

After HB 182, Should Financial Services Companies Apply for a Vermont Loan Solicitation License?

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On May 1, 2017, Vermont HB 182 substantially revised the Vermont Licensed Lender Law. HB 182 modified the requirements applicable to a variety of consumer financial service companies, such as money transmitters and mortgage brokers. This alert, however, will focus on the provisions of HB 182 that create two new categories of regulated entities, lead generators and loan solicitors.

The most significant change is the creation of a new class of license under the Licensed Lender Law, the Loan Solicitation License, which will apply to lead generators and loan solicitors, and a new disclosure requirement that will apply to loan solicitors who engage in lead generation. The definitional and licensing provisions were effective immediately, while the disclosure provisions will be effective July 1, 2017.

Under the immediately effective portion of the bill, a license is now required to engage in the business of loan solicitation. Vt. Code tit. 8, § 2201(a)(5). The passage of HB 182 appears designed to regulate and license entities acting as the intermediary between lenders and consumers.

Before the enacting of HB 182, the Licensed Lender Law did not squarely address whether lead generation or bank partnership model activities would require licensure under the Licensed Lender Law. HB 182, however, now broadly defines “loan solicitation” to mean, for compensation or gain or with the expectation of compensation or gain, to:

1. Offer, solicit, broker, directly or indirectly arrange, place, or find a loan for a prospective Vermont borrower;
2. Engage in any activity intended to assist a prospective Vermont borrower in obtaining a loan, including lead generation;
3. Arrange, in whole or in part, a loan through a third party, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for a third party, through any method, including mail, telephone, internet, or any electronic means; or
4. Advertise or cause to be advertised in Vermont a loan or any of the services described in sections (1) through (3). Vt. Code tit. 8, § 2200(17)(A).

The definition of “loan solicitation” does not apply to activities relating to residential mortgage loans or retail sellers, among other things. Vt. Code tit. 8, § 2200(17)(B). The term “lead generation,” in turn, is defined to mean:

1. Initiate consumer interest or inquiry in a loan by online marketing, direct response advertising, telemarketing, or other similar consumer contact;
2. Engage in the business of selling leads for loans;
3. Generate or augment leads for other persons for, or with the expectation of, compensation or gain; or
4. Refer Vermont borrowers to other persons for loans for, or with the expectation of, compensation or gain. Vt. Code tit. 8, § 2200(14).

Finally, the term “lead” is broadly defined to mean any information identifying a potential consumer of a loan. Vt. Code tit. 8, § 2200(13).

The impact of these new broad definitions is that virtually any loan sourcing activity directed to Vermont consumers will constitute loan solicitation activity requiring a Loan Solicitation license. The need to obtain a Loan Solicitation license is therefore a significant change for lead generators and for the lenders who work with lead generators. Of even greater significance is the fact that the licensing requirement is immediately effective. This appears to reflect a position that such entities were historically required to obtain a license, despite the lack of clarity in the statutes and regulations relating to activities far removed from traditional loan brokering or solicitation of loans. The fact that the license requirement is already effective makes it critical for entities that need a license to submit license applications as soon as possible to ensure compliance.

We also note that Vermont is located in the 2nd Circuit Court of Appeals district. As a reminder, the 2nd Circuit is the court that decided the *Madden v. Midland Funding* decision, which called into question whether a non-depository entity may, as an assignee of the loan, apply the interest rate contracted for in a loan originated by a depository institution exporting its home state interest rate under federal law, or must comply with state law usury limits. As a result, an entity engaged in a bank-partnership model that facilitates the origination of loans by a depository institution may wish to err on the side of caution and obtain a Licensed Lender license, rather than a Loan Solicitation License. A Licensed Lender license would potentially act as a hedge against the impact of the *Madden v. Midland Funding* decision with respect to Vermont loans, and would also act as a shield against true lender concerns.

HB 182 also imposes, effective July 1, 2017, a disclosure requirement on loan solicitation licensees engaging solely in lead generation. Vt. Code tit. 8, §§ 2219, 2220a. This disclosure, which explains that the loan solicitor is not a lender and that any loans obtained through the loan solicitor are made by the lender, must be clearly and conspicuously in all advertisements of loans and solicitations of leads, using the text prescribed under the statute. We note that the statutory language does not appear to require this disclosure for Licensed Lender licensees who are engaged in loan solicitation activities and will be exploring this issue further with the Vermont Department of Financial Regulation (Department).

The Loan Solicitation License can be applied for on NMLS and the checklist for the application can be found [here](#).

Please contact the authors of this alert or another member of the firm's Consumer Financial Services Group for questions regarding the scope of HB 182, whether you should obtain a Vermont Loan Solicitation License, or if you need assistance in preparing a Loan Solicitation or Licensed Lender License.

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