

ASSEMBLY BILL NO. 197—ASSEMBLYMEN FLORES;
BENITEZ-THOMPSON AND WATTS

FEBRUARY 18, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to consumer practices.
(BDR 52-899)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to contracts; establishing a rebuttable presumption that certain terms in certain form contracts are unconscionable; establishing certain remedies for the inclusion in a form contract of certain terms found by a court to be unconscionable; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if a court finds that certain contracts or clauses of certain contracts are unconscionable at the time it was made, the court is authorized to refuse to enforce the contract, enforce the contract without the unconscionable clause or limit the application of the unconscionable clause so as to avoid any unconscionable result. (NRS 104.2302, 104A.2108, 116.1112, 116B.275, 118A.230) **Section 1** of this bill creates a rebuttable presumption that, when included in certain form contracts to which a resident of this State who did not draft the form contract is a party, the following contractual terms are unconscionable: (1) a requirement that a claim arising under the contract be resolved in a forum that is inconvenient to the nondrafting party, as defined in **section 1**; (2) a limitation or waiver of the nondrafting party's right to assert a claim or seek a remedy available under state or federal law; (3) a limitation or waiver of the nondrafting party's right to seek punitive damages for any claim for which punitive damages are available; (4) a requirement that the nondrafting party bring a claim within a time limit which expires before the statute of limitations on that claim; or (5) a requirement that the nondrafting party pay fees and costs to bring a claim which are substantially in excess of the fees and costs required to bring the claim in state or federal court. **Section 1** further provides that in an action to enforce a provision that is found to be unconscionable pursuant to **section 1**, if the court finds one of these contractual terms to be unconscionable, the court, in addition to any other award or remedy, is required to award the nondrafting party statutory damages in an amount not to exceed \$1,000 for each contractual term found to be unconscionable, costs and



reasonable attorney's fees. **Section 1** provides that its provisions do not apply to contracts in which one of the parties is a bank, national banking association, savings bank, trust company, savings and loan association, credit union, mortgage broker, mortgage banker, thrift company or insurance company regulated and authorized to do business under the laws of this State or the United States.

Section 2 of this bill provides that the provisions of **section 1** apply only to a contract entered into on or after October 1, 2019.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section and NRS 108.2453, there is a rebuttable presumption that, when included in a form contract to which one of the parties is a natural person residing in this State who did not draft the form contract, the following contractual terms are substantively unconscionable:

(a) A requirement that resolution of any claim arising from the form contract take place in a forum that is inconvenient to the nondrafting party. For the purposes of this paragraph, a forum is inconvenient to the nondrafting party if:

(1) Except as otherwise provided in subparagraph (2), the forum is located in a state other than the state in which the nondrafting party resides, a state other than the state in which the contract was made or a state other than the state in which the nondrafting party suffered injury during performance of the contract.

(2) A claim is brought in, or removed to, a federal court and the forum is located in a federal judicial district other than the federal judicial district in which the nondrafting party resides, a federal judicial district other than the federal judicial district in which the contract was made or a federal judicial district other than the federal judicial district in which the nondrafting party suffered injury during performance of the contract.

(b) A limitation or waiver of the right of the nondrafting party to assert a claim or seek a remedy available under state or federal law.

(c) A limitation or waiver of the right of the nondrafting party to seek punitive damages for any claim for which punitive damages are available.

(d) A requirement that the nondrafting party bring a claim arising under the contract within a time period which expires earlier than the statute of limitations for that claim.



(e) A requirement that the nondrafting party pay fees and costs to bring a claim which are substantially in excess of the fees and costs required to bring such a claim in state or federal court, as applicable.

2. When it is claimed or appears to the court that a contractual term described in subsection 1 is unconscionable, the parties must be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

3. If a court finds that a contractual term described in subsection 1 is unconscionable, the court:

(a) Must, in determining whether the unconscionable term is enforceable, apply the principles of common law and the statutory provisions that normally guide by determination a court of this State of whether an unconscionable contractual term is unenforceable.

(b) May refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

4. In an action in which the drafting party seeks to enforce a contractual term described in subsection 1, if the court finds the term is unconscionable, the nondrafting party, in addition to any other award or remedy available pursuant to law, must be awarded statutory damages in an amount not to exceed \$1,000 for each contractual term found by the court to be unconscionable, costs and reasonable attorney's fees.

5. The provisions of this section do not apply to a contract to which one of the parties is a person doing business pursuant to the authority of any law of this State or of the United States relating to banks, national banking associations, savings banks, trust companies, savings and loan associations, credit unions, mortgage brokers, mortgage bankers, thrift companies or insurance companies, including, without limitation, any affiliate or subsidiary of such a person regardless of whether the affiliate or subsidiary is a bank.

6. As used in this section:

(a) "Drafting party" means a person who drafted a form contract and is a party to the form contract.

(b) "Form contract" means a contract or agreement with standardized terms that is imposed on a consumer without a meaningful opportunity for the consumer to negotiate the standardized terms.

(c) "Nondrafting party" means a natural person who did not draft a form contract but is a party to the form contract.



1 **Sec. 2.** The provisions of this act apply only to a contract
2 entered into on or after October 1, 2019.

