2013 DRAFTING REQUEST

Bill

Received:	**7/1/2013**	Received By:	**rnelson**
Wanted:	**As time permits**	Same as LRB:	
For:	**Legislative Council - IND 6-1946**	By/Representing:	**David Moore**
May Contact:		Drafter:	**rnelson**
Subject:	**Courts - civil procedure**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **David.Moore@legis.wisconsin.gov**
Carbon copy (CC) to: **John.Anderson@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Fair bargain act

Instructions:

See attached

sent to Sen. Miller per RPN

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson 7/2/2013						
/P1	rnelson 7/10/2013	kfollett 7/2/2013	jmurphy 7/2/2013		lparisi 7/2/2013		
/P2	rnelson 10/10/2013	kfollett 7/12/2013	rschluet 7/12/2013		srose 7/12/2013		
/P3	rnelson	kfollett	rschluet		srose		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	1/20/2014	10/25/2013	10/25/2013		10/25/2013		
/1		kfollett 1/24/2014	jmurphy 1/24/2014		lparisi 1/24/2014	lparisi 1/24/2014	

FE Sent For:

None Needed

<END>

2013 DRAFTING REQUEST

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Carbon copy (CC) to: **John.Anderson@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Fair bargain act

Jacket /P1 for Senator miller

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson 7/2/2013						
/P1	rnelson 7/10/2013	kfollett 7/2/2013	jmurphy 7/2/2013		lparisi 7/2/2013		
/P2	rnelson 10/10/2013	kfollett 7/12/2013	rschluet 7/12/2013		srose 7/12/2013		
/P3	rnelson	kfollett 1/24	rschluet 1/24		srose		

1/24

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	10/25/2013	10/25/2013	10/25/2013		10/25/2013		

FE Sent For:

<END>

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For:	**Legislative Council - IND 6-1946**	By/Representing:	**David Moore**
May Contact:		Drafter:	**rnelson**
Subject:	**Courts - civil procedure**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **David.Moore@legis.wisconsin.gov**
Carbon copy (CC) to: **John.Anderson@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Fair bargain act

Instructions:

See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson 7/2/2013						
/P1	rnelson 7/10/2013	kfollett 7/2/2013	jmurphy 7/2/2013		lparisi 7/2/2013		
/P2		kfollett 7/12/2013	rschluet 7/12/2013		srose 7/12/2013		

1P3 kf 10/23 10/25

1P3 kf 10/23 10/25

FE Sent For:

<END>

2013 DRAFTING REQUEST

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Wanted:	**As time permits**	Same as LRB:	
For:	**Legislative Council - IND 6-1946**	By/Representing:	**David Moore**
May Contact:		Drafter:	**rnelson**
Subject:	**Courts - civil procedure**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **David.Moore@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Fair bargain act

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson 7/2/2013						
/P1		kfollett 7/2/2013	jmurphy 7/2/2013		lparisi 7/2/2013		

FE Sent For:

12 of
7/12

<END>

2013 DRAFTING REQUEST

Bill

Received:	**7/1/2013**	Received By:	**rnelson**
Wanted:	**As time permits**	Same as LRB:	
For:	**Legislative Council - IND 6-1946**	By/Representing:	**David Moore**
May Contact:		Drafter:	**rnelson**
Subject:	**Courts - civil procedure**	Addl. Drafters:	
		Extra Copies:	Mike Gallagher

Submit via email: **YES**
Requester's email: **David.Moore@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Fair bargain act

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rnelson	/Plkf 7/2	jm 7/2	self			

FE Sent For:

<END>

A MODEL FAIR BARGAIN ACT
Draft of November 2003

This model law act was drafted by the North Carolina Fair Bargain Committee and is presented to anyone willing to consider its enactment in other states.* An earlier version was enacted in 2001 in New Mexico, and was introduced in several states in 2002 and 2003. It will be considered by the North Carolina and other state legislatures in 2004-2005.

The draft is a response to the use by large businesses of printed form contracts containing provisions having the apparent effect of stripping individual citizens with whom they deal of the procedural rights they would need to enforce their substantive rights against the firm drafting the form, rights conferred on them by Congress and state legislatures.

The basic policy of this Fair Bargain Act is not new. It was embedded in traditional English common law and in legal doctrine conventional in American states in the 19th century. The common law doctrine was that a person cannot by contract waive procedural rights they may need in a dispute that has not yet arisen. Such waivers were revocable. The premise of the revocability doctrine was that citizens who waive their procedural rights before a dispute has arisen in all likelihood do not know what they are doing and are probably being exploited by a party who expects to be sued by at least some of the persons with whom it makes contracts. The Model Act merely restates that old revocability principle and brings it up to date in its application to standardized form contracts. With respect to consumer transactions, it is merely an elaboration of Section 2-302 of the Uniform Commercial Code.

Printed forms were not used by American business until the late 19th century. It was soon recognized that such instruments were very useful, but also hazardous to the interests of the citizens who cannot read and understand technical legal prose in English, or who are inattentive to the details of what seem to them at the time to be minor transactions, or who have no real freedom to reject the printed terms offered.

By the early decades of the 20th century, it was well understood everywhere in America that contracts between large enterprises and individuals must be regulated. The duty of corporate management is to shareholders, not to consumers or workers. Much law was enacted in the late 19th and 20th

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* To contact the committee, address e-mail at pdc@law.duke.edu.

centuries to control the resulting impulses of corporate enterprise and protect workers and consumers. Much of that law was written to be enforced by injured parties serving as private attorneys general serving the public interest by their private actions. Examples of public law privately enforced are antitrust and franchise investment laws, civil rights laws, and laws to protect consumers, workers, and individual investors. Indeed, much of the law of torts developed in the 20th century is public law in the sense that it serves regulatory aims. There are also many laws enacted to protect tenants, small loan borrowers, and medical patients that are privately enforced. Indeed, private law enforcement has become the primary means by which American corporate management is deterred from making business judgments that externalize the risks or costs of their business by imposing those costs or risks on consumers, tenants, small loan borrowers, medical patients, workers, or others with whom they deal routinely.

Increasingly in the last quarter century, corporate managers and their lawyers have been trying to evade enforcement of all these regulatory laws by imposing on the consumers, employees, and others with whom they deal printed forms containing diverse waivers of procedural rights. One cause of this trend may be the increasingly shrill demand of investment managers for short-term profits. Another may be that managers have been in recent times compensated with stock options that are valuable only if stock prices rise in the short term. Another may be emergence of the ADR movement that seemed to invite managers to save legal costs. Another may be globalization that invites the comparison of legal costs of doing business in the United States and in other countries; businesses making that comparison seldom take note that other competitive economies socialize other costs such as health care, a need that is extraordinarily expensive in the United States and is borne by the individuals with whom multinational firms must deal.

Whatever the causes, the trend has been marked, and every member of every legislative body has in recent years received many forms recording transactions that contained one or more clauses substantially disabling them from enforcing any rights they might have against the party writing the forms.

Often these rights-impairing clauses masquerade as arbitration agreements. The federal courts have in the last quarter century fashioned a "national policy" favoring arbitration. Given the decisions of the Supreme Court, it seems that the legislatures cannot proscribe arbitration clauses even if they were of a mind to do so. Few if any citizens or legislators would want to impede in any way the rights of parties to arbitrate disputes in lieu of litigation, for most states share the general policy favoring arbitration. But corporate managers and their lawyers are often not content with merely diverting cases

from courts to arbitral forums to gain whatever cost savings might be effected by that step. As often as not, they add bells and whistles to make sure that the individuals with whom they deal are at a disadvantage should they later seek to enforce their rights against the corporate enterprise. It is these bells and whistles that are the subject of the Model Fair Bargain Act. In making those provisions – and not the arbitration clauses to which they are attached -- revocable, it aims to assure that arbitration is not used for the hidden purpose of preventing consumers, employees, and other individuals from enforcing the rights that Congress, state legislatures, and state courts have conferred upon them to protect them from the same corporate enterprises that are writing the forms being used to record their transactions.

The Supreme Court has repeatedly affirmed that the Federal Arbitration Act leaves in place the state law of contracts, and that an otherwise valid arbitration clause in a contract of adhesion may not be deployed to impose increased costs on a consumer or employee.[1] The Model Act set forth below is an expression of state contract law, not state arbitration law. It may be important to keep that distinction clear by enacting the Model Act separately from the Revised Uniform Arbitration Act and not as a part of that act, as was done in New Mexico. The Model Act declares the policy that printed forms purporting to be contracts may contain valid arbitration clauses, but cannot be used by vendors of goods and services, lessors, employers, or franchisors to prevent or discourage consumers, tenants, employees or small businesses from enforcing their substantive rights. Waivers of important procedural rights in future disputes are declared to be revocable. As noted, that is not new law, but a recodification of ancient law, and it has been recently reaffirmed by numerous courts.[2] Pursuant to the Model Act, arbitration clauses in standard

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[1] *Green Tree Financial Corp. of Alabama v. Randolph*, 531 U. S. 79 (2000).

[2] Recent cases affirming that this is so include *Armendariz v. Foundation Health Psychcare Svs, Inc.*, 24 CAL. 4th 83, 6 P. 3d 669, 690 (2000); *Circuit City Stores v. Adams*, 2002 U. S. App. Lexis 1686, cert. den. 122 S. Ct. 2329 (2002) (applying California law); *Choice Hotels International, Inc. v. Ticknor*, 265 F. 3d 931 (9th cir. 2001), cert den. 2002 U. S. Lexis 725 (2002) (applying Montana law); *Graham Oil Co. v. Arco Products Co.* 43 F3d 1244 (9th cir 1994) (applying California law); *Iwen v. U.S. West Direct*, 293 MONT. 512, 977 P. 2d 989 (1999); *Kloss v. Edward D. Jones & Co*, 2002 MONT.LEXIS 413 (Montana 2002); *Burch v. Second Jud. Dist. Ct.*, 49 P. 3d 647 (Nevada 2002); *Williams v. Aetna Insurance Co.*, 83 OHIO ST. 3d 464, 700 N. E. 2d 859 (1998), cert. den. 526 U. S. 1051 (1999); *Lytle v. CitiFinancial Services, Inc.*, 2002 PA. SUPER. 327 – A. 2d – (2002); *Mendez v. Palm Harbor Homes Inc.*, 111 WN. APP. 446, 45 P. 3d 594 (2002); *State ex rel. Dunlap v. Berger*, 567 S. E. 2d 265 (West Virginia 2002); *Ting v. AT&T*, 182 F.Supp. 2d. 902 (N. D. Cal. 2002). Cf. *McCaskill v. SCI Management Corp.*, 298 F. 3d. 1677 (7th cir 2002); *Milon v. Duke University*, 559 S. E. 2d 789 (N.C. 2002); *Harold Allen's Mobile Home Factory Outlet, Inc. v. Butler*,

forms may be enforced, but not in a manner placing the party who did not write the form at a procedural disadvantage.[3] The Act provides clarity where it is needed. Some federal courts have mistakenly supposed that the law of contracts binds an individual who is sufficiently inattentive, ignorant, illiterate or weak that she does not reject a printed form to every provision in that form no matter how it may disable her from enforcing her rights.[4] That is not the law of any state, nor is it likely that any legislature in the United States would approve such an enactment.

The Act if understood should attract the support of almost everyone, for all individuals are potential victims of the misuses of contract law that this law is intended to correct. Even managers of aggressive multi-national enterprises may approve the law if they perceive that it relieves them of competitive pressure to impose harsh terms on consumers, employees, borrowers, franchisees, patients, farmers, livestock and poultry growers, and other individuals with whom they deal.

2002 ALA. LEXIS 16 (2002); but cf. *Metro E. Ctr. for Conditioning & Health v. Qwest Comm. Int'l*, 294 F. 3d 924 (7th cir. 2002).

[3] E.g., *Cole v. Burns International Security Services*, 105 F. 3d 1465 (D. C. cir. 1997); *Shankle v. B-G Maintenance of Colorado Inc.*, 163 F. 3d 1230 (10th cir. 1999); *Hooters of America, Inc.*, 173 F. 3d 933 (4th cir. 1999).

[4] Charles Davant IV, Note, *Tripping on the Threshold: Federal Courts' Failure to Observe Controlling State Law Under the Federal Arbitration Act,* 51 DUKE L. J. 521 (2001).

THE DRAFT ACT

Now it is enacted that:

Section 1. Short Title. This Act shall be known as the Fair Bargain Act of 2003.

Section 2. Legislative Findings. The legislature finds that

(1) standard form contracts, in whatever form recorded, do not necessarily express the voluntary and informed assent of both parties; and

(2) the party drafting such a form will often foresee legal disputes with one or more of the parties to whom it is submitted for acceptance, while the party accepting such a form will seldom foresee such a legal dispute or prudently evaluate the loss of procedural rights affecting its outcome; and

(3) the party drafting such a form can unless restrained by law exploit the inadvertence, imprudence, or limited literacy of the party to whom it is presented for acceptance by including provisions disabling that party's procedural rights necessary or useful to the enforcement of substantive rights otherwise purportedly conferred by the contracts in which the provisions appear or by state or federal law; and

(4) this use of standard form contracts is unconscionable.

Section 3. Definitions.

(a) a *standard form contract or lease* is one prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees;

(b) *livestock or poultry grower* means any person engaged in the business of raising and caring for livestock or poultry in accordance with a growout contract, marketing agreement, or other arrangement under which a livestock or poultry grower raises and cares for livestock or poultry, whether the livestock or poultry is owned by the person or by another person;

(c) a *rights enforcement disabling provision* is one modifying or limiting otherwise available procedural rights necessary or useful to a consumer, borrower, tenant, livestock or poultry grower, employee, or small business in the enforcement of substantive rights against a party drafting a

standard form contract or lease, including a clause requiring the consumer, tenant, borrower, franchisee, livestock or poultry grower, or employee to

(1) assert any claim against the party who prepared the form in a forum that is less convenient, more costly, or more dilatory than a judicial forum established in this state for the resolution of the dispute; or

(2) assume a risk of liability for the legal fees of the party preparing the contract, unless those fees are authorized by statute, reasonable in amount and incurred to enforce a promise to pay money; or

(3) forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum available to hear and decide a dispute between the parties; or

(4) present evidence to a purported neutral who may reasonably be expected to regard the party preparing the contract as more likely to be a future employer of the neutral than is that party's adversary; or

(5) forego recourse to appeal from a decision not based on substantial evidence or disregarding his or her legal rights, or

(6) require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations; or

(7) decline to participate in a class action, or

(8) forego an award of attorneys' fees, civil penalties, punitive damages, or of multiple damages otherwise available under the law.

Section 4. Rights Enforcement Disabling Provision Revocable.

A rights enforcement disabling provision as defined in Section 3 that is included in a standard form contract or lease is revocable by the consumer, borrower, tenant, employee, livestock grower or small business. Revocation shall be in writing and communicated within a reasonable time after a dispute between the parties to the contract has arisen and the consumers of goods or services, borrowers, tenants, livestock or poultry growers, franchisees, or employees has had an opportunity to seek counsel on the effect of the provision. A party seeking to enforce such a provision after it has been revoked shall be liable for any resulting legal costs, including a reasonable attorney's fee.

Section 5. Covered Transactions.

This Act shall not apply to a provision in any contract

(a) for the sale or lease of property or for the delivery of services having a value in excess of two hundred thousand dollars, or for a loan in excess of that amount; or

(b) of employment providing for compensation in excess of one hundred thousand dollars a year; or

(c) that is an agreement to maintain a local business franchise having gross receipts in excess of a million dollars a year; or

(d) that is a commercial letter of credit.

Section 6. Agreements to Arbitrate Future Disputes Preserved.

Nothing in this Act shall preclude parties from making a binding agreement to arbitrate a future dispute provided that the arbitration agreement does not impose on any consumer, borrower, tenant, franchisee, or employee any of the rights enforcement disabilities identified in Section 2 of this Act as unconscionable.

Section 7. Severability.

The provisions of this Act are severable; the invalidity of any application of any provision of this Act for any reason shall not affect other applications, nor shall the invalidity of any provision affect the validity of other provisions.

1 of 1 DOCUMENT

Michie's Annotated Statutes Of New Mexico

*** This section is current through the Second Session of the Fiftieth Legislature and the Results of the November 6, 2012 General Election ***

CHAPTER 44. MISCELLANEOUS CIVIL LAW MATTERS
ARTICLE 7A. UNIFORM ARBITRATION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 44-7A-5 (2012)

§ 44-7A-5. Disabling civil dispute clause voidable

In the arbitration of a dispute between a consumer, borrower, tenant or employee and another party, a disabling civil dispute clause contained in a document relevant to the dispute is unenforceable against and voidable by the consumer, borrower, tenant or employee. If the enforcement of such a clause is at issue as a preliminary matter in connection with arbitration, the consumer, borrower, tenant or employee may seek judicial relief to have the clause declared unenforceable in a court having personal jurisdiction of the parties and subject matter jurisdiction of the issue.

HISTORY: Laws 2001, ch. 227, § 5.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Alternative Dispute Resolution

JUDICIAL DECISIONS

RELATION TO FAA

In light of the New Mexico Supreme Court's holding in *Fiser* that *44-7A-1(b)(4)(f) NMSA* 1978 and this section, which provide that any waiver of a consumer's right to a class action in an arbitration agreement is void and unenforceable, are not preempted by the Federal Arbitration Act (FAA), *9 U.S.C.S. §§ 1*-6, the Court of Appeals of New Mexico held that the FAA did not prevent application of the doctrine of unconscionability to a one-sided arbitration agreement that a nursing home required to be signed as a condition of admission. New Mexico courts are not to be used to enforce unconscionable arbitration clauses. Figueroa v. THI of N.M. at Casa Arena Blanca LLC, N.M. , P.3d

1 of 1 DOCUMENT

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*** This section is current through the Second Session of the Fiftieth Legislature and the Results of the November 6, 2012 General Election ***

CHAPTER 44. MISCELLANEOUS CIVIL LAW MATTERS
ARTICLE 7A. UNIFORM ARBITRATION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 44-7A-1 (2012)

§ 44-7A-1. Short title; definitions

(a) The provisions of this act may be cited as the "Uniform Arbitration Act" [*44-7A-1 to 44-7A-32 NMSA* 1978].

