



Testimony of Louise DiCocco
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Before the Banking Committee
March 8, 2016

Re: HB 5562, AAC Fairness in Consumer Contracts

Good afternoon Senator Winfield, Representative Lesser, members of the Banking Committee. Thank you for the opportunity to testify today. My name is Louise DiCocco and I am Associate Counsel at the Connecticut Business and Industry Association (CBIA). CBIA represents more than 10,000 companies throughout the state of Connecticut, but most of our members are small businesses of 50 or fewer employees.

CBIA is **OPPOSED** to **HB 5561**. HB 5561 will give consumers the ability to reform contracts that they legally entered into with businesses in Connecticut. In addition, specific sections of the bill seek to redefine the meaning and scope of “unconscionability”.

I will highlight the sections of the bill and the reasons we are opposed. First, Section 2(a)(1) says that consumer contracts must be written in plain language and references the provisions of section 42-152 of the general statutes. Section 42-152 permits a contract to be reformed or for a court to exclude provisions that violate either of the tests laid out in 42-152, which each contain very specific and subjective requirements.

Section 2(a)(3) requires all of the material terms of the consumer contract to be contained in a single document. Depending on the merchant and product, there are certainly products that have contracts/ agreements that are not and cannot be encompassed in a single document.

As far as redefining “unconscionability” is concerned, Section 3(a)(1) deems it substantively unconscionable if a consumer contract not drafted by the consumer includes a requirement that resolution of legal claims take place in an inconvenient venue. Inconvenient venue is defined as a place other than the judicial district where the consumer resides or where the transaction occurred. There can certainly be instances where a billing address differs from an address where a consumer resides or where the transaction took place.

Section 3(a)(2) deems it substantively unconscionable if a consumer contract not drafted by the consumer waives a consumer’s right to assert claims or seek remedies provided by state or federal law. Consumer contracts more often than not contain arbitration clause whereby a consumer waives his/her right to bring suits in courts of general jurisdiction, class arbitrations, or class actions. HB 5561 would appear to nullify arbitration clauses in consumer contracts.

Section 3(a)(4) deems it substantively unconscionable to require an action be brought within a time period that is shorter than the applicable statute of limitations. In Connecticut, the statute of limitations applicable to contract actions is 6 years after the right of action accrues. (§52-576). There are certainly consumer product contracts that have a shorter time frame for bringing any dispute.

Section 3(a)(5) deems it substantively unconscionable if there is no provision for the waiver of fees and costs for a consumer who cannot afford such fees and costs. Section 3(a)(6) deems it substantively unconscionable if a

consumer contract fails to permit a party to present evidence in person or to ensure that a consumer contain obtain material information prior to the hearing. The clause appears to nullify arbitration clauses in contracts as many have provisions written in the contracts that call for discovery and other hearing rules set by the American Arbitration Association (AAA)

Section 3(d) makes it an unfair and deceptive practice in violation of the Connecticut Unfair Trade Practices Act (CUTPA) to include any presumptively unconscionable terms in a consumer contract. Section 3(e) permits private causes of action to be brought for violations of this section in the form of a qui tam suit (brought essentially on behalf of the state), which can then only be dismissed if the Attorney General (AG) consents. This provision is very troublesome because it would make it difficult for businesses to attempt to negotiate with the plaintiff because the AG would have to get involved. In addition, it's not clear whether a plaintiff has to bring suit as a qui tam plaintiff or if a private cause of action can be brought. Finally, section 3(d) then states that any of the identified provisions in Section 3(a) will be deemed a CUTPA violation, subjecting a commercial party to a full array of CUTPA remedies, including compensatory and punitive damages, attorney's fees and injunctive relief.

For the aforementioned reasons, CBIA urges this committee to oppose this bill. If you have any questions, please contact Louise DiCocco at louise.dicocco@cbia.com or 860.244.1169.