TO THE HOUSE OF REPRESENTATIVES:

The Committee on Judiciary to which was referred Senate Bill No. 18 entitled “An act relating to consumer justice enforcement” respectfully reports that it has considered the same and recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 152 is added to read:

CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT ACT; STANDARD-FORM CONTRACTS

§ 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM CONTRACTS PROHIBITED

(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:

(1) A requirement that resolution of legal claims takes place in an inconvenient venue. As used in this subdivision, “inconvenient venue” for State law claims means a place other than the state in which the individual resides or the contract was consummated, and for federal law claims means a place other than the federal judicial district where the individual resides or the contract was consummated. Notwithstanding this subdivision, a standard-form
contract may include a term requiring that resolution of legal claims takes
place in a State or federal court in Vermont.

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

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

(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.

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

(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.

(c) Severability.

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

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

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

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

(d) Unfair and deceptive act and practice.

(1) In an underlying legal dispute between the drafting and nondrafting
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.

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

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

(1) A contract to which one party is:

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

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

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

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

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on October 1, 2020.
(Committee vote: __________)

_____________________

Representative __________

FOR THE COMMITTEE