Introduced by Senators Pearson, Benning, and Sirotkin

Referred to Committee on

Date:

Subject: Court procedure; arbitration; standard form contracts

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

An act relating to consumer justice enforcement

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

Sec. 1. 9 V.S.A. chapter 152 is added to read:

CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT

ACT: STANDARD FORM CONTRACTS

§ 6055. UNCONSCIONABLE TERMS IN STANDARD FORM CONTRACTS

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

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

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

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

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

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

(b) Relation to common law and the Uniform Commercial Code. In
determining whether the terms described in subsection (a) of this section are
unenforceable, a court shall consider the principles that normally guide courts
in this State in determining whether unconscionable terms are enforceable.
Additionally, the common law and Uniform Commercial Code shall guide
courts in determining the enforceability of unfair terms not specifically
identified in subsection (a) of this section.
(c) Severability. There is a rebuttable presumption that unconscionable terms in form contracts are not severable from the agreements in which they are situated, thus rendering the entire agreement unenforceable. In determining whether to sever an unenforceable term from a contract, the court shall consider the intent of the parties and whether the drafting party acted in bad faith.

(d) Unfair and deceptive act and practice. It is an unfair and deceptive practice in violation of section 2453 of this title to include one of the presumptively-unconscionable terms identified in subsection (a) of this section in a standard form contract to which only one of the parties to the contract is an individual and that individual does not draft the contract. Notwithstanding any other provisions to the contrary, a party who prevails in a claim under this section shall be entitled to $1,000.00 in statutory damages per violation.

Sec. 2. 12 V.S.A. § 5652 is amended to read:

§ 5652. VALIDITY OF ARBITRATION AGREEMENTS

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

(1) upon such grounds as exist for the revocation of a contract; and
(2) as provided in 9 V.S.A. chapter 152.

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Sec. 3. 12 V.S.A. § 5667 is added to read:

§ 5667. DATA DISCLOSURE REQUIREMENTS FOR ARBITRATION ADMINISTRATORS

(a) Requirements.

(1) Any private company that administers five or more arbitrations a year in this State involving a consumer or employee shall collect and publish the following information about each of its arbitrations for at least five years after the arbitration has completed:

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

(B) the party that filed the arbitration claim;

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

(D) the prevailing party;

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

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

(G) whether the arbitration resulted in an in-person hearing;
(H) whether the parties provided each other with any pre-hearing discovery;

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

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

(K) the arbitrator’s professional affiliations.

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

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

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

(c) Enforcement. Any private person and any public enforcement agency responsible for enforcing State law under this section may bring suit for injunctive relief against an entity that violates these provisions, and may recover reasonable attorney’s fees and other costs if an injunction or equivalent relief is awarded. Injunctive relief is the only relief available in a suit arising from failure to comply with this section.
(d) Severability. Should a court decide that any provision of this section is unconstitutional, preempted, or otherwise invalid, that provision shall be severed, and such a decision shall not affect the validity of the section other than the provision severed.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2017.