

S.287

Introduced by Committee on Finance

Date:

Subject: Commerce; loan servicers; licensing; regulation

Statement of purpose: This bill proposes to require the licensing and regulation of third party loan servicers.

An act relating to the licensing and regulation of loan servicers

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

Sec. 1. 8 V.S.A. chapter 83 is added to read:

CHAPTER 83. LOAN SERVICERS

§ 2900. DEFINITIONS

As used in this chapter:

(1) “Commercial loan” means any loan or extension of credit that is described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or extension of credit that is secured by an owner occupied one- to four-unit dwelling.

(2) “Commissioner” means the commissioner of banking, insurance, securities, and health care administration.

(3) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person,

1 ~~whether through the ownership of voting securities, by contract other than a~~
2 ~~commercial contract for goods or nonmanagement services, or otherwise,~~
3 ~~unless the power is the result of an official position with or corporate office~~
4 ~~held by the person. Control shall be presumed to exist if any person, directly~~
5 ~~or indirectly, owns, controls, holds with the power to vote, or holds proxies~~
6 ~~representing 10 percent or more of the voting securities or other interest of any~~
7 ~~other person.~~

8 (4) “Depository institution” has the same meaning as in Section 3 of the
9 Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank
10 and any savings association as defined in Section 3 of the Federal Deposit
11 Insurance Act. For purposes of this chapter, “depository institution” also
12 includes any credit union organized and regulated as such under the laws of the
13 United States or any state or territory of the United States.

14 (5) “Individual” means a natural person.

15 (6) “Nationwide Mortgage Licensing System and Registry” means a
16 licensing system developed and maintained by the Conference of State Bank
17 Supervisors and the American Association of Residential Mortgage
18 Regulators, or any successor to the Nationwide Mortgage Licensing System
19 and Registry.

1 ~~(7) "Person" shall have the meaning set forth in 1 V.S.A. § 128 and~~
2 ~~includes a natural person, corporation, company, limited liability company,~~
3 ~~partnership, or association.~~

4 ~~(8) "Servicing" means receiving a scheduled periodic payment from a~~
5 ~~borrower pursuant to the terms of a loan, including amounts for escrow~~
6 ~~accounts, and making the payments to the owner of the loan or other third~~
7 ~~party of principal and interest and other payments with respect to the amounts~~
8 ~~received from the borrower as may be required pursuant to the terms of the~~
9 ~~servicing loan document or servicing contract. In the case of a home equity~~
10 ~~conversion mortgage or a reverse mortgage, servicing includes making~~
11 ~~payment to the borrower.~~

12 ~~(9) "Third party loan servicer" means a person who engages in the~~
13 ~~business of servicing a loan, directly or indirectly, owed or due or asserted to~~
14 ~~be owed or due another.~~

§ 2900. DEFINITIONS

As used in this chapter:

(1) "Commercial loan" means any loan or extension of credit that is described in 9 V.S.A. § 46(1), (2), or (4). The term does not include a loan or extension of credit that is secured by an owner occupied one- to four-unit dwelling.

(2) "Commissioner" means the commissioner of banking, insurance, securities, and health care administration.

(3) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office

held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities or other interest of any other person.

(4) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c), which includes any bank and any savings association as defined in Section 3 of the Federal Deposit Insurance Act. For purposes of this chapter, "depository institution" also includes any credit union organized and regulated as such under the laws of the United States or any state or territory of the United States.

(5) " Dwelling" has the same meaning as in subsection 103(v) of the Truth in Lending Act, 15 U.S.C. § 1602(v).

(6) "Individual" means a natural person.

(7) "Loan" means a residential mortgage loan.

(8) "Nationwide Mortgage Licensing System and Registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or any successor to the Nationwide Mortgage Licensing System and Registry.

(9) "Person" shall have the meaning set forth in 1 V.S.A. § 128 and includes a natural person, corporation, company, limited liability company, partnership, or association.

(10) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on either a dwelling or residential real estate, upon which is constructed or intended to be constructed a dwelling.

(11) "Residential real estate" means any real property located in Vermont, upon which is constructed or intended to be constructed a dwelling.

(12) "Servicing" means receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or a reverse mortgage, servicing includes making payment to the borrower.

(13) "Third party loan servicer" means a person who engages in the business of servicing a loan, directly or indirectly, owed or due or asserted to be owed or due another.

1 § 2901. LICENSE REQUIRED

2 (a) No person shall act as a third party loan servicer, directly or indirectly,
3 for a loan to a Vermont borrower without first obtaining a license under this
4 chapter from the commissioner.

5 (b) No license shall be required of:

6 (1) A depository institution.

7 (2) A lender licensed under chapter 73 of this title that retains the
8 servicing rights on a loan originally closed in the lender's name and
9 subsequently sold in whole or in part to a third party, provided that the
10 provisions of section 2916 (segregated accounts) and section 2922 (prohibited
11 acts and practices) of this chapter shall apply to such lender.

12 (3) A debt adjuster licensed in this state.

13 (4) An attorney licensed in this state when collecting a debt on behalf of
14 a client.

15 (5) bona fide nonprofit organizations, exempt from taxation under
16 Section 501(c) of the Internal Revenue Code, that are approved by the
17 Department of Housing and Urban Development as housing counseling
18 agencies, that have a physical location in Vermont, and that lend state or
19 federal funds.

20 (c) This chapter shall not apply to commercial loans.

1 § 2902. APPLICATION FOR LICENSE; LICENSE AND INVESTIGATION

2 FEE

3 (a) Application for a license shall be in writing, under oath, and in the form
4 prescribed by the commissioner, and shall contain the name and the address of
5 the residence and place of business of the applicant, and if the applicant is a
6 partnership or association, of every member thereof, and if a corporation, of
7 each officer, director, and control person thereof; also the county and
8 municipality with street and number, if any, where the business is to be
9 conducted and such further information as the commissioner may require.

10 (b) At the time of making application, the applicant shall pay to the
11 commissioner a \$1,000.00 fee for investigating the application and a \$1,000.00
12 license fee for a period terminating on the last day of the current calendar year.

13 (c) In connection with an application for a license, the applicant and each
14 officer, director, and control person of the applicant shall furnish to the
15 commissioner information concerning the applicant's identity, including:

16 (1) Fingerprints for submission to the Federal Bureau of Investigation,
17 and any governmental agency or entity authorized to receive such information
18 for a state, national, and international criminal history background check.

19 (2) Personal history and experience in a form prescribed by the
20 commissioner, including the submission of authorization for the Nationwide
21 Mortgage Licensing System and Registry and the commissioner to obtain

1 information related to any administrative, civil, or criminal findings by any
2 governmental jurisdiction.

3 (3) Any other information required by the Nationwide Mortgage
4 Licensing System and Registry or the commissioner.

5 § 2903. BOND

6 (a) Prior to issuance of a license, the applicant shall file with the
7 commissioner and shall keep in force thereafter for as long as the license
8 remains in effect, a bond in a form and substance to be approved by the
9 commissioner in which the applicant shall be the obligor, in the amount of
10 \$100,000.00 or in such sum as the commissioner may require. The aggregate
11 liability for any and all claims on any bond shall in no event exceed the sum
12 thereof. No surety obligation on a bond shall be terminated unless at least 60
13 days' prior written notice is given by the surety to the obligor and the
14 commissioner. When one person is issued licenses to conduct the licensed
15 activity at more than one office, the commissioner may accept a single bond
16 covering all such offices. The bond shall run to the state for the use of the state
17 and of any person or persons who may have cause of action against the obligor
18 of such bond under the provisions of this chapter. Such bond shall be
19 conditioned that the obligor will faithfully conform to and abide by the
20 provisions of this chapter and of all rules and regulations lawfully made by the
21 commissioner hereunder, and will pay to the state and to any such person or

1 persons any and all moneys that may become due or owing to the state or to
2 such person or persons from such obligor under and by virtue of the provisions
3 of this chapter.

4 (b) When an action is commenced on a licensee's bond, the commissioner
5 may require the filing of a new bond. Immediately upon recovery upon any
6 action on the bond, the licensee shall file a new bond.

7 (c) Notwithstanding subsections (a) and (b) of this section, the
8 commissioner may waive or modify the requirement for or the amount of a
9 bond or accept other appropriate means of assuring the financial responsibility
10 of a licensee.

