

HOUSE BILL No. 5052

September 20, 2001, Introduced by Reps. Gielegem, Bovin, Kolb, Neumann, Dennis and Jacobs and referred to the Committee on Commerce.

A bill to require the use of plain language in consumer contracts; to impose certain requirements relating to consumer contracts; to prescribe the powers and duties of certain state officers and departments; to provide remedies; to provide for limitation of actions; and to provide for civil fines and prescribe penalties for violations of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan plain language law".

3 Sec. 2. As used in this act:

4 (a) "Consumer" means an individual who leases, buys, or
5 finances a good, property, or service primarily for noncommercial
6 personal, family, or household purposes and not for resale.

7 (b) "Consumer contract" means a written agreement between a
8 seller, lessor, or creditor and a consumer for the purchase,

1 lease, or financing of a good, property, or service primarily for
2 noncommercial personal, family, or household purposes. Consumer
3 contract does not include either of the following:

4 (i) An insurance policy form, annuity contract, rider or
5 indorsement form, form of renewal certificate, or group certifi-
6 cate form.

7 (ii) A contract drafted solely by the consumer entering into
8 the contract, if the contract specifies that it was drafted
9 solely by that consumer.

10 (c) "Plain language" means written in a clear and coherent
11 manner using words and phrases with common and everyday meanings,
12 appropriately divided and captioned by its various sections.

13 Sec. 3. (1) Except as provided in subsection (3):

14 (a) A seller, lessor, or creditor shall not offer or execute
15 a consumer contract in this state unless the contract is written
16 in plain language.

17 (b) A commercial preparer of contract forms shall not sell
18 or furnish to a person a contract form that may be used as a con-
19 sumer contract in this state unless the form is written in plain
20 language.

21 (2) A violation of subsection (1) is an unfair or deceptive
22 method, act, or practice in the conduct of trade or commerce.

23 (3) This act does not apply to either of the following:

24 (a) Language of a consumer contract that is prescribed by
25 state or federal statute or by rules or regulations promulgated
26 pursuant to a state or federal statute.

1 (b) Words and phrases that are part of a legal description
2 of real property.

3 Sec. 4. (1) If the attorney general has probable cause to
4 believe that a person has violated, is violating, or is about to
5 violate this act, and provides notice in accordance with this
6 section, the attorney general may bring an action to enjoin the
7 person from violating this act. The action may be brought in the
8 circuit court for the county in which the person resides or is
9 doing business or, if the person is not doing business in this
10 state, in the circuit court for Ingham county. The court may
11 award costs to the prevailing party. For each persistent and
12 knowing violation of section 3, the court may impose a civil fine
13 of not more than \$10,000.00. For purposes of this subsection, a
14 persistent and knowing violation of section 3 occurs if the court
15 determines that a person is in violation of this act and that
16 either of the following applies:

17 (a) A prior final judgment that is not subject to a claim of
18 appeal provides that the consumer contract language at issue vio-
19 lates this act.

20 (b) The person is violating an assurance of discontinuance
21 provided under section 5.

22 (2) Unless notice is waived by the court on good cause shown
23 not less than 10 days before the commencement of an action under
24 this section, the attorney general shall notify a person alleged
25 to violate this act of the attorney general's intent to seek an
26 injunction under this act. The attorney general also shall
27 provide the person an opportunity to confer with him or her in

1 person, by counsel, or by other representative as to the proposed
2 action before the proposed filing date. The notice may be given
3 to the person by mail, postage prepaid, to the person's usual
4 place of business or, if the person does not have a usual place
5 of business, to the person's last known address, or, with respect
6 to a corporation only, to a resident agent who is designated to
7 receive service of process or to an officer of the corporation.

8 (3) A prosecuting attorney or law enforcement officer
9 receiving notice of an alleged violation of this act, or of a
10 violation of an injunction, order, decree, or judgment issued in
11 an action brought pursuant to this section, or of an assurance
12 given under this act, immediately shall forward written notice of
13 the alleged violation or violation together with any pertinent
14 information he or she may have to the department of attorney
15 general.

16 Sec. 5. (1) The attorney general may accept an assurance of
17 discontinuance of an alleged violation of this act from the
18 person who is alleged to have violated, be violating, or be about
19 to violate this act. An assurance under this section is not an
20 admission of guilt and shall not be introduced in a proceeding
21 other than a proceeding described in section 4 for a persistent
22 and knowing violation of section 3. The assurance may include a
23 stipulation for any or all of the following:

24 (a) The person's voluntary payment of the costs of
25 investigation.

26 (b) The person's payment of an amount to be held in escrow
27 pending the outcome of an action.

1 (c) The person's payment of an amount for restitution to an
2 aggrieved person.

3 (2) An assurance of discontinuance shall be in writing and
4 may be filed with the circuit court for Ingham county. The clerk
5 of the court shall maintain a record of the filing. Unless
6 rescinded by the parties or voided by a court for good cause, the
7 assurance may be enforced in the circuit court by the parties to
8 the assurance. The assurance may be modified by the parties or
9 by a court for good cause.

10 Sec. 6. (1) A consumer may bring an action to enjoin a
11 person who is violating this act, and also may seek money damages
12 as provided in this section.

13 (2) Except as provided in subsections (3) and (4), a con-
14 sumer who suffers loss as a result of a violation of this act may
15 bring an action against a creditor, seller, or lessor who vio-
16 lated this act to recover actual damages and exemplary damages of
17 \$50.00, together with reasonable attorney fees.

18 (3) A consumer who suffers loss arising from a person's vio-
19 lation of this act may bring a class action against the person on
20 behalf of consumers injured for the lesser of either of the
21 following:

22 (a) Actual damages.

23 (b) \$10,000.00.

24 (4) A defendant who attempts in good faith to comply with
25 this act is not liable for more than actual damages.

26 (5) An action under this section shall not be brought more
27 than 3 years after the later of either of the following:

1 (a) The offering of the consumer contract to a consumer for
2 his or her signature or signing of the consumer contract that is
3 the subject of the action.

4 (b) The full performance of the contract.

5 (6) If a consumer commences an action against another
6 person, the defendant may assert, as a defense, counterclaim, or
7 offset, any claim under this act arising out of the transaction
8 on which the action is brought and may join as a party defendant
9 any person who prepared, sold, or furnished the principal
10 defendant the contract form if the form was prepared, sold, or
11 furnished after the effective date of this act.

12 (7) In an action brought by a consumer under this section,
13 the court shall construe the consumer contract that is the
14 subject of the action to conform to the reasonable expectations
15 of the consumer if the court finds that the consumer contract is
16 not written in plain language as required in section 3.

17 (8) Except as provided in subsection (7), a violation of
18 this act does not affect the enforceability of a contract.

19 Sec. 7. Upon commencement of an action brought pursuant to
20 section 6 or 10, the clerk of the court shall mail a copy of the
21 complaint to the attorney general, and upon entry of a judgment
22 or decree in the action, the clerk of the court shall mail a copy
23 of the judgment, decree, or order to the attorney general.

24 Sec. 8. The attorney general or a prosecuting attorney is
25 not required to pay a filing fee for the commencement of an
26 action or motions made during an action under this act.

1 Sec. 9. A law enforcement officer in the state, if
2 requested by the attorney general or a prosecuting attorney,
3 shall aid and assist in an investigation of an alleged or actual
4 violation of this act.

5 Sec. 10. A prosecuting attorney may conduct an investiga-
6 tion pursuant to this act and may institute and prosecute an
7 action under this act in the same manner as the attorney
8 general.

9 Sec. 11. (1) A seller, creditor, or lessor may submit a
10 consumer contract to the attorney general for review as to
11 whether the contract complies with the requirements of
12 section 3. Within 60 days after receiving the contract, the
13 attorney general shall do 1 of the following:

14 (a) Certify that the contract complies with section 3.

15 (b) Decline to certify that the contract complies with
16 section 3 and note his or her objections to the contractual
17 language.

18 (c) Decline to review the contract and refer the party sub-
19 mitting the contract to other previously certified contracts of
20 the same type.

21 (d) Decline to review the contract because the contract's
22 compliance with section 3 is the subject of pending litigation.

23 (e) Decline to review the contract because the contract is
24 not subject to section 3.

25 (2) An action of the attorney general pursuant to this sec-
26 tion may be appealed pursuant to the administrative procedures
27 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

1 (3) Certification of a consumer contract pursuant to
2 subsection (1) is not an approval of the contract's legality or
3 legal effect beyond complying with section 3.

4 (4) Failure to submit a contract to the attorney general for
5 review pursuant to subsection (1) does not show a lack of good
6 faith and does not raise a presumption that the contract violates
7 section 3. Failure to use a contract referred to the seller,
8 lessor, or creditor as a previously certified contract pursuant
9 to subsection (1)(c) does not show a lack of good faith and does
10 not raise a presumption that a contract used by that seller,
11 lessor, or creditor violated section 3.

12 (5) The attorney general may assess a fee of not more than
13 \$50.00 for the costs of reviewing a consumer contract pursuant to
14 subsection (1).

15 Sec. 12. This act takes effect 1 year after its enactment
16 and does not affect any contracts executed before its effective
17 date.