

# Journal of the Senate

THURSDAY, FEBRUARY 28, 2019

The Senate was called to order by the President.

## Devotional Exercises

Devotional exercises were conducted by the Rabbi David Edleson of South Burlington.

## Bill Referred to Committee on Finance

### S. 73.

Senate bill of the following title, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule was referred to the Committee on Finance:

An act relating to licensure of ambulatory surgical centers.

## Bill Amended; Third Reading Ordered

### S. 18.

Senator White, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to consumer justice enforcement.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 152 is added to read:

## CHAPTER 152. MODEL STATE CONSUMER JUSTICE ENFORCEMENT ACT; STANDARD-FORM CONTRACTS

### § 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM CONTRACTS PROHIBITED

(a) Unconscionable terms. There is a rebuttable presumption that the following contractual terms are substantively unconscionable when included in a standard-form contract to which only one of the parties to the contract is an individual and that individual does not draft the contract:

(1) A requirement that resolution of legal claims takes place in an inconvenient venue. As used in this subdivision, "inconvenient venue" for State law claims means a place other than the state in which the individual

resides or the contract was consummated, and for federal law claims means a place other than the federal judicial district where the individual resides or the contract was consummated. Notwithstanding this subdivision, a standard-form contract may include a term requiring that resolution of legal claims takes place in a State or federal court in Vermont.

(2) A waiver of the individual's right to assert claims or seek remedies provided by State or federal statute.

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

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

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

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

(c) Severability.

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

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

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

(2) In performing its analysis under this subsection (c), the court shall consider the actual purposes of the contracting parties and whether severing the term would create an incentive for contract drafters to include similar illegal or unconscionable terms.

(d) Unfair and deceptive act and practice.

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

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

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

(1) A contract to which one party is:

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

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

(2) A contract for the nondrafting party's enrollment or participation in a recreational activity, sport, or competition.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on October 1, 2020.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

### **Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**

#### **H. 3.**

House bill entitled:

An act relating to ethnic and social equity studies standards for public schools.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the Senate proposal of amendment in Sec. 1, subsection (a) (findings), by striking out subdivision (4) in its entirety and inserting in lieu thereof a new subdivision (4) to read as follows:

(4) According to the U.S. Department of Justice report on hate crimes in Vermont in 2017, of the 35 hate crimes reported in 2017, 51 percent were