11 § 2904. APPROVAL OF APPLICATION AND ISSUANCE OF LICENSE

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

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

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

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

8 (4) That the applicant, and each officer, director, and control person of
9 the applicant, has never had a third party loan servicer license, lender license,
10 mortgage broker license, mortgage loan originator license, or similar license
11 revoked in any governmental jurisdiction, except that a subsequent formal
12 vacation of such revocation shall not be deemed a revocation.

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

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

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

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

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

5 (b) If the commissioner does not find as set forth in subsection (a) of this
6 section, the commissioner shall not issue a license. Within 60 days of filing of
7 the completed application, the commissioner shall notify the applicant of the
8 denial, stating the reason or reasons therefor. If after the allowable period, no
9 request for reconsideration under subsection 2905(a) of this title is received
10 from the applicant, the commissioner shall return to the applicant the bond and
11 the sum paid by the applicant as a license fee, retaining the investigation fee to
12 cover the costs of investigating the application.

13 (c) If the commissioner makes findings as set forth in subsection (a) of this
14 section, he or she shall issue the license within 60 days of filing the completed
15 application. The license shall be in full force and effect until surrendered by
16 the licensee, or revocation, termination, suspension, or refusal to renew by the
17 commissioner.

18 § 2905. REVIEW OF DENIAL OF APPLICATION

19 (a) If the application is denied, the applicant may request that the
20 commissioner reconsider the application by making such request in writing,
21 within 15 days of the denial, responding specifically to the commissioner's

1 stated reason or reasons for denial. The commissioner shall then reconsider the
2 application in light of the response stated in the request for reconsideration.
3 Within 60 days of filing the request, upon findings as set forth in section 2904
4 of this title, the commissioner shall issue the license.

5 (b) If the commissioner is unable to make findings as set forth in section
6 2904 of this chapter, the commissioner shall not issue a license. Within 60
7 days of filing of the request for reconsideration, the commissioner shall notify
8 the applicant of the denial, and return to the applicant the bond and the sum
9 paid by the applicant as a license fee, retaining the investigation fee to cover
10 the costs of investigating the application. The applicant may request review by
11 the superior court in Washington County upon action brought in the usual form
12 by an aggrieved party within 15 days after written notice of the denial of the
13 request for reconsideration.

14 § 2906. CONTENTS OF LICENSE; NONTRANSFERABLE

15 The license shall state the address at which the business is to be conducted
16 and shall state fully the name of the licensee and, if the licensee is other than
17 an individual, the date and place of its organization or incorporation. The
18 commissioner may issue an electronic license. The license or a copy of the
19 electronic license shall be kept conspicuously posted in the place of business of
20 the licensee and shall not be transferred or assigned.

1 § 2907. ADDITIONAL BOND

2 If the commissioner finds at any time that a licensee's bond is insecure,
3 exhausted, insufficient, or otherwise doubtful, the commissioner shall require
4 one or more additional bonds meeting the standards set forth in section 2903 of
5 this chapter. The licensee shall file the bond within 10 days of the
6 commissioner's written demand to do so.

7 § 2908. ADDITIONAL PLACES OF BUSINESS; CHANGE OF PLACE OF
8 BUSINESS; CHANGE OF MANAGEMENT OR CONTROL

9 (a) Not more than one place of business shall be maintained under the same
10 license, but the commissioner may issue more than one license to the same
11 licensee upon compliance with all the provisions of this chapter governing an
12 original issuance of a license.

13 (b) Any change of location or closing of a place of business of the licensee
14 shall require 30 days' prior written notice thereof to the commissioner. Notice
15 of such change of location shall be accompanied by a fee of \$100.00. Upon
16 receipt of notice and fee, the commissioner shall attach to the license in writing
17 the commissioner's record of the change and the date thereof, which shall be
18 authority for the operation of such business under such license at such new
19 location.

20 (c) The licensee shall notify the commissioner of any change in control of
21 the licensee, and of every change in senior management personnel, and of

1 every change in membership of the board of directors or control persons of the
2 licensee within 30 days of such change.

3 § 2909. NOTICE OF CHANGE OF CONDITION

4 A licensee shall notify the commissioner immediately in writing within
5 three business days of the occurrence of any of the following significant
6 developments:

7 (1) Filing for bankruptcy or reorganization of the licensee or any
8 partner, member, officer, director, control person, principal employee, or
9 equivalent.

10 (2) Filing of a criminal indictment related in any way to the activities of
11 the licensee or related to any partner, member, officer, director, control person,
12 principal employee, or equivalent.

13 (3) Receiving notification of a license denial, cease and desist order,
14 suspension, or revocation procedure or other formal or informal regulatory
15 action in any state against the licensee, and including the reasons for such
16 action.

17 (4) Receiving notification of the initiation of any action by the attorney
18 general of this state or any other state, including the reason for such action.

19 (5) Receiving notification of the initiation of a class action lawsuit on
20 behalf of consumers against the licensee that is related to the operation of the
21 licensed business.

1 (6) Any partner, member, officer, director, control person, principal
2 employee, or equivalent being convicted of a crime.

3 § 2910. RENEWAL OF LICENSE

4 (a) On or before December 1 of each year, every licensee shall renew its
5 license for the next succeeding calendar year and shall pay to the
6 commissioner a license renewal fee of \$1,000.00. At a minimum, the licensee
7 shall continue to meet the standards for license issuance under section 2904 of
8 this chapter. At the same time, the licensee shall maintain with the
9 commissioner a bond in the amount and of the character as required by section
10 2903 of this chapter or as required by the commissioner under section 2907 of
11 this chapter.

12 (b) Any license originally issued on or after November 1 of the current year
13 shall be valid for the next succeeding year.

14 § 2911. REVOCATION, SUSPENSION, OR NONRENEWAL OF
15 LICENSE; CEASE AND DESIST ORDERS

16 (a) The commissioner may deny, suspend, revoke, condition, terminate, or
17 refuse to renew a license, or order that any person or licensee cease and desist
18 in any specified conduct if the commissioner finds that:

19 (1) The licensee has failed to pay the renewal of license fee, or an
20 examination fee as provided in section 2917 of this chapter, or to maintain in
21 effect the bond or bonds required under the provisions of this chapter, or to file

1 any annual report or other report, or to comply with any lawful demand, ruling,
2 or requirement of the commissioner; or

3 (2) The licensee has violated any provisions of this chapter, or any other
4 section of applicable law, or any rule, order, directive, or regulation lawfully
5 made thereunder; or

6 (3) The licensee fails to meet the requirements of section 2904 or 2910
7 of this chapter, or withholds information, or fails to cooperate with an
8 examination, or makes a material misstatement in a license application, license
9 renewal, or any document submitted to the commissioner or to the Nationwide
10 Mortgage Licensing System and Registry.

11 (4) Any cause for which issuance of the license could have been refused
12 had it then existed and been known to the commissioner at the time of
13 issuance, including unconscionable conduct which takes advantage of a
14 borrower's lack of bargaining power or lack of understanding of the terms or
15 consequences of the transaction.

16 (b) The commissioner may issue orders or directives to any person:

17 (1) To cease and desist from conducting business;

18 (2) To cease any harmful activities or violations of this chapter, or any
19 other section of applicable law, or any order, directive, rule, or regulation
20 lawfully made thereunder;

1 (3) To cease business under a license or any conditional license if the
2 commissioner determines that such license was erroneously granted, or the
3 licensee is currently in violation of this chapter or any other section of
4 applicable law or any order, directive, rule, or regulation lawfully made
5 thereunder;

6 (4) Enjoining or prohibiting any person from engaging in the loan
7 servicing or financial services industry in this state;

8 (5) To remove any officer, director, employee, or control person;

9 (6) Regarding any other action or remedy as the commissioner deems
10 necessary to carry out the purposes of this chapter.

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

1 § 2912. SURRENDER OF LICENSE; NO EFFECT ON LIABILITY;

2 REINSTATEMENT

3 (a) Any licensee may surrender any license by delivering to the
4 commissioner the license and notice that the licensee thereby surrenders such
5 license.

6 (b) Surrender shall not affect the licensee's administrative, civil, or
7 criminal liability for acts committed prior to surrender. No revocation,
8 suspension, refusal to renew, or surrender of any license shall impair or affect
9 the obligation of any preexisting lawful contract.

10 (c) The commissioner shall have authority to reinstate revoked, suspended,
11 terminated, expired, inactive, or nonrenewed licenses or to issue new licenses
12 to a licensee whose license or licenses shall have been revoked, suspended,
13 terminated, expired, inactive, or nonrenewed if no fact or condition then exists
14 which clearly would have warranted the commissioner refusing originally to
15 issue such license under this chapter.

16 § 2913. REVIEW OF SUSPENSION, REVOCATION, OR ORDER

17 The commissioner's findings and order of suspension, revocation, or to
18 cease and desist in specified conduct shall be served on the licensee. Mailing
19 to the licensee's current address as stated on the license shall constitute such
20 service and shall be presumptive evidence of its receipt by the licensee.

1 Within 15 days of service the licensee may appeal the commissioner's decision
2 to the superior court in Washington County.

3 § 2014. RULEMAKING

4 The commissioner is authorized to adopt rules, orders, and regulations and
5 make specific rulings, demands, and findings as may be necessary for the
6 proper conduct of business and enforcement of this chapter.

7 § 2915. PENALTIES

8 (a) The commissioner may:

9 (1) Impose an administrative penalty of not more than \$10,000.00 for
10 each violation upon any person who violates or participates in the violation of
11 this chapter or any other section of applicable law or any lawful regulation,
12 directive, or order issued thereunder; and

13 (2) Order any person to make restitution to any person for any violation
14 of this chapter or any other section of applicable law.

15 (b) Each violation or failure to comply with any directive or order of the
16 commissioner is a separate and distinct violation.

17 (c) It shall be a criminal offense, punishable by a fine of not more than
18 \$100,000.00 or not more than a year in prison, or both, for any person after
19 receipt of an order directing the licensee to cease exercising any duties and
20 powers of a licensee, and assessing an administrative penalty under the
21 authority of this chapter, to perform such duties or exercise such powers of any

1 licensee until the penalty has been satisfied or otherwise satisfactorily resolved
2 between the parties, or the order is vacated by the commissioner or by a court
3 of competent jurisdiction.

4 (d) The powers vested in the commissioner by this chapter shall be in
5 addition to any other powers to enforce any penalties, fines, or forfeitures
6 authorized by law with respect to the requirements set forth herein.

7 § 2916. SEGREGATED ACCOUNTS

8 (a) All amounts paid by borrowers to a licensee subject to this chapter shall
9 be deposited in one or more accounts maintained at a federally insured
10 depository institution and with respect to such funds, the licensee shall act as a
11 fiduciary. Such account or accounts shall be segregated from all other
12 accounts of the licensee. Such funds shall not be used in the conduct of the
13 licensee's personal affairs or in the licensee's business affairs.

14 (b) The licensee may withdraw funds from the segregated account for
15 payment directly to the owner of the loan or other third party of principal and
16 interest and other payments as may be required pursuant to the terms of the
17 loan document or servicing contract.

18 (c) The licensee may withdraw funds from the segregated account for
19 commissions to which it is entitled for services actually performed.

20 (d) The licensee may return funds from the segregated account to the
21 borrower if not prohibited.

1 (e) The licensee shall maintain complete and accurate account records,
2 including, at a minimum, the source of all deposits, the nature and recipient of
3 all disbursements, the date and amount of each transaction, and the name of the
4 borrower. All documents pertaining to account activity shall be produced upon
5 request of the commissioner.

6 § 2917. EXAMINATIONS; INVESTIGATIONS; EXAMINATION FEES

7 (a) In addition to any authority allowed under this chapter or elsewhere,
8 and for the purpose of examination or discovering or investigating violations or
9 complaints of or arising under this chapter or any other section of applicable
10 law, or any rule, order, directive, or regulation lawfully made thereunder, or
11 securing any information required or useful thereunder, and for purposes of
12 initial licensing, license renewal, license suspension, license conditioning,
13 license revocation or termination, or general or specific inquiry or
14 investigation, the commissioner or his or her duly designated representative
15 shall have the authority to:

16 (1) Conduct investigations and examinations.

17 (2) Access, receive, and use any books, accounts, records, files,
18 documents, information, or evidence, including:

19 (A) Criminal, civil, and administrative history information, including
20 nonconviction data.

1 (B) Personal history and experience information, including
2 independent credit reports obtained from a consumer reporting agency
3 described in Section 603(p) of the Fair Credit Reporting Act.

4 (C) Any other documents, information, or evidence the commissioner
5 deems relevant to the inquiry or investigation regardless of the location,
6 possession, control, or custody of such documents, information, or evidence.

7 (b) The commissioner may review, investigate, or examine any licensee,
8 individual, or person regardless of whether such individual or person has
9 obtained a license under this chapter as often as necessary in order to carry out
10 the purposes of this chapter. The commissioner may direct, subpoena, or order
11 the attendance of and examine under oath all persons whose testimony may be
12 required about the loans or the business or subject matter of any such
13 examination or investigation, and may direct, subpoena, or order such person
14 to produce books, accounts, records, files, and any other documents the
15 commissioner deems relevant to the inquiry.

16 (c) Each licensee, individual, or person subject to this chapter shall make
17 available to the commissioner upon request the books and records relating to
18 the operations of such licensee, individual, or person. The commissioner shall
19 have access to such books and records and to interview the officers, principals,
20 control persons, employees, independent contractors, agents, and customers of
21 the licensee, individual, or person concerning the business.

1 (d) Each licensee, individual, or person subject to this chapter shall make or
2 compile reports or prepare other information as directed by the commissioner
3 in order to carry out the purposes of this section, including:

4 (1) Accounting compilations.

5 (2) Information lists and data concerning loans in a format prescribed by
6 the commissioner.

7 (3) Such other information as the commissioner deems necessary to
8 carry out the purposes of this chapter.

9 (e) In making any examination or investigation authorized by this chapter,
10 the commissioner may control access to any documents and records of the
11 licensee or person under examination or investigation. The commissioner may
12 take possession of the documents and records or place a person in exclusive
13 charge of the documents and records in the place where they are usually kept.
14 During the period of control, no individual or person shall remove or attempt
15 to remove any of the documents and records except pursuant to a court order or
16 with the consent of the commissioner. Unless the commissioner has
17 reasonable grounds to believe the documents or records of the licensee have
18 been or are at risk of being altered or destroyed for purposes of concealing a
19 violation of this chapter, the licensee or owner of the documents and records
20 shall have access to the documents and records as necessary to conduct its
21 ordinary business affairs.

1 (f) In order to carry out the purposes of this chapter, the commissioner
2 may:

3 (1) Retain attorneys, accountants, or other professionals and specialists
4 as examiners, auditors, or investigators to conduct or assist in the conduct of
5 examinations or investigations;

6 (2) Enter into agreements or relationships with other government
7 officials or regulatory associations in order to improve efficiencies and reduce
8 regulatory burden by sharing resources, standardized or uniform methods or
9 procedures, and documents, records, information, or evidence obtained under
10 this section;

11 (3) Use, contract for, or employ public or privately available analytical
12 systems, methods, or software to examine or investigate the licensee,
13 individual, or person subject to this chapter;

14 (4) Accept and rely on examination or investigation reports made by
15 other government officials within or without this state; or

16 (5) Accept audit reports made by an independent certified public
17 accountant for the licensee, individual, or person subject to this chapter in the
18 course of that part of the examination covering the same general subject matter
19 as the audit and may incorporate the audit report in the report of the
20 examination, report of investigation, or other writing of the commissioner.

1 (g) The authority of this section shall remain in effect whether such
2 licensee, individual, or person acts or claims to act under any licensing or
3 registration law of this state, acts without such authority, or surrenders such
4 licensee's license.

5 (h) No licensee, individual, or person subject to investigation or
6 examination under this section may knowingly withhold, abstract, remove,
7 mutilate, destroy, or secrete any books, records, computer records, or other
8 information.

9 (i) The commissioner shall make an examination of the affairs, business,
10 and records of each licensee at least once every three years. The commissioner
11 may, in the case of those licensees who do not maintain a Vermont office,
12 accept reports of examinations prepared by another state or federal regulatory
13 agency as substitutes if such reports are available to the commissioner and are
14 determined to be adequate in exercising his or her powers and discharging his
15 or her responsibilities under this chapter.

