

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 84 entitled “An act relating to internet dating services”
4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate to further amend the bill by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 * * * Consumer Litigation Funding * * *

8 Sec. A.1. 8 V.S.A. chapter 74 is added to read:

9 CHAPTER 74. CONSUMER LITIGATION FUNDING COMPANIES

10 § 2251. DEFINITIONS

11 As used in this chapter:

12 (1) “Charges” means the amount a consumer owes to a company in
13 addition to the funded amount and includes an administrative fee, origination
14 fee, underwriting fee, processing fee, and any other fee regardless of how the
15 fee is denominated, including amounts denominated as interest or rate.

16 (2) “Commissioner” means the Commissioner of Financial Regulation.

17 (3) “Consumer” means a natural person who is seeking or has obtained
18 consumer litigation funding for a pending legal claim, provided:

19 (A) the claim is in Vermont; or

20 (B) the person resides or is domiciled in Vermont, or both.

1 (4) “Consumer litigation funding” or “funding” means a nonrecourse
2 transaction in which a company purchases and a consumer assigns to the
3 company a contingent right to receive an amount of the potential net proceeds
4 of a settlement or judgment obtained from the consumer’s legal claim. If no
5 proceeds or net proceeds are obtained, the consumer is not required to repay
6 the company the funded amount or charges.

7 (5) “Consumer litigation funding company,” “litigation funding
8 company,” or “company” means a person that provides consumer litigation
9 funding to a consumer. The term does not include an immediate family
10 member of the consumer, as defined in subdivision 2200(10) of this title.

11 (6) “Funded amount” means the amount of monies provided to, or on
12 behalf of, the consumer pursuant to a litigation funding contract. The term
13 excludes charges.

14 (7) “Health care facility” has the same meaning as in 18 V.S.A.
15 § 9402(6).

16 (8) “Health care provider” has the same meaning as in 18 V.S.A.
17 § 9402(7).

18 (9) “Litigation funding contract” or “contract” means a contract between
19 a company and a consumer for the provision of consumer litigation funding.

1 (10)(A) “Net proceeds” means the amount recovered by a consumer as a
2 result of a legal claim less costs associated with the legal claim or the
3 underlying events giving rise to the legal claim, including:

4 (i) attorney’s fees, attorney liens, litigation costs;

5 (ii) claims or liens for related medical services owned and asserted
6 by the provider of such services;

7 (iii) claims or liens for reimbursement arising from third parties
8 who have paid related medical expenses, including claims from insurers,
9 employers with self-funded health care plans, and publicly financed health care
10 plans; and

11 (iv) liens for workers’ compensation benefits paid to the
12 consumer.

13 (B) This definition of “net proceeds” shall in no way affect the
14 priority of claims or liens other than those for payments to the consumer
15 litigation funding company under a consumer litigation funding contract
16 subject to this chapter.

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
21 financial stability, as required by this section.

1 (b) A company shall submit a \$600.00 fee at the time of registration and at
2 the time of each renewal. Registrations shall be renewed every three years.

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

9 § 2253. CONTRACTS; DISCLOSURES AND REQUIREMENTS

10 (a) A contract shall be written in a clear and coherent manner using words
11 with common, everyday meanings to enable the average consumer who makes
12 a reasonable effort under ordinary circumstances to read and understand the
13 terms of the contract without having to obtain the assistance of a professional.

14 (b) Each contract shall include consumer disclosures on the front page.
15 The consumer disclosures shall be in a form prescribed by the Commissioner
16 and shall include:

17 (1) a description of possible alternatives to a litigation funding contract,
18 including secured or unsecured personal loans, and life insurance policies;

19 (2) notification that some or all of the funded amount may be taxable;

20 (3) a description of the consumer's right of rescission;

21 (4) the total funded amount provided to the consumer under the contract;

1 (5) an itemization of charges;

2 (6) the annual percentage rate of return;

3 (7) the total amount due from the consumer, including charges, if
4 repayment is made any time after the funding contract is executed;

5 (8) a statement that there are no fees or charges to be paid by the
6 consumer other than what is disclosed on the disclosure form;

7 (9) in the event the consumer seeks more than one litigation funding
8 contract, a disclosure providing the cumulative amount due from the consumer
9 for all transactions, including charges under all contracts, if repayment is made
10 any time after the contracts are executed;

11 (10) a statement that the company has no right to make any decisions
12 regarding the conduct of the legal claim or any settlement or resolution thereof
13 and that the right to make such decisions remains solely with the consumer and
14 his or her attorney;

15 (11) a statement that, if there is no recovery of any money from the
16 consumer's legal claim, the consumer shall owe nothing to the company and
17 that, if the net proceeds of the claim are insufficient to repay the consumer's
18 indebtedness to the company, then the consumer shall owe the company no
19 money in excess of the net proceeds; and

20 (12) any other statements or disclosures deemed necessary or
21 appropriate by the Commissioner.

1 (c) Each contract shall include the following provisions:

2 (1) Definitions of the terms “consumer,” “consumer litigation funding,”
3 and “consumer litigation funding company.”

4 (2) A right of rescission, allowing the consumer to cancel the contract
5 without penalty or further obligation if, within five business days following the
6 execution of the contract or the consumer’s receipt of any portion of the funded
7 amount, the consumer gives notice of the rescission to the company and returns
8 any funds provided to the consumer by the company.

9 (3) A provision specifying that, in the event of litigation involving the
10 contract and at the election of the consumer, venue shall lie in the Vermont
11 Superior Court for the county where the consumer resides.

12 (4) An acknowledgment that the consumer is represented by an attorney
13 in the legal claim and has had an opportunity to discuss the contract with his or
14 her attorney.

15 § 2254. PROHIBITED ACTS

16 (a) A consumer litigation funding company shall not engage in any of the
17 following conduct or practices:

18 (1) Pay or offer to pay commissions, referral fees, or any other form of
19 consideration to any attorney, law firm, health care provider, health care
20 facility, or an employee of a law firm, health care provider, or health care
21 facility for referring a consumer to the company.

1 (2) Accept any commissions, referral fees, or any other form of
2 consideration from any attorney, law firm, health care provider, health care
3 facility, or an employee of a law firm, health care provider, or health care
4 facility.

5 (3) Advertise false or misleading information regarding its products or
6 services.

7 (4) Receive any right to nor make any decisions with respect to the
8 conduct of the consumer’s legal claim or any settlement or resolution. The
9 right to make such decisions shall remain solely with the consumer and his or
10 her attorney.

11 (5) Knowingly pay or offer to pay for court costs, filing fees, or
12 attorney’s fees either during or after the resolution of the legal claim.

13 (6) Refer a consumer to a specific attorney, law firm, health care
14 provider, or health care facility.

15 (7) Fail to provide promptly copies of contract documents to the
16 consumer or to the consumer’s attorney.

17 (8) Obtain a waiver of any remedy the consumer might otherwise have
18 against the company.

19 (9) Provide legal advice to the consumer regarding the funding or the
20 underlying legal claim.

1 (10) Assign a contract in whole or in part to a third party. Provided,
2 however, if the company retains responsibility for collecting payment,
3 administering, and otherwise enforcing the consumer litigation funding
4 contract, the prohibition in this subdivision (10) shall not apply to an
5 assignment:

6 (A) to a wholly-owned subsidiary of the company;

7 (B) to an affiliate of the company that is under common control with
8 the company; or

9 (C) granting a security interest under Article 9 of the Uniform
10 Commercial Code or as otherwise permitted by law.

11 (11) Report a consumer to a credit reporting agency if insufficient funds
12 remain from the net proceeds to repay the company.

13 (12) Require binding arbitration in the event of a dispute between the
14 consumer and the company. A consumer has the right to a trial in the event of
15 a contractual dispute.

16 (b) An attorney or law firm retained by a consumer shall not have a
17 financial interest in a company offering litigation funding to the consumer and
18 shall not receive a referral fee or other consideration from such company, its
19 employees, or its affiliates.

1 § 2255. EFFECT OF COMMUNICATION ON PRIVILEGES

2 A communication between a consumer’s attorney and the company shall
3 not be discoverable or limit, waive, or abrogate the scope or nature of any
4 statutory or common-law privilege, including the work-product doctrine and
5 the attorney-client privilege.

6 § 2256. EXAMINATIONS; CHARGES

7 For the purpose of protecting consumer interests and determining a
8 company’s financial stability and compliance with the requirements of this
9 chapter, the Commissioner may conduct an examination of a company engaged
10 in the business of consumer litigation funding. The company shall reimburse
11 the Department of Financial Regulation all reasonable costs and expenses of
12 such examination. In unusual circumstances and in the interests of justice, the
13 Commissioner may waive reimbursement for the costs and expenses of an
14 examination under this section.

