

[Senate proposal to House proposal to As Passed Senate]

Report of Committee of Conference

S.136

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon Senate Bill, entitled:

S.136. An act relating to miscellaneous consumer protection provisions.

Respectfully reports that it has met and considered the same and recommends that the House recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SUNRISE REVIEW; REPORT

(a) Upon completion of its sunrise review concerning construction contractors, the Office of Professional Regulation, in addition to the House and Senate Committees on Government Operations, shall submit its sunrise report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs.

(b) As part of its review and report, the Office shall consider and make recommendations concerning whether contracts for residential construction projects should be in writing, and at what threshold amount.

* * * Residential Construction Contracts * * *

Sec. 2. 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:

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

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

(3) “Owner” means a person or entity having an interest in real property on which work is performed, if the person or entity has agreed to or requested such work. “Owner” includes successors in interest of the owner and agents of

the owner acting within their authority. “Owner” shall also include the State of Vermont and instrumentalities and subdivisions of the State of Vermont including municipalities and school districts having an interest in such real property.

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

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

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

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

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

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

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

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§ 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

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

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

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

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

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

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

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

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

(4) Warranty. A provision that reads: “In addition to any other warranties agreed to by the parties, the contractor warrants that his or her work is free from faulty materials and is performed in a skillful manner according to

the standards of the building code applicable for this location or to a higher standard agreed to by the parties.”

(5) Change order.

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

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

(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.

(d) Enforcement and remedies.

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

(2) The Attorney General has the same authority to adopt rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil

actions to enforce the provisions of this section as is provided under chapter 63, subchapter 1 of this title.

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

Sec. 3. 8 V.S.A. § 10404 is amended to read:

§ 10404. HOME LOAN ESCROW ACCOUNTS

* * *

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

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

(2) a lender may require monthly deposits no greater than one-twelfth of the reasonably estimated total annual charges plus an amount needed to maintain an additional account balance no greater than ~~one-twelfth~~ one-sixth of such total.

* * *

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

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

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

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Sec. 4. FANTASY SPORTS; FINDINGS AND PURPOSE

(a) Findings. The General Assembly finds:

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

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

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

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

Sec. 5. FANTASY SPORTS CONTESTS; PROPOSALS

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

(1) any amendments to the registration requirements or registration fee imposed in Sec. 6 of this act; and

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

Sec. 6. 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 sports data, performance, and statistics to create and manage a fantasy sports team;

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

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

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

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

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

(6) “Location percentage” mean 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.

(7) “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.

§ 4186. CONSUMER PROTECTION

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

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

(A) the fantasy sports operator;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) available resources addressing addiction and compulsive behavior;

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

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

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

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

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

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

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

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

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

(e) A fantasy sports operator shall not offer a fantasy sports contest based on the performance of participants in college, high school, or youth athletic events.

§ 4187. FAIR AND TRUTHFUL ADVERTISING

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

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

(2) students;

(3) schools or colleges; or

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

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

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

(2) collegiate athletes;

(3) colleges; or

(4) college athletic associations.

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

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

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

§ 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 the amount of \$5,000.00.

§ 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. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2017, except:

(1) Sec. 2 (residential home improvement contracts) shall take effect on July 1, 2018.

(2) Sec. 6 (fantasy sports contests) shall take effect on January 1, 2018.

COMMITTEE ON THE PART OF
THE SENATE

SEN. MICHAEL D. SIROTKIN

SEN. PHILIP E. BARUTH

SEN. ALISON CLARKSON

COMMITTEE ON THE PART OF
THE HOUSE

REP. MICHAEL J. MARCOTTE

REP. JEAN D. O’SULLIVAN

REP. MATTHEW HILL