(b) As used in the Uniform Arbitration Act:

(1) "arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

(2) "arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

(3) "court" means a court of competent jurisdiction in this state;

(4) "disabling civil dispute clause" means a provision modifying or limiting procedural rights necessary or useful to a consumer, borrower, tenant or employee in the enforcement of substantive rights against a party drafting a standard form contract or lease, such as, by way of example, a clause requiring the consumer, tenant or employee to:

(a) assert a claim against the party who prepared the form in a forum that is less convenient, more costly or more dilatory than a judicial forum established in this state for resolution of the dispute;

(b) assume a risk of liability for the legal fees of the party preparing the contract, but a seller, lessor or lender may exact for a buyer, tenant or borrower an obligation to reimburse the seller, lessor or lender for a reasonable fee paid to secure enforcement of a promise to pay money;

(c) forego access to the discovery of evidence as provided in the rules of procedure of a convenient judicial

forum available to hear and decide a dispute between the parties;

(d) present evidence to a purported neutral person who may reasonably be expected to regard the party preparing the contract as more likely to be a future employer of the neutral person;

(e) forego recourse to appeal from a decision not based on substantial evidence or disregarding the legal rights of the consumer, tenant or employee;

(f) decline to participate in a class action; or

(g) forego an award of attorney fees, civil penalties or multiple damages otherwise available in a judicial proceeding;

(5) "knowledge" means actual knowledge;

(6) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation or any other legal or commercial entity;

(7) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(8) "standard form contract or lease" means a written instrument prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees.

HISTORY: Laws 2001, ch. 227, § 1.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Alternative Dispute Resolution

JUDICIAL DECISIONS

ANALYSIS
GENERALLY
AGREEMENT
AGREEMENT INTERPRETATION
APPEALS
APPLICABILITY
ARBITRATION
AUTHORITY OF ARBITRATOR
CONSTRUCTION
CONSTRUCTION WITH OTHER LAW
COURT'S ROLE
DEFENSES
JURISDICTION
LEGISLATIVE INTENT
MOTION TO COMPEL
POLICY
PUBLIC POLICY

REVIEW OF ARBITRATION AWARD
TIME LIMITATIONS

GENERALLY

Under former 44-7-1, 1953 Comp. of the Uniform Arbitration Act (Act), a written agreement to submit a controversy to arbitration is valid, enforceable, and irrevocable, except on such grounds as may exist for revocation of the contract; the legislature and the courts of New Mexico express a strong policy preference for resolution of disputes by arbitration. *United Technology & Resources v. Dar Al Islam, 115 N.M. 1, 846 P.2d 307 (1993).*

AGREEMENT

On application of a party showing an agreement as set forth in former 44-7-1, 1953 Comp. and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denied the existence of the agreement to arbitrate, the court, pursuant to former 44-7-2A, 1953 Comp. should determine the issue and order arbitration if found for the moving party. *Gonzales v. United Southwest Nat'l Bank, 93 N.M. 522, 602 P.2d 619 (1979).*

Pursuant to former 44-7-1 and 44-7-2, 1953 Comp., the threshold issue of whether there is an existing agreement requiring arbitration is a matter for the court, not the arbitrator; the court must first rule upon the existence or validity of an alleged contract. *Gonzales v. United Southwest Nat'l Bank, 93 N.M. 522, 602 P.2d 619 (1979).*

Employer is not required under the Uniform Arbitration Act, former 44-7-1 and 44-7-2A, 1953 Comp. (see now *44-7A-1 NMSA* 1978 et seq.), to arbitrate a dispute over an employee's termination in alleged violation of an employment contract because the contract, which provides for steady employment for an indefinite period, had expired and was no longer in effect at the time of the employee's termination; although the contract uses the term "permanent" with respect to employment, the contract is not for lifetime employment but for employment for an indefinite period because no consideration supports the contract other than the performance of duties and the payment of wages. *Gonzales v. United Southwest Nat'l Bank, 93 N.M. 522, 602 P.2d 619 (1979).*

AGREEMENT INTERPRETATION

When parties agree to arbitrate any potential claims or disputes arising out of their relationships by contract or otherwise, the arbitration agreement will be given broad interpretation unless the parties themselves limit arbitration to specific areas or matters; but, barring such limiting language, the courts only decide the threshold question of whether there is an agreement to arbitrate. A trial court properly submitted to arbitration a contractual dispute concerning a roofing job between a city and a subcontractor even though the dispute arose after the expiration of the subcontractor's warranty periods, because the parties' written contract contained a broad arbitration clause, which was deemed valid, enforceable, and irrevocable under former 22-3-9, 1953 *Comp. K. L. House Constr. Co. v. Albuquerque, 91 N.M. 492, 576 P.2d 752 (1978).*

APPEALS

In an action which appealed an award of arbitration, it was determined that although the Arbitration Act, *44-7A-1 to 44-7A-22 NMSA* 1978 did not require a record of the arbitration proceedings as a prerequisite to an appeal under the act, a party who waived a record could be unable to prove the allegations because of the lack of a transcript. Casias v. Dairyland Ins. Co., 1999-*NMCA-046, 126 N.M. 772, 975 P.2d 385.*

Trial court erred in dismissing a company's motion to vacate an arbitration award in favor of its former employee for lack of jurisdiction because once an arbitration award was granted, the Uniform Arbitration Act, former 44-7-1 through 44-7-22, 1953 Comp., applied to the court's review process and provided for the courts to take jurisdiction to confirm the award or to vacate, modify, or correct it within narrow statutory limits, pursuant to former 44-7-11 through 44-7-13, 1953 Comp., and to enter judgment on an award pursuant to former 44-7-17, 1953 *Comp. Daniels Ins. Agency v. Jordan, 99 N.M. 297, 657 P.2d 624 (1982).*

APPLICABILITY

Order for arbitration imposed against the clients was improper pursuant to the New Mexico Arbitration Act, *44-7A-1 NMSA* 1978 et seq. because the district court was not permitted to compel arbitration absent an arbitration agreement as required by *44-7A-8(c) NMSA* 1978. Alexander v. Calton & Assocs., Inc., 2005-*NMCA-034, 137 N.M. 293, 110 P.3d 509.*

Pursuant to former 44-7-1, 1953 Comp., the former Uniform Arbitration Act, former 44-7-1 to 44-7-22, 1953 Comp. (now *44-7A-1 NMSA* 1978 et seq.), was applicable to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the agreement; so where neither a project agreement nor a walk out agreement provided that the Act would not apply, and where its application was not repugnant to any provision within either of those agreements, former 44-7-4, 1953 Comp., which provided that the powers of arbitrators could be exercised by a majority unless otherwise provided by the agreement or by the Act, was applicable, so a five to one decision of a joint administration committee was lawful, final, and binding despite common law authority that arbitration awards had to be unanimous. *Andrews v. Stearns-Roger, Inc., 93 N.M. 527, 602 P.2d 624 (1979).*

ARBITRATION

Given that an arbitration clause was stated narrowly to cover only disputes arising out of, or relating to, a particular agreement, and the tort claims made by a party to the agreement did not arise out of, or relate to, the agreement, because no reasonable relationship between the two existed the Uniform Arbitration Act did not apply to the tort claims. Santa Fe Techs. v. Argus Networks, 2002-*NMCA-030, 131 N.M. 772, 42 P.3d 1221,* cert. denied, *131 N.M. 737, 42 P.3d 842 (2002).*

A realty company that formerly employed a realtor who claimed that she was owed commissions by the company and its owner was not entitled to compel arbitration pursuant to the Uniform Arbitration Act, former 44-7-1 through 44-7-22, 1953 Comp. (now *44-7A-1 NMSA* 1978 et seq.) because Article 14 of the Realtors' Code of Ethics, which required arbitration whenever a controversy arose between realtors of different firms, was construed to bar arbitration when the dispute arose from a contractual relationship and the parties were members of the same firm, notwithstanding that the parties were associated with different firms when the action was brought. *Christmas v. Cimarron Realty Co., 98 N.M. 330, 648 P.2d 788 (1982).*

In an adversary proceeding to obtain monies owed under a contract, *44-7A-1 NMSA* 1978 required that a court determine if arbitration was required to settle a dispute between a construction company and a concrete company. *Cres Rivera Concrete Co. v. Bill Stuckman Constr. Co. (In re Cres Rivera Concrete Co.), 21 Bankr. 155 (Bankr. D.N.M. 1982).*

Employer is not required under the Uniform Arbitration Act, former 44-7-1 and 44-7-2A, 1953 Comp. (see now *44-7A-1 NMSA* et seq.), to arbitrate a dispute over an employee's termination in alleged violation of an employment contract because the contract, which provides for steady employment for an indefinite period, had expired and was no longer in effect at the time of the employee's termination; although the contract uses the term "permanent" with respect to employment, the contract is not for lifetime employment but for employment for an indefinite period because no consideration supports the contract other than the performance of duties and the payment of wages. *Gonzales v. United Southwest Nat'l Bank, 93 N.M. 522, 602 P.2d 619 (1979).*

AUTHORITY OF ARBITRATOR

Employer was entitled to summary judgment dismissing an employee's employment-related claims brought after the parties had gone to arbitration because, instead of raising the scope of the parties' arbitration agreement with the arbitrator, who had exclusive contractual authority to decide the issue, the employee wrongly unilaterally reserved a right to go to court. Horne v. Los Alamos Nat'l Sec., L.L.C., 2013-*NMSC-004, N.M. , 296 P.3d 478.*

Given the increasing importance of methods of alternative dispute resolution in the functioning of an overburdened court system, and New Mexico's strong public policy favoring the resolution of disputes through arbitration and other alternative means, arbitrators are authorized under the Uniform Arbitration Act, former 44-7-1, 1953 Comp. (now *44-7A-1 NMSA* 1978 et seq.) to award punitive damages when such damages are permitted by law and supported by the facts. Aguilera v. Palm Harbor Homes, Inc., 2001-*NMCA-091, 131 N.M. 228, 34 P.3d 617,* aff'd, Aguilera v. Palm Harbor Homes, Inc., 2002-*NMSC-029, 132 N.M. 715, 54 P.3d 993 (2002).*

CONSTRUCTION

Trial court's judgment affirming an arbitration decision between a property owner and his insurer under former 44-7-1, 1953 Comp. (now *44-7A-1 NMSA* 1978 et seq.), was affirmed; former 44-7-16, 1953 Comp., which governed applications to the court for enforcement of an arbitration award, did not specify that a jury trial was required. Eagle Laundry v. Fireman's Fund Ins. Co., 2002-*NMCA-056, 132 N.M. 276, 46 P.3d 1276.*

CONSTRUCTION WITH OTHER LAW

By its terms, a policy of automobile insurance provided that the insurer had the right to request a trial de novo in the event an arbitration award against it exceeded the minimum limit for bodily injury liability, as specified in *66-5-215* and *66-5-301 NMSA* 1978; thus, where an arbitration award in favor of an insured exceeded such minimum limit, the trial court properly vacated the arbitration award at the behest of the insurer, based on the authority of former 44-7-12A(5), 1953 Comp. of the Uniform Arbitration Act, former 44-7-1 to 44-7-22, 1953 Comp.. The policy provision was not in contravention of public policy. *Bruch v. CNA Ins. Co., 117 N.M. 211, 870 P.2d 749 (1994).*

COURT'S ROLE

Courts have a minimal role in supervising arbitration practice and procedures. Basically, the courts perform the initial screening process designed to determine in general terms whether the parties have agreed that the subject matter under dispute should be submitted to arbitration; once it appears that there is, or is not, a reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying contract, the court's inquiry is ended. *K. L. House Constr. Co. v. Albuquerque, 91 N.M. 492, 576 P.2d 752 (1978).*

DEFENSES

Parties to arbitration who fail to present their substantive defenses within the statutory time limit are barred from later asserting those defenses. *United Tech. & Res. v. Dar Al Islam, 115 N.M. 1, 846 P.2d 307 (1993).*

JURISDICTION

New Mexico Uniform Arbitration Act confers jurisdiction on the New Mexico district courts to hear motions for consolidation of arbitration proceedings as well as many other matters pertaining to arbitrations. *Lyndoe v. D.R. Horton, Inc., N.M. , 287 P.3d 357 (Ct. App. 2012),* cert. denied, *2012 N.M. LEXIS 342.*

LEGISLATIVE INTENT

A strong New Mexico public policy in favor of resolution of disputes through arbitration is expressed in the Uniform Arbitration Act, former 44-7-1, 1953 Comp. et seq. (now *44-7A-1 NMSA* 1978 et seq.). Aguilera v. Palm Harbor Homes, Inc., 2001-*NMCA-091, 131 N.M. 228, 34 P.3d 617,* aff'd, Aguilera v. Palm Harbor Homes, Inc., 2002-*NMSC-029, 132 N.M. 715, 54 P.3d 993 (2002).*

New Mexico's arbitration statute former 22-3-1 to 22-3-8, 1953 Comp., is somewhat similar to Colorado's. Neither statute is concerned with the enforcement of arbitration agreements made prior to the appearance of a dispute. *State ex rel. Duke City Lumber Co. v. Wood, 81 N.M. 285, 466 P.2d 562 (1970).*

MOTION TO COMPEL

Finding against the nursing home in an action involving arbitration was proper under the New Mexico Uniform Arbitration Act because the issue was found to be not referable to arbitration, and thus the court could not on just terms order an immediate stay of the proceedings without addressing the merits of the right to arbitrate the issue at hand pursuant to *44-7A-8(f) NMSA* 1978. Therefore, the district court had the discretion to stay or not stay the proceedings, depending on the viability of the right to arbitrate, and the nursing home's argument that it was justified in withholding discovery failed. Weiss v. THI of N.M., N.M. , P.3d (Ct. App. Dec. 26, 2012).

POLICY

It is the policy of the State of New Mexico to favor and encourage arbitration as a means of conserving the time and

resources of the courts and the contracting parties. A trial court properly submitted to arbitration a contractual dispute concerning a roofing job between a city and a subcontractor even though the dispute arose after the expiration of the subcontractor's warranty periods, because the parties' written contract contained a broad arbitration clause, which was deemed valid, enforceable, and irrevocable under former 22-3-9, 1953 *Comp. K. L. House Constr. Co. v. Albuquerque, 91 N.M. 492, 576 P.2d 752 (1978).*

PUBLIC POLICY

In light of the New Mexico Supreme Court's holding in Fiser that Subsection (b)(4)(f) of this section and *44-7A-5 NMSA* 1978, which provide that any waiver of a consumer's right to a class action in an arbitration agreement is void and unenforceable, are not preempted by the Federal Arbitration Act (FAA), *9 U.S.C.S. §§ 1*-6, the Court of Appeals of New Mexico held that the FAA did not prevent application of the doctrine of unconscionability to a one-sided arbitration agreement that a nursing home required to be signed as a condition of admission. New Mexico courts are not to be used to enforce unconscionable arbitration clauses. Figueroa v. THI of N.M. at Casa Arena Blanca LLC, N.M. , P.3d (Ct. App. July 18, 2012).

New Mexico's arbitration statute, former 22-3-1 to 22-3-8, 1953 Comp. (now *44-7A-1 NMSA* 1978 et seq.) does not reflect a public policy requiring the enforcement of an arbitration agreement pertaining to future claims or controversies that relate to or may later arise under a contract. *State ex rel. Duke City Lumber Co. v. Wood, 81 N.M. 285, 466 P.2d 562 (1970).*

REVIEW OF ARBITRATION AWARD

In an action which appealed an award of arbitration, it was determined that Arbitration Act, *44-7A-1 to 44-7A-22 NMSA* 1978 controlled the scope of the trial court's review of an arbitration award and *44-7A-12* and *44-7A-13 NMSA* 1978 established the statutory grounds for vacating, modifying, or correcting an award submitted for review, and were generally limited to allegations of fraud, partiality, misconduct, excess of powers, or technical problems in the execution of the award. Casias v. Dairyland Ins. Co., 1999-*NMCA-046, 126 N.M. 772, 975 P.2d 385.*

TIME LIMITATIONS

Under former 44-7-1, 1953 Comp. et seq. (see now *44-7A-1 NMSA* 1978 et seq.), in plaintiff's negligence action against defendants, where the appeal filed by defendants challenged the order compelling arbitration between the parties, but the arbitration had already taken place and resulted in a binding award, the appeal was untimely filed and therefore dismissed as it was filed 16 months after the entry of the arbitration order and had to have been appealed within 30 days of the award's entry. Lyman v. Kern, 2000-*NMCA-013, 128 N.M. 582, 995 P.2d 504,* cert. denied, *128 N.M. 688, 997 P.2d 820 (2000).*

In former employees' suit against their former employer, its agents, and their labor union representatives, stemming from their discharge and alleged blacklisting, assuming arguendo that a proceeding before and a decision by a joint administration committee was an arbitration proceeding subject to the former Uniform Arbitration Act, former 44-7-1 through 44-7-22, 1953 Comp. (now *44-7A-1 NMSA* 1978 et seq.), the employees lost their right by lapse of time to apply to the district court to vacate the award where they did not make an application within 90 days after they were delivered a copy of the award as required by former 44-7-12*B, 1953 Comp. Andrews v. Stearns-Roger, Inc., 93 N.M. 527, 602 P.2d 624 (1979).*

RESEARCH REFERENCES

NEW MEXICO LAW REVIEW

Trends In New Mexico Law: 1994-95: Civil Procedure/Alternative Dispute Resolution -- New Mexico Applies Collateral Estoppel To Issues Fully And Fairly Litigated In Arbitration Proceedings: Rex, Inc. v. Manufactured Housing Committee Of New Mexico, Manufactured Housing Division, Eric C. Christensen, *26 N.M.L. Rev. 513 (1996).*

Nelson, Robert

From: Moore, David
Sent: Thursday, June 06, 2013 2:26 PM
To: Gary, Aaron; Nelson, Robert
Cc: Anderson, John
Subject: RE: Fair Bargain Act

Hi Aaron,

Thanks for looking this over. When I talked with Sen. Miller, we talked about the legislative intent section and he is fine leaving that out. I don't recall whether we talked about the severability part too, but my guess is he'd probably be okay leaving that out too since Wisconsin has a global severability provision.

