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H.432

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry, and
Poirier of Barre City

Referred to Committee on

Date:

Subject: Insurance; personal lines; credit information; rates

Statement of purpose of bill as introduced: This bill proposes to regulate the
use of credit information for personal insurance.

An act relating to the use of credit information for personal insurance

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

Sec. 1. 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, and any other policies individually underwritten for personal, family, or household use.

1 (c) Definitions. As used in this section:

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

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

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

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

13 (5) “Consumer reporting agency” means any person which, for
14 monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in
15 whole or in part in the practice of assembling or evaluating consumer credit
16 information or other information on consumers for the purpose of furnishing
17 consumer reports to third parties.

18 (6) “Credit information” means any credit-related information derived
19 from a credit report, found on a credit report itself, or provided on an
20 application for personal insurance. Information that is not credit-related shall

1 not be considered “credit information,” regardless of whether it is contained in
2 a credit report or in an application, or is used to calculate an insurance score.

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

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

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

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

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

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

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

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

10 (A) Treats the consumer as otherwise approved by the
11 Commissioner, if the insurer presents information that such an absence or
12 inability relates to the risk for the insurer.

13 (B) Treats the consumer as if the applicant or insured had neutral
14 credit information, as defined by the insurer.

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

17 (6) Take an adverse action against a consumer based on credit
18 information, unless an insurer obtains and uses a credit report issued or an
19 insurance score calculated within 90 days from the date the policy is first
20 written or renewal is issued.

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

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

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

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

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

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

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

5 (iv) The insurer reevaluates the insured beginning not later than
6 36 months after inception and thereafter based upon other underwriting or
7 rating factors, excluding credit information.

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

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

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

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

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

1 (E) multiple lender inquiries, if coded by the consumer reporting
2 agency on the consumer's credit report as being from the automobile lending
3 industry and made within 30 days of one another, unless only one inquiry is
4 considered.

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

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

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

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

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

19 (E) identity theft;

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

1 (G) military deployment overseas; or

2 (H) other events, as determined by the insurer.

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

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

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

10 (C) require such request be made no more than 60 days from the date
11 of the application for insurance or the policy renewal;

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

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

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

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

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

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

20 (g)(1) Initial notification. If an insurer writing personal insurance uses
21 credit information in underwriting or rating a consumer, the insurer or its agent

1 shall disclose, either on the insurance application or at the time the insurance
2 application is taken, that it may obtain credit information in connection with
3 such application. Such disclosure shall be either written or provided to an
4 applicant in the same medium as the application for insurance. The insurer
5 need not provide the disclosure statement required under this section to any
6 insured on a renewal policy if such consumer has previously been provided a
7 disclosure statement.

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

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

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

20 (2) Provide notification to the consumer explaining the reason for the
21 adverse action. The reasons must be provided in sufficiently clear and specific

1 language so that a person can identify the basis for the insurer's decision to
2 take an adverse action. Such notification shall include a description of up to
3 four factors that were the primary influences of the adverse action. The use of
4 generalized terms such as "poor credit history," "poor credit rating," or "poor
5 insurance score" does not meet the explanation requirements of this subsection.
6 Standardized credit explanations provided by consumer reporting agencies or
7 other third party vendors are deemed to comply with this section.

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

15 (j) Indemnification. An insurer shall indemnify, defend, and hold agents
16 harmless from and against all liability, fees, and costs arising out of or relating
17 to the actions, errors, or omissions of a producer who obtains or uses credit
18 information or insurance scores, or both, for an insurer, provided the producer
19 follows the instructions of or procedures established by the insurer and
20 complies with any applicable law or regulation. Nothing in this section shall

1 be construed to provide a consumer or other insured with a cause of action that
2 does not exist in the absence of this section.

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

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on passage and apply to personal insurance
19 policies either written to be effective or renewed on or after nine months from
20 the effective date of the act.