that applies to all licensees.

As the Nationwide *Multistate* Licensing System or NMLS (formerly Nationwide *Mortgage* Licensing System) matured, the Department and other states began utilizing NMLS as the licensing system for more than just mortgage lenders. As new license types were brought onto NMLS, the required NMLS provisions and regulatory updates were added to the various chapters on a piecemeal basis. Placing all the common provisions in one chapter will ensure that the Department can use NMLS as it continues to mature and will enable the Department to work with other state regulators.

In addition, the bill makes the following revisions and updates:

- Authorizes the Department to deem a license application abandoned if it is incomplete and there has been no correspondence from the applicant for 90 days.
- Provides that the Department will review Consumer Litigation Funding Company applications like other applications, including financial responsibility, experience, character, general fitness, and criminal background checks. [NOTE: current law only requires that litigation funding company applicants show proof of financial responsibility and provide a surety bond or letter of credit.]
- Updates the administrative penalty provisions to make them consistent for all licensees.

- Changes the three-year exam cycle for loan solicitation companies to a risk-based exam cycle.
- Excludes from the money services license requirement: (1) agents of payees; (2) payment processors; and (3) independent trust companies.
- Changes the term “stored value” in the money services chapter to “prepaid access” to match the more current term.
- Sunsets the litigation funding report requirements on Dec. 31, 2021.
- Updates cross references to federal laws and regulations.
- Authorizes the Department to provide advisory opinions, non-objection letters, and no action letter and charge a reasonable fee.
- Requires owners of ATMs to notify the Department when a terminal is activated and when it is deactivated.
- Prohibits a lead solicitation company from using the name of a financial institution without the financial institution’s consent and gives the Department, the financial institution, and the Attorney General the ability to pursue violations.
- Eliminates the quarterly basic banking survey.
- Clarifies the application of loan payments to principal, interest, and escrow amounts before they are applied to late fees.
- Eliminates the requirement to file copies of mortgage foreclosure notices with the Department.
- Changes the land use tax lien to a contingent lien.

Section by Section

Sec. 1 (p. 1; page references are to the “As Passed by Senate” version that appears on the committee’s webpage)

Changes the title of Part 2 from “Banks and Other Financial Institutions” to “Financial and Related Services; Licensees.” Banks were removed from Part 2 in 2001 and are now in Part 4 of Title 8.

Chapter 72 General Provisions

Sec. 2 (pp. 1 – 40)

Creates a new Chapter 72 (General Provisions) and moves the common provisions of Chapters 73, 74, 79, 83, and 85 into the new chapter.

The substantive changes in pp. 1 – 40 are:

- P. 9, § 2103. Approval of Application and Issuance of License. Moving the license approval section to the general provisions chapter, and the changes to Chapter 74 (Consumer Litigation Funding Companies), will now provide that Consumer Litigation Funding Company applications are fully vetted, like all other applications, including financial responsibility, experience, character, general fitness, and criminal background checks.
- P. 13, § 2103(e). Adds a provision that if the application is incomplete and the Department has not heard from the applicant for 90 days, the Department can deem the application abandoned.
- P. 15, § 2105(b). Current law provides that a mortgage loan originator license include the individual's residence. Due to privacy concerns, the individual's residence is being deleted and replaced with the individual's sponsoring company and the location at which the individual is employed.
- P. 26, § 2115. Creates a uniform administrative penalty of \$10,000 per violation. Currently the administrative penalties in the various chapter range from \$1,000 to \$10,000 per violation. The Department's experience has shown that when potential administrative penalties are too low, some companies treat the administrative penalties as a cost of doing business instead of trying to comply with our laws.

Chapter 73 – Licensed Lenders, etc.

Sec. 3 – 32 (pp. 40 – 77)

Sections 3 – 32 remove provisions that have been moved to Chapter 72, update the name of the Nationwide *Mortgage* Licensing System to the Nationwide *Multistate* Licensing System, update cross references, and renumber sections so that common topics follow one another in the chapter.

The substantive changes in Sec. 3 – 32 (pp. 40 – 77) are:

- Sec. 3, P. 41. Change the title of Chapter 73 from “Licensed Lenders” to “Licensed Lenders, Mortgage Brokers, Mortgage Loan Originators, Sales Finance Companies, and Loan Solicitation Companies” to more accurately describe the license types governed by Chapter 73.
- Sec. 24, PP. 70, 74, § 2222. Changes the frequency of loan solicitation company examinations from every 3 years to a risk-based frequency. Some loan solicitation companies are licensed in Vermont so that they can advertise that they do business in all 50 states, but they may not place any loans for Vermont customers.

Chapter 74 – Consumer Litigation Funding Companies

Sec. 33 - 39 (pp. 77 – 84)

Sections 33 – 39 remove provisions that have been moved to Chapter 72.

