

56:12-1 to 56:12-13

LEGISLATIVE HISTORY CHECKLIST

NJSA 56:12-1 to 56:12-13 ("Plain Language"--consumer contracts)

LAWS 1980 CHAPTER 125

Bill No. A1860

Sponsor(s) Jackman and others

Date Introduced June 16, 1980

Committee: Assembly -----

Senate -----

Amended during passage Yes ~~No~~ Amendments denoted by asterisks

according to Governor's recommendations

Date of Passage: Assembly June 23, 1980

Re-enacted 9-29-80

Senate June 26, 1980

Re-enacted 10-9-80

Date of approval Oct. 16, 1980

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~ **Yes**

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Attached: A536 (1979) -- (mentioned in sponsors' statement and veto to A1860), committee statements and veto message.

6/22/81

RECEIVED
LEGISLATIVE HISTORY
SECTION
JUN 23 1980

125
J. 1980
10-16-80

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1860

STATE OF NEW JERSEY

INTRODUCED JUNE 16, 1980

By Assemblymen JACKMAN, BAER, BORNHEIMER, KAVANAUGH, VAN WAGNER, FLYNN, DORIA, COWAN, DEVERIN, Assemblywoman McCONNELL, Assemblymen JANISZEWSKI, HOLLENBECK, GIRGENTI, PELLECCIA, BATE, ADUBATO, T. GALLO, McMANIMON, WEIDEL, ALBANESE, VILLANE, Assemblywoman GLUCK, Assemblymen MAGUIRE, IMPERIALE, VISOTCKY, BROWN, RAND, MATTHEWS, KOSCO, KARCHER, THOMPSON, ZANGARI, McENROE, DALTON, RILEY, OTLOWSKI, Assemblywoman KALIK, Assemblymen COSTELLO, LESNIAK, STEWART, PATERO, HURLEY, CARDINALE, MARKERT, Assemblywoman BURGIO, Assemblymen SCHUCK, D. GALLO, BASSANO, Assemblywoman CURRAN, Assemblyman CHINNICI, Assemblywoman GARVIN, Assemblyman PATERNITI, Assemblywoman MUHLER, Assemblymen FORTUNATO, REMINGTON and HARDWICK

(Without Reference)

AN ACT concerning simple, clear, understandable and easily readable language in consumer contracts.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

- 1 1. As used in this act:
- 2 "Consumer contract" means a written agreement in which a
- 3 natural person:
 - 4 a. Leases or licenses real or personal property;
 - 5 b. Obtains credit;
 - 6 c. Obtains insurance coverage, except insurance coverage con-
 - 7 tained in policies subject to the "Life and Health Insurance Policy
 - 8 Language Simplification Act" (P. L. 1979, c. 167, C. 17B:17-17
 - 9 et seq.);
 - 10 d. Borrows money;
 - 11 e. Purchases real or personal property;
 - 12 f. Contracts for services including professional services, for
 - 13 cash or on credit and the money, property or services are obtained

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

14 for personal, family or household purposes. "Consumer contract"
15 includes writings required to complete the consumer transaction.

16 "Primary State regulator" means a State agency or person that
17 has licensing or general regulatory authority over a creditor, seller,
18 insurer or lessor.

1 2. A consumer contract entered into on or after the effective
2 date of this act shall be written in a simple, clear, understandable
3 and easily readable way. In determining whether a consumer con-
4 tract has been written in a simple, clear, understandable and easily
5 readable way as a whole, a court or primary State regulator shall
6 take into consideration the guidelines set forth in section 10 of
7 this act. Use of technical terms or words of art shall not in and
8 of itself be a violation of this act.

1 3. A creditor, seller, insurer or lessor who fails to comply with
2 section 2 of this act shall be liable to a consumer who is a party
3 to the consumer contract for actual damages sustained plus
4 punitive damages in an amount up to \$50.00. The creditor, seller,
5 insurer or lessor shall also be liable for the consumer's reasonable
6 attorney's fees and costs.

1 4. Class actions may be brought under the provisions of this act,
2 but the amount of punitive damages shall be limited to \$10,000.00
3 against any one seller, lessor, insurer or creditor.

1 5. There shall be no liability under sections 3 and 4 if: a. both
2 parties to the contract have performed their obligations under the
3 contract, b. the creditor, seller, insurer or lessor attempts in good
4 faith to comply with this act in preparing the consumer contract,
5 ***[or]*** c. the contract is in conformity with a rule, regulation, or the
6 opinion or interpretation of a State official authorized by section 8
7 of this act to issue approvals of the form of the contract*, or d. *the*
8 *consumer supplied the contract or the portion of the contract to*
9 *which the consumer objects*.*

1 6. The use of specific language in a consumer contract required,
2 permitted or approved by a law, regulation, rule or published inter-
3 pretation of a State or Federal agency shall not violate this act.

1 7. This act shall not preclude a debtor, buyer, insured or lessee
2 from making any claims which would have been available to him
3 if this act were not in effect.

1 8. A creditor, seller, insurer or lessor may request an opinion
2 from a primary State regulator as to whether a consumer contract
3 complies with this act. A reasonable fee may be charged by the
4 State regulator for processing the request. The Commissioner of
5 Banking may render an opinion to any banking institution which
6 has a Federal charter.

7 A creditor, seller or lessor who does not have a State regulator
8 may request an opinion from the Division of Consumer Affairs.

9 The State regulator shall furnish the opinion within a reason-
10 able period of time. A refusal to approve shall be in writing and
11 shall state the reasons for the refusal. The failure of a creditor,
12 seller, insurer or lessor to apply for an opinion under this section
13 shall not be used as evidence in an action brought for a violation
14 of this act.

1 9. This act shall not apply to consumer contracts involving
2 amounts of more than \$50,000.00, but no dollar limitation shall
3 apply to consumer contracts involving real estate or insurance.

1 10. a. To insure that a consumer contract shall be simple, clear,
2 understandable and easily readable, the following are examples of
3 guidelines that a court or primary State regulator may consider in
4 determining whether a consumer contract as a whole complies with
5 this act:

6 (1) Cross references that are confusing;

7 (2) Sentences that are of greater length than necessary;

8 (3) Sentences that contain double negatives and exceptions to
9 exceptions;

10 (4) Sentences and sections that are in a confusing or illogical
11 order;

12 (5) The use of words with obsolete meanings or words that
13 differ in their legal meaning from their common ordinary meaning;

14 (6) Frequent use of Old English and Middle English words and
15 Latin and French phrases.

16 b. The following are examples of guidelines that a court or
17 regulator shall consider in determining whether the consumer
18 contract as a whole complies with this act:

19 (1) Sections shall be logically divided and captioned;

20 (2) A table of contents or alphabetical index shall be used for
21 all contracts with more than 3,000 words;

22 (3) Conditions and exceptions to the main promise of the agree-
23 ment shall be given equal prominence with the main promise, and
24 shall be in at least 10 point type.

1 11. No consumer contract shall contain a waiver of any rights
2 under this act. A violation of this act will not render any consumer
3 contract void or voidable, or serve as a defense in an action to
4 enforce the consumer contract for breach thereof.

1 12. The Office of the Attorney General, the Division of Consumer
2 Affairs, the Department of the Public Advocate, or any interested
3 person may seek injunctive relief. The court may authorize

4 reasonable attorney's fees and court costs in such a proceeding.

1 13. If any provision of this act, or its application to any person
2 or circumstances, is held invalid, the remainder of the act and its
3 application to other persons or circumstances shall not be affected.

1 14. This act shall take effect immediately, but shall remain in-
2 operative until 1 year after its enactment, **except that the act shall*
3 *remain inoperative for 2 years with regard to all contracts of*
4 *insurance** during which time a State regulator may receive and
5 process requests for and render opinions as to whether consumer
6 contracts comply with this act.

ASSEMBLY, No. 1860

STATE OF NEW JERSEY

INTRODUCED JUNE 16, 1980

By Assemblymen JACKMAN, BAER, BORNHEIMER, KAVANAUGH, VAN WAGNER, FLYNN, DORIA, COWAN, DEVERIN, Assemblywoman McCONNELL, Assemblymen JANISZEWSKI, HOLLENBECK, GIRGENTI, PELLECCIA, BATE, ADUBATO, T. GALLO, McMANIMON, WEIDEL, ALBANESE, VILLANE, Assemblywoman GLUCK, Assemblymen MAGUIRE, IMPERIALE, VISOTCKY, BROWN, RAND, MATTHEWS, KOSCO, KARCHER, THOMPSON, ZANGARI, McENROE, DALTON, RILEY, OTLOWSKI, Assemblywoman KALIK, Assemblymen COSTELLO, LESNIAK, STEWART, PATERO, HURLEY, CARDINALE, MARKERT, Assemblywoman BURGIO, Assemblymen SCHUCK, D. GALLO, BASSANO, Assemblywoman CURRAN, Assemblyman CHINNICI, Assemblywoman GARVIN, Assemblyman PATERNITI, Assemblywoman MUHLER, Assemblymen FORTUNATO, REMINGTON and HARDWICK

(Without Reference)

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- 1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*
- 1 1. As used in this act:
- 2 "Consumer contract" means a written agreement in which a
3 natural person:
- 4 a. Leases or licenses real or personal property;
5 b. Obtains credit;
6 c. Obtains insurance coverage, except insurance coverage con-
7 tained in policies subject to the "Life and Health Insurance Policy
8 Language Simplification Act" (P. L. 1979, c. 167, C. 17B:17-17
9 et seq.);
10 d. Borrows money;
11 e. Purchases real or personal property;
12 f. Contracts for services including professional services, for
13 cash or on credit and the money, property or services are obtained
14 for personal, family or household purposes. "Consumer contract"

15 includes writings required to complete the consumer transaction.
16 "Primary State regulator" means a State agency or person that
17 has licensing or general regulatory authority over a creditor, seller,
18 insurer or lessor.

1 2. A consumer contract entered into on or after the effective
2 date of this act shall be written in a simple, clear, understandable
3 and easily readable way. In determining whether a consumer con-
4 tract has been written in a simple, clear, understandable and easily
5 readable way as a whole, a court or primary State regulator shall
6 take into consideration the guidelines set forth in section 10 of
7 this act. Use of technical terms or words of art shall not in and
8 of itself be a violation of this act.

1 3. A creditor, seller, insurer or lessor who fails to comply with
2 section 2 of this act shall be liable to a consumer who is a party
3 to the consumer contract for actual damages sustained plus
4 punitive damages in an amount up to \$50.00. The creditor, seller,
5 insurer or lessor shall also be liable for the consumer's reasonable
6 attorney's fees and costs.

1 4. Class actions may be brought under the provisions of this act,
2 but the amount of punitive damages shall be limited to \$10,000.00
3 against any one seller, lessor, insurer or creditor.

1 5. There shall be no liability under sections 3 and 4 if: a. both
2 parties to the contract have performed their obligations under the
3 contract, b. the creditor, seller, insurer or lessor attempts in good
4 faith to comply with this act in preparing the consumer contract,
5 or c. the contract is in conformity with a rule, regulation, or the
6 opinion or interpretation of a State official authorized by section 8
7 of this act to issue approvals of the form of the contract.

1 6. The use of specific language in a consumer contract required,
2 permitted or approved by a law, regulation, rule or published inter-
3 pretation of a State or Federal agency shall not violate this act.

1 7. This act shall not preclude a debtor, buyer, insured or lessee
2 from making any claims which would have been available to him
3 if this act were not in effect.

1 8. A creditor, seller, insurer or lessor may request an opinion
2 from a primary State regulator as to whether a consumer contract
3 complies with this act. A reasonable fee may be charged by the
4 State regulator for processing the request. The Commissioner of
5 Banking may render an opinion to any banking institution which
6 has a Federal charter.

7 A creditor, seller or lessor who does not have a State regulator
8 may request an opinion from the Division of Consumer Affairs.

9 The State regulator shall furnish the opinion within a reason-
10 able period of time. A refusal to approve shall be in writing and
11 shall state the reasons for the refusal. The failure of a creditor,
12 seller, insurer or lessor to apply for an opinion under this section
13 shall not be used as evidence in an action brought for a violation
14 of this act.

1 9. This act shall not apply to consumer contracts involving
2 amounts of more than \$50,000.00, but no dollar limitation shall
3 apply to consumer contracts involving real estate or insurance.

1 10. a. To insure that a consumer contract shall be simple, clear,
2 understandable and easily readable, the following are examples of
3 guidelines that a court or primary State regulator may consider in
4 determining whether a consumer contract as a whole complies with
5 this act:

6 (1) Cross references that are confusing;

7 (2) Sentences that are of greater length than necessary;

8 (3) Sentences that contain double negatives and exceptions to
9 exceptions;

10 (4) Sentences and sections that are in a confusing or illogical
11 order;

12 (5) The use of words with obsolete meanings or words that
13 differ in their legal meaning from their common ordinary meaning;

14 (6) Frequent use of Old English and Middle English words and
15 Latin and French phrases.

16 b. The following are examples of guidelines that a court or
17 regulator shall consider in determining whether the consumer
18 contract as a whole complies with this act:

19 (1) Sections shall be logically divided and captioned;

20 (2) A table of contents or alphabetical index shall be used for
21 all contracts with more than 3,000 words;

22 (3) Conditions and exceptions to the main promise of the agree-
23 ment shall be given equal prominence with the main promise, and
24 shall be in at least 10 point type.

1 11. No consumer contract shall contain a waiver of any rights
2 under this act. A violation of this act will not render any consumer
3 contract void or voidable, or serve as a defense in an action to
4 enforce the consumer contract for breach thereof.

1 12. The Office of the Attorney General, the Division of Consumer
2 Affairs, the Department of the Public Advocate, or any interested
3 person may seek injunctive relief. The court may authorize
4 reasonable attorney's fees and court costs in such a proceeding.

1 13. If any provision of this act, or its application to any person
2 or circumstances, is held invalid, the remainder of the act and its

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3 application to other persons or circumstances shall not be affected.
1 14. This act shall take effect immediately, but shall remain in-
2 operative until 1 year after its enactment, during which time a
3 State regulator may receive and process requests for and render
4 opinions as to whether consumer contracts comply with this act.

STATEMENT

This bill is essentially the same bill that was permitted to expire by pocket veto of the Governor on February 29, 1980.

It provides that consumer contracts shall be written in a simple, clear, understandable and easy readable way. Consumer insurance contracts that are covered by the provisions of Chapter 167, P. L. 169 are excepted from this bill.

Reading level requirements are eliminated. With these two exceptions the bill is identical to the former Assembly Bill No. 536 which passed both Houses of the Legislature in 1979.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 1860

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 22, 1980

Amend page 2, section 5, line 5, omit "or" at the beginning of the line.

Amend page 2, section 5, line 7, after "contract", insert ", or d. the consumer supplied the contract or the portion of the contract to which the consumer objects".

Amend page 4, section 14, line 2, after "enactment," insert "except that the act shall remain inoperative for 2 years with regard to all contracts of insurance".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 22, 1980

ASSEMBLY BILL NO. 1860

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 1860 with my objections for reconsideration.

This bill, commonly known as the plain language bill, provides that all consumer contracts entered into on or after the effective date of the act must be written in a simple, clear, understandable and easily readable way. It would apply to all written agreements in which a natural person leases or licenses real or personal property, obtains credit, borrows money, purchases real or personal property, obtains insurance coverage on the types of policies not subject to the Life and Health Insurance Policy Language Simplification Act (P.L. 1979, c. 167) or contracts for services, cash or credit for personal, family or household purposes. The bill would not apply to consumer contracts involving amounts of more than \$50,000, unless they involve real estate or insurance.

This bill is substantially the same as Assembly Bill No. 536 which I filed in the State Library without approval after the last legislative session. The sponsor has made two amendments which I suggested at that time - deletion of insurance contracts covered by the Life and Health Insurance Policy Language Simplification Act and deletion of the reading level requirements.

While I continue to support the concept of plain language, in my judgment, we must proceed cautiously in entering waters which have not been tested in this State; the cure should not be worse than the disease. Plain language is not a goal in itself. Rather, it is a means to protecting people in financial situations in which they might otherwise be at a disadvantage. That is my intent in suggesting these amendments.

Ideally, I would prefer more extensive amendments than the ones which I am suggesting today. The inclusion of securities, commodities, insurance and real property transactions in this bill may pose substantial practical problems in the day to day business world. Nonetheless, the bill has attracted an unusually large number of sponsors. Their willingness to impose new regulations on business conduct should reflect deliberate judgment. Accordingly, I am recommending only the following amendments to the bill, deferring to legislative wisdom in addressing the remaining issues before the operative date of the bill.

First, insurance companies would have two years, rather than one year, to conform their policies to the requirements of this legislation. The Life and Health Policy Language Simplification Act permits five years for conformance for life and health policies. Two years for property and casualty insurance does not seem excessive.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-2-

Second, an additional defense would be given to the seller in the case where the consumer supplied the contract. If an individual has done so, it seems unreasonable to let him contest the contract later on.

Accordingly, I herewith return Assembly Bill No. 1860 for reconsideration and recommend that it be amended as follows:

Page 2, Section 5, Line 5: omit "or" at the beginning of the line

Page 2, Section 5, Line 7: after "contract" insert ", or d. the consumer supplied the contract or the portion of the contract to which the consumer objects"

Page 4, Section 14, Line 2: after "enactment," insert "except that the act shall remain inoperative for two years with regard to all contracts of insurance"

Respectfully,

/s/ Brendan Byrne
GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

OCTOBER 16, 1980

PAT SWEENEY

Governor Brendan Byrne today in a public ceremony in his office signed the Plain Language bill, and a bill that would prohibit revaluations of real property in Newark.

A-1860, sponsored by Assemblyman Christopher J. Jackman (D-Hudson), commonly known as the Plain Language bill, provides that all consumer contracts made on or after the effective date of the act must be written in a simple, clear, understandable and easily readable way.

The bill applies to all written agreements in which a person leases or licenses real or personal property, obtains credit, borrows money, purchases real or personal property, obtains insurance coverage on the types of policies not subject to the Life and Health Insurance Policy Language Simplification Act or contracts for services, cash, or credit for personal, family or household purposes.

The bill will now apply to consumer contracts involving amounts of more than \$50,000 unless they involve real estate or insurance.

Insurance companies have two years to conform their policies to the requirements of this legislation.

A-1771, sponsored by Assemblyman Michael F. Adubato (D-Essex), will prohibit revaluations of real property in any city of the first class with a population in excess of 300,000 for the tax years 1981 to 1982, inclusive. Newark is the only city in the State meeting these qualifications. The bill, therefore, has the effect of placing a two-year moratorium on revaluations.

During the two-year moratorium period, the Legislature will conduct a formal study of real property taxation, with the intent that any remedy be implemented prior to the expiration of this moratorium.

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ASSEMBLY, No. 536

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1978

By Assemblyman JACKMAN

Referred to Committee on Commerce, Industry and Professions

AN ACT to require the use of readily understandable language and meaningful sequence in agreement forms in certain instances.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Every standard form agreement entered into by a consumer
2 for the sale or lease of real property to be occupied for residential
3 purposes, or wherein the money, property, or service which is the
4 subject of the agreement is primarily for personal, family or house-
5 hold purposes, or which is subject to the disclosure provisions of
6 the Federal Consumer Credit Protection Act and the regulation
7 thereunder (U.S.C.A. Title 15, Section 1601), as that act and the
8 regulation thereunder may be amended, shall be (1) written in
9 language which can be understood at least by a person of average
10 intelligence; (2) appropriately divided into its various sections
11 and captioned by meaningful headings; and (3) presented in such
12 a way to insure that within each aforementioned section each pro-
13 vision shall have a logical and easily comprehensible relationship
14 to the provisions which precede or follow it.

1 2. Any creditor, seller, lesser who fails to comply with the pro-
2 visions of this act shall be liable to a consumer in an amount equal
3 to the sum of any actual damages sustained plus \$1,500.00 and, in
4 the event of successful action to enforce such liability, the costs of
5 the action, together with a reasonable attorney's fee as determined
6 by the court. The total class action penalty against any such
7 creditor, seller or lesser shall not exceed \$10,000.00. The penalties
8 enumerated in this section shall be enforced only in a court of
9 competent jurisdiction, but not against any creditor, seller or lesser
10 who attempts in good faith to comply with the provisions of this act,
11 or after both parties to the agreement have fully performed their
12 obligation under such agreement.

1 3. This act shall not apply to agreements involving amounts in
2 excess of \$50,000.00.

1 4. This act shall take effect one year following the date of enact-
2 ment.

STATEMENT

This bill provides that any standard form agreement entered into by a consumer in New Jersey for the sale or lease of real property to be occupied for residential purposes; or wherein the money, property, or service which is the subject of the agreement is primarily for personal, family or household purposes; or, which is subject to the disclosure requirements of the Federal Consumer Credit Protection Act, shall be (1) written in language understandable by a person of average intelligence; (2) divided into sections captioned by meaningful headings; and, (3) presented in such a way to insure that within each section each provision shall have a logical and easily comprehensible relationship to the provision which precedes or follows it. This bill does not apply to agreements involving amounts in excess of \$50,000.00. In August 1977, a bill virtually identical to this was enacted into law in New York State.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 536

STATE OF NEW JERSEY

DATED: JUNE 22, 1978

The Assembly Committee Substitute for Assembly Bill No. 536 is the "Plain Language Agreement Act." It provides that standard form agreements for consumer loans, purchases or leases of less than \$50,000.00 or for real estate must be in plain language. For purposes of insurance, the \$50,000.00 limit would apply to the amount of the yearly premium and not the face value of the policy.

Such agreements must contain terms generally understood by persons other than persons with more than a twelfth grade reading level. Necessary technical specifications of a product or service are permitted. Clear composition is also required. Section 3 of the bill contains seven verbal standards for clear composition. For example, sections of an agreement must be appropriately divided and captioned. Sentences must not be unnecessarily long or complex. Cross references must not be unnecessarily confusing.

The bill also provides the option of satisfying the plain language requirement by meeting a standard that is mathematical rather than verbal. Section 9 provides that the mathematical standard would be met if the text of an agreement achieves a minimum Flesch scale readability score of fifty. The Flesch scale of readability is based on the number of syllables per 100 words and the average number of words per sentence. Several states have already adopted the Flesch scale of readability for insurance contracts.

A landlord with 3 or less rental units is exempt from the act. A person in business with an annual gross of less than \$100,000.00 is exempt. Casual or nonbusiness agreements are not covered by the act. If the contract shows that a borrower, purchaser or lessee was represented by an attorney, the agreement does not have to be in plain language.

Any person who violates the act would be liable to the borrower, purchaser or lessee for actual damages, up to \$500.00 punitive damages,

court costs and attorney's fees. A \$50,000.00 limit is set on a class action or a series of class actions involving the use of identical standard form agreements.

Punitive damages are not to be enforced against persons who attempt in good faith to comply with the act. Also, punitive damages are not to be enforced where an agreement achieves a minimum Flesch scale readability score of fifty.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 536

STATE OF NEW JERSEY

ADOPTED JUNE 22, 1978

AN ACT to require that certain written agreements be in plain language and appropriately divided and captioned and providing penalties for violations.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Title.

2 This act shall be known and may be cited as the "Plain Language
3 Agreement Act."

1 2. Understandable terms required. Written agreements covered
2 under this act shall only permit the following terms:

3 a. Terms whose meaning is generally understandable to persons
4 other than person with more than a twelfth grade reading level,
5 professionals or specialists in the particular field. These terms shall
6 be excluded when their generally understood meaning is contra-
7 dictory to the applicable legal or technical meaning.

8 b. Necessary technical specifications of a product or service.

1 3. Clear composition required. Language and structure used
2 shall meet the following requirements:

3 a. Sections shall be appropriately divided and captioned.

4 b. All text shall be no less than 10 point type.

5 c. Sentences shall not have unnecessary length or degree of
6 complexity.

7 d. Cross references that are unnecessarily confusing shall not
8 be used.

9 e. Definitions which are contradictory to generally understood
10 meanings shall not be used.

11 f. Sentences that have double negatives or exceptions to excep-
12 tions shall not be used.

13 e. Sentences and sections shall not be arranged in a confusing
14 sequence. They shall be in a logical order.

1 4. Written agreements covered. This act shall only apply to
2 standard form agreements in which the subject of the transaction
3 is primarily for personal, family or household purposes. It is lim-
4 ited to the following transactions:

5 a. A real estate transaction.
6 b. A transaction involving rental of a residential unit within
7 premises which include more than three rental units.

8 c. A transaction for money, personal property, a product or
9 service, including insurance, involving less than \$50,000.00.

1 5. Language covered. This act shall not apply to the following
2 language:

3 a. Language which is expressly defined, required or permitted by
4 Federal or State law or regulation.

5 b. Language which is drafted as a result of bona fide negotiations
6 between the parties to the agreement, or for sole use in one
7 agreement.

1 6. Persons excluded. This act shall not apply to any of the follow-
2 ing persons:

3 a. A creditor, seller or lessor using the agreement in businesses
4 producing less than \$100,000.00 gross annually or in nonbusiness
5 uses.

6 b. A borrower, purchaser or lessee who is represented by an
7 attorney. This fact shall be established by the attorney's signed
8 statement on the agreement.

1 7. Violators' liability. Any creditor, seller or lessor who violates
2 this act shall be liable to a borrower, purchaser or lessee who is a
3 party to the agreement. The liability shall be determined by a
4 court of competent jurisdiction to be equal to the sum of the
5 following:

6 a. Actual damages sustained.

7 b. Punitive damages not over \$500.00.

8 c. Costs of the action.

9 d. Reasonable attorney's fees.

10 Rights and remedies under any other law shall continue.

1 8. Class action limitation. The total class action punitive damages
2 against any person shall not exceed \$50,000.00. This includes a
3 series of class actions arising out of the use of identical standard
4 form agreements.

1 9. Enforcement constraint. No punitive damages under this act
2 shall be enforced against any person who attempts in good faith
3 to comply with this act. No punitive damages shall be enforced
4 where the text of an agreement achieves a minimum Flesch scale
5 readability score of fifty. The Flesch scale readability score shall
6 be determined by the Flesch readability formula. The formula is
7 set forth in The Art of Readable Writing by Rudolf Flesch (25th
8 Anniversary Edition, Revised and Enlarged; Harper & Row,
8A Publishers).

9 Also no punitive damages shall be awarded after all parties to
10 the agreement have fully performed their obligations under the
11 agreement.

1 10. Agreement remains in force. A violation of this act shall not
2 render any agreement void or voidable. A violation of this act
3 shall not constitute a defense to any other action or proceeding for
4 enforcement or breach of agreement. No provision for renewal
5 of an agreement shall be invalid merely because compliance with
6 this act changes the form of the renewed agreement.

1 11. Waiver prohibited. No agreement shall contain a waiver of
2 any rights under this act.

1 12. Processing fee authorized. Where any State agency required
2 by law to process agreements finds this act will cause it additional
3 expense, it may charge an appropriate fee. The fee shall only be
4 charged applicants for a total of 2 years. It shall not exceed the
5 amount needed to recover actual expenses.

1 13. Enactment. This act shall take effect on the three hundred
2 and sixty-fifth day after the date of enactment, except that
3 section 12, and steps necessary for its implementation, shall take
4 effect immediately.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 536

STATE OF NEW JERSEY

DATED: MAY 24, 1979

The Senate Labor, Industry and Professions Committee presented a Senate Committee Substitute to Assembly Bill No. 536. The committee substitute provides that all consumer contracts entered into on or after the effective date of this act must be written in a simple, clear, understandable and easily readable way.

The bill would apply to all written agreements in which a natural person leases or licenses real or personal property, obtains credit, obtains personal lines insurance coverage, borrows money, purchases property, or contracts for services and the money, property or services is obtained for personal, family or household purposes.

The bill provides that any creditor, seller, insurer, or lessor may request an opinion from the appropriate State agency as to whether a consumer contract complies with this act. A reasonable fee may be charged by the State agency to cover processing costs. Examples of both mandatory and optional guidelines that a court or regulator would consider in determining whether a contract complies with the act are listed. In the case of banks which are Federally chartered an opinion would be requested from the Commissioner of Banking. Any creditor, seller, or lessor who does not have a primary State regulator would request an opinion from the Division of Consumer Affairs. The failure of the primary State regulator to furnish the opinion within a 90-day period would be an approval of the consumer contract. A refusal to approve would be in writing and would state the reasons for the refusal. Failure of any creditor, seller, insurer or lessor to apply for an opinion under this section could not be used as evidence in any action brought for any violation of the act.

Anyone who violates the act would be liable to the borrower, purchaser, or lessee for actual damages up to \$50.00 punitive damages,

court costs and attorney's fees; the creditor, seller, insurer or lessor would not be liable if (a) both parties to the contract had performed their obligations under the contract; (b) the creditor, seller, insurer, or lessor had attempted in good faith to comply with this act in preparing the consumer contract; (c) if the contract was in conformity with any rule or regulation or the opinion of a State agency authorized to approve the form of consumer contracts; or (d) if the consumer contract was understandable and easily readable by a person with an eighth grade reading level, as determined by any reading formula that is nationally recognized.

The Office of Attorney General, the Division of Consumer Affairs, the Department of the Public Advocate, or any interested person would be authorized by this act to seek injunctive relief, if a proposed consumer contract appeared to violate this act.

This act would not apply to consumer contracts involving amounts of more than \$50,000.00 unless they involve real estate or insurance.

The bill provides that the use of specific language in a consumer contract which is required, permitted or approved by a law, regulation, rule, or published interpretation of a State or Federal agency, does not violate the act.

The Senate Labor, Industry and Professions Committee feels that such required, permitted or approved language should not be included in the computation of the number of words per sentence or the number of syllables per word in determining an eighth grade reading level.

The Senate Labor, Industry and Professions Committee understands the term Federal agency to include quasi-governmental organizations such as:

- The Federal Home Loan Mortgage Corporation
 - The Federal National Mortgage Association
 - The Government National Mortgage Association
 - The Student Loan Marketing Association
 - The Federal Savings and Loan Insurance Corporation
 - The Veterans Administration
 - The Federal Housing Administration.
-

SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 536

STATE OF NEW JERSEY

ADOPTED MAY 24, 1979

AN Act concerning simple, clear, understandable and easily
readable language in consumer contracts.

1 **BE IT ENACTED** *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 "Consumer contract" means a written agreement in which a
3 natural person:

4 a. Leases or licenses real or personal property;

5 b. Obtains credit;

6 c. Obtains personal lines insurance coverage;

7 d. Borrows money;

8 e. Purchases real or personal property;

9 f. Contracts for services including professional services for cash
10 or on credit and the money, property or services are obtained for
11 personal, family or household purposes. "Consumer contract" in-
12 cludes writings required to complete the consumer transaction.

13 "Primary State regulator" means a State agency or person that
14 has licensing or general regulatory authority over a creditor, seller,
15 insurer or lessor.

1 2. A consumer contract entered into on or after the effective
2 date of this act shall be written in a simple, clear, understandable
3 and easily readable way. In determining whether a consumer con-
3a tract has been written in a simple, clear, understandable and
4 easily readable way as a whole, a court or primary State regulator
5 shall take into consideration the guidelines set forth in section 10
6 of this act. Use of technical terms or words of art shall not in and
7 of itself be a violation of this act.

1 3. A creditor, seller, insurer or lessor who fails to comply with
2 section 2 of this act shall be liable to a consumer who is a party
3 to the consumer contract for actual damages sustained plus
4 punitive damages in an amount up to \$50.00. The creditor, seller,
5 insurer or lessor shall also be liable for the consumer's reasonable
6 attorney's fees and costs.

1 4. Class actions may be brought under the provisions of this act,
2 but the amount of punitive damages shall be limited to \$10,000.00
3 against any one seller, lessor, insurer or creditor.

1 5. There shall be no liability under sections 3 and 4 if: a. both
2 parties to the contract have performed their obligations under the
3 contract, b. the creditor, seller, insurer or lessor attempts in good
4 faith to comply with this act in preparing the consumer contract,
5 or c. the contract is in conformity with a rule, regulation, or the
6 opinion or interpretation of a State official authorized by section 8
7 of this act to issue approvals of the form of the contract.

1 6. The use of specific language in a consumer contract required,
2 permitted or approved by a law, regulation, rule or published inter-
3 pretation of a State or Federal agency shall not violate this act.

1 7. This act shall not preclude a debtor, buyer, insured or lessee
2 from making any claims which would have been available to him
3 if this act were not in effect.

1 8. A creditor, seller, insurer or lessor may request an opinion
2 from a primary State regulator as to whether a consumer contract
3 complies with this act. A reasonable fee may be charged by the
4 State regulator for processing the request. The Commissioner of
5 Banking may render an opinion to any banking institution which
6 has a Federal charter.

7 A creditor, seller or lessor who does not have a State regulator
8 may request an opinion from the Division of Consumer Affairs.

9 The failure of the State regulator to furnish the opinion within
10 a 90-day period shall be an approval of the consumer contract. A
11 refusal to approve shall be in writing and shall state the reasons
12 for the refusal. The failure of a creditor, seller, insurer or lessor
13 to apply for an opinion under this section shall not be used as
14 evidence in an action brought for a violation of this act.

1 9. This act shall not apply to consumer contracts involving
2 amounts of more than \$50,000.00, but no dollar limitation shall
3 apply to consumer contracts involving real estate or insurance.

1 10. a. To insure that a consumer contract shall be simple, clear,
2 understandable and easily readable, the following are examples of
3 guidelines that a court or primary State regulator may consider in
4 determining whether a consumer contract as a whole complies with
5 this act:

6 (1) Cross references that are confusing;

7 (2) Sentences that are of greater length than necessary;

8 (3) Sentences that contain double negatives and exceptions to
9 exceptions;

10 (4) Sentences and sections that are in a confusing or illogical
11 order;

12 (5) The use of words with obsolete meanings or words that
13 differ in their legal meaning from their common ordinary meaning;

14 (6) Frequent use of Old English and Middle English words and
15 Latin and French phrases.

16 b. The following are examples of guidelines that a court or
17 regulator shall consider in determining whether the consumer
18 contract as a whole complies with this act:

19 (1) Sections shall be logically divided and captioned;

20 (2) A table of contents or alphabetical index shall be used for
21 all contracts with more than 3,000 words;

22 (3) Conditions and exceptions to the main promise of the agree-
23 ment shall be given equal prominence with the main promise, and
24 shall be in at least ten point type.

1 11. There shall be no liability under sections 3 and 4 if a con-
2 sumer contract is understandable and easily readable by a person
3 with an eighth grade reading level. The Flesch Readability Test,
4 the Dale-Chall Test, the Fry Readability Graph, and any other
5 reading formula that is nationally recognized may be used by a
6 court or regulator to determine the reading level of a consumer
7 contract.

1 12. No consumer contract shall contain a waiver of any rights
2 under this act. A violation of this act will not render any consumer
3 contract void or voidable, or serve as a defense in an action to
4 enforce the consumer contract for breach thereof.

1 13. The Office of the Attorney General, the Division of Consumer
2 Affairs, the Department of the Public Advocate, or any interested
3 person may seek injunctive relief. The court may authorize
4 reasonable attorney's fees and court costs in such a proceeding.

1 14. If any provision of this act, or its application to any person
2 or circumstances, is held invalid, the remainder of the act and its
3 application to other persons or circumstances shall not be affected.

1 15. This act shall take effect 1 year after its enactment.

[OFFICIAL COPY REPRINT]
SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 536

STATE OF NEW JERSEY

ADOPTED MAY 24, 1979

AN ACT concerning simple, clear, understandable and easily
readable language in consumer contracts.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 "Consumer contract" means a written agreement in which a
3 natural person:

4 a. Leases or licenses real or personal property;

5 b. Obtains credit;

6 c. Obtains ***[personal lines]*** insurance coverage;

7 d. Borrows money;

8 e. Purchases real or personal property;

9 f. Contracts for services including professional services.

10 for cash or on credit and the money, property or services are
11 obtained for personal, family or household purposes. "Consumer
12 contract" includes writings required to complete the consumer
12A transaction.

13 "Primary State regulator" means a State agency or person that
14 has licensing or general regulatory authority over a creditor, seller,
15 insurer or lessor.

1 2. A consumer contract entered into on or after the effective
2 date of this act shall be written in a simple, clear, understandable
3 and easily readable way. In determining whether a consumer con-
3A tract has been written in a simple, clear, understandable and
4 easily readable way as a whole, a court or primary Staté regulator
5 shall take into consideration the guidelines set forth in section 10
6 of this act. Use of technical terms or words of art shall not in and
7 of itself be a violation of this act.

1 3. A creditor, seller, insurer or lessor who fails to comply with
2 section 2 of this act shall be liable to a consumer who is a party
3 to the consumer contract for actual damages sustained plus
4 punitive damages in an amount up to \$50.00. The creditor, seller,
5 insurer or lessor shall also be liable for the consumer's reasonable
6 attorney's fees and costs.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

1 4. Class actions may be brought under the provisions of this act,
2 but the amount of punitive damages shall be limited to \$10,000.00
3 against any one seller, lessor, insurer or creditor.

1 5. There shall be no liability under sections 3 and 4 if: a. both
2 parties to the contract have performed their obligations under the
3 contract, b. the creditor, seller, insurer or lessor attempts in good
4 faith to comply with this act in preparing the consumer contract,
5 or c. the contract is in conformity with a rule, regulation, or the
6 opinion or interpretation of a State official authorized by section 8
7 of this act to issue approvals of the form of the contract.

1 6. The use of specific language in a consumer contract required,
2 permitted or approved by a law, regulation, rule or published inter-
3 pretation of a State or Federal agency shall not violate this act.

1 7. This act shall not preclude a debtor, buyer, insured or lessee
2 from making any claims which would have been available to him
3 if this act were not in effect.

1 8. A creditor, seller, insurer or lessor may request an opinion
2 from a primary State regulator as to whether a consumer contract
3 complies with this act. A reasonable fee may be charged by the
4 State regulator for processing the request. The Commissioner of
5 Banking may render an opinion to any banking institution which
6 has a Federal charter.

7 A creditor, seller or lessor who does not have a State regulator
8 may request an opinion from the Division of Consumer Affairs.

9 The ~~*[failure of the]~~ State regulator ~~*[to]~~ **shall** furnish
10 the opinion within ~~*[a 90-day period shall be an approval of the~~
11 ~~consumer contract]~~ **a reasonable period of time**. A refusal to
12 approve shall be in writing and shall state the reasons for the re-
13 fusal. The failure of a creditor, seller, insurer or lessor to apply
14 for an opinion under this section shall not be used as evidence in
15 an action brought for a violation of this act.

1 9. This act shall not apply to consumer contracts involving
2 amounts of more than \$50,000.00, but no dollar limitation shall
3 apply to consumer contracts involving real estate or insurance.

1 10. a. To insure that a consumer contract shall be simple, clear,
2 understandable and easily readable, the following are examples of
3 guidelines that a court or primary State regulator may consider in
4 determining whether a consumer contract as a whole complies with
5 this act:

- 6 (1) Cross references that are confusing;
- 7 (2) Sentences that are of greater length than necessary;
- 8 (3) Sentences that contain double negatives and exceptions to
9 exceptions;

10 (4) Sentences and sections that are in a confusing or illogical
11 order;

12 (5) The use of words with obsolete meanings or words that
13 differ in their legal meaning from their common ordinary meaning;

14 (6) Frequent use of Old English and Middle English words and
15 Latin and French phrases.

16 b. The following are examples of guidelines that a court or
17 regulator shall consider in determining whether the consumer
18 contract as a whole complies with this act:

19 (1) Sections shall be logically divided and captioned;

20 (2) A table of contents or alphabetical index shall be used for
21 all contracts with more than 3,000 words;

22 (3) Conditions and exceptions to the main promise of the agree-
23 ment shall be given equal prominence with the main promise, and
24 shall be in at least ten point type.

1 11. There shall be no liability under sections 3 and 4 if a con-
2 sumer contract is understandable and easily readable by a person
3 with an eighth grade reading level. The Flesch Readability Test,
4 the Dale-Chall Test, the Fry Readability Graph, and any other
5 reading formula that is nationally recognized may be used by a
6 court or regulator to determine the reading level of a consumer
7 contract.

1 12. No consumer contract shall contain a waiver of any rights
2 under this act. A violation of this act will not render any consumer
3 contract void or voidable, or serve as a defense in an action to
4 enforce the consumer contract for breach thereof.

1 13. The Office of the Attorney General, the Division of Consumer
2 Affairs, the Department of the Public Advocate, or any interested
3 person may seek injunctive relief. The court may authorize
4 reasonable attorney's fees and court costs in such a proceeding.

1 14. If any provision of this act, or its application to any person
2 or circumstances, is held invalid, the remainder of the act and its
3 application to other persons or circumstances shall not be affected.

1 15. This act shall take effect **immediately, but shall remain in-*
2 *operative until** 1 year after its enactment*, *during which time*
3 *a State regulator may receive and process requests for and render*
4 *opinions as to whether consumer contracts comply with this act*.*

SENATE AMENDMENTS TO
SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 536

STATE OF NEW JERSEY

ADOPTED JUNE 25, 1979

Amend page 1, section 1, line 6, omit "personal lines".

Amend page 2, section 8, line 9, omit "failure of the"; omit "to", insert "shall".

Amend page 2, section 8, line 10, omit "a 90-day period shall be an approval of the consumer contract", insert "a reasonable period of time".

Amend page 3, section 15, line 1, after "effect", insert "immediately, but shall remain inoperative until"; after "enactment", insert ", during which time a State regulator may receive and process requests for and render opinions as to whether consumer contracts comply with this act".

STATEMENT

These amendments omit the term "personal lines insurance" from consumer contracts subject to the readability requirements of this bill. It is felt that "obtains personal insurance" clearly applies only to nonbusiness types of insurance coverage and that "personal lines" is unclear.

The 90-day review period for State regulators is too confining in which to adequately dispose of an opinion. Thus State regulators are given greater flexibility with regard to the review period. The amendments also provide that opinions by State regulators as to whether consumer contracts comply with the act may be furnished prior to the operative date of the act, so that these State regulators will not be overburdened by requests for opinions upon the operative date of the act and not unduly restricted by having to render an opinion within 90 days of the request.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

ASSEMBLY BILL NO. 536 (OCR)
STATEMENT

I am filing Assembly Bill No. 536 (OCR) in the State Library without my approval.

Under the provisions of Article V, Section I, Paragraph 14(b) of the Constitution, this bill does not become a law if it is not signed within the 45-day period, Sundays excepted, following the adjournment sine die of the Legislature. In these circumstances there is no provision for a veto, but I deem it to be in the public interest to state my reasons for deciding not to sign the bill.

I applaud the concept of plain language and Speaker Jackman's tireless efforts on its behalf. Although the Speaker has always heeded Aristotle's advice, "to speak as the common people do, to think as wisemen do," the notion of legislatively requiring plain language is a complicated subject with far-reaching impact.

The "legal lobby" has not influenced my decision. In fact, there is no consensus among lawyers against this bill or its concept. Thus, the Bar Association declined to take a position on the bill.

It is my own feeling that although regulating the protection of consumers is a worthy goal, legislating the style of a society's prose is another thing. Since the concept of legislatively requiring plain language is a new phenomenon, it is useful to profit from those jurisdictions which have already initiated such legislation, e.g. New York and Connecticut.

New York has experienced difficulties with the application of its Plain Language Bill and consequently a

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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statutorily permanent body - the New York State's Law Revision Commission has drafted revisions. Connecticut has also adopted a Plain Language Bill. I recommend certain changes based upon the experience in other jurisdictions and the realities of business transactions in which the parties are adequately regulated by other laws.

One, the bill should not encompass those situations where the consumer is simply not in need of "protection" of the plain language law; either because of the nature of the activity or because of presently existing regulations. Certain transactions require a sufficiently high level of sophistication that requiring plain language would be prescribing medicine for the healthy. For example, a commodities buyer can be expected to develop some skill before entering this field. Therefore, documents relating to commodities transactions and securities transactions should be excluded.

Two, although legal forms may be gobbledygook to laymen, when an attorney is hired to explain such legal forms and represent a consumer, there is no longer a need to insist on plain language. Indeed, to limit the available lexicon in such instances would only hinder and impede an understanding by all parties. Therefore, mortgages, deeds of real estate, contracts supplied by the consumer, or contracts read by the consumer's own lawyer should all be cases which are exempt from this bill.

Three, the danger of prescribing over-doses of remedies must be avoided. Insurance contracts, particularly life and health, are already regulated by Assembly

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Bill No. 3008, now P.L. 1979, c. 167. This law has already established the level of clarity and simplicity required. To legislate a new standard for insurance policies would only create ambiguity for laymen and lawyers alike.

Four, at a time when we are trying to raise the level of student skills, it would be paradoxical, to say the least, to mandate that everyone be obliged to write contracts to meet the reading skills of an eighth grader. Examples of prose writing which comply with the Flesch Readability Test (which is the test suggested by the plain language bill itself) are comics, Movie Screen and Seventeen magazines (Rudolf Flesch, "How to Write Plain English" p. 26, 1979)! Therefore, the bill must certainly not apply in instances where the consumer actually understood the contract.

Finally, damages should be limited to those suffered by the consumer because of a failure to comply.

Accordingly, I must file Assembly Bill No. 536 (OCR) without my approval.

Respectfully,


GOVERNOR

Dated: February 28, 1980