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S.136

Introduced by Committee on Economic Development, Housing and General
Affairs

Date:

Subject: Commerce and trade; consumer protection

Statement of purpose of bill as introduced: This bill proposes to adopt
miscellaneous consumer protection provisions relating to residential
construction contracts, escrow account analyses, and fantasy sports contests.

An act relating to miscellaneous consumer protection provisions

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

* * * Residential Construction Contracts * * *

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

CHAPTER 102. CONSTRUCTION CONTRACTS

§ 4001. DEFINITIONS

As used in this chapter:

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

1 (2) “Work” means:

2 (A) to build, alter, repair, or demolish any improvement on,
3 connected with, or on or beneath the surface of any real property, or to
4 excavate, clear, grade, fill, or landscape any real property or to construct
5 driveways, private roadways, highways and bridges, drilled wells, septic,
6 sewage systems, utilities, including trees and shrubbery, or to furnish
7 materials, for any of such purposes, or to perform any labor upon real property-
8 ~~”Work” also includes; and~~

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

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

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

1 (5) "Construction contract" means any agreement, whether written or
2 oral, to perform work on any real property located within the State of Vermont.

3 (6) "Subcontractor" means any person or entity which has contracted to
4 perform work, or provide materials or machinery necessary to perform work
5 for a contractor or another subcontractor in connection with a construction
6 contract.

7 (7) "Delivery" means receipt by addressee, including first class,
8 registered, or certified mail, hand delivered or transmitted by facsimile
9 machine. Mail, properly addressed, shall be deemed delivered three days from
10 the day it was sent.

11 (8) "Billing period" means the period agreed to by the parties or, in the
12 absence of an agreement, the calendar month within which work is performed.

13 (9) "Residential home improvement contract" means a contract between
14 a contractor and an owner for work on residential real estate where the
15 estimated value of the work and materials exceeds \$5,000.00.

16 (10) "Residential real estate" means a residential structure with one to
17 four dwelling units and the real property on which it is constructed.

18 * * *

19 § 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

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

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

3 (1) Contract price. One of the following provisions for the price of
4 the contract:

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

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

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

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

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

13 (4) Warranty. A provision that reads: "In addition to any other
14 warranties agreed to by the parties, the contractor warrants that his or her work
15 is free from faulty materials and is performed in a skillful manner according to
16 the standards of the building code applicable for this location or to a higher
17 standard agreed to by the parties."

18 (5) Change order.

19 (A) Unless a residential home improvement contract specifies that
20 billing and payment will be made on a time and materials basis and that there
21 is no maximum price, subject to subdivision (B) of this subdivision (5), a

1 provision that the contractor shall not perform any work or procure materials in
2 excess of the maximum price of the contract without prior written approval of
3 the owner.

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

7 (c) Down payment. Unless a residential home improvement contract
8 specifies that billing and payment will be made on a time and materials basis
9 and that there is no maximum price, the contract may require a down payment
10 of up to one-third of the maximum price of the contract, or the price of
11 materials, whichever is greater.

12 (d) Enforcement and remedies.

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

15 (2) The Attorney General has the same authority to adopt rules, conduct
16 civil investigations, enter into assurances of discontinuance, and bring civil
17 actions as is provided under chapter 63, subchapter 1 of this title.

18 * * * Home Loan Escrow Account Analysis * * *

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

20 § 10404. HOME LOAN ESCROW ACCOUNTS

21 * * *

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

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

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

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

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

18 (C) a fantasy sports team earns fantasy points based on the sports
19 performance statistics accrued by individual athletes or teams, or both, in real
20 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 § 4186. CONSUMER PROTECTION

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

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

16 (A) the fantasy sports operator;

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

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

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

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

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

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

11 (6) segregate player funds from operational funds, or maintain a reserve
12 in the form of cash, cash equivalents, payment processor receivables, payment
13 processor reserves, an irrevocable letter of credit, a bond, or a combination
14 thereof in an amount that equals or exceeds the amount of deposits in fantasy
15 sports player accounts, for the benefit and protection of fantasy sports player
16 funds held in their accounts; and

17 (7) notify fantasy sports players that winnings of a certain amount may
18 be subject to income taxation.

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

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

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

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

11 (i) available resources addressing addiction and compulsive
12 behavior;

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

15 (iii) requirements to reinstate an account at the end of the
16 period; and

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

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

1 (A) a player's play history, including money spent, games played,
2 previous line-ups, and prizes awarded;

3 (B) a player's account details, including deposit amounts, withdrawal
4 amounts, and bonus information, including amounts remaining for a pending
5 bonus and amounts released to the player.

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

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

12 (d) A fantasy sports operator shall not extend credit to a fantasy sports
13 player.

14 § 4187. FAIR AND TRUTHFUL ADVERTISING

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

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

18 (2) students;

19 (3) schools or colleges; or

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

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

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

4 (2) collegiate athletes;

5 (3) colleges; or

6 (4) college athletic associations.

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

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

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

19 § 4188. REGULATION; ENFORCEMENT

20 (a) In addition to applicable requirements under Titles 11–11C for a foreign
21 business organization to register with the Secretary of State, a fantasy sports

1 operator shall pay an additional \$250.00 registration fee and register with the
2 Secretary of State on a form adopted for that purpose.

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

5 (c) The Attorney General has the authority to adopt rules to implement the
6 provisions of this chapter and to conduct civil investigations, enter into
7 assurances of discontinuance, and bring civil actions as provided under chapter
8 63, subchapter 1 of this title.

9 § 4189. EXEMPTION

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

12 § 4190. ANNUAL ASSESSMENT

13 (a) A fantasy sports operator shall pay six percent of its annual net revenue
14 to the Department of Taxes for deposit in the General Fund.

15 (b) As used in this section, “annual net revenue” means the total amount of
16 consideration received in the prior year by a fantasy sports operator from
17 fantasy sports players in Vermont, less the amount of cash prizes, awards, or
18 cash equivalents that the fantasy sports operator paid in the prior year to
19 fantasy sports players in Vermont. The amount of the annual net revenue shall
20 be determined by the annual independent audit carried out pursuant to
21 subsection 4186(c) of this title.

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* * * Effective Date * * *

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Sec. 4. EFFECTIVE DATE

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This act shall take effect on July 1, 2017.