

1
2
3
4
5
6
7

8
9
10
11
12
13
14
15
16
17
18
19

H.784

Introduced by Representative Pearson of Burlington

Referred to Committee on

Date:

Subject: Court procedure; arbitration

Statement of purpose of bill as introduced: This bill proposes to prohibit forced arbitration of consumer and employment disputes.

An act relating to model State consumer and employee justice enforcement

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

Sec. 1. 3 V.S.A. chapter 14A is added to read:

CHAPTER 14A. MODEL STATE CONSUMER AND EMPLOYEE

JUSTICE ENFORCEMENT ACT; STATE CONTRACTS

§ 371. CONDITIONS ON PERSONS DOING BUSINESS WITH THE

STATE

(a) Doing business with the State. As used in this chapter, a person “does business with the State” when it or any of its subsidiaries or parent entities receives State funds exceeding \$100,000.00 in exchange for goods or services provided to the State or a third party. Persons “doing business with the State” include persons performing public work on State contracts, merchants of goods

1 or services purchased by the State, and persons providing services to third
2 parties in exchange for funds provided directly from the State.

3 (b) Prohibition against the State doing business with persons that form or
4 enforce forced arbitration agreements.

5 (1) The State shall not do business with any person or any of its parent
6 entities or subsidiaries if that person includes forced arbitration clauses in any
7 of its contracts with consumers or employees, unless 180 days before doing
8 business with the State, the person, its parent entity, or subsidiary provides
9 reasonable notice to its consumers or employees that it will cease enforcing
10 arbitration clauses in consumer or employment contracts if such clauses exist
11 in consumer or employment contracts.

12 (2) The State shall not do business with any person, any of its parent
13 entities, or subsidiaries if that person, any of its parent entities, or subsidiaries
14 enforces forced arbitration agreements against any of its employees or
15 consumers.

16 (c) Enforcement.

17 (1) Before doing business with any person, the State agency
18 representing the State in the business relationship shall confirm that such
19 person, its parent entities, and its subsidiaries do not form or enforce forced
20 arbitration agreements with consumers or employees and shall ensure, when
21 appropriate, that a contract between the State and the person includes a

1 provision prohibiting that person, its parent entities, and its subsidiaries from
2 forming or enforcing forced arbitration agreements. Under this provision, a
3 person, its parent entities, or subsidiaries forms forced arbitration clauses in its
4 contracts with consumers or employees if current contracts with consumers or
5 employees include forced arbitration clauses, unless, 180 days before doing
6 business with the State, the person, its parent entity, or subsidiary provides
7 reasonable notice to its consumers or employees that it will cease enforcing
8 arbitration clauses in consumer or employment contracts.

9 (2) If the State Attorney General, after giving a person doing business
10 with the State notice and an opportunity to be heard, concludes that such
11 person has violated the provisions of 12 V.S.A. § 5667, the State Attorney
12 General shall notify all State agencies doing business with the person about the
13 violation and can seek actual damages owed to the State caused by such
14 violation.

15 (3) If a State agency receives notice from the State Attorney General
16 that a person with whom the agency does business has violated the provisions
17 of 12 V.S.A. § 5667, the agency shall terminate its business dealings with such
18 person as soon as practical.

19 (d) Severability. If any provision of this chapter or the application thereof
20 to any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the chapter that can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 chapter are declared to be severable.

3 Sec. 2. 9 V.S.A. chapter 152 is added to read:

4 CHAPTER 152. MODEL STATE CONSUMER AND EMPLOYEE

5 JUSTICE ENFORCEMENT ACT; STANDARD FORM CONTRACTS

6 § 6055. UNCONSCIONABLE TERMS IN STANDARD FORM

7 CONTRACTS

8 (a) Unconscionable terms. There is a rebuttable presumption that the
9 following contractual terms are substantively unconscionable when included in
10 a standard form contract to which only one of the parties to the contract is an
11 individual and that individual does not draft the contract:

12 (1) A requirement that resolution of legal claims take place in an
13 inconvenient venue. An inconvenient venue is defined for State law claims as
14 a place other than the county where the individual resides or the contract was
15 consummated, and for federal law claims as a place other than the federal
16 judicial district where the individual resides or the contract was consummated.

17 (2) A waiver of the individual's right to assert claims or seek remedies
18 provided by State or federal statute.

19 (3) A waiver of the individual's right to seek punitive damages as
20 provided by law.

1 (4) A requirement that the individual bring an action prior to the
2 expiration of the applicable statute of limitations.

3 (5) A requirement that the individual pay fees and costs to bring a legal
4 claim substantially in excess of the fees and costs that this State's courts
5 require to bring such a State law claim or that federal courts require to bring
6 such a federal law claim.

7 (b) Relation to common law and the Uniform Commercial Code. In
8 determining whether the terms described in subsection (a) of this section are
9 unenforceable, a court shall consider the principles that normally guide courts
10 in this State in determining whether unconscionable terms are enforceable.
11 Additionally, the common law and Uniform Commercial Code shall guide
12 courts in determining the enforceability of unfair terms not specifically
13 identified in subsection (a) of this section.

14 (c) Severability. There is a rebuttable presumption that unconscionable
15 terms in form contracts are not severable from the agreements in which they
16 are situated, thus rendering the entire agreement unenforceable. In
17 determining whether this presumption has been rebutted, courts should
18 consider general State law principles regarding the severability of
19 unenforceable terms.

20 (d) Unfair and deceptive act and practice. It is an unfair and deceptive
21 practice in violation of section 2453 of this title to include one of the

1 presumptively-unconscionable terms identified in subsection (a) of this section
2 in a standard form contract to which only one of the parties to the contract is an
3 individual and that individual does not draft the contract. Notwithstanding any
4 other provisions to the contrary, a party who prevails in a claim under this
5 section shall be entitled to \$1,000.00 in statutory damages per violation.

6 Sec. 3. 12 V.S.A. § 5652 is amended to read:

7 § 5652. VALIDITY OF ARBITRATION AGREEMENTS

8 (a) General rule. Unless otherwise provided in the agreement, a written
9 agreement to submit any existing controversy to arbitration or a provision in a
10 written contract to submit to arbitration any controversy thereafter arising
11 between the parties creates a duty to arbitrate, and is valid, enforceable and
12 irrevocable, except:

13 (1) upon such grounds as exist for the revocation of a contract; and

14 (2) as provided in 3 V.S.A. chapter 14A and 9 V.S.A. chapter 152.

15 * * *

16 Sec. 4. 12 V.S.A. § 5667 is added to read:

17 § 5667. DATA DISCLOSURE REQUIREMENTS FOR ARBITRATION

18 ADMINISTRATORS

19 (a) Requirements.

20 (1) Any private company that administers five or more arbitrations a
21 year in this State involving a consumer or employee shall collect and publish

1 the following information about each of its arbitrations for at least five years
2 after the arbitration has completed:

3 (A) the names of the parties to the arbitration;

4 (B) the party that filed the arbitration claim;

5 (C) the type of dispute involved, including goods or services,
6 insurance, credit, debt collection, or employment;

7 (D) the prevailing party;

8 (E) whether the consumer or employee was represented by an
9 attorney;

10 (F) the date the company administering the arbitration received the
11 demand for arbitration, the date the arbitrator was appointed, and the date of
12 the arbitration's disposition;

13 (G) whether the arbitration resulted in an in-person hearing;

14 (H) whether the parties provided each other with any pre-hearing
15 discovery;

16 (I) the amount of the claim, the amount of the award, and any other
17 relief granted, if any;

18 (J) the name of the arbitrator, his or her total fee for the case, and the
19 percentage of the arbitrator's fee paid by each party; and

20 (K) the arbitrator's professional affiliations.

1 (2) Information published pursuant to this title must be updated at least
2 quarterly, and made available to the public in a computer-searchable format,
3 which shall be accessible at the website of the private company administering
4 the arbitrations, if any, and on paper upon request.

5 (3) No private company shall have any liability for collecting,
6 publishing, or distributing the information in accord with this section.

7 (b) Confidentiality. This section does not require disclosure of any
8 information other than that set forth in 9 V.S.A. chapter 152.

9 (c) Enforcement. Any private person and any public enforcement agency
10 responsible for enforcing State law under this section may bring suit for
11 injunctive relief against an entity that violates these provisions, and may
12 recover reasonable attorney's fees and other costs if an injunction or equivalent
13 relief is awarded. Injunctive relief is the only relief available in a suit arising
14 from failure to comply with this section.

15 (d) Severability. Should a court decide that any provision of this section is
16 unconstitutional, preempted, or otherwise invalid, that provision shall be
17 severed, and such a decision shall not affect the validity of the section other
18 than the provision severed.

19 Sec. 5. EFFECTIVE DATE

20 This act shall take effect on July 1, 2016.