

1 TO THE HONORABLE SENATE:

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 bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 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 only 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. An inconvenient venue is defined for State law claims as
18 a place other than the county where the individual resides or the contract was
19 consummated, and for federal law claims as a place other than the federal
20 judicial district where the individual resides or the contract was consummated.

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

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

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

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

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

19 (c) Severability. There is a rebuttable presumption that unconscionable
20 terms in form contracts are not severable from the agreements in which they
21 are situated, thus rendering the entire agreement unenforceable. In

1 determining whether to sever an unenforceable term from a contract, the court
2 shall consider the intent of the parties and whether the drafting party acted in
3 bad faith.

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

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

13 (f) This section shall not apply to contracts regulated by the Vermont
14 Department of Financial Regulation.

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

16 § 5652. VALIDITY OF ARBITRATION AGREEMENTS

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

