

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 18
3 entitled “An act relating to consumer justice enforcement” respectfully reports
4 that it has considered the same and recommends that the House propose to the
5 Senate that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the 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 takes place in an
17 inconvenient venue. As used in this subdivision, “inconvenient venue” for
18 State law claims means a place other than the state in which the individual
19 resides or the contract was consummated, and for federal law claims means a
20 place other than the federal judicial district where the individual resides or the
21 contract was consummated. Notwithstanding this subdivision, a standard-form

1 contract may include a term requiring that resolution of legal claims takes
2 place in a State or federal court in Vermont.

3 (2) A waiver of the individual's right to assert claims or seek remedies
4 provided by State or federal statute. A term that has the purpose or effect of
5 waiving an individual's right to a jury trial.

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, provided that an attorney fee shifting clause shall not
15 be deemed unconscionable under this subdivision.

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

1 courts in determining the enforceability of unfair terms not specifically
2 identified in subsection (a) of this section.

3 (c) Severability.

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

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

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

11 (2) In performing its analysis under this subsection (c), the court shall
12 consider the actual purposes of the contracting parties and whether severing the
13 term would create an incentive for contract drafters to include similar illegal or
14 unconscionable terms.

15 (d) Unfair and deceptive act and practice.

16 (1) In an underlying legal dispute between the drafting and nondrafting
17 parties in which the drafting party seeks to enforce one or more terms
18 identified in subsection (a) of this section, and upon a finding that such terms
19 are actually unconscionable, the court may also find that the drafting party has
20 thereby committed an unfair and deceptive practice in violation of section 2453

1 of this title and may order up to \$1,000.00 in statutory damages per violation
2 and an award of reasonable costs and attorney’s fees.

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

5 (e) Limitation on applicability. This section shall not apply to the
6 following contracts:

7 (1) A contract to which one party is:

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

9 (B) a financial institution as defined by 8 V.S.A. § 11101(32) or a
10 credit union as defined by 8 V.S.A. § 30101(5).

11 (2) A contract for the nondrafting party’s enrollment or participation in a
12 recreational activity, sport, or competition.

13 (3) A contract where the drafting party employs fewer than 25
14 employees.

15 (f) As used in this section, “standard-form contract” means a contract
16 containing standard form terms and conditions relating to the sale of goods or
17 services or the leasing of real or personal property.

18 Sec. 2. EFFECTIVE DATE

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

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE