

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 11, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on March 11, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL 190: Hearing commenced on Senate Bill 190. Senator Joe Mazurek, District #23, sponsor of the bill, explained this legislation is at the request of the Kessler Brewery. Senate Bill 190 allows a Montana brewer to give away its own products for consumption on its licensed premises.

Proponent Roger Tippy, representing the Montana Beer and Wine Wholesalers offered his support.

There bein no further discussion by proponents and no opponents to the bill, all were excused by the chairman and the hearing on Senate Bill 190 was closed.

ACTION ON SENATE BILL 190: Representative Kitselman moved DO PASS on Senate Bill 190. Second was received, Senate Bill 190 will BE CONCURRED IN by unanimous vote.

SENATE BILL 66: Hearing commenced on Senate Bill 66. Senator Mike Halligan, District #29, sponsor of the bill, stated this is the "Plain Language in Contracts Act" and requires a consumer contract to be written "in a clear and coherent manner using words with common and everyday meanings. City Bank in New York City revised their own forms and set a trend but it was not followed through by others. Each party should understand and agree to the terms of the contract and it should be readable to the average person. Senator Halligan distributed to committee members Exhibit 1 which is attached hereto. Only a small portion of an installment contract is covered under federal statute.

Proponent George Bousliman, representing the State Bar of Montana, explained that Senate Bill 66 will help take the mystery out of consumer contracts. A contract should be stated in plain English and the public should be clear of their rights.

Proponent Julie DalSoglio, representing the Montana Public Interest Research Group, supplied written testimony which is attached hereto as Exhibit 2.

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Proponent Tom Ryan, representing the Montana Senior Citizens Association, supplied written testimony which is attached hereto as Exhibit 3.

Proponent George Bennett, representing the Montana Bankers Association, supplied written testimony which is attached hereto as Exhibit 4. Mr. Bennett explained the amendments proposed by the association.

Proponent Louise Kunz, representing the Montana Low Income Coalition, supplied written testimony which is attached hereto as Exhibit 5.

Proponent Pat Hooks, representing the Montana League of Savings Institutions, explained that they are also subject to federal regulation.

Proponent Don Ingles, representing the Montana Chamber of Commerce, supports the bill as amended.

Proponent Bob Houseman, an English Professor at the University of Montana and an expert in the English language, explained that language clearly written is language that is clearly understood. It has been proven that long sentences and paragraphs cannot be typed as well and cannot be kept in one's memory as well. Most legal writing is not intended to defraud people, stated Mr. Houseman. The consumer will benefit if contracts are written in a clear and plain language manner. If a P.H.D. must call a lending institution for interpretation of a contract, the average citizen must, also. Senate Bill 66 will benefit all and hurt none. Mr. Houseman read an excerpt from a contract that was the winner of the "Golden Blow Award".

Proponents Molly Munro, Executive Secretary, Montana Association of Homes for the Aging, and George Allen, representing the Montana Retail Association offered their support of the bill.

Proponent Wade Wilkinson, representing LISCA, explained that the Medicare forms flunk the plain language test.

Proponent Riley Johnson, representing the National Federation of Independent Business offered his support of the bill as amended.

In closing, Senator Halligan explained that the amendment offered by the Montana Bankers Association are disclosures and do not say anything about plain language. If this is a

duplication, Senator Halligan will support the amendment.

Representative Thomas asked Senator Halligan why on page 3, lines 23 - 25 of the bill the exclusion for a public utility service exists. Senator Halligan explained that he met with the Public Service Commission and this area is complicated enough and that this area of regulation is not meant for consumer understanding.

Representative Ellerd asked Mr. Bennett if the Electronic Transfer Act is a complicated one and how plain language affects this act. Mr. Bennett explained that it is not a complicated act and that the consumer is already protected under this act.

Representative Kadas asked Mr. Bennett if the proposed amendment applies to the entire contract distributed by him or just the box that has been marked. Mr. Bennett stated that the amendment would apply to any contract dealing with the federal Truth-In-Lending Act or the Electronic Fund Transfer Act.

Representative Simon asked Senator Halligan if the amendment is adopted how many contract will be left. Senator Halligan explained that it would be those covering personal property and where the borrowing of money is not involved.

Representative Simon asked Les Alke, Montana Bankers Association if the Reg Z applies only to financial contracts. Mr. Alke explained that it applies to any credit/debtor type contract.

Representative Simon then asked Mr. Alke if the Reg Z and electronic transfer act is exempt, what will remain. Mr. Alked stated that any transaction that does not have credit involved. In response to the same question Senator Halligan explained that no contracts would remain.

Representative Thomas asked Molly Munro why real estate had been exempted. Ms. Munro explained that it is exempt due to the legal description of property, a problem with this was anticipated.

There being no further discussion by proponents and no opponents to the bill, all were excused by the chairman and the hearing on Senate Bill 66 was closed.

SENATE BILL 34: Hearing commenced on Senate Bill 34. Senator Bob Brown, District #2, sponsor of the bill by request of the Department of Revenue and the Revenue Oversight Committee, explained that this bill revises the

liquor license law to require that in a license application by any business entity other than an individual or a corporation all individuals concerned must meet the same qualifications as an individual applicant.

Proponent Howard Heffelfinger, Administrator, Liquor Division, Department of Revenue, explained that there have been instances where a partnership has applied for a license and was in fact a corporation. With the entity being a partnership, the court has ruled in their favor and a license was issued. Senate Bill 34 will give the department the full legal authority to investigate any entity applying for a license.

Representative Brandewie asked Howard Heffelfinger if an individual from out of state could own 49% of a license. Mr. Heffelfinger explained that the individual who owns 51% of a license must be a resident of the state.

There being no further discussion by proponents and no opponents to the bill, all were excused by the chairman and the hearing on Senate Bill 34 was closed.

SENATE BILL 35: Hearing commenced on Senate Bill 35. Senator Bob Brown, District #2, sponsor of the bill by request of the Department of Revenue and the Revenue Oversight Committee, stated this revises the liquor laws to define a "subwarehouse" and to provide an annual license fee of \$400 for each subwarehouse maintained by a beer wholesaler or table wine distributor.

Proponent Howard Heffelfinger, Administrator, Liquor Division, Department of Revenue, explained that this permits an individual to have one subwarehouse in addition to the main place of business. The \$400 fee was never referred to in the code, this will codify the past practice of the department. There is no change in the fee, added Mr. Heffelfinger.

Proponent Roger Tippy, representing the Montana Beer and Wine Wholesalers, expressed his support and explained that the association has no objection to the departments bill to codify.

There being no further discussion by proponents and no opponents to the bill, all were excused by the chairman and the hearing on Senate Bill 35 was closed.

SENATE BILL 36: Hearing commenced on Senate Bill 36. Senator Bob Brown, District #2, sponsor of the bill by request of the Department of Revenue and the Revenue Oversight Committee, explained that this revises the liquor law to remove reference to alcoholic beverage club licensees.

Proponent Howard Heffelfinger, Administrator, Liquor Division, Department of Revenue, stated this is a housekeeping measure and that there is no such entity as a "club licensee".

There being no further discussion by proponents and no opponents to the bill, both were excused by the chairman and the hearing on Senate Bill 36 was closed.

ACTION ON SENATE BILL 34: Representative Nisbet moved DO PASS on Senate Bill 34. Second was received, Senate Bill 34 will BE CONCURRED IN by unanimous vote.

ACTION ON SENATE BILL 35: Representative Schultz moved DO PASS on Senate Bill 35. Second was received, Senate Bill 35 will BE CONCURRED IN by unanimous vote.

ACTION ON SENATE BILL 36: Representative Bachini moved DO PASS on Senate Bill 36. Second was received, Senate Bill 36 will BE CONCURRED IN by unanimous vote.

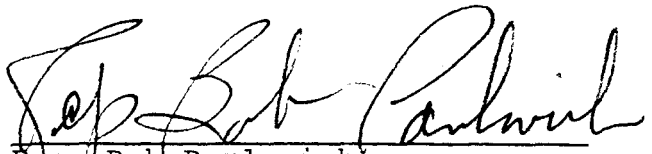
ACTION ON SENATE BILL 66: Representative Thomas moved DO PASS on Senate Bill 66. Representative Thomas moved to amend on page 3, line 23 - 25, deleting the language. Representative Schultz agreed with the amendment. Representative Kadas added that utility language is between the utility and the Public Service Commission, they both have a legal staff and thus, should be excluded. Representative Brandewie stated that each real estate transaction is individual and complex. The condition of each contract is individual and are negotiated between the buyer, seller and their counsel. Representative Thomas added that standardized forms are used in real estate. Representative Glaser stated that those properties over \$50,000 are exempt from the act. A roll call vote on Representative Thomas' motion to delete the language on page 3, line 23 failed by a vote of 7 to 13. A motion by Representative Thomas to delete on page 3, line 25 carried with all but Representative Brandewie and Hansen voting yes. Representative Simon explained that if the amendments proposed by the banks are adopted, there will not be any contracts covered. Representative Brown asked Ann Krembel, Senator Halligans' aide to comment. Ms. Krembel explained that the senator does not support the proposed amendments by the bankers. Representative Simon suggested that Paul Verdon, staff researcher, see if state law can override the federal Regulation Z requirement. Senate Bill 66 will be held for consideration at a later date.

ACTION ON SENATE BILL 79: Representative McCormick moved

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Page 6

DO PASS on Senate Bill 79. Representative Brandewie moved the amendments attached hereto as Exhibit 6. The amendments DO PASS by unanimous vote. Representative Simon stated that more and more boards are being set up and a continual parade will be seen for every profession imagined. Once a bill has been passed to license, the profession will then want mandatory insurance provisions. Representative Hansen explained that it is important to protect the public and screen out those individuals who are not qualified. Several boards share the same secretary and the members meet once a year. It is not as complicated an issue as it looks. Representative McCormick stated that Medicare will not pay for services unless the individual is licensed and that most older people can't pay for the bill if treatment is needed. Representative Simon stated that the legislature is for the concerns of Montanans and that there was no testimony of persons operating in a negligent manner. Representative Hart added that the woman who had a foster child described the difference in therapists she experienced. Representative Wallin stated that the patients are referred by a medical doctor and an occupational therapist should be treated the same as a physical therapist. Question being called, Senate Bill 79 will BE CONCURRED IN with all but Representative Simon voting yes.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 9:35 a.m.



Rep. Bob Pavlovich,
Chairman

DAILY ROLL CALL
BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date March 11, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

MARCH 11

1935

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration Senate Bill No. 190

third reading copy (blue)
color

BREWERS TO SELL BEER FOR CONSUMPTION ON BREWERY PREMISES

Respectfully report as follows: That Senate Bill No. 190

**YEAS
BE CONCURRED IN**

STANDING COMMITTEE REPORT

March 11

19 65

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

Senate

having had under consideration Bill No. 79

third reading copy (blue)
color

LICENSEURE AND REGULATION OF OCCUPATIONAL THERAPISTS

Senate

Respectfully report as follows: That Bill No. 79

BE AMENDED AS FOLLOWS:

1. Page 3, line 3
Following: "UPPER"
Strike: "AND LOWER"
2. Page 3, line 20
Following: "the"
Insert: "general"
3. Page 3, line 21
Following: "therapist"
Insert: "in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American Occupational Therapy Association, as it reads on October 1, 1965"

~~XXXXXX~~
~~DUPASS~~

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 11

55

19.....

SPEAKER

MR.

BUSINESS AND LABOR

We, your committee on

Senate

34

having had under consideration Bill No.

third

blue

reading copy (.....)
color

ALCOHOLIC BEVERAGE LICENSING CRITERIA FOR BUSINESS ENTITIES

Senate

34

Respectfully report as follows: That Bill No.

DO PASS
BE CONCURRED IN

STANDING COMMITTEE REPORT

March 11 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration Senate Bill No. 35

third reading copy (blue)
color

**DEPINING SUBWAREHOUSE FOR BEER AND WINE WHOLESALERS;
ANNUAL LICENSE FEE**

Respectfully report as follows: That Senate Bill No. 35

**DRAFT
BE CONCURRED IN**

STANDING COMMITTEE REPORT

March 11

19 05

MR. SPIKER

We, your committee on BUSINESS AND LABOR

having had under consideration Senate Bill No. 36

third reading copy (blue)
color

DELETING ALCOHOLIC BEVERAGE CLUB LICENSE REFERENCE

SENATE

36

Respectfully report as follows: That..... Bill No.....

