

PHILIP B. SCOTT  
Governor



State of Vermont  
OFFICE OF THE GOVERNOR

May 22, 2018

The Honorable John Bloomer, Jr.  
Secretary of the Senate  
115 State Street  
Montpelier, VT 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.105, *An act relating to consumer justice enforcement* without my signature in the time permitted by the Constitution because of my objections described herein.

I am proud that Vermont is already known as a leader in consumer protection. It is essential, however, that such protections are fair, carefully defined regulations to avoid unintended consequences that disadvantage Vermont consumers and businesses when compared to laws of other states. To have a strong economy that provides Vermonters with good jobs, and ensures we have the revenue needed to invest in vital programs and services, Vermont must be able to compete, not only regionally and nationally, but globally.

Since its passage by the Legislature, my office has heard from a significant number of businesses and non-profits alike, with serious concerns about the detrimental impacts of this bill. This feedback has come from entities ranging from charitable organizations and community groups, to Vermont's outdoor recreation sector (vital to our economy and our state's identity) and our burgeoning tech industry. While I do not believe the Legislature intended to adversely impact such a diverse group of organizations in our state, the unintended consequences of this policy are pervasive and unacceptable.

Vermont's outdoor recreation economy and non-profit organizations, like the YMCA, Run Vermont, and the Vermont Special Olympics who offer recreational services to the community, have voiced opposition to provisions in this bill, noting it will greatly inhibit the use of standard waivers, which are central to daily operations.

The outdoor recreation industry helps to generate \$2.6 billion and brings 13 million visitors through our tourism economy. This legislation would hamper the ability of Vermont's outdoor recreation businesses and non-profits to exist, much less grow, and jeopardize the significant tax revenues and direct spending that tourism and outdoor recreation generate.

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By weakening the enforceability of waivers and releases, S.105 increases liability exposure for many Vermont businesses and non-profits. Cross country and alpine ski areas, guide services, trail-based organizations, recreational event providers, environmental and educational programs, college outing groups, land owners, and summer camps all use waivers for protection under the law when a participant in the activity has agreed to assume the associated risks. These entities depend on strong legislation to help enforce waivers. This bill would make it easier for recreation participants to sue and more difficult for recreation providers to secure liability insurance.

With this bill, Vermont would – yet again – be an outlier, making us less competitive with other states. States like New York, Connecticut and Illinois, have proposed model consumer bills like S.105, which have been rejected. On the other hand, New Hampshire and Colorado – states like Vermont, that are highly dependent on recreation – have passed language to enforce waiver forms and strengthen inherent risk laws, moving in the opposite direction of this bill.

While S.105 is intended to protect consumers from unfair terms in standard-form contracts, it will apply to most, if not all, e-commerce transactions, and includes any Vermont business selling goods or services online. E-commerce has proven to be a powerful tool and opportunity for both Vermont businesses and consumers. As we work together to grow the tech industry in Vermont, this legislation will adversely impact these entrepreneurs and inhibit growth and expansion in this important sector.

This bill does not express an intent to address particular types of transactions or particular industries affected. It would discourage the use of certain contract terms without any consideration of legitimate needs to employ them. Rather than directly addressing consumer protections in cases of bad actors or specific consumer abuses, this bill presumes an anti-consumer intent in all instances where an agreement limits certain claims or remedies. And it does it in a way that would be very detrimental to our economy and to the not-for-profit organizations that enrich our quality of life.

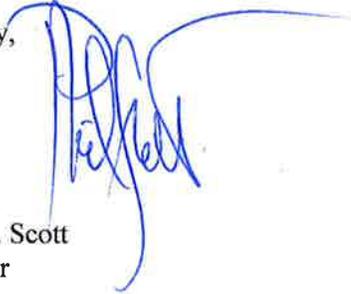
Further, Vermont courts already have the discretion to address the issue of unconscionable terms in contracts. The Vermont Supreme Court has already applied a test in determining whether waiver clauses are enforceable. The decision of the Vermont Supreme Court in *Dalury v. S-K-I, Ltd* stated that “we recognize that no single formula will reach the relevant public policy issues in every factual context... [W]e conclude that ultimately the determination of what constitutes the public interest must be made considering the totality of the circumstances of any given case against the backdrop of current societal expectations,” which could be used when evaluating if a waiver clause would be unconscionable under this bill.

Clearly, current law already protects consumers in this arena. We’d therefore be making it more difficult and less appealing for businesses in sectors vital to our economy to do business in Vermont and eroding the ability of not-for-profit organizations to provide programs and services, without significantly improving consumer protections beyond what’s already achievable through current law.

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As noted, based on the outstanding objections outlined above, I cannot support this piece of legislation and must return them without my signature pursuant to Chapter II, Section 11 of the Vermont Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip B. Scott", with a long horizontal flourish extending to the right.

Philip B. Scott  
Governor

PBS/kp