

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1704

By: Representative Gazaway

## For An Act To Be Entitled

AN ACT TO ESTABLISH THE ARKANSAS STATE CONSUMER  
JUSTICE ENFORCEMENT ACT; TO REGULATE STANDARD-FORM  
CONTRACTS; AND FOR OTHER PURPOSES.

## Subtitle

TO ESTABLISH THE ARKANSAS STATE CONSUMER  
JUSTICE ENFORCEMENT ACT; AND TO REGULATE  
STANDARD-FORM CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4 is amended to add an additional  
chapter to read as follows:

### CHAPTER 118

### ARKANSAS STATE CONSUMER JUSTICE ENFORCEMENT ACT

#### Subchapter 1 – General Provisions

#### 4-118-101. Title.

This chapter shall be known and may be cited as the "Arkansas State  
Consumer Justice Enforcement Act".

#### 4-118-102. Definitions.

#### As used in this chapter:

(1)(A) "Inconvenient venue" means:

(i) A state other than the state in which a party to  
a standard-form contract resides or a standard-form contract was consummated;



1 and

2 (ii) A place, designated or claimed by federal law,  
3 that is a place other than the federal judicial district where a party to a  
4 standard-form contract resides or a standard-form contract was consummated.

5 (B) "Inconvenient venue" does not include the state or  
6 federal judicial district in which the individual suffered injury during the  
7 performance of a standard-form contract;

8 (2) "Individual" means a natural person;

9 (3) "Party" means an individual, group, unincorporated  
10 association, limited or general partnership, limited liability corporation,  
11 corporation, professional fund raiser, charitable organization, or other  
12 business entity that has made an agreement under a standard-form contract;  
13 and

14 (4) "Standard-form contract" means a written or other record of  
15 the total legal obligation resulting from the parties' agreement under legal  
16 terms for the purpose of specifying the rights and obligations of parties in  
17 a transaction.

18  
19 4-118-103. Unconscionable terms in standard-form contracts -  
20 Prohibited.

21 (a) In a standard-form contract to which one (1) of the parties to the  
22 standard-form contract is an individual and that individual did not draft the  
23 standard-form contract, there is a rebuttable presumption that the following  
24 contractual terms are substantively unconscionable when included in a  
25 standard-form contract:

26 (1) A requirement that resolution of legal claims take place in  
27 an inconvenient venue;

28 (2) A waiver of the individual's right to assert claims or seek  
29 remedies provided by state or federal statute;

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

32 (4) A provision that limits the time in which an action may be  
33 brought under the standard-form contract or that waives the statute of  
34 limitations under § 4-2-725, § 16-56-105, § 16-56-111, and § 16-56-115; and

35 (5) A requirement that the individual pay fees and costs to  
36 bring a legal claim subsequently in excess of the required fees and costs to

1 bring a claim in a state court or in a federal court.

2 (b)(1) When determining whether the terms described in subsection (a)  
3 of this section are unenforceable, a court shall consider the principles that  
4 normally guide courts in this state in determining whether unconscionable  
5 terms are enforceable.

6 (2) The common law and the Uniform Commercial Code shall guide  
7 courts in determining the enforceability of unfair terms not specifically  
8 identified under subsection (a) of this section.

9 (c) If a party claims or it appears to the court that the standard-  
10 form contract or any clause within the standard-form contract is  
11 unconscionable, the parties shall be afforded a reasonable opportunity to  
12 present evidence regarding its commercial setting, purpose, and effect to aid  
13 the court in making a determination.

14 (d) If a court finds the a standard-form contract contains an  
15 unconscionable term, the court shall:

16 (1) Limit the application of the unconscionable term or the  
17 clause containing that term as to avoid any illegal or unconscionable result;  
18 or

19 (2) Refuse to enforce the entire standard-form contract or the  
20 specific part, clause, or provision containing the unconscionable term.

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22 4-118-104. Unfair and deceptive act or practice.

23 (a)(1) A violation of this chapter is punishable by action of the  
24 Attorney General under the provisions of § 4-88-101 et seq.

25 (2) All remedies, penalties, and authority granted to the  
26 Attorney General under § 4-88-101 et seq. shall be available to the Attorney  
27 General for the enforcement of this chapter.

28 (b) In an underlying legal dispute between the drafting and  
29 nondrafting parties in which the drafting party seeks to enforce one (1) or  
30 more terms identified in § 4-118-103, and upon a finding that such terms are  
31 actually unconscionable, the court may find that the drafting party has  
32 committed an unfair and deceptive act or practice in violation of § 4-88-101  
33 et seq.

34 (c) Each term the drafting party seeks to enforce that is found by the  
35 court to be unconscionable may constitute a separate violation of this  
36 chapter.

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2 4-118-105. Applicability.

3 This chapter shall not apply to a standard-form contract to which one  
4 (1) party is:

5 (1) Regulated by the Insurance Commissioner, the Securities  
6 Commissioner, the State Highway Commission, the Bank Commissioner, or another  
7 regulatory body or officer acting under statutory authority of this state or  
8 the United States; or

9 (2) A financial institution as defined under § 23-45-102.  
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