

OUTLINE OF TESTIMONY REGARDING S. 18

Senate Judiciary Committee

February 7, 2019

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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.
- 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 goals of this legislation.

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 116 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)
- We work with some of the biggest companies in the world in the same Open and Fair manner because we believe it's the right thing to do and it's important we limit our liability with them as well. The only difference is the number, which is proportionate to the economic and other risks involved.

Questions & Concerns regarding S. 18

- We believe it is absolutely Fair to provide the strictest protection possible against some corporate actors' worst practices and unconscionable terms and conditions of sale, including:
 - mandating an inconvenient venue;
 - 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.
- The above notwithstanding, 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.
- The combination of a statutory presumption of unconscionability, the broadest judicial remedial authority to impose strict liability and statutory damages contained within proposed §6055(c)(d), significantly and potentially unnecessarily increases the risk of potential liability to Vermont online businesses from actions filed by out-of-state interests under the veneer of consumer protection.
- One example is the inclusion of any waiver of an individual's right to assert claims or seek remedies allowed by State or federal statute within the definition of presumed unconscionable terms in §6055(a)(2). As S. 18 clearly states, statutory and common law UCC jurisprudence "shall" be considered, and used to guide courts in their determinations of whether unconscionable terms are enforceable and current statutory and common law UCC jurisprudence allows for some limitations of claims and remedies, section (a)(2) above is, by definition, overly broad and would subject VT online businesses to high risk of threatened legal action from out-of-state parties.

- We also have concerns regarding the “inconvenient venue” language in §6055(a)(1). On its face, (a)(1) appears unequivocally Fair. We agree no individual should be forced to seek remedies at a cost, time and resource-prohibitive venue. That said, any truly Fair outcome necessarily involves some balancing of all interests involved. We feel strongly that small businesses, including Logic Supply and other VT online businesses, should likewise not be put in a similar position of needing to resolve legal matters or defend themselves in inconvenient venues.
- To that end, Logic Supply’s Ts & Cs require the application of VT law AND include the customer’s express consent to the exclusive jurisdiction of the “state and federal courts located within the State of Vermont.”
- So, what is an "inconvenient venue" when an individual consumer purchases a LS computer online from N. Dakota or one of the other 49 states? We fear the very language which seeks to protect Vermont consumers from being forced to go to an inconvenient venue to resolve a legal claim will be used to force Vermont online businesses to potentially defend claims anywhere individuals purchase VT products online.
- We have grave concerns these risks and potential liabilities simply cannot be mitigated by any commercially reasonable means by Logic Supply or VT’s online business community, one that is growing and adding significantly to VT’s economic well-being.

Solutions

- Given the complexity of the issues involved, we urge this Committee and the Sponsors of S.18 to consider our concerns, which we firmly believe are applicable to a large number of online businesses based in VT, before moving forward.
- We believe §6055(a)(2) should be limited or eliminated given its over breadth.
- We do not seek any type of exemption or exclusion as we believe eliminating players from the field is anathema to our notion of Fair and a level playing field for VT’s consumers.
- We do hope any such legislation that does become law will be specifically and thoughtfully tailored to balance the interests of both Vermont and other states’ online businesses and individual consumers. In other words, we ask you to “thread the needle” so as not to unintentionally over-burden VT’s online businesses and severely limit the availability, sustainability and growth of economic opportunity for all in VT.
- We stand by to help, offer feedback or be involved in the conversation to best achieve our mutual goals.

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