HB
592

**Sylvia Porter**

*Your money's worth*

# *Plain English used in New York laws*

"(1) What does the bill do? The bill requires all consumer contracts to be: (a) written in plain English; (b) appropriately divided; (c) properly captioned.

"(2) What is a consumer contract? A consumer contract is an agreement about money, goods or services valued at less than $50,000.

"When does the bill take effect? The bill takes effect on June 1, 1978."

"I approve the bill. (Signed) Hugh L. Carey, State of New York Executive Chamber, etc..."

Miracle of miracles in the world of financial bafflegab, New York state now has on its books a pioneering law requiring that contracts from now on should not be ukases issued by one party which the other can't even understand, but be in understandable English. Marvel of marvels in the world of state politics, this bill, introduced by an upstate New York Republican, Assemblyman Peter Sullivan, was recently approved by the Democratic State Assembly, the Republican State Senate and signed by Democratic Gov. Carey.

It's a victory over enormous opposition that represents one of the few times the tactics of the opposing lobbyists boomeranged by enhancing the fight's dramatic value. The issue: a single assemblyman battling organized forces defending incomprehensible contracts designed primarily to protect the sellers and their lawyers while intimidating you, the buyer.

Now there seems no doubt that New York's historic simplification law will be copied the nation over. For the first time ever, you'll be able to understand the contracts you are signing, the bargains to which you are agreeing.

A contract is supposed to be a bargain struck between two sides, each of whom knows what they are doing and each of whom is trying to work out the best deal they can. But does this described what happens when you buy most major big-ticket products or services? Obviously not. The terms of the agreement are pre-printed, often in type too small to be read without a magnifier. You have no choice about these agreed-upon terms if you want to buy the item at all.

Worse, you probably can't understand most of this mass of verbiage even if you attempt to read it, because it is written in "lawyerese," or legal bafflebag.

As for the provisions, often they are written by a form company and included in a standard form written with the goal of appealing to the wishes of the buyer of the forms.

(New York's law, as Carey's own historically simple document of approval stated, will not become effective until mid-1978.)

What makes this tale of exceptional interest is that when Sullivan's bill got hot, suddenly prestigious lawyers and powerful trade associations protested vigorously, declaring that their old unreadable contracts would have to be reprinted, and the delay until June of next year wasn't sufficient for that. Moreover, they insisted that some of the contract terms were impossible to write in terms you and I could comprehend!

This argument actually was the admission that boomeranged. For if consumers are signing agreements every day which couldn't be understood even if they were able to read them, how could these documents be labeled as agreements to begin with? Is it not unfair and deceptive to coax consumers into signing documents that are actually beyond the comprehension of anybody but the lawyers?

The unsuccessful, intensive, behind-the-scenes scramble to stop Sullivan and his Plain English bill attracted far more attention than would have mere passage of the proposal. Thus, the result is certain to be more and more similar laws in states across the land.

This time, the federal government might look to New york for leadership in a battle it is fighting with little, if any, success. President Carter has stated frequently that he wants government regulations to be written in plain English. But so far, with enormous luck and perserverance, all you have is a picayune chance to grasp the meaning of anyone—and I'm not even including the tax laws!

The editors of the Federal Register also are having a fascinating time trying to translate some of the tortuous writing they receive from the bureaucratic agencies. Same tale.

But in this area, we, the consumers of New York, have won—and with Sullivan's law, we are pointing the way.

SERVING THE BENCH AND BAR SINCE 1888

NEW YORK, THURSDAY, AUGUST 18, 1977





# Consumer Law

By Richard A. Givens

*This column, which is contributed by members of the Special Committee of The Association of the Bar of the City of New York, is a regular feature of the Law Journal. Richard A. Givens, a member of the New York Bar, recently resigned as the regional director in New York of the Federal Trade Commission.*

## The 'Plain English' Law

The 1977 amendment to General Obligations Law Sec. 5-701, popularly known as the "plain English" law, was sponsored by Assemblyman Peter Sullivan as A. 4535-A, and introduced in the Senate by Senator Joseph Pisani (S. 2902-B) and signed by Governor Carey on Aug. 5 as L. 1977, ch. 747. Assemblyman Harvey Strelzin, Chairman of the Assembly Consumer Protection Committee, and the staff of Senate Majority Leader Warren Anderson were instrumental in the revision of the bill. For background see Safire, "Legalesey Does It," *N.Y. Times*, 7/28/77, p. A19; Cerra, "Controversial State Bill Mandates A Curb on Legalese In Contracts," *N.Y. Times*, 8/8/77, p. 27.

### Provisions of the Act

The amendment adds new subdivisions b and c to Sec. 5-701 requiring that each written agreement entered into after June 1, 1978, for residential leases or for sales of

*Continued on page 4, column 1*

*Continued from page 1, column 1*

goods or services for personal, family or household purposes must be:

"1. Written in non-technical language and in a clear and coherent manner using words with common and everyday meanings;

"2. Appropriately divided and captioned by its various sections."

A creditor, seller or lessor who fails to comply is made liable to the consumer for actual damages plus $50; the total class action "penalty" (which would appear to refer to the aggregate liability for the statutory $50 damages) is limited to $10,000.

### 'Fail-Safe' Clauses

The penalty is not enforceable where both parties have fully performed their obligation under the contract or against a party who "attempts in good faith to comply with this section." The section does not apply to agreements involving amounts in excess of $50,000.

As an additional safeguard against abuse, a violation of this provision does not render any agreement void or voidable, or constitute a defense to an action to enforce the agreement or for breach thereof. Sec. 5-701(c). The Sullivan proposal grew out of concern over consumer credit contracts couched in unintelligible language, understandable only by an attorney versed in the arcane subtleties of creditor remedies, or in what Sylvia Porter has called (Sylvia Porter's *Money Book*, 1976) "Bafflegab". The "plain English" movement in regard to governmental documents undoubtedly also contributed to similar concern as to private documents to be governmentally enforced in the courts.

Many fears of harmful impact on legitimate business have been expressed in regard to the bill. Proper construction in light of the objectives of the bill can avoid or mitigate many of the anticipated problems. Peter Sullivan, the sponsor, has also expressed willingness to meet with members of the business community to work out clarifying amendments which would avoid problems without diluting the objectives of the bill.

### Common Law Principle

The basic principle underlying the Sullivan law is the common law doctrine that a party cannot be held to contract provisions not likely to have been comprehended (and thus agreed to) by the party. *Cf. Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 NE 2d 389 (1940); *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A. 2d 69 (1960) and authorities cited. Compare also *Jones v. Great No. Ry.*, 65 Mont. 231, 217 Pac. 673 (1923); *Lambert v. California*, 355 U.S. 225, 228-29 (1957).

The Sullivan statute should be interpreted in light of this common law principle. Experience has demonstrated that consumer contracts can in fact be drafted so as to be understandable to the lay public. See Siegel, "To Lift the Curse of Legalese — Simplify, Simplify", 14 Across the Board: The Conference Board Magazine No. 6, p. 61 (June 1977).

### Background Relevant

Also relevant as background to the Sullivan Act is the concept that documents drafted by one side are to be most strongly considered against that party. E.g. *Rentaways, Inc. v. O'Neill Milk & Cream Co.*, 308 N.Y. 342, 345, 126 NE 2d 271, 273 (1955); *Taylor v. United States Casualty Co.*, 269 N.Y. 360, 364, 199 N.E. 232, 233 (1936); *Bay State Smelting Co. v. Ferric Indus., Inc.*, 292 F. 2d 96 (1st Cir. 1961); *Matter of Davis*, 14 Misc. 96, 98 203 N.Y. Supp. 482, 484 (Surr. Ct. 1933); Restatement, Contracts Sec. 236(d) & Comment (d) (1932); 3 Corbin, Contracts Sec. 559, p. 302 (rev. ed. 1960); Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 (1964). This is done in part because of an imbalance in bargaining power where a "contract of adhesion" is a "take it or leave it proposition." See Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 855-862 (1964); Ehrenzweig, "Adhesion Contracts in the Conflict of Laws," Colum. L. Rev. 1072 (1953); Kessler, "Contracts of Adhesion — Some Thoughts About Freedom of Contract," 43 Colum. L. Rev. 629 (1943); Llewellyn, "Book Review," 52 Harv. L. Rev. 700 (1939); cf. *Siegelman v. Cunard White Star, Ltd.*, 221 F. 2d 189, 204-06 (2d Cir. 1955) (Frank, J. dissenting). Furthermore, the drafting party is responsible for any ambiguity in the document. *Rentaways, Inc. v. O'Neill Milk Cream Co.*, 308 N.Y. 342, 126 NE 2d 271 (1955); *Bay State Smelting Co. v. Ferric Indus., Inc.*, 292 F. 2d 96 (1st Cir. 1961) discussed in Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 & n. 83 (1964). ". . . If there is any doubt as to the meaning of the terms employed, the (party presenting the language) is responsible for it as the language is wholly (his) own . . ." *Gillet v. Bank of America*, 169 N.Y. 549, 554, 55 N.E. 292, 293 (1899).

Where one party has counsel and the other does not, special care is also exercised by the courts to protect the latter party. See *Ryon v. John Wanamaker, New York, Inc.*, 116 Misc. 91, 190 N.Y. Supp. 260 (Sup. Ct. 1921), aff'd, 212 App. Div. 548, 194 N.Y. Supp. 977 (2d Dep't 1922), aff'd, 236 N.Y. 515, 139 N.E. 728 (1923); *In re Vaupel's Estate*, 37 N.Y. Supp. 2d 853, 856 (Surr. Ct. 1942), aff'd, 266

ambiguous to some degree. Cf. Dickerson, "Statutory Interpretation: Core Meaning and Marginal Uncertainty," 29 Mo. L. Rev. 1 (1964).

Few documents are absolutely clear in their application to particular facts not yet in existence when the document was drawn. Cf. Curtis, "A Better Theory of Legal Interpretation," in Jurisprudence in Action 131-170 (N.Y.C.B.A. 1953); Jones, "Statutory Doubts and Legislative Intention," 40 Colum. L. Rev. 957 (1940). Further, "The same words, in different settings, may not mean the same thing." *Shelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 678 (1950); cf. *R.H. Johnson & Co. v. SEC*, 198 F. 2d 690, 696 (2d Cir.), cert. denied, 344 U.S. 855 (1952).

The Sullivan Act (General Obligations Law Sec. 5-701[b]) is, of course, relevant to consideration of the common law principle which it recognizes even where the statute in terms does not apply. E.g., *Comm'r v. LeBue*, 351 U.S. 243, 249 (1956); *United States v. Hutcheson*, 312 U.S. 219, 234, 35 (1941); *Electrolux Corp. v. Val-Worth, Inc.*, 6 NY 2d 555, 563, 161 NE 2d 197, 204, 190 N.Y. Supp. 2d 977, 987 (1959); *Schuster v. City of New York*, 5 NY 2d 75, 85-86, 154 NE 2d 534, 540, 180 N.Y. Supp. 2d 265, 273-74 (1958); Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 12-18 (1936); Farnsworth, "Implied Warranties of Quality in Non-Sales Cases," 57 Colum. L. Rev. 653, 654 (1957); Comment, 59 Colum. L. Rev. 487, 494 (1959); cf. *Parker v. Brown*, 317 U.S. 341, 367 (1943); *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 773 (1945). Compare also Fuld, J. in *Zendman v. Harry Winston, Inc.*, 305 N.Y. 180, 185 n. 3, 111 NE 2d 871 (1953) (persuasiveness of UCC prior to adoption as reflecting modern thinking on commercial transactions). There is also an overlap between Sec. 5-701(b), and the concept of unconscionability (which, unlike Sec. 5-701(b) may be a defense).

Uniform Commercial Code Sec. 2-302. On Sec. 2-302 generally see *American Home Improvement, Inc. v. MacIver*, 201 A. 2d 886 (N.H. 1964), 78 Harv. L. Rev. 865 (1965). The official comment to this section states that ". . . the principle is one of the prevention of oppression and unfair surprise . . . " Cf. Patterson, "The Interpretation and Construction of Contracts," 64 Colum. L. Rev. 833, 854 & n. 83 (1964) and cases cited. Compare also *Williams v. Walker-Thomas Furn. Co.*, 350 F. 2d 445 (D.C. Cir. 1965).

create large unforeseen liabilities or losses to legitimate business. It should be noted that the "good faith" defense applies only to "penalties" (i.e. $50 statutory damages in any class action based thereon) and not to "actual damages sustained . . ." In order to show good faith, proof that a party had instructed its attorneys to simplify its documents and that changes were made where needed, or that an outside firm specializing in simplification of documents would be relevant. Cf. Siegel, supra. Dr. Rudolf Flesch has also developed a scale for establishing the readability of documents.

The burden of going forward with evidence of good faith would, of course, be on the party asserting the defense as the one having relevant information. Compare *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 225-26 (1939); *United States v. Costello*, 275 F. 2d 335, 358 (2d Cir. 1960), aff'd, 365 U.S. 265 (1961); 3 Wigmore, Evidence Sec. 1042 at p. 733 (3d ed. 1940). See also *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *United States v. Sahadi*, 292 F. 2d 565, 565 (2d Cir. 1961); *Dyson v. United States*, 253 F. 2d 635, 637 (9th Cir. 1959); *United States v. Walker Co.*, 152 F. 2d 612, 613-14 (3d Cir. 1945); *Haggerty v. United States*, 5 F. 2d 224, 225 (7th Cir. 1925).

### Statute Not Exclusive

The statute in not making a violation a defense to an action to enforce or for breach of an agreement, does not, of course, affect the fact that violation of the underlying common law principle might constitute such a defense.

Where a statute creates a remedy, in addition to a common law remedy, for the protection of a right, but contains no language barring the common law remedy, it is not construed to have removed the common law remedy. See *Odom v. East Avenue Corp.*, 178 Misc. 363, 34 NYS 2d 312, 317 (Sup. Ct. 1942); aff'd, 264 App. Div. 955, 37 NYS 2d 491 (4th Dept. 1942); *Brewster v. J. and J. Rogers Co.*, 169 N.Y. 73, 80, 62 N.E. 161 (1901). In *Schuster v. City of New York* the court stated:

"The existence of section 1848 of the Penal Law does not defeat plaintiff's common law cause of action. On the contrary, it reflects a public policy that municipalities shall respond in damages to private citizens or their estates who have been injured and killed as a result of aiding in law enforcement. This statute contains no language barring plaintiff's common law remedy. The rule is that '[a] statute in the affirmative, without any negative expressed or additional remedy, for the enforcement of a right . . .' (McKinney's Cons. Laws of N.Y., Book 1, Statutes, Sec. 34).

"In other words, where a remedy existed at common law for the wrong or injury against which a remedial statute is directed, if such statute provides a more enlarged or a summary or more efficient remedy for the party aggrieved, but does not in terms or by necessary implication deprive him of the remedy which existed at common law, the statutory remedy is considered as merely cumulative, and the party injured may resort to either at his election."

5 NY 2d 75, 180 NYS 2d 265, 273, 154 NE 2d 534 (1958). See also *Norton v. the State of New York*, 53 Misc. 2d 495, 279 NYS 2d 309, 313 (Ct. of Claims, 1967); *Taylor v. Mayor, etc., of City of New York*, 82 N.Y. 11 (1880); *Seligman v. Friedlander*, 199 N.Y. 373, 92 N.E. 1047 (1910); *Lobell v. Galpin*, 225 App. Div. 65, 229 N.Y.S. 76, 79 (4th Dept. 1930); Pound, "Common Law and Legislation", 21 Harv. L. Rev. 383, 385-387 (1908); Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 13 (1936).

### Counterclaim Provision

Furthermore, a claim for actual damages because one was subjected to adverse consequences by a contract that they did not comply with Sec. 5-701(b) can be asserted as a counterclaim in an action to enforce the contract or for its breach. This would not contravene the purpose of Sec. 5-701(c), which was to avoid the disproportionate result of cancelling an entire debt because certain provisions in the agreement were not written in plain English.

Persistent, deliberate and blatant violation of Sec. 5-701(b) might also constitute illegality justifying injunctive relief at the suit of the Attorney General under Executive Law Sec. 63(12), and subject to contempt penalties as set forth in Judiciary Law Sec. 751(4), added by L. 1975, ch. 410. Compare *State v. ITM*, 52 Misc. 2d 39, 275 NYS 2d 303 (1966); *People v. MacDonald*, 69 Misc. 2d 455, 330 NYS 2d 85 (1972).

One of the arguments raised in opposition to the Sullivan law was that certain provisions cannot be translated into ordinary English. Although non-understandable provisions can no longer be properly utilized in consumer contracts after June 1, 1978, a similar result can nevertheless be obtained by a creditor by substitute provisions, such as giving a consumer a pro rata refund, less a specific cancellation fee or cancellation percentage (compare General Business Law Sec. 412-a as amended by L. 1977 ch. 345).

thinking up unhappy contingencies and sets about the careful legal covering of himself against each of them, he has embarked upon a course which ends only with the incorporation of a fifteen volume encyclopedia of law and procedure, or else with plain exhaustion." Llewelyn, "Meet Negotiable Instruments," 44 Colum. L. Rev. 299, 312 (1944).

In many cases, the courts or statutes can or will supply answers to contingencies which cannot practicably be covered in contract language suitable for comprehension by the general public. Thus, a bank check does not contain a description of all legal consequences which apply to various situations contemplated by the Negotiable Instruments Law or the Uniform Commercial Code. Instead, use of certain language automatically triggers legal provisions deemed by the courts or the Legislature to be fair to all parties. Compare the triggering of various consequences by the use of the term "full" or "limited" warranty under the Magnuson-Moss Warranty Act, Public Law 93-637 (1975), 88 Stat. 2187, Section 101, 15 U.S.C. Sec. 2304. Cf. New York State Bar Association, Banking, Corporation and Business Law Section, Address from Fall Meeting, Oct. 9-12, 1975, Saratoga Springs, p. 11-14.

The section should not be considered to obliterate the common law principle out of which it grew, nor to limit that principle or its enforcement; it should be regarded as a supplemental remedy for certain types of disregard of that principle. The chief reason for the need for such a law, of course, is the absence of provable damages for many instances where non-understandable contracts are used. Section 5-701(b) sets up mechanisms for individual or class actions with a penalty of up to $50 per consumer and up to $10,000 in total as a mechanism for enforcement, subject to the "fail safe" principles discussed above. These "fail safe" provisions provide that no statutory minimum damages ("penalty") will be imposed except where good faith is lacking, and that a technical violation of Sec. 5-701(b) will not make an entire debt or contract unenforceable.

Of course, if the language of the "contract" was so obtuse that it was never agreed to in the true sense in the first place thus, as distinct from merely violating the statute as written would be a defense. Cf. *Sandler v. Commonwealth Station Co.*, 307 Mass. 470, 30 NE 2d 389 (1940); *Jones v. Great No. Ry.*, 68 Mont. 231, 217 Pac. 673 (1932); compare also

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Although the subjects discussed in this article reflect the activities of the Special Committee on Consumer Affairs, the views expressed are

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similar consumer transactions, such as purely financial contracts subject to separate regulatory schemes like securities brokerage agreements or insurance contracts. See N.Y. Insurance Law, Art. VII, Sec. 140-160-b; General Business Law Art. 23, 23-A, 23-B, 23-C, Sec. 350-359-W; 15 U.S.C. ch. 2A, 2B, 2b-1, 2D, Sec. 77a-78aaa, 80a-1. While the separate regulation of these types of agreements obviously would not in and of itself negative the applicability of the Sullivan law, it should do do when combined with the traditional separateness of these areas from what are normally considered consumer transactions. Compare generally *Silver v. New York Stock Exchange*, 373 U.S. 341 (1963); Note, 58 Colum. L. Rev. 673 (1958). On the other hand, consumer-type loans such as small loans or loans to buy consumer goods are obviously covered. As to the latter, compare Federal Trade Commission Trade Regulation Rule, Preservation of Buyer's Claims and Defenses, 16 C.F.R. Part 433, Federal Register May 14, 1976.

The law prohibits use of "technical" language in consumer contracts; the intention is obviously to prohibit technical language of a type understandable only to specialists. If language is technical and has the same ordinary meaning as its technical meaning, the law would obviously not prohibit its use. This is evident from the other terms with which the term "non-technical" is grouped. See *Third National Bank v. Impac Limited, Inc.*, 97 S. Ct. 2307, 2314 (6/17/77) citing *United States v. Feola*, 420 U.S. 671, 705 (Stewart, J. dissenting).

### Mandated Language Permissible

Similarly where technical language is specifically mandated by state or Federal law, its use is obviously permissible because use of terms required by any other applicable binding state or Federal law or regulation would be a good defense to a charge of violation of the Sullivan law. In the case of a state requirement this would be because of the general principle that the more specific provision overrides the more general absent a contrary expression of intention. Compare *Silver v. New York Stock Exchange*, supra; Note, 58 Colum. L. Rev. 673 (1958). In the case of a Federal requirement, this would be so by virtue of the Supremacy Clause of the Federal Constitution. Specifically, in the case of the Truth in Lending Act and Regulation Z issued by the Federal Reserve Board, the purpose of the provisions involved is disclosure to the consumer — the objective which underlies the Sullivan law.

Consequently, compliance with disclosure requirements mandated by Truth in Lending or similar Federal laws is in accordance with the purpose of the Sullivan law and would not produce a violation of it, even apart from the Supremacy Clause. Of course, the purpose of the Sullivan law is not to regulate the disclosures required by the Truth in Lending Act, but other applicable provisions in consumer contracts.

fice.

It has been feared that the Sullivan law would cause chaos by applying to all sorts of situations where its objectives are not relevant. See Tyler, Letter to the Editor, "Sullivan Bill: A Sledgehammer Blow for Clarity," *N.Y. Times*, 5/5/77, p. A20. This will not be the case if the law is interpreted in accordance with its objectives, as it should be. The courts do not normally interpret statutes to reach absurd results contrary to the purpose of the legislation, nor should they here. The original version of the bill, A. 4538-A (2/23/77) covered only contracts subject to the disclosure provisions of the Truth in Lending Act (15 U.S.C. Section 1601); the amended version dropped that provision to avoid problems raised by incorporating by reference specific statutes subject to amendment by other legislative bodies, a matter raising state constitutional as well as practical problems.

The intent of the change was not to broaden coverage but to avoid such problems. The purpose of the bill was to avoid consumer entry into obligations not understood. Consequently where there is no future obligation placed on the consumer, the law should not apply. This is confirmed by the express provision barring recovery of statutory damages where the contract is fully performed by both sides (General Obligations Law Sec. 5-701(b), final unnumbered paragraph, as added).

### Standard Forms

Similarly, the intent of the law is to apply to standard-form printed or reproduced contracts, not individually negotiated handwritten or similar agreements. Only the former normally contain sections to be captioned, as referred to by Sec. 5-701(b)(2) as added.

Likewise, warranty disclosure governed by Title I of the Magnuson-Moss Warranty — Federal Trade Commission Improvements Act, P.L. 93-637 (1975) and regulations thereunder would not seem to be affected or covered by Section 5-701(b).

To the extent that the Sullivan law is successful in improving the readability of consumer contracts, it will benefit both legitimate business and consumers, because businesses will be subjected to public irritation by the problem which the Sullivan law will help to eliminate. It will be up to the Bar and the business community to see that these forward-looking reforms are successful, and that any necessary clarifying amendments are agreed upon.

The approach of seeking an accommodation under which both consumers and business can benefit from a synthesis of interests can be discerned in other recent legislative action, such as the additional notice requirement in debt collection suits added by L. 1977, ch. 344, amending CPLR 308, effective Jan. 1, 1978, discussed in the July 28 Consumer Column in the *Law Journal*. This reform was supported by the collection Bar as well as consumer groups and law enforcement agencies. The same has been true of other major reforms such as the new state criminal antifraud statute, Penal Law 190.65 added in 1976 and the

January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the use of plain language in residential leases and consumer agreements. For too long people have been unnecessarily subjected to technical jargon and convoluted sentences often making the documents virtually incomprehensible.

This bill would require the use of clearly written, non-technical language and a clear sequence and labeling of the sections of those leases and agreements. The bill would not apply to leases and agreements involving amounts in excess of $50,000.

The bill does not conflict with existing substantive law. It addresses form only, and its purpose is to render consumer agreements more easily understandable. This bill is based on ch. 747 of the Laws of New York 1977. As in the New York law, the enforcement mechanism is written to avoid disruption of commerce but to provide double damages plus $50 when a party to such an agreement is in fact injured and the agreement was written in violation of these requirements.

The effective date of this bill is January 1, 1979 so that persons affected by these new requirements will have time to revise their leases and agreements.

Sincerely,

S/JSH

Jay S. Hammond
Governor

IV. DATE December 7, 1977 PREPARED BY Richard T. Pegues, Admin. Officer
Department of Law

Installment Purchase

Introduced: 1/10/78
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 592

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the use of plain language in contracts and leases; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding a new section to read:

ARTICLE 6. CONSUMER AGREEMENTS.

Sec. 45.45.250. FORM. (a) Subject to (b) of this section, every written agreement entered into after January 1, 1979 for the lease of space to be occupied for residential purposes, and every written agreement to which a consumer is a party and the money, property, or service which is the subject of the transaction is primarily for personal, family, or household purposes, must be:

(1) written in non-technical language and in a clear and coherent manner using words with common and everyday meanings;

(2) appropriately divided and captioned by its various sections.

(b) This section does not apply to agreements involving amounts in excess of $50,000. or to agreements the forms of which are regulated by other provisions of Alaska Law.

(c) A creditor, seller, or lessor who fails to comply with (a) of this section is liable to a consumer who is a party to a written agreement governed by (a) in an amount equal to the sum of any actual damages sustained plus $50. The total class action penalty against any such creditor, seller, or lessor may not exceed $10,000. These penalties may be enforced only in a court of competent jurisdiction,

but not after both parties to the agreement have fully performed their obligation under the agreement, nor against any creditor, seller, or lessor who attempts in good faith to comply with this section.

(d) A violation of (a) of this section does not render an agreement void or voidable nor does it constitute:

(1) a defense to any action or proceeding to enforce the agreement; or

(2) a defense to any action or proceeding for breach of the agreement.

* Sec. 2. This Act takes effect on January 1, 1979. (1 year)

Amend 21.~~##~~42.130

(5) – ~~should be readable~~ does not meet the standards for readability established by the director

Mike Thomas

STATE OF ALASKA

Inter-Department Route Slip

Rm 124

TO:
MAIL STATION NUMBER_____

~~DEPARTMENT~~ House Judiciary Com.

ATTENTION Terry Gardiner

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return As Requested
- ☐ Return For Approval
- ☐ Necessary Action
- ☒ Your Information

Remarks:

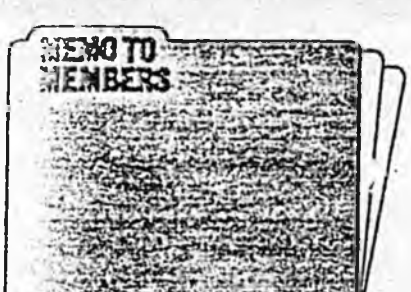
Re HB 592.

FROM:
MAIL STATION NUMBER_____

DEPARTMENT Law

BY Art Peterson DATE 5/9/78

02-002 (REV.10/73)




**READ A CONTRACT BEFORE YOU SIGN IT.** No bit of advice is more basic than that—and, often, no advice is more futile. For the standard language of contracts is not standard English. It's frequently a legal gobbledygook handed down from one generation of lawyers to the next. Puzzling or confusing jargon leaves consumers unsure about their rights and obligations under a contract.

But help is on the way.

In New York last year, a bill passed by the Legislature requires residential leases and certain consumer contracts to be written in words of common and everyday meaning. Other states appear to be in no hurry to follow New York, and there's a move afoot in New York to delay or repeal the law. (Or, as a New York Times headline-writer put it, tongue firmly in cheek: "Plain-Language Law Facing Amendatory Relegislative Proceeding.")

But even without state laws, the lot of the contract-signer has been improving. Years ago Herbert Denenberg, then Pennsylvania's Commissioner of Insurance, pioneered in requiring understandable insurance forms. Now Citibank, one of the largest banks in the country, has begun to replace legal jargon with plain English in its consumer loan agreements.

Other organizations are returning to the mother tongue. The Blue Cross Association has announced that South Carolina Blue Cross and Blue Shield has rewritten all 33 of its standard nongroup policies and group booklets into nontechnical language; that Virginia "blue" plans have rewritten some policies in plain English; and that other plans are reviewing their contracts for possible rewriting. The National Bank of Washington, D.C., has put out a consumer loan form in everyday English—and even pretested it for comprehension. Chemical Bank in New York has rewritten its Master Charge Card agreement in simple English.

The Insurance Services Organization, an industry group with about 1600 affiliated companies, has developed a plain-English homeowners policy for insurance companies. These are now available in several states. So is a simplified auto-insurance form.

Other insurance companies are making similar changes in their forms.

The Federal Government is helping, too. President Carter has issued an order requiring that executive department regulations be written simply and clearly. The Employee Retirement Income Security Act (ERISA) requires that covered plans be described "in a manner calculated to be understood by the average plan participant." The Magnuson-Moss Warranty Act requires that consumer warranties be written in "simple and readily understood language."

Consumers surely have a right to understand what they're asked to sign. But don't confuse an *understandable* contract with a *fair* contract. While it's fine to understand the terms of leases, insurance policies, and loan agreements, it would be better still if consumers had an opportunity to negotiate those terms as well. If simplified contract language helps consumers see how one-sided some form contracts are, they can press for changes in meaning as well as in language.

—Rhoda H. Karpatkin, *Executive Director*


## DOES A FRUIT-RIPENING BOWL REALLY DO IT BETTER?

Most fruit is picked before it is ripe, so it will survive the rigors of shipment. Much of it is still unripe when you get it home. What's the best way to ripen the fruit? One way is to simply put it in an open bowl. Another way is to store it in a perforated plastic bag (you can punch the holes with a fork).

Still another way is to keep the fruit in one of the clear plastic fruit-ripening bowls that recently came on the market. These vented, pear-shaped affairs (see photo) are supposed to ripen fruit quickly yet preserve its juiciness and flavor. Do they do the trick better than the plastic bag or the ordinary bowl?

To find out, we bought samples of two fruit-ripening bowls—the *California Summer Fruits Ripening Bowl* (California Tree Fruit Agreement, Sacramento), which sells in supermarkets for about $5, and the *RipenRight Fruit Bowl* (Blue Anchor Inc., Sacramento), which, at the time CU purchased samples, was available by mail for $10. Despite the sizable price difference, the two bowls are almost identical.

The fruit-ripening bowls are supposed to provide a special environment to aid the ripening. After fruit is picked, it continues to "breathe," taking in oxygen and giving off carbon dioxide, water vapor, and ethylene gas. The fruit-ripening bowls retain some of the water vapor and ethylene gas the fruit needs to ripen, and allow some of the carbon dioxide to escape through their vents. (A perforated plastic bag provides a similar semiclosed environment.)

We tested the new bowls against an open bowl and against perforated plastic bags, using a variety of unripe fruits. All the tests were conducted at room

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 6, 1978

TO: Rep. Terry Gardiner, chairman

FROM: Bob Speed, A.A.

RE: "Son of Sam" statute, CS SB 488
An act requiring money received by criminals as a result of the commission of a crime to be available to victims of that crime

Sen. Ziegler briefed me on CSSB 488, which passed the Senate this date by a vote of 18-0. It is patterned after New York's "Son of Sam" statute.

The bill is intended to keep perpetrators of crimes from profiting financially by selling accounts of their lives or their criminal activities to news media, movies or for other uses.

Proceeds and royalties from publication rights or other money accruing to the perpetrator from similar sources would go to the Violent Crimes Compensation Board for deposit in an escrow account. The board would make as much money available to the defendant as needed for legal expenses, including appeals. Any remaining money would go to the victim of the crime or the victim's family.

The CS transfers the Violent Crimes Compensation Board from the Department of Health and Social Services to the Department of Public Safety. Sen. Ziegler said this was done because the board did not have access to confidential DPS files and information, to which they will have access as an arm of Public Safety. Commissioners Beirne and Burton have endorsed this transfer.

The CS also deletes a section of the original bill which would have required publication in newspapers of general circulation that money from this source is available to victims of violent crimes. Sen. Ziegler said it was felt that this requirement is not needed in Alaska because the state is not burdened with the large population which would be affected in New York or other states.