

1 TO THE HONORABLE SENATE:

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 bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 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-

1 form contract may include a term requiring that resolution of legal claims take
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.

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

7 (4) Pursuant to 12 V.S.A. § 465, a provision that limits the time in
8 which an action may be brought under the contract or that waives the statute of
9 limitations.

10 (5) A requirement that the individual pay fees and costs to bring a legal
11 claim substantially in excess of the fees and costs that this State’s courts
12 require to bring such a State law claim or that federal courts require to bring
13 such a federal law claim.

14 (b) Relation to common law and the Uniform Commercial Code. In
15 determining whether the terms described in subsection (a) of this section are
16 unenforceable, a court shall consider the principles that normally guide courts
17 in this State in determining whether unconscionable terms are enforceable.
18 Additionally, the common law and Uniform Commercial Code shall guide
19 courts in determining the enforceability of unfair terms not specifically
20 identified in subsection (a) of this section.

21 (c) Severability.

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

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

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

8 (2) In performing its analysis under this subsection (c), the court shall
9 consider the incentive of the contract drafter in including the illegal or
10 unconscionable term.

11 (d) Unfair and deceptive act and practice.

12 (1) In an underlying legal dispute between the drafting and non-drafting
13 parties in which the drafting party seeks to enforce one or more terms
14 identified in subsection (a) of this section, and upon a finding that such terms
15 are actually unconscionable, the court may also find that the drafting party has
16 thereby committed an unfair and deceptive practice in violation of section 2453
17 of this title and may order up to \$1,000.00 in statutory damages per violation
18 and an award of reasonable costs and attorney's fees.

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

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

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

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

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

6 (2) A contract for the non-drafting party’s enrollment or participation in
7 a recreational activity, sport, or competition.

8 Sec. 2. LEGISLATIVE INTENT

9 The General Assembly acknowledges that outdoor recreation is an
10 important part of Vermont’s economy and culture that encourages healthy
11 communities and individuals, increases our connection to nature, enhances the
12 Vermont lifestyle, and supports the attraction of high-quality employers and a
13 sustainable workforce in all economic sectors. It is not the intent of the
14 General Assembly to change the way courts allocate responsibility for the
15 inherent risks of any outdoor recreational activity or sport.

16 Sec. 2. EFFECTIVE DATE

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

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19 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE