

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 897

S. P. 300

In Senate, March 2, 1979

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

Presented by Senator Silverman of Washington.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT Requiring Certain Agreements Involving Consumer Transactions 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. 221 is enacted to read:

**CHAPTER 221
LANGUAGE REQUIREMENTS
FOR CONSUMER AGREEMENTS**

§ 1491. 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.

§ 1492. Definitions

As used in this chapter, unless the context indicates otherwise, 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 the

transaction. For purposes of this chapter, "agreement" includes insurance policies, certificates, riders, endorsements and the like which are furnished to a consumer in connection with a consumer transaction, regardless of whether they are furnished for the consumer to sign.

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.

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

§ 1493. 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 money, property or services bought, leased or borrowed have a fair market value of more than \$50,000 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.

§ 1494. 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;
- 2. **Meaningful arrangement.** Appropriately divided and captioned by its various sections so that its contents are set out clearly and in a meaningful order; and
- 3. **Visual presentation.** Printed with spaces and margins, typesize and face, ink and paper color and contrast which permit an individual with normal vision to read it under ordinary circumstances without unusual aids or special assistance.

§ 1495. Consumer's remedy

- 1. **Civil liability.** Except as otherwise provided in this section, if an

agreement does not comply with the requirements of section 1494 the seller, lessor or lender is liable to a consumer who signed the agreement in an amount equal to:

A. \$200 plus any actual damages; and

B. Costs of the action together with reasonable attorney's fees as determined by the court. Reasonable attorney's fees shall be determined by the value of the time the attorney reasonably spends, without regard to the amount awarded under paragraph A.

2. Jurisdiction and service of process on nonresidents.

A. A consumer may bring an action under this section in any court of competent jurisdiction.

B. In addition to any other method provided by rule or by statute, if the seller, lessor or lender is not a resident of this State and enters into a consumer transaction with a consumer who is a resident of this State at the time of the transaction, personal jurisdiction in the Superior and District Courts of this State may be acquired by service of process upon the Secretary of State and mailing forthwith a copy of the process and pleading by registered or certified mail to the defendant at his last reasonably ascertainable address. An affidavit of compliance with this paragraph shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

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 transaction 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 the requirements of section 1494.

5. Noncompliance no defense. A seller's, lessor's or lender's failure to comply with the requirements of section 1494 does not make a consumer transaction void or voidable if it is otherwise legal, nor may a consumer raise non-compliance as a defense to his obligation to perform in connection with the transaction.

6. Counterclaims. If a seller, lessor or lender brings an action against a consumer arising out of a consumer transaction, the consumer may counterclaim under subsection 1, up to the amount of the plaintiff's award, without regard to subsection 3.

7. Liability of assignees. For purposes of this section, "seller, lessor or lender" includes any person to whom a seller, lessor or lender voluntarily assigns his rights in connection with a consumer transaction if the seller, lessor or lender regularly assigns those rights to that person.

8. 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.

§ 1496. Enforcement by Attorney General

A seller's, lessor's or lender's failure to comply with any of the requirements of section 1494 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.

STATEMENT OF FACT

This bill will make it possible for consumers actually to read and understand contracts before signing them. Consumers want to understand what they are agreeing to; business and government even urge us to read before we sign. The fact of the matter is that contracts themselves are too often written in nearly incomprehensible "legalese" and printed in practically unreadable fine print. Frequently, the average person needs the help of a lawyer or an accountant to understand them. This state of affairs is not only unnecessary but also harmful to the interests of both business and the consumer. In this bill, Maine has an opportunity to join other states in correcting this sorry situation.

Basically, this bill requires form contracts to be written clearly in everyday language, appropriately arranged by sections, and printed so that they can be read by ordinary people. The bill covers all kinds of consumer contracts including home mortgages, leases and insurance policies. It does not cover contracts actually negotiated by the parties themselves or sales, leases or loans involving more than \$50,000. Nor does the bill apply to securities deals, government agencies or legally required contract language such as that required by the Truth-in-Lending Act. If a contract does not meet the bill's requirements, the seller, lessor or lender is liable to the consumer for a civil penalty of \$200 plus any actual damages, as well as the costs of suit together with reasonable attorney's fees. The total civil penalty award in a class action may not exceed \$10,000. Further, even if a contract fails to meet the bill's requirements, neither the validity of the contract nor the collectability of the debt is affected; nor is the seller, lessor or lender liable at all if he can show that he honestly tried to comply with the law. Finally, the Attorney General may enforce the bill under the Unfair Trade Practices Act.