

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. 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.

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

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

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

(5) A requirement that the person 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. If a court finds that a standard-form contract contains an unconscionable term, the court shall:

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

3           (B) refuse to enforce the entire contract or the specific part, clause, or  
4           provision containing the unconscionable term.

5           (d) Unfair and deceptive act and practice.

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

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

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

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

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

1       Sec. 2. EFFECTIVE DATE

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

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7           (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE