

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 1281

4
5 By: Representative Ledbetter

For An Act To Be Entitled

8 THE "FAIR BARGAIN ACT OF 2003".

Subtitle

11 THE "FAIR BARGAIN ACT OF 2003".

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

17 SECTION 1. Title.

18 This act shall be known and cited as the "Fair Bargain Act of 2003".

20 SECTION 2. Legislative findings.

21 The General Assembly finds that:

22 (1) Standard form contracts, in whatever form recorded, do not
23 necessarily express the voluntary and informed assent of both parties;

24 (2) The party drafting a standard form contract will often
25 foresee legal disputes with one (1) or more of the parties to whom the
26 contract is submitted for acceptance, while the party accepting a standard
27 form contract will seldom foresee legal disputes or prudently evaluate the
28 loss of procedural rights affecting their outcome;

29 (3) Unless restrained by law, the party drafting a standard form
30 contract can exploit the inadvertence, imprudence, or limited literacy of the
31 party to whom the contract is presented for acceptance by including
32 provisions disabling that party's procedural rights necessary or useful to
33 the enforcement of substantive rights otherwise purportedly conferred by the
34 contracts in which the provisions appear, or by state or federal law; and

35 (4) This use of standard form contracts is unconscionable.

36



1 SECTION 3. Definitions.

2 As used in this act:

3 (1) “Standard form contract or lease” means a contract or lease
 4 prepared by a party for whom its use is routine in business transactions with
 5 consumers, borrowers, tenants, livestock or poultry growers, franchisees, or
 6 employees;

7 (2) “Livestock or poultry grower” means a person engaged in the
 8 business of raising and caring for livestock or poultry in accordance with a
 9 growout contract, marketing agreement, or other arrangement under which a
 10 livestock or poultry grower raises and cares for livestock or poultry,
 11 whether the livestock or poultry is owned by the person or by another person;

12 (3) “Rights enforcement disabling provision” means a contract
 13 provision modifying or limiting otherwise available procedural rights
 14 necessary or useful to a consumer, borrower, tenant, livestock or poultry
 15 grower, franchisee, or employee in the enforcement of substantive rights
 16 against a party drafting a standard form contract or lease, including a
 17 clause requiring the consumer, borrower, tenant, livestock or poultry grower,
 18 franchisee, or employee to:

19 (A) Assert any claim against the party who prepared the form in
 20 a forum that is less convenient, more costly, or more dilatory than a
 21 judicial forum established in this state for the resolution of the dispute;

22 (B) Assume a risk of liability for the legal fees of the party
 23 preparing the contract, unless those fees are authorized by statute,
 24 reasonable in amount and incurred to enforce a promise to pay money;

25 (C) Forego access to evidence otherwise obtainable under the
 26 rules of procedure of a convenient judicial forum available to hear and
 27 decide a dispute between the parties;

28 (D) Present evidence to a purported neutral party
 29 who may reasonably be expected to regard the party preparing the
 30 contract as more likely to be a future employer of the neutral
 31 party than is that party’s adversary;

32 (E) Forego recourse to appeal from a decision not
 33 based on substantial evidence or disregarding his or her legal
 34 rights;

35 (F) Decline to participate in a class action;

36 (G) Forego an award of attorneys’ fees, civil penalties,

1 punitive damages, or of multiple damages otherwise available under the law;
2 or

3 (H) Limit the time for asserting a claim for relief
4 notwithstanding an otherwise applicable statute of limitations.

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7 SECTION 4. Rights enforcement disabling provision revocable.

8 (a) A rights enforcement disabling provision that is included in a
9 standard form contract or lease is revocable by the consumer, borrower,
10 tenant, livestock or poultry grower, franchisee, or employee.

11 (b)(1) Revocation shall be in writing and communicated within a
12 reasonable time after a dispute between the parties to the contract has
13 arisen and after the consumers, borrowers, tenants, livestock or poultry
14 growers, franchisees, or employees has had an opportunity to seek counsel on
15 the effect of the provision.

16 (2) A party seeking to enforce a rights enforcement disabling
17 provision after it has been revoked shall be liable for any resulting legal
18 costs, including a reasonable attorneys' fee.

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20 SECTION 5. Covered transactions.

21 This act shall not apply to a provision in any contract:

22 (1) For the sale of property having a value in excess of two hundred
23 thousand dollars (\$200,000), or for a loan in excess of two hundred thousand
24 dollars (\$200,000) to purchase property;

25 (2) For the lease of property having a value in excess of two hundred
26 thousand dollars (\$200,000), or for a loan in excess of two hundred thousand
27 dollars (\$200,000) to lease property;

28 (3) For the delivery of services having a value in excess of two
29 hundred thousand dollars (\$200,000), or for a loan in excess of two hundred
30 thousand dollars (\$200,000) to purchase services;

31 (4) Of employment providing for compensation in excess of one hundred
32 thousand dollars (\$100,000) a year;

33 (5) That is an agreement to maintain a local business franchise having
34 gross receipts in excess of one million dollars (\$1,000,000) a year; or

35 (6) That is a commercial letter of credit.
36

SECTION 6. Agreements to arbitrate future disputes preserved.

Nothing in this act shall preclude parties from making a binding agreement to arbitrate a future dispute if the arbitration agreement does not impose on any consumer, borrower, tenant, livestock or poultry grower, franchisee, or employee any rights enforcement disabilities.

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