

1 S.18

2 Introduced by Senators Pearson, Sears, Perchlik, and Sirotkin

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; standard-form contracts

6 Statement of purpose of bill as introduced: This bill proposes to create a  
7 rebuttable presumption that certain contractual terms are substantively  
8 unconscionable when included in certain standard-form contracts.

9 An act relating to consumer justice enforcement

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 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:

1           (1) A requirement that resolution of legal claims takes place in an  
2           inconvenient venue. As used in this subdivision, “inconvenient venue” for  
3           State law claims means a place other than the state in which the individual  
4           resides or the contract was consummated, and for federal law claims means a  
5           place other than the federal judicial district where the individual resides or the  
6           contract was consummated.

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

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

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

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

18          (b) Relation to common law and the Uniform Commercial Code. In  
19          determining whether the terms described in subsection (a) of this section are  
20          unenforceable, a court shall consider the principles that normally guide courts  
21          in this State in determining whether unconscionable terms are enforceable.

1 Additionally, the common law and Uniform Commercial Code shall guide  
2 courts in determining the enforceability of unfair terms not specifically  
3 identified in subsection (a) of this section.

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

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

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

10 (d) Unfair and deceptive act and practice.

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

18 (2) Each term found to be unconscionable pursuant to subsection (a)  
19 shall constitute a separate violation of this section.

20 (e) Limitation on applicability. This section shall not apply to contracts to  
21 which one party is:

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

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

3           (f) Acceptance of inherent risks. Nothing in this chapter shall be construed  
4 to limit the application of 12 V.S.A. § 1037 (acceptance of inherent risks).

5           Sec. 2. LEGISLATIVE INTENT

6           The General Assembly acknowledges that outdoor recreation is an  
7 important part of Vermont's economy and culture that encourages healthy  
8 communities and individuals, increases our connection to nature, enhances the  
9 Vermont lifestyle, and supports the attraction of high-quality employers and a  
10 sustainable workforce in all economic sectors. It is not the intent of the  
11 General Assembly to change the way courts allocate responsibility for the  
12 inherent risks of any outdoor recreational activity or sport.

13           Sec. 3. EFFECTIVE DATE

14           This act shall take effect on October 1, 2020.