

SUBSTITUTE FOR  
HOUSE BILL NO. 4028

A bill to provide for the readability of 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 substantially for noncom-  
6 mercial personal, family, or household purposes and not for  
7 resale.

**HB4028, As Passed House, February 5, 1998**

House Bill No. 4028

2

1       (b) "Consumer contract" means a written contract between a  
2 seller, lessor, or creditor and a consumer for the purchase,  
3 lease, or financing of a good, property, or service primarily for  
4 noncommercial personal, family, or household purposes. Consumer  
5 contract does not include either of the following:

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

9       (ii) A contract or contract provision drafted solely by the  
10 consumer entering into the contract, if the contract or contract  
11 provision specifies that it was drafted solely by that consumer.

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

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

16       (a) A person shall not offer or execute a consumer contract  
17 in this state unless the contract is written in plain language.

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

22       (2) This act does not apply to either of the following:

23       (a) Language of a consumer contract that is required by  
24 state or federal statute or by rules or regulations promulgated  
25 under a state or federal statute.

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

1       Sec. 4. (1) A consumer contract is presumed to be written  
2 in plain language if it achieves a score of 50 or more points  
3 under the following test:

4       (a) The total number of words contained in the consumer con-  
5 tract is divided by the total number of sentences contained in  
6 that contract.

7       (b) The quotient determined under subdivision (a) is multi-  
8 plied by a factor of 1.015.

9       (c) The total number of syllables contained in the consumer  
10 contract is divided by the total number of words in that  
11 contract.

12       (d) The quotient determined under subdivision (c) is multi-  
13 plied by a factor of 84.6.

14       (e) The amounts determined under subdivisions (b) and (d)  
15 are subtracted from 206.835.

16       (2) The presumption created under subsection (1) may be  
17 rebutted by evidence establishing that the consumer contract is  
18 not written in a clear and coherent manner.

19       (3) For calculations under this section, each of the follow-  
20 ing constitutes a single word:

21       (a) A contraction.

22       (b) A hyphenated word.

23       (c) A combination of numbers and letters that designates a  
24 finite number.

25       (4) For calculations under this section, a consumer contract  
26 containing not more than 10,000 words shall be examined in its  
27 entirety. If the consumer contract contains more than 10,000

**HB4028, As Passed House, February 5, 1998**

House Bill No. 4028

4

1 words, not less than two 200-word samples per page may be  
2 examined in lieu of the entire contract.

3 (5) Language in a consumer contract that is any of the fol-  
4 lowing shall not be considered in the calculations under subsec-  
5 tion (1):

6 (a) Words and phrases required by state or federal statute,  
7 or by a rule promulgated under a state or federal statute.

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

10 Sec. 5. (1) If the attorney general has probable cause to  
11 believe that a person has violated, is violating, or is about to  
12 violate this act, and provides notice in accordance with this  
13 section, the attorney general may bring an action to enjoin the  
14 person from violating this act. The action may be brought in the  
15 circuit court for the county in which the person is established  
16 or conducts business or, if the person is not established in this  
17 state, in the circuit court for Ingham county. The court may  
18 award costs to the prevailing party. For each persistent and  
19 knowing violation of section 3, the court may impose a civil fine  
20 of not more than \$10,000.00. For purposes of this subsection, a  
21 persistent and knowing violation of section 3 occurs if the court  
22 determines that a person knowingly violated this act on more than  
23 1 occasion, or if either of the following applies:

24 (a) The court determines that the person is in violation of  
25 this act, a final judgment against the person has been entered  
26 for a prior violation of this act, and that judgment is not  
27 subject to a claim of appeal.

1       (b) The person is violating an assurance of discontinuance  
2 provided under section 6.

3       (2) Unless notice is waived by the court on good cause shown  
4 not less than 10 days before the commencement of an action under  
5 this section, the attorney general shall notify a person alleged  
6 to violate this act of the attorney general's intent to seek an  
7 injunction under this act. The attorney general shall addition-  
8 ally provide the person an opportunity to confer with him or her  
9 in person, by counsel, or by other representative as to the pro-  
10 posed action before the proposed filing date. The notice may be  
11 given to the person by mail, postage prepaid, to the person's  
12 usual place of business or, if the person does not have a usual  
13 place of business, to the person's last known address, or, with  
14 respect to a corporation only, to a resident agent who is desig-  
15 nated to receive service of process or to an officer of the  
16 corporation.

17       (3) A prosecuting attorney or law enforcement officer  
18 receiving notice of an alleged violation of this act, or of a  
19 violation of an injunction, order, decree, or judgment issued in  
20 an action brought pursuant to this section, or an assurance given  
21 under this act, immediately shall forward written notice of the  
22 alleged violation or violation together with any information he  
23 or she may have to the department of attorney general.

24       Sec. 6. (1) The attorney general may accept an assurance of  
25 discontinuance of an alleged violation of this act from the  
26 person who is alleged to have violated, be violating, or be about  
27 to violate this act. An assurance under this section is not an

**HB4028, As Passed House, February 5, 1998**

House Bill No. 4028

6

1 admission of guilt and shall not be introduced in a proceeding  
2 other than a proceeding described in section 5 for a persistent  
3 and knowing violation of section 3. The assurance may include a  
4 stipulation for any or all of the following:

5 (a) The person's voluntary payment of the costs of  
6 investigation.

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

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

11 (2) An assurance of discontinuance shall be in writing and  
12 may be filed with the circuit court for Ingham county. The clerk  
13 of the court shall maintain a record of the filings. Unless  
14 rescinded by the parties or voided by a court for good cause, the  
15 assurance may be enforced in the circuit court by the parties to  
16 the assurance. The assurance may be modified by the parties or  
17 by a court for good cause.

18 Sec. 7. (1) A consumer may bring an action to enjoin a  
19 person who is violating this act and may additionally seek money  
20 damages as provided in this section.

21 (2) Except as provided in subsections (3) and (4), a con-  
22 sumer who suffers loss as a result of a violation of this act may  
23 bring an action against a person to recover actual damages and  
24 exemplary damages of \$50.00, together with reasonable attorney  
25 fees.

26 (3) A consumer who suffers loss arising from a person's  
27 violation of this act may bring a class action against the person

1 on behalf of consumers injured for the lesser of either of the  
2 following:

3 (a) Actual damages.

4 (b) \$10,000.00.

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

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

9 (a) The offering of the consumer contract to a consumer for  
10 his or her signature or signing of the consumer contract that is  
11 the subject of the action.

12 (b) The full performance of the contract.

13 (6) If a consumer commences an action against a person, the  
14 person may assert, as a defense, counterclaim, or offset, any  
15 claim under this act arising out of the transaction on which the  
16 action is brought and may join as a party defendant any person  
17 who prepared, sold, or furnished the principal defendant the con-  
18 tract form if the form was prepared, sold, or furnished after the  
19 effective date of this act.

20 (7) In an action brought by a consumer under this section,  
21 the court may construe the consumer contract that is the subject  
22 of the action to conform to the reasonable expectations of the  
23 consumer if the court finds that the consumer contract is not  
24 written in plain language as required in section 3.

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

1       Sec. 8. Upon commencement of an action brought pursuant to  
2 section 5 or 11, the clerk of the court shall mail a copy of the  
3 complaint to the attorney general, and upon entry of a judgment  
4 or decree in the action, the clerk of the court shall mail a copy  
5 of the judgment, decree, or order to the attorney general.

6       Sec. 9. The attorney general or a prosecuting attorney is  
7 not required to pay a filing fee for the commencement of an  
8 action or motions made during an action under this act.

9       Sec. 10. A law enforcement officer in the state, if  
10 requested by the attorney general or a prosecuting attorney,  
11 shall aid and assist in an investigation of an alleged or actual  
12 violation of this act.

13       Sec. 11. A prosecuting attorney may conduct an investiga-  
14 tion pursuant to this act and may institute and prosecute an  
15 action under this act in the same manner as the attorney  
16 general.

17       Sec. 12. (1) A person may submit a consumer contract to the  
18 attorney general for review as to whether the contract complies  
19 with the requirements of section 3. Within 60 days after receiv-  
20 ing the contract, the attorney general shall do 1 of the  
21 following:

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

23       (b) Decline to certify that the contract complies with  
24 section 3 and note his or her objections to the contractual  
25 language.



1 (c) Decline to review the contract and refer the party  
2 submitting the contract to other previously certified contracts  
3 of the same type.

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

6 (e) Decline to review the contract because the contract is  
7 not subject to section 3.

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

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

14 (4) Failure to submit a contract to the attorney general for  
15 review pursuant to subsection (1) does not show a lack of good  
16 faith nor does it raise a presumption that the contract violates  
17 section 3. Failure to use a contract referred to the person as a  
18 previously certified contract pursuant to subsection (1)(c) does  
19 not show a lack of good faith nor does it raise a presumption  
20 that a contract used by that person violated section 3.

21 (5) The attorney general may assess a fee of not more than  
22 \$50.00 for the costs of reviewing a consumer contract pursuant to  
23 subsection (1).

24 Sec. 13. This act takes effect 1 year after its enactment  
25 and does not affect a provision of a contract executed before  
26 that effective date. If a contract executed before the effective

**HB4028, As Passed House, February 5, 1998**

House Bill No. 4028

10

1 date of this act is modified after that effective date, the  
2 modification is subject to this act.