

## OUTLINE OF TESTIMONY REGARDING S. 18

House Judiciary Committee

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### Introduction

- We appreciate this opportunity to share how this legislation might impact Logic Supply, our employees, and potentially many other VT businesses and organizations.
- Logic Supply is a Values based company and we do our best to “walk the walk” of being Open, Fair, Independent & Innovative in all that we do, including our relationships with our customers.
- We want to state at the outset, we support strong consumer protections and the overall intent of this legislation. However, we have significant concerns as to the unintended consequences should this legislation become law.

### Background

- Logic Supply engineers and manufactures computer hardware systems designed to meet the specific needs and solve complex problems for our global customer base.
- Logic Supply was founded in mid-2003, and moved to VT in early 2004.
- We've grown to over 120 employees at our HQ in S. Burlington, and more in our operating divisions in the Netherlands and Taiwan. All locations, especially our HQ in VT are growing and actively hiring.
- Logic Supply began as, and continues to be an online business. We are primarily a B2B company focused on sales for commercial applications to enterprise customers. While our focus is on commercial customers and applications, a good portion of our sales are to individuals online.
- Like virtually all online companies, we use terms and conditions of sale, which necessarily contain some limitations of claims and remedies.
- The sale of many products, electronic devices, computers, etc. for both commercial and individual uses can involve risks and liabilities to manufacturers or sellers of such products which are mitigated through best practices, insurance coverage and some limitations of claims and remedies standard to the industry or applications in order for a business to be economically viable. That said, the way any business mitigates its own legitimate risks and liabilities must be Fair to the customer, especially when it comes to individual consumers.
- We strive to be Open and transparent with our Ts & Cs for all customers. This includes including them not only on product pages and at checkout, but also in the primary navigation menu of our website. ([www.logicsupply.com/company/support/terms-conditions](http://www.logicsupply.com/company/support/terms-conditions))
- We do have limitations of claims and remedies provided for by both state and federal statute in our Ts & Cs. They are balanced and take into account both the interests of Logic Supply and the

interests of our customers, whether they be individual consumers or the largest multi-national corporations given the context of the industry we serve, the products we manufacture and sell and the costs involved.

### Questions & Concerns regarding S. 18

- We believe it is absolutely Fair to provide for the strictest of protections against some corporate actors' worst practices and unconscionable terms and conditions of sale, including:
  - waiving specific claims and remedies critical to the protection of consumers.
  - limiting statutes of limitation; and
  - making remedial efforts too cost prohibitive.
  - As well as requiring resolution of any legal claim in an inconvenient venue.
- However, any protections must take into consideration the context and circumstances involved in the transaction, the sector and the goods or services involved. What might be unconscionable in one context, may not in fact, be unconscionable in another. While our current legal jurisprudence allows for such an analysis depending on the circumstances, this Legislation presumes all business are guilty of unfair and deceptive or unconscionable actions and attempts to soften the blow by stating that presumption of guilt can be rebutted.
- Certain parts of S.18, which purposefully provide the most effective shield to protect individual consumers could also be used as a sword against Vermont's online businesses. Given the internet's reach, it's virtually impossible for one state's regulation of ecommerce activity NOT to have a substantial impact in the other 49 states and beyond. And, while the purported targets of this legislation are supposedly not Vermont businesses and organizations, we are never the less obligated and want to be compliant with Vermont law.
- The combination of a statutory presumption of unconscionability, the broadest judicial remedial authority to void entire contracts as well as specific provisions, impose statutory damages and the award of attorney fees significantly and unnecessarily increases the risk of potential liability to Vermont businesses from actions filed by out-of-state as well as in-state interests under the veneer of consumer protection.
- We use "veneer" because the practical realities of being in business and the cost of defending oneself from any number of claims may lead to the targeting of some Vermont businesses and organizations for reasons other than the benefit of the consumer.
- For example, Logic Supply is a firm believer in intellectual property rights as are many Vermont businesses and organizations. However, that has not stopped Vermont businesses and organizations from being targeted or receiving demand letters for payment of damages or face threatened litigation based on substantively frivolous and meritless claims, under a similar veneer of "enforcing IP rights." In the vast majority of cases, such claims are settled long before anyone has their day in court because it's more economical to settle and pay what amounts to

legal blackmail than to spend vast sums of money, time & organizational resources proving you did nothing wrong in the first place.

- We have grave concerns this legislation will impose significant additional risks and potential liabilities on Logic Supply, VT's growing tech sector and all businesses who sell goods and services online. A tech sector that is growing faster than any other sector in Vermont and adding significantly to the economic well-being of all Vermonters. This additional risk and potential liability simply cannot be mitigated by any commercially reasonable means. Given the complexity of choice of law, forum and conflict of laws principles and jurisprudence when it comes to interstate commerce, we would be severely constrained by the time and resources it would take to ensure our terms and conditions of sale meet our needs as a business for our national and global enterprise customers, which are our focus, and the need to not expose ourselves to unreasonable risks and liability to individual consumers
- While these and many of our specific concerns, as described in our Senate Judiciary Committee testimony remain, I wanted to highlight some additional general concerns we have as we think more about the breadth and reach of this legislation.

### **General Concerns**

- Our initial focus was the bills impact on our use of our standard Terms & Conditions of Sale, which we've also provided to you for review. However, Logic Supply and our employees will also be impacted on a much greater scale.
- Like many VT businesses and organizations, we require our employees and service providers to sign any number of standard forms that include release, waiver of claims and other language which limits our liability. Should this legislation be enacted, we would need to consider:
  - Countless forms we require employees to sign, including:
    - Handbook acknowledgements
    - Confidentiality agreements
    - IP assignment forms
    - Marketing permissions
    - Benefit program forms, authorizations, etc.
  - In both employment-related and individual use cases, medical providers often use standard forms which may contain waivers of certain claims and remedies provided for by State and federal statute. While insurance companies are excluded from the reach of this bill due to their regulation by the Department of Financial Regulation, forms drafted and used by medical providers and which need to be signed by our employees as individuals might also be implicated.
  - Individual/Visitor Non-Disclosure Agreements;
  - Volunteer activity sign up forms; Workshop releases
    - A co-worker & I led a woodworking workshop for interested employees. Since we would be carving wood with very sharp knives and this was totally voluntary and requested by employees, I/we drafted a release/waiver of claims.

- I've spoken with other organizations we work with or have sponsored, including the Generator, one of Vermont's premiere maker spaces and a valuable resource to the business and general community at large. Following some conversations with their Board, The Generator has authorized me to state they too have concerns and at the least, they would need to remove their waiver of damages provision from the membership agreement and potentially expose themselves to considerable liability. How many other member organizations, clubs and associations exist in Vermont that will need to review and modify their agreements or forms or accept an unreasonable amount of risk and potential liability? How will they obtain insurance necessary to continue to operate?
- The fact is, standard form contracts are in use in many instances in business, employment and plenty of day-to-day situations that may not fall within the exclusions provided to certain businesses or sectors in Vermont. I've personally signed insurance forms in both employment-related and individual use cases often contain waivers of certain claims and remedies provided for by State and federal statute. However, while insurance companies are excluded from the reach of this bill due to their regulation by the Department of Financial Regulation, forms drafted and used by medical providers whether a large hospital or a small general practice might also be considered.
- We also don't believe it's reasonable or fair to identify and exclude some consumers of certain types of industries or activities from the same protections deemed vital to those same consumers when buying a different good or service.

### Conclusion

- Given the complexity of the issues involved and the impact to the tech sector and online companies like Logic Supply, or other Vermont employers whether like Logic Supply or not, we urge this Committee to weight the likely actual benefits to the consumer against the certain negative impact this legislation will have on the broad array of businesses, organizations, employers and individuals that make our Community what it is.
- Given the breadth of the impact on our business and from my conversations with other businesses and non-profit organizations of the potential impact of this legislation, we suggest this legislation also be reviewed by the House Commerce Committee.
- We are not seeking any type of exemption or exclusion from this bill, nor do we believe the exemptions should be expanded. Logic Supply believe protecting some industries, companies and organizations or protecting some consumers and not others is anathema to our notion of Fair and equitable treatment for all.

On behalf of Logic Supply, thank you again for the opportunity to share the above today.