

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 132
3 entitled “An act relating to limiting landowner liability for posting the dangers
4 of swimming holes” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. 12 V.S.A. § 5793 is amended to read:

9 § 5793. LIABILITY LIMITED

10 (a) Land. An owner shall not be liable for property damage or personal
11 injury sustained by a person who, without consideration, enters or goes upon
12 the owner’s land for a recreational use unless the damage or injury is the result
13 of the willful or wanton misconduct of the owner.

14 (b) Equipment, fixtures, machinery, or personal property.

15 (1) Unless the damage or injury is the result of the willful or wanton
16 misconduct of the owner, an owner shall not be liable for property damage or
17 personal injury sustained by a person who, without consideration and without
18 actual permission of the owner, enters or goes upon the owner’s land for a
19 recreational use and proceeds to enter upon or use:

20 (A) equipment, machinery, or personal property; or

1 (B) structures or fixtures not described in subdivision 5792(2)(A)(iii)
2 or (iv) of this title.

3 (2) Permission to enter or go upon an owner's land shall not, by itself,
4 include permission to enter or go upon structures or to go upon or use
5 equipment, fixtures, machinery, or personal property.

6 (c) Posting. An owner may post a sign warning against the dangers of
7 swimming in a swimming hole on the owner's land dangers on the owner's
8 land or water. An owner who posts a sign pursuant to this subsection shall not
9 be liable for any damage or injury allegedly arising out of the posting unless
10 the damage or injury is the result of the willful or wanton misconduct of the
11 owner.

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

13 CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT

14 ACT; STANDARD-FORM CONTRACTS

15 § 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM

16 CONTRACTS PROHIBITED

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

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

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

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

10 (4) Pursuant to 12 V.S.A. § 465, a provision that limits the time in
11 which an action may be brought under the contract or that waives the statute of
12 limitations.

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

17 (b) Relation to common law and the Uniform Commercial Code. In
18 determining whether the terms described in subsection (a) of this section are
19 unenforceable, a court shall consider the principles that normally guide courts
20 in this State in determining whether unconscionable terms are enforceable.
21 Additionally, the common law and Uniform Commercial Code shall guide

1 courts in determining the enforceability of unfair terms not specifically
2 identified in subsection (a) of this section.

3 (c) Severability. If a court finds that a standard-form contract contains an
4 illegal or unconscionable term, the court shall:

5 (1) refuse to enforce the entire contract or the specific part, clause, or
6 provision containing the illegal or unconscionable term; or

7 (2) so limit the application of the illegal or unconscionable term or the
8 clause containing such term as to avoid any illegal or unconscionable result.

9 (d) Unfair and deceptive act and practice. It is an unfair and deceptive
10 practice in violation of section 2453 of this title to include one of the
11 presumptively unconscionable terms identified in subsection (a) of this section
12 in a standard-form contract to which only one of the parties to the contract is
13 an individual and that individual does not draft the contract. Notwithstanding
14 any other provisions to the contrary, a party who prevails in a claim under this
15 section shall be entitled to \$1,000.00 in statutory damages per violation and an
16 award of reasonable costs and attorney's fees.

17 (e) Separate violations. Each term found to be unconscionable pursuant to
18 subsection (a) shall constitute a separate violation of this section.

19 (f) Applicability. This section shall not apply to contracts to which one
20 party is:

21 (1) regulated by the Vermont Department of Financial Regulation; or

