

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 a person
15 and that person does not draft the contract:

16 (1) A requirement that resolution of legal claims take place in an
17 inconvenient venue. An inconvenient venue is defined for State law claims as:

18 (A) a place 250 miles or more from the person’s residence or the
19 place in which the contract was consummated; and

20 (B) a place other than the state in which the person resides or the
21 contract was consummated and for federal law claims as a place other than the

1 federal judicial district where the person resides or the contract was
2 consummated.

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

5 (3) A waiver of the person's right to seek punitive damages as provided
6 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 person 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. In
15 determining whether the terms described in subsection (a) of this section are
16 unenforceable, a court shall consider the principles that normally guide courts
17 in this State in determining whether unconscionable terms are enforceable.
18 Additionally, the common law and Uniform Commercial Code shall guide
19 courts in determining the enforceability of unfair terms not specifically
20 identified in subsection (a) of this section.

21 (c) Severability.

1 (1) If a court finds that a standard-form contract contains an illegal or
2 unconscionable term, the court shall:

3 (A) so limit the application of the illegal or unconscionable term or
4 the clause containing such term as to avoid any illegal or unconscionable
5 result; or

6 (B) refuse to enforce the entire contract or the specific part, clause, or
7 provision containing the illegal or unconscionable term.

8 (2) In ordering a remedy pursuant to subdivision (1) of this subsection
9 (c), a court shall consider the parties' actual intent, and whether:

10 (A) severing the term and enforcing the remainder of the contract
11 creates an incentive for contract drafters to include illegal or unconscionable
12 terms in standard form contracts;

13 (B) severing the term and enforcing the remainder of the contract
14 removes, in whole or in part, the incentive to draft enforceable standard form
15 contracts that do not include such terms;

16 (C) the inclusion of such an illegal or unconscionable term may deter
17 the non-drafting party from asserting his or her rights under the contract or
18 challenging the enforcement of the illegal or unconscionable term; and

19 (D) the drafting party acted in bad faith, including by drafting a term
20 that is illegal or unconscionable under established precedent.

21 (d) Unfair and deceptive act and practice.

1 (1) It is an unfair and deceptive practice in violation of section 2453 of
2 this title to include one of the presumptively unconscionable terms identified in
3 subsection (a) of this section in a standard-form contract to which only one of
4 the parties to the contract is a person and that person does not draft the
5 contract. Notwithstanding any other provisions to the contrary, upon a finding
6 that a term is actually unconscionable under this section, the court shall order
7 \$1,000.00 in statutory damages per violation and an award of reasonable costs
8 and attorney's fees.

9 (2) Each term found to be unconscionable pursuant to this subsection
10 shall constitute a separate violation of this section.

11 (e) This section shall not apply to contracts to which one party is:

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

13 (2) a financial institution as defined by 8 V.S.A. § 11101(32).

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

15 § 5652. VALIDITY OF ARBITRATION AGREEMENTS

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

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

