

S.105: an act relating to consumer justice enforcement
5/8/18

As passed the Senate	As passed the House
<p>Sec. 1. 9 V.S.A. chapter 152 is added to read:</p> <p style="text-align: center;"><u>CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT ACT; STANDARD-FORM CONTRACTS</u></p> <p style="text-align: center;"><u>§ 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM CONTRACTS PROHIBITED</u></p> <p><u>(a) Unconscionable terms. There is a rebuttable presumption that the following contractual terms are substantively unconscionable when included in a standard-form contract to which only one of the parties to the contract is an individual and that individual does not draft the contract:</u></p> <p style="padding-left: 40px;"><u>(1) A requirement that resolution of legal claims take place in an inconvenient venue. An inconvenient venue is defined for State law claims as a place other than the state in which the individual resides or the contract was consummated and for federal law claims as a place other than the federal judicial district where the individual resides or the contract was consummated.</u></p> <p style="padding-left: 40px;"><u>(2) A waiver of the individual’s right to assert claims or seek remedies provided by State or federal statute.</u></p>	<p>Sec. 1. 9 V.S.A. chapter 152 is added to read:</p> <p style="text-align: center;"><u>CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT ACT; STANDARD-FORM CONTRACTS</u></p> <p style="text-align: center;"><u>§ 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM CONTRACTS PROHIBITED</u></p> <p><u>(a) Unconscionable terms. There is a rebuttable presumption that the following contractual terms are substantively unconscionable when included in a standard-form contract to which one of the parties to the contract is an individual and that individual does not draft the contract:</u></p> <p style="padding-left: 40px;"><u>(1) A requirement that resolution of legal claims take place in an inconvenient venue. As used in this subdivision, “inconvenient venue” includes for State law claims a place other than the state in which the individual resides or the contract was consummated, and for federal law claims a place other than the federal judicial district where the individual resides or the contract was consummated. Inconvenient venue shall not include the State or federal judicial district in which the individual suffered injury during the performance of the contract.</u></p> <p style="padding-left: 40px;"><u>(2) A waiver of the individual’s right to assert claims or seek remedies provided by State or federal statute.</u></p>

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<p><u>(3) A waiver of the individual’s right to seek punitive damages as provided by law.</u></p> <p><u>(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.</u></p> <p><u>(5) A requirement that the individual 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.</u></p> <p><u>(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.</u></p>	<p><u>(3) A waiver of the individual’s right to seek punitive damages as provided by law.</u></p> <p><u>(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.</u></p> <p><u>(5) A requirement that the individual 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.</u></p> <p><u>(b) Relation to common law and the Uniform Commercial Code.</u></p> <p><u>(1) 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.</u></p> <p><u>(2) When a party claims or it appears to the court that the contract or any clause within the contract is unconscionable, the parties shall be afforded a reasonable opportunity to present evidence regarding its commercial setting, purpose, and effect to</u></p>
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<p><u>(c) Severability. If a court finds that a standard-form contract contains an illegal or unconscionable term, the court shall:</u></p> <p><u>(1) refuse to enforce the entire contract or the specific part, clause, or provision containing the illegal or unconscionable term;</u></p> <p><u>or</u></p> <p><u>(2) so limit the application of the illegal or unconscionable term or the clause containing such term as to avoid any illegal or unconscionable result.</u></p> <p><u>(d) Unfair and deceptive act and practice. It is an unfair and deceptive practice in violation of section 2453 of this title to include one of the presumptively unconscionable terms identified in subsection (a) of this section in a standard-form contract to which only one of the parties to the contract is an individual and that individual does not draft the contract. Notwithstanding any other provisions to the contrary, a party who prevails in a claim under this section shall be entitled to \$1,000.00 in statutory damages per violation and an award of reasonable costs and attorney's fees.</u></p> <p><u>(e) Each term found to be unconscionable pursuant to subsection (a) shall constitute a separate violation of this section.</u></p>	<p><u>aid the court in making a determination.</u></p> <p><u>(c) Severability. If a court finds that a standard-form contract contains an unconscionable term, the court shall:</u></p> <p><u>(1) so limit the application of the unconscionable term or the clause containing that term as to avoid any illegal or unconscionable result; or</u></p> <p><u>(2) refuse to enforce the entire contract or the specific part, clause, or provision containing the unconscionable term.</u></p> <p><u>(d) Unfair and deceptive act and practice.</u></p> <p><u>(1) In an underlying legal dispute between the drafting and non-drafting parties in which the drafting party seeks to enforce one or more terms identified in subsection (a) of this section, and upon a finding that such terms are actually unconscionable, the court may also find that the drafting party has thereby committed an unfair and deceptive practice in violation of section 2453 of this title and may order up to \$1,000.00 in statutory damages per violation and an award of reasonable costs and attorney's fees.</u></p> <p><u>(2) Each term the drafting party seeks to enforce that is found by the court to be actually unconscionable may constitute a separate violation of this section.</u></p>
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<p><u>(f) This section shall not apply to contracts to which one party is:</u></p> <p><u>(1) regulated by the Vermont Department of Financial Regulation; or</u></p> <p><u>(2) a financial institution as defined by 8 V.S.A. § 11101(32).</u></p>	<p><u>(e) Limitation on applicability. This section shall not apply to contracts to which one party is:</u></p> <p><u>(1) regulated by the Vermont Department of Financial Regulation; or</u></p> <p><u>(2) a financial institution as defined by 8 V.S.A. § 11101(32).</u></p> <p><u>(f) Nothing in this chapter shall be construed to limit the application of 12 V.S.A. § 1037 (acceptance of inherent risks).</u></p>
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<p>[No corresponding language in Senate version]</p>	<p>Sec. 1a. LEGISLATIVE INTENT</p> <p>The General Assembly acknowledges that outdoor recreation is an important part of Vermont’s economy and culture that encourages healthy communities and individuals, increases our connection to nature, enhances the Vermont lifestyle, and supports the attraction of high-quality employers and a sustainable workforce in all economic sectors. It is not the intent of the General Assembly to change the way courts allocate responsibility for the inherent risks of any outdoor recreational activity or sport.</p>
<p>Sec. 2. 12 V.S.A. § 5652 is amended to read:</p> <p>§ 5652. VALIDITY OF ARBITRATION AGREEMENTS</p> <p>(a) General rule. Unless otherwise provided in the agreement, a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties creates a duty to arbitrate; and is valid, enforceable and irrevocable, except:</p> <p>(1) upon such grounds as exist for the revocation of a contract; and</p> <p>(2) as provided in 9 V.S.A. chapter 152.</p>	<p>[No corresponding language in House version]</p>

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Sec. 3. EFFECTIVE DATE <u>This act shall take effect on October 1, 2019.</u>	Sec. 2. EFFECTIVE DATE <u>This act shall take effect on October 1, 2019.</u>