STATE OF NEW YORK

6094

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to unconscionable terms in standard form contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 349-f to read as follows:

§ 349-f. Unconscionable terms in standard form contracts. 1. Findings. The inclusion of unconscionable terms in standard form contracts regarding dispute resolution is unfair not only because any resulting dispute resolution proceeding is unfair to the party forced to agree to the unconscionable terms, but also because the unconscionable terms discourage valid claims. Furthermore, when the provisions are challenged, courts may simply strike the unconscionable terms but enforce the remainder of the agreement regarding dispute resolution. As a result, businesses have little incentive not to include these terms. Furthermore, it is unlikely that there is any meeting of the minds over a dispute-resolution agreement that does not include severed unconscionable terms.

2. Definition. For the purposes of this section, "standard form contract" shall mean any contract to which only one of the parties is an individual and that individual does not draft the contract. In order to be a standard form contract, the document constituting the contract need not be a preprinted form nor need it contain language completely identical to any other contract.

3. 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:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD07681-01-7

(a) a requirement that resolution of legal claims takes place in an inconvenient venue. An "inconvenient venue" is, for purposes of state law claims, a place other than the county where the individual resides or the contract was consummated, and for purposes of federal law claims, a place other than the federal judicial district where the individual resides or the contract was consummated;

(b) a waiver of the individual's right to assert claims or seek remedies provided by state or federal statute;

(c) a waiver of the individual's right to seek punitive damages as provided by law;

(d) a requirement that the individual bring an action prior to the expiration of the applicable statute of limitations;

(e) 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; and

(f) the contract does not advise the individual that it is a legal document, that the individual should consult with counsel of his or her choosing concerning the meaning of its terms, and does not give the individual a reasonable time in which to review the contact with his or her counsel.

4. Relation to common law and the uniform commercial code. In determining whether the terms described in subdivision three 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 the uniform commercial code shall guide courts in determining the enforceability of unfair terms not specifically identified in such subdivision.

5. Severability. There is a rebuttable presumption that a term in a standard form contract that is found to be unconscionable is not severable from the agreement in which it is situated. In determining whether this presumption has been rebutted courts should consider general state law principles regarding the severability of unenforceable terms.

6. Unfair and deceptive act and practice. It is an unfair and deceptive practice in violation of section three hundred forty-nine of this article to include one of the presumptively-unconscionable terms identified in subdivision three of this section 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. Notwithstanding any other provision of law to the contrary, a party who prevails in a claim under this section shall be entitled to one thousand dollars in statutory damages per violation. Additionally, such an action may be maintained by an employee against his or her employer whether or not the labor law otherwise allows for such claims.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to contracts entered into on or after such date.