

SENATE BILL NO. 261

Introduced: 01/22/83

Referred to Committee on Business & Industry: 01/22/83
Hearing: 2/4/83

Rereferred to Committee on Judiciary: 02/10/83
Hearing: 2/14/83
Died in Committee.

1 *Senate* BILL NO. *261*
 2 INTRODUCED BY *Holligan Rodley Veltch Kelly*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CONSUMER
 5 CONTRACTS TO BE WRITTEN IN CLEAR AND COHERENT LANGUAGE;
 6 GIVING THE DEPARTMENT OF COMMERCE REVIEW AND ENFORCEMENT
 7 AUTHORITY; PROVIDING FOR EXCEPTIONS AND REMEDIES; AND
 8 PROVIDING AN APPLICABILITY DATE."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. [This act] may be cited as the
 12 "Plain Language in Contracts Act".

13 Section 2. Definitions. As used in [this act], unless
 14 the context requires otherwise, the following definitions
 15 apply:

16 (1) "Consumer" means any individual who, primarily for
 17 personal, family, or household purposes:

18 (a) gives consideration for an interest in any
 19 services or personal property, including money;

20 (b) transfers or authorizes a security interest in any
 21 personal property; or

22 (c) leases residential premises for a term not
 23 exceeding 3 years.

24 (2) "Consumer contract" means any written contract
 25 with a consumer except:

1 (a) a contract in which the price, excluding interest
 2 or finance charges, is more than \$50,000;

3 (b) a contract through which a consumer obtains money
 4 or credit to be used to purchase or refinance an interest in
 5 realty;

6 (c) a contract in which the sale of personal property
 7 is merely incidental to the sale of an interest in realty;
 8 or

9 (d) a contract subject to the provisions of 33-15-321
 10 through 33-15-329.

11 (3) "Department" means the department of commerce
 12 created in 2-15-1801.

13 Section 3. Plain language required. Except as provided
 14 in [section 4], every consumer contract must be written in a
 15 clear and coherent manner, using words with common and
 16 everyday meanings, and must be appropriately divided and
 17 captioned by its various sections.

18 Section 4. Exceptions. (1) [Section 3] does not apply
 19 to:

20 (a) any consumer contract for which a federal or state
 21 statute, rule, or regulation prescribes standards of
 22 readability applicable to the entire contract; and

23 (b) particular words, phrases, provisions, or forms of
 24 agreement specifically required, recommended, or endorsed by
 25 a state or federal statute, rule, or regulation.

(2) A consumer contract may include technical terms to describe the services or property which are the subject of the contract if the terms are customarily used by consumers in connection with the services or property.

Section 5. Remedies. (1) A violation of [section 3] is a violation of Title 30, chapter 14, and the provisions of 30-14-111 through 30-14-115, 30-14-121, 30-14-122, and 30-14-131 through 30-14-134 apply to a violation of [section 3].

(2) (a) In addition to the remedies provided in subsection (1), a court reviewing a consumer contract may reform or limit a provision to avoid an unfair result if it finds that:

(i) a material provision of the contract violates [section 3];

(ii) a violation of [section 3] caused the consumer to be substantially confused about any of the rights, obligations, or remedies of the contract; or

(iii) a violation of [section 3] has caused or is likely to cause financial detriment to the consumer.

(b) If the court reforms or limits a provision of a consumer contract, the court shall also make orders necessary to avoid unjust enrichment.

(3) Bringing a claim for relief pursuant to subsection (2) does not entitle a consumer to withhold performance of

an otherwise valid contractual obligation. No relief may be granted pursuant to subsection (2) unless the claim is brought before the obligations of the contract have been fully performed.

Section 6. Limitation on remedies. (1) In any proceeding in which civil penalties are claimed from a party for a violation of [section 3], it is a defense to the claim that the party made a good faith and reasonable effort to comply with [section 3].

(2) A party who has made a good faith and reasonable effort to comply with [section 3] may not be assessed attorney's fees or costs of investigation in an action for violating [section 3].

(3) In any class action or series of class actions which arise from the use by a person of a particular consumer contract found to violate [section 3], the amount of attorney fees and costs of investigation assessed against that person and in favor of the consumer class or classes may not exceed \$10,000.

(4) A violation of [section 3] is not a defense to a claim arising from a consumer's breach of a consumer contract or to an action for unlawful detainer. A consumer may recover actual damages caused by a violation of [section 3] only if the violation caused the consumer to be substantially confused about the rights, obligations, or

1 remedies of the contract.

2 (5) A claim that a consumer contract violates [section
3 3] must be brought within 6 years of the date the contract
4 is executed by the consumer.

5 Section 7. Review by department. (1) A seller,
6 creditor, or lessor may submit a consumer contract to the
7 department for review as to whether the contract complies
8 with the requirements of [section 3]. After receiving the
9 contract the department shall:

10 (a) certify that the contract complies with [section
11 3];

12 (b) decline to certify that the contract complies with
13 [section 3] and note its objections to the contractual
14 language;

15 (c) decline to review the contract and refer the party
16 submitting the contract to other previously certified
17 contracts of the same type;

18 (d) decline to review the contract because the
19 contract's compliance with [section 3] is the subject of
20 pending litigation; or

21 (e) decline to review the contract because the
22 contract is not subject to [section 3].

23 (2) Actions of the department pursuant to subsection
24 (1) are not subject to title 2, chapter 4, and are not
25 appealable to a court.

1 (3) A consumer contract certified pursuant to
2 subsection (1) is considered to comply with [section 3].
3 Such certification is not otherwise an approval of the
4 contract's legality or legal effect.

5 (4) Failure to submit a contract to the department for
6 review pursuant to subsection (1) does not show a lack of
7 good faith or raise a presumption that the contract violates
8 [section 3]. If pursuant to subsection (1) the department
9 refers a party to a previously certified contract, that the
10 party chooses not to use the contract does not show a lack
11 of good faith or raise a presumption that a contract used by
12 that party violated [section 3].

13 (5) The department may charge a fee, not to exceed
14 \$50, for the costs of reviewing a consumer contract pursuant
15 to subsection (1).

16 Section 8. Waiver void. Any provision of a consumer
17 contract that purports to waive any provision of [this act]
18 is void.

19 Section 9. Applicability. This act applies only to
20 consumer contracts entered into after October 1, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 218-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 261 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 261 requires contracts to be written in clear and coherent language and gives the Department of Commerce review and enforcement authority.

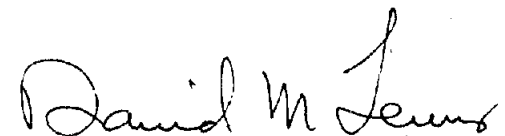
ASSUMPTIONS:

- 1) Consumers will refer contracts to the Department of Commerce.
- 2) 200 requests will be reviewed each fiscal year.
- 3) \$50 per contract will go to the earmarked revenue fund.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
<u>Revenue:</u>		
Under Proposed Law		
\$50 per contract	\$ 10,000	\$ 12,500
<u>Expenditures:</u>		
Administration of Proposal	\$ 25,275	\$ 27,619
Expenditures over Revenue	\$ (24,275)	\$ (15,199)

FISCAL NOTE 6:AA/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-28-83