

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 * * * Residential Construction Contracts; S.136 * * *

9 Sec. 1. 9 V.S.A. chapter 102 is amended to read:

10 CHAPTER 102. CONSTRUCTION CONTRACTS

11 § 4001. DEFINITIONS

12 As used in this chapter:

13 (1) “Contractor” means a person or entity which contracts with an owner
14 to perform work, or provide materials or machinery necessary to perform work
15 on real property.

16 (2) “Work” means:

17 (A) to build, alter, repair, or demolish any improvement on,
18 connected with, or on or beneath the surface of any real property, or to
19 excavate, clear, grade, fill, or landscape any real property or to construct
20 driveways, private roadways, highways and bridges, drilled wells, septic,
21 sewage systems, utilities, including trees and shrubbery, or to furnish

1 materials, for any of such purposes, or to perform any labor upon real property-

2 ~~”Work” also includes; and~~

3 (B) to provide any design or other professional or skilled services
4 rendered by architects, engineers, land surveyors, landscape architects, and
5 construction managers.

6 (3) “Owner” means a person or entity having an interest in real property
7 on which work is performed, if the person or entity has agreed to or requested
8 such work. “Owner” includes successors in interest of the owner and agents of
9 the owner acting within their authority. “Owner” shall also include the State of
10 Vermont and instrumentalities and subdivisions of the State of Vermont
11 including municipalities and school districts having an interest in such real
12 property.

13 (4) “Real property” means real estate, including lands, leaseholds,
14 tenements and hereditaments, and improvements placed thereon.

15 (5) “Construction contract” means any agreement, whether written or
16 oral, to perform work on any real property located within the State of Vermont.

17 (6) “Subcontractor” means any person or entity which has contracted to
18 perform work, or provide materials or machinery necessary to perform work
19 for a contractor or another subcontractor in connection with a construction
20 contract.

1 (7) “Delivery” means receipt by addressee, including first class,
2 registered, or certified mail, hand delivered or transmitted by facsimile
3 machine. Mail, properly addressed, shall be deemed delivered three days from
4 the day it was sent.

5 (8) “Billing period” means the period agreed to by the parties or, in the
6 absence of an agreement, the calendar month within which work is performed.

7 (9) “Residential home improvement contract” means a contract between
8 a contractor and an owner for work on residential real estate where the
9 estimated value of the work and materials exceeds \$10,000.00.

10 (10) “Residential real estate” means a residential structure with one to
11 two dwelling units and the real property on which it is constructed.

12 * * *

13 § 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

14 (a) Writing required. A residential home improvement contract, and any
15 amendment to the contract, shall be in writing.

16 (b) Required provisions. A residential home improvement contract shall
17 include the following:

18 (1) Contract price. One of the following provisions for the price of
19 the contract:

20 (A) a maximum price for all work and materials;

1 (B) a statement that billing and payment will be made on a time and
2 materials basis, not to exceed a maximum price; or

3 (C) a statement that billing and payment will be made on a time and
4 materials basis and that there is no maximum price.

5 (2) Work dates. A start date and a completion date for work.

6 (3) Scope of work. A description of the work to be performed and a
7 description of the materials to be used.

8 (4) Warranty. A provision that reads: “In addition to any other
9 warranties agreed to by the parties, the contractor warrants that his or her work
10 is free from faulty materials and is performed in a skillful manner according to
11 the standards of the building code applicable for this location or to a higher
12 standard agreed to by the parties.”

13 (5) Change order.

14 (A) Unless a residential home improvement contract specifies that
15 billing and payment will be made on a time and materials basis and that there
16 is no maximum price, subject to subdivision (B) of this subdivision (5), a
17 provision that the contractor shall not perform any work or procure materials in
18 excess of the maximum price of the contract without prior written approval of
19 the owner.

1 (B) The contract may provide that an owner can approve a change
2 order verbally, provided that the owner and contractor shall memorialize the
3 approval in a writing within three days of the approval.

4 (c) Emergency work. If an owner requests a contractor to perform work in
5 an emergency, the parties shall execute a residential home improvement
6 contract not less than five days after the date on which the contractor
7 completes the work.

8 (d) Enforcement and remedies.

9 (1) A contractor who violates a provision of this section commits an
10 unfair and deceptive act in commerce in violation of section 2453 of this title.

11 (2) The Attorney General has the same authority to adopt rules, conduct
12 civil investigations, enter into assurances of discontinuance, and bring civil
13 actions to enforce the provisions of this section as is provided under chapter
14 63, subchapter 1 of this title.

15 (e) Sample contract. The Attorney General shall adopt and make available
16 on its website a sample residential home improvement contract, which a
17 contractor may or may not use, that is consistent with the provisions of this
18 section.

19 * * * Home Loan Escrow Account Analysis; S.136 * * *

20 Sec. 2. 8 V.S.A. § 10404 is amended to read:

21 § 10404. HOME LOAN ESCROW ACCOUNTS

1 * * *

2 (g)(1) At least annually, a lender shall conduct an escrow account analysis
3 at the completion of the escrow account computation year to determine the
4 borrower's monthly escrow account payments for the next computation year.

5 (2) Upon written or verbal notice from a borrower that his or her
6 property tax bill has been revised, the lender shall review the property tax bill
7 and upon verifying that it has been revised since the date of the last escrow
8 account analysis, the lender shall, within 30 days of receiving notice from the
9 borrower, conduct a new escrow account analysis and recalculate the
10 borrower's monthly escrow payment accordingly.

11 (3) The lender shall provide ~~annually, or upon request of the borrower,~~
12 financial statements relating to the borrower's escrow account in a manner and
13 on a form approved by the Commissioner at least annually, and whenever an
14 escrow account analysis is conducted or a borrower requests such information.
15 The lender shall not charge the borrower for the preparation and transmittal of
16 such statements.

17 * * *

18 * * * Fantasy Sports Contests; S.136 * * *

19 Sec. 3. 9 V.S.A. chapter 116 is added to read:

20 CHAPTER 116. FANTASY SPORTS CONTESTS

21 § 4185. DEFINITIONS

1 As used in this chapter:

2 (1) “Computer script” means a list of commands that can be executed by
3 a program, scripting engine, or similar mechanism that a fantasy sports player
4 can use to automate participation in a fantasy sports contest.

5 (2) “Confidential fantasy sports contest information” means nonpublic
6 information available to a fantasy sports operator that relates to a fantasy sports
7 player’s activity in a fantasy sports contest and that, if disclosed, may give
8 another fantasy sports player an unfair competitive advantage in a fantasy
9 sports contest.

10 (3) “Fantasy sports contest” means a virtual or simulated sporting event
11 governed by a uniform set of rules adopted by a fantasy sports operator in
12 which:

13 (A) a fantasy sports player may earn one or more cash prizes or
14 awards, the value of which a fantasy sports operator discloses in advance of the
15 contest;

16 (B) a fantasy sports player uses his or her knowledge and skill of
17 sports data, performance, and statistics to create and manage a fantasy sports
18 team;

19 (C) a fantasy sports team earns fantasy points based on the sports
20 performance statistics accrued by individual athletes or teams, or both, in real
21 world sporting events;

1 (D) the outcome is determined by the number of fantasy points
2 earned; and

3 (E) the outcome is not determined by the score, the point spread, the
4 performance of one or more teams, or the performance of an individual athlete
5 in a single real world sporting event.

6 (4) “Fantasy sports operator” means a person that offers to members of
7 the public the opportunity to participate in a fantasy sports contest for
8 consideration.

9 (5) “Fantasy sports player” means an individual who participates in a
10 fantasy sports contest for consideration.

11 (6) “Location percentage” mean the percentage, rounded to the nearest
12 tenth of a percent, of the total of all entry fees collected from fantasy sports
13 players located in Vermont, divided by the total entry fees collected from all
14 fantasy sports players in fantasy sports contests.

15 (7) “Net fantasy sports contest revenues” means the amount equal to the
16 total of all entry fees that a fantasy sports operator collects from all fantasy
17 sports players, less the total of all sums paid out as winnings to all fantasy
18 sports players, multiplied by the location percentage for Vermont.

19 § 4186. CONSUMER PROTECTION

20 (a) A fantasy sports operator shall adopt commercially reasonable policies
21 and procedures to:

1 (1) prevent participation in a fantasy sports contest it offers to the public
2 with a cash prize of \$5.00 or more by:

3 (A) the fantasy sports operator;

4 (B) an employee of the fantasy sports operator or a relative of the
5 employee who lives in the same household; or

6 (C) a professional athlete or official who participates in one or more
7 real world sporting events in the same sport as the fantasy sports contest;

8 (2) prevent the disclosure of confidential fantasy sports contest
9 information to an unauthorized person;

10 (3) require that a fantasy sports player is 18 years of age or older, and
11 verify the age of each player using one or more commercially available
12 databases, which government or business regularly use to verify and
13 authenticate age and identity;

14 (4) limit and disclose to prospective players the number of entries a
15 fantasy sports player may submit for each fantasy sports contest;

16 (5) limit a fantasy sports player to not more than one username or
17 account;

18 (6) prohibit the use of computer scripts that provide a player with a
19 competitive advantage over another player;

20 (7) segregate player funds from operational funds, or maintain a reserve
21 in the form of cash, cash equivalents, payment processor receivables, payment

1 processor reserves, an irrevocable letter of credit, a bond, or a combination
2 thereof in an amount that equals or exceeds the amount of deposits in fantasy
3 sports player accounts, for the benefit and protection of fantasy sports player
4 funds held in their accounts; and

5 (8) notify fantasy sports players that winnings of a certain amount may
6 be subject to income taxation.

7 (b) A fantasy sports operator shall have the following duties:

8 (1) The operator shall provide a link on its website to information and
9 resources addressing addiction and compulsive behavior and where to seek
10 assistance with these issues in Vermont and nationally.

11 (2)(A) The operator shall enable a fantasy sports player to restrict
12 irrevocably his or her own ability to participate in a fantasy sports contest, for a
13 period of time the player specifies, by submitting a request to the operator
14 through its website or by online chat with the operator's agent.

15 (B) The operator shall provide to a player who self-restricts his or her
16 participation information concerning:

17 (i) available resources addressing addiction and compulsive
18 behavior;

19 (ii) how to close an account and restrictions on opening a new
20 account during the period of self-restriction;

1 (iii) requirements to reinstate an account at the end of the
2 period; and

3 (iv) how the operator addresses reward points and account
4 balances during and after the period of self-restriction, and when the player
5 closes his or her account.

6 (3) The operator shall provide a player access to the following
7 information for the previous six months:

8 (A) a player’s play history, including money spent, games played,
9 previous line-ups, and prizes awarded;

10 (B) a player’s account details, including deposit amounts, withdrawal
11 amounts, and bonus information, including amounts remaining for a pending
12 bonus and amounts released to the player.

13 (c)(1) A fantasy sports operator shall contract with a third party to perform
14 an annual independent audit, consistent with the standards established by the
15 American Institute of Certified Public Accountants, to ensure compliance with
16 the requirements in this chapter.

17 (2) The fantasy sports operator shall submit the results of the
18 independent audit to the Attorney General.

19 (d) A fantasy sports operator shall not extend credit to a fantasy sports
20 player.

21 § 4187. FAIR AND TRUTHFUL ADVERTISING

1 (a) A fantasy sports operator shall not depict in an advertisement to
2 consumers in this State:

3 (1) minors, other than professional athletes who may be minors;

4 (2) students;

5 (3) schools or colleges; or

6 (4) school or college settings, provided that incidental depiction of
7 nonfeatured minors does not violate this section.

8 (b) A fantasy sports operator shall not state or imply in an advertisement to
9 consumers in this State endorsement by:

10 (1) minors, other than professional athletes who may be minors;

11 (2) collegiate athletes;

12 (3) colleges; or

13 (4) college athletic associations.

14 (c)(1) A fantasy sports operator shall include in an advertisement to
15 consumers in this State information concerning assistance available to problem
16 gamblers, or shall direct consumers to a reputable source of that information.

17 (2) If an advertisement is of insufficient size or duration to provide the
18 information required in subdivision (1) of this subsection, the advertisement
19 shall refer to a website or application that does prominently include such
20 information.

1 (d) A fantasy sports operator shall only make representations concerning
2 winnings that are accurate, not misleading, and capable of substantiation at the
3 time of the representation. For purposes of this subsection, an advertisement is
4 misleading if it makes representations about average winnings without equally
5 prominently representing the average net winnings of all players.

6 § 4188. EXEMPTION

7 The provisions of 13 V.S.A. chapter 51, relating to gambling and lotteries,
8 shall not apply to a fantasy sports contest.

9 § 4189. REGISTRATION

10 In addition to applicable requirements under Titles 11–11C for a business
11 organization doing business in this State to register with the Secretary of State,
12 on or before January 15 following each year in which a fantasy sports operator
13 offers a fantasy sports contest to consumers in this State, the operator shall file
14 an annual registration with the Secretary of State on a form adopted for that
15 purpose and pay to the Secretary an annual registration fee in an amount equal
16 to one-half of one percent of its annual net fantasy sports contest revenue for
17 the prior calendar year.

18 § 4190. ENFORCEMENT

19 (a) A person that violates a provision of this chapter commits an unfair and
20 deceptive act in commerce in violation of section 2453 of this title.

1 (b) The Attorney General has the authority to adopt rules to implement the
2 provisions of this chapter and to conduct civil investigations, enter into
3 assurances of discontinuance, and bring civil actions as provided under
4 chapter 63, subchapter 1 of this title.

5 Sec. 4. 32 V.S.A. § 3102(e)(19) is added to read:

6 (19) To the Secretary of State for the purpose of administering the
7 registration fee for fantasy sports operators under 9 V.S.A. § 4189.

8 Sec. 5. 32 V.S.A. § chapter 221 is added to read:

9 CHAPTER 221. FANTASY SPORTS

10 § 9001. DEFINITIONS

11 The terms used in this chapter shall have the same mean as the terms
12 defined in 9 V.S.A. chapter 116.

13 § 9002. TAX IMPOSED

14 A fantasy sports operator shall annually pay 11 percent of its annual net
15 fantasy sports contest revenue to the Department of Taxes for deposit in the
16 General Fund. The tax shall be on annual net fantasy sports contest revenue
17 for each calendar year. To the extent it does not conflict with the terms of this
18 chapter, the tax imposed by this section shall be implemented under the
19 administrative and appeal provisions related to Vermont’s personal income tax
20 under chapter 151 of this title.

