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H.648

Representative Olson of Starksboro recommends that the House concur in the Senate proposal of amendment with further proposal of amendment thereto as follows:

First: By striking out Sec. 11, 8 V.S.A. § 2507, in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. 8 V.S.A. § 2507 is amended to read:

§ 2507. MONEY TRANSMISSION KIOSK REGISTRATION

(a) A licensee shall not locate, or allow a third party to locate, a money transmission kiosk in this State ~~that allows users of the money transmission kiosk to engage in money transmission~~ through which money transmission is offered, facilitated, or engaged in, in whole or in part, directly or indirectly, by or on behalf of the licensee unless the licensee registers the money transmission kiosk and obtains the prior approval of the Commissioner for its activation.

(b) To apply for registration and approval to activate a money transmission kiosk, a licensee shall submit an application, using a form prescribed by the Commissioner, that includes the ownership and location of the money transmission kiosk, an affidavit of all businesses and services to be offered at the kiosk, the written agreement between the licensee and the owner of the money transmission kiosk if different persons, and the text of each disclosure

1 required pursuant to subsection (c) of this section along with a description of
2 the form, timing, and location for each disclosure.

3 (c) Each money transmission kiosk shall disclose prominently and
4 conspicuously, using as high a contrast or resolution as any other display or
5 graphics on the money transmission kiosk, prior to the point at which a user of
6 the money transmission kiosk is irrevocably committed to completing any
7 transaction:

8 (1) on or at the location of the money transmission kiosk, or on the first
9 screen of such kiosk, the name, address, ~~and~~ telephone number, and Vermont
10 license number of the ~~owner of the kiosk~~ licensee and the days, time, and
11 means by which a consumer can contact the ~~owner~~ licensee for consumer
12 assistance; and

13 (2) on the screen of the money transmission kiosk:

14 ~~(A) for a transaction that does not involve virtual currency, the~~
15 amount of the fees or charges that will be assessed to the user of the money
16 transmission kiosk for the transaction by the licensee and by the owner of the
17 money transmission kiosk, a clear explanation of who is imposing each fee or
18 charge and that such fees and charges are in addition to any fees or charges that
19 may be imposed by other entities relevant to the particular transaction, and the
20 method by which the user may cancel the transaction to avoid the imposition of
21 fees or charges; ~~and~~

1 confirm the terms and conditions of the virtual-currency transaction, which
2 shall include the following:

3 ~~(A)~~(1) the type, value, date, precise time, and amount of the transaction;
4 and

5 ~~(B)~~(2) the consideration charged for the transaction, including:

6 ~~(i)~~(A) any charge, fee, commission, or other consideration for any
7 trade, exchange, conversion, or transfer involving virtual currency; and

8 ~~(ii)~~(B) any difference between the price paid by the customer for any
9 virtual currency and the prevailing market ~~price~~ value of such virtual currency,
10 if any;

11 ~~(C) for a customer of a virtual currency kiosk, a description of the~~
12 ~~virtual currency kiosk operator's refund policy, which shall be consistent with~~
13 ~~the requirements specified in subsections 2577(k) and (l) of this subchapter;~~

14 ~~(D) for a customer of a virtual currency kiosk, the customer warning~~
15 ~~described in subdivision (g)(1) of this section; and~~

16 ~~(E) the daily transaction limit, if applicable.~~

17 ~~(2) Disclosures for new kiosk accounts. When opening an account for a~~
18 ~~new customer, and prior to entering into an initial transaction for, on behalf of,~~
19 ~~or with such customer, each virtual currency kiosk operator shall disclose~~
20 ~~relevant terms and conditions associated with its products, services, and~~

1 ~~activities and with virtual currency, generally, including disclosures~~
2 ~~substantially similar to the following:~~

3 ~~(A) the customer’s liability for unauthorized virtual currency~~
4 ~~transactions;~~

5 ~~(B) under what circumstances the virtual currency kiosk operator~~
6 ~~will, absent a court or government order, disclose information concerning the~~
7 ~~customer’s account to third parties;~~

8 ~~(C) the customer’s right to receive periodic account statements and~~
9 ~~valuations from the virtual currency kiosk operator;~~

10 ~~(D) the customer’s right to receive a receipt, trade ticket, or other~~
11 ~~evidence of a transaction;~~

12 ~~(E) the customer’s right to prior notice of a change in the virtual-~~
13 ~~currency kiosk operator’s rules or policies;~~

14 ~~(F) a statement of the material risks associated with virtual currency~~
15 ~~transactions, generally, as described in subsection (h) of this section;~~

16 ~~(G) the name and telephone number of the Department of Financial~~
17 ~~Regulation and a statement disclosing that a customer may contact the~~
18 ~~Department with questions or complaints about a licensee; and~~

19 ~~(H) such other disclosures as are customarily given in connection~~
20 ~~with the opening of customer accounts.~~

1 (d) Licensee receipt requirements. Except as otherwise provided in
2 subsection (e) of this section, at the conclusion of a virtual-currency
3 transaction with or on behalf of a person, a licensee shall provide the person
4 with a receipt that contains:

5 (1) the name and contact information of the licensee, including
6 information the person may need to ask a question or file a complaint;

7 (2) the type of virtual currency, ~~value~~ quantity of virtual currency, date,
8 precise time, and amount of the transaction expressed in U.S. currency;

9 (3) the consideration charged for the transaction, including:

10 (A) any charge, fee, commission, or other consideration for any trade,
11 exchange, conversion, or transfer involving virtual currency; or

12 (B) the amount of any difference between the price paid by the
13 customer for any virtual currency and the prevailing market ~~price~~ value of such
14 virtual currency, if any; and

15 (4) any other information required pursuant to section 2562 of this title.

16 (e) Licensee daily confirmation. If a licensee discloses that it will provide
17 a daily confirmation in the initial disclosure under subsection (b) of this
18 section, the licensee may elect to provide a single, daily confirmation for all
19 transactions with or on behalf of a person on that day instead of a per-
20 transaction confirmation.

1 ~~(f) Kiosk transaction receipt. Notwithstanding any other provision of law~~
2 ~~to the contrary, a virtual currency kiosk operator shall provide a customer with~~
3 ~~both a paper and an electronic receipt in a retainable form for each virtual-~~
4 ~~currency transaction completed at a virtual currency kiosk. In addition to the~~
5 ~~information required to be included in a receipt under subsection (d) of this~~
6 ~~section or under section 2562 of this title, each receipt for a virtual currency~~
7 ~~transaction completed at a virtual currency kiosk shall include:~~

8 ~~(1) the identification of any applicable digital wallet address to which~~
9 ~~virtual currency is transmitted;~~

10 ~~(2) the full name of the account owner;~~

11 ~~(3) any unique transaction identifiers;~~

12 ~~(4) a prominent statement of the virtual currency kiosk operator's refund~~
13 ~~obligations under this section, in a form approved by the Commissioner;~~

14 ~~(5) a statement of the operator's liability for nondelivery or delayed~~
15 ~~delivery of virtual currency; and~~

16 ~~(6) the name and telephone number of the Department of Financial~~
17 ~~Regulation and a statement disclosing that a customer may contact the~~
18 ~~Department with questions or complaints about an operator.~~

19 ~~(g) Customer warning.~~

20 ~~(1) Prior to entering into a virtual currency transaction with a customer~~
21 ~~at a virtual currency kiosk, and as required by subdivision (c)(1)(D) of this~~

1 ~~section, each virtual currency kiosk operator shall ensure a warning is~~
2 ~~disclosed to the customer substantially similar to the following:~~

3 ~~Customer Notice. Please Read Carefully.~~

4 ~~Did you receive a phone call from your bank, software provider, the~~
5 ~~police, or were you directed to make a payment for Social Security, a utility~~
6 ~~bill, an investment, warrants, or bail money at this kiosk? STOP~~

7 ~~Is anyone on the phone pressuring you to make a payment of any kind?~~
8 ~~STOP~~

9 ~~I understand that the purchase and sale of cryptocurrency may be a final,~~
10 ~~irreversible, and nonrefundable transaction.~~

11 ~~I confirm I am sending funds to a digital wallet I own or directly have~~
12 ~~control over. I confirm that I am using funds gained from my own initiative to~~
13 ~~make my transaction.~~

14 ~~(2) A virtual currency kiosk operator shall ensure a customer has a~~
15 ~~readily accessible opportunity to end a transaction for any reason prior to its~~
16 ~~completion.~~

17 ~~(h) Statement of material risks. As used in subdivision (c)(2)(F) of this~~
18 ~~section, a statement of material risks associated with virtual currency~~
19 ~~transactions, generally, shall include disclosures substantially similar to the~~
20 ~~following:~~

1 ~~(1) Virtual currency is not legal tender, is not backed by the~~
2 ~~government, and accounts and value balances are not subject to Federal~~
3 ~~Deposit Insurance Corporation or Securities Investor Protection Corporation~~
4 ~~protections.~~

5 ~~(2) Legislative and regulatory changes or actions at the State, federal, or~~
6 ~~international level may adversely affect the use, transfer, exchange, and value~~
7 ~~of virtual currency.~~

8 ~~(3) Transactions in virtual currency may be irreversible and,~~
9 ~~accordingly, losses due to fraudulent or accidental transactions may not be~~
10 ~~recoverable.~~

11 ~~(4) Some virtual currency transactions shall be deemed to be made~~
12 ~~when recorded on a public ledger, which is not necessarily the date or time that~~
13 ~~the customer initiates the transaction.~~

14 ~~(5) The value of virtual currency may be derived from the continued~~
15 ~~willingness of market participants to exchange fiat currency for virtual~~
16 ~~currency, which may result in the potential for permanent and total loss of~~
17 ~~value of a particular virtual currency should the market for that virtual~~
18 ~~currency disappear.~~