15 § 2257. NATIONWIDE LICENSING SYSTEM; INFORMATION

16 SHARING; CONFIDENTIALITY

17 (a) In furtherance of the Commissioner’s duties under this chapter, the
18 Commissioner may participate in the Nationwide Mortgage Licensing System
19 and Registry and may take such action regarding participation in the Registry
20 as the Commissioner deems necessary to carry out the purposes of this section,
21 including:

- 1 (1) issue rules or orders, or establish procedures, to further participation
2 in the Registry;
- 3 (2) facilitate and participate in the establishment and implementation of
4 the Registry;
- 5 (3) establish relationships or contracts with the Registry or other entities
6 designated by the Registry;
- 7 (4) authorize the Registry to collect and maintain records and to collect
8 and process any fees associated with licensure or registration on behalf of the
9 Commissioner;
- 10 (5) require persons engaged in activities that require registration under
11 this chapter to use the Registry for applications, renewals, amendments,
12 surrenders, and such other activities as the Commissioner may require and to
13 pay through the Registry all fees provided for under this chapter;
- 14 (6) authorize the Registry to collect fingerprints on behalf of the
15 Commissioner in order to receive or conduct criminal history background
16 checks, and, in order to reduce the points of contact which the Federal Bureau
17 of Investigation may have to maintain for purposes of this subsection, the
18 Commissioner may use the Registry as a channeling agent for requesting
19 information from and distributing information to the Department of Justice or
20 any other governmental agency; and

1 (7) in order to reduce the points of contact which the Commissioner may
2 have to maintain for purposes of this chapter, use the Registry as a channeling
3 agent for requesting and distributing information to and from any source so
4 directed by the Commissioner.

5 (b) The Commissioner may require persons engaged in activities that
6 require registration under this chapter to submit fingerprints, and the
7 Commissioner may use the services of the Registry to process the fingerprints
8 and to submit the fingerprints to the Federal Bureau of Investigation, the
9 Vermont State Police, or any equivalent state or federal law enforcement
10 agency for the purpose of conducting a criminal history background check.
11 The company shall pay the cost of such criminal history background check,
12 including any charges imposed by the Registry.

13 (c) Persons engaged in activities that require registration pursuant to this
14 chapter shall pay all applicable charges to use the Registry, including such
15 processing charges as the administrator of the Registry shall establish, in
16 addition to the fees required under this chapter.

17 (d) The Registry is not intended to and does not replace or affect the
18 Commissioner's authority to grant, deny, suspend, revoke, or refuse to renew
19 registrations.

20 (e) In order to promote more effective regulation and reduce regulatory
21 burden through supervisory information sharing:

1 (1) The privacy or confidentiality of any information or material
2 provided to the Registry and any privilege arising under federal or state law
3 (including the rules of any federal or state court) with respect to such
4 information or material shall continue to apply to such information or material
5 after the information or material has been disclosed to the Registry. Such
6 information and material may be shared with all state and federal regulatory
7 officials with oversight authority without the loss of privilege or the loss of
8 confidentiality protections provided by federal law or state law.

9 (2) To carry out the purpose of this section, the Commissioner is
10 authorized to enter agreements or sharing arrangements with other
11 governmental agencies, the Conference of State Bank Supervisors, the
12 American Association of Residential Mortgage Regulators, or other
13 associations representing governmental agencies.

14 (3) Information or material that is subject to privilege or confidentiality
15 under subdivision (1) of this subsection shall not be subject to:

16 (A) disclosure under any federal or state law governing the disclosure
17 to the public of information held by an officer or an agency of the federal
18 government or the respective state; or

19 (B) subpoena or discovery or admission into evidence in any private
20 civil action or administrative process unless with respect to any privilege held
21 by the Registry with respect to such information or material the person to

1 whom such information or material pertains waives, in whole or in part, in the
2 discretion of the person, that privilege.

3 (4) This subsection shall not apply with respect to information or
4 material relating to employment history and publicly adjudicated disciplinary
5 and enforcement actions that are included in the Registry for access by the
6 public.

7 (f) In this section, “Nationwide Mortgage Licensing System and Registry”
8 or “the Registry” means a licensing system developed and maintained by the
9 Conference of State Bank Supervisors and the American Association of
10 Residential Mortgage Regulators as defined in 12 U.S.C. § 5102(6), or its
11 successor in interest, or any alternative or replacement licensing system and
12 registry designated by the Commissioner.

13 § 2258. RULES

14 The Commissioner may adopt rules he or she deems necessary for the
15 proper conduct of business and enforcement of this chapter.

16 § 2259. PENALTIES; ENFORCEMENT

17 (a) After notice and opportunity for hearing in accordance with the
18 Administrative Procedures Act, 3 V.S.A. chapter 25, the Commissioner may
19 take action to enforce the provisions of this chapter and may:

20 (1) revoke or suspend a company’s registration;

1 (2) order a company to cease and desist from further consumer litigation
2 funding;

3 (3) impose a penalty of not more than \$1,000.00 for each violation or
4 \$10,000.00 for each violation the Commissioner finds to be willful; and

5 (4) order the company to make restitution to consumers.

6 (b) The powers vested in the Commissioner by this chapter shall be in
7 addition to any other powers of the Commissioner to enforce any penalties,
8 finances, or forfeitures authorized by law.

9 (c) A company's failure to comply with the requirements of this chapter
10 shall constitute an unfair or deceptive act in commerce enforceable under
11 9 V.S.A. chapter 63, the Consumer Protection Act.

12 (d) The powers vested in the Commissioner by this chapter shall be in
13 addition to any other powers or rights of consumers or the Attorney General or
14 others under any other applicable law or rule, including the Vermont
15 Consumer Protection Act and any applicable rules adopted thereunder,
16 provided the Commissioner's determinations concerning the interpretation and
17 administration of the provisions of this chapter and rules adopted thereunder
18 shall carry a presumption of validity.

19 § 2260. ANNUAL REPORTS

20 (a) Annually, on or before April 1, each company registered under this
21 chapter shall file a report with the Commissioner under oath and in the form

1 and manner prescribed by the Commissioner. The report shall include any
2 information the Commissioner requires concerning the company's business
3 and operations during the preceding calendar year within Vermont and, in
4 addition, shall include:

5 (1) the number of contracts entered into;

6 (2) the dollar value of funded amounts to consumers;

7 (3) the dollar value of charges under each contract, itemized and
8 including the annual rate of return;

9 (4) the dollar amount and number of litigation funding transactions in
10 which the realization to the company was as contracted; and

11 (5) the dollar amount and number of litigation funding transactions in
12 which the realization to the company was less than contracted.

13 (b) To assist the general public with more fully understanding the nature of
14 consumer litigation funding in Vermont, the Commissioner shall summarize
15 and analyze relevant data submitted under this section and publish the
16 summary and analysis on a web page maintained by the Department of
17 Financial Regulation, as well as on a web page maintained by the Office of the
18 Attorney General.

19 (c) Annually, beginning on or before October 1, 2017, the Commissioner
20 and Attorney General shall report jointly to the General Assembly on the status
21 of consumer litigation funding in Vermont and make any recommendations

1 they deem necessary to improve the regulatory framework of consumer
2 litigation funding, including a recommendation on whether Vermont should
3 limit charges imposed under a consumer litigation funding contract.

4 * * * Structured Settlement Agreements * * *

5 Sec. B.1. 9 V.S.A. § 2480ff(b) is amended to read:

6 (b) Not less than 20 days prior to the scheduled hearing on any application
7 for approval of a transfer of structured settlement payment rights under section
8 2480dd of this title, the transferee shall file with the Court and serve on all
9 interested parties a notice of the proposed transfer and the application for its
10 authorization, including with such notice:

11 * * *

12 (7) a statement setting forth whether, to the best of the transferee's
13 knowledge after making a reasonable inquiry to the payee, the structured
14 settlement obligor, and the annuity issuer, there have been any previous
15 transfers or applications for transfer of any structured settlement payment
16 rights of the payee and giving details of all such transfers or applications for
17 transfer;

18 (8) to the best of the transferee's knowledge after making reasonable
19 inquiry to the payee, the structured settlement obligor, and the annuity issuer, a
20 description of the remaining payments owed to the payee under the structured

1 settlement if the court approves the proposed transfer, including the amount
2 and dates or date ranges of the payments owed, provided that:

3 (A) the description may be filed under seal; and

4 (B) if the transferee's knowledge concerning the remaining payments
5 changes after the transferee submits a notice of the proposed transfer, the
6 transferee may provide updated information to the court at the hearing;

7 ~~(8)~~(9) if available to the transferee after making a good faith request of
8 the payee, the structured settlement obligor and the annuity issuer, the
9 following documents, which shall be filed under seal:

10 (A) a copy of the annuity contract;

11 (B) a copy of any qualified assignment agreement; and

12 (C) a copy of the underlying structured settlement agreement;

13 ~~(9)~~(10) either a certification from an independent professional advisor
14 establishing that the advisor has given advice to the payee on the financial
15 advisability of the transfer and the other financial options available to the
16 payee or a written request that the Court determine that such advice is
17 unnecessary pursuant to subdivision 2480dd(a)(2) of this title; and

18 ~~(10)~~(11) notification of the time and place of the hearing and
19 notification of the manner in which and the time by which written responses to
20 the application must be filed, which shall be not less than 15 days after service
21 of the transferee's notice, in order to be considered by the court.

1 * * * Business Registration; Enforcement * * *

2 Sec. C.1. PURPOSE

3 (a) The purpose of 11 V.S.A. § 1637, as added in Sec. C. 2 of this act, is to
4 protect consumers by ensuring that they have adequate public notice in the
5 records of the Secretary of State when a person is no longer allowed to conduct
6 business in this State.

7 (b) The purpose of Secs. C.3–C.14 is to standardize among the statutes
8 governing business organizations authorized to conduct business in this State:

9 (1) the duty of a person to register with the Secretary of State; and

10 (2) the enforcement and penalties for failure register.

11 Sec. C.2. 11 V.S.A. § 1637 is added to read:

12 § 1637. AUTHORITY TO TERMINATE AND AMEND REGISTRATION

13 (a) The Secretary of State shall have the authority to:

14 (1) terminate the registration of a person who, pursuant to a final court
15 order or an assurance of discontinuance, is not authorized to conduct business
16 in this State; and

17 (2) amend his or her records to reflect the termination of a registration
18 pursuant to subdivision (1) of this section.

19 (b)(1) If the Secretary of State terminates the registration of a person
20 pursuant to this section, the person appoints the Secretary as his or her agent
21 for service of process in any proceeding based on a cause of action that arose

1 during the time the person was authorized to transact, or was transacting
2 without authorization, business in this State.

3 (2) Upon receipt of process, the Secretary of State shall deliver by
4 registered mail a copy of the process to the secretary of the terminated person
5 at its principal office shown in its most recent annual report or in any
6 subsequent communication received from the person stating the current
7 mailing address of its principal office, or, if none is on file, in its application
8 for registration.

9 (c)(1) If a court or other person with sufficient legal authority reinstates the
10 ability of a terminated person to conduct business in this State, the terminated
11 person may file with the Secretary of State evidence of the reinstated authority
12 and pay to the Secretary a fee of \$25.00 for each year the person is delinquent.

13 (2) Upon receipt of a filing and payment pursuant to subdivision (1) of
14 this subsection, the Secretary shall cancel the termination and prepare a
15 certificate of reinstatement, file the original of the certificate, and serve a copy
16 on the person.

17 Sec. C.3. 11 V.S.A. § 1626 is amended to read:

18 § 1626. FAILURE TO REGISTER; ENFORCING COMPLIANCE

19 ~~Upon the complaint of the secretary of state, a person, copartnership,~~
20 ~~association, limited liability company or corporation carrying on business in~~

1 ~~this state contrary to this chapter may be enjoined therefrom by a superior~~
2 ~~court and fined not more than \$100.00.~~

3 (a) A person who is not registered with the Secretary of State as required
4 under this chapter and any successor to the person or assignee of a cause of
5 action arising out of the business of the person may not maintain an action or
6 proceeding or raise a counterclaim, crossclaim, or affirmative defense in this
7 State until the person, successor, or assignee registers with the Secretary.

8 (b) The failure of a person to register as required under this chapter does
9 not impair the validity of a contract or act of the person or preclude it from
10 defending an action or proceeding in this State.

11 (c) An individual does not waive a limitation on his or her personal liability
12 afforded by other law solely by transacting business in this State without
13 registering with the Secretary of State as required under this chapter.

14 (d) If a person transacts business in this State without registering with the
15 Secretary of State as required under this chapter, the Secretary is its agent for
16 service of process with respect to a right of action arising out of the transaction
17 of business in this State.

18 (e) A person that transacts business in this State without registering with
19 the Secretary of State as required under this chapter shall be liable to the
20 State for:

1 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
2 \$10,000.00 for each year, it transacts business in this State without a
3 registration;

4 (2) an amount equal to the fees due under this chapter during the period
5 it transacted business in this State without a registration; and

6 (3) other penalties imposed by law.

7 (f) The Attorney General may maintain an action in the Civil Division of
8 the Superior Court to collect the penalties imposed in subsection (e) of this
9 section and to restrain a person from transacting business in this State in
10 violation of this chapter.

11 Sec. C.4. 11 V.S.A. § 3303 is amended to read:

12 § 3303. EFFECT OF FAILURE TO QUALIFY

13 (a)(1) A foreign limited liability partnership transacting business in this
14 ~~state~~ State may not maintain an action or proceeding or raise a counterclaim,
15 crossclaim, or affirmative defense in this ~~state~~ State unless it has in effect a
16 statement of foreign qualification.

17 (2) The successor to a foreign limited liability partnership that
18 transacted business in this State without a certificate of authority and the
19 assignee of a cause of action arising out of that business may not maintain a
20 proceeding or raise a counterclaim, crossclaim, or affirmative defense based on

1 that cause of action in any court in this State until the foreign limited liability
2 partnership or its successor or assignee obtains a certificate of authority.

3 (b) The failure of a foreign limited liability partnership to have in effect a
4 statement of foreign qualification does not impair the validity of a contract or
5 act of the foreign limited liability partnership or preclude it from defending an
6 action or proceeding in this ~~state~~ State.

7 (c) A limitation on personal liability of a partner is not waived solely by
8 transacting business in this ~~state~~ State without a statement of foreign
9 qualification.

10 (d) If a foreign limited liability partnership transacts business in this ~~state~~
11 State without a statement of foreign qualification, the ~~secretary of state~~
12 Secretary of State is its agent for service of process with respect to a right of
13 action arising out of the transaction of business in this ~~state~~ State.

14 (e) A foreign limited liability partnership that transacts business in this
15 State without a statement of foreign qualification shall be liable to the
16 State for:

17 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
18 \$10,000.00 for each year, it transacts business in this State without a statement
19 of foreign qualification;

1 (2) an amount equal to the fees due under this chapter during the
2 period it transacted business in this State without a statement of foreign
3 qualification; and

4 (3) other penalties imposed by law.

5 Sec. C.5. 11 V.S.A. § 3305 is amended to read:

6 § 3305. ACTION BY ATTORNEY GENERAL

7 The ~~attorney general~~ Attorney General may maintain an action in the Civil
8 Division of the Superior Court to collect the penalties imposed in section 3303
9 of this title and to restrain a foreign limited liability partnership from
10 transacting business in this ~~state~~ State in violation of this subchapter.

11 Sec. C.6. 11 V.S.A. § 3487 is amended to read:

12 § 3487. TRANSACTION OF BUSINESS WITHOUT REGISTRATION

13 (a)(1) A foreign limited partnership transacting business in this ~~state~~ State
14 may not maintain an action or proceeding or raise a counterclaim, crossclaim,
15 or affirmative defense in this state State until it has registered in this ~~state~~
16 State.

17 (2) The successor to a foreign limited partnership that transacted
18 business in this State without a certificate of authority and the assignee of a
19 cause of action arising out of that business may not maintain a proceeding or
20 raise a counterclaim, crossclaim, or affirmative defense based on that cause of

1 action in any court in this State until the foreign limited partnership or its
2 successor or assignee obtains a certificate of authority.

3 (b) The failure of a foreign limited partnership to register in this ~~state~~ State
4 does not impair the validity of any contract or act of the foreign limited
5 partnership or prevent the foreign limited partnership from defending any
6 action, suit, or proceeding in any court of this ~~state~~ State.

7 (c) A limited partner of a foreign limited partnership is not liable as a
8 general partner of the foreign limited partnership solely by reason of having
9 transacted business in this ~~state~~ State without registration.

10 (d) A foreign limited partnership, by transacting business in this ~~state~~ State
11 without registration, appoints the ~~secretary of state~~ Secretary of State as its
12 agent for service of process with respect to claims for relief and causes of
13 action arising out of the transaction of business in this ~~state~~ State.

14 (e) A foreign limited partnership that transacts business in this State
15 without a registration shall be liable to the State for:

16 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
17 \$10,000.00 for each year, it transacts business in this State without a
18 registration;

19 (2) an amount equal to the fees due under this chapter during the period
20 it transacted business in this State without a registration; and

21 (3) other penalties imposed by law.

1 Sec. C.7. 11 V.S.A. § 3488 is amended to read:

2 § 3488. ACTION BY ATTORNEY GENERAL

3 The ~~attorney general~~ Attorney General may bring an action in the Civil
4 Division of the Superior Court to collect the penalties imposed under section
5 3487 of this title and to restrain a foreign limited partnership from transacting
6 business in this ~~state~~ State in violation of this subchapter.

7 Sec. C.8. 11 V.S.A. § 4119 is amended to read:

8 § 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF
9 AUTHORITY

10 (a)(1) A foreign limited liability company transacting business in this State
11 may not maintain a proceeding or raise a counterclaim, cross-claim, or
12 affirmative defense in any court in this State until it obtains a certificate of
13 authority to transact business in this State.

14 (2) The successor to a foreign limited liability company that transacted
15 business in this State without a certificate of authority and the assignee of a
16 cause of action arising out of that business may not maintain a proceeding or
17 raise a counterclaim, crossclaim, or affirmative defense based on that cause of
18 action in any court in this State until the foreign limited liability company or its
19 successor or assignee obtains a certificate of authority.

20 (b) The failure of a foreign limited liability company to have a certificate of
21 authority to transact business in this State does not impair the validity of a

1 contract or act of the company or prevent the foreign limited liability company
2 from defending an action or proceeding in this State.

3 (c) A member or manager of a foreign limited liability company is not
4 liable for the debts, obligations, or other liabilities of the company solely
5 because the company transacted business in this State without a certificate of
6 authority.

7 (d) If a foreign limited liability company transacts business in this State
8 without a certificate of authority, it appoints the Secretary of State as its agent
9 for service of process for claims arising out of the transaction of business in
10 this State.

11 (e) A foreign limited liability company that transacts business in this State
12 without a certificate of authority shall be liable to the State for:

13 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
14 \$10,000.00 for each year, it transacts business in this State without a certificate
15 of authority;

16 (2) an amount equal to the fees due under this chapter during the period
17 it transacted business in this State without a certificate of authority; and

18 (3) other penalties imposed by law.

1 Sec. C.9. 11 V.S.A. § 4120 is amended to read:

2 § 4120. ACTION BY ATTORNEY GENERAL

3 The Attorney General may maintain an action in the Civil Division of the
4 Superior Court to collect the penalties imposed under section 4119 of this title
5 and to restrain a foreign limited liability company from transacting business in
6 this State in violation of this chapter.

7 Sec. C.10. 11A V.S.A. § 15.02 is amended to read:

8 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT
9 AUTHORITY

10 (a) A foreign corporation transacting business in this ~~state~~ State without a
11 certificate of authority may not maintain a proceeding or raise a counterclaim,
12 crossclaim₂ or affirmative defense in any court in this ~~state~~ State until it obtains
13 a certificate of authority.

14 (b) The successor to a foreign corporation that transacted business in this
15 ~~state~~ State without a certificate of authority and the assignee of a cause of
16 action arising out of that business may not maintain a proceeding or raise a
17 counterclaim, crossclaim₂ or affirmative defense based on that cause of action
18 in any court in this ~~state~~ State until the foreign corporation or its successor or
19 assignee obtains a certificate of authority.

20 (c) A court may stay a proceeding commenced by a foreign corporation, its
21 successor, or assignee until it determines whether the foreign corporation or its

1 successor requires a certificate of authority. If it so determines, the court may
2 further stay the proceeding until the foreign corporation or its successor obtains
3 the certificate.

4 (d) A foreign corporation that transacts business in this State without a
5 certificate of authority is liable to the ~~state~~ State for:

6 (1) a civil penalty of \$50.00 for each day, ~~but~~ not to exceed a total of
7 ~~\$1,000.00~~ \$10,000.00 for each year, it transacts business in this ~~state~~ State
8 without a certificate of authority;

9 (2) an amount equal to ~~all the fees that would have been imposed due~~
10 under this ~~chapter title~~ title during the ~~years, or parts thereof,~~ period it transacted
11 business in this ~~state~~ State without a certificate of authority; and

12 (3) ~~such other penalties as are imposed by law. The attorney general~~
13 ~~may collect all penalties due under this subsection.~~

14 (e) ~~Upon petition of the attorney general~~ The Attorney General may
15 maintain an action in the Civil Division of the Superior Court to collect the
16 penalties imposed in this section and to restrain a foreign corporation not in
17 compliance with this chapter, ~~and its officers and agents, may be enjoined by~~
18 ~~the courts of this state~~ from doing business within this ~~state~~ State.

19 (f) Notwithstanding subsections (a) and (b) of this section, the failure of a
20 foreign corporation to obtain a certificate of authority does not impair the

1 validity of its corporate acts, to the extent they are otherwise in compliance
2 with law, or prevent it from defending any proceeding in this ~~state~~ State.

3 Sec. C.11. 11B V.S.A. § 15.02 is amended to read:

4 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT
5 AUTHORITY

6 (a) A foreign corporation transacting business in this ~~state~~ State without a
7 certificate of authority may not maintain a proceeding or raise a counterclaim,
8 crossclaim, or affirmative defense in any court in this ~~state~~ State until it obtains
9 a certificate of authority.

10 (b) The successor to a foreign corporation that transacted business in this
11 ~~state~~ State without a certificate of authority and the assignee of a cause of
12 action arising out of that business may not maintain a proceeding or raise a
13 counterclaim, crossclaim, or affirmative defense based on that cause of action
14 in any court in this ~~state~~ State until the foreign corporation or its successor or
15 assignee obtains a certificate of authority.

16 (c) A court may stay a proceeding commenced by a foreign corporation, its
17 successor, or assignee until it determines whether the foreign corporation or its
18 successor requires a certificate of authority. If it so determines, the court may
19 further stay the proceeding until the foreign corporation or its successor obtains
20 the certificate.

1 ~~(d) A foreign corporation is liable for a civil penalty of \$50.00 for each~~
2 ~~day, but not to exceed a total of \$1,000.00 for each year, it transacts business in~~
3 ~~this state without a certificate of authority, an amount equal to all fees that~~
4 ~~would have been imposed under this chapter during the years, or parts thereof,~~
5 ~~it transacted business in this state without a certificate of authority, and such~~
6 ~~other penalties as are imposed by law. The attorney general may collect all~~
7 ~~penalties due under this subsection.~~ A foreign corporation that transacts
8 business in this State without a certificate of authority is liable to the State for:

9 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
10 \$10,000.00 for each year, it transacts business in this State without a certificate
11 of authority;

12 (2) an amount equal to the fees due under this title during the period it
13 transacted business in this State without a certificate of authority; and

14 (3) other penalties imposed by law.

15 (e) The Attorney General may file an action in the Civil Division of
16 Superior Court to collect the penalties due under this subsection and to restrain
17 a foreign corporation not in compliance with this chapter from doing business
18 within this State.

19 (f) Notwithstanding subsections (a) and (b) of this section, the failure of a
20 foreign corporation to obtain a certificate of authority does not impair the

1 validity of its corporate acts or prevent it from defending any proceeding in
2 this ~~state~~ State.

3 Sec. C.12. 11C V.S.A. § 1402 is amended to read:

4 § 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

5 (a) A foreign enterprise may apply for a certificate of authority by
6 delivering an application to the Secretary of State for filing. The application
7 shall state:

8 (1) the name of the foreign enterprise and, if the name does not comply
9 with section 111 of this title, an alternative name adopted pursuant to section
10 1405 of this title;

11 (2) the name of the state or other jurisdiction under whose law the
12 foreign enterprise is organized;

13 (3) the street address and, if different, mailing address of the principal
14 office and, if the law of the jurisdiction under which the foreign enterprise is
15 organized requires the foreign enterprise to maintain another office in that
16 jurisdiction, the street address and, if different, mailing address of the required
17 office;

18 (4) the street address and, if different, mailing address of the foreign
19 enterprise's designated office in this State, and the name of the foreign
20 enterprise's agent for service of process at the designated office; and

1 (5) the name, street address and, if different, mailing address of each of
2 the foreign enterprise's current directors and officers.

3 (b) A foreign enterprise shall deliver with a completed application under
4 subsection (a) of this section a certificate of good standing or existence or a
5 similar record signed by the Secretary of State or other official having custody
6 of the foreign enterprise's publicly filed records in the state or other
7 jurisdiction under whose law the foreign enterprise is organized.

8 (c) A foreign enterprise may not transact business in this State without a
9 certificate of authority.

10 Sec. C.13. 11C V.S.A. § 1407 is amended to read:

11 § 1407. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT
12 OF FAILURE TO HAVE CERTIFICATE

13 (a) To cancel its certificate of authority, a foreign enterprise shall deliver to
14 the Secretary of State for filing a notice of cancellation. The certificate is
15 canceled when the notice becomes effective under section 203 of this title.

16 (b)(1) A foreign enterprise transacting business in this State may not
17 maintain an action or proceeding or raise a counterclaim, crossclaim, or
18 affirmative defense in this State unless it has a certificate of authority.

19 (2) The successor to a foreign enterprise that transacted business in this
20 State without a certificate of authority and the assignee of a cause of action
21 arising out of that business may not maintain a proceeding or raise a

1 counterclaim, crossclaim, or affirmative defense based on that cause of action
2 in any court in this State until the foreign enterprise or its successor or assignee
3 obtains a certificate of authority.

4 (c) The failure of a foreign enterprise to have a certificate of authority does
5 not impair the validity of a contract or act of the foreign enterprise or prevent
6 the foreign enterprise from defending an action or proceeding in this State.

7 (d) A member of a foreign enterprise is not liable for the obligations of the
8 foreign enterprise solely by reason of the foreign enterprise's having transacted
9 business in this State without a certificate of authority.

10 (e) If a foreign enterprise transacts business in this State without a
11 certificate of authority or cancels its certificate, it appoints the Secretary of
12 State as its agent for service of process for an action arising out of the
13 transaction of business in this State.

14 (f) A foreign enterprise that transacts business in this State without a
15 certificate of authority is liable to the State for:

16 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
17 \$10,000.00 for each year, it transacts business in this State without a certificate
18 of authority;

19 (2) an amount equal to the fees due under this title during the period it
20 transacted business in this State without a certificate of authority; and

21 (3) other penalties imposed by law.

1 Sec. C.14. 11C V.S.A. § 1408 is amended to read:

2 § 1408. ACTION BY ATTORNEY GENERAL

3 The Attorney General may maintain an action in the Civil Division of the
4 Superior Court to collect the penalties imposed in section 1407 of this title and
5 to restrain a foreign enterprise from transacting business in this State in
6 violation of this ~~article~~ chapter.

7 * * * Anti-Trust Penalties * * *

8 Sec. D.1. 9 V.S.A. § 2458 is amended to read:

9 § 2458. RESTRAINING PROHIBITED ACTS

10 * * *

11 (b) In addition to the foregoing, the Attorney General or a State's Attorney
12 may request and the court is authorized to render any other temporary or
13 permanent relief, or both, as may be in the public interest including:

14 (1) the imposition of a civil penalty of not more than \$10,000.00 for
15 ~~each violation~~ unfair or deceptive act or practice in commerce, and of not more
16 than \$100,000.00 for an individual or \$1,000,000.00 for any other person for
17 each unfair method of competition in commerce;

18 * * *

19 * * * Discount Membership Programs * * *

20 Sec. E.1. 9 V.S.A. chapter 63, subchapter 1D is amended to read:

21 Subchapter 1D. Third-Party Discount Membership Programs

1 § 2470aa. DEFINITIONS

2 ~~In~~ As used in this subchapter:

3 (1) “Billing information” means any data that enables a seller of a
4 third-party discount membership program to access a consumer’s credit or
5 debit card, bank, or other account, but does not include the consumer’s name,
6 e-mail address, telephone number, or mailing address. For credit card and
7 debit card accounts, billing information includes the full account number, card
8 type, and expiration date, and, if necessary, the security code. For accounts at
9 a financial institution, “billing information” includes the full account number
10 and routing number, and, if necessary, the name of the financial institution
11 holding the account.

12 (2) A “third-party discount membership program” is a program that
13 entitles consumers to receive discounts, rebates, rewards, or similar incentives
14 on the purchase of goods or services or both, in whole or in part, from any
15 third party.

16 § 2470bb. APPLICABILITY

17 (a) A third-party discount membership program is a good or service within
18 the meaning of subsection 2451a(b) of this chapter.

19 (b) This subchapter applies only to persons who are regularly and primarily
20 engaged in trade or commerce in this State in connection with offering or
21 selling third-party discount membership programs.

1 (c) This subchapter shall not apply to an electronic payment system, as
2 defined in section 2480o of this title, or to a financial institution, as defined in
3 8 V.S.A. § 11101(32).

4 § 2470cc. REQUIRED DISCLOSURES; CONSENT

5 (a) No person shall charge or attempt to charge a consumer for a third-party
6 discount membership program, or to renew a third-party discount membership
7 program beyond the term expressly agreed to by the consumer or the term
8 permitted under section 2470ff of this title, whichever is shorter, unless:

9 (1) ~~Before~~ before obtaining the consumer's billing information, the
10 person has clearly and conspicuously disclosed to the consumer all material
11 terms of the transaction, including:

12 (A) a description of the types of goods and services on which a
13 discount is available;

14 (B) the name of the third-party discount membership program, ~~and~~
15 the name and address of the seller of the program, and a telephone number,
16 e-mail address, or other contact information the consumer may use to contact
17 the seller with questions concerning the operation of the program;

18 (C) the amount, or a good faith estimate, of the typical discount on
19 each category of goods and services;

20 (D) the cost of the program, including the amount of any periodic
21 charges, how often such charges are imposed, and the method of payment;

1 (E) the right to cancel and to terminate the program, which shall be
2 no more restrictive than as required by section 2470ee of this subchapter, and a
3 toll-free telephone number and e-mail address that can be used to cancel the
4 membership;

5 (F) the maximum length of membership, as described in section
6 2470ff of this subchapter;

7 (G) in the event that the program is offered on the Internet through a
8 link or referral from another business's website, the fact that the seller is not
9 affiliated with that business; and

10 (H) the fact that periodic notices of the program billings will be
11 e-mailed or mailed to the consumer, as the case may be, consistent with section
12 2470dd of this title; and

13 (2) ~~The~~ the person has received express informed consent for the charge
14 from the consumer whose credit or debit card, bank, or other account will be
15 charged, by:

16 (A) obtaining from the consumer:

17 (i) the consumer's billing information; and

18 (ii) the consumer's name and address and a means to contact the
19 consumer; and

20 (B) requiring the consumer to perform an additional affirmative
21 action, such as clicking on an online confirmation button, checking an online

1 box that indicates the consumer's consent to be charged the amount disclosed,
2 or expressly giving consent over the telephone.

3 (b) A person who sells third-party discount membership programs shall
4 retain evidence of a consumer's express informed consent for at least three
5 years after the consent is given.

6 (c) A person who sells a third-party discount membership program shall
7 provide to a consumer on the receipt for the underlying good or service:

8 (1) confirmation that the consumer has signed up for a discount
9 membership program;

10 (2) the price the consumer will be charged for the program;

11 (3) the date on which the consumer will first be charged for the
12 program;

13 (4) the frequency of charges for the program; and

14 (5) information concerning the consumer's right to cancel the program
15 and a toll-free telephone number, address, and e-mail address a consumer may
16 use to cancel the program.

17 § 2470dd. PERIODIC NOTICES

18 (a) A person who periodically charges a consumer for a third-party
19 discount membership program shall send the consumer a notice of the charge
20 no less frequently than every three months from the date of initial enrollment
21 that clearly and conspicuously discloses:

1 (1) a description of the program;

2 (2) the name of the third-party discount membership program and the
3 name and address of the seller of the program;

4 (3) the cost of the program, including the amount of any periodic
5 charges, how often such charges are imposed, and the method of payment;

6 (4) the right to cancel and to terminate the program, which shall be no
7 more restrictive than as required by section 2470ee of this subchapter, and a
8 toll-free number and e-mail address that can be used to cancel the
9 membership; and

10 (5) the maximum length of membership, as described in section 2470ff
11 of this subchapter.

12 (b) The notice specified in subsection (a) of this section:

13 (1) ~~Shall~~ shall be sent:

14 (A) ~~To~~ to the consumer's last known e-mail address, if the consumer
15 enrolled in the third-party discount membership program online or by e-mail,
16 with the subject line, "IMPORTANT INFORMATION ABOUT YOUR
17 DISCOUNT PROGRAM BILLING," or substantially similar words, provided
18 that the sender takes reasonable steps to verify that the e-mail has been
19 opened; or

20 (B) ~~Otherwise~~ otherwise by first-class mail to the consumer's last
21 known mailing address, with the heading on the enclosure and outside

1 envelope, “IMPORTANT INFORMATION ABOUT YOUR DISCOUNT
2 PROGRAM BILLING,” or substantially similar words; and

3 (2) ~~Shall~~ shall not include any solicitation or advertising.

4 § 2470ee. CANCELLATION AND TERMINATION

5 (a) In addition to any other right to revoke an offer, a consumer may cancel
6 the purchase of a third-party discount membership program until midnight on
7 the 30th day after the date the consumer has given express informed consent to
8 be charged for the program. If the consumer cancels within the 30-day period,
9 the seller of the third-party discount membership program shall, within 10 days
10 of receiving the notice of cancellation, provide a full refund to the consumer.

11 (b)(1) Notice of cancellation shall be deemed given when deposited in a
12 mailbox properly addressed and postage prepaid or when e-mailed to the
13 e-mail address of the seller of the third-party discount membership program.

14 (2) A consumer may cancel a third-party discount membership program
15 verbally by contacting the seller at a toll-free telephone number that the seller
16 provides for that purpose.

17 (c) In addition to the right to cancel described in this subchapter, a
18 consumer may terminate a third-party discount membership program at any
19 time by providing notice to the seller by one of the methods described in this
20 section. In that case, the consumer shall not be obligated to make any further
21 payments under the program and shall not be entitled to any discounts under

1 the program for any period of time after the last month for which payment has
2 been made.

3 (d) If the seller of a third-party discount membership program cancels the
4 program for any reason other than nonpayment by the consumer, the seller
5 shall make pro rata reimbursement to the consumer of all periodic charges paid
6 by the consumer for periods of time after cancellation. Prior to such
7 cancellation, the seller shall first provide reasonable notice and an explanation
8 of the cancellation in writing to the consumer.

9 § 2470ff. MAXIMUM LENGTH OF PLAN

10 No person shall sell, or offer for sale, a third-party discount membership
11 program lasting longer than 18 months.

12 § 2470gg. BILLING INFORMATION

13 No person who offers or sells third-party discount membership programs
14 shall obtain billing information relating to a consumer except directly from the
15 consumer.

16 § 2470hh. VIOLATIONS

17 (a) A person who violates this subchapter commits an unfair and deceptive
18 act in trade and commerce in violation of section 2453 of this title.

19 (b) The Attorney General has the same authority to make rules, conduct
20 civil investigations, enter into assurances of discontinuance, and bring civil
21 actions as is provided under subchapter 1 of this chapter.

1 (c) It is an unfair and deceptive act and practice in commerce for any
2 person to provide substantial assistance to the seller of a third-party discount
3 membership program that has engaged or is engaging in an unfair or deceptive
4 act or practice in commerce, when the person or the person's authorized agent:

5 (1) receives notice from a regulatory, law enforcement, or similar
6 governmental authority that the seller of the third-party discount membership
7 program is in violation of this subchapter;

8 (2) knows from information received or in its possession that the seller
9 of the third-party discount membership program is in violation of this
10 subchapter; or

11 (3) consciously avoids knowing that the seller of the third-party discount
12 membership program is in violation of this subchapter.

13 (d) Subject to section 2452 of this title, a person who provides only
14 incidental assistance, which does not further the sale of a third-party discount
15 membership program, to the seller of the program, or who does not receive a
16 benefit from providing assistance to the seller of a discount membership, shall
17 not be liable under this section unless the person receives notice, knows, or
18 consciously avoids knowing, pursuant to subdivision (c)(1), (2), or (3) of this
19 section, that a third-party discount membership program is in violation of this
20 chapter.

1 Sec. E.2. 9 V.S.A. chapter 63, subchapter 1E is added to read:

2 Subchapter 1E: Add-On Discount Membership Programs

3 § 2470ii. DEFINITIONS

4 As used in this subchapter:

5 (1) An “add-on discount membership program” is a program that
6 entitles consumers to receive discounts, rebates, rewards, or similar incentives
7 on the purchase of goods or services or both, sold to a consumer during the
8 purchase of a different good or service using the same billing information.

9 (2) “Billing information” means any data that enables a seller of an
10 add-on discount membership program to access a consumer’s credit or debit
11 card, bank, or other account, but does not include the consumer’s name, e-mail
12 address, telephone number, or mailing address. For credit card and debit card
13 accounts, billing information includes the full account number, card type, and
14 expiration date, and, if necessary, the security code. For accounts at a financial
15 institution, “billing information” includes the full account number and routing
16 number, and, if necessary, the name of the financial institution holding the
17 account.

18 § 2470jj. APPLICABILITY

19 (a) An add-on discount membership program is a good or service within
20 the meaning of subsection 2451a(b) of this title.

1 (b) This subchapter applies only to persons who are regularly engaged in
2 offering or selling add-on discount membership programs.

3 (c) This subchapter shall not apply to an electronic payment system, as
4 defined in section 2480o of this title, or to a financial institution, as defined in
5 8 V.S.A. § 11101(32).

6 § 2470kk. REQUIRED DISCLOSURES; CONSENT

7 (a) No person shall charge or attempt to charge a consumer for an add-on
8 discount membership program, or to renew an add-on discount membership
9 program beyond the term expressly agreed to by the consumer, unless:

10 (1) before obtaining the consumer's billing information, the person has
11 clearly and conspicuously disclosed to the consumer all material terms of the
12 transaction, including:

13 (A) a description of the types of goods and services on which a
14 discount is available;

15 (B) the name of the add-on discount membership program, the name
16 and address of the seller of the program, and a telephone number, e-mail
17 address, or other contact information the consumer may use to contact the
18 seller with questions concerning the operation of the program;

19 (C) the cost of the program, including the amount of any periodic
20 charges, how often such charges are imposed, and the method of payment; and

1 (D) the right to cancel and to terminate the program, which shall be
2 no more restrictive than as required by section 247011 of this title, and a
3 toll-free telephone number and e-mail address that can be used to cancel the
4 membership;

5 (2) before obtaining the consumer’s billing information, the person has
6 received express informed consent for the add-on membership program from
7 the consumer whose credit or debit card, bank, or other account will be
8 charged, by requiring the consumer to perform an additional affirmative action,
9 such as clicking on an online confirmation button, checking an online box that
10 indicates the consumer’s consent to be charged the amount disclosed, or
11 expressly giving consent over the telephone; and

12 (3) after providing the disclosures and obtaining the consent required by
13 subdivisions (1) and (2) of this subsection, obtaining from the consumer:

14 (A) the consumer’s billing information; and

15 (B) the consumer’s name and address, and a means to contact the
16 consumer.

17 (b) A person who sells an add-on discount membership program shall
18 retain evidence of a consumer’s express informed consent for at least three
19 years after the consent is given.

20 (c) A person who sells an add-on discount membership program shall
21 provide to a consumer on the receipt for the underlying good or service:

1 (1) confirmation that the consumer has signed up for a discount
2 membership program;

3 (2) the price the consumer will be charged for the program;

4 (3) the date on which the consumer will first be charged for the
5 program;

6 (4) the frequency of charges for the program; and

7 (5) information concerning the consumer’s right to cancel the program
8 and a toll-free telephone number, address, and e-mail address a consumer may
9 use to cancel the program.

10 § 2470II. CANCELLATION AND TERMINATION

11 (a) In addition to any other right to revoke an offer, a consumer may cancel
12 the purchase of an add-on discount membership program until midnight on the
13 30th day after the date the consumer has given express informed consent to be
14 charged for the program. If the consumer cancels within the 30-day period, the
15 seller of the add-on discount membership program shall, within 10 days of
16 receiving the notice of cancellation, provide a full refund to the consumer less
17 the value of any discount the consumer has received by using the add-on
18 discount membership program.

19 (b)(1) Notice of cancellation shall be deemed given when deposited in a
20 mailbox properly addressed and postage prepaid or when e-mailed to the
21 e-mail address of the seller of the add-on discount membership program.

1 (2) A consumer may cancel an add-on discount membership program
2 verbally by contacting the seller at a toll-free telephone number that the seller
3 provides for that purpose.

4 (c) In addition to the right to cancel described in this subchapter, a
5 consumer may terminate an add-on discount membership program at any time
6 by providing notice to the seller by one of the methods described in this
7 section. In that case, the consumer shall not be obligated to make any further
8 payments under the program and shall not be entitled to any discounts under
9 the program for any period of time after the last month for which payment has
10 been made.

11 (d) If the seller of an add-on discount membership program cancels the
12 program for any reason other than nonpayment by the consumer, the seller
13 shall make pro rata reimbursement to the consumer of all periodic charges paid
14 by the consumer for periods of time after cancellation. Prior to such
15 cancellation, the seller shall first provide reasonable notice and an explanation
16 of the cancellation in writing to the consumer.

17 § 2470mm. BILLING INFORMATION

18 A person who offers or sells a discount membership program may not
19 obtain billing information relating to a consumer except directly from the
20 consumer.

1 § 2470nn. VIOLATIONS

2 (a) A person who violates this subchapter commits an unfair and deceptive
3 act in trade and commerce in violation of section 2453 of this title.

4 (b) The Attorney General has the same authority to make rules, conduct
5 civil investigations, enter into assurances of discontinuance, and bring civil
6 actions as is provided under subchapter 1 of this chapter.

7 (c) It is an unfair and deceptive act and practice in commerce for any
8 person to provide substantial assistance to the seller of an add-on discount
9 membership program that has engaged or is engaging in an unfair or deceptive
10 act or practice in commerce, when the person or the person's authorized agent:

11 (1) receives notice from a regulatory, law enforcement, or similar
12 governmental authority that the seller of the add-on discount membership
13 program is in violation of this subchapter;

14 (2) knows from information received or in its possession that the seller
15 of the add-on discount membership program is in violation of this
16 subchapter; or

17 (3) consciously avoids knowing that the seller of the add-on discount
18 membership program is in violation of this subchapter.

19 (d) Subject to section 2452 of this title, a person who provides only
20 incidental assistance, which does not further the sale of an add-on discount
21 membership program, to the seller of the program, or who does not receive a

1 benefit from providing assistance to the seller of a an add-on discount
2 membership, shall not be liable under this section unless the person receives
3 notice, knows, or consciously avoids knowing, pursuant to subdivision (c)(1),
4 (2), or (3) of this section, that an add-on discount membership program is in
5 violation of this chapter.

6 * * * Nonresidential Home Improvement Fraud * * *

7 Sec. F.1. 13 V.S.A. § 2029 is amended to read:

8 § 2029. HOME IMPROVEMENT FRAUD

9 (a) As used in this section, “home improvement” includes the fixing,
10 replacing, remodeling, removing, renovation, alteration, conversion,
11 improvement, demolition, or rehabilitation of or addition to any building or
12 land, or any portion thereof, which is used or designed to be used as a
13 residence or dwelling unit. Home improvement shall include the construction,
14 replacement, installation, paving, or improvement of driveways, roofs, and
15 sidewalks, and the limbing, pruning, and removal of trees or shrubbery and
16 other improvements to structures or upon land that is adjacent to a dwelling
17 house.

18 (b)(1) A person commits the offense of home improvement fraud when he
19 or she enters into a contract or agreement, written or oral, for \$500.00 or more,
20 with an owner for home improvement, or into several contracts or agreements

1 for \$2,500.00 or more in the aggregate, with more than one owner for home
2 improvement, and he or she knowingly:

3 (A) fails to perform the contract or agreement, in whole or in
4 part; and

5 (B) when the owner requests performance or a refund of payment
6 made, the person fails to either:

7 (i) refund the payment; or

8 (ii) make and comply with a definite plan for completion of the
9 work that is agreed to by the owner;

10 (2) misrepresents a material fact relating to the terms of the contract or
11 agreement or to the condition of any portion of the property involved;

12 (3) uses or employs any unfair or deceptive act or practice in order to
13 induce, encourage, or solicit such person to enter into any contract or
14 agreement or to modify the terms of the original contract or agreement; or

15 (4) when there is a declared state of emergency, charges for goods or
16 services related to the emergency a price that exceeds two times the average
17 price for the goods or services and the increase is not attributable to the
18 additional costs incurred in connection with providing those goods or services.

19 (c) Whenever a person is convicted of home improvement fraud or of
20 fraudulent acts related to home improvement:

21 (1) the person shall notify the Office of Attorney General;

1 (2) the court shall notify the Office of the Attorney General; and

2 (3) the Office of Attorney General shall place the person's name on the
3 Home Improvement and Nonresidential Improvement Fraud Registry.

4 (d)(1) A person who violates subsection (b) of this section shall be
5 imprisoned not more than two years or fined not more than \$1,000.00, or both,
6 if the loss to a single consumer is less than \$1,000.00.

7 (2) A person who is convicted of a second or subsequent violation of
8 subdivision (1) of this subsection shall be imprisoned not more than three years
9 or fined not more than \$5,000.00, or both.

10 (3) A person who violates subsection (b) of this section shall be
11 imprisoned not more than three years or fined not more than \$5,000.00, or
12 both, if:

13 (A) the loss to a single consumer is \$1,000.00 or more; or

14 (B) the loss to more than one consumer is \$2,500.00 or more in the
15 aggregate.

16 (4) A person who is convicted of a second or subsequent violation of
17 subdivision (3) of this subsection shall be imprisoned not more than five years
18 or fined not more than \$10,000.00, or both.

19 (5) A person who violates subsection (c) or (e) of this section shall be
20 imprisoned for not more than two years or fined not more than \$1,000.00,
21 or both.

1 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
2 this section, subdivision of 2029a(d)(2), (3), or (4) of this title, or convicted of
3 fraudulent acts related to home improvement, may engage in home
4 improvement activities for compensation only if:

5 (1) the work is for a company or individual engaged in home
6 improvement activities or nonresidential improvement activities, and the
7 person first notifies the company or individual of the conviction and notifies
8 the Office of Attorney General of the person's current address and telephone
9 number; the name, address, and telephone number of the company or
10 individual for whom the person is going to work; and the date on which the
11 person will start working for the company or individual; or

12 (2) the person notifies the Office of Attorney General of the intent to
13 engage in home improvement activities or nonresidential improvement
14 activities, and that the person has filed a surety bond or an irrevocable letter of
15 credit with the Office in an amount of not less than \$50,000.00, and pays on a
16 regular basis all fees associated with maintaining such bond or letter of credit.

17 (f) The Office of Attorney General shall release the letter of credit at such
18 time when:

19 (1) any claims against the person relating to home improvement fraud or
20 nonresidential improvement fraud have been paid;

1 (2) there are no pending actions or claims against the person for home
2 improvement fraud or nonresidential improvement fraud; and

3 (3) the person has not been engaged in home improvement activities or
4 nonresidential improvement activities for at least six years and has signed an
5 affidavit so attesting.

6 (g) [Reserved.]

7 (h) [Repealed.]

8 Sec. F.2. 13 V.S.A. § 2029a is added to read:

9 § 2029a. NONRESIDENTIAL IMPROVEMENT FRAUD

10 (a) As used in this section, “nonresidential improvement” includes the
11 fixing, replacing, remodeling, removing, renovation, alteration, conversion,
12 improvement, demolition, or rehabilitation of or addition to any building or
13 land, or any portion thereof, that is used or designed to be used as a business,
14 office, or by the State, a county, or a municipality. Nonresidential
15 improvement shall include the construction, replacement, installation, paving,
16 or improvement of driveways, parking lots, signs, roofs, and sidewalks, and the
17 limbing, pruning, and removal of trees or shrubbery and other improvements to
18 structures or upon land that is adjacent to a business, office, or State, county, or
19 municipal building.

20 (b)(1) A person commits the offense of nonresidential improvement fraud
21 when he or she enters into a contract or agreement, written or oral, for

1 \$1,000.00 or more, with an owner for nonresidential improvement, or into
2 several contracts or agreements for \$5,000.00 or more in the aggregate, with
3 more than one owner for nonresidential improvement, and he or she
4 knowingly:

5 (A) fails to perform the contract or agreement, in whole or in
6 part; and

7 (B) when the owner requests performance or a refund of payment
8 made, the person fails to either:

9 (i) refund the payment; or

10 (ii) make and comply with a definite plan for completion of the
11 work that is agreed to by the owner;

12 (2) misrepresents a material fact relating to the terms of the contract or
13 agreement or to the condition of any portion of the property involved;

14 (3) uses or employs any unfair or deceptive act or practice in order to
15 induce, encourage, or solicit such person to enter into any contract or
16 agreement or to modify the terms of the original contract or agreement; or

17 (4) when there is a declared state of emergency, charges for goods or
18 services related to the emergency a price that exceeds two times the average
19 price for the goods or services and the increase is not attributable to the
20 additional costs incurred in connection with providing those goods or services.

1 (c) Whenever a person is convicted of nonresidential improvement fraud:

2 (1) the person shall notify the Office of Attorney General;

3 (2) the court shall notify the Office of the Attorney General; and

4 (3) the Office of Attorney General shall place the person's name on the
5 Home Improvement and Nonresidential Improvement Fraud Registry.

6 (d)(1) A person who violates subsection (b) of this section shall be
7 imprisoned not more than two years or fined not more than \$1,000.00, or both,
8 if the loss to a single consumer is less than \$1,000.00.

9 (2) A person who is convicted of a second or subsequent violation of
10 subdivision (1) of this subsection shall be imprisoned not more than three years
11 or fined not more than \$5,000.00, or both.

12 (3) A person who violates subsection (b) of this section shall be
13 imprisoned not more than three years or fined not more than \$5,000.00, or
14 both, if:

15 (A) the loss to a single consumer is \$1,000.00 or more; or

16 (B) the loss to more than one consumer is \$2,500.00 or more in the
17 aggregate.

18 (4) A person who is convicted of a second or subsequent violation of
19 subdivision (3) of this subsection shall be imprisoned not more than five years
20 or fined not more than \$10,000.00, or both.

1 (5) A person who violates subsection (c) or (e) of this section shall be
2 imprisoned for not more than two years or fined not more than \$1,000.00,
3 or both.

4 (e) A person who is sentenced pursuant to subdivision (d)(2), (3), or (4) of
5 this section, subdivision 2029(d)(2), (3), or (4) of this title, or convicted of
6 fraudulent acts related to nonresidential improvement, may engage in home
7 improvement activities or nonresidential improvement activities for
8 compensation only if:

9 (1) the work is for a company or individual engaged in home
10 improvement activities or nonresidential improvement activities, and the
11 person first notifies the company or individual of the conviction and notifies
12 the Office of Attorney General of the person's current address and telephone
13 number; the name, address, and telephone number of the company or
14 individual for whom the person is going to work; and the date on which the
15 person will start working for the company or individual; or

16 (2) the person notifies the Office of Attorney General of the intent to
17 engage in home improvement activities or nonresidential improvement
18 activities, and that the person has filed a surety bond or an irrevocable letter of
19 credit with the Office in an amount of not less than \$50,000.00, and pays on a
20 regular basis all fees associated with maintaining such bond or letter of credit.

1 (f) The Office of Attorney General shall release the letter of credit at such
2 time when:

3 (1) any claims against the person relating to home improvement fraud or
4 nonresidential improvement fraud have been paid;

5 (2) there are no pending actions or claims against the person for home
6 improvement fraud or nonresidential improvement fraud; and

7 (3) the person has not been engaged in home improvement activities or
8 nonresidential improvement activities for at least six years and has signed an
9 affidavit so attesting.

10 * * * Financial Institutions; Licensed Lender;

11 Technical Corrections * * *

12 G.1. 8 V.S.A. § 10101 is amended to read:

13 § 10101. APPLICATION OF CONSUMER PROTECTION CHAPTER

14 Except as otherwise provided in this chapter, the provisions of this chapter
15 shall apply to all financial institutions, as defined in subdivision 11101(32) of
16 this title, licensed lenders, mortgage brokers, mortgage loan originators, sales
17 finance companies, independent trust companies, money service providers,
18 debt adjusters, loan servicers, credit unions, and any other person doing or
19 soliciting business in this State as described in Part 2, 4, or 5, ~~or 6~~ of this title,
20 in addition to any other applicable consumer protection or remedy section not

1 contained in this chapter, unless such consumer protection or remedy section is
2 expressly made exclusive.

3 G.2. 8 V.S.A. § 10601 is amended to read:

4 § 10601. APPLICATION

5 This subchapter shall apply to all persons licensed, authorized, or registered,
6 or required to be licensed, authorized, or registered under Parts 2, 4, and 5, and
7 ~~6~~ of this title.

8 G.3. 8 V.S.A. 2200(17) is amended to read:

9 (17) “Mortgage loan originator”:

10 * * *

11 (D) Does not include:

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

14 * * *

15 * * * Internet Dating Services * * *

16 Sec. H.1. FINDINGS AND PURPOSE

17 (a) The General Assembly finds:

18 (1) Currently, an Internet dating service does not have an affirmative
19 duty under any state or federal law to ban a member of the service, but a
20 service may choose to voluntarily ban a member for violating one or more

1 terms of use, or because the service determines the member poses a risk of
2 defrauding another member.

3 (2) In 2014, Internet dating services banned millions of members, the
4 vast majority of which were banned within 72 hours of creating an account
5 with the service.

6 (3) Of the members banned in 2014, well less than one percent
7 contacted the Internet dating service concerning the ban.

8 (4) Due to a growing number of cases in which Vermont members of
9 Internet dating services have lost significant financial amounts to persons using
10 Internet dating services to defraud members or businesses, the Office of the
11 Vermont Attorney General proposes this legislation, working with the input of
12 multiple Internet dating services and other stakeholders.

13 (5) If an Internet dating service violates the statutory provisions created
14 in this act, the Attorney General has the authority pursuant to 9 V.S.A. §§ 2458
15 and 2459 to request from a court, or to settle with the service for, restitution for
16 a consumer or class of consumers affected by the violation.

17 (b) Purpose. The purposes of this act are:

18 (1) to protect Vermont consumers by requiring an Internet dating service
19 to disclose in a timely manner important information about banned members to
20 Vermont members of the service;

1 (2) to protect Internet dating services from liability to members for
2 disclosing the information required by this act, while preserving liability to the
3 State of Vermont and its agencies, departments, and subdivisions for violating
4 this act; and

5 (3) to protect Vermont consumers and other members of Internet dating
6 services by requiring an Internet dating service to notify its Vermont members
7 when there is a significant change to the Vermont member’s account
8 information.

9 H.2. 9 V.S.A. chapter 63, subchapter 8 is added to read:

10 Subchapter 8. Internet Dating Services

11 § 2482a. DEFINITIONS

12 In this chapter:

13 ~~(1) “Account change” means a change to the password, e-mail address,~~
14 ~~age, identified gender, gender of members seeking to meet, primary photo~~
15 ~~unless it has previously been approved by the Internet dating service, or other~~
16 ~~conspicuous change to a member’s account or profile with or on an Internet~~
17 ~~dating service.~~

18 (1) “Account change” means a change to a member’s password,
19 username, e-mail address, or other contact information an Internet dating
20 service uses to enable communications between members.

1 (2) “Banned member” means the member whose account or profile is
2 the subject of a fraud ban.

3 (3) “Fraud ban” means barring a member’s account or profile from an
4 Internet dating service because, in the judgment of the service, the member
5 poses a significant risk of attempting to obtain money from other members
6 through fraudulent means.

7 (4) “Internet dating service” means a person ~~or entity~~, or a division of a
8 person, that is primarily in the business of providing dating services principally
9 on or through the Internet.

10 (5) “Member” means a person who submits to an Internet dating service
11 information required to access the service and who obtains access to the
12 service.

13 (6) “Vermont member” means a member who provides a Vermont
14 residential or billing address or zip code when registering with the Internet
15 dating service.

16 § 2482b. REQUIREMENTS FOR INTERNET DATING SERVICES

17 (a) An Internet dating service shall disclose to all of its Vermont members
18 known to have previously received and responded to an on-site message from a
19 banned member:

20 (1) the user name, identification number, or other profile identifier of the
21 banned member;

1 (2) the fact that the banned member was banned because, in the
2 judgment of the Internet dating service, the banned member may have been
3 using a false identity or may pose a significant risk of attempting to obtain
4 money from other members through fraudulent means;

5 (3) that a member should never send money or personal financial
6 information to another member; and

7 (4) a hyperlink to online information that clearly and conspicuously
8 addresses the subject of how to avoid being defrauded by another member of
9 an Internet dating service.

10 (b) The notification required by subsection (a) of this section shall be:

11 (1) clear and conspicuous;

12 (2) by e-mail, text message, or other appropriate means of
13 communication; and

14 (3) sent within 24 hours after the fraud ban, or at a later time if the
15 service has determined, based on an analysis of effective messaging, that a
16 different time is more effective, but in no event later than three days after the
17 fraud ban.

18 (c) An Internet dating service shall disclose in an e-mail, text message, or
19 other appropriate means of communication, in a clear and conspicuous manner,
20 within 24 hours after discovering an account change to a Vermont member's
21 account:

1 (1) the fact that information on the member’s account ~~or personal profile~~
2 has been changed;

3 (2) a brief description of the change; and

4 (3) if applicable, how the member may obtain further information on
5 the change.

6 (d)(1) A banned member from Vermont who is identified to one or more
7 Vermont members pursuant to subsection (a) of this section shall have the right
8 to challenge the ban by written complaint to the Office of the Vermont
9 Attorney General.

10 (2) The Office of the Attorney General shall review a challenge brought
11 by a banned member pursuant to this subsection and, if it finds that there was
12 no reasonable basis for banning the member, shall require the Internet dating
13 service to take reasonable corrective action to cure the erroneous ban.

14 § 2482c. LIMITED IMMUNITY

15 (a) An Internet dating service shall not be liable to any person, other than
16 the State of Vermont, or any agency, department, or subdivision of the State,
17 for disclosing to any member that it has banned a member, the user name or
18 identifying information of the banned member, or the reasons for the Internet
19 dating service’s decision to ban such member in accordance with section
20 2482b of this title.

- 1 (4) Sec. D.1 (anti-trust penalties).
- 2 (5) Secs. E.1–E.2 (discount membership programs).
- 3 (6) Secs. F.1–F.2 (nonresidential home improvement fraud).
- 4 (7) Sec. H.1 (findings and purpose; internet dating services).

5 (c) In Sec. H.2 (internet dating services):

- 6 (1) 9 V.S.A. §§ 2482a, 2482c, and 2482d shall take effect on passage.
- 7 (2) 9 V.S.A. § 2482b shall take effect on January 1, 2017.

8 and that after passage the title of the bill be amended to read: “An act relating
9 to consumer protection”

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE