

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Notes from David M meeting of 10/7

1 **AN ACT to create** 134.495 of the statutes; **relating to:** contract and lease
2 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:

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

4 **134.495 Fair contract limitations.** (1) In this section:

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

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

under in a court action or arbitration proceeding that is

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

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

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

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

8 (b) A contract for the delivery of goods or services having a value in excess of
9 \$200,000.

10 (c) A contract for a loan in excess of \$500,000.

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

12 (e) A commercial letter of credit.

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

17 (END)

If we are to have a provision that would be a rights enforcement provision regarding the standard form contract or lease provision (7-9)

1 in the enforcement of rights against the person that prepared the standard form
 2 contract or lease, including any provision that requires the consumer, borrower,
 3 tenant, or employee who is a party to the contract or lease to do any of the following:

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

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

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

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

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

20 6. Require commencement of a proceeding regarding the contract or lease
 21 sooner than would be required by the otherwise applicable statute of limitations.

22 7. Decline his or her right to participate in a class action.

23 8. Forego an award of attorney fees, civil penalties, punitive damages, or of
 24 multiple damages otherwise available by law.

9. Waive a right of access to a judicial
 forum on a side by side basis
 that is otherwise available by law.



8 of 30 DOCUMENTS

Michie's Annotated Statutes Of New Mexico

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*** This section is current through the First Session of the Fifty-First Legislature ***

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 (2013)

§ 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;



1 of 1 DOCUMENT

Michie's Annotated Statutes Of New Mexico

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*** This section is current through the First Session of the Fifty-First Legislature ***

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 (2013)

§ 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

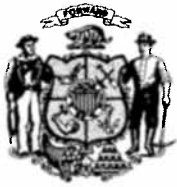
RELATION TO FAA

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 (Ct. App. July 18, 2012).*

10/7 David Moore, LC
G-1946

1. F. Liaison Standard form
to be used in
instead, ~~the~~ ~~same~~
the do not understand -
to be used

2. Have ct. determine
if ~~any~~ provision,
not ~~in~~
see NM ~~has~~ language,
p 1



in 10/10

State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2603/P2

RPN:kjf:rs

stays

P3

LPS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

see Green changes

Regen

restriction on

1 AN ACT to create 134.495 of the statutes; relating to: contract and lease
2 language ~~limitations~~ *that limits a party's access to procedural or substantive rights*

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:

3 SECTION 1. 134.495 of the statutes is created to read:
4 134.495 ~~Fair contract limitations~~ *on contract and lease provisions* (1) In this section:

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

7 (b) "Rights enforcement disabling provision" is a provision in a ~~standard~~ *form*
8 contract or lease that modifies or limits otherwise available procedural or
9 substantive rights *in a court action or arbitration proceeding that are* necessary or useful to a consumer, borrower, tenant, or employee

SECTION 1

in the enforcement of rights against the person ^a *who is a party to the* ~~(that prepared the standard form)~~

contract or lease ~~including any 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. 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) 2. 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.

^(c) 3. 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) 4. 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) 5. 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.

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

^(g) 7. Decline his or her right to participate in a class action.

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

Waive the right of access to a judicial forum or to jury trial, unless the contract or lease includes an arbitration agreement that is subject to judicial review.

insert here 3-5

move

insert 3-5 (insert p. 11)

move

1 tenant, or employee in the enforcement of rights against a person who is a party to
2 the contract or lease.

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

6 (a) Assert a claim against the person who prepared the contract or lease in a
7 forum that is not in this state, ~~or is required because it is more costly than a judicial~~
8 ~~forum established in this state for the resolution of the dispute~~ or will result in a
9 delay of the resolution of the dispute.

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

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

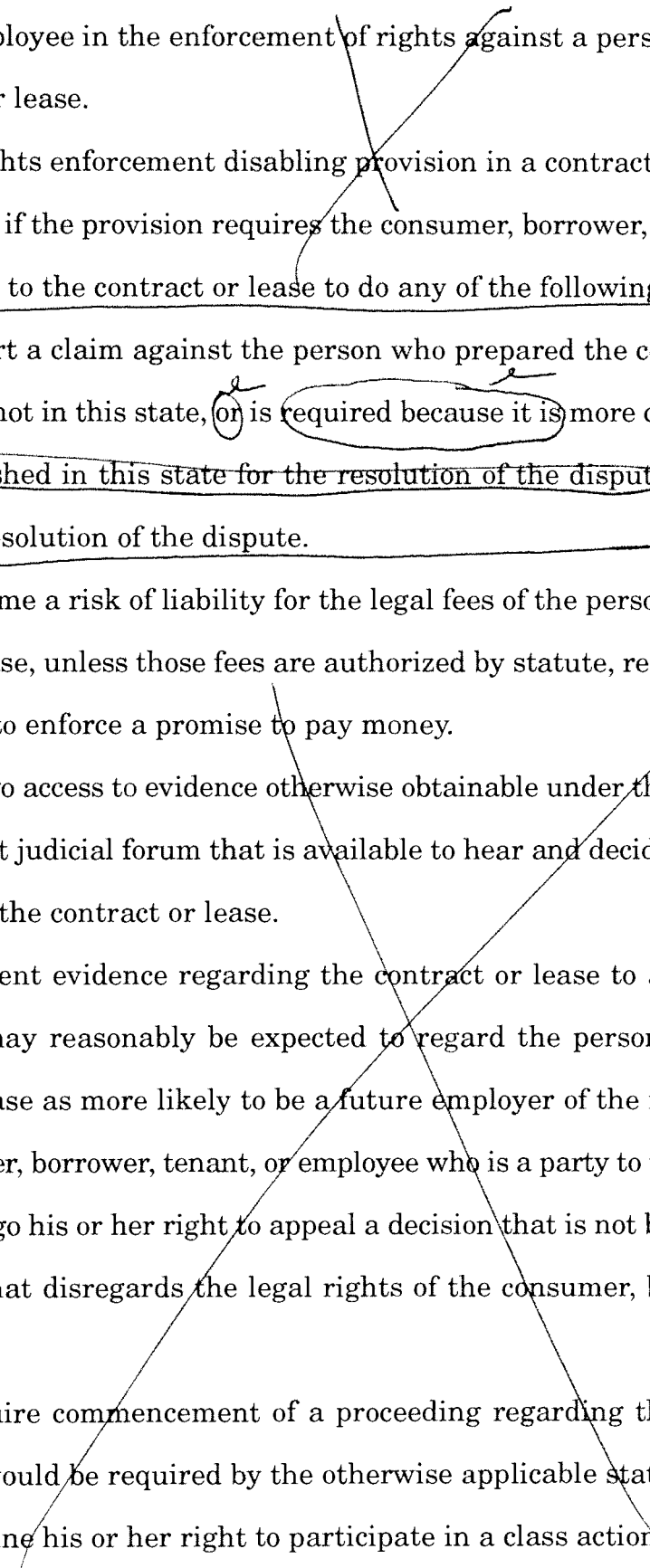
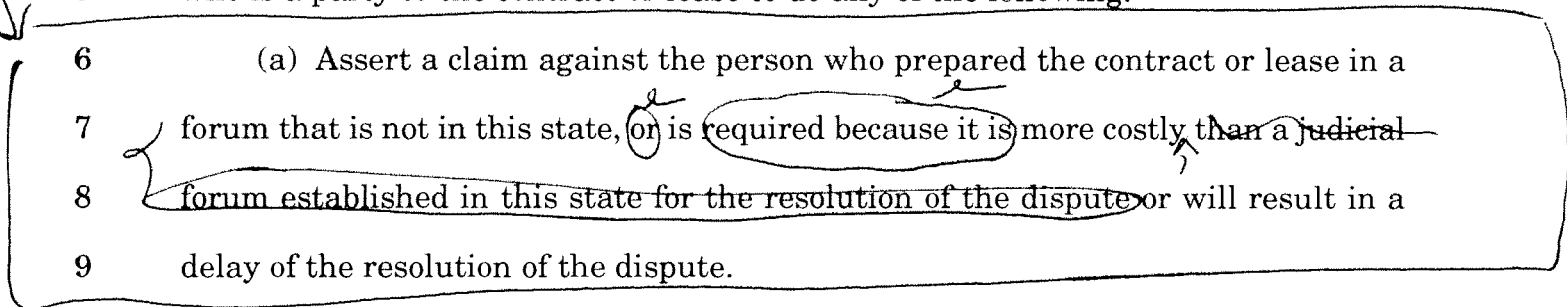
16 (d) Present evidence regarding the contract or lease to a purported neutral
17 person who may reasonably be expected to regard the person who prepared the
18 contract or lease as more likely to be a future employer of the neutral person than
19 is the consumer, borrower, tenant, or employee who is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

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

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

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

input
(a)
↓



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

4 (2) A rights enforcement disabling provision in a standard form contract or
5 lease is void and unenforceable. *if the provision (insert 3-5)*

6 (3) This section does not apply to any of the following:
A collective bargaining agreement.

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

8 (b) A contract for the delivery of goods or services having a value in excess of
9 \$200,000.

10 (c) A contract for a loan in excess of \$500,000.

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

12 (e) A commercial letter of credit.

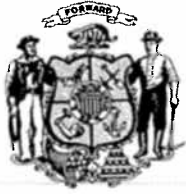
13 (4) The department of agriculture, trade and consumer protection shall adjust
14 the amounts under sub. (3) annually by rule to reflect any changes to the U.S.
15 consumer price index for all urban consumers, U.S. city average, as determined by
16 the federal department of labor.

17 (END)

*disabling unless that contract includes a rights
enforcement disabling provision that the parties did not specifically
negotiated separately in good faith.*

(B)

*(4) If the existence or enforcement of
rights enforcement disabling provision is at issue, a
party to the contract or lease may seek judicial review
as a preliminary matter to have the provision declared
void and unenforceable.*



State of Wisconsin
2013 - 2014 LEGISLATURE

IP3 stays
LRB-2603/P3
RPN:kjf:lm
LPS initials

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Friday
a.m.

Regen

1 AN ACT to create 134.495 of the statutes; relating to: contract and lease
2 language that limits a party's access to procedural or substantive rights.

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:

3 SECTION 1. 134.495 of the statutes is created to read:
4 **134.495 Limitations on contract and lease provisions.** (1) In this section:
5 (a) "Consumer" means a person who enters into a contract for the purchase of
6 goods or services.
7 (b) "Rights enforcement disabling provision" is a provision in a contract or lease
8 that modifies or limits otherwise available procedural or substantive rights in a court
9 action or arbitration proceeding that are necessary or useful to a consumer, borrower,

1 tenant, or employee in the enforcement of rights against a person who is a party to
2 the contract or lease.

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

6 (a) *For any contract or lease entered into in this state,* Assert a claim against the person who prepared the contract or lease in a
7 forum that is not in this state, is more costly, or will result in a delay of the resolution
8 of the dispute.

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

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

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

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

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

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

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

3 (i) Waive the right of access to a judicial forum or to jury trial, unless the
4 contract or lease includes an arbitration agreement that is subject to judicial review.

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

6 (a) A collective bargaining agreement.

7 (b) A contract of employment for compensation in excess of \$100,000 per year
8 unless that contract includes a rights enforcement disabling provision that the
9 parties did not specifically negotiate separately in good faith.

10 (4) If the existence or enforcement of a rights enforcement disabling provision
11 is at issue in a court or arbitration proceeding, a party to the contract or lease may
12 seek judicial review as a preliminary matter to have the provision declared void and
13 unenforceable.

14 (END)

(j) Agree to any other provision in the contract or lease that modifies or limits his or her otherwise procedural or substantive rights in a court action or arbitration proceeding.

Nelson, Robert

From: LRB.Legal
Sent: Friday, January 17, 2014 10:46 AM
To: Nelson, Robert
Subject: FW: Draft review: LRB -2603/P3 Topic: Fair bargain act

Hi Bob, Can you make this a /1 and please put a note on the request sheet so that we jacket it when it comes thru to us?

Thanks so much...

Lori

From: Anderson, John
Sent: Friday, January 17, 2014 10:39 AM
To: LRB.Legal
Subject: RE: Draft review: LRB -2603/P3 Topic: Fair bargain act

Senator Miller would like this to be jacketed for introduction. Thank you.

John Anderson
Office of Senator Mark Miller
608-266-9170

From: LRB.Legal
Sent: Friday, October 25, 2013 9:39 AM
To: Anderson, John
Subject: Draft review: LRB -2603/P3 Topic: Fair bargain act

Draft Requester: Legislative Council - IND

Following is the PDF version of draft LRB -2603/P3.

Nelson, Robert

From: Anderson, John
Sent: Wednesday, January 22, 2014 10:36 AM
To: Nelson, Robert
Subject: FW: Draft review: LRB -2603/P3 Topic: Fair bargain act

Hi Bob. Can we get this jacketed for introduction? Thanks, much. John

From: Anderson, John
Sent: Friday, January 17, 2014 10:39 AM
To: LRB.Legal
Subject: RE: Draft review: LRB -2603/P3 Topic: Fair bargain act

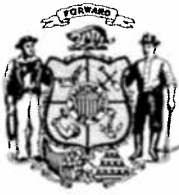
Senator Miller would like this to be jacketed for introduction. Thank you.

John Anderson
Office of Senator Mark Miller
608-266-9170

From: LRB.Legal
Sent: Friday, October 25, 2013 9:39 AM
To: Anderson, John
Subject: Draft review: LRB -2603/P3 Topic: Fair bargain act

Draft Requester: Legislative Council - IND

Following is the PDF version of draft LRB -2603/P3.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2013 Bill

1 AN ACT *to create* 134.495 of the statutes; **relating to:** contract and lease
2 language that limits a party's access to procedural or substantive rights.

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:

3 SECTION 1. 134.495 of the statutes is created to read:
4 **134.495 Limitations on contract and lease provisions. (1)** In this section:
5 (a) "Consumer" means a person who enters into a contract for the purchase of
6 goods or services.
7 (b) "Rights enforcement disabling provision" is a provision in a contract or lease
8 that modifies or limits otherwise available procedural or substantive rights in a court
9 action or arbitration proceeding that are necessary or useful to a consumer, borrower,

1 tenant, or employee in the enforcement of rights against a person who is a party to
2 the contract or lease.

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

6 (a) For any contract or lease entered into in this state, assert a claim against
7 the person who prepared the contract or lease in a forum that is not in this state.

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

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

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

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

21 (f) Require ^{the} commencement of a proceeding regarding the contract or lease
22 sooner than would be required by the otherwise applicable statute of limitations.

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

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

1 (i) Waive the right of access to a judicial forum or to ^ajury trial, unless the
2 contract or lease includes an arbitration agreement that is subject to judicial review.

3 (j) Agree to any other provision in the contract or lease that modifies or limits
4 his or her otherwise procedural or substantive rights in a court action or arbitration
5 proceeding.

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

7 (a) A collective bargaining agreement.

8 (b) A contract of employment for compensation in excess of \$100,000 per year
9 unless that contract includes a rights enforcement disabling provision that the
10 parties did not specifically negotiate separately in good faith.

11 (4) If the existence or enforcement of a rights enforcement disabling provision
12 is at issue in a court or arbitration proceeding, a party to the contract or lease may
13 seek judicial review as a preliminary matter to have the provision declared void and
14 unenforceable.

15

(END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2603/lins
RPN:kjf:rs

1

ins anl:

provision in a

This bill creates limits on contracts and leases between consumers who purchase goods or services and the person who provides those goods or services. Under the bill, a contract or lease is void if that ~~contract or lease contains a~~ provision ~~that~~ modifies or limits otherwise available necessary or useful procedural or substantive rights of a consumer, borrower, tenant, or employee in a court action or arbitration proceeding to enforce those rights against a party to the contract or lease.

Examples in the bill of provisions that modify or limit otherwise available necessary or useful procedural or substantive rights include provisions that require the consumer, borrower, tenant, or employee to do any of the following:

1. Assert a claim against the person who prepared the contract or lease in a forum that is not in this state.
2. Forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum.
3. Forego the right to appeal a decision that is not based on substantial evidence or that disregards his or her legal rights.
4. Require the commencement of a proceeding sooner than would be required by the applicable statute or limitations.
5. Forego an award of attorney fees, civil penalties, or punitive damages otherwise available by law.
6. Waive the right to access to a judicial forum or to a jury trial, unless the contract or lease includes judicial review of any arbitration agreement.

The bill specifies that these provisions do not apply to collective bargaining agreements or to certain contracts of employment for compensation in excess of \$100,000 per year. The bill also permits a party to a contract or lease to seek judicial review of the enforceability of one of these provisions as a preliminary matter in a court action or arbitration proceeding in which such a provision is at issue.

fix indent

x

Parisi, Lori

From: Anderson, John
Sent: Friday, January 17, 2014 10:39 AM
To: LRB.Legal
Subject: RE: Draft review: LRB -2603/P3 Topic: Fair bargain act

Senator Miller would like this to be jacketed for introduction. Thank you.

John Anderson
Office of Senator Mark Miller
608-266-9170

From: LRB.Legal
Sent: Friday, October 25, 2013 9:39 AM
To: Anderson, John
Subject: Draft review: LRB -2603/P3 Topic: Fair bargain act

Draft Requester: Legislative Council - IND

Following is the PDF version of draft LRB -2603/P3.