The substantive change in Sec. 33 – 39 (pp. 77 – 84) is:

- Sec. 39, P. 83, § 2260 (b), (c) and Sec. 149(b), P. 150. Sunsetting the reports required by § 2260 (b) and (c) on December 31, 2021. There are only 2 litigation funding companies licensed in Vermont with limited activity. Consequently, there is very little information to report. The sunset provisions are in Sec. 109(b) on p. 150.

Chapter 79 – Money Services

Sec. 40 – 63 (pp. 84 – 111)

Sections 40 – 63 remove provisions that have been moved to Chapter 72.

The substantive changes in Sec. 40 – 63 (pp. 83 – 111) are:

- Sec. 40, P. 86, 87, § 2500(12). Delete the definition of “stored value” and replace it with “prepaid access.” While the definitions are substantially the same, “prepaid access” is the term being used in other states. Like the definition of stored value, the new definition of prepaid access includes gift cards, prepaid debit cards, and virtual currency. The term prepaid access replaces the term stored value throughout sections 40 – 63.
- Sec. 41, P. 89, § 2501(a)(4). Clarifies that a chartered and regulated independent trust company does not need to also obtain a money services license.
- Sec. 41, P. 90, § 2501(a)(9)(B). Creates a licensing exemption for payment processors that enter into contracts with banks to perform the back-office money transmission functions for the bank.
- Sec. 41, P. 90, § 2501(a)(9)(C). Creates an exemption for companies that act as an intermediary to accept payment on behalf of a vendor. The contractual relationship between the vendor and the intermediary must provide that as soon as the consumer pays the intermediary, the consumer’s obligation to the vendor is extinguished. This is commonly known in other states as the “agent of the payee” exemption.

Chapter 81 – Gift Certificates

Sec. 64 – 65 (pp. 111 – 113)

Sections 64 – 65 replace the term “stored value” with the new term “prepaid access.”

Chapter 83 – Debt Adjusters

Sec. 66 – 80 (pp. 113 – 129)

Sections 66 – 80 remove provisions that have been moved to Chapter 72.

Chapter 85 – Loan Servicers

Sec. 81 – 99 (pp. 129 – 138)

Sections 81 – 99 remove provisions that have been moved to Chapter 72.

Chapter 200 – Financial and Related Institutions, Consumer Protection

Sec. 100 (pp. 138 – 141)

Section 100 updates 8 V.S.A. § 10206, the lead solicitation statute, to prohibit a company from using a financial institution’s name in an advertisement to a specific bank customer without the financial institution’s consent. Likewise, a company may not use a loan number, loan amount, or other specific loan information that may be publicly available in a solicitation unless the company discloses in clear and conspicuous bold face type that the company is not affiliated with the financial institution, the financial institution did not authorize the solicitation, and the financial institution did not provide the loan information to the company.

As updated, § 10206 provides that the Department, the affected financial institution, and the attorney general may take action for violations of this section.

[Additional Notes:

- **Example** – mail solicitation that has National Bank of Middlebury in bold type on the solicitation and then in mouse print states that it is not from the bank, but from some other company. The solicitation appears to be coming from the bank when it is not.
- The updates are taken from Massachusetts law.]

Sec. 101 (pp. 142 – 143)

Sec. 101 updates 8 V.S.A. § 10302 to require owners of ATMs to inform the Department when they activate and deactivate a terminal.

Sec. 102 (p. 143)

Sec. 102 eliminates the requirement in 8 V.S.A. § 10503 that the Department conduct a quarterly survey on basic banking. The survey requirement was added in 1999 and served a useful purpose for some years. However, given the evolution of banking products and fee structures, and the use of websites, consumers today can easily access and compare information from various institutions.

Sec. 103 (p. 144)

Sec. 103 updates cross references to federal regulations in 8 V.S.A. § 10602.

9 V.S.A. Chapter 4 – Interest

Sec. 104 (p. 145)

Sec. 104 updates 9 V.S.A. § 47 to require that payments are applied first to interest, principal, and escrow charges before they are applied to late fees.

12 V.S.A. Chapter 172 – Foreclosure of Mortgages

Sec. 105 (pp. 145)

Sec. 105 removes the requirement in 12 V.S.A. § 4933 that mortgage holders file notices of foreclosure with the Department. This requirement was part of the response to the mortgage meltdown. The Department no longer needs the granular first-hand information. Consumer complaints about foreclosure issues can now be handled through the Department's normal complaint process.

8 V.S.A. Chapter 1 – Policy and Administration

Sec. 106 – 107 (pp. 145 – 148)

Sections 106 and 107 amend 8 V.S.A. §§ 15 and 19 to authorize the Commissioner to issue advisory opinions and non-objection letter and charge a \$250 fee therefore.

Land Use Change Tax Lien

Sec. 108 – 109(a) (pp. 148 – 150)

Sections 108 and 109(a) amend the Land Use Tax Lien statute, 32 V.S.A. § 3757(f), to make it a contingent lien instead of a lien with an unspecified amount when property is entered into the land use tax program. The current statute has created difficulties with selling mortgages on the secondary market.