19 ~~(6) There is no assurance that a person who accepts a virtual currency as~~
20 ~~payment today will continue to do so in the future.~~

1 ~~(7) The volatility and unpredictability of the price of virtual currency~~
2 ~~relative to fiat currency may result in significant loss over a short period of~~
3 ~~time.~~

4 ~~(8) The nature of virtual currency may lead to an increased risk of fraud~~
5 ~~or cyber attack.~~

6 ~~(9) The nature of virtual currency means that any technological~~
7 ~~difficulties experienced by the virtual currency kiosk operator may prevent the~~
8 ~~access or use of a customer's virtual currency.~~

9 ~~(10) Any bond or trust account maintained by the virtual currency kiosk~~
10 ~~operator for the benefit of its customers may not be sufficient to cover all~~
11 ~~losses incurred by customers.~~

12 Third: By adding a new section to be Sec. 14b, to read as follows:

13 Sec. 14b. 8 V.S.A. § 2577 is amended to read:

14 § 2577. VIRTUAL-CURRENCY KIOSK OPERATORS PROHIBITION

15 (a) ~~Daily transaction limit~~ Prohibition of virtual currency kiosks.

16 (1) ~~A virtual currency kiosk operator shall not accept or dispense more~~
17 ~~than \$2,000.00 of cash in a day in connection with virtual currency~~
18 ~~transactions with a single, new customer in this State via one or more virtual-~~
19 ~~currency kiosks~~ No person shall locate, operate, or otherwise make available
20 for use, or allow a third party to locate, operate, or otherwise make available
21 for use, a virtual currency kiosk in Vermont.

1 ~~(2) A virtual-currency kiosk operator shall not accept or dispense more~~
2 ~~than \$5,000.00 of cash in a day in connection with virtual-currency~~
3 ~~transactions with a single, existing customer in this State via one or more~~
4 ~~virtual-currency kiosks~~ No person shall offer, facilitate, or engage in, in whole
5 or in part, directly or indirectly, virtual-currency business activity via a money
6 transmission kiosk in Vermont.

7 (b) ~~Fee cap~~ Registration expiration and refunds. ~~The aggregate fees and~~
8 ~~charges, directly or indirectly, charged to a customer related to a single~~
9 ~~transaction or series of related transactions involving virtual-currency effected~~
10 ~~through a money transmission kiosk in this State, including any difference~~
11 ~~between the price charged to a customer to buy, sell, exchange, swap, or~~
12 ~~convert virtual-currency and the prevailing market value of such virtual~~
13 ~~currency at the time of such transaction, shall not exceed the greater of the~~
14 ~~following:~~ With respect to any virtual-currency kiosk in operation in Vermont
15 prior to July 1, 2026:

16 (1) ~~\$5.00; or~~ Expiration and termination. Any registration of a virtual-
17 currency kiosk shall expire and terminate on July 1, 2026.

18 (2) ~~15 percent of the U.S. dollar equivalent of virtual-currency involved~~
19 ~~in the transaction or transactions.~~

20 ~~(e) Single transaction.~~ ~~The purchase, sale, exchange, swap, or conversion~~
21 ~~of virtual-currency, or the subsequent transfer of virtual-currency, in a series of~~

1 ~~transactions shall be deemed to be a single transaction for purposes of~~
2 ~~subsections (a) and (b) of this section.~~

3 ~~(d) Licensing requirement. A virtual currency kiosk operator shall comply~~
4 ~~with the licensing requirements of this subchapter to the extent that the virtual-~~
5 ~~currency kiosk operator engages in virtual currency business activity.~~

6 ~~(e) Operator accountability. If a virtual currency kiosk operator allows or~~
7 ~~facilitates another person to engage in virtual currency business activity via a~~
8 ~~virtual currency kiosk in this State that is owned, operated, or managed by the~~
9 ~~virtual currency kiosk operator, the virtual currency kiosk operator shall do all~~
10 ~~of the following:~~

11 ~~(1) ensure that the person engaging in virtual currency business activity~~
12 ~~is licensed under subchapter 2 of this chapter to engage in virtual currency~~
13 ~~business activity and complies with all other applicable provisions of this~~
14 ~~chapter;~~

15 ~~(2) ensure that any charges collected from a customer via the virtual-~~
16 ~~currency kiosk comply with the fee cap established in subsection (b) of this~~
17 ~~section; and~~

18 ~~(3) comply with all other applicable provisions of this chapter.~~

19 ~~(f) Moratorium. To protect the public safety and welfare and safeguard the~~
20 ~~rights of consumers, virtual currency kiosks shall not be permitted to operate~~
21 ~~in Vermont prior to July 1, 2026. This moratorium shall not apply to a virtual-~~

1 ~~currency kiosk that was duly licensed and operational in Vermont on or before~~
2 ~~June 30, 2024.~~

3 ~~(g) Customer identification. For each virtual currency transaction~~
4 ~~occurring at a virtual currency kiosk in this State, the virtual currency kiosk~~
5 ~~operator shall verify the identity of the customer prior to accepting payment~~
6 ~~from the customer. A virtual currency kiosk operator shall not allow a~~
7 ~~customer to engage in any transaction at a virtual currency kiosk under any~~
8 ~~name, account, or identity other than the customer's own true name and~~
9 ~~identity. A virtual currency kiosk operator shall obtain a copy of a~~
10 ~~government-issued identification card that identifies the customer and shall~~
11 ~~collect additional customer information, including the customer's name, date~~
12 ~~of birth, telephone number, address, and email address prior to accepting any~~
13 ~~payment from a customer at a virtual currency kiosk in this State. In addition,~~
14 ~~a virtual currency kiosk operator shall take a photograph of the customer in a~~
15 ~~retainable format at the virtual currency kiosk for each transaction. A virtual-~~
16 ~~currency kiosk operator shall be strictly liable for any violation of this~~
17 ~~subsection.~~

18 ~~(h) Customer support. A virtual currency kiosk operator shall offer live,~~
19 ~~toll-free, telephone customer support during the hours of operation of a virtual-~~
20 ~~currency kiosk. The customer support telephone number shall be displayed on~~
21 ~~the virtual currency kiosk or on the virtual currency kiosk screen.~~

1 ~~(i) Mandatory live screening.~~

2 ~~(1) A virtual currency kiosk operator shall identify and speak by~~
3 ~~telephone with:~~

4 ~~(A) a new customer over 60 years of age prior to such customer's~~
5 ~~first virtual currency transaction with the virtual currency kiosk operator; or~~

6 ~~(B) a customer attempting to conduct more than \$5,000.00 in virtual~~
7 ~~currency transactions during any consecutive 10-day period.~~

8 ~~(2) The virtual currency kiosk operator's approval of a transaction~~
9 ~~subject to a mandatory live screening under this subsection shall be dependent~~
10 ~~upon its assessment of its communication with the customer during the~~
11 ~~screening.~~

12 ~~(3) A virtual currency kiosk operator shall record and retain a copy of~~
13 ~~each mandatory live screening.~~

14 ~~(4) During the mandatory live screening, the virtual currency kiosk~~
15 ~~operator shall:~~

16 ~~(A) positively identify the customer;~~

17 ~~(B) reconfirm any attestations made by the customer at the virtual-~~
18 ~~currency kiosk;~~

19 ~~(C) discuss the purpose of the transaction; and~~

20 ~~(D) discuss types of fraudulent schemes relating to virtual currency.~~

1 ~~(j) Blockchain analytics. A virtual-currency kiosk operator shall use~~
2 ~~blockchain analytics software and retain an established third party that~~
3 ~~specializes in performing blockchain analytics to assist in the prevention of~~
4 ~~sending purchased virtual currency from a virtual-currency kiosk operator to a~~
5 ~~digital wallet known to be affiliated with fraudulent activity at the time of a~~
6 ~~transaction. The Commissioner may request evidence from any virtual-~~
7 ~~currency kiosk operator of its current use of blockchain analytics.~~

8 ~~(k)~~ Full refund for new customers. The virtual-currency kiosk operator
9 shall provide a full refund to a customer who was fraudulently induced to
10 engage in a virtual-currency kiosk transaction, provided the fraudulently
11 induced transaction occurred while the customer was a new customer and
12 further provided the customer contacts the virtual-currency kiosk operator and
13 a law enforcement or government agency to inform the operator and the
14 agency of the fraudulent nature of the transaction within 90 days after the
15 customer's last virtual-currency transaction with the virtual-currency kiosk
16 operator. The refund shall include any fees charged in association with the
17 fraudulently induced transaction.

18 ~~(4)~~(3) Fee refund for existing customers. The virtual-currency kiosk
19 operator shall provide a fee refund to an existing customer who has been
20 fraudulently induced to engage in a virtual-currency kiosk transaction,
21 provided the customer contacts the virtual-currency kiosk operator and a law

1 enforcement or government agency to inform the operator and the agency of
2 the fraudulent nature of the transaction within 90 days after the last
3 fraudulently induced transaction. The refund shall include all fees charged in
4 association with the fraudulently induced transaction.

5 (4) Records retention. Until at least July 1, 2031, or a later date required
6 by the Commissioner, the virtual-currency kiosk operator shall maintain, and
7 make available to the Commissioner upon request, all records that the virtual-
8 currency kiosk operator was required to maintain prior to July 1, 2026.

9 (c) Violations. For any virtual-currency kiosk transaction occurring after
10 July 1, 2026, in violation of this section, the virtual-currency kiosk operator
11 shall provide a full refund to the customer upon request of the customer or the
12 Commissioner. The refund shall include any fees charged in association with
13 the transaction.

14 ~~(m) Fraud prevention. A virtual-currency kiosk operator shall take~~
15 ~~reasonable steps to detect and prevent fraud, including establishing and~~
16 ~~maintaining a written antifraud policy. The antifraud policy shall, at a~~
17 ~~minimum, include the following:~~

18 ~~(1) the identification and assessment of fraud-related risk areas;~~

19 ~~(2) procedures and controls to protect against identified risks;~~

20 ~~(3) allocation of responsibility for monitoring risks;~~

1 ~~(4) procedures for the periodic evaluation and revision of the antifraud~~
2 ~~procedures, controls, and monitoring mechanisms;~~

3 ~~(5) procedures and controls that prevent more than one customer from~~
4 ~~using the same digital wallet;~~

5 ~~(6) procedures and controls that enable the virtual currency kiosk~~
6 ~~operator to prevent a digital wallet from being used at a virtual currency kiosk~~
7 ~~it operates if the operator knows or reasonably should know the digital wallet~~
8 ~~is affiliated with fraudulent activities; and~~

9 ~~(7) policies and procedures for using a risk-based method for monitoring~~
10 ~~customers on a post transaction basis.~~

11 ~~(n) Due diligence policy. A virtual currency kiosk operator shall maintain,~~
12 ~~implement, and enforce a written Enhanced Due Diligence Policy. The Policy~~
13 ~~shall be reviewed and approved by the virtual currency kiosk operator's board~~
14 ~~of directors or an equivalent governing body of the virtual currency kiosk~~
15 ~~operator. The Policy shall identify, at a minimum, individuals who are at risk~~
16 ~~of fraud based on age or mental capacity.~~

17 ~~(o) Compliance policies. A virtual currency kiosk operator shall maintain,~~
18 ~~implement, and enforce written compliance policies and procedures. Such~~
19 ~~policies and procedures shall be reviewed and approved by the virtual currency~~
20 ~~kiosk operator's board of directors or an equivalent governing body of the~~
21 ~~virtual currency kiosk operator.~~

1 ~~(p) Compliance officer.~~

2 ~~(1) A virtual currency kiosk operator shall designate and employ a~~
3 ~~compliance officer who meets the following requirements:~~

4 ~~(A) is qualified to coordinate and monitor compliance with this~~
5 ~~section and all other applicable federal and State laws and regulations;~~

6 ~~(B) is employed full time by the virtual currency kiosk operator; and~~

7 ~~(C) is not an individual who owns more than 20 percent of the~~
8 ~~virtual currency kiosk operator by whom the individual is employed.~~

9 ~~(2) Compliance responsibilities required under federal and State law and~~
10 ~~regulation shall be completed by one or more full-time employees of the~~
11 ~~virtual currency kiosk operator.~~

12 ~~(q) Consumer protection officer. A virtual currency kiosk operator shall~~
13 ~~designate and employ a consumer protection officer who meets the following~~
14 ~~requirements:~~

15 ~~(1) is qualified to coordinate and monitor compliance with this section~~
16 ~~and all other applicable federal and State laws and regulations;~~

17 ~~(2) is employed full-time by the virtual currency kiosk operator; and~~

18 ~~(3) is not an individual who owns more than 20 percent of the virtual-~~
19 ~~currency kiosk operator by whom the individual is employed.~~

20 ~~(r) The Commissioner may adopt rules the Commissioner deems necessary~~
21 ~~and proper to carry out the purposes of this section, including with respect to~~

1 ~~what constitutes fraudulent activity or a fraudulently induced transaction in the~~
2 ~~context of customer transactions at a virtual currency kiosk.~~

3 Fourth: By striking out Sec. 59, effective date, and its corresponding reader
4 assistance heading in their entirety and inserting in lieu thereof the following:

5 * * * Providers of Merchant Cash Advances; Licensing and Regulation * * *

6 Sec. 59. 8 V.S.A. § 2115(e) is amended to read:

7 (e)(1) A loan contract made in knowing and willful violation of subdivision
8 2201(a)(1) of this title is void, and the lender shall not collect or receive any
9 principal, interest, or charges; provided, however, in the case of a loan made in
10 violation of subdivision 2201(a)(1) of this title, where the Commissioner does
11 not find a knowing and willful violation, the lender shall not collect or receive
12 any interest or charges, but may collect and receive principal.

13 (2) A commercial financing contract made in knowing and willful
14 violation of subdivisions 2247(b)(1) or (2) of this title is void, and the provider
15 shall not collect or receive any amounts, payments, receivables, or charges;
16 provided, however, in the case of a commercial financing contract made in
17 violation of subdivisions 2247(b)(1) or (2) of this title, where the
18 Commissioner does not find a knowing and willful violation, the provider may
19 only collect and receive an amount up to the disbursement amount paid to the
20 recipient, after any fees deducted or withheld at disbursement, and the provider
21 may not collect or receive any charges or other amounts.

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

11 Sec. 60. 8 V.S.A. § 2247 is added to read:

12 § 2247. COMMERCIAL FINANCING

13 (a) Definitions. As used in this section:

14 (1) “Commercial financing” means a sales-based financing or factoring
15 transaction.

16 (2) “Factoring transaction” means an accounts receivable purchase
17 transaction that includes an agreement to purchase, transfer, assign, or sell a
18 legally enforceable claim for payment held by a recipient for goods the
19 recipient has supplied or services the recipient has rendered that have been
20 ordered but for which payment has not yet been made. A purchase of accounts
21 receivable in connection with the purchase and sale of substantially all of the

1 assets of a business or line of business shall not be deemed to be a factoring
2 transaction.

3 (3) “Finance charge” means the cost of financing as a dollar amount. It
4 includes any charge payable directly or indirectly by the recipient and imposed
5 directly or indirectly by the provider as an incident to or a condition of the
6 extension of financing. It includes all charges that would be included under 12
7 C.F.R. part 1026.4 as if the transaction were subject to 12 C.F.R. part 1026.4.
8 In addition, the finance charge shall include any charges as determined by the
9 Commissioner. For the purposes of a factoring transaction, the finance charge
10 includes the discount taken on the face value of the accounts receivable.

11 (4) “Provider” means a person who provides or will provide commercial
12 financing to a recipient or who extends a specific offer of commercial
13 financing to a person or to the person’s authorized representative. A provider
14 also includes a person who solicits prospective recipients of commercial
15 financing or who presents specific offers of commercial financing on behalf of
16 a third party.

17 (5) “Recipient” means a person that receives or applies for commercial
18 financing or is made a specific offer of commercial financing by a provider. A
19 recipient may also be an authorized representative of such person.

20 (6) “Sales-based financing” means a transaction that is repaid by the
21 recipient to the provider, over time, as a percentage of sales or revenue, in

1 which the payment amount may increase or decrease according to the volume
2 of sales made or revenue received by the recipient. Sales-based financing also
3 includes a true-up mechanism where the financing is repaid as a fixed payment
4 but provides for a reconciliation process that adjusts the payment to an amount
5 that is a percentage of sales or revenue. Sales-based financing also includes
6 transactions structured as a sale or assignment of future accounts receivable,
7 future revenue, or future sales.

8 (7) “Solicit prospective recipients of commercial financing” means, for
9 compensation or gain or with the expectation of compensation or gain, to:

10 (A) solicit prospective recipients for commercial financing;

11 (B) offer, broker, directly or indirectly arrange, place, or find
12 commercial financing for a prospective recipient;

13 (C) obtain commercial financing for a prospective recipient or offer
14 to obtain commercial sales-based financing for a recipient from a provider;

15 (D) initiate prospective recipients’ interest or inquiry in commercial
16 financing by online marketing, direct response advertising, telemarketing, or
17 other similar contact;

18 (E) engage in the business of selling information identifying a
19 prospective recipient of commercial financing;

20 (F) generate or augment information identifying a prospective
21 recipient of commercial financing for other persons; or

1 (G) refer prospective Vermont recipients to other persons for
2 commercial financing.

3 (8) “Specific offer” means the specific terms of commercial financing,
4 including price or amount, that is quoted to a recipient, based on information
5 obtained from, or about, the recipient, which, if accepted by a recipient, shall
6 be binding on the provider, as applicable, subject to any specific requirements
7 stated in such terms.

8 (b) License requirement.

9 (1) A provider shall not provide commercial financing to a person in this
10 State, extend a specific offer of commercial financing to a person in this State,
11 or solicit prospective recipients of commercial financing extended by such
12 provider, unless the provider is licensed as a lender under this chapter.

13 (2) A provider shall not solicit prospective recipients of commercial
14 financing on behalf of a third party or present or extend specific offers of
15 commercial financing on behalf of a third party unless the provider holds a
16 loan solicitation license under this chapter and such third party is licensed as a
17 lender under this chapter or exempt from the licensing requirements under this
18 section pursuant to subdivisions (3) or (4) of this subsection.

19 (3) A lender license, commercial lender license, or loan solicitation
20 license shall not be required under this section of any for the following:

1 (A) a state agency, political subdivision, or other public
2 instrumentality of a state;

3 (B) a federal agency or other public instrumentality of the United
4 States;

5 (C) a depository institution or a financial institution as defined in
6 subdivision 11101(32) of this title; or

7 (D) a seller of goods or services that finances the sale of such goods
8 or services to a recipient.

9 (4) This section shall not apply to commercial financing transactions of
10 \$1,000,000.00 or more that are not primarily for personal, family, or household
11 use.

12 (5) For purposes of this section, 8 V.S.A. § 2201(d) shall not apply.

13 (c) Personal, family, or household use. A commercial financing offered,
14 extended, or otherwise provided primarily for personal, family, or household
15 use, for the purpose of regulation under this chapter, shall also be deemed to be
16 a loan for purposes of this chapter. Any commercial financing deemed to be a
17 loan under this subsection shall be governed by and subject to applicable
18 provisions of this title, including this section, and 9 V.S.A. chapters 4, 59, and
19 61.

20 (d) Certain automatic debts prohibited. A provider shall not establish a
21 mechanism for automatically debiting a recipient's deposit account unless the

1 provider holds a validly perfected security interest in the recipient’s account
2 under Title 9A, with a first priority against the claims of all other persons.

3 (e) Confessions of judgment. A commercial financing contract that
4 contains a confession of judgment provision or any similar provision is void
5 and unenforceable.

6 (f) Choice of law, jurisdiction, and venue; arbitration. Where a provider
7 enters into a contract or agreement with a recipient to provide commercial
8 financing, such contract or agreement shall be governed exclusively by
9 Vermont law, and any cause of action arising under such contract or agreement
10 shall be brought in a court in this State. Any provision in the contract or
11 agreement providing that the law of any other jurisdiction shall govern or
12 mandating that any such action be brought outside this State shall be
13 unenforceable by any party other than the recipient. Where a contract between
14 a provider and recipient contains an arbitration provision, such contract shall
15 not require face-to-face arbitration proceedings outside this State. If the
16 contract requires face-to-face arbitration proceedings outside this State, such
17 provision is unenforceable by any party other than the recipient. The
18 enforceability of the remaining provisions of the arbitration agreement and the
19 method of selecting a forum for the conduct of the arbitration proceedings are
20 as provided in the Vermont Arbitration Act, 12 V.S.A. chapter 192, the Federal
21 Arbitration Act, 9 U.S.C. §§ 1–16, and any applicable rules of arbitration. The

1 provider shall pay any arbitrators’ expenses or fees, or any other expenses or
2 administrative fees incurred in the conduct of any such arbitration proceedings.

3 (g) Sales-based financing disclosure requirements.

4 (1) A provider shall provide the following disclosures to a recipient at
5 the time of extending a specific offer of sales-based financing:

6 (A) The total amount of the commercial financing, and the
7 disbursement amount, if different from the financing amount, after any fees
8 deducted or withheld at disbursement.

9 (B) The finance charge.

10 (C) The estimated annual percentage rate, using the words “annual
11 percentage rate” or the abbreviation “APR,” expressed as a yearly rate,
12 inclusive of any fees and finance charges, and determined in accordance with
13 the federal Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026.22, as may
14 be amended, based on the estimated term of repayment and the projected
15 periodic payment amounts, regardless of whether such act or such regulation
16 would require such a calculation. The estimated term of repayment and the
17 projected periodic payment amounts shall be calculated based on a projection
18 of the volume of the recipient’s sales or revenue. The projected volume of
19 sales or revenue may be calculated using the historical method, as described in
20 subdivision (i) of this subdivision (g)(1)(C), or the opt-in method, as described
21 in subdivision (ii) of this subdivision (g)(1)(C).

1 (i) A provider using the historical method shall use an average
2 historical volume of sales or revenue on which the financing’s payment
3 amounts are based and by which the estimated annual percentage rate is
4 determined. The provider shall fix the historical time period to be used to
5 calculate the average historical volume of sales or revenue and use such period
6 for all disclosure purposes for all sales-based financing products offered by the
7 provider. The fixed historical time period shall either be the time period
8 immediately preceding the specific offer or, alternatively, a time period
9 consisting of the same number of months with the highest sales or revenue
10 volume within the past twelve months. The fixed historical time period shall
11 be at least one month and shall not exceed 12 months.

12 (ii) A provider using the opt-in method shall determine the
13 estimated annual percentage rate, the estimated term, and the projected
14 payments using a projected sales or revenue volume that the provider elects for
15 each disclosure. Upon a finding by the Commissioner that the use of projected
16 sales or revenue volume by the provider has resulted in an unacceptable
17 deviation between the estimated and actual annual percentage rates, the
18 Commissioner shall require the provider to use the historical method. The
19 Commissioner may consider unusual and extraordinary circumstances
20 impacting the provider’s deviation between estimated and actual annual
21 percentage rates in making such finding.

1 (D) The total repayment amount, which is the disbursement amount
2 plus the finance charge.

3 (E) The estimated term is the period of time required for the periodic
4 payments, based on the projected sales volume, to equal the total amount
5 required to be repaid.

6 (F) The payment amounts, based on the projected sales volume:

7 (i) for payment amounts that are fixed, the payment amounts and
8 frequency (for example, daily, weekly, or monthly) and, if the payment
9 frequency is other than monthly, the amount of the average projected payments
10 per month; or

11 (ii) for payment amounts that are variable, a payment schedule or
12 a description of the method used to calculate the amounts and frequency of
13 payments, and the amount of the average projected payments per month.

14 (G) A description of all other potential fees and charges not included
15 in the finance charge, including draw fees, late payment fees, and returned
16 payment fees.

17 (H) Were the recipient to elect to pay off or refinance the commercial
18 financing prior to full repayment, the provider shall disclose:

19 (i) whether the recipient would be required to pay:

20 (I) any finance charges other than interest accrued since the last
21 payment; if so, disclosure of the percentage of any unpaid portion of the

1 finance charge and maximum dollar amount the recipient could be required to
2 pay; and

3 (II) any additional fees not already included in the finance
4 charge; and

5 (ii) a description of collateral requirements or security interests, if
6 any.

7 (2) The provider shall obtain the recipient’s signature on the disclosures
8 required by this subsection before finalizing the application for the sales-based
9 financing.

10 (3) A provider shall not provide sales-based financing to a recipient
11 without first providing the disclosures required by this subsection and
12 obtaining the recipient’s signature on such disclosures.

13 (4) The Commissioner may prescribe the format for the disclosures
14 required by this subsection.

15 (h) Factoring transaction disclosure requirements.

16 (1) A provider shall provide the following disclosures to a recipient at
17 the time of extending a specific offer for a factoring transaction:

18 (A) The amount of the receivables purchase price paid to the
19 recipient and, if different from the purchase price, the amount disbursed to the
20 recipient after any fees deducted or withheld at disbursement.

21 (B) The finance charge.

1 (C) The estimated annual percentage rate, using the words “annual
2 percentage rate” or the abbreviation “APR,” calculated according to the federal
3 Truth in Lending Act, Regulation Z, 12 C.F.R. § 1026 Appendix J, as a “single
4 advance, single payment transaction,” regardless of whether such act or such
5 regulation would require such a calculation. To calculate the estimated annual
6 percentage rate, the purchase amount is considered the financing amount, the
7 purchase amount minus the finance charge is considered the payment amount,
8 and the term is established by the payment due date of the receivables. As an
9 alternate method of establishing the term, the provider may estimate the term
10 for a factoring transaction as the average payment period, based on its
11 historical data over a period not to exceed the previous 12 months, concerning
12 payment invoices paid by the party owing the accounts receivable in question.

13 (D) The total payment amount, which is the purchase amount plus the
14 finance charge.

15 (E) A description of all other potential fees and charges that can be
16 avoided by the recipient.

17 (F) A description of the receivables purchased and any additional
18 collateral requirements or security interests.

19 (2) The provider shall obtain the recipient’s signature on the disclosures
20 required by this subsection before finalizing the application for the factoring
21 transaction.

1 (3) A provider shall not provide commercial financing to a recipient in a
2 factoring transaction without first providing the disclosures required by this
3 subsection and obtaining the recipient’s signature on such disclosures.

4 (4) The Commissioner may prescribe the format for the disclosures
5 required by this subsection.

6 (i) Disclosures required if recipient required to pay off existing commercial
7 financing as condition. If as a condition of obtaining commercial financing the
8 provider requires the recipient to pay off the balance of existing commercial
9 financing from the same provider, the provider shall disclose to the recipient:

10 (1) The amount of the new commercial financing used to pay off the
11 portion of the existing commercial financing that consists of prepayment
12 charges required to be paid and any unpaid interest expense that was not
13 forgiven at the time of renewal. For financing for which the total repayment
14 amount is calculated as a fixed amount, the prepayment charge is equal to the
15 original finance charge multiplied by the amount of the renewal used to pay off
16 existing financing as a percentage of the total repayment amount, minus any
17 portion of the total repayment amount forgiven by the provider at the time of
18 prepayment.

19 (2) If the disbursement amount will be reduced to pay down any unpaid
20 portion of the outstanding balance, the actual dollar amount by which such
21 disbursement amount will be reduced.

1 (j) Rulemaking. The Commissioner is authorized to adopt rules the
2 Commissioner determines are consistent with the purposes of this section, or
3 appropriate for the effective administration of this section, including:

4 (1) Rules in connection with the calculation or determination of any
5 metric required to be disclosed to a recipient.

6 (2) Rules necessary to develop and prescribe disclosure formatting to be
7 used by providers that allows for recipients to easily compare financing options
8 in a clear and conspicuous manner. Such rules may include the designation
9 and method for disclosing the information required in this section, or
10 approving adequate forms and methods already used by providers.

11 (3) Rules that define the terms used in this section if the Commissioner
12 determines such rules are necessary and appropriate to interpret and implement
13 the provisions of this section.

14 (4) Rules necessary for the enforcement of this section.

15 Sec. 61. COMMERCIAL FINANCING RULEMAKING

16 The Commissioner may initiate a rulemaking concerning the
17 implementation and enforcement of commercial financing transactions

1 consistent with the requirements established in Secs. 59 and 60 of this act.

2 However, such rules shall not take effect until on or after July 1, 2027.

3 * * * Effective Dates; Application * * *

4 Sec. 62. EFFECTIVE DATES; APPLICATION

5 This act shall take effect on July 1, 2026, except that Secs. 59 and 60,
6 concerning commercial financing, shall take effect on July 1, 2027, and shall
7 apply to commercial financing contracts entered into or modified, amended, or
8 restructured on or after July 1, 2027.