

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 631

H. P. 483

House of Representatives, February 16, 1979

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Brenerman of Portland.

Cosponsors: Mr. Lizotte of Biddeford, Mr. Jackson of Yarmouth and Mr. Wood of Sanford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT Requiring Certain Consumer Agreements to be Written so that they are
Readable and Understandable.**

Be it enacted by the People of the State of Maine, as follows:

10 MRSA c. 202 is enacted to read:

CHAPTER 10

LANGUAGE OF CONSUMER CONTRACTS

§ 1121. Purpose

The purpose of this chapter is to enable the average consumer, who makes a reasonable effort under ordinary circumstances, to read and understand the terms of so-called form contracts and the like without having to obtain the assistance of a professional.

§ 1122. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Agreement.** "Agreement" means any writing which is substantially prepared in advance of a consumer transaction and which a seller, lessor or lender furnishes to a consumer for the consumer to sign in connection with that transaction.

2. **Consumer.** "Consumer" means an individual who buys, leases or borrows in connection with a consumer transaction.

3. **Consumer transaction.** "Consumer transaction" means a sale, lease or loan of money, property or services primarily for personal, family or household purposes. For purposes of this chapter, "consumer transaction" shall not include a sale of insurance, but it shall include an advance for the purpose of facilitating payment of a premium or a loan against the cash surrender value of a life insurance policy.

4. **Seller, lessor or lender.** "Seller, lessor or lender" means a person who regularly sells, lets or lends in connection with consumer transactions.

§ 1123. Scope

1. **Application.** Except as provided in subsection 2, this chapter applies to any agreement signed in connection with a consumer transaction entered into in this State between a consumer who is a resident of this State at the time of the transaction and a seller, lessor or lender, wherever he resides.

2. **Exclusions.** This chapter does not apply:

A. To consumer transactions in which the value of the money, property or services bought, leased or borrowed exceeds \$100,000 at the time of the transaction;

B. To consumer transactions in which securities or commodities accounts are bought, leased or borrowed;

C. If the seller, lessor or lender is a government agency or instrumentality; or

D. To language or arrangement of an agreement which is required by federal or state law.

§ 1124. Requirements for agreements

After July 1, 1980, every agreement shall be:

1. **Plain language.** Written in nontechnical language and in a clear and coherent manner using words with common and everyday meanings; and

2. **Meaningful arrangement.** Appropriately divided and captioned by its various sections.

§ 1125. Consumer's remedy

1. **Civil liability.** Except as otherwise provided in this section, if an agreement does not comply with the requirements of section 1124, the seller,

lessor or lender is liable to a consumer who signed the agreement in an amount equal to:

- A. \$50 plus any actual damages; and
 - B. Costs of the action together with reasonable attorney's fees as determined by the court.
2. Jurisdiction of courts. A consumer may bring an action under this section in any court of competent jurisdiction.
 3. Limitation on actions. A consumer may not bring an action under this section after the date on which his obligations in connection with the agreement are scheduled to be finally performed.
 4. Good faith defense. No seller, lessor or lender is liable under subsection 1 if he attempts in good faith to comply with requirements of section 1124.
 5. Noncompliance no defense. Noncompliance with the requirements of section 1124 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise noncompliance as a defense to his obligation to perform in connection with the transaction.
 6. Limitation on class actions. In a class action brought under subsection 1, the seller, lessor or lender shall be liable under subsection 1, paragraph A, for no more than \$10,000 plus actual damages.

§ 1126. Enforcement by Attorney General

A seller's, lessor's or lender's failure to comply with any of the requirements of section 1124 shall constitute an unfair trade practice under Title 5, section 206 et seq., but, for purposes of this chapter only, a consumer shall have no rights under Title 5, section 213.

§ 1127. Assistance of the Department of Business Regulation

Before July 1, 1980, the Commissioner of Business Regulation shall, to the extent his resources permit, make general information available for the purpose of assisting persons subject to this chapter to comply with it. If a person only acts in reliance on that general information alone, he shall not be considered to have attempted to comply in good faith under section 1125, subsection 4. Nothing in this section shall be construed to require the commissioner to advise any person concerning a particular agreement, but if he does, and that person acts in reliance on that advice, that person shall be considered to have attempted to comply in good faith under section 1125, subsection 4.

STATEMENT OF FACT

It is vitally important for both consumers and business that the consumer understand what is in the contract he signs. Yet, it is almost impossible for the average person to understand what he is about to sign if it is cluttered with

complicated terminology buried in endless fine print; many contracts are written this way. This bill makes an important change by requiring consumer contracts to be written clearly in plain, ordinary language and appropriately divided and captioned by sections. This requirement applies to all so-called form contracts except insurance policies. The bill does not cover securities deals or sales, leases or loans involving more than \$100,000. It also does not apply to government agencies or contract language which is required by any law, such as the Truth-in-Lending Act. If a contract does not comply with the law, the consumer can sue the seller, lessor or lender for \$50 plus actual damages, costs of the suit and reasonable attorney's fees. The size of the civil penalty in a class action is limited, however, and noncompliance doesn't impair contract rights or invalidate any debt. Also, if a seller, lessor or lender shows that he genuinely tried to comply, he is not liable to the consumer. The Attorney General can enforce the law under the Unfair Trade Practices Act. Finally, the bill requires the Department of Business Regulation to make available general information about compliance.