

1 H.639

2 Introduced by Representatives Turner of Milton and Fagan of Rutland City

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; licensed lenders

6 Statement of purpose of bill as introduced: This bill proposes to create a
7 de minimis exemption from the licensed lender requirement for a person who
8 makes no more than three residential mortgage loans in any consecutive three-
9 year period.

10 An act relating to creation of a de minimis exception to the licensed lender
11 requirements

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

13 Sec. 1. 8 V.S.A. § 2201 is amended to read:

14 § 2201. LICENSES REQUIRED

15 (a) No person shall without first obtaining a license under this chapter from
16 the Commissioner:

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

20 (2) act as a mortgage broker;

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

2 (4) act as a sales finance company.

3 (b) Each licensed mortgage loan originator must register with and maintain
4 a valid unique identifier with the Nationwide Mortgage Licensing System and
5 Registry and must be either:

6 (1) an employee actively employed at a licensed location of, and
7 supervised and sponsored by, only one licensed lender or licensed mortgage
8 broker operating in this State;

9 (2) an individual sole proprietor who is also a licensed lender or licensed
10 mortgage broker; or

11 (3) an employee engaged in loan modifications employed at a licensed
12 location of, and supervised and sponsored by, only one third-party loan
13 servicer licensed to operate in this State pursuant to chapter 85 of this title. ~~For~~
14 ~~purposes of~~ As used in this subsection, “loan modification” means an
15 adjustment or compromise of an existing residential mortgage loan. The term
16 “loan modification” does not include a refinancing transaction.

17 (c) A person licensed pursuant to subdivision (a)(1) of this section may
18 engage in mortgage brokerage and sales finance if such person informs the
19 Commissioner in advance that he or she intends to engage in sales finance and
20 mortgage brokerage. Such person shall inform the Commissioner of his or her
21 intention on the original license application under section 2202 of this title, any

1 renewal application under section 2209 of this title, or pursuant to section 2208
2 of this title, and shall pay the applicable fees required by subsection 2202(b) of
3 this title for a mortgage broker license or sales finance company license.

4 (d) No lender license, mortgage broker license, or sales finance company
5 license shall be required of:

6 (1) a State agency, political subdivision, or other public instrumentality
7 of the State;

8 (2) a federal agency or other public instrumentality of the United States;

9 (3) a gas or electric utility subject to the jurisdiction of the ~~public service~~
10 ~~board~~ Public Service Board engaging in energy conservation or safety loans;

11 (4) a depository institution;

12 (5) a pawnbroker;

13 (6) an insurance company;

14 (7) a seller of goods or services that finances the sale of such goods or
15 services, other than a residential mortgage loan;

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

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

3 (9) lenders that conduct their lending activities, other than residential
4 mortgage loan activities, through revolving loan funds, that are nonprofit
5 organizations exempt from taxation under Section 501(c) of the Internal
6 Revenue Code, 26 U.S.C. § 501(c), and that register with the Commissioner of
7 Economic Development under 10 V.S.A. § 690a;

8 (10) persons who lend, other than residential mortgage loans, an
9 aggregate of less than \$75,000.00 in any one year at rates of interest of no
10 more than 12 percent per annum;

11 (11) a seller who, pursuant to 9 V.S.A. § 2355(f)(1)(D), includes the
12 amount paid or to be paid by the seller to discharge a security interest, lien
13 interest, or lease interest on the traded-in motor vehicle in a motor vehicle
14 retail installment sales contract, provided that the contract is purchased,
15 assigned, or otherwise acquired by a sales finance company licensed pursuant
16 to this title to purchase motor vehicle retail installment sales contracts or a
17 depository institution;

18 (12)(A) a person making an unsecured commercial loan, which loan is
19 expressly subordinate to the prior payment of all senior indebtedness of the
20 commercial borrower regardless of whether such senior indebtedness exists at
21 the time of the loan or arises thereafter. The loan may or may not include the

1 right to convert all or a portion of the amount due on the loan to an equity
2 interest in the commercial borrower;

3 (B) ~~for purposes of as used in~~ this subdivision (12), “senior
4 indebtedness” means:

5 (i) all indebtedness of the commercial borrower for money
6 borrowed from depository institutions, trust companies, insurance companies,
7 and licensed lenders, and any guarantee thereof; and

8 (ii) any other indebtedness of the commercial borrower that the
9 lender and the commercial borrower agree shall constitute senior indebtedness;

10 (13) nonprofit organizations established under testamentary instruments,
11 exempt from taxation under Section 501(c)(3) of the Internal Revenue Code,
12 26 U.S.C. § 501(c)(3), and which make loans for postsecondary educational
13 costs to students and their parents, provided that the organizations provide
14 annual accountings to the ~~probate division of the superior court~~ Probate
15 Division of the Superior Court pursuant to 14 V.S.A. § 2324;

16 (14) any individual who offers or negotiates terms of a residential
17 mortgage loan with or on behalf of an immediate family member of the
18 individual;

19 (15) a housing finance agency;

20 (16) a person who makes not more than three residential mortgage loans
21 in any consecutive three-year period beginning on or after July 1, 2011.

1 (e) No mortgage loan originator license shall be required of:

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

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

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

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

19 (5) A licensed attorney who negotiates the terms of a residential
20 mortgage loan on behalf of a client as an ancillary matter to the attorney's
21 representation of the client, unless the attorney is compensated by a lender, a

1 mortgage broker, or other mortgage loan originator or by any agent of such
2 lender, mortgage broker, or other mortgage loan originator. To the extent an
3 attorney licensed in this State undertakes activities that are covered by the
4 definition of a mortgage loan originator, such activities do not constitute
5 engaging in the business of a mortgage loan originator, provided that:

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

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

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

13 (f) If a person who offers or negotiates the terms of a residential mortgage
14 loan is exempt from licensure pursuant to subdivision (d)(16) of this section,
15 there is a rebuttable presumption that he or she is not engaged in the business
16 of a mortgage loan originator.

17 (g) Independent contractor loan processors or underwriters. A loan
18 processor or underwriter who is an independent contractor may not engage in
19 the activities of a loan processor or underwriter unless such independent
20 contractor loan processor or underwriter obtains and maintains a mortgage loan
21 originator license. Each independent contractor loan processor or underwriter

1 licensed as a mortgage loan originator must have and maintain a valid unique
2 identifier issued by the Nationwide Mortgage Licensing System and Registry.

3 ~~(g)~~(h) This chapter shall not apply to commercial loans of \$1,000,000.00 or
4 more.

5 Sec. 2. EFFECTIVE DATE

6 This act shall take effect on July 1, 2014.