



Central Vermont Chamber of Commerce

At Beaulieu Place

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Responsibly Improving the Climate for Doing Business in the Central Vermont Community.

Statement to
Vermont General Assembly
House Committee on Judiciary
Presented by
William D. Moore
Central Vermont Chamber of Commerce
April 23, 2019

RE: S. 18 An Act Relating to Consumer Justice Enforcement

Representative Grad, Honorable Members of the House Committee on Judiciary . . .

My name is William D. Moore. I am the President and CEO of the Central Vermont Chamber of Commerce. The Central Vermont Chamber of Commerce is the largest business organization serving Washington County and a portion of Orange County. Our diverse membership consists of some of the largest businesses in Vermont as well sole proprietorships. Virtually every sector of Vermont's economy is represented in our membership.

The Central Vermont Chamber of Commerce opposes S. 18 An Act Relating to Consumer Justice Enforcement, and respectfully urges the members of the House Judiciary Committee to reject the measure.

Arbitration is good for businesses and consumers alike. It provides an efficient, cost-effective forum in which consumers can prosecute small, individualized claims—many of which, by definition, cannot be pursued by using the class action mechanism. The United States Supreme Court has often touted the benefits of arbitration, including that arbitration is less expensive and more efficient, particularly for consumers with small claims.

As for the costs of arbitration, mainstream arbitration organizations have due process protocols and fee schedules that ensure that costs are reasonable. Filing fees are generally no more than, and oftentimes are much less than, what consumers would pay to commence court proceedings.

Consumers also obtain larger awards in arbitration on average, as compared to class action settlements where much of the benefits go to the plaintiffs' attorneys and claims administration. A study by the Consumer Financial Protection Bureau determined the average arbitral award for consumers was over \$5000, whereas the average amount paid to consumers

after a class action lawsuit was just over \$30.²³ The same study observed that arbitrations proceed efficiently and generally take place in locations that are convenient to consumers. So to the extent that is animated by concerns about inconvenient forums and unreasonable costs, those concerns have already been addressed by businesses and arbitration organizations.

This legislation could have a significant and unfairly broad application to Vermont businesses of all kinds that utilize standard contracts, in particular, businesses that depend on the Internet and e-commerce. While these standard contracts may contain certain limitations or restrictions on claims or remedies, they are clearly not per se, or as applied, unconscionable under either the Uniform Commercial Code or common law as referenced in the bill. This is particularly true for business that sell products online, as all e-commerce transactions involve terms and conditions of sale, which are, by definition, standard form contracts.

Inclusive standard form contracts are a proven mechanism to make common agreements between suppliers and consumers more efficient and less costly. Passage of this bill would drastically increase liability exposure for businesses, potentially subjecting well intentioned Vermonters to significant liability, as well as penalties, and increased attorney fees. This would serve as a disincentive for economic growth and business startup in sectors that depend on the ability of service providers to responsibly operate without fear of frivolous lawsuit.

We are not advocating for businesses to operate free of liability and we are also supportive of the court's common-sense test in determining the enforceability of waiver clauses. If a business is proven negligent or at fault, that business should be held accountable. Our concern instead lies in the real possibility that S.18 would move us away from fully considering circumstance and context on a case by case basis when determining the legitimacy of grievances, toward a situation in which the occurrence of frivolous lawsuits increases significantly. The penalties for being found to have violated a provision in this bill will have a chilling effect on the willingness of businesses to advocate for their legal interests, which ultimately impacts the overall stability of entire business sectors. Businesses finding themselves in the precarious situation of operating without previously enjoyed legal protections will also have to confront the added challenge of increased insurance premiums, which would naturally rise along with increased rates of risk brought on by diminished protections. All of these factors lead to increased consumer costs.

Thank you for the opportunity to present our concerns related to S. 18 An Act Relating to Consumer Justice Enforcement.