

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 593 entitled “An act relating to miscellaneous  
4 consumer protection provisions” respectfully reports that it has considered the  
5 same and recommends that the bill be amended by striking out all after the  
6 enacting clause and inserting in lieu thereof the following:

7 \* \* \* Automatic Renewal Provisions in Consumer Contracts \* \* \*

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

9 § 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL

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

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

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

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

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

21 (i) the automatic renewal date;

1                   (ii) the termination date; or

2                   (iii) the date by which the consumer must provide notice to cancel

3 the contract; and

4                   (B) that includes:

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

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

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

11                   (iv) contact information for the seller or lessor.

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

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

16                   (1) a contract between a consumer and a financial institution, as defined  
17 in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in  
18 8 V.S.A. § 30101; or

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

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

3           (a) A contract between a consumer and a seller or lessor in effect on  
4           January 1, 2019 with an initial term of one year or longer that renews for a  
5           subsequent term that is longer than one month shall not renew automatically  
6           unless the seller or lessor sends written or electronic notice to the consumer  
7           with the information required in 9 V.S.A. § 2454a(a)(3)(B):

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

10                   (A) the automatic renewal date;

11                   (B) the termination date; or

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

14                   (2) if the contract will automatically renew on or before January 31,  
15           2019, then as soon as is commercially reasonable after this section takes effect.

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

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

19                   (1) a contract between a consumer and a financial institution, as defined  
20           in 8 V.S.A. § 11101, or between a consumer and a credit union, as defined in  
21           8 V.S.A. § 30101; or

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

2           \* \* \* Retainage of Payment for Construction Materials \* \* \*

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

4           § 4005. RETAINAGE

5           (a) If payments under a construction contract are subject to retainage, any  
6           amounts ~~which~~ that have been retained during the performance of the contract  
7           and ~~which~~ that are due to be released to the contractor upon final completion  
8           shall be paid within 30 days after final acceptance of the work.

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

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

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

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

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

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

10                            \* \* \* Credit Protection for Vulnerable Persons \* \* \*

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

12        § 2480a. DEFINITIONS

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

14            (1) “Consumer” means a natural person ~~residing in this State~~ other than  
15            a protected consumer.

16            (2) “Consumer who is subject to a protected consumer security freeze”  
17            means a natural person:

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

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

4           ~~(2)(3)~~ “Credit report” means ~~any written, oral, or other communication~~  
5           ~~of any information by a credit reporting agency bearing on a consumer’s credit~~  
6           ~~worthiness, credit standing, credit capacity, character, general reputation,~~  
7           ~~personal characteristics, or mode of living, including an investigative credit~~  
8           ~~report. The term does not include:~~

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

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

16           ~~(3)(4)~~ “Credit reporting agency” or “agency” means ~~any person which,~~  
17           ~~for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages~~  
18           ~~in whole or in part in the practice of assembling or evaluating consumer credit~~  
19           ~~information or other information on consumers for the purpose of reporting to~~  
20           ~~third parties on the credit rating or creditworthiness of any consumer a person~~  
21           ~~who, for fees, dues, or on a cooperative basis, regularly engages in whole or in~~

1 part in the practice of assembling or evaluating information concerning a  
2 consumer’s credit or other information for the purpose of furnishing a credit  
3 report to another person.

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

5 (4) “Identity theft” means the unauthorized use of another person’s  
6 personal identifying information to obtain credit, goods, services, money, or  
7 property.

8 (6) “Incapacitated person” shall have the same meaning as in 14 V.S.A.  
9 § 3152.

10 (5)(7) “Investigative credit report” means a report in which information  
11 on a consumer’s character, general reputation, personal characteristics, or  
12 mode of living is obtained through personal interviews with neighbors, friends,  
13 or associates of the consumer reported on or with others with whom the  
14 consumer is acquainted or who may have knowledge concerning any such  
15 items of information. The term does not include reports of specific factual  
16 information on a consumer’s credit record obtained directly from a creditor of  
17 the consumer or from a credit reporting agency when such information was  
18 obtained directly from a creditor of the consumer or from the consumer.

19 (8) “Proper authority” means:

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

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

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

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

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

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

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

12                   ~~(6)(9)~~ “Proper identification,” as used in this subchapter, means that  
13 information generally deemed sufficient to identify a person shall have the  
14 same meaning as in 15 U.S.C. § 1681h(a)(1), and includes:

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

17                   (B) any name the consumer previously used;

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

20                   (D) the consumer’s Social Security number; and

21                   (E) the consumer’s date of birth.



1           (10) “Protected consumer” means a natural person who at the time a  
2           request for a security freeze is made is:

3                   (A) under 18 years of age, unless emancipated under 12 V.S.A.  
4           chapter 217;

5                   (B) an incapacitated person; or

6                   (C) a protected person.

7           (11) “Protected consumer security freeze” means:

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

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

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

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

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

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

21

1           (12) “Protected person” shall have the same meaning as in 14 V.S.A.  
2           § 3152.

3           (13) “Record” means a compilation of information that:

4                   (A) identifies a protected consumer;

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

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

10           (14) “Representative” means a person who provides to a consumer  
11           reporting agency sufficient proof of authority to act on behalf of a protected  
12           consumer.

13           (15) “Security freeze” means a notice placed in a credit report, at the  
14           request of the consumer, pursuant to section 2480h of this title.

15           (16) “Sufficient proof of authority” means documentation that shows  
16           that a person has authority to act on behalf of a protected consumer, including:

17                   (A) a court order;

18                   (B) a lawfully executed power of attorney; or

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

1           (17) “Sufficient proof of identification” means information or  
2           documentation that identifies a protected consumer or a representative,  
3           including:

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

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

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

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

10                           Subchapter 9. Credit Protection for Minors

11           § 2483. APPLICABILITY

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

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

16                           (A) the protected consumer has subscribed; or

17                           (B) the protected consumer’s representative has subscribed on the  
18                   protected consumer’s behalf;

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

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

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

4 (A) reports on incidents of fraud; or

5 (B) authorization for the purpose of approving or processing

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

7 (4) a deposit account information service company that issues reports

8 regarding account closures due to fraud, substantial overdrafts, automated

9 teller machine abuse, or similar information regarding an individual to

10 inquiring banks or other financial institutions for use only in reviewing an

11 individual's request for a deposit account at the inquiring bank or financial

12 institution;

13 (5) an insurance company for the purpose of conducting the insurance

14 company's ordinary business;

15 (6) a consumer reporting agency that:

16 (A) only resells credit information by assembling and merging

17 information contained in a database of another consumer reporting agency or

18 multiple consumer reporting agencies; and

19 (B) does not maintain a permanent database of credit information

20 from which new credit reports are produced; or

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

3           (A) concerns and is used for:

4                   (i) criminal record information;

5                   (ii) fraud prevention or detection;

6                   (iii) personal loss history information; or

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

8           (B) is not used for credit granting purposes.

9    § 2483a. SECURITY FREEZE FOR PROTECTED CONSUMER; TIME IN

10           EFFECT

11           (a) A consumer reporting agency shall place a security freeze for a  
12 protected consumer if:

13                   (1) the consumer reporting agency receives a request to place the  
14 security freeze:

15                           (A) from the protected consumer’s representative if the protected

16 consumer is 15 years of age or younger; or

17                           (B) from the protected consumer or from his or her representative if

18 the protected consumer is 16 or 17 years of age; and

19                           (2) the protected consumer’s representative or the protected consumer

20 who is 16 or 17 years of age, as applicable:

1           (A) submits the request described in subdivision (1) of this  
2           subsection (a):

3                   (i) to the address or other point of contact provided by the  
4           consumer reporting agency; and

5                   (ii) in the manner specified by the consumer reporting agency; and

6           (B) demonstrates to the consumer reporting agency proper authority  
7           as the protected consumer’s representative or sufficient proof of identification  
8           of the protected consumer making the request who is 16 or 17 years of age.

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

13           (c) The credit reporting agency shall:

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

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

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

19                   (B) provide a unique personal identification number or password,  
20           other than a Social Security number, or another method of authentication that  
21           is equally or more secure than a PIN or password, to be used to authorize the

1 release of the protected consumer's credit for a specific party, parties, or period  
2 of time.

3 (d)(1) A credit reporting agency shall lift temporarily a protected consumer  
4 security freeze to allow access by a specific party or parties or for a specific  
5 period of time, upon a request from:

6 (A) the protected consumer's representative if the protected  
7 consumer is 15 years of age or younger; or

8 (B) the protected consumer and the protected consumer's  
9 representative jointly if the protected consumer is 16 or 17 years of age.

10 (2) The party or parties making a request pursuant to subdivision (1) of  
11 this subsection shall submit the request to the consumer reporting agency:

12 (A) at the address or other point of contact provided by the consumer  
13 reporting agency;

14 (B) in the manner specified by the consumer reporting agency; and

15 (C) that includes:

16 (i) proper authority, and if applicable, sufficient proof of  
17 identification of the protected consumer making the request who is 16 or 17  
18 years of age; and

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

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

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

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

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

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

18       (h) If a third party requests access to a credit report on which a protected  
19       consumer security freeze is in effect and this request is in connection with an  
20       application for credit or any other use and neither the consumer subject to the  
21       protected consumer security freeze nor the protected consumer's representative



1 allows the credit report to be accessed for that specific party or period of time,  
2 the third party may treat the application as incomplete.

3 (i) A credit reporting agency that receives a request to place a protected  
4 consumer security freeze pursuant to this section shall disclose to the protected  
5 consumer and his or her representative the process of placing and lifting  
6 temporarily a security freeze and the process for allowing access to  
7 information from the protected consumer's credit report for a specific party,  
8 parties, or period of time while the protected consumer security freeze is in  
9 place.

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

12 (A) the protected consumer's representative if the protected  
13 consumer is 15 years of age or younger;

14 (B) the protected consumer and the protected consumer's  
15 representative jointly if the protected consumer is 16 or 17 years of age; or

16 (C) the consumer who is subject to the protected consumer security  
17 freeze.

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

1           (3) The party or parties requesting the removal of a protected consumer  
2           security freeze pursuant to subdivision (1) of this subsection shall submit to the  
3           consumer reporting agency a proper request for removal:

4                   (A) at the address or other point of contact provided by the consumer  
5           reporting agency;

6                   (B) in the manner specified by the consumer reporting agency; and

7                   (C) that includes:

8                           (i) proper authority, and if applicable, sufficient proof of  
9           identification of the protected consumer making the request who is 16 or 17  
10           years of age; and

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

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

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

19                   (1) A person, or the person's subsidiary, affiliate, agent, or assignee with  
20           which the protected consumer has or, prior to assignment, had an account,  
21           contract, or debtor-creditor relationship for the purposes of reviewing the

1 account or collecting the financial obligation owing for the account, contract,  
2 or debt, or extending credit to a consumer with a prior or existing account,  
3 contract, or debtor-creditor relationship, subject to the requirements of section  
4 2480e of this title. As used in this subdivision, “reviewing the account”  
5 includes activities related to account maintenance, monitoring, credit line  
6 increases, and account upgrades and enhancements.

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

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

11 (4) The Office of Child Support when investigating a child support case  
12 pursuant to Title IV-D of the Social Security Act (42 U.S.C. §§ 651–669b) and  
13 33 V.S.A. § 4102.

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

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

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

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

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

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

9           § 2483b. FEES

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

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

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

14           § 4727. PERSONAL INSURANCE; USE OF CREDIT INFORMATION

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

18           (b) Scope. This section applies to personal insurance and not to  
19           commercial insurance. As used in this section, “personal insurance” means  
20           private passenger automobile, homeowners, motorcycle, mobile home owners,  
21           and noncommercial dwelling fire insurance policies. Such policies must be

1 underwritten for personal, family, or household use. No other types of  
2 insurance shall be included as personal insurance for the purpose of this  
3 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

8           (iv) The insurer reevaluates the insured beginning not later than  
9           36 months after inception and thereafter based upon other underwriting or  
10          rating factors, excluding credit information.

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

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

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

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

20                (D) multiple lender inquiries if coded by the consumer reporting  
21                agency on the consumer's credit report as being from the home mortgage

1 industry and made within 30 days of one another unless only one inquiry is  
2 considered; and

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

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

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

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

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

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

21 (E) identity theft;

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

3           (G) military deployment overseas; or

4           (H) other events as determined by the insurer.

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

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

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

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

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

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

18          (3) An insurer is not out of compliance with any law or rule relating to  
19 underwriting, rating, or rate filing as a result of granting an exception under  
20 this section. Nothing in this section shall be construed to provide a consumer

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

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

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

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

1 back to the shorter of either the last 12 months of coverage or the actual policy  
2 period.

3 (g)(1) Initial notification. If an insurer writing personal insurance uses  
4 credit information in underwriting or rating a consumer, the insurer or its agent  
5 shall disclose, either on the insurance application or at the time the insurance  
6 application is taken, that it may obtain credit information in connection with  
7 such application. Such disclosure shall be either written or provided to an  
8 applicant in the same medium as the application for insurance. The insurer  
9 need not provide the disclosure statement required under this section to any  
10 insured on a renewal policy if such consumer has previously been provided a  
11 disclosure statement.

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

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

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

4           (2) Provide notification to the consumer explaining the reason for the  
5           adverse action. The reasons must be provided in sufficiently clear and specific  
6           language so that a person can identify the basis for the insurer’s decision to  
7           take an adverse action. Such notification shall include a description of up to  
8           four factors that were the primary influences of the adverse action. The use of  
9           generalized terms such as “poor credit history,” “poor credit rating,” or “poor  
10           insurance score” does not meet the explanation requirements of this subsection.  
11           Standardized credit explanations provided by consumer reporting agencies or  
12           other third-party vendors are deemed to comply with this section.

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

20           (j) Indemnification. An insurer shall indemnify, defend, and hold agents  
21           harmless from and against all liability, fees, and costs arising out of or relating

1 to the actions, errors, or omissions of a producer who obtains or uses credit  
2 information or insurance scores, or both, for an insurer, provided the producer  
3 follows the instructions of or procedures established by the insurer and  
4 complies with any applicable law or rule. Nothing in this section shall be  
5 construed to provide a consumer or other insured with a cause of action that  
6 does not exist in the absence of this section.

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

21 \* \* \* Effective Dates \* \* \*

1       Sec. 7. EFFECTIVE DATES

2           (a) This section shall take effect on passage.

3           (b) Sec. 6 (credit information for personal insurance) shall take effect on  
4           passage and apply to personal insurance policies that either are written to be  
5           effective or are renewed on or after nine months after the **date of passage**.

6           (c) Secs. 1–2 (automatic renewal provisions) and Secs. 4–5 (credit  
7           protection for vulnerable persons) shall take effect on January 1, 2019.

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

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