

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-form

1 contract may include a term requiring that resolution of legal claims takes  
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 actual purposes of the contracting parties and whether severing the  
10           term would create an incentive for contract drafters to include similar illegal or  
11           unconscionable terms.

12           (d) Unfair and deceptive act and practice.

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

20                   (2) Each term found to be unconscionable pursuant to subsection (a) of  
21           this section 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 nondrafting party’s enrollment or participation in a  
7        recreational activity, sport, or competition.

8        Sec. 2. EFFECTIVE DATE

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

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13        (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE