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MEMORANDUM

TO: David Hall, Legislative Council
FROM: Michael Pieciak, Commissioner
Molly Dillon, Deputy Commissioner of Banking
Jill Rickard, Director of Policy
SUBJECT: 2019 DFR Banking Bill
DATE: April 9, 2019

Please find below a summary of items in DFR's 2019 banking bill.

Licensing statutory revision

For improved consistency, DFR has proposed to revise and consolidate the common provisions in Title 8's licensing statute and update fees, including application, license, and renewal fees. The common provisions in the following chapters are consolidated into a new Chapter 72 that applies to all licenses: Chapter 73 (Licensed Lenders); Chapter 74 (Consumer Litigation Funding), Chapter 79 (Money Services); Chapter 83 (Debt Adjusters); and Chapter 85 (Loan Servicers). Approximately 90 pages of the bill remove sections from Chapters 73, 74, 79, 83, and 85 that are now in the new Chapter 72. Fee provisions are located in the fee bill.

In addition, the bill makes following revisions:

- 8 V.S.A. § 2103(e): Authorize DFR to deem a license application abandoned if it is incomplete and there is no correspondence from the applicant for 90 days.
- 8 V.S.A. §§ 15(b) and 19(a)(21): Authorize the Commissioner to provide interpretive opinions or issue determinations that he or she will not institute a proceeding or action against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with the licensing statutes, and permit DFR to collect a reasonable charge therefor.
- 8 V.S.A. § 2222: Change the three-year exam requirement for loan solicitation companies to risk-based examinations.
- Ensure the statute allows for DFR to meet any licensing standards under NMLS 2.0, the Multi-State MSB Licensing Agreement, or any similar agreements, including any potential fee impacts.

Money services

The bill revises Title 8, Chapter 79 as follows:

- 8 V.S.A. § 2501(a)(9): Add exclusions to the license requirement for: (1) agents of payees; (2) payment processors; and (3) independent trust companies.
- Change the term “stored value” to “prepaid access” and update the definition to resemble FinCEN (funds or monetary value represented in digital electronics format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically).
- Clarify that the administrative and criminal penalties in 8 V.S.A. §§ 2548 and 2549 apply to each violation, for conformity with penalties applicable to licensed lenders in 8 V.S.A. § 2215.

Other:

The bill makes following additional revisions in Titles 8, 9, and 12:

- Consumer litigation funding report: Amend 8 V.S.A. § 2260(b) and (c) to sunset the reporting requirement.
- Update the citations to federal laws and regulations in 8 V.S.A. § 10602.
- Automated teller machines: Revise 8 V.S.A. § 10302 to require owners of ATMs to notify the Commissioner at least 30 days prior to the activation of the terminal and notify the Commissioner within 30 days after the deactivation of the terminal.
- Trigger lead solicitations for mortgage loans: Revise 8 V.S.A. § 10206 to: (1) require any person conducting a trigger lead solicitation to *clearly and conspicuously* disclose that they are not affiliated with the financial institution to which the consumer has submitted an application for credit; and (2) permit DFR to take action against a person violating such subchapter.
- Basic banking survey: Delete 8 V.S.A. § 10503, which requires DFR to 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 pervasive use of websites, consumers today can easily access and compare information from various institutions. (Please refer to 2/1/19 memo)
- Application of payments: Add language to 9 V.S.A. § 47 specifying the order of payment application for notes, bills, and other obligations such that they are applied to interest, principal, and escrow charges, if any, before any portion of the payment is applied to late fees, delinquency charges, deferral charges, or any similar fees or charges.
- Disaster exception for retail installment contract amendments: Add a provision to 9 V.S.A. § 2358 to allow the Commissioner to grant exceptions to retail installment contract amendment signature requirements in the event of a natural disaster. (Please refer to 2/1/19 memo)

- Mortgage foreclosure reporting: Revise 12 V.S.A. § 4933 such that mortgage holders are no longer required to file copies of mortgage foreclosure notices with the Commissioner. DFR obtains consolidated filings from court clerks on a monthly basis.
- Land use change tax lien: Amend 32 V.S.A. § 3757(f) to record a notice of contingent lien, rather than file a lien, on agricultural and forest land for the land use change tax due upon its development; and delete 32 V.S.A. § 3777 (land use change tax lien subordination).