

# HB5258



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5258

Introduced 2/8/2012, by Rep. Maria Antonia Berrios

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Consumer Contract Plain Language Act. Requires consumer contracts to be written in a simple, clear, understandable, and easily readable manner. Establishes the requirements necessary for compliance with the Act. Authorizes the Attorney General to enforce the Act. Provides remedies, including statutory damages. Effective immediately.

LRB097 19251 JLS 64494 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning consumer contract protection in  
2 Illinois.

3 **Be it enacted by the People of the State of Illinois,**  
4 **represented in the General Assembly:**

5 Section 1. Short title. This Act may be cited as the  
6 Consumer Contract Plain Language Act.

7 Section 5. Definitions. As used in this Act:

8 "Consumer" means an individual who borrows, buys, or leases  
9 services or products under a consumer contract.

10 "Consumer contract" or "contract" means a written  
11 agreement between a consumer and a party, acting in the usual  
12 course of business, for products or services made or performed  
13 for primarily personal, family, or household purposes. A  
14 "consumer contract" includes, but is not limited to, standard  
15 form contracts, consumer agreements, forms, or terms.

16 "Covered entity" means a person who utilizes consumer  
17 contracts in the usual course of business.

18 "Transaction" means a business transaction that occurs  
19 between a consumer and a covered entity for the exchange of  
20 products or services through the use of a consumer contract.

21 Section 10. Scope. This Act applies to all consumer  
22 contracts.

1           Section 15. Plain language. A contract entered into on or  
2 after the effective date of this Act shall be written in a  
3 simple, clear, understandable, and easily readable manner. In  
4 determining whether a contract as a whole has been written in a  
5 simple, clear, understandable, and easily readable manner, a  
6 court, the Attorney General, or proper regulatory agency, shall  
7 apply the provisions of Section 20.

8           Section 20. Requirements for contracts.

9           (a) For a contract to be simple, clear, understandable, and  
10 easily readable, it must be written in plain language. A  
11 contract is written in plain language if:

12           (1) it is written in a clear and coherent manner using  
13 words with common and everyday meanings; use of technical  
14 terms or words of art is not, however, in and of itself a  
15 violation of this Act;

16           (2) it is appropriately divided and captioned by its  
17 various sections;

18           (3) it uses type of readable size and no less than  
19 8-point font;

20           (4) it uses layout and spacing that separate the  
21 paragraphs and sections of the contract from each other and  
22 from the borders of the paper or medium upon which it is  
23 displayed;

24           (5) it uses simple and active verb forms;

1           (6) it uses ink that contrasts with the paper or medium  
2 upon which it is displayed;

3           (7) it does not contain a provision that permits the  
4 unilateral modification of the contract by the covered  
5 entity to the disadvantage of the consumer without explicit  
6 consumer consent after the execution of the contract;

7           (8) it uses a table of contents or alphabetical index  
8 and definitional glossary for all contracts with more than  
9 2,000 words; and

10          (9) conditions and exceptions to the main promise of  
11 the contract are given prominence equal to that given to  
12 the main promise and are in at least 10-point bold type.

13          (b) A contract may not be simple, clear, understandable, or  
14 easily readable if it contains one or more the following:

15           (1) cross references that are confusing;

16           (2) references to terms not included in the consumer  
17 contract that are necessary to understand its material  
18 provisions;

19           (3) sentences that are of greater length than  
20 necessary;

21           (4) sentences that contain double negatives and  
22 exceptions to exceptions;

23           (5) sentences and sections that are in a confusing or  
24 illogical order;

25           (6) the use of words with obsolete meanings or words  
26 that differ in their legal meaning from their common,

1 ordinary meaning; and

2 (7) frequent use of Old English and Middle English  
3 words and Latin and French phrases.

4 Section 25. Content of contracts. A covered entity shall  
5 include a clear and conspicuous description of the terms of the  
6 contract, including the total cost of all fees and other  
7 charges or waiver of rights in connection with the transaction,  
8 in English and in the language in which the transaction was  
9 conducted.

10 Section 30. Enforcement. The Illinois Attorney General may  
11 bring an action to enforce this Act and to obtain injunctive  
12 relief in any court of competent jurisdiction not later than 5  
13 years after the date of the violation.

14 Section 35. Safe harbor. There shall be no liability under  
15 Section 40 if any of the following occurs:

16 (1) the consumer wrote the contract or the part of it  
17 that violates this Act; or

18 (2) the creditor, seller, or lessor made a good faith  
19 and reasonable effort to comply with this Act.

20 Section 40. Penalties. A person who knowingly violates the  
21 requirements of Section 20 shall be liable to the consumer for  
22 the following:

1           (1) compensation in an amount equal to the value of any  
2 actual loss caused by the violation of this Act;

3           (2) statutory damages of the lesser of \$1000 or the  
4 total amount of the contract;

5           (3) court costs;

6           (4) reasonable attorney's fees; and

7           (5) any equitable and other relief ordered by the  
8 court.

9           Section 99. Effective date. This Act takes effect upon  
10 becoming law.