

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 878

Short Title: Fair Bargain Act.

(Public)

Sponsors: Senator Horton.

Referred to: Judiciary I.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE FAIR BARGAIN ACT OF 2003 TO ENABLE CERTAIN
3 PARTIES TO REVOKE UNFAIR CONTRACT PROVISIONS WHEN THEY
4 ENTER INTO STANDARD FORM CONTRACTS THAT CONTAIN
5 PROVISIONS THAT MODIFY OR LIMIT THE PARTIES' PROCEDURAL
6 RIGHTS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 22B of the General Statutes is amended by adding a
9 new Article to read:

10 "Article 3.

11 "Unfair Standard Form Contracts.

12 "**§ 22B-20. Short title.**

13 This Article shall be known as the Fair Bargain Act of 2003.

14 "**§ 22B-21. Legislative findings.**

15 The General Assembly makes the following findings:

- 16 (1) Standard form contracts, in whatever form recorded, do not necessarily
17 express the voluntary and informed assent of both parties.
- 18 (2) The party drafting a standard form contract will often foresee legal
19 disputes with one or more of the parties to whom it is submitted for
20 acceptance, while the party accepting a standard form contract will
21 seldom foresee such a legal dispute or prudently evaluate the loss of
22 procedural rights affecting its outcome.
- 23 (3) The party drafting a standard form contract can, unless restrained by
24 law, exploit the inadvertence, imprudence, or limited literacy of the
25 party to whom it is presented for acceptance by including provisions
26 disabling that party's procedural rights necessary or useful to the
27 enforcement of substantive rights otherwise purportedly conferred by
28 the contracts in which the provisions appear or by State or federal law.

- 1 (4) The use of standard form contracts as described in subdivisions (1)
2 through (3) of this section is unconscionable.

3 **"§ 22B-22. Definitions.**

4 The following definitions apply in this Article:

- 5 (1) Standard form contract or lease. – A contract or lease prepared by a
6 party for whom its use is routine in business transactions with
7 consumers of goods or services, borrowers, tenants, or employees.
- 8 (2) Livestock or poultry grower. – A person engaged in the business of
9 raising and caring for livestock or poultry in accordance with a
10 growout contract, marketing agreement, or other arrangement under
11 which a livestock or poultry grower raises and cares for livestock or
12 poultry, whether the livestock or poultry is owned by the person or by
13 another person.
- 14 (3) Rights enforcement disabling provision. – A provision modifying or
15 limiting otherwise available procedural rights necessary or useful to a
16 consumer, borrower, tenant, livestock or poultry grower, employee, or
17 small business in the enforcement of substantive rights against a party
18 drafting a standard form contract or lease, including a clause requiring
19 the consumer, borrower, tenant, livestock or poultry grower, employee,
20 or franchisee to do any one or more of the following:
- 21 a. Assert any claim against the party who prepared the form in a
22 forum that is less convenient, more costly, or more dilatory than
23 a judicial forum established in this State for the resolution of the
24 dispute.
- 25 b. Assume a risk of liability for the legal fees of the party
26 preparing the contract, unless those fees are authorized by
27 statute, reasonable in amount, and incurred to enforce a promise
28 to pay money.
- 29 c. Forego access to evidence otherwise obtainable under the
30 applicable rules of procedure of a convenient judicial forum
31 available to hear and decide a dispute between the parties.
- 32 d. Present evidence to a purported neutral who may reasonably be
33 expected to regard the party preparing the contract as more
34 likely to be a future employer of the neutral than is that party's
35 adversary.
- 36 e. Forego recourse to appeal from a decision not based on
37 substantial evidence or disregarding his or her legal rights.
- 38 f. Require commencement of a proceeding sooner than would be
39 required by the otherwise applicable statute of limitations.
- 40 g. Decline to participate in a class action.
- 41 h. Forego an award of attorneys' fees, civil penalties, punitive
42 damages, or multiple damages otherwise available under the
43 law.

44 **"§ 22B-23. Rights enforcement disabling provision revocable.**

1 A rights enforcement disabling provision that is included in a standard form contract
2 or lease is revocable by the consumer, borrower, tenant, livestock or poultry grower,
3 employee, or small business. Revocation shall be in writing and communicated within a
4 reasonable time after a dispute between the parties to the contract has arisen and the
5 consumer, borrower, tenant, livestock or poultry grower, employee, or franchisee has
6 had an opportunity to seek counsel on the effect of the provision. A party seeking to
7 enforce such a provision after it has been revoked shall be liable for any resulting legal
8 costs, including reasonable attorneys' fees.

9 **"§ 22B-24. Exempt contracts.**

10 This Article does not apply to a provision in any of the following contracts:

- 11 (1) A contract for the sale or lease of property or for the delivery of
12 services having a value in excess of two hundred thousand dollars
13 (\$200,000) or for a loan in excess of that amount.
14 (2) A contract of employment providing for compensation in excess of
15 one hundred thousand dollars (\$100,000) a year.
16 (3) A contract that is an agreement to maintain a local business franchise
17 having gross receipts in excess of one million dollars (\$1,000,000) a
18 year.
19 (4) A contract that is a commercial letter of credit.

20 **"§ 22B-25. Agreements to arbitrate future disputes preserved.**

21 Nothing in this Article precludes parties from making a binding agreement to
22 arbitrate a future dispute provided that the arbitration agreement does not impose on any
23 consumer, borrower, tenant, livestock or poultry grower, employee, or franchisee any of
24 the rights enforcement disabling provisions under sub-subdivisions (a) through (h) of
25 subdivision (3) of G.S. 22B-22.

26 **"§ 22B-26. Severability.**

27 The provisions of this Article are severable. The invalidity of any application of any
28 provision of this Article for any reason shall not affect other applications, nor shall the
29 invalidity of any provision affect the validity of other provisions."

30 **SECTION 2.** This act becomes effective September 1, 2003, and applies to
31 contracts and leases entered into on or after that date.