16 (j) Each licensee shall pay to the department all fees, costs, and expenses of
17 any examination, review, and investigation as prescribed by section 18 of this
18 title, which fees, costs, and expenses shall be billed when they are incurred. In
19 addition to the powers set forth in section 2910 of this chapter, the
20 commissioner may maintain an action for the recovery of examination, review

1 and investigation fees, costs, and expenses as prescribed in section 18 of this
2 title in any court of competent jurisdiction.

3 § 2918. RECORDS REQUIRED OF LICENSEE

4 The licensee shall keep, use in the licensee's business, and make available
5 to the commissioner upon request such books, accounts, records, and data
6 compilations as will enable the commissioner to determine whether such
7 licensee is complying with the provisions of this chapter and with the rules and
8 regulations lawfully made by the commissioner hereunder. Every licensee
9 shall preserve such books, accounts, records, and data compilations in a secure
10 manner for at least seven years after making the final entry on any loan
11 recorded therein. Thereafter, the licensee shall dispose of such books,
12 accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

13 § 2919. ANNUAL REPORT; FINANCIAL STATEMENTS

14 (a) Annually, on or before April 1, each licensee shall file a report with the
15 commissioner giving such relevant information as the commissioner
16 reasonably may require concerning the business and operations during the
17 preceding calendar year of each licensed place of business. Such report shall
18 be made under oath and shall be in the form prescribed by the commissioner.

19 (b) Annually, within 90 days of the end of its fiscal year, each licensee
20 shall file financial statements with the commissioner in a form and substance

1 satisfactory to the commissioner, which financial statements must include a
2 balance sheet and income statement.

3 § 2920. USE OF OTHER NAMES OR BUSINESS PLACES

4 No licensee shall transact such business under any other name or at any
5 other place of business than that named in its license or licenses.

6 § 2921. NATIONAL MORTGAGE LICENSING SYSTEM AND
7 REGISTRY

8 (a) In furtherance of the commissioner's duties under this chapter, the
9 commissioner may participate in the Nationwide Mortgage Licensing System
10 and Registry and may take such action regarding participation in the licensing
11 system as the commissioner deems necessary to carry out the purposes of this
12 section, including:

13 (1) Issue rules or orders, and may establish procedures, to further
14 participation in the Nationwide Mortgage Licensing System and Registry.

15 (2) Facilitate and participate in the establishment and implementation of
16 the Nationwide Mortgage Licensing System and Registry.

17 (3) Establish relationships or contracts with the Nationwide Mortgage
18 Licensing System and Registry or other entities designated by the Nationwide
19 Mortgage Licensing System and Registry.

1 (4) Authorize the Nationwide Mortgage Licensing System and Registry
2 to collect and maintain records and to collect and process any fees associated
3 with licensure on behalf of the commissioner.

4 (5) Require persons engaged in activities that require a license under this
5 chapter to utilize the Nationwide Mortgage Licensing System and Registry for
6 license applications, renewals, amendments, surrenders, and such other
7 activities as the commissioner may require, and to pay through the national
8 licensing system all fees provided for under this chapter.

9 (6) Authorize the Nationwide Mortgage Licensing System and Registry
10 to collect fingerprints on behalf of the commissioner in order to receive or
11 conduct criminal history background checks, and in order to reduce the points
12 of contact which the Federal Bureau of Investigation may have to maintain for
13 purposes of this subsection, the commissioner may use the Nationwide
14 Mortgage Licensing System and Registry as a channeling agent for requesting
15 information from and distributing information to the Department of Justice or
16 any governmental agency.

17 (7) In order to reduce the points of contact which the commissioner may
18 have to maintain for purposes of this chapter, the commissioner may use the
19 Nationwide Mortgage Licensing System and Registry as a channeling agent for
20 requesting and distributing information to and from any source so directed by
21 the commissioner.

1 (b) The commissioner may require persons engaged in activities that
2 require a license under this chapter to submit fingerprints, and the
3 commissioner may utilize the services of a Nationwide Mortgage Licensing
4 System and Registry to process the fingerprints and to submit the fingerprints
5 to the Federal Bureau of Investigation, the Vermont state police, or any
6 equivalent state or federal law enforcement agency for the purpose of
7 conducting a criminal history background check. The licensee or applicant
8 shall pay the cost of such criminal history background check, including any
9 charges imposed by the Nationwide Mortgage Licensing System and Registry.

