

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 105  
3 entitled “An act relating to consumer justice enforcement” respectfully reports  
4 that it has considered the same and recommends that the House propose to the  
5 Senate that the bill be amended by striking out all after the enacting clause and  
6 inserting in lieu thereof the following:

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

8 CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT

9 ACT; STANDARD-FORM CONTRACTS

10 § 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM

11 CONTRACTS PROHIBITED

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

16 (1) A requirement that resolution of legal claims take place in an  
17 inconvenient venue. As used in this subdivision, “inconvenient venue”  
18 includes for State law claims a place other than the state in which the  
19 individual resides or the contract was consummated, and for federal law claims  
20 a place other than the federal judicial district where the individual resides or  
21 the contract was consummated. Inconvenient venue shall not include the State

1 or federal judicial district in which the individual suffered injury during the  
2 performance of the contract.

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

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

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

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

14 (b) Relation to common law and the Uniform Commercial Code.

15 (1) In determining whether the terms described in subsection (a) of this  
16 section are unenforceable, a court shall consider the principles that normally  
17 guide courts in this State in determining whether unconscionable terms are  
18 enforceable. Additionally, the common law and Uniform Commercial Code  
19 shall guide courts in determining the enforceability of unfair terms not  
20 specifically identified in subsection (a) of this section.

1           (2) When a party claims or it appears to the court that the contract or any  
2           clause within the contract is unconscionable, the parties shall be afforded a  
3           reasonable opportunity to present evidence regarding its commercial setting,  
4           purpose, and effect to aid the court in making a determination.

5           (c) Severability. If a court finds that a standard-form contract contains an  
6           unconscionable term, the court shall:

7                   (1) so limit the application of the unconscionable term or the clause  
8                   containing that term as to avoid any illegal or unconscionable result; or

9                   (2) refuse to enforce the entire contract or the specific part, clause, or  
10                  provision containing the unconscionable term.

11           (d) Unfair and deceptive act and practice.

12                   (1) In an underlying legal dispute between the drafting and non-drafting  
13                   parties in which the drafting party seeks to enforce one or more terms  
14                   identified in subsection (a) of this section, and upon a finding that such terms  
15                   are actually unconscionable, the court may also find that the drafting party has  
16                   thereby committed an unfair and deceptive practice in violation of section 2453  
17                   of this title and may order up to \$1,000.00 in statutory damages per violation  
18                   and an award of reasonable costs and attorney's fees.

19                   (2) Each term the drafting party seeks to enforce that is found by the  
20                   court to be actually unconscionable may constitute a separate violation of this  
21                   section.

- 1        (e) Limitation on applicability. This section shall not apply to contracts to  
2        which one party is:  
3            (1) regulated by the Vermont Department of Financial Regulation; or  
4            (2) a financial institution as defined by 8 V.S.A. § 11101(32).

5        Sec. 2. EFFECTIVE DATE

6        This act shall take effect on October 1, 2019.

7

8

9        (Committee vote: \_\_\_\_\_)

10

\_\_\_\_\_

11

Representative \_\_\_\_\_

12

FOR THE COMMITTEE