I'll need to look into the revocable/void issue a little more closely, and perhaps that's a question I will put to Professor Carrington. New Mexico adopted parts of the model act, and appears to have taken an approach in line with your suggestion. Section 44-7A-5 of the New Mexico statutes provides: "In the arbitration of a dispute between a consumer, borrower, tenant or employee and another party, a disabling civil dispute clause contained in a document relevant to the dispute is unenforceable and voidable by the consumer, borrow, tenant or employee ...."

David

From: Gary, Aaron
Sent: Thursday, June 06, 2013 1:25 PM
To: Moore, David
Cc: Nelson, Robert
Subject: Fair Bargain Act

Hi David,

I read over the materials you provided on the Fair Bargain Act. I don't believe there is a perfect place in the statutes to cover the model act, but it probably fits best in ch. 895. While the model act impacts a lot of different topics, I think the core of it relates to contractual limits on potential litigants in legal disputes, which is similar to some of the other provisions in ch. 895. Bob Nelson has drafted in this area for a long time and he will be the drafter.

I don't have many comments on the substance of the model act. In some ways, the style is not consistent with LRB drafting protocol, including the use of a legislative intent statement and a severability provision (WI stats have a "global" severability provision in ch. 990), so stylistic changes will be needed. On the substance, I do wonder why the model act makes these provisions revocable instead of making them void. Isn't a contract term that is revocable at will by a party, for no specific reason, illusory? Generally we write statutes like this to simply make certain clauses void and unenforceable. See for example 2013 AB-140/SB-130 and 2011 Act 33 (all relating to contractual indemnification provisions) and also ss. 895.055 and 895.447, stats.

Let me know if I can do anything else for you. When it is time to start drafting, please contact Bob with the instructions.

Aaron

Aaron R. Gary
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Leg Council draft request

A MODEL FAIR BARGAIN ACT

Draft of November 2003

This model law act was drafted by the North Carolina Fair Bargain Committee and is presented to anyone willing to consider its enactment in other states.* An earlier version was enacted in 2001 in New Mexico, and was introduced in several states in 2002 and 2003. It will be considered by the North Carolina and other state legislatures in 2004-2005.

The draft is a response to the use by large businesses of printed form contracts containing provisions having the apparent effect of stripping individual citizens with whom they deal of the procedural rights they would need to enforce their substantive rights against the firm drafting the form, rights conferred on them by Congress and state legislatures.

The basic policy of this Fair Bargain Act is not new. It was embedded in traditional English common law and in legal doctrine conventional in American states in the 19th century. The common law doctrine was that a person cannot by contract waive procedural rights they may need in a dispute that has not yet arisen. Such waivers were revocable. The premise of the revocability doctrine was that citizens who waive their procedural rights before a dispute has arisen in all likelihood do not know what they are doing and are probably being exploited by a party who expects to be sued by at least some of the persons with whom it makes contracts. The Model Act merely restates that old revocability principle and brings it up to date in its application to standardized form contracts. With respect to consumer transactions, it is merely an elaboration of Section 2-302 of the Uniform Commercial Code.

Printed forms were not used by American business until the late 19th century. It was soon recognized that such instruments were very useful, but also hazardous to the interests of the citizens who cannot read and understand technical legal prose in English, or who are inattentive to the details of what seem to them at the time to be minor transactions, or who have no real freedom to reject the printed terms offered.

By the early decades of the 20th century, it was well understood everywhere in America that contracts between large enterprises and individuals must be regulated. The duty of corporate management is to shareholders, not to consumers or workers. Much law was enacted in the late 19th and 20th centuries to control the resulting impulses of corporate enterprise and protect workers and consumers. Much of that law was written to be enforced by injured parties serving as private attorneys general serving the public interest by their private actions. Examples of public law privately enforced are antitrust and franchise investment laws, civil rights laws, and laws to protect consumers, workers, and individual investors. Indeed, much of the law of torts developed in the 20th century is public law in the

sense that it serves regulatory aims. There are also many laws enacted to protect tenants, small loan borrowers, and medical patients that are privately enforced. Indeed, private law enforcement has become the primary means by which American corporate management is deterred from making business judgments that externalize the risks or costs of their business by imposing those costs or risks on consumers, tenants, small loan borrowers, medical patients, workers, or others with whom they deal routinely.

Increasingly in the last quarter century, corporate managers and their lawyers have been trying to evade enforcement of all these regulatory laws by imposing on the consumers, employees, and others with whom they deal printed forms containing diverse waivers of procedural rights. One cause of this trend may be the increasingly shrill demand of investment managers for short-term profits. Another may be that managers have been in recent times compensated with stock options that are valuable only if stock prices rise in the short term. Another may be emergence of the ADR movement that seemed to invite managers to save legal costs. Another may be globalization that invites the comparison of legal costs of doing business in the United States and in other countries; businesses making that comparison seldom take note that other competitive economies socialize other costs such as health care, a need that is extraordinarily expensive in the United States and is borne by the individuals with whom multinational firms must deal.

Whatever the causes, the trend has been marked, and every member of every legislative body has in recent years received many forms recording transactions that contained one or more clauses substantially disabling them from enforcing any rights they might have against the party writing the forms.

Often these rights-impairing clauses masquerade as arbitration agreements. The federal courts have in the last quarter century fashioned a "national policy" favoring arbitration. Given the decisions of the Supreme Court, it seems that the legislatures cannot proscribe arbitration clauses even if they were of a mind to do so. Few if any citizens or legislators would want to impede in any way the rights of parties to arbitrate disputes in lieu of litigation, for most states share the general policy favoring arbitration. But corporate managers and their lawyers are often not content with merely diverting cases from courts to arbitral forums to gain whatever cost savings might be effected by that step. As often as not, they add bells and whistles to make sure that the individuals with whom they deal are at a disadvantage should they later seek to enforce their rights against the corporate enterprise. It is these bells and whistles that are the subject of the Model Fair Bargain Act. In making those provisions – and not the arbitration clauses to which they are attached -- revocable, it aims to assure that arbitration is not used for the hidden purpose of preventing consumers, employees, and other individuals from enforcing the rights that Congress, state legislatures, and state courts have conferred upon them to protect them from the same corporate enterprises that are writing the forms being used to record their transactions.

The Supreme Court has repeatedly affirmed that the Federal Arbitration Act leaves

in place the state law of contracts, and that an otherwise valid arbitration clause in a contract of adhesion may not be deployed to impose increased costs on a consumer or employee.[1] The Model Act set forth below is an expression of state contract law, not state arbitration law. It may be important to keep that distinction clear by enacting the Model Act separately from the Revised Uniform Arbitration Act and not as a part of that act, as was done in New Mexico. The Model Act declares the policy that printed forms purporting to be contracts may contain valid arbitration clauses, but cannot be used by vendors of goods and services, lessors, employers, or franchisors to prevent or discourage consumers, tenants, employees or small businesses from enforcing their substantive rights. Waivers of important procedural rights in future disputes are declared to be revocable. As noted, that is not new law, but a recodification of ancient law, and it has been recently reaffirmed by numerous courts.[2] Pursuant to the Model Act, arbitration clauses in standard forms may be enforced, but not in a manner placing the party who did not write the form at a procedural disadvantage.[3] The Act provides clarity where it is needed. Some federal courts have mistakenly supposed that the law of contracts binds an individual who is sufficiently inattentive, ignorant, illiterate or weak that she does not reject a printed form to every provision in that form no matter how it may disable her from enforcing her rights.[4] That is not the law of any state, nor is it likely that any legislature in the United States would approve such an enactment.

The Act if understood should attract the support of almost everyone, for all individuals are potential victims of the misuses of contract law that this law is intended to correct. Even managers of aggressive multi-national enterprises may approve the law if they perceive that it relieves them of competitive pressure to impose harsh terms on consumers, employees, borrowers, franchisees, patients, farmers, livestock and poultry growers, and other individuals with whom they deal.

mailto:pdc@law.duke index.htm

THE DRAFT ACT

Now it is enacted that:

Section 1. Short Title. This Act shall be known as the Fair Bargain Act of 2003.

Section 2. Legislative Findings. The legislature finds that

(1) standard form contracts, in whatever form recorded, do not necessarily express the voluntary and informed assent of both parties; and

(2) the party drafting such a form will often foresee legal disputes with one or more of the parties to whom it is submitted for acceptance, while the party accepting such a form will seldom foresee such a legal dispute or prudently evaluate the loss of procedural rights affecting its outcome; and

(3) the party drafting such a form can unless restrained by law exploit the inadvertence, imprudence, or limited literacy of the party to whom it is presented for acceptance by including provisions disabling that party's procedural rights necessary or useful to the enforcement of substantive rights otherwise purportedly conferred by the contracts in which the provisions appear or by state or federal law; and

(4) this use of standard form contracts is unconscionable.

