

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS65183-LD-74 (03/26)

Short Title: Fair Bargain Act.

(Public)

Sponsors: Senator Horton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FAIR BARGAIN ACT OF 2003 TO ENABLE CERTAIN PARTIES TO REVOKE UNFAIR CONTRACT PROVISIONS WHEN THEY ENTER INTO STANDARD FORM CONTRACTS THAT CONTAIN PROVISIONS THAT MODIFY OR LIMIT THE PARTIES' PROCEDURAL RIGHTS.

The General Assembly of North Carolina enacts:

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

"Article 3.

"Unfair Standard Form Contracts.

"§ 22B-20. Short title.

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

"§ 22B-21. Legislative findings.

The General Assembly makes the following findings:

- (1) Standard form contracts, in whatever form recorded, do not necessarily express the voluntary and informed assent of both parties.
- (2) The party drafting a standard form contract will often foresee legal disputes with one or more of the parties to whom it is submitted for acceptance, while the party accepting a standard form contract will seldom foresee such a legal dispute or prudently evaluate the loss of procedural rights affecting its outcome.
- (3) The party drafting a standard form contract can, unless restrained by law, exploit the inadvertence, imprudence, or limited literacy of the party to whom it is presented for acceptance by including provisions disabling that party's procedural rights necessary or useful to the

1 enforcement of substantive rights otherwise purportedly conferred by
2 the contracts in which the provisions appear or by State or federal law.

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

5 **"§ 22B-22. Definitions.**

6 The following definitions apply in this Article:

- 7 (1) Standard form contract or lease. – A contract or lease prepared by a
8 party for whom its use is routine in business transactions with
9 consumers of goods or services, borrowers, tenants, or employees.

- 10 (2) Livestock or poultry grower. – A person engaged in the business of
11 raising and caring for livestock or poultry in accordance with a
12 growout contract, marketing agreement, or other arrangement under
13 which a livestock or poultry grower raises and cares for livestock or
14 poultry, whether the livestock or poultry is owned by the person or by
15 another person.

- 16 (3) Rights enforcement disabling provision. – A provision modifying or
17 limiting otherwise available procedural rights necessary or useful to a
18 consumer, borrower, tenant, livestock or poultry grower, employee, or
19 small business in the enforcement of substantive rights against a party
20 drafting a standard form contract or lease, including a clause requiring
21 the consumer, borrower, tenant, livestock or poultry grower, employee,
22 or franchisee to do any one or more of the following:

23 a. Assert any claim against the party who prepared the form in a
24 forum that is less convenient, more costly, or more dilatory than
25 a judicial forum established in this State for the resolution of the
26 dispute.

27 b. Assume a risk of liability for the legal fees of the party
28 preparing the contract, unless those fees are authorized by
29 statute, reasonable in amount, and incurred to enforce a promise
30 to pay money.

31 c. Forego access to evidence otherwise obtainable under the
32 applicable rules of procedure of a convenient judicial forum
33 available to hear and decide a dispute between the parties.

34 d. Present evidence to a purported neutral who may reasonably be
35 expected to regard the party preparing the contract as more
36 likely to be a future employer of the neutral than is that party's
37 adversary.

38 e. Forego recourse to appeal from a decision not based on
39 substantial evidence or disregarding his or her legal rights.

40 f. Require commencement of a proceeding sooner than would be
41 required by the otherwise applicable statute of limitations.

42 g. Decline to participate in a class action.

1 h. Forego an award of attorneys' fees, civil penalties, punitive
2 damages, or multiple damages otherwise available under the
3 law.

4 **"§ 22B-23. Rights enforcement disabling provision revocable.**

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

13 **"§ 22B-24. Exempt contracts.**

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

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

24 **"§ 22B-25. Agreements to arbitrate future disputes preserved.**

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

30 **"§ 22B-26. Severability.**

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

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