UNAPPROVED:
BE CONCURRED IN

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 3-11-85 BILL NO. 466 TIME _____

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitzelman		✓
Bob Bachini		✓
Ray Brandewie		✓
Jan Brown		✓
Jerry Driscoll	✓	
Robert Ellerd		✓
William Glaser		✓
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe	✓	
Tom Jones		✓
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon		✓
Fred Thomas	✓	
Norm Wallin		✓

Secretary Debbie Aquil

Chairman Bob Pavlovich

Motion: 7-13
delete on page 3, line 23



RETAIL INSTALLMENT CONTRACT (MONTANA)

Exhibit 1
3/11/85
SB66

Submitted by:
Senator Halligan

Buyer(s)-Name, Address (include County & Zip Code)

Seller-Creditor Name, Address

THIS AGREEMENT covers my installment purchase from you of the property described below. In this agreement, the words "I", "ME", and "MY" refer to the buyer. The words "YOU" and "YOUR" refer to the Seller, Assignee and any other person to whom this agreement may be assigned.

Promise to Pay. I promise to pay you, the Seller, a Total Sale Price of \$_____. I have made a downpayment of \$_____. I will repay the balance in _____ monthly installments of \$_____ beginning on _____, 19____ plus any irregular payments (if any) as follows: _____.

I understand that you intend to assign this contract to First Bank _____ Address _____ and that I will make my payments directly to the bank which will have the same rights you have under this agreement. I understand that anyone else who signs this agreement (except someone offering only a security interest in the property) will be individually and jointly responsible, to the same extent as I am.

This payment schedule is based on an Annual Percentage Rate of _____% which includes the cost of any insurance and other charges on which you and I have agreed. Finance Charge begins to accrue _____, 19_____.

The Property. The property I am buying is described as follows:

N or U	Year and Make	Body Type & Model	Description (including capacity if truck)	Property Used For	Number		Cash Sale Price
					Serial	Key	

Accessories & Miles: A. Trans. () P. Steering () F.M. Radio () A. Cond. () Other _____ Miles _____

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of my credit at a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled.	The total cost of my purchase on credit, including my downpayment of \$_____
%	\$	\$	\$	\$

Payment Schedule: No. _____ Amt. \$_____ Due: ☐ Monthly ☐ (Other) _____ Beginning _____, 19____. Irregular payments (if any) as follows: _____

Filing Fees: \$_____ **Non-Filing Insurance** \$_____

Security: I am giving you a security interest in: ☐ the property being purchased. ☐ Other (describe) _____ Collateral securing any other debts I owe you may also be security for this sale.

Late Charge: If a payment is late by more than 10 days I will be charged \$5 or 5% of the unpaid installment, whichever is less.

Prepayment: I will not have to pay a penalty if I pay off early. If I do I may be entitled to a refund of part of the finance charge.

Assumption Policy (Applicable only to Mobile Home Transactions when used as Principal Residence): Someone buying my mobile home ☐ may, subject to conditions, be allowed to ☐ cannot assume the remainder of my obligation on the original terms.

See the contract provisions for any additional information about nonpayment, default, any required repayment in full before the scheduled date, any prepayment penalties and refunds.

e means an estimate

1-4-8-6

Itemization of the Amount Financed of	Amount paid to others on my behalf:
\$_____ to _____ public officials/agencies	\$_____ to _____ credit reporting agency
\$_____ to _____ appraiser	\$_____ to _____ insurance company
\$_____ to _____ prepaid finance charge	

3/11/85

SB66

Submitted by: Tom Ryan

March 11, 1985

To: Chairman Bob Pavlovich and members of the House Committee on Business and Labor

From: Tom Ryan, Montana Senior Citizens Association

RE: SB 66 - Plain Language in Consumer Contracts

Those senior citizens who can afford supplemental insurance to meet their health care needs have had problems understanding the small print in their insurance policies.

MSCA believes that this bill should it become a part of the state statutes, will force insurance companies to make a greater effort at being more explicit in explaining the costs and benefits affecting the senior citizen consumer.

We think this is a good bill, written in plain language!

The date of applicability, July 1, 1987, gives legitimate companies, time to get their act together.

Many seniors have several insurance policies to insure they are adequately covered in the event of illness and often discover that they are not covered because of loopholes written into the "fine print" of a policy that they have purchased.

Personally, I like to see bills written where the Legislature line items the specific provisions and does not have bureaus, boards, and commissions controlling by flexibility in the application of the law.

It is the consumer who loses when too much power is left to bureaucratic interpretation. Bureaucrats become quasi-legislative and quasi-judicial.

The same goes for the courts who become quasi-legislative bodies.

Thank you.

3/11/85

SB66

Submitted by: George
Braniff

TESTIMONY OF THE MONTANA BANKERS ASSOCIATION IN
SUPPORT OF AN AMENDMENT TO SENATE BILL 66

Senate Bill 66 is the "Plain Language In Contracts Act" which requires as to "consumer contracts" that they be "written in a clear and coherent manner using words with common and everyday meanings."

Since the 1960's federal consumer protection laws have comprehensively covered certain consumer contract transactions requiring extensive disclosure and full and comprehensive statements as to consumers' rights, liabilities and obligations thereunder. As a part of the federal consumer credit protection legislation there is the Truth-In-Lending Act, 15 United States Code, Sections 1601 et seq. and the Electronic Fund Transfers Act, 15 United States Code, Section 1693 et seq. These Acts are enforced by the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the administrator of the National Credit Union Administration, the Farm Credit Administration, the Board of Governors of the Federal Reserve System and the Federal Trade Commission.

In addition to protecting consumers as to their obligations, liabilities, rights and other matters, the enforcing agencies have continuously attempted to revise the language of consumer contracts covered under such acts so that they will appear in "plain language."

However, in an attempt to comply with the many requirements of this federal legislation it may not at all times be possible to use "plain language" and still comply with federal law. There are serious questions as to where federal law would control and preempt, and where state law would control.

In the Senate, Senate Bill 66 was amended in Section 4, commencing on line 23 to exclude "THE PROVISION OF PUBLIC UTILITY SERVICE UNDER TARIFFS APPROVED BY THE PUBLIC SERVICE COMMISSION." This is a recognition that PSC tariffs controlling regulated consumer transactions with public utilities may not be in "plain language." By the same reasoning those consumer transactions which are covered under Truth-In-Lending and the Electronic Fund Transfers Act of the federal government may not always be covered by contract provisions in "plain language."

Banks in many ways are heavily regulated in a manner similar to public utilities. Since banks are required to comply with comprehensive and extensive federal law which is aimed at consumer protection, consumers will be protected in all respects, including the use of "plain language." To avoid conflict, transactions covered under the extensive federal legislation should be excluded for the same reason public utility tariffs are excluded.

REQUESTED AMENDMENT TO SENATE BILL 66, THIRD READING,

BY THE MONTANA BANKERS ASSOCIATION

Amend Senate Bill 66, third reading, by adding following subsection "(F)" of Section 4 following line 25, page 3, by inserting the following new material:

"(G) Consumer contracts covered under the federal Truth-In-Lending Act, 15 United States Codes, Section 1601 et seq. and the Federal Electronic Fund Transfers Act, 15 United States Code, Section 1693 et seq., and the regulations adopted thereunder."

Exhibit 5

3/11/85

SB66

Submitted by: Louise Kunz

3/11/85

Louise Kunz
107 Lawrence

MT. Low Income Coalition Support SB 66

WE SUPPORT SB 66 AS LOW INCOME BUDGETS
ARE ALREADY STRETCHED AND A MISUNDERSTOOD
CONTRACT COULD ~~BE THE~~ SPELL DISASTER
TO FAMILIES.

WE URGE YOU TO PASS THIS BILL.

Amendments SB79, third reading bill

1. Page 3, line 3
Following: "UPPER"
Strike: "AND LOWER"
2. Page 3, line 20
Following: "the"
Insert: "general"
3. Page 3, line 21
Following: "therapist"
Insert: "in accordance with the provisions of the
Essentials for an Approved Educational
Program for the Occupational Therapy
Assistant, published by the American
Occupational Therapy Association, as it
reads on October 1, 1985"

Re: SB 66

Scott J. Burnham
Associate Professor of Law
University of Montana School of Law

Personal Background

I teach Contract Law, Legal Drafting, and Consumer Law. In all of these courses, I am concerned with the parties' ability to read and understand the contracts they enter.

Position

1. Contracts should be written in plain language. This means they should be:

- written in language that is easy to understand;
- organized in a form that is easy to follow.

2. The law should not:

- be onerous for businesses to comply with;
- contain harsh penalties for violations.

Argument

Writing is communication. But many contract drafters have forgotten this, for many contracts are unreadable.

For consumers, this means that they do not know what they are getting into. They can't read it, and if they can read it, they can't understand it. But contract law says they are bound by it.

Consumers have become sophisticated at comparative shopping on the basis of price and other qualities of goods. They cannot comparative shop for contracts unless they can read them.

Plain language is important not only when contracts are entered, but during their performance. A contract should not be signed and filed away but should be accessible. Have you ever wondered about your insurance coverage, for example, and tried to find the answer in the contract? This is why a form that is easy to follow is as important as the language.

We often think that consumers are the only ones benefitted by plain language. This is not true. Merchants who draft contracts or buy forms don't understand them most of the time either. Writing in plain language forces them to think about what they are saying. Experience has shown that when a business rewrites its form in plain language, it revises for substance as well as for style.

An excellent example is the attached Citibank loan agreement, a copy of which is attached in its form before and after being rewritten in plain language. The default provision has been made readable and accessible. But the number of events that constitute default has also been reduced. Much of the old substance was found to be unnecessary. Businesses have found that use of plain language contracts creates good public relations. And courts are more likely to enforce a provision that has been expressed in such a way that it is meaningful to the consumer.

The remedies under the proposed bill seem well-balanced to encourage compliance without doing substantial harm to businesses that violate the law. It is limited to consumer contracts. The contract is still legal even if it violates the law. The penalties are sufficient to encourage compliance but not so harsh as to cripple a business. A good-faith attempt at compliance is a defense, as is the presence of counsel for the consumer.

The Bill Under Consideration

1. The present bill defines the requirements of a plain language contract in general terms. This standard is preferable to a "laundry list" of requirements, which may produce mechanical conformity without clarity. For example, a contract might begin: "The First National City Bank shall be known in this agreement as the party of the first part. John Zilch shall be known as the party of the second part." These are short sentences composed of simple words. But for clarity, the lender should be known as "lender" or "Citibank" or "you," not "party of the first part."

It is argued that under the general standards, a drafter doesn't know if a contract is in compliance. The bill has a built-in solution to this problem. It makes a good faith attempt to comply a complete defense. A merchant could easily undertake an in-house or outside revision of existing contracts to come within this defense.

2. The present bill excludes real estate contracts. I believe this is unwise. Real estate contracts drafted by attorneys (e.g., contracts for deed) are excluded from the act by the exception for contracts where the consumer was represented by an attorney. Consumers should have protection in those real estate transactions where they are not represented by attorneys, such as the Listing Contract or Buy-Sell agreement.

See, for example, the attached Montana Standard Form Listing Contract. It is an unreadable consumer contract. I defy either brokers or sellers to read it and explain the circumstances under which a broker becomes entitled to his or her commission. But isn't this exactly the kind of situation where plain language would prevent disputes from arising later on?

3. The present bill denies attorneys' fees to the consumer who recovers under the act. This provision should be restored. The act does not require any state supervision or expenditure. Yet it is clearly in the public interest. The state is therefore using private means for enforcement that it would otherwise undertake. In these circumstances, many consumer protection statutes (e.g. the Montana Consumer Protection Act and most federal statutes) allow the recovery of attorneys' fees for enforcement. To protect merchants from frivolous claims, judges could have discretion to award attorneys' fees to either party.

Conclusion

Plain language laws have been adopted in a number of states. They are most effective when they require general standards and are easy to comply with.

The proposed bill is a well-balanced one, but would be strengthened by including real estate contracts and allowing attorneys' fees for successful enforcement.

Attachments:

Citibank loan agreements "before" and "after"
Montana Standard Form Listing Contract

VISITOR'S REGISTER

HOUSE COMMITTEE

BILL Senate Bill 34

DATE _____

SPONSOR Sen. Norman

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL Senate Bill 35

DATE _____

SPONSOR Sen. Norman

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____ COMMITTEE

BILL Senate Bill 36

DATE _____

SPONSOR Sen. Norman

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____

COMMITTEE

BILL Senate Bill 66

DATE _____

SPONSOR Sen. Halligan

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____

COMMITTEE

BILL Senate Bill 190

DATE _____

SPONSOR Sen. Mazurek

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.