

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 136 entitled “An act relating to miscellaneous
4 consumer protection provisions” respectfully reports that it has considered the
5 same and recommends that the House propose to the Senate that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 * * * Home Loan Escrow Account Analysis * * *

9 Sec. 1. 8 V.S.A. § 10404 is amended to read:

10 § 10404. HOME LOAN ESCROW ACCOUNTS

11 * * *

12 (c) A lender shall not require a borrower to deposit into an escrow account
13 any greater sum than is sufficient to pay taxes, insurance premiums, and other
14 charges with respect to the residential real estate, subject to the following
15 additional charges:

16 (1) a lender may require aggregate annual deposits no greater than the
17 reasonably estimated total annual charges plus ~~one-twelfth~~ one-sixth of such
18 total; and

19 (2) a lender may require monthly deposits no greater than one-twelfth of
20 the reasonably estimated total annual charges plus an amount needed to

1 maintain an additional account balance no greater than ~~one-twelfth~~ one-sixth
2 of such total.

3 * * *

4 (g)(1) At least annually, at the completion of the escrow account
5 computation year, a lender shall conduct an escrow account analysis to
6 determine the borrower's monthly escrow account payments for the next
7 computation year based on the borrower's current tax liability, if made
8 available to the lender either by the borrower or the municipality, after any
9 applicable adjustment for a State credit on property taxes.

10 (2) Upon receipt of a revised property tax bill, the lender shall review
11 the property tax bill and, upon verifying that it has been reduced since the date
12 of the last escrow account analysis, the lender shall, within 30 days of
13 receiving the bill, conduct a new escrow account analysis, recalculate the
14 borrower's monthly escrow payment, and notify the borrower of any change.

15 (3) ~~The lender shall provide~~ At least annually, and whenever an escrow
16 account analysis is conducted or upon request of the borrower, the lender shall
17 provide to the borrower financial statements relating to the borrower's escrow
18 account in a manner and on a form approved by the Commissioner consistent
19 with the federal Real Estate Settlement Procedures Act. The lender shall not
20 charge the borrower for the preparation and transmittal of such statements.

21 * * *

1 * * * Fantasy Sports Contests * * *

2 Sec. 2. FANTASY SPORTS; FINDINGS AND PURPOSE

3 (a) Findings. The General Assembly finds:

4 (1) Participation in online fantasy sports contests throughout the nation
5 has grown significantly in recent years and it is estimated that approximately
6 80,000 Vermonters have participated in at least one fantasy sports contest.

7 (2) At least 10 states have now recognized fantasy sports as a legal,
8 regulated activity, and legislation has been introduced in many more states to
9 recognize, regulate, and tax the activity in order to identify contest operators,
10 ensure fair play, and protect consumers.

11 (3) Given the widespread participation in online fantasy sports contests,
12 Vermont should carefully consider how best to regulate fantasy sports contests,
13 register fantasy sports contest operators, and provide necessary protection for
14 Vermont consumers.

15 (b) Purpose. The purpose of Sec. 3 of this act is to direct the Attorney
16 General and the Executive Branch to consider and propose an appropriate
17 regulatory framework for fantasy sports contests.

18 Sec. 3. FANTASY SPORTS CONTESTS; PROPOSALS

19 (a) On or before December 15, 2017, the Attorney General shall submit to
20 the House Committee on Commerce and Economic Development and the
21 Senate Committee on Economic Development, Housing and General Affairs a

1 proposal for necessary consumer protection provisions regulating fantasy
2 sports contests and operators.

3 (b) On or before December 15, 2017, the Secretary of Administration shall
4 submit to the House Committee on Ways and Means and the Senate
5 Committee on Finance a proposal for fantasy sports contests concerning:

6 (1) registration requirements and a flat registration fee of an appropriate
7 amount; and

8 (2) an appropriate percentage tax on an appropriate measure of revenue.