Section 3. Definitions.

(a) a *standard form contract or lease* is one prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees;

(b) *livestock or poultry grower* means any person engaged in the business of raising and caring for livestock or poultry in accordance with a growout contract, marketing agreement, or other arrangement under which a livestock or poultry grower raises and cares for livestock or poultry, whether the livestock or poultry is owned by the person or by another person;

(c) a *rights enforcement disabling provision* is one modifying or limiting otherwise available procedural rights necessary or useful to a consumer, borrower, tenant, livestock or poultry grower, employee, or small business in the enforcement of substantive rights against a party drafting a standard form contract or lease, including a clause requiring the consumer, tenant, borrower, franchisee, livestock or poultry grower, or employee to

(1) assert any claim against the party who prepared the form in a forum that is less convenient, more costly, or more dilatory than a judicial forum established in this state for the resolution of the dispute; or

(2) assume a risk of liability for the legal fees of the party preparing the contract, unless those fees are authorized by statute, reasonable in amount and incurred to enforce a promise to pay money; or

(3) forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum available to hear and decide a dispute between the parties; or

(4) present evidence to a purported neutral who may reasonably be expected to regard the party preparing the contract as more likely to be a future employer of the neutral than is that party's adversary; or

(5) forego recourse to appeal from a decision not based on substantial evidence or disregarding his or her legal rights, or

(6) require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations; or

(7) decline to participate in a class action, or

(8) forego an award of attorneys' fees, civil penalties, punitive damages, or of multiple damages otherwise available under the law.

Section 4. Rights Enforcement Disabling Provision Revocable.

A rights enforcement disabling provision as defined in Section 3 that is included in a standard form contract or lease is revocable by the consumer, borrower, tenant, employee, livestock grower or small business. Revocation shall be in writing and communicated within a reasonable time after a dispute between the parties to the contract has arisen and the consumers of goods or services, borrowers, tenants, livestock or poultry growers, franchisees, or employees has had an opportunity to seek counsel on the effect of the provision. A party seeking to enforce such a provision after it has been revoked shall be liable for any resulting legal costs, including a reasonable attorney's fee.

Section 5. Covered Transactions.

This Act shall not apply to a provision in any contract

(a) for the sale or lease of property or for the delivery of services having a value in excess of two hundred thousand dollars, or for a loan in excess of that amount; or

(b) of employment providing for compensation in excess of one hundred thousand dollars a year; or

(c) that is an agreement to maintain a local business franchise having gross receipts in excess of a million dollars a year; or

(d) that is a commercial letter of credit.

Section 6. Agreements to Arbitrate Future Disputes Preserved.

Nothing in this Act shall preclude parties from making a binding agreement to arbitrate a future dispute provided that the arbitration agreement does not impose on any consumer, borrower, tenant, franchisee, or employee any of the rights enforcement disabilities identified in Section 2 of this Act as unconscionable.

Section 7. Severability.

The provisions of this Act are severable; the invalidity of any application of any provision of this Act for any reason shall not affect other applications, nor shall the invalidity of any provision affect the validity of other provisions.

mailto:pdc@law.duke index.htm

[1] *Green Tree Financial Corp. of Alabama v. Randolph*, 531 U. S. 79 (2000).

[2] Recent cases affirming that this is so include *Armendariz v. Foundation Health Psychcare Svs, Inc.*, 24 CAL. 4th 83, 6 P. 3d 669, 690 (2000); *Circuit City Stores v. Adams*, 2002 U. S. App. Lexis 1686, cert. den. 122 S. Ct. 2329 (2002) (applying California law); *Choice Hotels International, Inc. v. Ticknor*, 265 F. 3d 931 (9th cir. 2001), cert den. 2002 U. S. Lexis 725 (2002) (applying Montana law); *Graham Oil Co. v. Arco Products Co.* 43 F3d 1244 (9th cir 1994) (applying California law); *Iwen v. U.S. West Direct*, 293 MONT. 512, 977 P. 2d 989 (1999); *Kloss v. Edward D. Jones & Co.* 2002 MONT.LEXIS 413 (Montana 2002); *Burch v. Second Jud. Dist. Ct.*, 49 P. 3d 647 (Nevada 2002); *Williams v. Aetna Insurance Co.*, 83 OHIO ST. 3d 464, 700 N. E. 2d 859 (1998), cert. den. 526 U. S. 1051 (1999); *Lytle v. CitiFinancial Services, Inc.*, 2002 PA. SUPER. 327 – A. 2d – (2002); *Mendez v. Palm Harbor Homes Inc.*, 111 WN. APP. 446, 45 P. 3d 594 (2002); *State ex rel. Dunlap v. Berger*, 567 S. E. 2d 265 (West Virginia 2002); *Ting v. AT&T*, 182 F.Supp. 2d. 902 (N. D. Cal. 2002). Cf. *McCaskill v. SCI Management Corp.*, 298 F. 3d. 1677 (7th cir 2002); *Milon v. Duke University*, 559 S. E. 2d 789 (N.C. 2002); *Harold Allen's Mobile Home Factory Outlet, Inc. v. Butler*, 2002 ALA. LEXIS 16 (2002); but cf. *Metro E. Ctr. for Conditioning & Health v. Qwest Comm. Int'l*, 294 F. 3d 924 (7th cir. 2002).

[3] E.g., *Cole v. Burns International Security Services*, 105 F. 3d 1465 (D. C. cir. 1997); *Shankle v. B-G Maintenance of Colorado Inc.*, 163 F. 3d 1230 (10th cir. 1999); *Hooters of America, Inc.*, 173 F. 3d 933 (4th cir. 1999).

[4] Charles Davant IV, Note, *Tripping on the Threshold: Federal Courts' Failure to Observe Controlling State Law Under the Federal Arbitration Act,* 51 DUKE L. J. 521 (2001).

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* To contact the committee, address e-mail at pdc@law.duke.edu.

centuries to control the resulting impulses of corporate enterprise and protect workers and consumers. Much of that law was written to be enforced by injured parties serving as private attorneys general serving the public interest by their private actions. Examples of public law privately enforced are antitrust and franchise investment laws, civil rights laws, and laws to protect consumers, workers, and individual investors. Indeed, much of the law of torts developed in the 20th century is public law in the sense that it serves regulatory aims. There are also many laws enacted to protect tenants, small loan borrowers, and medical patients that are privately enforced. Indeed, private law enforcement has become the primary means by which American corporate management is deterred from making business judgments that externalize the risks or costs of their business by imposing those costs or risks on consumers, tenants, small loan borrowers, medical patients, workers, or others with whom they deal routinely.

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Often these rights-impairing clauses masquerade as arbitration agreements. The federal courts have in the last quarter century fashioned a "national policy" favoring arbitration. Given the decisions of the Supreme Court, it seems that the legislatures cannot proscribe arbitration clauses even if they were of a mind to do so. Few if any citizens or legislators would want to impede in any way the rights of parties to arbitrate disputes in lieu of litigation, for most states share the general policy favoring arbitration. But corporate managers and their lawyers are often not content with merely diverting cases

from courts to arbitral forums to gain whatever cost savings might be effected by that step. As often as not, they add bells and whistles to make sure that the individuals with whom they deal are at a disadvantage should they later seek to enforce their rights against the corporate enterprise. It is these bells and whistles that are the subject of the Model Fair Bargain Act. In making those provisions – and not the arbitration clauses to which they are attached -- revocable, it aims to assure that arbitration is not used for the hidden purpose of preventing consumers, employees, and other individuals from enforcing the rights that Congress, state legislatures, and state courts have conferred upon them to protect them from the same corporate enterprises that are writing the forms being used to record their transactions.

The Supreme Court has repeatedly affirmed that the Federal Arbitration Act leaves in place the state law of contracts, and that an otherwise valid arbitration clause in a contract of adhesion may not be deployed to impose increased costs on a consumer or employee.[1] The Model Act set forth below is an expression of state contract law, not state arbitration law. It may be important to keep that distinction clear by enacting the Model Act separately from the Revised Uniform Arbitration Act and not as a part of that act, as was done in New Mexico. The Model Act declares the policy that printed forms purporting to be contracts may contain valid arbitration clauses, but cannot be used by vendors of goods and services, lessors, employers, or franchisors to prevent or discourage consumers, tenants, employees or small businesses from enforcing their substantive rights. Waivers of important procedural rights in future disputes are declared to be revocable. As noted, that is not new law, but a recodification of ancient law, and it has been recently reaffirmed by numerous courts.[2] Pursuant to the Model Act, arbitration clauses in standard

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[1] *Green Tree Financial Corp. of Alabama v. Randolph*, 531 U. S. 79 (2000).

[2] Recent cases affirming that this is so include *Armendariz v. Foundation Health Psychcare Svs, Inc.*, 24 CAL. 4th 83, 6 P. 3d 669, 690 (2000); *Circuit City Stores v. Adams*, 2002 U. S. App. Lexis 1686, cert. den. 122 S. Ct. 2329 (2002) (applying California law); *Choice Hotels International, Inc. v. Ticknor*, 265 F. 3d 931 (9th cir. 2001), cert den. 2002 U. S. Lexis 725 (2002) (applying Montana law); *Graham Oil Co. v. Arco Products Co.* 43 F3d 1244 (9th cir 1994) (applying California law); *Iwen v. U.S. West Direct*, 293 MONT. 512, 977 P. 2d 989 (1999); *Kloss v. Edward D. Jones & Co*, 2002 MONT.LEXIS 413 (Montana 2002); *Burch v. Second Jud. Dist. Ct.*, 49 P. 3d 647 (Nevada 2002); *Williams v. Aetna Insurance Co.*, 83 OHIO ST. 3d 464, 700 N. E. 2d 859 (1998), cert. den. 526 U. S. 1051 (1999); *Lytle v. CitiFinancial Services, Inc.*, 2002 PA. SUPER. 327 – A. 2d – (2002); *Mendez v. Palm Harbor Homes Inc.*, 111 WN. APP. 446, 45 P. 3d 594 (2002); *State ex rel. Dunlap v. Berger*, 567 S. E. 2d 265 (West Virginia 2002); *Ting v. AT&T*, 182 F.Supp. 2d. 902 (N. D. Cal. 2002). Cf. *McCaskill v. SCI Management Corp.*, 298 F. 3d. 1677 (7th cir 2002); *Milon v. Duke University*, 559 S. E. 2d 789 (N.C. 2002); *Harold Allen's Mobile Home Factory Outlet, Inc. v. Butler*,

forms may be enforced, but not in a manner placing the party who did not write the form at a procedural disadvantage.[3] The Act provides clarity where it is needed. Some federal courts have mistakenly supposed that the law of contracts binds an individual who is sufficiently inattentive, ignorant, illiterate or weak that she does not reject a printed form to every provision in that form no matter how it may disable her from enforcing her rights.[4] That is not the law of any state, nor is it likely that any legislature in the United States would approve such an enactment.

The Act if understood should attract the support of almost everyone, for all individuals are potential victims of the misuses of contract law that this law is intended to correct. Even managers of aggressive multi-national enterprises may approve the law if they perceive that it relieves them of competitive pressure to impose harsh terms on consumers, employees, borrowers, franchisees, patients, farmers, livestock and poultry growers, and other individuals with whom they deal.

2002 ALA. LEXIS 16 (2002); but cf. *Metro E. Ctr. for Conditioning & Health v. Qwest Comm. Int'l*, 294 F. 3d 924 (7th cir. 2002).

[3] E.g., *Cole v. Burns International Security Services*, 105 F. 3d 1465 (D. C. cir. 1997); *Shankle v. B-G Maintenance of Colorado Inc.*, 163 F. 3d 1230 (10th cir. 1999); *Hooters of America, Inc.*, 173 F. 3d 933 (4th cir. 1999).

[4] Charles Davant IV, Note, *Tripping on the Threshold: Federal Courts' Failure to Observe Controlling State Law Under the Federal Arbitration Act*, 51 DUKE L. J. 521 (2001).

THE DRAFT ACT

Now it is enacted that:

Section 1. Short Title. This Act shall be known as the Fair Bargain Act of 2003.

Section 2. Legislative Findings. The legislature finds that

(1) standard form contracts, in whatever form recorded, do not necessarily express the voluntary and informed assent of both parties; and

(2) the party drafting such a form will often foresee legal disputes with one or more of the parties to whom it is submitted for acceptance, while the party accepting such a form will seldom foresee such a legal dispute or prudently evaluate the loss of procedural rights affecting its outcome; and

(3) the party drafting such a form can unless restrained by law exploit the inadvertence, imprudence, or limited literacy of the party to whom it is presented for acceptance by including provisions disabling that party's procedural rights necessary or useful to the enforcement of substantive rights otherwise purportedly conferred by the contracts in which the provisions appear or by state or federal law; and

(4) this use of standard form contracts is unconscionable.

Delete Leg Findings

Section 3. Definitions.

(a) a *standard form contract or lease* is one prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees;

(b) *livestock or poultry grower* means any person engaged in the business of raising and caring for livestock or poultry in accordance with a growout contract, marketing agreement, or other arrangement under which a livestock or poultry grower raises and cares for livestock or poultry, whether the livestock or poultry is owned by the person or by another person;

Remove references to livestock or poultry growers

(c) a *rights enforcement disabling provision* is one modifying or limiting otherwise available procedural rights necessary or useful to a consumer, borrower, tenant, livestock or poultry grower, employee, or small business in the enforcement of substantive rights against a party drafting a

Specify that "tenant" is a residential tenant

possibly delete "franchisee" - If not include in prior reference as well

standard form contract or lease, including a clause requiring the consumer, tenant, borrower, franchisee, ~~livestock or poultry grower,~~ or employee to

(1) assert any claim against the party who prepared the form in a forum that is less convenient, more costly, or more dilatory than a judicial forum established in this state for the resolution of the dispute; or

(2) assume a risk of liability for the legal fees of the party preparing the contract, unless those fees are authorized by statute, reasonable in amount and incurred to enforce a promise to pay money; or

(3) forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum available to hear and decide a dispute between the parties; or

(4) present evidence to a purported neutral who may reasonably be expected to regard the party preparing the contract as more likely to be a future employer of the neutral than is that party's adversary; or

(5) forego recourse to appeal from a decision not based on substantial evidence or disregarding his or her legal rights, or

(6) require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations; or

(7) decline to participate in a class action, or

(8) forego an award of attorneys' fees, civil penalties, punitive damages, or of multiple damages otherwise available under the law.

Void and Unenforceable

Section 4. Rights Enforcement Disabling Provision ~~Revocable.~~

A rights enforcement disabling provision as defined in Section 3 that is included in a standard form contract or lease is ~~revocable by the consumer, borrower, tenant, employee, livestock grower or small business. Revocation shall be in writing and communicated within a reasonable time after a dispute between the parties to the contract has arisen and the consumers of goods or services, borrowers, tenants, livestock or poultry growers, franchisees, or employees has had an opportunity to seek counsel on the effect of the provision. A party seeking to enforce such a provision after it has been revoked shall be liable for any resulting legal costs, including a reasonable attorney's fee.~~ void and unenforceable.

Exceptions (?)

Section 5. ~~Covered Transactions.~~

Possibly authorize adjustment of these numbers

This Act shall not apply to a provision in any contract

(a) for the sale or lease of property or for the delivery of services having a value in excess of two hundred thousand dollars, or for a loan in excess of that amount; or

(b) of employment providing for compensation in excess of one hundred thousand dollars a year; or

(c) that is an agreement to maintain a local business franchise having gross receipts in excess of a million dollars a year; or

(d) that is a commercial letter of credit.

Section 6. Agreements to Arbitrate Future Disputes Preserved.

Nothing in this Act shall preclude parties from making a binding agreement to arbitrate a future dispute provided that the arbitration agreement does not impose on any consumer, borrower, tenant, franchisee, or employee any of the rights enforcement disabilities identified in Section 2 of this Act as unconscionable.

Section 7. Severability.

The provisions of this Act are severable; the invalidity of any application of any provision of this Act for any reason shall not affect other applications, nor shall the invalidity of any provision affect the validity of other provisions.

Put in stats. as s. 134.495

- "Tenant" → any conflict w/ landlord/tenant laws?
- "Employee" → any conflict w/ employment laws?
- "Borrower" → any conflict w/ laws governing lending by financial institutions?
- "contract to maintain a business franchise" → Does this draft apply to such a contract?
- Suggestion for (4):

"The department of agriculture, trade, and consumer protection shall adjust the ~~limits~~ amounts under sub. (3) annually by rule to reflect any changes to the U.S. consumer price index."

Wanted by 9/10

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-2603/P1
RPN: KGF

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Ben

AN ACT ...; **relating to:** contact and lease language limitations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 134.495 of the statutes is created to read:

134.495 Fair contract limitations. (1) In this section:

(a) "Consumer" means a person who enters into a contract for the purchase of goods or services.

****NOTE: I am not sure if this draft is supposed to apply just to individuals that enter into contracts or leases or more broadly to persons (individuals and businesses) who do so. This definition of consumer is the broader definition.

(b) "Rights enforcement disabling provision" is a provision in a standard form contract or lease that modifies or limits otherwise available procedural or substantive rights necessary or useful to a consumer, borrower, tenant, or employee

in the enforcement of rights against the person that prepared the standard form contract or lease.

****NOTE: I changed this language because I thought some of the rights involved, such as punitive damages, are more than just procedural rights.

(c) "Standard form contract or lease" means a contract prepared by a person that is routinely used in business transactions between a person and a consumer, borrower, tenant, or employee.

(2) A standard form contract or lease is void and unenforceable if that contract or lease contains a rights enforcement disabling provision that requires the consumer, borrower, tenant, or employee who is a party to the contract or lease to do any of the following:

(a) Assert a claim against the person who prepared the contract or lease in a forum that is less convenient, more costly, or more dilatory than a judicial forum established in this state for the resolution of the dispute.

