

STATE OF NEW YORK

8377

IN SENATE

February 18, 2022

Introduced by Sen. HARCKHAM -- 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:

1 Section 1. The general business law is amended by adding a new section
2 349-g to read as follows:

3 § 349-g. Unconscionable terms in standard form contracts. 1. Find-
4 ings. The inclusion of unconscionable terms in standard form contracts
5 regarding dispute resolution is unfair not only because any resulting
6 dispute resolution proceeding is unfair to the party forced to agree to
7 the unconscionable terms, but also because the unconscionable terms
8 discourage valid claims. Furthermore, when the provisions are chal-
9 lenged, courts may simply strike the unconscionable terms but enforce
10 the remainder of the agreement regarding dispute resolution. As a
11 result, businesses have little incentive not to include these terms.
12 Furthermore, it is unlikely that there is any meeting of the minds over
13 a dispute-resolution agreement that does not include severed unconscion-
14 able terms.

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

21 3. Unconscionable terms. There is a rebuttable presumption that the
22 following contractual terms are substantively unconscionable when
23 included in a standard form contract to which only one of the parties to
24 the contract is an individual and that individual does not draft the
25 contract:

26 (a) a requirement that resolution of legal claims takes place in an
27 inconvenient venue. An "inconvenient venue" is, for purposes of state
28 law claims, a place other than the county where the individual resides

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

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1 or the contract was consummated, and for purposes of federal law claims,
2 a place other than the federal judicial district where the individual
3 resides or the contract was consummated;

4 (b) a waiver of the individual's right to assert claims or seek reme-
5 diés provided by state or federal statute;

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

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

10 (e) a requirement that the individual pay fees and costs to bring a
11 legal claim substantially in excess of the fees and costs that this
12 state's courts require to bring such a state law claim or that federal
13 courts require to bring such a federal law claim; and

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

19 4. Relation to common law and the uniform commercial code. In deter-
20 mining whether the terms described in subdivision three of this section
21 are unenforceable, a court shall consider the principles that normally
22 guide courts in this state in determining whether unconscionable terms
23 are enforceable. Additionally, the common law and the uniform commercial
24 code shall guide courts in determining the enforceability of unfair
25 terms not specifically identified in such subdivision.

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

31 6. Unfair and deceptive act and practice. It is an unfair and decep-
32 tive practice in violation of section three hundred forty-nine of this
33 article to include one of the presumptively-unconscionable terms identi-
34 fied in subdivision three of this section in a standard form contract to
35 which only one of the parties to the contract is an individual and that
36 individual does not draft the contract. Notwithstanding any other
37 provision of law to the contrary, a party who prevails in a claim under
38 this section shall be entitled to one thousand dollars in statutory
39 damages per violation. Additionally, such an action may be maintained by
40 an employee against his or her employer whether or not the labor law
41 otherwise allows for such claims.

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