



Vermont Technology Alliance
The Voice for Technology in Vermont

The Honorable Dick Sears
Chair of the Senate Committee on
Judiciary Vermont State House

February 1, 2019

Re: S.18 – Standard Contracts

Dear Chair Sears and Members of the Committee:

We write today to provide the perspective of the tech sector regarding S.18, an act relating to consumer justice enforcement, which is currently being considered by the Senate Judiciary Committee.

The Vermont Technology Alliance (vtTA) is a non-profit business association with a mission to support, promote, and grow technology jobs and technology businesses in Vermont. We have more than 200 members from throughout the state representing a range of tech areas, including software, IT, manufacturing, telecommunications, energy, and others.

The vtTA supports legislative efforts to protect individual consumers from some of the worst “fine print” and standard contract provisions and practices employed by some businesses across the country. However, several of our member businesses have expressed concern with the breadth of the bill as it currently stands, and its potential unintended consequences and impact.

Specifically, 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.

The vtTA is in favor of enhanced consumer protection from specific provisions presumed to be “unconscionable,” such as being forced to pursue a claim outside of Vermont, in a completely cost-prohibitive manner, or without the full benefit of having the time to pursue certain remedies as called for in existing statutes of limitations.

However, the inclusion of any waiver of an individual's right to assert claims or seek remedies as provided for by any state or federal statute, or even punitive damages in some instances, within the definition of "presumptively unconscionable" seems to be beyond the intent of the bill and could have an extreme, negative impact on many vtTA members and Vermont businesses.

This is especially true for Vermont businesses that sell products with both commercial and individual customers and applications. The breadth of the bill in this regard, along with the threat of the included statutory damages, could expose many such companies to potential risks and liabilities that cannot be mitigated through commercially reasonable or affordable means should S.18 become law in its present form. This includes any limitations on punitive damages without regard to the nature of the transaction, the specific goods and services, the industries, or the knowledge and sophistication of the parties involved, whether individuals or businesses.

The Internet and growth of e-commerce has and continues to provide opportunities and easier access to goods and services for both Vermont businesses and consumers. We believe the legislation in its current form will have a chilling effect on the growth of online businesses and the tech sector in general in Vermont. This bill's prescriptive and all-encompassing reach goes far beyond what is necessary to provide additional consumer protections against the worst actors and forms of consumer abuse. We urge the Committee to seek alternatives to the current bill, or language therein, which will not unfairly impact such a large and vital part of Vermont's economic development. Vermont's online businesses should not be targeted en masse for the misdeeds of the worst consumer rights abusers.

We request that you work to include language that strikes a balance between enhancing consumer protections from the worst abusers and the regular and appropriate use of standard form contracts for those selling online.

Jeff Couture, Executive
Director Vermont Technology
Alliance

Alex Meyer, Chair, vtTA Board
Vice President, Renaissance Information Systems, Inc.

Mark Heyman, Secretary, vtTA Board
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