

H.593

An act relating to miscellaneous consumer protection provisions

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

* * * Automatic Renewal Provisions in Consumer Contracts * * *

Sec. 1. 9 V.S.A. § 2454a is added to read:

§ 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL

(a) A contract between a consumer and a seller or a lessor with an initial term of one year or longer that renews for a subsequent term that is longer than one month shall not renew automatically unless:

(1) the contract states clearly and conspicuously the terms of the automatic renewal provision in plain, unambiguous language in bold-face type;

(2) in addition to accepting the contract, the consumer takes an affirmative action to opt in to the automatic renewal provision; and

(3) if the consumer opts in to the automatic renewal provision, the seller or lessor provides a written or electronic notice to the consumer:

(A) not less than 30 days and not more than 60 days before the earliest of:

(i) the automatic renewal date;

(ii) the termination date; or

(iii) the date by which the consumer must provide notice to cancel the contract; and

(B) that includes:

(i) the date the contract will terminate and a clear statement that the contract will renew automatically unless the consumer cancels the contract on or before the termination date;

(ii) the length and any additional terms of the renewal period;

(iii) one or more methods by which the consumer can cancel the contract; and

(iv) contact information for the seller or lessor.

(b) A person who violates a provision of subsection (a) of this section commits an unfair and deceptive act in commerce in violation of section 2453 of this title.

(c) The provisions of this section do not apply to:

(1) a contract between a consumer and a financial institution, as defined in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in 8 V.S.A. § 30101; or

(2) a contract for insurance, as defined in 8 V.S.A. § 3301a.

Sec. 2. AUTOMATIC RENEWAL OF CONTRACTS; APPLICABILITY TO
EXISTING CONTRACTS

(a) A contract between a consumer and a seller or lessor in effect on July 1, 2019 with an initial term of one year or longer that renews for a subsequent term that is longer than one month shall not renew automatically unless the

seller or lessor sends written or electronic notice to the consumer with the information required in 9 V.S.A. § 2454a(a)(3)(B):

(1) not less than 30 days and not more than 60 days before the earliest of:

(A) the automatic renewal date;

(B) the termination date; or

(C) the date by which the consumer must provide notice to cancel the contract; or

(2) if the contract will automatically renew on or before July 31, 2019, then as soon as is commercially reasonable after this section takes effect.

(b) The Attorney General shall have the same authority to enforce this section as set forth in 9 V.S.A. § 2454a.

(c) The provisions of this section do not apply to:

(1) a contract between a consumer and a financial institution, as defined in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in 8 V.S.A. § 30101; or

(2) a contract for insurance, as defined in 8 V.S.A. § 3301a.

* * * Retainage of Payment for Construction Materials * * *

Sec. 3. 9 V.S.A. § 4005 is amended to read:

§ 4005. RETAINAGE

(a) If payments under a construction contract are subject to retainage, any amounts ~~which~~ that have been retained during the performance of the contract

and ~~which~~ that are due to be released to the contractor upon final completion shall be paid within 30 days after final acceptance of the work.

(b) If an owner is not withholding retainage, a contractor or subcontractor may withhold retainage from its subcontractor in accordance with their agreement. The retainage shall be paid within 30 days after final acceptance of the work.

(c) Notwithstanding any contrary agreement, a contractor shall pay to its subcontractors, and each subcontractor shall in turn pay to its subcontractors, within seven days after receipt of the retainage, the full amount due to each such subcontractor.

(d) If an owner, contractor, or subcontractor unreasonably withholds acceptance of the work or fails to pay retainage as required by this section, the owner, contractor, or subcontractor shall be subject to the interest, penalty, and attorney's fees provisions of sections 4002, 4003, and 4007 of this title.

(e) Notwithstanding any provision of this section or an agreement to the contrary, except in the case of a contractor or subcontractor who is both a materialman who delivers materials and is contracted to perform work using those materials, a contractor or subcontractor shall not hold retainage for contracted materials that:

(1) have been delivered by a materialman and accepted by the contractor at the site or off site; and

(2) are covered by a manufacturer's warranty or graded to meet industry standards, or both.

* * * Credit Protection for Vulnerable Persons * * *

Sec. 4. 9 V.S.A. § 2480a is amended to read:

§ 2480a. DEFINITIONS

~~For purposes of~~ As used in this subchapter and subchapter 9 of this chapter:

(1) "Consumer" means a natural person ~~residing in this State~~ other than a protected consumer.

(2) "Consumer who is subject to a protected consumer security freeze" means a natural person:

(A) for whom a credit reporting agency placed a security freeze under section 2480h of this title; and

(B) who, on the day on which a request for the removal of the security freeze is submitted under section 2480h of this title, is not a protected consumer.

~~(2)(3) "Credit report" means any written, oral, or other communication of any information by a credit reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including an investigative credit report. The term does not include:~~

~~(A) a report containing information solely as to transactions or experiences between the consumer and the person making the report; or~~

~~(B)~~ ~~an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device~~ a consumer report, as defined in 15 U.S.C. § 1681a, that is used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

~~(3)(4)~~ "Credit reporting agency" or "agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of reporting to third parties on the credit rating or creditworthiness of any consumer a person who, for fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating information concerning a consumer's credit or other information for the purpose of furnishing a credit report to another person.

(5) "File" shall have the same meaning as in 15 U.S.C. § 1681a.

~~(4)(6)~~ "Identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property.

(7) "Incapacitated person" shall have the same meaning as in 14 V.S.A. § 3152.

~~(5)(8)~~ "Investigative credit report" means a report in which information on a consumer's character, general reputation, personal characteristics, or

mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information. The term does not include reports of specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a credit reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(9)(A) "Personal information" means personally identifiable financial information:

(i) provided by a consumer to another person;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by another person.

(B) "Personal information" does not include:

(i) publicly available information, as that term is defined by the regulations prescribed under 15 U.S.C. § 6804; or

(ii) any list, description, or other grouping of consumers and publicly available information pertaining to the consumers that is derived without using any nonpublic personal information.

(C) Notwithstanding subdivision (B) of this subdivision (9), "personal information" includes any list, description, or other grouping of consumers and publicly available information pertaining to the consumers that

is derived using any nonpublic personal information other than publicly available information.

(10) “Proper authority” means:

(A) in the case that it is required of a protected consumer’s representative:

(i) sufficient proof of identification of the protected consumer;

(ii) sufficient proof of identification of the protected consumer’s representative; and

(iii) sufficient proof of authority to act on behalf of the protected consumer; and

(B) in the case that it is required of a consumer who is subject to a protected consumer security freeze:

(i) sufficient proof of identification of the consumer who is subject to a protected consumer security freeze; and

(ii) proof that the consumer who is subject to a protected consumer security freeze is not a protected consumer.

~~(6)(11)~~ “Proper identification,” as used in this subchapter, means that information generally deemed sufficient to identify a person shall have the same meaning as in 15 U.S.C. § 1681h(a)(1), and includes:

(A) the consumer’s full name, including first, last, and middle names and any suffix;

(B) any name the consumer previously used;

(C) the consumer's current and recent full addresses, including street address, any apartment number, city, state, and zip code;

(D) the consumer's Social Security number; and

(E) the consumer's date of birth.

(12) "Protected consumer" means a natural person who, at the time a request for a security freeze is made, is:

(A) under 16 years of age;

(B) an incapacitated person; or

(C) a protected person.

(13) "Protected consumer security freeze" means:

(A) if a consumer reporting agency does not have a file that pertains to a protected consumer, a restriction that:

(i) is placed on the protected consumer's record in accordance with this subchapter; and

(ii) except as otherwise provided in this subchapter, prohibits the consumer reporting agency from releasing the protected consumer's record; or

(B) if a consumer reporting agency has a file that pertains to the protected consumer, a restriction that:

(i) is placed on the protected consumer's credit report in accordance with this subchapter; and

(ii) except as otherwise provided in this subchapter, prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report.

(14) "Protected person" shall have the same meaning as in 14 V.S.A. § 3152.

(15) "Record" means a compilation of information that:

(A) identifies a protected consumer;

(B) is created by a consumer reporting agency solely for the purpose of complying with this section; and

(C) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

(16) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

~~(17)~~ "Security freeze" means a notice placed in a credit report, at the request of the consumer, pursuant to section 2480h of this title.

(18) "Sufficient proof of authority" means documentation that shows that a person has authority to act on behalf of a protected consumer, including:

(A) a birth certificate;

(B) a court order;

(C) a lawfully executed power of attorney; or

(D) a written, notarized statement signed by the person that expressly describes the person's authority to act on behalf of the protected consumer.

(19) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative, including:

(A) a Social Security number or a copy of a Social Security card issued by the U.S. Social Security Administration;

(B) a certified or official copy of a birth certificate; or

(C) a copy of a government-issued driver's license or identification card.

Sec. 5. 9 V.S.A. chapter 63, subchapter 9 is added to read:

Subchapter 9. Credit Protection for Minors

§ 2483. APPLICABILITY

This subchapter does not apply to the use of a protected consumer's credit report or record by:

(1) a person administering a credit file monitoring subscription service to which:

(A) the protected consumer has subscribed; or

(B) the protected consumer's representative has subscribed on the protected consumer's behalf;

(2) a person who, upon request from the protected consumer or the protected consumer's representative, provides the protected consumer or the

protected consumer's representative with a copy of the protected consumer's credit report;

(3) a check services or fraud prevention services company that issues:

(A) reports on incidents of fraud; or

(B) authorization for the purpose of approving or processing

negotiable instruments, electronic funds transfers, or similar payment methods;

(4) a deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar information regarding an individual to inquiring banks or other financial institutions for use only in reviewing an individual's request for a deposit account at the inquiring bank or financial institution;

(5) an insurance company for the purpose of conducting the insurance company's ordinary business;

(6) a consumer reporting agency that:

(A) only resells credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(B) does not maintain a permanent database of credit information from which new credit reports are produced; or

(7) a consumer reporting agency's database or file that consists of information that:

(A) concerns and is used for:

(i) criminal record information;

(ii) fraud prevention or detection;

(iii) personal loss history information; or

(iv) employment, tenant, or individual background screening; and

(B) is not used for credit granting purposes.

§ 2483a. SECURITY FREEZE FOR PROTECTED CONSUMER; TIME IN
EFFECT

(a) A consumer reporting agency shall place a security freeze for a protected consumer if the protected consumer's representative submits a request, including proper authority, to the address and in the manner specified by the consumer reporting agency.

(b) If a consumer reporting agency does not have a file that pertains to a protected consumer when the consumer reporting agency receives a request described in subsection (a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(c) The credit reporting agency shall:

(1) place a security freeze not later than 30 days after the date the agency receives a request pursuant to subsection (a) of this section; and

(2) not later than 10 business days after placing the freeze:

(A) send a written confirmation of the security freeze to the protected consumer or the protected consumer's representative; and

(B) provide a unique personal identification number or password, other than a Social Security number, or another method of authentication that is equally or more secure than a PIN or password, to be used to authorize the release of the protected consumer's credit for a specific party, parties, or period of time.

(d)(1) A credit reporting agency shall lift temporarily a protected consumer security freeze to allow access by a specific party or parties or for a specific period of time, upon a request from the protected consumer's representative.

(2) The protected consumer's representative shall submit the request to the address and in the manner specified by the consumer reporting agency.

(3) The request shall include:

(A) proper authority; and

(B) the unique personal identification number, password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section.

(e) A credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request to lift temporarily a freeze on a credit report pursuant to subsection (d) of this section in an expedited manner.

(f) A credit reporting agency that receives a request to lift temporarily a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request not later than three business days after receiving the request.

(g) A credit reporting agency shall remove or lift temporarily a freeze placed on a protected consumer's credit report only in the following cases:

(1) Upon request, pursuant to subsection (d) or (j) of this section.

(2) If the protected consumer's credit report was frozen due to a material misrepresentation of fact by the protected consumer or by his or her representative. If a credit reporting agency intends to remove a freeze upon a protected consumer's credit report pursuant to this subdivision, the credit reporting agency shall notify the protected consumer and his or her representative in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a credit report on which a protected consumer security freeze is in effect and this request is in connection with an application for credit or any other use and neither the consumer subject to the protected consumer security freeze nor the protected consumer's representative allows the credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) A credit reporting agency that receives a request to place a protected consumer security freeze pursuant to this section shall disclose to the protected consumer and his or her representative the process of placing and lifting temporarily a security freeze and the process for allowing access to information from the protected consumer's credit report for a specific party,

parties, or period of time while the protected consumer security freeze is in place.

(j)(1) A protected consumer security freeze shall remain in place until the credit reporting agency receives a request to remove the freeze from:

(A) the protected consumer's representative; or

(B) the consumer who is subject to the protected consumer security freeze.

(2) A credit reporting agency shall remove a protected consumer security freeze within three business days after receiving a proper request for removal.

(3) The party requesting the removal of a protected consumer security freeze pursuant to subdivision (1) of this subsection shall submit the request to the address and in the manner specified by the consumer reporting agency.

(4) The request shall include:

(A) proper authority; and

(B) the unique personal identification number, password, or other method of authentication provided by the credit reporting agency pursuant to subsection (c) of this section.

(k) A credit reporting agency shall require proper identification of the person making a request to place or remove a protected consumer security freeze.

(l) The provisions of this section, including the protected consumer security freeze, do not apply to the use of a consumer report by the following:

(1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the protected consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt, or extending credit to a consumer with a prior or existing account, contract, or debtor-creditor relationship, subject to the requirements of section 2480e of this title. As used in this subdivision, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) The Office of Child Support when investigating a child support case pursuant to Title IV-D of the Social Security Act (42 U.S.C. §§ 651–669b) and 33 V.S.A. § 4102.

(5) The Economic Services Division of the Department for Children and Families or the Department of Vermont Health Access or its agents or assignees acting to investigate welfare or Medicaid fraud.

(6) The Department of Taxes, municipal taxing authorities, or the Department of Motor Vehicles or any of their agents or assignees acting to investigate or collect delinquent taxes or assessments, including interest and penalties or unpaid court orders, or to fulfill any of their other statutory or charter responsibilities.

(7) A person's use of credit information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act.

(8) Any person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed.

(9) A credit reporting agency for the sole purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(10) Any property and casualty insurance company for use in setting or adjusting a rate or underwriting for property and casualty insurance purposes.

§ 2483b. FEES

A consumer reporting agency shall not charge a fee for any service performed under this subchapter.

* * * Use of Credit Information for Personal Insurance * * *

Sec. 6. 8 V.S.A. § 4727 is added to read:

§ 4727. PERSONAL INSURANCE; USE OF CREDIT INFORMATION

(a) Purpose. The purpose of this section is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of such information.

(b) Scope. This section applies to personal insurance and not to commercial insurance. As used in this section, “personal insurance” means private passenger automobile, homeowners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies. Such policies must be underwritten for personal, family, or household use. No other types of insurance shall be included as personal insurance for the purpose of this section.

(c) Definitions. As used in this section:

(1) “Adverse action” means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance.

(2) “Affiliate” means any company that controls, is controlled by, or is under common control with another company.

(3) “Applicant” means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) “Consumer” means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.

(5) “Consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or

other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related shall not be considered "credit information," regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

(d) Use of credit information. An insurer authorized to do business in this State that uses credit information to underwrite or rate risks shall not:

(1) Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subdivision (1) of this subsection.

(3) Base an insured's renewal rates for personal insurance solely upon credit information without consideration of any other applicable factor independent of credit information.

(4) Take an adverse action against a consumer solely because he or she does not have a credit card account without consideration of any other applicable factor independent of credit information.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(A) treats the consumer as otherwise approved by the Commissioner if the insurer presents information that such an absence or inability relates to the risk for the insurer;

(B) treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer; or

(C) excludes the use of credit information as a factor and uses only other underwriting criteria.

(6) Take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an

insurance score calculated within 90 days from the date the policy is first written or renewal is issued.

(7) Use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection:

(A) At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.

(B) The insurer shall have the discretion to obtain current credit information upon any renewal before the 36 months if consistent with its underwriting guidelines.

(C) No insurer need obtain current credit information for an insured, despite the requirements of subdivision (A) of this subdivision (7), if one of the following applies:

(i) The insurer is treating the consumer as otherwise approved by the Commissioner.

(ii) The insured is in the most favorably priced tier of the insurer within a group of affiliated insurers. However, the insurer shall have the discretion to order such report if consistent with its underwriting guidelines.

(iii) Credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer shall have the discretion to use credit for underwriting or rating such insured upon renewal if consistent with its underwriting guidelines.

(iv) The insurer reevaluates the insured beginning not later than 36 months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.

(8) Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:

(A) credit inquiries not initiated by the consumer or inquiries requested by the consumer for his or her own credit information;

(B) inquiries relating to insurance coverage, if so identified on a consumer's credit report;

(C) collection accounts with a medical industry code, if so identified on the consumer's credit report;

(D) multiple lender inquiries if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another unless only one inquiry is considered; and

(E) multiple lender inquiries if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending

industry and made within 30 days of one another unless only one inquiry is considered.

(e)(1) Extraordinary life circumstances. Notwithstanding any other law or rule to the contrary, an insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:

(A) a catastrophic event, as declared by the federal or State government;

(B) a serious illness or injury or a serious illness or injury to an immediate family member;

(C) the death of a spouse, child, or parent;

(D) divorce or involuntary interruption of legally owed alimony or support payments;

(E) identity theft;

(F) the temporary loss of employment for a period of three months or more if it results from involuntary termination;

(G) military deployment overseas; or

(H) other events as determined by the insurer.

(2) If an applicant or insured submits a request for an exception as set forth in subdivision (1) of this subsection, an insurer may, in its sole discretion, but is not mandated to:

(A) require the consumer to provide reasonable written and independently verifiable documentation of the event;

(B) require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information;

(C) require such request be made not more than 60 days from the date of the application for insurance or the policy renewal;

(D) grant an exception despite the consumer not providing the initial request for an exception in writing; or

(E) grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.

(3) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(4) The insurer shall provide notice to consumers that reasonable exceptions are available and information about how the consumer may inquire further.

(5) Within 30 days following the insurer's receipt of sufficient documentation of an event described in subdivision (1) of this subsection, the insurer shall inform the consumer of the outcome of the request for a reasonable exception. Such communication shall be in writing or provided to an applicant in the same medium as the request.

(f) Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and re-rate the consumer within 30 days following receiving the notice. After reunderwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(g)(1) Initial notification. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information in connection with such application. Such disclosure shall be either written or provided to an

applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.

(2) Use of the following example disclosure statement constitutes compliance with this section: “In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.”

(h) Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of this subsection. Such insurer shall:

(1) Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681m(a).

(2) Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take an adverse action. Such notification shall include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as “poor credit history,” “poor credit rating,” or “poor

insurance score” does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this section.

(i) Plain language. In any written communication or notification to a consumer pursuant to this section, an insurer shall use clear and plain language that is understandable to the average consumer.

(j) Filing. Insurers that use insurance scores to underwrite and rate risks must file their scoring models, or other scoring processes, with the Department of Financial Regulation. A third party may file scoring models on behalf of insurers. A filing that includes insurance scoring may include loss experience justifying the use of credit information. Any filing relating to credit information is considered a trade secret and is not subject to disclosure under Vermont’s Public Records Act.

(k) Indemnification. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of a producer who obtains or uses credit information or insurance scores, or both, for an insurer, provided the producer follows the instructions of or procedures established by the insurer and complies with any applicable law or rule. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

(l) Sale of policy term information by consumer reporting agency. A consumer reporting agency shall not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage. The restrictions provided in this subsection do not apply to data or lists the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer's affiliates or holding companies. Nothing in this section shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

* * * Effective Dates * * *

Sec. 7. EFFECTIVE DATES

- (a) This section shall take effect on passage.
- (b) Sec. 6 (credit information for personal insurance) shall take effect on passage and apply to personal insurance policies that either are written to be effective or are renewed on or after nine months after the date of passage.
- (c) Secs. 4-5 (credit protection for vulnerable persons) shall take effect on January 1, 2019.

(d) Sec. 3 (retainage for construction materials) shall take effect on
July 1, 2018.

(e) Secs. 1–2 (automatic renewal provisions) shall take effect on July 1,
2019.