21 § 9003. RETURNS

1 Any person liable for the tax imposed by this chapter shall, on or before the
2 15th day of March, return to the Commissioner under oath of a person with
3 legal authority to bind the fantasy sports operator a statement containing its
4 name and place of business, its net fantasy sports contest revenues for the
5 preceding year, and any other information required by the Commissioner,
6 along with the tax due for the prior calendar year.

7 § 9004. PENALTIES

8 Any person subject to the provisions of this chapter who fails to pay the tax
9 imposed by this chapter by the date that payment is due or fails to submit a
10 return as required by this chapter is subject to the provisions of section 3202 of
11 this title.

12 * * * Automobile advertising; H.112 * * *

13 Sec. 6. 9 V.S.A. § 2466c is added to read:

14 § 2466c. AUTOMOBILE ADVERTISING

15 (a) In any advertisement for an automobile that is available for sale or lease
16 to consumers, an automobile dealer shall specify in clear and conspicuous
17 language:

18 (1) whether the vehicle is available for sale or for lease, or both; and

19 (2) the price and terms that relate to the sale or the lease of the vehicle.

1 (5) “Personal watercraft” means a Class A vessel that uses an inboard
2 engine powering a water jet pump as its primary source of motive power and
3 that is designed to be operated by a person or persons sitting, standing, or
4 kneeling on, or being towed behind the vessel rather than in the conventional
5 manner of sitting or standing inside the vessel.

6 (6) “Supplier” means a wholesaler, manufacturer, or distributor of
7 inventory that enters into a dealer agreement with a dealer.

8 (7) “Vessel” means every description of watercraft, other than a
9 seaplane on the water or a racing shell or rowing scull, occupied exclusively by
10 persons over 12 years of age, used or capable of being used as a means of
11 transportation on water.

12 § 4052. WARRANTY SERVICE OBLIGATIONS

13 (a) A supplier shall:

14 (1) specify in writing a dealer’s reasonable obligation to perform
15 warranty service on the supplier’s inventory;

16 (2) provide the dealer a schedule of reasonable compensation for
17 warranty service, including amounts for diagnostic work, parts, labor, and the
18 time allowance for the performance of warranty service; and

19 (3) compensate the dealer pursuant to the schedule of compensation for
20 the warranty service the supplier requires it to perform.

1 (b) Time allowances for the diagnosis and performance of warranty service
2 shall be reasonable and adequate for the service performed by a dealer that is
3 equipped to complete the requirements of the warranty service.

4 (c) The hourly rate paid to a dealer shall not be less than the rate the dealer
5 charges to customers for nonwarranty service.

6 (d) A supplier shall compensate a dealer for parts used to fulfill warranty
7 and recall obligations at a rate not less than the price the dealer actually paid
8 the supplier for the parts plus 20 percent, plus freight and handling if charged
9 by the supplier.

10 (e) The wholesale price on which a dealer's markup reimbursement is
11 based for any parts used in a recall or campaign shall not be less than the
12 highest wholesale price listed in the supplier's wholesale price catalogue
13 within six months prior to the start of the recall or campaign.

14 (f)(1) Whenever a supplier and a dealer enter into an agreement providing
15 consumer warranties, the supplier shall pay a warranty claim made for
16 warranty parts and service within 30 days after its receipt and approval.

17 (2) The supplier shall approve or disapprove a warranty claim within
18 30 days after its receipt.

19 (3) If a claim is not specifically disapproved in writing within 30 days
20 after its receipt, it is deemed to be approved and the supplier shall pay the
21 dealer within 30 days after receipt.

1 (g) A supplier violates this section if it:

2 (1) fails to perform its warranty obligations;

3 (2) fails to include in written notices of factory recalls to owners of
4 inventory and to dealers the expected date by which necessary parts and
5 equipment will be available to dealers for the correction of such defects; or

6 (3) fails to compensate a dealer for repairs required by a recall.

7 (h) A supplier shall not:

8 (1) impose an unreasonable requirement in the process a dealer must
9 follow to file a warranty claim; or

10 (2) impose a surcharge or fee to recover the additional costs the supplier
11 incurs from complying with the provisions of this section.

12 Sec. 8. APPLICABILITY TO EXISTING DEALER AGREEMENTS

13 Notwithstanding 1 V.S.A. § 214, for a dealer agreement, as defined in
14 9 V.S.A. § 4071, that is in effect on or before July 1, 2017, the provisions of
15 this act shall apply on July 1, 2017.

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

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

18 § 2454a. CONSUMER CONTRACTS; AUTOMATIC RENEWAL

19 (a) A contract between a consumer and a seller or a lessor shall not
20 automatically renew upon termination unless:

1 (1) the contract states the terms of the automatic renewal provisions in
2 plain, unambiguous language;

3 (2) the consumer takes an additional, affirmative action to opt in to the
4 automatic renewal provision; and

5 (3) if the consumer accepts the automatic renewal provision, the seller
6 or lessor provides a written or electronic notice to the consumer not less than
7 30 days but not more than 60 days before the termination date that includes:

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

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

12 (C) one or more methods by which the consumer can cancel the
13 contract; and

14 (D) contact information for the seller or lessor,

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

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

19 Sec. 10. 9 V.S.A. § 4005 is amended to read:

20 § 4005. RETAINAGE

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

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

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

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

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

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

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

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

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

5 § 2480a. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

6 (B) any name the consumer previously used;

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

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

10 (E) the consumer’s date of birth.

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

13 (8) “Consumer who is subject to a protected consumer security freeze”
14 means a natural person:

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

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

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

1 (10) “Incapacitated person” has the same meaning as in 14 V.S.A.
2 § 3152.

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

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

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

8 (iii) otherwise obtained by another person.

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

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

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

15 (C) Notwithstanding subdivision (B) of this subdivision (11),
16 “personal information” includes any list, description, or other grouping of
17 consumers, and publicly available information pertaining to the consumers,
18 that is derived using any nonpublic personal information other than publicly
19 available information.

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

1 (A) less than 16 years of age;

2 (B) an incapacitated person; or

3 (C) a protected person.

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

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

6 (A) identifies a protected consumer;

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

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

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

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 license or identification
8 card.

9 Sec. 12. 9 V.S.A. chapter 63, subchapter 9 is added to read:

10 Subchapter 9. Credit Report Protection for Minors

11 § 2493. TITLE

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

13 § 2494. DEFINITIONS

14 As used in this subchapter:

15 (1) “Proper authority” means:

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

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

19 (ii) sufficient proof of identification of the protected consumer’s

20 representative; and

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

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

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

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

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

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

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

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

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

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

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

4 § 2495. APPLICABILITY

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

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

9 (A) the protected consumer has subscribed; or

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

12 (2) a person who, upon request from the protected consumer or the
13 protected consumer's representative, provides the protected consumer or the
14 protected consumer's representative with a copy of the protected consumer's
15 credit report;

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

17 (A) reports on incidents of fraud; or

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

20 (4) a deposit account information service company that issues reports
21 regarding account closures due to fraud, substantial overdrafts, automated

1 teller machine abuse, or similar information regarding an individual to
2 inquiring banks or other financial institutions for use only in reviewing an
3 individual's request for a deposit account at the inquiring bank or financial
4 institution;

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

7 (6) a consumer reporting agency that:

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

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

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

15 (A) concerns and is used for:

16 (i) criminal record information;

17 (ii) fraud prevention or detection;

18 (iii) personal loss history information; or

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

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

21 § 2496. SECURITY FREEZE FOR PROTECTED CONSUMER; TIME IN

1 EFFECT

2 (a) A consumer reporting agency shall place a security freeze for a
3 protected consumer if:

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

6 (2) the protected consumer’s representative:

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

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

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

12 (B) demonstrates proper authority to the consumer reporting
13 agency; and

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

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

20 (c) The credit reporting agency shall send a written confirmation of the
21 security freeze to the protected consumer or the protected consumer’s

1 representative within 10 business days and shall provide a unique personal
2 identification number or password, other than a Social Security number, to be
3 used to authorize the release of the protected consumer's credit for a specific
4 party, parties, or period of time.

5 (d) If the protected consumer or protected consumer's representative
6 wishes to allow the protected consumer's credit report to be accessed by a
7 specific party or parties, or for a specific period of time while a freeze is in
8 place, he or she shall:

9 (1) contact the credit reporting agency;

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

11 (3) provide:

12 (A) proper authority;

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

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

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

19 (e) A credit reporting agency may develop procedures involving the use of
20 telephone, fax, the Internet, or other electronic media to receive and process a

1 request from a consumer to lift temporarily a freeze on a credit report pursuant
2 to subsection (d) of this section in an expedited manner.

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

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

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

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

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

1 (i) If a protected consumer’s representative requests a security freeze
2 pursuant to this section, the credit reporting agency shall disclose to the
3 protected consumer’s representative the process of placing and lifting
4 temporarily a security freeze and the process for allowing access to
5 information from the protected consumer’s credit report for a specific party,
6 parties, or period of time while the protected consumer security freeze is in
7 place.

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

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

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

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

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

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

4 (A) provide proper authority;

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

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

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

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

15 (1) A person, or the person’s subsidiary, affiliate, agent, or assignee with
16 which the protected consumer has or, prior to assignment, had an account,
17 contract, or debtor-creditor relationship for the purposes of reviewing the
18 account or collecting the financial obligation owing for the account, contract,
19 or debt, or extending credit to a consumer with a prior or existing account,
20 contract, or debtor-creditor relationship, subject to the requirements of section
21 2480e of this title. As used in this subdivision, “reviewing the account”

1 includes activities related to account maintenance, monitoring, credit line
2 increases, and account upgrades and enhancements.

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

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

7 (4) The Office of Child Support when investigating a child support case
8 pursuant to Title IV-D of the Social Security Act (42 U.S.C. et seq.) and
9 33 V.S.A. 4102.

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

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

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

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

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

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

5 § 2497. FEES

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

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

12 (1) the protected consumer's representative:

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

15 (B) provides a copy of the report to the consumer reporting
16 agency; or

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

19 (B) the consumer reporting agency has a file that pertains to the
20 protected consumer.

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

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

2 § 4727. PERSONAL INSURANCE; USE OF CREDIT INFORMATION

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

6 (b) Scope. This section applies to personal insurance and not to
7 commercial insurance. As used in this section, “personal insurance” means
8 private passenger automobile, homeowners, motorcycle, mobile home owners,
9 and noncommercial dwelling fire insurance policies, and any other policies
10 individually underwritten for personal, family, or household use.

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

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

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

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

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

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

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

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

20 (8) “Insurance score” means a number or rating that is derived from an
21 algorithm, computer application, model, or other process that is based in whole

1 or in part on credit information for the purposes of predicting the future
2 insurance loss exposure of an individual applicant or insured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (iv) The insurer reevaluates the insured beginning not later than
17 36 months after inception and thereafter based upon other underwriting or
18 rating factors, excluding credit information.

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

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

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

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

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

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

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

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

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

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

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

8 (E) identity theft;

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

11 (G) military deployment overseas; or

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

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

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

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

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

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

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

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

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

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

18 (f) Dispute resolution and error correction. If it is determined through the
19 dispute resolution process set forth in the federal Fair Credit Reporting Act, 15
20 U.S.C. § 1681i(a)(5), that the credit information of a current insured was
21 incorrect or incomplete and if the insurer receives notice of such determination

1 from either the consumer reporting agency or from the insured, the insurer
2 shall reunderwrite and rerate the consumer within 30 days of receiving the
3 notice. After reunderwriting or rerating the insured, the insurer shall make any
4 adjustments necessary, consistent with its underwriting and rating guidelines.

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

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

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

1 may use a third party in connection with the development of your insurance
2 score.”

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

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

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

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

1 justifying the use of credit information. Any filing relating to credit
2 information is considered trade secret under and not subject to disclosure under
3 Vermont’s Public Records Act.

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

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

1 insurer on whose behalf such producer acted, or such insurer's affiliates or
2 holding companies. Nothing in this section shall be construed to restrict any
3 insurer from being able to obtain a claims history report or a motor vehicle
4 report.

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

6 Sec. 14. 9 V.S.A. chapter 105 is amended to read:

7 Chapter 105: Credit Cards

8 Subchapter 1: Definitions; Liability; Fraud; Illegal Possession

9 § 4041. DEFINITIONS

10 * * *

11 Subchapter 2: Fair Credit Card Debt Collection

12 § 4051. REQUIREMENTS PRIOR TO FILING A COURT ACTION TO
13 COLLECT CREDIT CARD DEBT

14 (a) At least 30 days, and not more than 90 days, prior to filing an action to
15 collect credit card debt, the credit card debt collector shall send to the
16 prospective defendant a mailing that includes:

17 (1) The following information:

18 (A) The name of the credit card debt collector.

19 (B) The name of the creditor, if different from the credit card debt
20 collector.

21 (C) The last four digits of the original credit card account number.

1 (D) The date of default.

2 (E) The balance at the time of default.

3 (F) The current balance due.

4 (G) The statement:

5 “If you notify us in writing within thirty days that you dispute this
6 debt, or any part of this debt, before we file a case in court, we will mail to you
7 the credit card agreement, or some other written evidence of the original debt
8 that contains your signature. If we do not have written evidence of the original
9 debt with your signature, we will mail a copy of the last credit card statement
10 generated when the credit card was used for a purchase, or, some other form of
11 documentation so that you can confirm that this is your debt. We will also
12 mail to you an assignment or other writing establishing that we have the right
13 to collect this debt from you.”

14 (2) A “Declaration of Inability to Pay” form that includes:

15 (A) The statement:

16 If a creditor or credit card debt collector receives a money judgment
17 against you in court, State and federal law may prevent an order requiring
18 payment of the debt if any of the following apply to you:

19 1. You receive need-based cash assistance or health benefits.

1 2. You receive income from the Social Security Administration,
2 Veteran’s Administration, Unemployment Insurance, or Worker’s
3 Compensation.

4 3. Your weekly income is less than the hourly Vermont minimum
5 wage times 40 hours.

6 4. After you pay the reasonable expenses to maintain food, shelter
7 and medical care for yourself and your dependents, you have no money left to
8 pay this debt.

9 Fill out the Declaration of Inability to Pay form below as soon as
10 possible and return it in the enclosed envelope. **If you need help filing out**
11 **this form, call Vermont Law Help at 1-800-889-2047 or go to**
12 **VermontLawHelp.org.**

13 (B) A form requiring the prospective defendant to indicate whether
14 he or she:

15 (i) receives need-based income or health benefits from the State of
16 Vermont;

17 (ii) receives income from the Social Security Administration,
18 Veteran’s Administration, Unemployment Insurance, or Worker’s
19 Compensation.

20 (iii) earns income that is less than the hourly Vermont minimum
21 wage times 40 hours;

1 (iv) after paying reasonable expenses to maintain food, shelter and
2 medical care for himself or herself, and his or her dependents, has no money
3 left to pay the debt; and

4 (v) has any individual ownership interest in real estate, the value
5 of the real estate according to the municipality in which it is located, and the
6 unpaid balance of any loan on the real estate.

7 (C) A date and signature line, above which appears the statement:

8 “By signing this form, I swear or affirm that the information on this
9 form is true.”

10 (b) If the prospective defendant responds to the notice required by
11 subdivision (a)(1) of this section, or otherwise disputes a credit card debt in
12 writing, the credit card debt collector shall cease to call or write the
13 prospective defendant or engage in any other efforts to collect the debt until the
14 debt collector delivers the mailing required in subdivision (a)(1) of this section.

15 § 4052. COURT PROCESS; COURT ACTION TO COLLECT CREDIT

16 CARD DEBT; REQUIREMENTS

17 In an action to collect credit card debt:

18 (1) In its complaint the plaintiff shall:

19 (A) certify that it sent the mailing and the Declaration of Inability to
20 Pay form to the defendant pursuant to section 4051 of this title; and

1 (B) include a copy of the signed Declaration of Inability to Pay form,
2 or certify that the plaintiff has not received the Declaration.

3 (2) The plaintiff shall include with service of its summons and
4 complaint a copy of the Declaration form, unless already included in the
5 complaint, and pre-addressed, postage-paid envelopes for the court and the
6 plaintiff.

7 (3) Whether the defendant answers the complaint, the court shall send
8 the defendant notice of the date and time of trial, at which the defendant shall
9 have the right to appear, answer, and assert any defense.

10 (4) A court shall not construe a prospective defendant's failure to
11 respond to the notice required by subdivision 4051(a)(1) of this title, or to
12 otherwise dispute a credit card debt, as an admission of liability for the debt.

13 (5) The plaintiff has the burden to prove at trial that the defendant owes
14 the debt, the amount of the debt, and that the plaintiff has the legal authority to
15 collect the debt.

16 (6) If the court issues a judgment for the plaintiff:

17 (A) The plaintiff shall provide the court at the time of the trial with at
18 least one calculation, similar to a credit card minimum payment warning, that:

19 (i) quantifies the amount of the debt;

20 (ii) quantifies how much simple interest would annually accrue
21 after the judgment at a rate of 12 percent per year;

1 (iii) quantifies the monthly payment necessary to pay off the debt
2 and the interest in 96 months; and

3 (iv) quantifies, if paid at that rate, the total amount paid over the
4 96-month period.

5 (B) The plaintiff may provide the court at the time of the trial one or
6 more additional calculations, using one or more lower interest rates acceptable
7 to the plaintiff, to illustrate different acceptable payments, terms, or rates.

8 (7) The court may issue an order that requires the defendant to make one
9 or more payments on the judgment, subject to the following:

10 (A) The court shall determine whether the defendant’s income is
11 exempt from collection, and if exempt:

12 (i) The court shall provide in its order that no post-judgment
13 interest accrues as long as the defendant’s income remains exempt from
14 collection.

15 (ii) The court may approve a payment plan only if it finds:

16 (I) the defendant consents to the plan; and

17 (II) the defendant is able to comply with the plan and meet the
18 minimum necessary expenses for his or her cost of living, and that of any
19 dependents.

20 (B) If the defendant’s income is not exempt from collection:

1 (i) The court shall consider the information the plaintiff submits
2 pursuant to subdivision (6) of this section, the defendant’s income, and
3 whether the plaintiff is willing to reduce or waive interest.

4 (ii) The court shall not require the defendant to make any payment
5 unless the amount of the payment exceeds the accruing interest and reduces the
6 judgment principal.

7 § 4053. POST-JUDGMENT COLLECTION ACTION

8 (a) At least 30 days, and not more than 90 days, prior to filing a motion for
9 financial disclosure or for wage assignment, the plaintiff shall send to the
10 defendant a mailing that includes:

11 (1) a letter stating its intent to file in court to enforce the judgment and
12 the following information:

13 (A) the name of the debt collector;

14 (B) the name of the creditor, if different from the debt collector;

15 (C) the last four digits of the original credit card account number;

16 (D) the date of judgment;

17 (E) the amount of the judgment;

18 (F) the amount of post-judgment interest claimed as of the date of the
19 letter;

20 (G) the total of all payments made on the judgment; and

21 (H) the amount of the judgment due as of the date of the letter.

