

SENATE, No. 1152

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)

SYNOPSIS

Establishes protections against unconscionable terms in standard form contracts.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning unconscionable terms in standard form
2 contracts and supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Standard form contract” means a consumer contract as provided
9 in section 1 of P.L.1980, c.125 (C.56:12-1) to which only one of the
10 parties to the contract is an individual and that individual did not
11 draft the contract.

12 “Term” means a portion of an agreement that relates to a
13 particular matter.

14

15 2. a. There shall be a rebuttable presumption that the following
16 contractual terms are substantively unconscionable when included
17 in a standard form contract:

18 (1) A requirement that resolution of a legal claim takes place
19 outside of the county or district where the individual resides or the
20 contract was consummated;

21 (2) A waiver of the individual’s right to assert a claim or seek a
22 remedy provided by State or federal law;

23 (3) A waiver of the individual’s right to seek punitive damages
24 as provided by law;

25 (4) A requirement that the individual bring an action prior to the
26 expiration of the applicable statute of limitations;

27 (5) A requirement that the individual pay fees or costs to bring a
28 legal claim that are substantially in excess of the fees and costs that
29 the State or federal courts require to bring a claim;

30 (6) A requirement that the individual waive a right to participate
31 in any collective or class action; and

32 (7) A requirement that the individual waive any statutory right
33 to attorneys’ fees and costs which might attend to a prevailing party
34 under any action brought in any state or federal court or other
35 forum.

36 b. In determining whether a term is unenforceable pursuant to
37 subsection a. of this section, a court shall consider the principles
38 that guide courts in this State in determining whether an
39 unconscionable term is enforceable. Additionally, the common law
40 and Uniform Commercial Code shall guide courts in determining
41 the enforceability of any term not specifically identified in
42 subsection a. of this section.

43 c. It shall be an unlawful practice in violation of P.L.1960, c.39
44 (C.56:8-1 et seq.) to include an unconscionable term identified in
45 subsection a. of this section in a standard form contract to which
46 only one of the parties to the contract is an individual and that
47 individual does not draft the contact.

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1 The bill creates a rebuttable presumption that the following
2 contractual terms are substantively unconscionable when included
3 in a standard form contract to which only one of the parties to the
4 contract is an individual and that individual does not draft the
5 contract:

6 (1) A requirement that resolution of legal claims take place in a
7 place other than the county or district where the individual resides
8 or the contract was consummated;

9 (2) A waiver of the individual's right to assert a claim or seek a
10 remedy provided by State or federal law;

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

13 (4) A requirement that the individual bring an action prior to the
14 expiration of the applicable statute of limitations;

15 (5) A requirement that the individual pay fees and costs to bring
16 a legal claim substantially in excess of the fees and costs that the
17 State or federal courts require to bring a claim'

18 (6) A requirement that the individual waive a right to participate
19 in any collective or class action; and

20 (7) A requirement that the individual waive any statutory right
21 to attorneys' fees and costs which might attend to a prevailing party
22 under any action brought in any state or federal court or other
23 forum.

24 The bill provides that, in determining whether a term described
25 in the bill is unenforceable, a court must consider the principles that
26 guide courts in this State in determining whether an unconscionable
27 term is enforceable. The bill also provides that the common law
28 and Uniform Commercial Code are to guide courts in determining
29 the enforceability of any term not specifically identified in the bill.

30 The bill provides that it is an unlawful practice in violation of the
31 consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), to include an
32 unconscionable term identified in the bill in a standard form
33 contract to which only one of the parties to the contract is an
34 individual and that individual does not draft the contract.

35 An unlawful practice under the consumer fraud act is punishable
36 by a monetary penalty of not more than \$10,000 for a first offense
37 and not more than \$20,000 for any subsequent offense.
38 Additionally, violations may result in cease and desist orders issued
39 by the Attorney General, the assessment of punitive damages, and
40 the awarding of treble damages and costs to the injured party.

41 The bill provides that, if a court finds that a standard form
42 contract contains an unconscionable term, the court may:

43 (1) refuse to enforce the entire contract or the specific part,
44 clause, or provision containing the term;

45 (2) enforce the contract including the specific part, clause, or
46 provision containing the term, while severing only the
47 unconscionable term; or

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1 (3) limit the application of the unconscionable term or the clause
2 containing the term to avoid any unconscionable result.

3 The bill provides that, in ordering a remedy for unconscionable
4 terms in standard form contracts, a court is required to consider the
5 following factors:

6 (1) whether severing the term and enforcing the contract in its
7 absence creates an incentive for drafters to include unconscionable
8 terms in standard form contracts;

9 (2) whether severing the term and enforcing the contract in its
10 absence removes, in whole or in part, the incentive to draft
11 enforceable standard form contracts that do not include
12 unconscionable terms;

13 (3) whether the inclusion of the unconscionable term may deter
14 the non-drafting party from asserting any right under the contract or
15 by deterring the non-drafting party from challenging the
16 enforcement of the unconscionable term;

17 (4) whether the drafting party acted in bad faith, for example, by
18 including a term that is illegal or unconscionable under established
19 precedent; and

20 (5) the parties' purposes in entering into the contract.

21 In deciding whether to sever unenforceable terms from a
22 standard form contract, the bill provides that courts may not
23 consider any term in the contract that requires unenforceable terms
24 to be severed.

25 The bill also provides that, for any standard form contract
26 drafted by one party and presented to another party of weaker
27 bargaining power, there is a rebuttable presumption that any right to
28 opt out of the contract or any of its provisions shall not be
29 considered when determining the conscionability of the contract.