10 (c) Persons engaged in activities that require licensure pursuant to this
11 chapter shall pay all applicable charges to utilize the Nationwide Mortgage
12 Licensing System and Registry, including such processing charges as the
13 administrator of the Nationwide Mortgage Licensing System and Registry shall
14 establish, in addition to the fees required under this chapter.

15 (d) The Nationwide Mortgage Licensing System and Registry is not
16 intended to and does not replace or affect the commissioner's authority to
17 grant, deny, suspend, revoke, terminate, or refuse to renew licenses.

18 § 2922. PROHIBITED ACTS AND PRACTICES

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

20 (1) Directly or indirectly employ any scheme, device, or artifice to
21 defraud or mislead borrowers or lenders or to defraud any person.

1 (2) Engage in any unfair or deceptive practice toward any person.

2 (3) Obtain property by fraud or misrepresentation.

3 (4) Use any unfair or unconscionable means in servicing a loan.

4 (5) Knowingly misapply or recklessly apply loan payments to the
5 outstanding balance of a loan.

6 (6) Knowingly misapply or recklessly apply payments to escrow
7 accounts.

8 (7) Require the unnecessary forced placement of insurance, when
9 adequate insurance is currently in place.

10 (8) Fail to provide loan payoff information within the time period set
11 forth in 27 V.S.A. § 464.

12 (9) Charge excessive or unreasonable fees to provide loan payoff
13 information.

14 (10) Fail to manage and maintain escrow accounts in accordance with
15 section 10404 of this title.

16 (11) Knowingly or recklessly provide inaccurate information to a credit
17 bureau, thereby harming a consumer's creditworthiness.

18 (12) Fail to report both the favorable and unfavorable payment history
19 of the consumer to a nationally recognized consumer credit bureau at least
20 annually if the servicer regularly reports information to a credit bureau.

1 (13) Collect private mortgage insurance beyond the date for which
2 private mortgage insurance is no longer required.

3 (14) Knowingly or recklessly facilitate the illegal foreclosure of real
4 property collateral.

5 (15) Knowingly or recklessly facilitate the illegal repossession of chattel
6 collateral.

7 (16) Fail to respond to consumer complaints in a timely manner.

8 (17) Conduct any business covered by this chapter without holding a
9 valid license as required under this chapter, or assist or aid and abet any person
10 in the conduct of business under this chapter without a valid license as required
11 under this chapter.

12 (18) Fail to comply with any federal or state law, rule, or other legally
13 binding authority relating to the evaluation of loans for modification purposes
14 or the modification of loans.

15 (19) Fail to comply with this chapter or rules adopted under this chapter,
16 or fail to comply with any orders or directives from the commissioner, or fail
17 to comply with any other state or federal law, including the rules thereunder,
18 applicable to any business authorized or conducted under this chapter.

19 (b) A violation of this section is an unfair and deceptive act or practice
20 under 9 V.S.A. § 2453, provided that the commissioner's determinations
21 concerning the interpretation and administration of the provisions of this

1 chapter and any rules adopted thereunder shall carry a presumption of validity.

2 Prior to initiating an action for a violation of this chapter, the attorney general

3 shall consult with the commissioner regarding the proposed action.

4 Sec. 2. 10 V.S.A. § 611(k) is amended to read:

5 (k) Notwithstanding any general or special law to the contrary, the
6 provisions of ~~chapter~~ chapters 73 and 83 of Title 8 shall not apply to the
7 agency or to any loan heretofore or hereafter made or serviced by the agency in
8 accordance with this title.

9 Sec. 3. 16 V.S.A. § 2821(c) is added to read:

10 (c) Notwithstanding any general or special law to the contrary, the
11 provisions of chapter 83 of Title 8 shall not apply to the corporation or to any
12 loan heretofore or hereafter made or serviced by the corporation in accordance
13 with this title.

14 Sec. 4. EFFECTIVE DATE

15 This act shall take effect on January 1, 2011.