1 (2) the “Declaration of Inability to Pay” form described in section 4051
2 of this title; and

3 (3) a request that the defendant complete the form in thirty days and
4 return it in the postage-paid, self-addressed envelope.

5 (b) If the plaintiff receives the Declaration of Inability to Pay form from the
6 defendant, the plaintiff shall include the form with its post judgment filing with
7 the court.

8 § 4054. STATUTE OF LIMITATIONS; CONTACT FOLLOWING
9 EXPIRATION

10 (a) Notwithstanding 12 V.S.A. § 511, a plaintiff shall not commence an
11 action to collect credit card debt after three years from the date the cause of
12 action accrues.

13 (b) A person shall not contact a debtor concerning the collection of a credit
14 card debt after the statute of limitations for filing an action to collect the debt
15 has expired.

16 § 4055. ACTION TO RENEW A JUDGMENT

17 Notwithstanding 12 V.S.A. § 506, a court shall not allow an action on a
18 judgment or to renew or revive a judgment concerning credit card debt, unless
19 the plaintiff demonstrates that:

20 (1) he or she has taken steps to collect the debt since a court rendered
21 the judgment; and

- 1 (i) the amount of his or her damages; ~~or~~
- 2 (ii) the consideration or the value of the consideration given by the
- 3 consumer; or
- 4 (iii) \$500.00 for a first violation, or \$1,000.00 for each subsequent
- 5 violation; and

6 (C) may sue and recover reasonable attorney's fees- and exemplary
7 damages not exceeding three times the value of the consideration given by the
8 consumer.

9 (2) Any language, written or oral, used by a seller or solicitor, which
10 attempts to exclude or modify recovery of the penalty or reasonable attorney's
11 fees shall be unenforceable.

12 * * *

13 Sec. 16. 12 V.S.A. § 3170 is amended to read:

14 § 3170. EXEMPTIONS; ISSUANCE OF ORDER

15 (a) No order approving the issuance of trustee process against earnings shall
16 be entered against a judgment debtor ~~who~~ whose household, as determined by
17 the Commissioner of Children and Families or the Commissioner of Vermont
18 Health Access was, within the two-month period preceding the hearing
19 provided in section 3169 of this title, a recipient of assistance from the
20 Vermont Department for Children and Families or the Department of Vermont

1 Health Access. The judgment debtor must establish this exemption at the time
2 of hearing.

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

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

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

10 * * *

11 Sec. 17. 12 V.S.A. § 2903 is amended to read:

12 § 2903. DURATION AND EFFECTIVENESS

13 (a) A judgment lien shall be effective for eight years from the issuance of a
14 final judgment on which it is based except that an action to foreclose the
15 judgment lien during the eight-year period shall extend the period until the
16 termination of the foreclosure suit if a copy of the complaint is filed in the land
17 records on or before eight years from the issuance of the final judgment.

18 (b) A judgment which is renewed or revived pursuant to section 506 of this
19 title shall constitute a lien on real property for eight years from the issuance of
20 the renewed or revived judgment if recorded in accordance with this chapter.

21 The renewed or revived judgment shall relate back to the date on which the

1 original lien was first recorded if a copy of the complaint to renew the
2 judgment was recorded in the land records where the property lies within eight
3 years after the rendition of the judgment, and the renewed or revived judgment
4 is subsequently recorded in accordance with this chapter.

5 (c) Interest on a judgment lien shall accrue at the rate of 12 percent per
6 annum; provided that, if a court finds that a defendant's income is exempt from
7 collection, the court shall suspend the accrual of interest.

8 (d) If a judgment lien is not satisfied within 30 days of recording, it may be
9 foreclosed and redeemed as provided in this title and V.R.C.P. 80.1. Unless the
10 court finds that as of the date of foreclosure the amount of the outstanding debt
11 exceeds the value of the real property being foreclosed, section 4531 of this
12 title shall apply to foreclosure of a judgment lien.

13 Sec. 18. EFFECTIVE DATES

14 (a) This section and the following sections shall take effect on passage:

15 (1) Sec. 13 (credit information for personal insurance) shall take effect
16 on passage and apply to personal insurance policies either written to be
17 effective or renewed on or after nine months from the effective date of the act.

18 (b) Sec. 5 (tax on fantasy sports operators) shall take effect on January 1,
19 2018 and apply to calendar year 2018 and after.

20 (c) The following sections shall take effect on July 1, 2017:

- 1 (1) Secs. 7–8 (warranty obligations for motorboat and watercraft
2 dealers).
- 3 (2) Sec. 9 (automatic renewal provisions).
- 4 (3) Sec. 10 (retainage for materials).
- 5 (4) Secs. 11–12 (credit protection for vulnerable persons).
- 6 (5) Secs. 14–17 (credit card debt collection); in Sec. 14, 9 V.S.A. § 4054
7 (statute of limitations) applies to causes of action that accrue on or after July 1,
8 2017.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE