



MEMORANDUM

To: Rep. Maxine Grad, Chair House Judiciary
Members of House Judiciary Committee

From: Dean L Thompson
Vice President of Finance & Governmental Affairs
ELRAC, LLC d/b/a Enterprise Rent-A-Car

Date: April 12, 2018

Re. Impact of Proposed Legislation S105 on Terms & Conditions of Vermont Business – Both Big and Small

Thank you for the opportunity for Laurie Bangs, Enterprise Rent-A-Car Vice President, to testify in front of the Judiciary Committee this past week. In furtherance to her testimony, we continue to have concerns on the impact that the proposed Vermont legislation S105 would have on the business community in Vermont. In this memorandum, we look to the Terms & Conditions that are contained on the websites of the following Vermont businesses and pinpoint the provisions that would violate the proposed Vermont legislation, S105 -- the Model State Consumer Justice Enforcement Act: (1) Vermont Teddy Bear; (2) Aunt Sadies; (3) Noyes Automotive & Tire; (4) BedandBreakfast.com – the “A Very Merry B&B Sweepstakes” in Vermont; (5) BedandBreakfast.com; (6) Vermont Quick Lube; (7) Stewart Maple; (8) Vermont Drone; (9) Lakeview Inn; (10) Vermont 100 Endurance Race; (11) Vermont Dog Trainer; (12) Ben & Jerry Ice Cream; and (13) Vermont Brownie Company.

Critically, each and every business - both big and small – contain provisions that in our estimation would be considered unconscionable pursuant to the proposed legislation.

I. Vermont Teddy Bear

Terms available at: <https://www.vermontteddybear.com/terms-and-conditions>

- a) Warranty Disclaimer. Violates Section 6055(a)(2).
- b) Use of Site: Violates Section 6055(a)(2).
- c) User Generated Content: Violates Section 6055(a)(2).
- d) Indemnification: Violates Section 6055(a)(2) and (3).
- e) Limitation of Liability: Violates Section 6055(a)(3).
- f) Miscellaneous: Violates Section 6055(a)(4).

II. Aunt Sadies – Premium Scented Candles

“Aunt Sadie’s is located in the scenic Northeast Kingdom region of Vermont in a peaceful little town called Lunenburg. Amidst rolling hills, cradled by majestic mountains sits our home, a former horse farm. Every one of our candles is hand poured in the

original bar and we live in the 1865 farmhouse. Our candle making artisans include family and friends, all native Vermonters”

Terms available at: <https://www.auntsadiesonline.com/terms-condition/>

- a) Warranties: Violates Section 6055(a)(2).
- b) Limitation of Liability: Violates Section 6055(a)(2) and (3).
- c) Severability: Violates Section 6055(c).

III. Noyes Automotive & Tire (Burlington, VT)

“Noyes Auto & Tire Service is family owned and operated and has been serving customers in Burlington, Vermont since 1916. We are currently in our third generation of owners. We pride ourselves on giving great customer service and honest advice about the repairs your vehicle needs and the best tires for you.”

Terms available at: <https://www.noyesautoandtire.com/termsandconditions.htm>.

- a) Product Descriptions.” Violates Section 6055(a)(2).

IV. BedandBreakfast.com – A Very Merry B&B Sweepstakes in Vermont

Terms available at: <https://www.bedandbreakfast.com/info/a-very-merry-bb-sweepstakes/northeast-kingdom/terms-and-conditions>

- a) Release and Limitations of Liability: Violates Section 6055(a)(2) and (3).
- b) Disputes: Violates Section 6055(a)(1).

V. BedandBreakfast.com

“BedandBreakfast.com is the world's largest B&B travel site.”

Terms available at: <https://www.bedandbreakfast.com/Home/TermsAndConditions>

- a) This Site is a Venue and We are Not a Party to any Transaction: Violates Section 6055(a)(2).
- b) Identity Verification: Violates Section 6055(a)(2).
- c) Responsibility for Use-Contributed Content: Violates Section 6055(a)(2).
- d) Links to Third Party Sites: Violates Section 6055(a)(2).
- e) Limitation of Liability: Violates Section 6055(a)(2) and (3).
- f) Disclaimers: Violates Section 6055(a)(2).
- g) Release; Indemnification: Violates Section 6055(a)(2).
- h) Changes to the Site or These Terms and Conditions: Violates Section 6055(a)(2).
- i) Entire Agreement, Headings and Severability: Violates Section 6055(c).
- j) Disputes; Arbitration: Violates Section 6055(a)(2).

VI. Vermont Quick Lube (Barre, VT)

" We began as a small oil change business but we have expanded our business by adding more equipment and additional employees.Our goal to continue our evolution in order meet the changing needs of our guests and the demands of ever-changing automotive technology. Vermont Quick Lube specializes in Fast, Friendly, Clean & Complete service. Customer service and satisfaction is our number one goal"

Terms available at: <https://www.vermontquicklube.com/terms-and-conditions/>

- a) Preamble: Violates Section 6055(a)(2).
- b) Limitation of Liability: limits punitive damages. Violates Section 6055(a)(2).

VII. Stewart Maple

"Established in 2009, Stewart Maple is a family-run company that has been making incredible maple syrup products. This is the real thing, straight from their maple trees in Cuttingsville, Vermont to your home"

Terms available at: <https://www.stewartmaple.com/terms-conditions.php>

- a) Exclusion and Limitation of Liability: Violates Section 6055(a)(2) and (3).
- b) Invalidity of Provisions: Violates Section 6055(c).

VIII. Vermont Drone

"Steve Mermelstein, is a photography workshop instructor, award-winning commercial, event, and aerial photographer, naturalist, birder and nature lover based in South Burlington, Vermont. He provides Professional Aerial, Ground, Interior, and Underwater Photography/Cinematography and Data Collection Services."

Terms available at: <http://vtdrone.com/shop/terms/>

- a) Warranties & Manufacturers: Violates Section 6055(a)(2).
- b) Limitation of Liability: Violates Section 6055(a)(2) and (3).

IX. Lakeview Inn (Greensboro, VT)

"The Lakeview Inn offers group lodging to those interested in promoting awareness, consumption, and production of food and products from small scale enterprises in Vermont and other rural landscapes."

Terms available at: <http://lakeviewinnvermont.com/terms-and-conditions/>

- a) Disclaimers and Limitation of Liability: Violates Section 6055(a)(2).
- b) Indemnity: Violates Section 6055(a)(2) and (3).
- c) Severance: Violates Section 6055(c).

X. Vermont 100 Endurance Race

“The Only 100-Mile Running and Horse Race On the Planet. Benefiting Vermont Adaptive Ski & Sports.”

Terms available at: <https://vermont100.com/site-terms-conditions/>

- a) Disclaimer: Violates Section 6055(a)(2) and (3).
- b) Limitation of Liability: Violates Section 6055(a)(2) and (3).
- c) Links to Third-Party Sites: Violates Section 6055(a)(2).

XI. Vermont Dog Trainer (aka “VT Dog BnB”)

“Vermont Dog Boarding and Behavior has changed hundreds of lives in the Northeast, and we cannot wait to help you. We are here to make sure you have nothing to worry about when it comes to your dog being safe and happy. Our Daycare is filled with dogs that are thrilled to be hanging out with their peers, and our training has truly changed the lives of the great families we have helped.”

Terms available at: <https://vermontdogtrainer.com/terms-of-service/>

- a) Description of Website Services Offered: Violates Section 6055(a)(2).
- b) Member Account, Username, Password and Security: Violates Section 6055(a)(2).
- c) Contributions to Company Website: Violates Section 6055(a)(2).
- d) Indemnity: Violates Section 6055(a)(2).
- e) Use and Storage General Practices: Violates Section 6055(a)(2).
- f) Modifications: Violates Section 6055(a)(2).
- g) Termination: Violates Section 6055(a)(2).
- h) Advertisers: Violates Section 6055(a)(2).
- i) Links: Violates Section 6055(a)(2).
- j) Warranty Disclaimers: Violates Section 6055(a)(2) and (3).
- k) Release: Violates Section 6055(a)(2).
- l) Special Admonition Related to Financial Matters: Violates Section 6055(a)(2).
- m) Third Party Beneficiaries: Violates Section 6055(a)(2).
- n) Choice of Law and Forum: Violates Section 6055(a)(1).
- o) Waiver and Severability of Terms: Violates Section 6055(c)
- p) Statute of Limitations: Violates Section 6055(a)(4).

XII. Ben & Jerry Ice Cream

Terms available at: <https://www.benjerry.com/about-us/terms-and-conditions>

- a) Submissions: Violates Section 6055(a)(2).
- b) Links to Other Sites: Violates Section 6055(a)(2) and (3).
- c) Contents of the Web Site – Disclaimer: Violates Section 6055(a)(2).
- d) Operation of the Web Site – Disclaimer: Violates Section 6055(a)(2).
- e) Limitation of Liability: Violates Section 6055(a)(2) and (3).
- f) Limitations as to Paragraphs 10, 11, and 12: Violates Section 6055(a)(2) and (3).
- g) Postings: Violates Section 6055(a)(2).
- h) Applicable Law; Jurisdiction: Violates Section 6055(a)(1) and (2).
- i) Severability: Violates Section 6055(c).

XIII. Vermont Brownie Company

“Vermont Brownie Company was born on New Year’s Day 2008 after a hearty snowshoe and some New Year’s day-dreaming. Since that fateful chilly afternoon, Vermont Brownie Company grew and grew, and now delights Brownie fans around the world with our creative flavor pairings, all-natural, farm-fresh ingredients (no preservatives!) and whimsical packaging designs.”

Terms available at: <https://www.vermontbrownie.com/pages/terms-and-conditions>

- a) Use of Site: Violates Section 6055(a)(2).
- b) User Generated Content: Violates Section 6055(a)(2).
- c) Participation Disclaimer: Violates Section 6055(a)(2).
- d) Indemnification: Violates Section 6055(a)(2).
- e) Limitation of Liability: May at times violate Section 6055(a)(2) and (3).
- f) Miscellaneous: Violates Section 6055(a)(2) and (4).

On behalf of Enterprise, our employees and especially our customers, I thank you for allowing me to share this additional information. I trust that the brief sample of the companies that would be impacted by the proposed legislation demonstrates the enormity of the impact that the proposed Vermont Legislation S105 would have on businesses both big and small within in the State of Vermont.

Sincerely

Dean Thompson
ELRAC, LLC. d/b/a Enterprise Rent-A-Car
Vice President of Finance