

1 H.182

2 Introduced by Representatives Botzow of Pownal, Marcotte of Coventry, Hill
3 of Wolcott, O'Sullivan of Burlington, Stuart of Brattleboro, and
4 Sullivan of Dorset

5 Referred to Committee on

6 Date:

7 Subject: Consumer litigation funding companies; licensed lenders; money
8 servicers; debt adjusters; loan servicers

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

12 An act relating to certain businesses regulated by the Department of
13 Financial Regulation

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

15 ~~*** Consumer Litigation Funding ***~~

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

17 § 2252. REGISTRATION; FEE; FINANCIAL STABILITY

18 (a) A company shall not engage in the business of consumer litigation
19 funding without first filing a registration with the Commissioner on a form
20 prescribed by the Commissioner and submitting a registration fee and proof of

1 ~~financial stability, as required by this section.~~

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

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

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

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

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

20 * * * Licensed Lenders; Substituted Information; Prelicensure Training * * *

21 ~~Sec. 3. 8 V.S.A. § 2204 is amended to read.~~

1 ~~§ 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE~~

2 * * *

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

6 (e) This section does not apply to a lender making only commercial loans.

7 Sec. 4. 8 V.S.A. § 2204a is amended read:

8 § 2204a. MORTGAGE LOAN ORIGINATOR PRELICENSING AND
9 RELICENSING EDUCATION REQUIREMENT

10 * * *

11 (f) A person previously licensed as a mortgage loan originator under this
12 chapter applying to be licensed again must prove that he or she has completed
13 all of the continuing education requirements for the year in which the license
14 was last held. This subsection does not apply to an individual who is required
15 to retake 20 hours of prelicensing education pursuant to subsection (g) of this
16 section.

17 (g) A person who has completed 20 hours of prelicensing education under
18 12 U.S.C. § 5104(c) must retake such prelicensing education to be eligible to
19 apply for a Vermont loan originator license if he or she:

20 (1) within three years of completing the prelicensing education, does not
21 acquire a valid mortgage loan originator license in any state or does not

1 ~~become a federally registered mortgage loan originator; or~~

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

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

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

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

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

17 § 2204c. APPROVAL OF APPLICATION; ISSUANCE OF COMMERCIAL
18 LENDER LICENSE

19 * * *

20 (d) The Commissioner may waive or modify the requirements of
21 subdivision (a)(2) of this section or may permit an applicant to submit

1 ~~substituted information in lieu of the required information.~~

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

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

9 * * * Financial Responsibility; Money Servicers;
10 Debt Adjusters; Loan Servicers * * *

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

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

20 (1) ~~the~~ The applicant has complied with sections 2506, 2507, and 2510
21 ~~of this title.~~

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

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

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

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

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

16 (iv) a pattern of seriously delinquent accounts within the past
17 three years.

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

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

20 (a) Upon the filing of an application under this subchapter, the

21 ~~Commissioner shall investigate the applicant's financial condition and~~

1 ~~responsibility, financial and business experience, character, and general fitness.~~

2 The Commissioner may conduct an on-site investigation of the applicant, the
3 cost of which the applicant shall bear in accordance with section 18 of this
4 title. The Commissioner shall issue a license to an applicant under this
5 subchapter if the Commissioner finds that all of the following conditions have
6 been fulfilled:

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

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

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

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

20 (ii) current outstanding tax liens or other government liens and
21 liens.

1 ~~(iii) foreclosures within the past three years;~~

2 ~~(iv) a pattern of seriously delinquent accounts within the past~~
3 ~~three years.~~

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

5 Sec. 9. 8 V.S.A. § 2756(a) is amended to read:

6 (a) The Commissioner shall issue a license to the applicant upon the filing
7 of the application and the payment of the fees, if the Commissioner finds upon
8 investigation that all of the following conditions have been fulfilled:

9 (1) ~~the~~ The financial responsibility, experience, character, and general
10 fitness of the applicant, and of the members, officers, directors, and persons in
11 control of the applicant, command the confidence of the community and
12 warrant belief that the business will be operated honestly, fairly, and efficiently
13 within the purposes of this chapter;

14 (2)(A) ~~neither~~ Neither the applicant nor any of such members, officers,
15 directors, or persons in control of the applicant have been convicted of a
16 felony or ~~has~~ have had a record of having defaulted in the payment of money
17 collected for others, including the discharge of such debts through bankruptcy
18 proceedings; ~~and.~~

19 (B) For purposes of this subsection (a), a person has shown that he or
20 she is not financially responsible when he or she has shown a disregard in the
21 management of his or her own financial condition. A determination that a

1 ~~person has not shown financial responsibility may include the following:~~

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

4 (ii) current outstanding tax liens or other government liens and
5 filings;

6 (iii) foreclosures within the past three years;

7 (iv) a pattern of seriously delinquent accounts within the past
8 three years.

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

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

11 § 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

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

15 (1)(A) That the financial responsibility, experience, character, and
16 general fitness of the applicant are such as to command the confidence of the
17 community and to warrant belief that the business will be operated honestly,
18 fairly, and efficiently within the purposes of this chapter. If the applicant is a
19 partnership or association, such findings are required with respect to each
20 partner, member, and control person. If the applicant is a corporation, such
21 ~~findings are required with respect to each officer, director, and control person.~~

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

5 ~~(i) current outstanding judgments, except judgments solely as a~~
6 ~~result of medical expenses;~~

7 ~~(ii) current outstanding tax liens or other government liens and~~
8 ~~filings;~~

9 ~~(iii) foreclosures within the past three years;~~

10 ~~(iv) a pattern of seriously delinquent accounts within the past~~
11 ~~three years;~~

12 (2) That allowing the applicant to engage in business will promote the
13 convenience and advantage of the community in which the business of the
14 applicant is to be conducted.

15 (3) That the applicant is licensed to engage in such business in its state
16 of domicile, and is in good standing in its state of domicile with its state
17 regulator or equivalent financial industry regulator, if such state licenses third
18 party loan servicers.

19 (4) That the applicant, and each officer, director, and control person of
20 the applicant, has never had a third party loan servicer license, lender license,
21 ~~mortgage broker license, mortgage loan originator license, or similar license~~

1 ~~revoked in any governmental jurisdiction, except that a subsequent formal~~

2 vacation of such revocation shall not be deemed a revocation.

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

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

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

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

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

17 * * *

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

21 ~~Money Services, Virtual Currency, Exclusions, Receipts and Refunds,~~

1 ~~Segregated Accounts; Permissible Investments; Enforcement * * *~~

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

3 (2) “Virtual currency” means stored value that:

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

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

8 (C) may be centralized or decentralized; and

9 (D) can be exchanged for money or other convertible virtual
10 currency.

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

12 § 2501. EXCLUSIONS

13 (a) This chapter does not apply to:

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

16 (2) the sale or issuance of payment instruments or stored value, or
17 money transmission, by the U.S. Postal Service, or by a contractor on behalf of
18 the U.S. Postal Service;

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

21 ~~(4) a financial institution as defined in subdivision 11101(32) of this~~

1 ~~title, a financial institution holding company as defined in subdivision~~

2 11101(33) of this title, a credit union, an office of an international banking
3 corporation, a branch of a foreign bank, a corporation organized pursuant to
4 the Bank Services Company Act, or a corporation organized under the Edge
5 Act under the laws of a state or the United States if the person does not issue,
6 sell, or provide payment instruments or stored value through an authorized
7 delegate that is not such a person;

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

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

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

18 (8) a person that provides clearance or settlement services pursuant to a
19 registration as a clearing agency or an exemption from such registration
20 granted under the federal securities laws to the extent of its operation as such a
21 provider,

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

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

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

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

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

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

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

19 § 2511. ACTIVITIES OF MONEY TRANSMITTERS; RECEIPTS AND
20 REFUNDS

21 ~~(a) Every money transmitter licensee and its authorized delegates shall~~

1 ~~provide a receipt to the customer that clearly states the name, address, and~~
2 ~~telephone number of the licensee; the amount of money presented for~~
3 ~~transmission; and the total of any fees charged by the licensee.~~

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

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

15 ~~(3) As used in this section, "fees" does not include revenue that a~~
16 ~~licensee or its authorized delegate generates, in connection with a money~~
17 ~~transmission, in the conversion of the money of one government into the~~
18 ~~money of another government.~~

19 ~~(b) Every money transmitter licensee and its authorized delegates shall~~
20 ~~refund to the customer within 10 days of receipt of a written request for a~~
21 ~~refund all moneys received for transmittal unless any of the following occurs.~~

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

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

6 ~~(3) The licensee or its authorized delegate has reason to believe that a~~
7 ~~crime has occurred, is occurring, or may potentially occur as a result of~~
8 ~~transmitting the money as requested by the customer or refunding the money~~
9 ~~as requested by the customer.~~

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

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

12 § 2536. SEGREGATED ACCOUNTS

13 (a) All monetary value remitted by customers to a licensee and its
14 authorized delegates subject to this chapter shall be maintained in a
15 permissible investment pursuant to section 2541 of this chapter. Such account
16 or accounts shall be segregated from all other accounts of the licensee and
17 shall not be used in the conduct of the licensee's personal affairs or the
18 licensee's business affairs.

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

20 (1) disbursement as directed by the customer;

21 ~~(2) fees to which it is entitled for services actually performed, and~~

1 ~~(2) customer refunds.~~
2 (c) The licensee shall maintain complete and accurate account records,
3 including the source of all deposits, the nature and recipient of all
4 disbursements, the date and amount of each transaction, and the name of the
5 customer. All documents pertaining to account activity shall be produced upon
6 request of the Commissioner.

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

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

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

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

16 (1) cash, a certificate of deposit, or a senior debt obligation of a
17 depository institution within the meaning of subdivision 11101(24) of this title;

18 (2) a banker's acceptance or bill of exchange that is eligible for
19 purchase upon endorsement by a member bank of the Federal Reserve System
20 and is eligible for purchase by a Federal Reserve Bank;

21 ~~(3) an investment bearing a rating of one of the three highest grades, as~~

1 ~~defined by a nationally recognized organization that rates securities;~~

2 (4) an investment security that is an obligation of the United States or a
3 department, agency, or instrumentality thereof; an investment in an obligation
4 that is guaranteed fully as to principal and interest by the United States; or an
5 investment in an obligation of a state or a governmental subdivision, agency,
6 or instrumentality thereof;

7 (5) receivables that are payable to a licensee from its authorized
8 delegates, in the ordinary course of business, pursuant to contracts ~~which~~ that
9 are not past due or doubtful of collection, if the aggregate amount of
10 investments in receivables under this subdivision does not exceed 20 percent
11 of the total permissible investments of a licensee and the licensee does not
12 have at one time investments in receivables under this subdivision in any one
13 person aggregating more than 10 percent of the licensee's total permissible
14 investments; and

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

21 ~~(7) virtual currency owned by the licensee, but only to the extent of~~

1 ~~outstanding transmission obligations received by the licensee in identical~~
2 ~~denomination of virtual currency.~~

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

4 § 2545. SUSPENSION, REVOCATION, AND NONRENEWAL
5 RECEIVERSHIP

6 * * *

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

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

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

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

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

22 ~~*** Licensed Lenders, Employee Definition, Loan Solicitations ***~~

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

2 § 2200. DEFINITIONS

3 As used in this chapter:

4 * * *

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

10 (i) the controlling person;

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

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

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

20 * * *

21 ~~(15) "Lead" means any information identifying a potential consumer of~~

1 ~~a loan~~

2 (14) "Lead generation" means to:

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

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

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

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

11 (15) "Licensee" means any person subject to the provisions of section
12 2201 of this title.

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

17 (A) For purposes of this subdivision ~~(14)~~ subdivision (16), the term
18 "clerical or support duties" may include, subsequent to the receipt of a
19 residential mortgage loan application:

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

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

5 (B) ~~An individual engaging solely in loan processor or underwriter~~
6 ~~activities shall not represent 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 any of the activities of a mortgage loan~~
10 ~~originator.~~

11 ~~(15)(17) "Loan solicitation" means to:~~

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

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

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

20 ~~(D) advertise or cause to be advertised in this State a loan or any of~~
21 ~~the services described in subdivisions (A) to (D) of this subdivision (17). The~~

1 ~~term does not apply to residential mortgage loans.~~

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

17 (16)(19) “Mortgage loan” means a loan secured primarily by a lien
18 against real estate.

19 (17)(20) “Mortgage loan originator”:

20 (A) Means an individual who for compensation or gain or in the
21 expectation of compensation or gain.

- 1 ~~(i) takes a residential mortgage loan application;~~
- 2 (ii) offers or negotiates terms of a residential mortgage loan;
- 3 (iii) represents to the public, through advertising or other means
- 4 of communicating or providing information (including the use of business
- 5 cards, stationery, brochures, signs, rate lists, or other promotional items), that
- 6 such individual can or will perform the services described in subdivision (A)(i)
- 7 or (A)(ii) of this ~~subdivision (17)~~ subdivision (20).

8 (B) An individual “takes a residential mortgage loan application” if

9 the individual receives a residential mortgage loan application for the purpose

10 of facilitating a decision whether to extend an offer of residential mortgage

11 loan terms to a borrower or prospective borrower (or to accept the terms

12 offered by a borrower or prospective borrower in response to a solicitation),

13 whether the application is received directly or indirectly from the borrower or

14 prospective borrower.

15 (C) An individual “offers or negotiates terms of a residential

16 mortgage loan for compensation or gain” if the individual:

17 (i)(I) presents for consideration by a borrower or prospective

18 borrower particular residential mortgage loan terms;

19 (II) communicates directly or indirectly with a borrower or

20 prospective borrower for the purpose of reaching a mutual understanding

21 ~~about prospective residential mortgage loan terms, or~~

1 ~~(III) recommends, refers, or steers a borrower or prospective~~
2 borrower to a particular lender or set of residential mortgage loan terms, in
3 accordance with a duty to or incentive from any person other than the
4 borrower or prospective borrower; and
5 (ii) receives or expects to receive payment of money or anything
6 of value in connection with the activities described in subdivision (C)(i) of this
7 ~~subdivision (17)~~ subdivision (20) or as a result of any residential mortgage
8 loan terms entered into as a result of such activities.
9 (D) Does not include:
10 (i) an individual engaged solely as a loan processor or
11 underwriter, except as otherwise provided in subsection 2201(g) of this
12 chapter;
13 (ii) a person or entity that only performs real estate brokerage
14 activities and is licensed or registered in accordance with Vermont law, unless
15 the person or entity is compensated by a buyer or a seller in addition to the
16 compensation received for such real estate brokerage activity or is
17 compensated by a lender, a mortgage broker, or other mortgage loan originator
18 or by any agent of such lender, mortgage broker, or other mortgage loan
19 originator; and
20 (iii) a person or entity solely involved in extensions of credit
21 ~~relating to timeshare plans, as that term is defined in Section 11 U.S.C.~~

1 ~~§ 101(52D) of Title 11, United States Code.~~

2 ~~(18)(21) “Nationwide Mortgage Licensing System and Registry” means~~
3 ~~a mortgage licensing system developed and maintained by the Conference of~~
4 ~~State Bank Supervisors and the American Association of Residential Mortgage~~
5 ~~Regulators for the licensing and registration of licensed mortgage loan~~
6 ~~originators, or any successor to the Nationwide Mortgage Licensing System~~
7 ~~and Registry.~~

8 ~~(19)(22) “Nontraditional mortgage product” means any mortgage~~
9 ~~product other than a 30-year fixed rate mortgage.~~

10 ~~(20)(23) “Person” shall have has the meaning set forth in 1 V.S.A. § 128~~
11 ~~and includes a natural person, corporation, company, limited liability company,~~
12 ~~partnership, or association.~~

13 ~~(21)(24) “Real estate brokerage activity” means any activity that~~
14 ~~involves offering or providing real estate brokerage services to the public,~~
15 ~~including:~~

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

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

20 ~~(C) negotiating, on behalf of any party, any portion of a contract~~

21 ~~relating to the sale, purchase, lease, rental, or exchange of real property (other~~

1 ~~than in connection with providing financing with respect to any such~~

2 transaction);

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

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

8 ~~(22)~~(25) "Registered mortgage loan originator" means any individual
9 who:

10 (A) meets the definition of mortgage loan originator and is an
11 employee of:

12 (i) a depository institution;

13 (ii) a subsidiary that is:

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

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

17 (iii) an institution regulated by the Farm Credit
18 Administration; and

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

21 ~~(23)~~(26) "Residential mortgage loan" means any loan primarily for

1 ~~personal, family, or household use that is secured by a mortgage, deed of trust,~~
2 or other equivalent consensual security interest on a dwelling (as defined in
3 section 103(v) of the Truth in Lending Act) or residential real estate upon
4 which is constructed or intended to be constructed a dwelling (as so defined).

5 ~~(24)(27)~~ “Residential mortgage loan application” means a request, in
6 any form, for an offer (or a response to a solicitation of an offer) of residential
7 mortgage loan terms, and information about the borrower or prospective
8 borrower that is customary or necessary in a decision on whether to make such
9 an offer.

10 ~~(25)(28)~~ “Residential real estate” means any real property located in
11 Vermont, upon which is constructed or intended to be constructed a dwelling.

12 ~~(26)(29)~~ “Sales finance company” means any person who has purchased
13 one or more retail installment contracts, as defined in 9 V.S.A. §§ 2351(5) and
14 2401(7), from one or more retail sellers located in this State. Taking one or
15 more retail installment contracts as security for a loan or loans shall not be
16 construed as purchasing for purposes of this definition.

17 ~~(27)(30)~~ “Unique identifier” means a number or other identifier
18 assigned by protocols established by the Nationwide Mortgage Licensing
19 System and Registry.

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

21 § 2201. LICENSES REQUIRED

22 ~~(a) No person shall without without first obtaining a license under this~~

chapter from the Commissioner, a person shall not:

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

(2) act Act as a mortgage broker;

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

(4) act Act as a sales finance company.

(5) Engage in the business of loan solicitation. A person licensed as a lender or mortgage broker is not required to obtain a separate loan solicitation license when acting on the person's own behalf.

* * *

(d) ~~No~~ A lender license, mortgage broker license, ~~or~~ sales finance company license, or loan solicitation license shall not be required of:

* * *

(e) ~~No~~ A mortgage loan originator license shall not be required of:

(1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision ~~2200(22)~~ 2200(25) of this chapter.

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

~~(3) Any individual who offers or negotiates terms of a residential~~

1 ~~mortgage loan secured by a dwelling that served as the individual's residence,~~
2 including a vacation home, or inherited property that served as the deceased's
3 dwelling, provided that the individual does not act as a mortgage loan
4 originator or provide financing for such sales so frequently and under such
5 circumstances that it constitutes a habitual activity and acting in a commercial
6 context.

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

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

20 (A) such activities are considered by the State governing body
21 ~~responsible for regulating the practice of law to be part of the authorized~~

1 ~~practice of law within this State;~~

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

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

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

8 * * *

9 Sec. 20. 8 V.S.A. § 2202(b)(6) is added to read:

10 (6) For an applicant for a loan solicitation license, \$500.00 as a license
11 fee, and \$500.00 as an application and investigation fee.

12 Sec. 21. 8 V.S.A. § 2203 is amended to read:

13 § 2203. BOND; LIQUID ASSETS REQUIRED

14 * * *

15 (c) A loan solicitation licensee shall maintain a surety bond in an amount
16 not less than \$25,000.00 or in such other amount as the Commissioner may
17 require.

18 (d) When an action is commenced on a licensee's bond, the Commissioner
19 may require the filing of a new bond. Immediately upon recovery upon any
20 action on the bond, the licensee shall file a new bond.

21 ~~(e)(c) Every applicant for a lender's license shall also prove, in form~~

1 ~~satisfactory to the Commissioner, that the applicant has liquid assets of~~
2 \$25,000.00, or such greater amount as the Commissioner may require,
3 available for the operation of such business at the location specified in the
4 application. Every applicant wishing to make commercial loans shall prove
5 liquid assets in an amount of \$50,000.00 or such greater amount as the
6 Commissioner may require.

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

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

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

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

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

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

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

1 ~~§ 2219. CONTRACT REQUIRED OF MORTGAGE BROKER~~

2 * * *

3 (b) A mortgage broker who acts as an independent contractor loan
4 processor or an underwriter who performs loan processing or underwriting
5 activities for a licensed or exempt mortgage broker or lender is not required to
6 provide a mortgage broker agreement to the prospective borrower, provided:

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

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

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

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

19 (c) A mortgage broker that engages solely in lead generation and does not
20 employ or sponsor any mortgage loan originators is not required to provide a
21 mortgage broker agreement but must include clearly and conspicuously in all

1 ~~advertisements of loans and solicitation of leads, the following disclosure:~~

2 **THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE**
3 **NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL**
4 **BE SHARED WITH ONE OR MORE THIRD PARTIES IN**
5 **CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY**
6 **NOT BE SUBJECT TO ALL VERMONT LENDING LAWS.**

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

8 § 2220a. DISCLOSURE REQUIRED BY LOAN SOLICITATION

9 LICENSEE

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

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

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

18 § 2223. RECORDS REQUIRED OF LICENSEE

19 (a) The licensee shall keep, use in the licensee's business, and make
20 available to the Commissioner upon request, such books, accounts, records,
21 and data compilations as will enable the Commissioner to determine whether

1 ~~such licensee is complying with the provisions of this chapter and with the~~
2 rules and regulations lawfully made by the Commissioner hereunder. Every
3 licensee shall preserve such books, accounts, records, and data compilations in
4 a secure manner for at least seven years after making the final entry on any
5 loan recorded therein. Thereafter, the licensee shall dispose of such books,
6 accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

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

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

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

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

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

19 § 2224. ANNUAL REPORT, MORTGAGE CALL REPORTS

20 (a) Annually, on or before April 1, each licensed lender, mortgage broker,
21 ~~and sales finance company, and loan solicitation licensee shall file a report~~

1 ~~with the Commissioner giving such relevant information as the Commissioner~~
2 reasonably may require concerning the business and operations during the
3 preceding calendar year of each licensed place of business conducted by ~~such~~
4 the licensee within the State. Such report shall be made under oath and shall
5 be in the form prescribed by the Commissioner, who shall make and publish
6 annually an analysis and recapitulation of such reports. For good cause, the
7 Commissioner may extend the due date for the annual report required by this
8 subsection. If a licensee does not file its annual report on or before April 1, or
9 within any extension of time granted by the Commissioner, the licensee shall
10 pay to the Department \$100.00 for each month or part of a month that the
11 report is past due.

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

18 (c) Each licensed lender, mortgage broker, ~~and mortgage loan originator~~
19 and loan solicitation licensee shall submit to the Nationwide Mortgage
20 Licensing System and Registry reports of condition, which shall be in such
21 ~~form and shall contain such information as the Nationwide Mortgage~~

1 ~~Licensing System and Registry may require~~

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

3 § 2241. PROHIBITED ACTS AND PRACTICES

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

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

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

8 (3) obtain property by fraud or misrepresentation;

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

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

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

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

3 (8) fail to comply with this chapter or rules adopted under this chapter,
4 or fail to comply with any orders or directives from the Commissioner, or fail
5 to comply with any other State or federal law, including the rules thereunder,
6 applicable to any business authorized or conducted under this chapter;

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

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

18 (11) make any payment, threat, or promise, directly or indirectly, to any
19 person for the purposes of influencing the independent judgment of the person
20 in connection with a residential mortgage loan, or make any payment, threat
21 ~~or promise, directly or indirectly, to any appraiser of a property, for the~~

1 ~~purposes of influencing the independent judgment of the appraiser with respect~~
2 to the value of the property;

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

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

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

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

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

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

21 ~~(b) The unique identifier issued by the Nationwide Mortgage Licensing~~

1 ~~System and Registry of any person engaging in the business of lending or~~
2 acting as a mortgage broker, sales finance company, or loan solicitation
3 licensee shall be clearly shown on all loan application forms, solicitations, or
4 advertisements, including business cards and websites, and any other
5 documents as established by rule or order of the Commissioner.

6 * * * Banking Housekeeping, Vermont Student Assistance Corporation * * *

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

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

12 * * * Effective Date * * *

13 Sec. 31. EFFECTIVE DATE

14 ~~This act shall take effect on passage.~~

** * * Consumer Litigation Funding * * **

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

§ 2252. REGISTRATION; FEE, FINANCIAL STABILITY

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

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

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

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

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

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

** * * Licensed Lenders; Substituted Information; Prelicensure Training * * **

Sec. 3. 8 V.S.A. § 2204 is amended to read:

§ 2204. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

* * *

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

(e) This section does not apply to a lender making only commercial loans.

Sec. 4. 8 V.S.A. § 2204a is amended read:

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

* * *

(f) A person previously licensed as a mortgage loan originator under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held. This subsection does not apply to an individual who is required to retake 20 hours of prelicensing education pursuant to subsection (g) of this section.

(g) A person who has completed 20 hours of prelicensing education under 12 U.S.C. § 5104(c) must retake such prelicensing education to be eligible to apply for a Vermont loan originator license if he or she:

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

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

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

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

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

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

§ 2204c. APPROVAL OF APPLICATION; ISSUANCE OF COMMERCIAL
LENDER LICENSE

* * *

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of ~~subdivisions (a)(3) and (a)(4)~~ subdivision (a)(2) of this section.

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

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

** * * Financial Responsibility; Money Servicers;*

*Debt Adjusters; Loan Servicers * * **

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

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

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

(2)(A) ~~the~~ The financial condition and responsibility, financial and

business experience, competence, character, and general fitness of the applicant, and competence, experience, character, and general fitness of the executive officers, managers, and directors of, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission; ~~and.~~

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

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

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

(iii) foreclosures within the past three years; or

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

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

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

(a) Upon the filing of an application under this subchapter, the Commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general

fitness. The Commissioner may conduct an on-site investigation of the applicant, the cost of which the applicant shall bear in accordance with section 18 of this title. The Commissioner shall issue a license to an applicant under this subchapter if the Commissioner finds that all of the following conditions have been fulfilled:

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

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

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

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

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

(iii) foreclosures within the past three years; or

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

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

Sec. 9. 8 V.S.A. § 2756(a) is amended to read:

(a) The Commissioner shall issue a license to the applicant upon the filing of the application and the payment of the fees, if the Commissioner finds upon investigation that all of the following conditions have been fulfilled:

(1) ~~the~~ The financial responsibility, experience, character, and general fitness of the applicant, and of the members, officers, directors, and persons in control of the applicant, command the confidence of the community and warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter;

(2)(A) ~~neither~~ Neither the applicant nor any of such members, officers, directors, or persons in control of the applicant have been convicted of a felony or ~~has~~ have had a record of having defaulted in the payment of money collected for others, including the discharge of such debts through bankruptcy proceedings; ~~and~~.

(B) For purposes of assessing whether a person is financially responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

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

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

(iii) foreclosures within the past three years; or

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

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

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

§ 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

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

(1)(A) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter. If the applicant is a partnership or association, such findings are required with respect to each partner, member, and control person. If the applicant is a corporation, such findings are required with respect to each officer, director, and control person.

(B) For purposes of assessing whether a person is financially

responsible under this subdivision, the Commissioner may consider how the person has managed his or her own financial condition. A determination that a person has not shown financial responsibility may include the following:

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

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

(iii) foreclosures within the past three years; or

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

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

(3) *That the applicant is licensed to engage in such business in its state of domicile, and is in good standing in its state of domicile with its state regulator or equivalent financial industry regulator, if such state licenses third party loan servicers.*

(4) *That the applicant, and each officer, director, and control person of the applicant, has never had a third party loan servicer license, lender license, mortgage broker license, mortgage loan originator license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal*

vacation of such revocation shall not be deemed a revocation.

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

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

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

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

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

** * **

(d) For good cause shown and consistent with the purposes of this section, the Commissioner may waive or modify the requirements of subdivisions (a)(3) and (a)(4) of this section.

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

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

(22) "Virtual currency" means stored value that:

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

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

(C) may be centralized or decentralized; and

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

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

§ 2501. EXCLUSIONS

(a) This chapter does not apply to:

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

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

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

(4) a financial institution as defined in subdivision 11101(32) of this title, a financial institution holding company as defined in subdivision

11101(33) of this title, a credit union, an office of an international banking corporation, a branch of a foreign bank, a corporation organized pursuant to the Bank Services Company Act, or a corporation organized under the Edge Act under the laws of a state or the United States if the person does not issue, sell, or provide payment instruments or stored value through an authorized delegate that is not such a person;

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

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

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

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

(9) an operator of a payment system that provides processing, clearing,

or settlement services, between or among persons excluded by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers to the extent of its operation as such;

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

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

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

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

(b) The Commissioner may issue an order exempting any person from this chapter when such person is performing services for the benefit of the United States or a department, agency, or instrumentality thereof, or for the benefit of any state, county, city, or any other governmental agency or governmental subdivision within a state.

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

§ 2511. ACTIVITIES OF MONEY TRANSMITTERS; RECEIPTS AND REFUNDS

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

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

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

(3) As used in this section, "fees" does not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in the conversion of the money of one government into the money of another government.

(b) Every money transmitter licensee and its authorized delegates shall refund to the customer within 10 days of receipt of a written request for a

refund all moneys received for transmittal unless any of the following occurs:

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

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

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

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

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

§ 2536. SEGREGATED ACCOUNTS

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

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

(1) disbursement as directed by the customer;

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

(3) customer refunds.

(c) The licensee shall maintain complete and accurate account records, including the source of all deposits, the nature and recipient of all disbursements, the date and amount of each transaction, and the name of the customer. All documents pertaining to account activity shall be produced upon request of the Commissioner. These records shall be subject to the retention requirements of section 2534 of this title.

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

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

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

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

(1) cash, a certificate of deposit, or a senior debt obligation of a depository institution within the meaning of subdivision 11101(24) of this title;

(2) a banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System

and is eligible for purchase by a Federal Reserve Bank;

(3) an investment bearing a rating of one of the three highest grades, as defined by a nationally-recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts ~~which~~ that are not past due or doubtful of collection, if the aggregate amount of investments in receivables under this subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not have at one time investments in receivables under this subdivision in any one person aggregating more than 10 percent of the licensee's total permissible investments; ~~and~~

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

this subsection; and

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

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

§ 2545. SUSPENSION, REVOCATION, AND NONRENEWAL
RECEIVERSHIP

* * *

(c) If the Commissioner believes, from evidence satisfactory to him or her, that any person has violated a provision of subsection (a) of this section, the Commissioner may, in addition to any other powers, issue orders or directives to any person:

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

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

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

(d) The licensee shall receive 15 days' notice and an opportunity to be heard before such order shall be issued. Mailing notice by certified mail to the licensee's current address as stated on the license shall be presumptive evidence of its receipt by the licensee. However, if the Commissioner finds that

the public safety or welfare imperatively requires emergency action, action with no prior notice or prior opportunity to be heard may be taken, pending proceedings for revocation or other action.

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

*Generation * * **

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

§ 2200. DEFINITIONS

As used in this chapter:

** * **

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

(i) the controlling person;

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

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

(B) For purposes of a registered mortgage loan originator as defined in ~~subdivision (22)~~ subdivision (25) of this section, the term employee has such

binding definition as may be issued by the federal banking agencies in connection with their responsibilities under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

* * *

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

(14) “Lead generation” means to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

previously originated loans.

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

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

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

(i) takes a residential mortgage loan application;

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

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

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

(C) An individual “offers or negotiates terms of a residential

mortgage loan for compensation or gain” if the individual:

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

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

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

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

(D) Does not include:

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

(ii) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Vermont law, unless the person or entity is compensated by a buyer or a seller in addition to the

compensation received for such real estate brokerage activity or is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

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

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

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

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

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

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

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

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

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

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

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

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

(i) a depository institution;

(ii) a subsidiary that is:

(I) owned and controlled by a depository institution, as

determined by a federal banking agency; and

(II) regulated by a federal banking agency; or

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

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

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

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

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

~~(26)~~(29) “Sales finance company” means any person who has purchased one or more retail installment contracts, as defined in 9 V.S.A. §§ 2351(5) and 2401(7), from one or more retail sellers located in this State.

Taking one or more retail installment contracts as security for a loan or loans shall not be construed as purchasing for purposes of this definition.

(27)(30) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

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

§ 2201. LICENSES REQUIRED

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

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

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

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

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

(5) Engage in the business of loan solicitation. A person licensed as a lender or mortgage broker is not required to obtain a separate loan solicitation license when acting on the person's own behalf.

** * **

(d) ~~No~~ A lender license, mortgage broker license, ~~or~~ sales finance company license, or loan solicitation license shall not be required of:

* * *

(e) ~~No~~ A mortgage loan originator license shall not be required of:

(1) Registered mortgage loan originators, when employed by and acting for an entity described in subdivision ~~2200(22)~~ 2200(25) of this chapter.

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

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling, provided that the individual does not act as a mortgage loan originator or provide financing for such sales so frequently and under such circumstances that it constitutes a habitual activity and acting in a commercial context.

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

(5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's

representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator. To the extent an attorney licensed in this State undertakes activities that are covered by the definition of a mortgage loan originator, such activities do not constitute engaging in the business of a mortgage loan originator, provided that:

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

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

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

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

** * **

Sec. 20. 8 V.S.A. § 2202(b)(6) is added to read:

(6) For an applicant for a loan solicitation license, \$500.00 as a license fee, and \$500.00 as an application and investigation fee.

Sec. 21. 8 V.S.A. § 2203 is amended to read:

§ 2203. BOND; LIQUID ASSETS REQUIRED

* * *

(c) A loan solicitation licensee shall maintain a surety bond in an amount not less than \$25,000.00 or in such other amount as the Commissioner may require.

(d) When an action is commenced on a licensee's bond, the Commissioner may require the filing of a new bond. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

~~(d)~~(e) Every applicant for a lender's license shall also prove, in form satisfactory to the Commissioner, that the applicant has liquid assets of \$25,000.00, or such greater amount as the Commissioner may require, available for the operation of such business at the location specified in the application. Every applicant wishing to make commercial loans shall prove liquid assets in an amount of \$50,000.00 or such greater amount as the Commissioner may require.

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

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

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

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

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

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

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

§ 2219. CONTRACT REQUIRED OF MORTGAGE BROKER

** * **

(b) A mortgage broker who acts as an independent contractor loan processor or an underwriter who performs loan processing or underwriting activities for a licensed or exempt mortgage broker or lender is not required to provide a mortgage broker agreement to the prospective borrower, provided:

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

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

(3) the mortgage broker is paid a fee solely by the licensed or exempt mortgage broker or lender, is not paid by the prospective borrower, and is not

paid a commission based upon the dollar amount of the loan; and

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

(c) A mortgage broker that engages solely in lead generation and does not employ or sponsor any mortgage loan originators is not required to provide a mortgage broker agreement but must include clearly and conspicuously in all advertisements of loans and solicitation of leads, the following disclosure:
THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE NAME] IS NOT THE LENDER. INFORMATION RECEIVED WILL BE SHARED WITH ONE OR MORE THIRD PARTIES IN CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY NOT BE SUBJECT TO ALL VERMONT LENDING LAWS. THE LENDER MAY BE SUBJECT TO FEDERAL LENDING LAWS.

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

§ 2220a. DISCLOSURE REQUIRED BY LOAN SOLICITATION LICENSEE

Each loan solicitation licensee shall include clearly and conspicuously in all advertisements of loans and solicitations of leads, the following statement:
THIS IS A LOAN SOLICITATION ONLY. [INSERT LICENSEE NAME]

IS NOT THE LENDER. INFORMATION RECEIVED WILL BE SHARED WITH ONE OR MORE THIRD PARTIES IN CONNECTION WITH YOUR LOAN INQUIRY. THE LENDER MAY NOT BE SUBJECT TO ALL VERMONT LENDING LAWS. THE LENDER MAY BE SUBJECT TO FEDERAL LENDING LAWS.

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

§ 2223. RECORDS REQUIRED OF LICENSEE

(a) The licensee shall keep, use in the licensee's business, and make available to the Commissioner upon request, such books, accounts, records, and data compilations as will enable the Commissioner to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, records, and data compilations in a secure manner for ~~at least~~ not less than seven years after making the final entry on any loan recorded therein. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

(b)(1) A licensee that engages in loan solicitation activity shall maintain the following records for not less than seven years:

(A) copies of all solicitation materials used in its business, regardless of medium, including business cards, telephone scripts, mailers, electronic

mail, and radio, television, and Internet advertisements;

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

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

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

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

§ 2224. ANNUAL REPORT, MORTGAGE CALL REPORTS

(a) Annually, on or before April 1, each licensed lender, mortgage broker, ~~and~~ sales finance company, and loan solicitation licensee shall file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by ~~such~~ the licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports. For good cause, the Commissioner may extend the due date for the annual report required by this subsection. If a licensee does not file its annual report on or before April 1, or

within any extension of time granted by the Commissioner, the licensee shall pay to the Department \$100.00 for each month or part of a month that the report is past due.

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

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

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

§ 2241. PROHIBITED ACTS AND PRACTICES

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

- (1) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;*
- (2) engage in any unfair or deceptive practice toward any person;*
- (3) obtain property by fraud or misrepresentation;*

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

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

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

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

(8) fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any orders or directives from the Commissioner, or fail to comply with any other State or federal law, including the rules thereunder, applicable to any business authorized or conducted under this chapter;

(9) make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing

terms or conditions for a mortgage loan, ~~or to~~ engage in bait and switch advertising, or to represent to the public that the licensee is able to perform an activity requiring licensure unless such licensee is duly licensed or is exempt from licensure;

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

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

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

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

(14) fail to account truthfully for monies belonging to a party to a

mortgage loan transaction;

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

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

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

(b) The unique identifier issued by the Nationwide Mortgage Licensing System and Registry of any person engaging in the business of lending or acting as a mortgage broker, sales finance company, or loan solicitation licensee shall be clearly shown on all loan application forms, solicitations, or advertisements, including business cards and websites, and any other documents as established by rule or order of the Commissioner.

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

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

(c) Notwithstanding any general or special law to the contrary, the

provisions of 8 V.S.A. chapter ~~83~~ 73 shall not apply to the Corporation or to any loan heretofore or hereafter made or serviced by the Corporation in accordance with this title.

*Sec. 31. VERMONT STUDENT ASSISTANCE CORPORATION; LOANS;
LICENSE EXEMPTION; RETROACTIVE APPLICATION*

Notwithstanding 1 V.S.A. §§ 213 and 214(b), Sec. 30 of this act applies retroactively to January 1, 2011.

** * * Effective Dates * * **

Sec. 32. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 13 (money transmitter receipts and refunds), 14 (money transmitter segregated accounts), 24 (lead generator disclosure requirement), and 25 (loan solicitor disclosure requirement) shall take effect on July 1, 2017.