

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 state in which 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 that 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. If a court finds that a standard-form contract contains an  
20           illegal or unconscionable term, the court shall:

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

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

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

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

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

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

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

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

19           § 5652. VALIDITY OF ARBITRATION AGREEMENTS

20           (a) General rule. Unless otherwise provided in the agreement, a written  
21           agreement to submit any existing controversy to arbitration or a provision in a

1 written contract to submit to arbitration any controversy thereafter arising  
2 between the parties creates a duty to arbitrate; and is valid, enforceable and  
3 irrevocable, except:

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

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

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7 Sec. 3. EFFECTIVE DATE

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

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11 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE