

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  
4

As Engrossed: H2/17/03

# A Bill

HOUSE BILL 1281

5 By: Representative Ledbetter  
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7

## For An Act To Be Entitled

8 THE "FAIR BARGAIN ACT OF 2003".  
9

### Subtitle

10 THE "FAIR BARGAIN ACT OF 2003".  
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15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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17 *SECTION 1. Title.*

18 *This act shall be known and cited as the "Fair Bargain Act of 2003".*  
19

20 *SECTION 2. Legislative findings.*

21 *The General Assembly finds that:*

22 *(1) Depending on the parties respective bargaining positions,*  
23 *standard form contracts, in whatever form recorded, may not always reflect*  
24 *the voluntary and informed consent of both parties;*

25 *(2) The party drafting a standard form contract will often*  
26 *foresee legal disputes with one (1) or more of the parties to whom the*  
27 *contract is submitted for acceptance, while the party accepting a standard*  
28 *form contract may not foresee legal disputes or prudently evaluate the loss*  
29 *of procedural rights affecting their outcome; and*

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

2            As used in this act:

3            (1) "Contractor" means a person who owns poultry or livestock that is  
4 raised or cared for by a livestock or poultry grower;

5            (2) "Standard form contract or lease" means a contract or lease  
6 prepared by a party for whom its use is routine in business transactions with  
7 consumers, borrowers, tenants, livestock or poultry growers, franchisees, or  
8 employees;

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

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

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

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

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

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

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

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

1 (G) Forego an award of attorneys' fees, civil penalties,  
2 punitive damages, or of multiple damages otherwise available under the law;  
3 or

4 (H) Limit the time for asserting a claim for relief  
5 notwithstanding an otherwise applicable statute of limitations.  
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8 SECTION 4. Rights enforcement disabling provision revocable.

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

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

17 (2) A party seeking to enforce a rights enforcement disabling  
18 provision after it has been revoked shall be liable for any resulting legal  
19 costs, including a reasonable attorneys' fee.  
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21 SECTION 5. Exempt transactions.

22 (a) This act shall not apply to any contract:

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

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

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

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

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

36 (6) That is a commercial letter of credit;

1                   (7) Approved by the Arkansas Realtors Association; or  
2                   (8) In which the party preparing the contract presents in  
3 writing the option of striking any rights disabling provisions contained in  
4 the contract.

5                   (b) Nothing herein is intended to exempt from coverage any standard  
6 form contract between a contractor and a livestock or poultry grower.

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8                   SECTION 6. Agreements to arbitrate future disputes preserved.  
9                   Nothing in this act shall preclude parties from making a binding  
10 agreement to arbitrate a future dispute if the arbitration agreement does not  
11 impose on any consumer, borrower, tenant, livestock or poultry grower,  
12 franchisee, or employee any rights enforcement disabilities.

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/s/ Ledbetter