AN ACT CONCERNING FAIRNESS IN CONSUMER CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective July 1, 2016) For the purposes of this section and sections 2 and 3 of this act:

(1) "Consumer contract" means a contract prepared by or on behalf of a business or commercial party for use in such party's routine business or commercial transactions with consumers;

(2) "Consumer" means an individual who uses, purchases, acquires, attempts to purchase or acquire or receives an offer for any real property, tangible or intangible goods, services or credit for personal, family or household purposes; and

(3) "Business or commercial party" means the party on behalf of which a standard form contract is prepared.

Sec. 2. (NEW) (Effective July 1, 2016) (a) The following contractual terms shall be deemed substantively unconscionable when included in a consumer contract that was not drafted by the consumer:

(1) A requirement that resolution of legal claims take place in a venue that is inconvenient to the consumer;
(2) A waiver of the consumer's substantive rights to assert claims or seek remedies provided by state or federal law;

(3) A waiver of the consumer's right to seek punitive, minimum, multiple or other statutory damages as provided by law or attorney's fees if authorized by statute or common law;

(4) A requirement that any action brought by the consumer with regard to the contract be initiated within a time period that is shorter than the applicable statute of limitations;

(5) A requirement that the consumer pay fees and costs to bring a legal claim that substantially exceed the fees and costs that would be required to bring a claim in a state court or that makes no provision for the waiver of fees and costs for a consumer who cannot afford such fees and costs; and

(6) A failure to permit a party to present evidence in person or to ensure that the consumer can obtain, prior to a hearing, any information that is material to the issue to be determined at such hearing.

(b) 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 the state in determining whether unconscionable terms are enforceable. The common law and the Uniform Commercial Code shall also guide the court in determining the enforceability of unfair terms not specifically identified in subsection (a) of this section.

(c) In determining whether the rebuttable presumption that a term in a consumer contract found to be unconscionable is unseverable from the provision in which it is situated has been rebutted, the court may consider the general principles of contract law regarding the severability of unenforceable terms.

(d) It shall be an unfair and deceptive practice in violation of the
Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q, inclusive, of the general statutes, to include any of the presumptively unconscionable terms identified in subsection (a) of this section in a consumer contract that was drafted by a party other than the consumer. A party who prevails on a claim under this section shall be entitled to all damages and remedies available pursuant to the Connecticut Unfair Trade Practices Act.

Sec. 3. (NEW) (Effective July 1, 2016) (a) A person harmed by a violation of the Connecticut Unfair Trade Practices Act may initiate on behalf of the state an action to recover civil penalties on behalf of the state and to seek injunctive, declaratory or other equitable relief that the state would itself be entitled to seek.

(b) In initiating an action under this section, a person may allege multiple violations that have affected different consumers, provided such violations are of a sufficiently similar kind such that they may be efficiently managed in a single action.

(c) A court may award a person who initiates an action under this section an incentive award of up to twenty-five per cent of the total monetary recovery if such person pursues the action to final judgment or settlement as the prevailing party, or up to ten per cent of the total monetary recovery if the state intervenes in the action and pursues such action to final judgment or settlement as the prevailing party.

(1) A person initiating an action under this section shall serve a copy of the complaint and a letter describing the action on the Attorney General, at which point the action shall be stayed for thirty days. The state may intervene in the action and proceed with any and all claims in the action: (A) As of right within the thirty-day stay; or (B) for good cause, as determined by the court, after the expiration of the thirty-day stay.

(2) The court may stay such discovery for a period of not more than sixty days upon a showing by the state that certain actions of discovery
by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, whether or not the state proceeds with the action. Such a showing shall be conducted in camera as necessary. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the action will interfere with the ongoing criminal or civil investigation or proceedings.

(3) No action may be brought by a private party acting pursuant to this section for any violations previously alleged as the basis for an action brought by the state or by another private party under this section, and no action may be brought by the state for any violations previously alleged as the basis for an action brought by a private party pursuant to this section. Furthermore, when a person initiates an action under this section, no person other than the state may intervene or bring a related action under this section based on the facts underlying the pending action.

(4) The court in which the action brought under this section is filed shall review and approve any proposed settlement of such action to ensure that the settlement provisions are reasonable in light of state law. The court shall also ensure that any incentive fees and attorney fees or costs included in a settlement are reasonable and that the person initiating such action does not recover, as an incentive payment, more than twenty-five per cent of the recovery remitted to the state under the proposed settlement. The proposed settlement shall be submitted to the Attorney General at the same time that it is submitted to the court. If the Attorney General opposes the settlement and expresses such opposition by filing a motion with the court, the court shall decline approval of the settlement.

(5) The state may dismiss any action in which it decides to intervene under subdivision (1) of this subsection notwithstanding the objections of the person who initiated the action.
(6) The state may settle any action in which it decides to intervene under subdivision (1) of this subsection notwithstanding the objections of the person who initiated the action.

(7) An action initiated by a private person under this section shall not bar such person or any other individual from filing a private action based on the same nucleus of operative facts, nor shall a prior private action based on the same nucleus of operative facts bar an action under this section.

(8) Actions under this section are prosecuted on behalf of the state, not on behalf of an individual, and mandatory arbitration agreements between private parties do not apply to actions under this section. No contract shall waive or limit a private party’s right to bring suit under this section by preventing such party from being able to bring an action in a public forum or an action alleging multiple violations committed against multiple consumers pursuant to subsection (b) of this section.

(9) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section that may be given effect without such invalid provision or application, and, to this end, the provisions of this section are declared to be severable.

(d) Unless state law provides a greater amount as the civil penalty recoverable by the state for violations of the Connecticut Unfair Trade Practices Act, a person who commits a violation of such act shall be subject to a civil penalty not to exceed five thousand dollars per violation.

This act shall take effect as follows and shall amend the following sections:

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<tr>
<th>Section 1</th>
<th>July 1, 2016</th>
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<tr>
<td>Sec. 2</td>
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<td>Sec. 3</td>
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Statement of Legislative Commissioners:
In Section 2(a)(1), "an inconvenient venue" was changed to "a venue that is inconvenient to the consumer" for clarity; in Section 3(b), "those" was changed to "such" for consistency with standard drafting conventions; in Section 3(c), "including after settlement of the action in accordance with subdivision (4) of this subsection" was deleted and, in the last line, "or settlement" was inserted before "as the prevailing party," to eliminate redundant language; in Section 3(c)(2), the clauses of the first sentence were reordered and "as necessary" was moved to after "in camera" for consistency with standard drafting conventions; in Section 3(c)(3), "pursuant to" was changed to "under" for consistency; in Section 3(c)(4), "brought under this section" was moved to after "action" for consistency with other provisions of the section, "an" was replaced with "such," and "must" was replaced with "shall" for consistency with standard drafting conventions; and in Section 3(c)(8), "by waiving such party's right to bring such an action in a public forum or" was deleted and "an action in a public forum or" was inserted after "bring" for clarity.

BA Joint Favorable Subst.