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S.136

Introduced by Committee on Economic Development, Housing and General  
Affairs

Date: March 21, 2017

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.

(2) “Work” means:

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

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

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

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

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

1 Vermont.

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

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

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

12 (9) "Residential home improvement contract" means a contract between  
13 a contractor and an owner for work on residential real estate where the  
14 estimated value of the work and materials exceeds ~~\$5,000.00~~ \$10,000.00.

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

17 \* \* \*

18 § 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

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

21 (b) Required provisions. A residential home improvement contract shall

1 include the following:

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

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

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

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

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

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

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

17 (5) Change order.

18 (A) Unless a residential home improvement contract specifies that  
19 billing and payment will be made on a time and materials basis and that there  
20 is no maximum price, subject to subdivision (B) of this subdivision (5), a  
21 provision that the contractor shall not perform any work or procure materials

1 in excess of the maximum price of the contract without prior written approval  
2 of the owner.

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

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

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

11 (d) Enforcement and remedies.

12 (1) A ~~person~~ contractor who violates a provision of this ~~chapter~~ section  
13 commits an unfair and deceptive act in commerce in violation of section 2453  
14 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 *to enforce the provisions of this section* as is provided under chapter 63,  
18 subchapter 1 of this title.

*(e) Sample contract. The Attorney General shall adopt and make*



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\* \* \*

\* \* \* Fantasy Sports Contests \* \* \*

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

CHAPTER 116. FANTASY SPORTS CONTESTS

§ 4185. DEFINITIONS

As used in this chapter:

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

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

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

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

(B) a fantasy sports player uses his or her knowledge and skill of

1 sports data, performance, and statistics to create and manage a fantasy sports  
2 team;

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

6 (D) the outcome is determined by the number of fantasy points  
7 earned; and

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

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

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

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

(7) “Location percentage” means the percentage, rounded to the nearest  
tenth of a percent, of the total of all entry fees collected from fantasy sports  
players located in Vermont, divided by the total entry fees collected from all  
fantasy sports players in fantasy sports contests.

16 § 4186. CONSUMER PROTECTION

17 (a) A fantasy sports operator shall adopt commercially reasonable policies



1 and procedures to:

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

4 (A) the fantasy sports operator;

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

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

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

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

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

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

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

19 ~~(6)~~ (7) segregate player funds from operational funds, or maintain a  
20 reserve in the form of cash, cash equivalents, payment processor receivables,

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

5 ~~(7)~~ (8) notify fantasy sports players that winnings of a certain amount  
6 may 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  
13 a 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;

21 (iii) requirements to reinstate an account at the end of the

1 period; and

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

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

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

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

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

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

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

20 § 4187. FAIR AND TRUTHFUL ADVERTISING

21 (a) A fantasy sports operator shall not depict in an advertisement to

1 consumers in this State:

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

3 (2) students;

4 (3) schools or colleges; or

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

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

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

10 (2) collegiate athletes;

11 (3) colleges; or

12 (4) college athletic associations.

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

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

20 (d) A fantasy sports operator shall only make representations concerning  
21 winnings that are accurate, not misleading, and capable of substantiation at the

1 time of the representation. For purposes of this subsection, an advertisement is  
2 misleading if it makes representations about average winnings without equally  
3 prominently representing the average net winnings of all players.

4 § 4188. REGULATION, ENFORCEMENT

5 (a) In addition to applicable requirements under Titles 11–11C for a foreign  
6 business organization to register with the Secretary of State, a fantasy sports  
7 operator shall pay an additional \$250.00 registration fee and register with the  
8 Secretary of State on a form adopted for that purpose.

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

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

15 § 4189. EXEMPTION

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

18 § 4190. ANNUAL ASSESSMENT

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

21 (b) As used in this section, “annual net revenue” means the total amount of

1 ~~consideration received in the prior year by a fantasy sports operator from~~  
2 ~~fantasy sports players in Vermont, less the amount of cash prizes, awards, or~~  
3 ~~cash equivalents that the fantasy sports operator paid in the prior year to~~  
4 ~~fantasy sports players in Vermont. The amount of the annual net revenue shall~~  
5 ~~be determined by the annual independent audit carried out pursuant to~~  
6 ~~subsection 4186(c) of this title.~~

§ 4188. EXEMPTION

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

§ 4189. REGISTRATION

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

§ 4190. ENFORCEMENT

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

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

*Sec. 3a. 32 V.S.A. § chapter 221 is added to read:*

CHAPTER 221. FANTASYSPO RTS

§ 9001. DEFINITIONS

*The terms used in this chapter shall have the same meaning as the terms defined in 9 V.S.A. chapter 116.*

§ 9002. TAX IMPOSED

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

§ 9003. RETURNS

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

§ 9004. PENALTIES

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

Sec. 3b. 32 V.S.A. § 3102(e)(19) is added to read:

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

1 ~~\*\*\* Effective Date \*\*\*~~

2 Sec. 4. EFFECTIVE DATE

3 ~~This act shall take effect on July 1, 2017.~~

*\*\*\* Effective Date \*\*\**

*Sec. 4. EFFECTIVE DATES*

This act shall take effect on July 1, 2017, except Sec. 3a, which shall take effect on January 1, 2018 and apply to calendar year 2018 and after.