9 Secs. 4–5. [Deleted.]

10 * * * Automatic Renewal Provisions in Consumer Contracts; H.286 * * *

11 Sec. 6. 9 V.S.A. § 2454a is added to read:

12 § 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL

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

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

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

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

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

5 (i) the automatic renewal date;

6 (ii) the termination date; or

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

9 (B) that includes:

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

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

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

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

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

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

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

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

4

5 Sec. 7. AUTOMATIC RENEWAL OF CONTRACTS; APPLICABILITY TO
6 EXISTING CONTRACTS

7 (a) A contract between a consumer and a seller or lessor in effect on
8 January 1, 2018, with an initial term of one year or longer, and that renews for
9 a subsequent term that is longer than one month, shall not renew automatically
10 unless the seller or lessor sends written or electronic notice to the consumer
11 with the information required 9 V.S.A. § 2454a(a)(3)(B):

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

14 (A) the automatic renewal date;

15 (B) the termination date; or

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

18 (2) if the contract will automatically renew on or before January 31,
19 2018, then as soon as is commercially reasonable after this section takes effect.

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

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

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

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

5 * * * Retainage of Payment for Construction Materials; H.288 * * *

6 Sec. 8. 9 V.S.A. § 4005 is amended to read:

7 § 4005. RETAINAGE

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

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

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

20 (d) If an owner, contractor, or subcontractor unreasonably withholds
21 acceptance of the work or fails to pay retainage as required by this section, the

1 owner, contractor, or subcontractor shall be subject to the interest, penalty, and
2 attorney's fees provisions of sections 4002, 4003, and 4007 of this title.

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

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

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

12 * * * Credit Protection for Vulnerable Persons; H.390 * * *

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

14 § 2480a. DEFINITIONS

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

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

18 (2) "Credit report" means ~~any written, oral, or other communication of~~
19 ~~any information by a credit reporting agency bearing on a consumer's credit~~
20 ~~worthiness, credit standing, credit capacity, character, general reputation,~~

1 ~~personal characteristics, or mode of living, including an investigative credit~~
2 ~~report. The term does not include:~~

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

5 ~~(B) an authorization or approval of a specific extension of credit~~
6 ~~directly or indirectly by the issuer of a credit card or similar device. a~~

7 consumer report, as defined in 15 U.S.C. § 1681a, that is used or collected in
8 whole or in part for the purpose of serving as a factor in establishing a
9 consumer’s eligibility for credit for personal, family, or household purposes.

10 (3) ~~“Credit reporting agency” or “agency” means any person which, for~~
11 ~~monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in~~
12 ~~whole or in part in the practice of assembling or evaluating consumer credit~~
13 ~~information or other information on consumers for the purpose of reporting to~~
14 ~~third parties on the credit rating or creditworthiness of any consumer a person~~
15 who, for fees, dues, or on a cooperative basis, regularly engages in whole or in
16 part in the practice of assembling or evaluating information concerning a
17 consumer’s credit or other information for the purpose of furnishing a credit
18 report to another person.

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

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

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

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

15 (B) any name the consumer previously used;

16 (C) the consumer’s current and recent full addresses, including street
17 address, any apartment number, city, state, and ZIP code;

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

19 (E) the consumer’s date of birth.

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

1 (8) “Consumer who is subject to a protected consumer security freeze”

2 means a natural person:

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

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

8 (9) “File” has the same meaning as in 15 U.S.C. § 1681a.

9 (10) “Incapacitated person” has the same meaning as in 14 V.S.A.
10 § 3152.

11 (11)(A) “Personal information” means personally identifiable financial
12 information:

13 (i) provided by a consumer to another person;

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

16 (iii) otherwise obtained by another person.

17 (B) “Personal information” does not include:

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

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

4 (C) Notwithstanding subdivision (B) of this subdivision (11),
5 “personal information” includes any list, description, or other grouping of
6 consumers, and publicly available information pertaining to the consumers,
7 that is derived using any nonpublic personal information other than publicly
8 available information.

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

11 (A) less than 18 years of age, unless emancipated under 12 V.S.A.
12 chapter 217;

13 (B) an incapacitated person; or

14 (C) a protected person.

15 (13) “Protected person” has the same meaning as in 14 V.S.A. § 3152.

16 (14) “Record” means a compilation of information that:

17 (A) identifies a protected consumer;

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

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

4 (15) “Representative” means a person who provides to a consumer
5 reporting agency sufficient proof of authority to act on behalf of a protected
6 consumer.

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

9 (A) a court order;

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

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

13 (17) “Sufficient proof of identification” means information or
14 documentation that identifies a protected consumer or a representative,
15 including:

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

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

19 (C) a copy of a government issued driver license or identification
20 card.

21 Sec. 10. 9 V.S.A. chapter 63, subchapter 9 is added to read:

1 Subchapter 9. Credit Report Protection for Minors

2 § 2493. TITLE

3 This subchapter is known as “Credit Report Protection for Minors.”

4 § 2494. DEFINITIONS

5 As used in this subchapter:

6 (1) “Proper authority” means:

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

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

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

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

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

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

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

20 (2) “Protected consumer security freeze” means:

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

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

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

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

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

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

14 § 2495. APPLICABILITY

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

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

19 (A) the protected consumer has subscribed; or

20 (B) the protected consumer’s representative has subscribed on the
21 protected consumer’s behalf;

1 (2) a person who, upon request from the protected consumer or the
2 protected consumer’s representative, provides the protected consumer or the
3 protected consumer’s representative with a copy of the protected consumer’s
4 credit report;

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

6 (A) reports on incidents of fraud; or

7 (B) authorization for the purpose of approving or processing
8 negotiable instruments, electronic funds transfers, or similar payment methods;

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

15 (5) an insurance company for the purpose of conducting the insurance
16 company’s ordinary business;

17 (6) a consumer reporting agency that:

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

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

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

5 (A) concerns and is used for:

6 (i) criminal record information;

7 (ii) fraud prevention or detection;

8 (iii) personal loss history information; or

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

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

11 § 2496. SECURITY FREEZE FOR PROTECTED CONSUMER; TIME IN
12 EFFECT

13 (a) A consumer reporting agency shall place a security freeze for a
14 protected consumer if:

15 (1) the consumer reporting agency receives a request from the protected
16 consumer’s representative for the placement of the security freeze; and

17 (2) the protected consumer’s representative:

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

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

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

2 (B) demonstrates proper authority to the consumer reporting
3 agency; and

4 (C) if applicable, pays the consumer reporting agency a fee described
5 in section 2497 of this title.

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

10 (c) The credit reporting agency shall:

11 (1) place a security freeze no later than 30 days after the date the agency
12 receives a request pursuant to subsection (a) of this section; and

13 (2) no later than 10 business days after placing the freeze:

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

16 (B) provide a unique personal identification number or password,
17 other than a Social Security number, to be used to authorize the release of the
18 protected consumer’s credit for a specific party, parties, or period of time.

19 (d) If the protected consumer or protected consumer’s representative
20 wishes to allow the protected consumer’s credit report to be accessed by a

1 specific party or parties, or for a specific period of time while a freeze is in
2 place, he or she shall:

3 (1) contact the credit reporting agency;

4 (2) request that the freeze be temporarily lifted;

5 (3) provide:

6 (A) proper authority;

7 (B) the unique personal identification number or password provided
8 by the credit reporting agency pursuant to subsection (c) of this section;

9 (C) the proper information regarding the third party, parties, or time
10 period for which the report shall be available to users of the credit report; and

11 (4) if applicable, pay the consumer reporting agency a fee described in
12 section 2497 of this title.

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

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

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

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

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

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

16 (i) If a protected consumer’s representative requests a security freeze
17 pursuant to this section, the credit reporting agency shall disclose to the
18 protected consumer’s representative the process of placing and lifting
19 temporarily a security freeze and the process for allowing access to
20 information from the protected consumer’s credit report for a specific party.

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

3 (j)(1) A protected consumer security freeze shall remain in place until the
4 consumer subject to the protected consumer security freeze or the protected
5 consumer’s representative requests that the security freeze be removed.

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

9 (3) The protected consumer’s representative or the consumer who is
10 subject to a protected consumer security freeze shall submit to the consumer
11 reporting agency a proper request for removal:

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

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

15 (4) When submitting a proper request for removal, a protected
16 consumer’s representative or a consumer who is subject to a protected
17 consumer security freeze shall:

18 (A) provide proper authority;

19 (B) provide the unique personal identification number or password
20 provided by the credit reporting agency pursuant to subsection (c) of this
21 section; and

1 (C) if applicable, pay the consumer reporting agency a fee described
2 in section 2497 of this title.

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

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

8 (1) A person, or the person’s subsidiary, affiliate, agent, or assignee with
9 which the protected consumer has or, prior to assignment, had an account,
10 contract, or debtor-creditor relationship for the purposes of reviewing the
11 account or collecting the financial obligation owing for the account, contract,
12 or debt, or extending credit to a consumer with a prior or existing account,
13 contract, or debtor-creditor relationship, subject to the requirements of section
14 2480e of this title. As used in this subdivision, “reviewing the account”
15 includes activities related to account maintenance, monitoring, credit line
16 increases, and account upgrades and enhancements.

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

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

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

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

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

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

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

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

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

20 § 2497. FEES

1 (a) Except as provided in subsection (b) of this section, a consumer
2 reporting agency may not charge a fee for any service performed under this
3 subchapter.

4 (b) A consumer reporting agency may charge a reasonable fee, which does
5 not exceed \$5.00, for each placement, suspension, or removal of a protected
6 consumer security freeze, unless:

7 (1) the protected consumer’s representative:

8 (A) has obtained a police report that states the protected consumer is
9 the alleged victim of identity fraud; and

10 (B) provides a copy of the report to the consumer reporting
11 agency; or

12 (2)(A) the protected consumer is less than 16 years of age at the time the
13 request is submitted to the consumer reporting agency; and

14 (B) the consumer reporting agency has a file that pertains to the
15 protected consumer.

16 * * * Use of Credit Information for Personal Insurance; H.432 * * *

17 Sec. 11. 8 V.S.A. § 4727 is added to read:

18 § 4727. PERSONAL INSURANCE; USE OF CREDIT INFORMATION

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

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

8 **(c) Definitions. As used in this section:**

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

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

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

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

20 **(5) “Consumer reporting agency” means any person which, for**
21 **monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in**

1 whole or in part in the practice of assembling or evaluating consumer credit
2 information or other information on consumers for the purpose of furnishing
3 consumer reports to third parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (iv) The insurer reevaluates the insured beginning not later than
11 36 months after inception and thereafter based upon other underwriting or
12 rating factors, excluding credit information.

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

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

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

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

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

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

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

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

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

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

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

3 (E) identity theft;

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

6 (G) military deployment overseas; or

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

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

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

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

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

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

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

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

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

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

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

1 If an insurer determines that the insured has overpaid premium, the insurer
2 shall refund to the insured the amount of overpayment calculated back to the
3 shorter of either the last 12 months of coverage or the actual policy period.

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

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

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

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

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

16 (i) Filing. Insurers that use insurance scores to underwrite and rate risks
17 must file their scoring models, or other scoring processes, with the Department
18 of Financial Regulation. A third party may file scoring models on behalf of
19 insurers. A filing that includes insurance scoring may include loss experience
20 justifying the use of credit information. Any filing relating to credit

1 information is considered trade secret under and not subject to disclosure under
2 Vermont’s Public Records Act.

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

11 (k) Sale of policy term information by consumer reporting agency. A
12 consumer reporting agency shall not provide or sell data or lists that include
13 any information that in whole or in part was submitted in conjunction with an
14 insurance inquiry about a consumer’s credit information or a request for a
15 credit report or insurance score. Such information includes the expiration
16 dates of an insurance policy or any other information that may identify time
17 periods during which a consumer’s insurance may expire and the terms and
18 conditions of the consumer’s insurance coverage. The restrictions provided in
19 this subsection do not apply to data or lists the consumer reporting agency
20 supplies to the insurance producer from whom information was received, the
21 insurer on whose behalf such producer acted, or such insurer’s affiliates or

1 holding companies. Nothing in this section shall be construed to restrict any
2 insurer from being able to obtain a claims history report or a motor vehicle
3 report.

4 * * * Credit Card Debt Collection; H.482 * * *

5 Sec. 12. 12 V.S.A. § 511 is amended to read:

6 § 511. CIVIL ACTION

7 (a) A civil action, except one brought upon the judgment or decree of a
8 court of record of the United States or of this or some other state, and except as
9 otherwise provided, shall be commenced within six years after the cause of
10 action accrues and not thereafter.

11 (b) Notwithstanding subsection (a) of this section, a civil action to collect a
12 debt arising from default on a credit card account shall be commenced within
13 three years after the cause of action accrues and not thereafter.

14 Sec. 13. 12 V.S.A. § 3170 is amended to read:

15 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

16 (a) No order approving the issuance of trustee process against earnings shall
17 be entered against a judgment debtor who was, within the two-month period
18 preceding the hearing provided in section 3169 of this title, a recipient of
19 assistance from the Vermont Department for Children and Families or the
20 Department of Vermont Health Access. The judgment debtor must establish
21 this exemption at the time of hearing.

1 (b) The earnings of a judgment debtor shall be exempt as follows:

2 (1) seventy-five percent of the debtor's weekly disposable earnings, or 30
3 times the federal minimum hourly wage, whichever is greater; ~~or~~

4 (2) if the judgment debt arose from a consumer credit transaction, as that
5 term is defined by 15 U.S.C. section 1602 and implementing regulations of the
6 Federal Reserve Board, other than a default on a credit card account, 85
7 percent of the debtor's weekly disposable earnings, or 40 times the federal
8 minimum hourly wage, whichever is greater; ~~or~~

9 (3) if the judgment debt arose from a default on a credit card account, 85
10 percent of the debtor's weekly disposable earnings, or 40 times the applicable
11 minimum hourly wage, whichever is greater; or

12 (4) if the court finds that the weekly expenses reasonably incurred by
13 the debtor for his or her maintenance and that of dependents exceed the
14 amounts exempted by subdivisions (1), ~~and~~ (2), and (3) of this subsection, such
15 greater amount of earnings as the court shall order.

16 * * *

17 Sec. 14. 9 V.S.A. § 41a is amended to read:

18 § 41A. LEGAL RATES

19 * * *

1 (e)(1) Subject to subdivision (2) of this subsection, interest on a judgment
2 against a debtor in default on a credit card account shall accrue at the rate of 12
3 percent per annum.

4 (2) A court may suspend the accrual of interest on a judgment against a
5 debtor in default on a credit card account if the court finds, through a financial
6 disclosure, that the debtor has an inability to pay.

7 Sec. 15. 12 V.S.A. § 2903(c) is amended to read:

8 § 2903. DURATION AND EFFECTIVENESS

9 * * *

10 (c) ~~Interest~~ Unless a court suspends the accrual of interest pursuant to
11 9 V.S.A. § 41a(e), interest on a judgment lien shall accrue at the rate of
12 12 percent per annum.

13 Sec. 16. EFFECTIVE DATES

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

15 (b) Sec. 11 (credit information for personal insurance) shall take effect on
16 passage and apply to personal insurance policies either written to be effective
17 or renewed on or after nine months from the effective date of the act.

18 (c) Secs. 2–3 (fantasy sports proposals) shall take effect on passage.

19 (d) Secs. 6–7 (automatic renewal provisions) and Secs. 9–10 (credit
20 protection for vulnerable persons) shall take effect on January 1, 2018.

21 (e) The following sections shall take effect on July 1, 2017:

1 (1) Sec. 1 (home loan escrow accounts).

2 (2) Sec. 8 (retainage for construction materials).

3 (3) Secs. 12–15 (credit card debt collection).

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9 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE