

56:12-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 56:12-1 et al. (Plain Language Law--amends)

LAWS 1981 CHAPTER 464

Bill No. A3601

Sponsor(s) Jackman

Date Introduced Nov. 16, 1981

Committee: Assembly _____

Senate _____

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

Date of Passage: Assembly Nov. 30, 1981

Senate Dec. 14, 1981

Date of approval Jan. 11, 1982

Following statements are attached if available:

Sponsor statement	Yes	No	Attached: Senate amendments, adopted 12-7-81 (with statements)
Committee Statement: Assembly	Yesx	No	
Senate	Yesx	No	
Fiscal Note	Yesx	No	
Veto Message	Yesx	No	
Message on signing	Yesx	No	

Following were printed:

Reports	Yesx	No
Hearings	Yesx	No

See newspaper clipping file in New Jersey Reference Section "N.J. - Consumer protection - 1981 & 1982.

6/22/81

1002

1-11-82

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 3601

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 16, 1981

By Assemblyman JACKMAN

(Without Reference)

AN ACT to amend and supplement "An act concerning simple, clear, understandable and easily readable language in consumer contracts," approved October 16, 1980 (P. L. 1980, c. 125).

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

1 1. Section 1 of P. L. 1980, c. 125 (C. 56:12-1) is amended to
2 read as follows:

3 1. As used in this act:

4 "Consumer contract" means a written agreement in which [a
5 natural person] *an individual:*

6 a. Leases or licenses real or personal property;

7 b. Obtains credit;

8 c. Obtains insurance coverage, except insurance coverage con-
9 tained in policies subject to the "Life and Health Insurance Policy
10 Language Simplification Act" (P. L. 1979, c. 167, C. 17B:17-17
11 et seq.);

12 d. Borrows money;

13 e. Purchases real or personal property;

14 f. Contracts for services including professional services,
15 for cash or on credit and the money, property or services are
16 obtained for personal, family or household purposes. "Consumer
17 contract" includes writings required to complete the consumer
18 transaction.

19 ["Primary State regulator" means a State agency or person
20 that has licensing or general regulatory authority over a creditor,
21 seller, insurer or lessor.]

1 2. Section 2 of P. L. 1980, c. 125 (C. 56:12-2) is amended to
2 read as follows:

3 2. A consumer contract entered into on or after the effective

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

4 date of this *amendatory and supplementary* act shall be written
 5 in a simple, clear, understandable and easily readable way. In
 6 determining whether a consumer contract has been written in a
 7 simple, clear, understandable and easily readable way as a whole,
 8 a court or **primary State regulator** *the Attorney General* shall
 9 take into consideration the guidelines set forth in section 10 of
 10 this act. Use of technical terms or words of art shall not in and
 11 of itself be a violation of this act.

1 3. Section 3 of P. L. 1980, c. 125 (C. 56:12-3) is amended to
 2 read as follows:

3 3. A creditor, seller, insurer or lessor who fails to comply with
 4 section 2 of this act shall be liable to a consumer who is a party
 5 to the consumer contract for actual damages sustained, *if the*
 6 *violation caused the consumer to be substantially confused about*
 7 *the rights, obligations or remedies of the contract*, plus punitive
 8 damages in an amount up to \$50.00. The creditor, seller, insurer
 9 or lessor shall also be liable for the consumer's reasonable attor-
 10 ney's fees and costs, *not to exceed \$2,500.00.*

1 4. Section 4 of P. L. 1980, c. 125 (C. 56:12-4) is amended to
 2 read as follows:

3 4. Class actions may be brought under the provisions of this
 4 act, but the amount of punitive damages shall be limited to
 5 \$10,000.00 against any one seller, lessor, insurer or creditor *and*
 6 *the amount of attorney's fees may not exceed \$10,000.00.*

1 5. Section 5 of P. L. 1980, c. 125 (C. 56:12-5) is amended to
 2 read as follows:

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

1 6. Section 8 of P. L. 1980, c. 125 (C. 56:12-8) is amended to
 2 read as follows:

3 8. a. A creditor, seller, insurer **or**, lessor *or any person in*
 4 *the business of preparing and selling forms of consumer contracts*
 5 may request an opinion from **a primary State regulator** *the*
 6 *Attorney General* as to whether a consumer contract complies
 7 with this act. **A reasonable fee may be charged by the State**
 8 **regulator for processing the request.** The Commissioner of Bank-

9 ing may render an opinion to any banking institution which has a
10 Federal charter.】

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

12 The 【State regulator】 *Attorney General* shall furnish the opinion
13 within a reasonable period of time. 【A refusal to approve shall
14 be in writing and shall state the reasons for the refusal. The failure
15 of a creditor, seller, insurer or lessor to apply for an opinion under
16 this section shall not be used as evidence in an action brought for
17 a violation of this act.】

18 *b. After reviewing the contract the Attorney General shall:*
19 *(1) certify that the contract complies with this act; (2) decline*
20 *to certify that the contract complies with this act and note his*
21 *objections to the contractual language; (3) decline to review the*
22 *contract and refer the party submitting the contract to other pre-*
23 *viously certified contracts of the same type; (4) decline to review*
24 *the contract because the contract's compliance with this act is the*
25 *subject of pending litigation; or (5) decline to review the contract*
26 *because the contract is not subject to this act.*

27 *c. Actions of the Attorney General pursuant to this section are*
28 *not appealable.*

29 *d. Any consumer contract certified pursuant to this section is*
30 *deemed to comply with this act. Certification of a consumer con-*
31 *tract pursuant to this section is not otherwise an approval of the*
32 *contract's legality or legal effect.*

33 *e. Failure to submit a contract to the Attorney General for re-*
34 *view pursuant to this section does not show a lack of good faith*
35 *nor does it raise a presumption that the contract violates this act.*
36 *If pursuant to this section the Attorney General refers a party to*
37 *a previously certified contract, that the party chooses not to use*
38 *the contract does not show a lack of good faith nor does it raise*
39 *a presumption that a contract used by that party violated this act.*

40 *f. The Attorney General may charge a fee, not to exceed \$50.00,*
41 *for the costs of reviewing a consumer contract pursuant to this*
42 *section.*

1 7. Section 10 of P. L. 1980, c. 125 (C. 56:12-10) is amended to
2 read as follows:

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

8 (1) Cross references that are confusing;

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

10 (3) Sentences that contain double negatives and exceptions to
11 exceptions;

12 (4) Sentences and sections that are in a confusing or illogical
13 order;

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

16 (6) Frequent use of Old English and Middle English words and
17 Latin and French phrases.

18 b. The following are examples of guidelines that a court or
19 [regulator shall] *the Attorney General* may consider in determin-
20 ing whether the consumer contract as a whole complies with this act:

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

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

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

1 8. Section 12 of P. L. 1980, c. 125 (C. 56:12-12) is amended to
2 read as follows:

3 12. The Office of the Attorney General, the Division of Consumer
4 Affairs, the Department of the Public Advocate, or any interested
5 person may seek injunctive relief. The court may authorize reason-
6 able attorney's fees, *not to exceed \$2,500.00*, and court costs in such
7 a proceeding.

1 9. (New section) In addition to the remedies provided in this
2 act, a court reviewing a consumer contract may reform or limit
3 a provision so as to avoid an unfair result if it finds that:

4 a. a material provision of the contract violates this act;

5 b. the violation caused the consumer to be substantially confused
6 about any of the rights, obligations or remedies of the contract; and

7 c. the violation has caused or is likely to cause financial detriment
8 to the consumer.

9 If the court reforms or limits a provision of a consumer contract,
10 the court shall also make orders necessary to avoid unjust enrich-
11 ment. Bringing a claim for relief pursuant to this section does not
12 entitle a consumer to withhold performance of an otherwise valid
13 contractual obligation. No relief shall be granted pursuant to this
14 section unless the claim is brought before the obligations of the
15 contract have been fully performed.

1 10. P. L. 1981, c. 274 (C. 56:12-8.1) is repealed.

1 11. This act shall take effect April 15, 1982, but with respect to
2 consumer contracts which are subject to the Federal Truth in

3 Lending Act (P. L. 90-321, 15 U. S. C. s. 1601 et seq.), this act
4 shall take effect 60 days after the next revision of regulations made
5 pursuant to that act or April 15, 1982, whichever is later. **This*
6 *act shall remain inoperative until October 16, 1982 with regard to*
7 *all contracts of insurance during which time the Attorney General*
8 *may receive and process requests for and render opinions as to*
9 *whether those contracts comply with this act.**

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5 person may seek injunctive relief. The court may authorize reason-
6 able attorney's fees, *not to exceed \$2,500.00*, and court costs in such
7 a proceeding.

1 9. (New section) In addition to the remedies provided in this
2 act, a court reviewing a consumer contract may reform or limit
3 a provision so as to avoid an unfair result if it finds that:

4 a. a material provision of the contract violates this act;

5 b. the violation caused the consumer to be substantially confused
6 about any of the rights, obligations or remedies of the contract; and

7 c. the violation has caused or is likely to cause financial detriment
8 to the consumer.

9 If the court reforms or limits a provision of a consumer contract,
10 the court shall also make orders necessary to avoid unjust enrich-
11 ment. Bringing a claim for relief pursuant to this section does not
12 entitle a consumer to withhold performance of an otherwise valid
13 contractual obligation. No relief shall be granted pursuant to this
14 section unless the claim is brought before the obligations of the
15 contract have been fully performed.

1 10. P. L. 1981, c. 274 (C. 56:12-8.1) is repealed.

1 11. This act shall take effect April 15, 1982, but with respect to
2 consumer contracts which are subject to the Federal Truth in
3 Lending Act (P. L. 90-321, 15 U. S. C. s. 1601 et seq.), this act
4 shall take effect 60 days after the next revision of regulations made
5 pursuant to that act or April 15, 1982, whichever is later.

STATEMENT

WHAT THIS BILL DOES

This bill changes the plain language law in the following ways:

1. Several pure language changes have been made to prevent litigation. An example is changing the term "a natural person" to an "individual."

2. The power to review consumer contract language, to determine if the consumer contract complies with the act, is transferred from the regulatory agencies to the Attorney General.

3. The Attorney General's power in approving a consumer contract is set forth.

The Attorney General may:

a. Certify that the contract complies with the act.

b. Decline to certify that the contract complies with the act and note his objections to the contractual language.

c. Decline to review the contract and refer the party submitting the contract to other previously certified contracts of the same type.

d. Decline to review the contract because the contract's compliance with the act is the subject of pending litigation.

e. Decline to review the contract because the contract is not subject to the requirements of the act.

4. The actions of the Attorney General are not appealable.

5. Certification of the Attorney General is not otherwise an approval of the contract's legality or legal effect.

6. Failure to submit a contract to the Attorney General for review does not show a lack of good faith or a presumption that the contract violates the act.

7. Additional powers are granted to the courts to reform or limit a provision of the consumer contract to avoid an unfair result if the court finds:

a. A material provision of the contract is not simple, clear, understandable or easily readable or if a condition to the benefit is not given equal prominence to the benefit.

b. The violation is likely to cause financial detriment to the consumer.

c. The violation caused the consumer to be substantially confused about any of the rights, obligations or remedies of the contract.

8. The courts are granted the power to make orders necessary to avoid unjust enrichment.

9. Attorney's fees or costs of investigation in a class action are limited to an amount not to exceed \$10,000.00. The act's penalties remain the same.

A3601 (1981)

10. A consumer may recover actual damages only if the violation caused the consumer to be substantially confused about the rights, obligations or remedies of the contract.

11. The Attorney General may charge a fee not to exceed \$50.00 for the cost of reviewing a consumer contract.

12. The act takes effect on April 15, 1982 except for consumer contracts which are subject to Federal Truth In Lending requirements. The act will apply to such contracts 60 days after the revised Federal regulations are made public.

WHY THESE CHANGES ARE NECESSARY

1. To make this act as litigation-proof as possible, it is designed to prevent nitpicking lawyers from playing with words.

2. The power of the regulatory agencies is transferred to the Attorney General because the regulatory agencies have candidly admitted they have no one in the agencies capable of writing plain language.

Secondly, the art of determining what is plain language in consumer contracts requires a person with a knowledge of law combined with the ability to write clearly and understandably.

Recent graduates of the national law schools have been trained to write in plain language.

3. Additional powers granted to the courts are necessary to prevent the act from being used solely to secure a financial windfall by consumers and lawyers.

4. Experience has shown that in other laws which provide for assessment of attorney's fees, the cost of attorney's fees due to current hourly rates far exceeds the penalties provided under the law.

5. It is necessary to amend the act to provide that technical violations cannot be used as a financial club against business.

Substantial confusion by the consumer rather than technical violations will now be required in any lawsuits commenced under this act. This is necessary to lessen the real or fanciful fears of business under the present language of the act.

6. The change stated in 7a. of the statement is necessary because of a legislative awareness that conditions to benefits are just as important as the benefits themselves. Generally as a matter of instinct these exceptions to benefits are traditionally presented in the nature of "boilerplate" or in "fine print." This practice is endemic to the insurance industry and is found in the consumer contracts of the large department stores and the rent-a-car industry. Unfortunately the consumers' attention is inadequately or never

directed to the fine print. New Jersey's law is the only plain language law in the nation that addresses this problem.

7. The effective date of the act has been postponed to April 15, 1982 so that the confusion and chaos created by the action of the regulatory agencies together with the unfortunate language of the recent amendment, which is now being repealed by this act, may be balanced with the right of the consumer to have an understandable contract within a reasonable period of time.

8. These provisions are adopted in part from a well thought out plain language act recently adopted by the State of Minnesota.

SENATE AMENDMENT TO
ASSEMBLY, No. 3601

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STATE OF NEW JERSEY

ADOPTED DECEMBER 7, 1981

Amend page 4, section 11, line 5, after "later.", insert "This act shall remain inoperative until October 16, 1982 with regard to all contracts of insurance during which time the Attorney General may receive and process requests for and render opinions as to whether those contracts comply with this act.".

STATEMENT

This amendment makes clear that the amendatory and supplementary provisions of this bill do not apply to insurance contracts until October 16, 1982. The "Plain Language Law," effective October 16, 1980 provided that insurance contracts would not be covered by that law until October 16, 1982.