

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 dangers on the
7 owner’s land or water. An owner who posts a sign pursuant to this subsection
8 shall not be liable for any damage or injury allegedly arising out of the posting
9 unless the damage or injury is the result of the willful or wanton misconduct of
10 the owner.

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

12 CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT

13 ACT; STANDARD-FORM CONTRACTS

14 § 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM

15 CONTRACTS PROHIBITED

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

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

1 a place other than the state in which the individual resides or the contract was
2 consummated and for federal law claims as a place other than the federal
3 judicial district where the individual resides or the contract was consummated.

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

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

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

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

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

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

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

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

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

15 (e) Each term found to be unconscionable pursuant to subsection (a) shall
16 constitute a separate violation of this section.

17 (f) This section shall not apply to contracts to which one party is:

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

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

20 Sec. 3. 12 V.S.A. § 5652 is amended to read:

21 § 5652. VALIDITY OF ARBITRATION AGREEMENTS

1 (a) General rule. Unless otherwise provided in the agreement, a written
2 agreement to submit any existing controversy to arbitration or a provision in a
3 written contract to submit to arbitration any controversy thereafter arising
4 between the parties creates a duty to arbitrate; and is valid, enforceable and
5 irrevocable, except:

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

7 (2) as provided in 9 V.S.A. chapter 152.

8 * * *

9 Sec. 4. EFFECTIVE DATES

10 (a) Sec. 1 of this act and this section shall take effect on passage.

11 (b) Sec. 2 and Sec. 3 of this act shall take effect on passage.

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13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE