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April 19, 2018

E-MAIL

Vermont House of Representatives
Committee on Judiciary
Attn: Rep. Janssen Willhoit, Clerk
Vermont State House
115 State Street
Montpelier, VT 05633-5301

Re: S.105

Dear Members of the Committee:

I am a partner in the firm of Gravel & Shea PC and have practiced business law in Vermont for over 30 years. During that time, I have represented countless businesses in all types of transactions. I have also been active in various business law related efforts with the Vermont Legislature over many years and am an active member of the Vermont Bar Association Business Associations Committee (former chair).

Yesterday I was advised that the Committee is considering whether to make the provisions of S.105 applicable to business-to-business transactions. Respectfully, I believe that doing so would be an extremely bad idea.

The version of the bill that I was provided appears to be designed to afford protections to consumers who are sometimes "compelled" to sign so-called adhesion contracts with unfavorable terms in them. These consumers may lack the ability to negotiate those terms and may need some legislative protection. Without taking any position on whether the terms of the bill are appropriate, I understand its purpose in the consumer context.

However, extending this set of mandatory contract rules to businesses would be extremely unwise. Businesses are able to fend for themselves and are able to understand that, in order to obtain certain items or services, they need to sign contracts with terms that are not negotiated, such as software licenses, or for purchases of equipment. My law firm is a small business and does this all of the time. Businesses do not need the types of protections that are provided by S.105 and would likely view having to deal with them as an unwarranted intrusion into their freedom of contract. And Vermont companies that sell products or services would certainly not be pleased

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with them. In fact, I believe that adoption of this law would give a strong reason for Vermont companies that make and sell products or provide services to out of state customers to move elsewhere.


The specific provisions of the statute, if applied to business-to-business transactions, would pose a number of significant problems for businesses wishing to contract in Vermont. First, many Vermont companies, when doing business with out of state concerns, freely enter into agreements where the parties agree that a neutral jurisdiction will serve as the forum for resolving complaints. This jurisdiction may not be in Vermont but often is not in the state where the other party to the contract is located either. Businesses should be free to enter into these types of arrangements.

Many agreements that I negotiate also include waivers of various rights and remedies. For example, many Vermont businesses who are manufacturers include waivers of rights and remedies in contracts that they enter into with other businesses to whom they sell their products. The businesses receiving the products are aware of these limitations and willingly agree to them. The freedom of these parties to negotiate these terms should not be abridged. In addition, most agreements involving the sale of a business in which I am involved and many other business agreements contain restrictions on the period of time in which claims may be brought. This is very often a negotiated term. All of these provisions (and others) would be blocked by the proposed terms of S.105.

In short, were S.105 passed in any form that applies to business to business transactions, it is likely that commercial contracts would almost never choose Vermont law as governing law and a great deal of uncertainty may be introduced to business transactions in Vermont. I respectfully submit that this result is not consistent with what appear to be the primary purposes of this legislation.

I would be happy to answer further questions or provide further information as to any of these matters should the Committee deem doing so appropriate. Thank you for considering these comments.

Very truly yours,

GRAVEL & SHEA PC

Peter S. Erly

PSE:smh