

HOUSE BILL No. 4995

July 13, 1989, Introduced by Reps. Ciaramitaro, Jondahl, Emerson, Brown, Gire, DeMars, Gubow, Perry Bullard, Jaye and Fitzgerald and referred to the Committee on Consumers.

A bill to provide for the readability of consumer contracts; to impose certain requirements relating to consumer contracts; to create certain presumptions regarding the readability of a consumer contract; 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 English law".

3 Sec. 2. As used in this act:

4 (a) "Consumer" means an individual who leases or buys for
5 his or her own use or the use of another, but not for resale.

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

1 lease, or financing of goods, property, or a service primarily
2 for personal, family, or household purposes, but not for commer-
3 cial purposes. Consumer contract does not include an insurance
4 policy form, annuity contract, rider or indorsement form, form of
5 renewal certificate, or group certificate form. Consumer con-
6 tract does not include a contract drafted solely by the consumer
7 entering into the contract, if the contract indicates that it was
8 drafted solely by that consumer.

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

12 Sec. 3. (1) After the effective date of this act, a seller,
13 lessor, or creditor shall not present to a consumer for signing
14 or shall not execute a consumer contract in this state unless the
15 contract is written in plain language. After the effective date
16 of this act, a commercial preparer of contract forms shall not
17 sell or furnish to a person a contract form that may be used as a
18 consumer contract in this state, unless the form is written in
19 plain language.

20 (2) The presentation to a consumer for signing or the execu-
21 tion of a consumer contract that is not written in plain language
22 constitutes an unfair or deceptive method, act, or practice in
23 the conduct of trade or commerce.

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

25 (a) Language of a consumer contract that is prescribed by
26 state or federal statute or by rules or regulations promulgated
27 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 upon notice given in accordance with this
6 section, the attorney general may bring an action, in accordance
7 with principles of equity, to restrain the defendant by temporary
8 or permanent injunction from violating this act. The action may
9 be brought in the circuit court for the county where the
10 defendant is established or conducts business or, if the
11 defendant is not established in this state, in the circuit court
12 for Ingham county. The court may award costs to the prevailing
13 party. For each persistent and knowing violation of section 3,
14 the court may assess the defendant a civil fine of not more than
15 \$10,000.00. For purposes of this subsection, a persistent and
16 knowing violation of section 3 consists of a violation as deter-
17 mined by the court, provided that each of the following applies:

18 (a) A prior final judgment has found the same consumer con-
19 tract language in violation of this act.

20 (b) A prior final judgment against the defendant is not
21 subject to a claim of appeal.

22 (c) The defendant has violated this act more than once or
23 the defendant is found to be violating an assurance of discon-
24 tinuance pursuant to section 5.

25 (2) Unless waived by the court on good cause shown not less
26 than 10 days before the commencement of an action under this
27 section, the attorney general shall notify the person of his or

1 her intended action and give the person an opportunity to confer
2 with the attorney general in person, by counsel, or by other rep-
3 resentative as to the proposed action before the proposed filing
4 date. The notice may be given to the person by mail, postage
5 prepaid, to the person's usual place of business or, if the
6 person does not have a usual place of business, to the person's
7 last known address, or, with respect to a corporation only, to a
8 resident agent who is designated to receive service of process or
9 to an officer of the corporation.

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

17 Sec. 5. (1) If the attorney general has authority to insti-
18 tute an action or proceeding pursuant to section 4, the attorney
19 general may accept an assurance of discontinuance of an alleged
20 violation of this act from the person who is alleged to have vio-
21 lated, be violating, or be about to violate this act. The assur-
22 ance shall not constitute an admission of guilt nor be introduced
23 in any other proceeding. The assurance may include a stipulation
24 for any or all of the following:

25 (a) The voluntary payment by the person for the costs of
26 investigation.

1 (b) An amount to be held in escrow pending the outcome of an
2 action.

3 (c) An amount for restitution to an aggrieved person.

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

11 Sec. 6. (1) Whether or not a consumer seeks damages or has
12 an adequate remedy at law, a consumer may bring an action to
13 enjoin, in accordance with the principles of equity, a person who
14 is violating this act.

15 (2) Except in a class action and as provided in subsection
16 (4), a consumer who suffers loss as a result of a violation of
17 this act may bring an action against a creditor, seller, or
18 lessor to recover actual damages and a penalty of \$50.00,
19 together with reasonable attorneys' fees.

20 (3) A consumer who suffers loss as a result of a violation
21 of this act may bring a class action on behalf of consumers
22 injured, for the actual damages or \$10,000.00, whichever is less,
23 caused by a violation of this act.

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

26 (5) An action under this section shall not be brought more
27 than 3 years after the presentation, if not signed, or signing of

1 the consumer contract that is the subject of the action, nor
2 after the contract has been fully performed, whichever is later.
3 However, when a consumer commences an action against another
4 person, the defendant may assert, as a defense, counterclaim, or
5 offset, any claim under this act arising out of the transaction
6 on which the action is brought and may join as a party defendant
7 any person who prepared, sold, or furnished the principal
8 defendant the contract form if the form was prepared, sold, or
9 furnished after the effective date of this act.

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

15 (7) A violation of this act does not affect the enforceabil-
16 ity of a contract.

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

22 Sec. 8. Filing fees shall not be required to be paid for
23 the commencement of an action or the filing of a voluntary assur-
24 ance pursuant to this act by the attorney general or prosecuting
25 attorney.

26 Sec. 9. A law enforcement officer in the state, if
27 requested by the attorney general or a prosecuting attorney,

1 shall aid and assist in an investigation of an alleged or actual
2 violation of this act.

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

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

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

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

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

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

21 (e) Decline to review the contract because the contract is
22 not subject to section 3.

23 (2) An action of the attorney general pursuant to this sec-
24 tion may be appealed pursuant to the administrative procedures
25 act of 1969, Act No. 306 of the Public Acts of 1969, being sec-
26 tions 24.201 to 24.328 of the Michigan Compiled Laws.

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

6 (4) Failure to submit a contract to the attorney general for
7 review pursuant to subsection (1) does not show a lack of good
8 faith nor does it raise a presumption that the contract violates
9 section 3. Failure to use a contract referred to the party as a
10 previously certified contract pursuant to subsection (1)(c) does
11 not show a lack of good faith nor does it raise a presumption
12 that a contract used by that party violated section 3.

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

16 Sec. 12. This act shall take effect 1 year after it is
17 enacted into law and shall not affect any contracts executed
18 before the effective date of this act.