(b) Assume a risk or liability for the legal fees of the person who prepared the standard form contract or lease, unless those fees are authorized by statute, reasonable in amount, and incurred to enforce a promise to pay money.

(c) Forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum that is available to hear and decide a dispute between the parties to the contract or lease.

(d) Present evidence regarding the contract or lease to a purported neutral person who may reasonably be expected to regard the person who prepared the contract or lease as more likely to be a future employer of the neutral person than is the consumer, borrower, tenant, or employee who is a party to the contract or lease.

(e) Forego his or her right to appeal a decision that is not based on substantial evidence or that disregards the legal rights of the consumer, borrower, tenant, or employee.

(g) Require commencement of a proceeding regarding the contract or lease sooner than would be required by the otherwise applicable statute of limitations.

(h) Decline his or her right to participate in a class action.

(i) Forego an award of attorney fees, civil penalties, punitive damages, or of multiple damages otherwise available by law.

(3) This section does not apply to any of the following:

(a) A contract for the sale of property having a value in excess of $200,000.

(b) A lease of property having a value in excess of $200,000.

(c) A contract for the delivery of goods or services having a value in excess of $200,000.

(d) A contract for a loan in excess of $200,000.

(e) A contract of employment for compensation in excess of $100,000 per year.

(f) A commercial letter of credit.

(4) The department of agriculture, trade, and consumer protection shall adjust the amounts under sub. (3) annually by rule to reflect any changes to the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor.

(END)

Nelson, Robert

From: Moore, David
Sent: Friday, July 05, 2013 11:31 AM
To: Nelson, Robert
Cc: Anderson, John
Subject: Comments on and revisions to LRB-2603/P1

Bob,

Thanks for your help with LRB-2603/P1. I have a few comments and revision requests on the draft. Please call if it would be useful to talk about any of these comments.

Page 1, Line 6: In response to your note, I think this broader definition is most in keeping with Senator Miller's intent. I believe he would like small businesses to have the benefit of this legislation, and the definition you used appears to do that.

Page 2, Line 7: The draft makes the whole contract or lease void and unenforceable if it contains a rights enforcement disabling provision. Please revise so that only the rights enforcement disabling provision of the contract is void and unenforceable.

Page 2, Line 11 through page 3 line 3: In the model act, the provisions described in page 2 line 11 through page 3 line 3 are non-exhaustive examples of rights enforcement disabling provisions. In LRB-2603/P1, at least one of these provisions must be present for the rights enforcement disabling provision to be void. I can see a benefit to either approach; however, it appears to me that the treatment of these provisions in LRB-2603/P1 renders the definition of rights enforcement disabling provision (page 1, line 7 through page 2, line 3) superfluous. If the draft takes the approach that these provisions are exhaustive, then the definition of rights enforcement disabling provision could be deleted, as well as the reference to such provisions on page 2, line 7. If, however, the approach is to treat these provisions as non-exhaustive examples, perhaps it would be better to put them into the definition. I can ask Sen. Miller's office if he has any preference. But please let me know if you see any problems with either approach.

Page 2, Line 14: "risk or liability" should be "risk of liability." The model act used "risk or," but I think "risk of" would make more sense.

Page 3, Line 10: I think this line can be eliminated. Consumer is defined as a person who enters into a contract for the purchase of goods or services. I would think, then, that that excludes real property purchases, so there would not be any need to separately exclude real property purchases over a certain threshold.

Page 3, Line 11: Can this be revised to clarify that it is the value of the lease, not of the property, that must exceed $200,000? Perhaps this is already the case. However, my concern is that it could be interpreted to exclude residential leases because the value of the property—especially in the case of multi-unit dwellings—will generally exceed $200,000 although the value of the lease will not.

Page 3, Line 14: This is the part Sen. Miller is concerned about with respect to the marketability of residential mortgages. Ideally, I think it would be preferable to draft so that all loans, with the exception of larger commercial loans, would come within the scope of the legislation, but I'm not quite sure that is feasible from a drafting perspective. In any event, I think it is problematic to establish a cutoff for loans that is solidly within the spectrum of the amount of residential mortgages. Perhaps the best solution would be to just raise the threshold to $500,000? That would still exclude some residential mortgages from the bill, but far fewer than if the cutoff were $200,000. I would welcome any other suggestions you have on this.

Thanks,

David

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-2603/P2
RPN:kjf:jm

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT *to create* 134.495 of the statutes; **relating to:** contract and lease language limitations.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 134.495 of the statutes is created to read:

134.495 Fair contract limitations. (1) In this section:

(a) "Consumer" means a person who enters into a contract for the purchase of goods or services.

****NOTE: I am not sure if this draft is supposed to apply just to individuals that enter into contracts or leases or more broadly to persons (individuals and businesses) who do so. This definition of consumer is the broader definition.

(b) "Rights enforcement disabling provision" is a provision in a standard form contract or lease that modifies or limits otherwise available procedural or

substantive rights necessary or useful to a consumer, borrower, tenant, or employee in the enforcement of rights against the person that prepared the standard form contract or lease, including any

****NOTE: I changed this language because I thought some of the rights involved, such as punitive damages, are more than just procedural rights.

move this to p. 3

(c) "Standard form contract or lease" means a contract prepared by a person that is routinely used in business transactions between a person and a consumer, borrower, tenant, or employee.

(2) A standard form contract or lease is void and unenforceable if that contract or lease contains a rights enforcement disabling provision that requires the consumer, borrower, tenant, or employee who is a party to the contract or lease to do any of the following:

1. ~~(a)~~ Assert a claim against the person who prepared the contract or lease in a forum that is less convenient, more costly, or more dilatory than a judicial forum established in this state for the resolution of the dispute.

2. ~~(b)~~ Assume a risk of liability for the legal fees of the person who prepared the standard form contract or lease, unless those fees are authorized by statute, reasonable in amount, and incurred to enforce a promise to pay money.

3. ~~(c)~~ Forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum that is available to hear and decide a dispute between the parties to the contract or lease.

4. ~~(d)~~ Present evidence regarding the contract or lease to a purported neutral person who may reasonably be expected to regard the person who prepared the contract or lease as more likely to be a future employer of the neutral person than is the consumer, borrower, tenant, or employee who is a party to the contract or lease.

5. ~~(e)~~ Forego his or her right to appeal a decision that is not based on substantial evidence or that disregards the legal rights of the consumer, borrower, tenant, or employee.

6. ~~(g)~~ Require commencement of a proceeding regarding the contract or lease sooner than would be required by the otherwise applicable statute of limitations.

7. ~~(h)~~ Decline his or her right to participate in a class action.

8. ~~(i)~~ Forego an award of attorney fees, civil penalties, punitive damages, or of multiple damages otherwise available by law.

Insert From p. 2, Ls 4-6 → Insert 3-8 →

(3) This section does not apply to any of the following:

(a) A contract for the sale of property having a value in excess of $200,000.

~~(b)~~ A lease of property having a value in excess of $200,000.

~~(c)~~ A contract for the delivery of goods or services having a value in excess of $200,000.

~~(d)~~ A contract for a loan in excess of $200,000.

~~(e)~~ A contract of employment for compensation in excess of $100,000 per year.

~~(f)~~ A commercial letter of credit.

(4) The department of agriculture, trade and consumer protection shall adjust the amounts under sub. (3) annually by rule to reflect any changes to the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor.

(END)

D-Note

insert 3–8:

(2) A rights enforcement disabling provision in a standard form contract or lease is void and unenforceable.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2603/P2dn
RPN:kjf:~~jcr~~

Date

David,

I made the changes you suggested, including expanding the definition of "rights enforcement disabling provision" and making only that provision void, not the whole contract.

Let me know what you, or whoever at the LC reviews this, thinks about the redraft.

Robert Nelson
Legislative Attorney
Phone: (608) 266-9739

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2603/P2dn
RPN:kjf:rs

July 12, 2013

David,

I made the changes you suggested, including expanding the definition of "rights enforcement disabling provision" and making only that provision void, not the whole contract.

Let me know what you, or whoever at the LC reviews this, thinks about the redraft.

Robert Nelson
Legislative Attorney
Phone: (608) 266-9739

LRB-2603/P2

Nelson, Robert

From: Anderson, John
Sent: Thursday, July 11, 2013 2:54 PM
To: Nelson, Robert
Subject: Sen. Miller's Fair Contract Act (David Moore)

Good afternoon, Bob. I understand you are working on a pDraft for Sen. Miller re: Fair Contracts through David Moore at Leg Council. Sen. Miller asked me to check with you to see when he might be able to see the initial pDraft. Thanks, much.

John Anderson
Office of Senator Mark Miller

Per RPN
07-15-2013

Sent to

Barman, Mike

From: Barman, Mike
Sent: Monday, July 15, 2013 2:01 PM
To: Anderson, John
Cc: Nelson, Robert
Subject: LRB-2603/P2 (attached - per RPN)

13-2603_P2.pdf

Mike Barman (**Lead Program Assistant**)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
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