Introduced by Representatives Botzow of Pownal, Koch of Barre Town, and Kupersmith of South Burlington

Referred to Committee on

Date:

Subject: Financing; litigation; funding companies; personal expenses; licensing; regulation

Statement of purpose of bill as introduced: This bill proposes to regulate and license companies that advance personal expense funds to cover the personal expenses of consumers who are parties to a civil action or legal claim in exchange for the right to receive a portion of the amount recovered in the action by the consumer, including the amount advanced, a rate of return, and fees.

An act relating to regulation of legal funding companies

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

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

CHAPTER 74. LEGAL FUNDING COMPANIES

§ 2251. DEFINITIONS

As used in this chapter:

(1) “Commissioner” means the Commissioner of Financial Regulation.
(2) “Consumer” means a person residing or domiciled in Vermont who
is a party to a civil action, including an alternative dispute-resolution
proceeding, or has a bona fide legal claim and is represented by an attorney.

(3) “Funded amount” means the amount of monies provided to, or on
behalf of, the consumer in the legal funding transaction. “Funded amount”
excludes fees.

(4) “Funding date” means the date on which the funded amount is
transferred to the consumer by the legal funding company by:

(A) personal delivery;

(B) wire or other electronic means; or

(C) insured, certified, and registered U.S. mail.

(5) “Legal funding company” or “company” means a person or entity,
wherever located, that provides nonrecourse legal funding to a consumer. The
term does not include an immediate family member of the consumer.

(6) “Legal funding contract” means a contract between a legal funding
company and a consumer for the provision of nonrecourse legal funding.

(7) “Nationwide Mortgage Licensing System and Registry” or
“Registry” means a licensing system developed and maintained by the
Conference of State Bank Supervisors and the American Association of
Residential Mortgage Regulators for the licensing and registration of licensees
under this chapter, or any successor to the Nationwide Mortgage Licensing
System and Registry, or any alternative or replacement licensing system as
designated by the Commissioner.

(8) “Nonrecourse legal funding” or “legal funding” or “legal funding
transaction” means a transaction in which a company purchases and a
consumer assigns to the legal funding company a contingent right to receive an
amount of the potential proceeds of any settlement, judgment, award, or
verdict the consumer may receive in a civil action or legal claim. If no
proceeds in the civil action or legal claim are received, the consumer is not
required to repay the company the funded amount, any fees or charges, or any
other sums.

(9) “Resolution date” means the date the amount funded to the
consumer, plus the agreed-upon fees, are delivered to the legal funding
company.

§ 2252. APPLICATION OF LAW

This chapter does not apply to an advance made by a consumer’s attorney to
pay for expenses related to preparation for trial.

§ 2253. CONTRACT REQUIREMENTS

(a)(1) A legal funding contract shall be written in a clear and coherent
manner using words with common, everyday meanings to enable the average
consumer who makes a reasonable effort under ordinary circumstances to read
and understand the terms of the contract without having to obtain the
assistance of a professional. The contract shall have a meaningful arrangement that is appropriately divided and captioned by its various sections.

(2) This subsection shall not apply to:

(A) an acknowledgment signed by an attorney;

(B) language or arrangements that are specifically required by federal or State law, regulation, or official agency interpretation; or

(C) an agreement, the form or any part of which is required by a governmental instrumentality as a condition of the assignability of the agreement.

(b) A company shall require that the contracted amount to be paid to the company be set as a predetermined amount based upon intervals of time from the funding date through the resolution date and not be determined as a percentage of the recovery from the legal claim.

(c) In calculating the annual percentage fee or rate of return, a company shall include all charges payable directly or indirectly by the consumer, and shall compute the rate based only on amounts actually received and retained by the consumer.

(d) A company shall not knowingly provide nonrecourse legal funding to a consumer who has previously sold and assigned an amount of his or her potential proceeds from the legal claim to another legal funding company.
without first buying out that legal funding company’s entire accrued balance, including the funded amount and all fees and charges.

(e)(1) A contract shall provide that the consumer may cancel the contract within five business days following the consumer’s receipt of the funded amount without penalty or further obligation. If the funded amount is to be paid in installments rather than a lump sum, the consumer may cancel the contract within five business days following the consumer’s receipt of the first installment of the funded amount without penalty or further obligation.

(2)(A) A contract shall specify that, in order for the cancellation to be effective, the consumer shall do one of the following:

(i) Deliver the company’s uncashed check or a cashier’s check for the entire funded amount received in person to the company’s office at the address specified for cancellation in the contract within five business days of the consumer’s receipt of the funded amount.

(ii) Return the entire funded amount received to the company by wire transfer or other electronic means within five business days of the consumer’s receipt of the funded amount. The consumer shall pay the cost of the wire transfer or other electronic means for the return of the funded amount. The consumer shall transfer the funded amount to the account from which the company electronically transferred the funded amount to the consumer or to the account specified for cancellation in the contract.
(iii) Mail the company’s uncashed check or a cashier’s check for the entire funded amount received by certified, registered, and insured U.S. mail to the company’s office at the address specified for cancellation in the contract postmarked within five business days of the receipt of the funded amount.

(B) For purposes of this subdivision (2), the date of the receipt of the funded amount shall be the third business day after the date of the legal funding company’s wire transfer or mailing as reflected by its postmark. In computing the five-business-day period of time, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. All intermediate Saturdays, Sundays, and State or federal legal holidays shall be excluded in the computation.

(f) A contract shall contain an acknowledgment by the consumer that he or she has reviewed the contract in its entirety. The consumer shall initial each page of the contract.

(g) A contract shall contain a written acknowledgment by the attorney representing the consumer in the civil action or legal claim that states:

(1) the attorney has reviewed the contract and, to the best of his or her knowledge, all the fees relating to the legal funding transaction have been disclosed to the consumer and there are no blanks in the contract;
(2) the attorney representing the consumer in the civil action or legal claim is being paid on a contingency basis pursuant to a written fee agreement;

(3) all proceeds of the civil action or legal claim will be disbursed via the trust account of the attorney representing the consumer in the civil action or legal claim or a settlement fund established to receive the proceeds of the civil action or legal claim from the defendant on behalf of the consumer;

(4) without waiving the attorney-client privilege, the attorney is following the written instructions of the consumer with regard to the legal funding transaction; and

(5) the attorney has not received a referral fee or other consideration from the company in connection with the legal funding, nor will the attorney receive a referral fee or other consideration in the future.

(h) For English-speaking, French-speaking, and Spanish-speaking consumers, a contract shall be written in the same language in which the oral negotiations are conducted between the company and the consumer. For consumers whose primary language is not English, French, or Spanish, all of the terms of the contract shall be translated by a certified translator in the consumer’s native language. The translator shall sign a notarized affirmation confirming that all of its terms have been presented to the consumer in the consumer’s native language and acknowledged by the consumer in writing.
(i) A contract shall not require mandatory arbitration to resolve disputes under the contract.

(j) To the extent the contract provides for attorney’s fees and costs in addition to the amount due and owing under the contract, the contract shall provide that, in case of a breach of the contract by either party, attorney’s fees and costs may be recoverable by the prevailing party and shall be reasonable. Any contractual cap on attorney’s fees and costs shall apply equally to both parties.

(k) A company shall give to the consumer a plain and complete statement of all payments made specifying the amount applied to fees and the amount, if any, applied to the principal and stating the unpaid principal balance. When payment is made, a company shall provide the consumer with the statement required by this subsection within 30 days after the payment is received. The company shall provide a transaction history to the consumer upon request.

(l) Only attorney’s liens related to the civil action or legal claim or Medicare or other statutory liens related to the civil action or legal claim shall take priority over any lien of the company. All other liens shall take priority by normal operation of law.

(m) A company shall not use any form of legal funding contract in Vermont unless it has been filed with the Commissioner in accordance with the filing procedures set forth by the Department of Financial Regulation.
§ 2254. DISCLOSURES

(a) A legal funding contract shall be completely filled in and shall contain a disclosure form on the front page in at least 12-point bold type, in the following format:

1. Total funded amount to the consumer under this contract: $____

2. Itemized fees/charges (specify):
   a. $____
   b. $____
   c. $____

   Total fees: $____

   THERE ARE NO FEES OR CHARGES TO BE PAID BY THE CONSUMER OTHER THAN THOSE DISCLOSED ABOVE.

3. Annual percentage fee (rate of return) on funded amount calculated as of the last day of each six-month interval: ____%

4. Frequency of compounding interest: ______

5. Total amount to be repaid by consumer, including all fees:
   If at 6 months: $____
   If at 12 months: $____
   If at 18 months: $____
   If at 24 months: $____
   If at 30 months: $____
If at 36 months: $____

(b) A contract shall contain the following language in at least 14-point bold type:

VERMONT CONSUMER’S RIGHT TO CANCELLATION:

YOU MAY CANCEL THE CONTRACT WITHIN 5 BUSINESS DAYS FOLLOWING YOUR RECEIPT OF THE FUNDS WITHOUT PENALTY OR FURTHER OBLIGATION. IF THE FUNDS ARE TO BE PAID IN INSTALLMENTS, YOU MAY CANCEL THE CONTRACT WITHIN 5 BUSINESS DAYS FOLLOWING YOUR RECEIPT OF THE FIRST INSTALLMENT OF THE FUNDS WITHOUT PENALTY OR FURTHER OBLIGATION.

(c) A contract shall contain the following language in at least 14-point bold type:

THE LEGAL FUNDING COMPANY AGREES THAT IT HAS NO RIGHT TO AND SHALL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE CIVIL ACTION OR LEGAL CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE SUCH DECISIONS REMAINS
SOLELY WITH THE CONSUMER AND THE

CONSUMER’S ATTORNEY.

(d) A contract shall contain the following language in at least 14-point bold type:

IF THERE IS NO RECOVERY OF ANY MONEY FROM
YOUR CIVIL ACTION OR LEGAL CLAIM OR IF THERE
IS NOT ENOUGH MONEY TO PAY BACK THE LEGAL
FUNDING COMPANY IN FULL, YOU WILL NOT OWE
THE LEGAL FUNDING COMPANY ANYTHING IN
EXCESS OF YOUR RECOVERY UNLESS YOU HAVE
VOLATED THE TERMS OF THIS CONTRACT.

(e) A contract shall contain a legend above the consumer’s signature in at least 14-point bold type:

NOTICE: LEGAL FUNDING COMPANIES SHALL
REGISTER WITH VERMONT REGULATORS. GO TO [web address] AND SELECT THE LINK TO VERIFY A LEGAL
FUNDING COMPANY’S LICENSING OR TO CONTACT
OTHER LEGAL FUNDING COMPANIES TO OBTAIN
COMPARATIVE RATE QUOTES.

(f) A contract shall contain the following legend immediately above the consumer’s signature in at least 14-point bold type:
DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT

COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE CIVIL ACTION OR LEGAL CLAIM HAS NOT PROVIDED YOU WITH ANY TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.

§ 2255. PROHIBITED ACTS

(a) A legal funding company shall not pay or offer to pay commissions, referral fees, or any other form of consideration to any attorney, employee of a law firm, law firm, medical provider, physician as defined in 26 V.S.A. § 1732, chiropractor, or physical therapist or their employees for referring a consumer to the company.

(b) A company shall not accept any commissions, referral fees, or any other form of consideration from any attorney, employee of a law firm, law firm.
medical provider, physician as defined in 26 V.S.A. § 1732, chiropractor, or physical therapist or their employees.

(c) A company shall not advertise materially false or misleading information regarding its products or services.

d) A company shall not knowingly provide nonrecourse legal funding to a consumer who has previously sold or assigned an amount of the consumer’s potential proceeds from the civil action or legal claim to another legal funding company without first making payment to or purchasing a prior unsatisfied company’s entire accrued balance, including the funded amount and contracted fees, unless a lesser amount is otherwise agreed to in writing by the companies.

e) A company shall not receive any right to nor make any decisions with respect to the conduct of the civil action or legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney in the civil action or legal claim.

(f) A company shall not knowingly pay or offer to pay for court costs, filing fees, or attorney’s fees either during or after the resolution of the civil action or legal claim using all or any portion of the funded amount.

§ 2256. EFFECT OF COMMUNICATION ON PRIVILEGES; ATTORNEY RESPONSIBILITIES AND PROHIBITIONS

(a) No communication between the attorney for the consumer and the company shall be discoverable or limit, waive, or abrogate the scope or nature
of any statutory or common-law privilege, including the work-product doctrine
and the attorney-client privilege.

(b) If a dispute arises between the consumer and the company concerning
the contract for nonrecourse legal funding, the responsibilities of the attorney
representing the consumer in the civil action or legal claim shall be no greater
than the attorney’s responsibilities under the Vermont Rules of Professional
Conduct.

(c) An attorney or law firm retained by the consumer in the civil action or
legal claim shall not have a financial interest in the company offering legal
to that consumer. Any attorney who has referred the consumer to his
or her retained attorney shall not have a financial interest in the company
offering legal funding to that consumer.

§ 2257. LICENSING

(a) No person shall, without first obtaining a license under this chapter
from the Commissioner, engage in the business of nonrecourse legal funding.

(b) The Commissioner shall maintain a list of all persons licensed pursuant
to subsection (a) of this section and make the list available to consumers,
attorneys, and others on a publicly accessible website.

(c) A legal funding transaction solicited or made by mail, telephone, or
electronic means to a Vermont resident shall be subject to the provisions of this
chapter irrespective of the location where the legal funding transaction was
legally made. A legal funding company shall not engage in the business of
soliciting or making legal funding transactions by mail, telephone, or
electronic means to residents of this State unless licensed under this chapter. A
company licensed in a state other than Vermont shall be subject to this chapter
but shall not be required to have or maintain a place of business in the State.
§ 2258. APPLICATION; FEES
(a) Application for a legal funding license shall be in writing, under oath,
and in the form prescribed by the Commissioner, and shall contain the name
and the address of the residence and place of business of the applicant, and if
the applicant is a partnership or association, of every member thereof, and if a
corporation, of each officer and director thereof. The application shall state the
county and municipality with street and number, if any, where the business is
to be conducted and any further information the Commissioner may require.
(b) At the time of making application, the applicant shall pay to the
Commissioner a fee for investigating the application and a license fee for a
period terminating on the last day of the current calendar year. The fees shall
be determined by rule by the Commissioner.
§ 2259. BOND; LIQUID ASSETS
(a) Prior to issuance of a license, the applicant shall file with the
Commissioner, and shall keep in force thereafter for as long as the license
remains in effect, a bond in a form and substance approved by the
Commissioner in which the applicant shall be the obligor, in the sum as the
Commissioner may require. The aggregate liability for any and all claims on
the bond shall in no event exceed the sum of the bond. A surety obligation on
a bond shall not be terminated unless at least 60 days’ prior written notice is
given by the surety to the obligor and the Commissioner. When one person is
issued licenses to conduct the licensed activity at more than one office, the
Commissioner may accept a single bond covering all the offices. The bond
shall run to the State for the use of the State and of any person or persons who
may have cause of action against the obligor of the bond under the provisions
of this chapter. The bond shall be conditioned that the obligor will faithfully
conform to and abide by the provisions of this chapter and all rules adopted by
the Commissioner pursuant to this chapter, and will pay to the State and to any
other person any monies that may become due or owing to the State or to any
other person or persons from the obligor under the provisions of this chapter.
The Commissioner shall adopt rules specifying the minimum bond
requirements for legal funding companies.

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

(c) An applicant for a legal funding license shall prove, in a form
satisfactory to the Commissioner, that the applicant has liquid assets of
$25,000.00, or a greater amount if the Commissioner requires, available for the
operation of the business at the location specified in the application.

(d) The Commissioner may waive or modify the requirement for or amount
of a bond or liquid assets set forth in this section, or accept other appropriate
means of assuring the financial responsibility of a company.

(e) If the Commissioner finds at any time that a company’s bond is
insecure, exhausted, or insufficient, or otherwise doubtful, the Commissioner
shall require one or more additional bonds meeting the standards set forth in
this section. The company shall file the bond within 10 days of the
Commissioner’s written demand to do so.

(f) A company shall maintain at all times assets in amounts as set forth in
this section, or in a greater amount deemed necessary by the Commissioner.
Assets must be in liquid form available for either the operation of or actually
used in the conduct of the business at the location specified in the license.

§ 2260. CONTENTS OF LICENSE; NONTRANSFERABILITY

A license issued under this chapter shall state the address at which the
business is to be conducted and shall state fully the name of the licensee and, if
the licensee is other than an individual, the date and place of its organization or
incorporation. The Commissioner may issue an electronic license. The license
shall not be transferable or assignable.
§ 2261. PLACES OF BUSINESS; CHANGE OF MANAGEMENT OR
CONTROL; USE OF OTHER NAMES

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

(b) Any change of location or closing of a place of business of the licensee
shall require 30 days’ prior written notice thereof to the Commissioner. Notice
of a change of location shall be accompanied by a fee of $100.00. Upon
receipt of the notice and fee, the Commissioner shall attach to the license in
writing the Commissioner’s record of the change, including the date of the
change, which shall be authority for the operation of the business under the
license at the new location.

(c) The licensee shall notify the Commissioner of any change in control of
the licensee, and of every change in senior management personnel, and of
every change in membership of the board of directors or control persons of the
licensee within 30 days of the change.

(d) No company shall transact business as provided for by this chapter
under any other name or at any other place of business than that named in the
license.
§ 2262. APPLICATION APPROVAL; ISSUANCE OF LICENSE

(a) Upon the filing of the application, payment of the required fees, approval of the bond, and satisfactory proof of liquid assets, the Commissioner shall issue and deliver a license to the applicant, provided he or she finds:

(1) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(A) If the applicant is a partnership or association, the findings required by this subsection (a) shall be made with respect to each partner, member, and control person. If the applicant is a corporation, the findings required by this subsection shall be made with respect to each officer, director, and control person.

(B) The applicant has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include:

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

(ii) current outstanding tax liens or other government liens and filings:
(iii) foreclosures within the past three years;

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

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

(3) The applicant is licensed to engage in the business of legal funding in its state of domicile and is in good standing in its state of domicile with its equivalent financial industry regulator.

(4) The applicant, and each officer, director, and control person of the applicant, has never had a nonrecourse legal funding license, or similar license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.

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

(i) during the seven-year period preceding the date of the application for licensing; or

(ii) at any time preceding the date of the application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
(B) A pardon or expungement of a conviction shall not be a conviction for purposes of this subsection.

(6) The applicant has satisfied the surety bond and liquid asset requirements of section 2259 of this chapter.

(b) If the Commissioner makes the findings required by subsection (a) of this section, he or she shall issue the license within 60 days of filing the completed application. The license shall be in full force and effect until surrendered by the licensee, or revocation, suspension, or refusal to renew by the Commissioner.

(c) If the Commissioner does not make the findings required by subsection (a) of this section, the Commissioner shall not issue a license. Within 60 days of filing of the completed application, the Commissioner shall notify the applicant of the denial, stating the reason or reasons therefore. After the allowable period, if no request for reconsideration under subsection 2263(a) of this chapter is received from the applicant, the Commissioner shall return to the applicant the bond and the sum paid by the applicant as a license fee, retaining any costs of investigating the application.

§ 2263. RECONSIDERATION

(a) If the application is denied, the applicant may request that the Commissioner reconsider the application. A request to reconsider shall be made in writing, within 15 days of the denial, and shall respond specifically to
the Commissioner’s stated reason or reasons for denial. The Commissioner
shall reconsider the application in light of the response.

(b) If the Commissioner makes the findings required by section 2262 of
this chapter, he or she shall issue a license within 60 days of the filing of the
request for reconsideration.

(c) If the Commissioner does not make the findings required by section
2262 of this chapter, the Commissioner shall not issue a license. Within 60
days of filing the request for reconsideration, the Commissioner shall notify
the applicant of the denial, and return to the applicant the bond and the sum
paid by the applicant as a license fee, retaining any costs of investigating the
application.

(d) A denial by the Commissioner under this section may be appealed to
Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure.

§ 2264. RENEWAL

(a) On or before December 1 of each year, every licensee shall renew its
license for the next succeeding calendar year and shall pay to the
Commissioner a license renewal fee. At a minimum, the licensee shall
continue to meet the standards under section 2262 of this chapter. At the same
time, the licensee shall maintain with the Commissioner a bond in the amount
and of the character as required by section 2259 of this chapter. The license
renewal fee shall be set by rule by the Commissioner.
(b) Any license originally issued on or after November 1 of the current year shall be valid for the next succeeding year.

§ 2265. REVOCATION, SUSPENSION, EXPIRATION, NONRENEWAL; CEASE AND DESIST ORDERS; REVIEW

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

(1) the licensee has failed to pay the license renewal fee, or to maintain in effect the required liquid assets or the bond or bonds required under the provisions of this chapter, or to file any annual report or other report, or to comply with any lawful demand, ruling, or requirement of the Commissioner;

(2) the licensee has violated any provisions of this chapter or any rule, order, or directive lawfully made thereunder;

(3) the licensee fails to meet the requirements of sections 2262 and 2264 of this chapter, or withholds information, or fails to cooperate with an examination, or makes a material misstatement in a license application, license renewal, or any document submitted to the Commissioner or to the Nationwide Mortgage Licensing System and Registry; or

(4) there is cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner at the time of issuance, including unconscionable conduct which takes advantage of a
consumer’s lack of bargaining power or lack of understanding of the terms or consequences of the transaction.

(b) Where a licensee has more than one place of business, the Commissioner may revoke, suspend, or refuse to renew the license for the place of business with respect to which grounds for revocation, suspension, or refusal to renew may occur or exist or, if the Commissioner finds that the grounds for revocation, suspension, or refusal to renew are of general application to all offices or to more than one office operated by the licensee, the Commissioner shall revoke, suspend, or refuse to renew all of the licenses issued to the licensee or the licenses to which the grounds apply, as the case may be.

(c) The Commissioner may issue orders or directives to any person:

(1) to cease and desist from conducting business;

(2) to cease any harmful activities or violations of this chapter or section 10403 of this title, where applicable, or any order, directive, or rule made thereunder;

(3) to cease business under a license or any conditional license if the Commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter or section 10403 of this title, where applicable, or any order, directive, or rule made thereunder;
(4) to enjoin or prohibit any person from engaging in the financial services industry in this State;

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

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

(d) The licensee shall receive 15 days’ notice and an opportunity to be heard before an order is issued under this section. Mailing notice to the licensee’s current address as stated on the license shall be presumptive evidence of its receipt by the licensee. However, if the Commissioner finds that public safety or welfare requires emergency action, action with no prior notice or prior opportunity to be heard may be taken, pending proceedings for revocation or other action.

(e) The Commissioner’s findings and order of suspension, revocation, or to cease and desist in specified conduct shall be served on the licensee. Mailing to the licensee’s current address as stated on the license shall constitute sufficient service and shall be presumptive evidence of its receipt by the licensee. Within 15 days of service, the licensee may appeal the Commissioner’s decision to the Washington County Superior Court.

(f) The Commissioner shall have authority to reinstate a revoked, suspended, expired, inactive, or nonrenewed license if no fact or condition at
the time of reinstatement exists which would have warranted the
Commissioner in refusing originally to issue the license under this chapter.

(g) The Commissioner shall have authority to issue a new license to a
licensee whose prior license was revoked, suspended, expired, inactive, or
nonrenewed.

§ 2266. SURRENDER OF LICENSE, NO EFFECT ON LIABILITY;
REINSTATEMENT

(a) A company may surrender a license issued pursuant to this chapter by
delivering the license to the Commissioner and providing notice that the
company is surrendering it.

(b) Surrender shall not affect the licensee’s administrative, civil, or
criminal liability for acts committed prior to surrender.

(c) The Commissioner shall have authority to reinstate a surrendered
license if no fact or condition at the time of reinstatement exists which would
have warranted the Commissioner in refusing originally to issue the license
under this chapter.

§ 2267. RECORDS

The company shall keep, use in its business, and make available to the
Commissioner upon request books, accounts, records, and data compilations
that will enable the Commissioner to determine whether the company is
complying with the provisions of and the rules adopted under this chapter.
Every company shall preserve its books, accounts, records, and data compilations in a secure manner for at least seven years after the company records its final entry on a legal funding transaction in such books, accounts, records, and data compilations. Thereafter, the licensee shall dispose of such books, accounts, records, and data compilations in accordance with 9 V.S.A. § 2445.

§ 2268. DECEPTIVE ADVERTISING

No company or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever a false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of nonrecourse legal funding. The Commissioner may order any person to desist from any conduct that the Commissioner finds to be in violation of this section.

§ 2269. CONDUCT OF UNRELATED BUSINESS

A company shall not conduct the business of legal funding under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with the other business, except as may be authorized in writing by the Commissioner upon his or her finding that the character of the other business would not facilitate the evasion of the requirements of this chapter.
§ 2270. RULEMAKING

The Commissioner may adopt any rules and orders consistent with this chapter to regulate legal funding companies and to enforce the provisions of this chapter.

§ 2271. NATIONWIDE LICENSING SYSTEM AND REGISTRY

(a) In furtherance of the Commissioner’s duties under this chapter, the Commissioner may participate in the Registry and may take action regarding participation in the licensing system as the Commissioner deems necessary to carry out the purposes of this section, including:

(1) issuing rules or orders and establishing procedures to further participation in the Registry;

(2) facilitating and participating in the establishment and implementation of the Registry;

(3) establishing relationships or contracts with the Registry or other entities designated by the Registry;

(4) authorizing the Registry to collect and maintain records and to collect and process any fees associated with licensure on behalf of the Commissioner;

(5) requiring persons engaged in activities that require a license under this chapter to use the Registry for license applications, renewals, amendments, surrenders, and such other activities as the Commissioner may require, and to
pay through the national licensing system all fees provided for under this chapter;

(6) authorizing the Registry to collect fingerprints on behalf of the Commissioner in order to receive or conduct criminal history background checks, and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this subsection, the Commissioner may use the Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(b) In order to reduce the points of contact which the Commissioner may have to maintain for purposes of section 2258 of this chapter, the Commissioner may use the Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

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

(d) Persons engaged in activities that require licensure pursuant to this chapter shall pay all applicable charges to use the Registry, including processing charges as the administrator of the Registry shall establish, in addition to the fees required under this chapter.

(e) The Registry is not intended to and does not replace or affect the Commissioner’s authority to grant, deny, suspend, revoke, or refuse to renew licenses.

§ 2272. CONFIDENTIALITY

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry and any privilege arising under federal or State law, including the rules of any federal or State court with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Registry. Such information and material may be shared with all State and federal regulatory officials with oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or State law.
(2) To carry out the purpose of this section, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies.

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

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

(B) subpoena or discovery or admission into evidence in any private civil action or administrative process unless with respect to any privilege held by the Registry with respect to such information or material the person to whom such information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

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

§ 2273. UNIQUE IDENTIFIER

The unique identifier issued by the Registry of any person engaging in the business of legal funding shall be clearly shown on all legal funding contracts, application forms, solicitations, or advertisements, including business cards.
and websites, and any other documents as established by rule or order of the Commissioner.

§ 2274. ANNUAL REPORT

(a) Annually, on or before April 1, each company licensed under this chapter shall file a report with the Commissioner under oath and in the form and manner prescribed by the Commission. The report shall provide any information the Commissioner may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the company within the State, including:

(1) the number of nonrecourse legal funding transactions;

(2) the dollar value of funded amounts to the consumer pursuant to nonrecourse legal funding transactions;

(3) the dollar value of fees charged to the consumer, including the annual percentage fee and the itemized fees, in connection with nonrecourse legal funding transactions;

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

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

(b) The Commissioner shall make and publish annually an analysis of the reports filed under this section. For good cause, the Commissioner may extend
the due date for the annual report required by this subsection. If a company
does not file its annual report on or before April 1, or within any extension of
time granted by the Commissioner, the company shall pay to the Department
$100.00 for each month or part of a month that the report is past due.

(c) Annually, within 90 days of the end of its fiscal year, each company
shall file financial statements, including a balance sheet and income statement,
with the Commissioner in a form and manner satisfactory to the
Commissioner.

(d) The Commissioner shall report annually to the House Committees on
Judiciary and on Commerce and Economic Development and to the Senate
Committees on Judiciary and on Finance on the status of companies in the
State. The report shall include aggregate information reported by companies
licensed under this chapter.

§ 2275. PENALTIES

(a) Any person, partnership, association, or corporation and the several
members, officers, directors, agents, and employees thereof who shall violate
or participate in the violation of any of the provisions of this chapter shall be
imprisoned not more than two years or fined not more than $1,500.00, or both.

(b) The Commissioner may impose an administrative penalty of not more
than $1,500.00 per violation upon any person who violates any provision of
this chapter, plus the State’s costs and expenses for the investigation and
prosecution of the matter, including attorney’s fees.

(c) The Commissioner may order any person to make restitution to any
person as a result of a violation of this chapter. Additionally, a consumer may
bring a private action against such licensee or such person that should have
been licensed under this chapter for restitution because of a violation of this
chapter.

(d) The powers vested in the Commissioner by this chapter shall be in
addition to any other powers of the Commissioner to enforce any penalties,
fines, or forfeitures authorized by law.

(e) The powers vested in the Commissioner by this chapter shall be in
addition to any other powers or rights of consumers or the Attorney General or
others under any other applicable law or rule, including without limitation the
Vermont Consumer Protection Act and any applicable rules issued in
connection therewith, provided that the Commissioner’s determinations
concerning the interpretation and administration of the provisions of this
chapter and any rules adopted thereunder shall carry a presumption of validity.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2014.