

A SUMMARY OF HOUSE BILL 4595 AS INTRODUCED 4-27-99

House Bill 4595 would create the Michigan Plain English Law, which would require most consumer contracts between customers and businesses to be written in "plain language." This means that the agreement would have to be "written in a clear and coherent manner using words and phrases with common and everyday meanings, (and be) appropriately divided and captioned by its various sections."

The bill would apply to contracts for the purchase, lease, or financing of goods, property, and services primarily for personal, family, or household purposes, but not for commercial purposes. The bill would not apply to insurance and annuity forms; legal descriptions of real property; contracts written in language prescribed by state or federal laws or regulations; and contracts drafted solely by the consumers entering into them, as long as they indicate they were so drafted. A violation of the plain English law would not affect the enforceability of a contract, but the contract would be interpreted to conform with the reasonable expectations of the consumer. The bill would take effect one year after being enacted into law and would not affect contracts executed before the effective date.

Specifically, the bill would:

** Make it an "unfair or deceptive method, act, or practice in the conduct of trade or commerce" for a seller, lessor, or creditor to execute a contract or present a contract to a consumer for signing that was not written in plain language.

** Prohibit a commercial preparer of contract forms from selling or furnishing a form for use in the state as a consumer contract unless the form was written in plain language.

** Permit a seller, lessor, or creditor to submit a contract to the attorney general for review to see if it complied with the plain language standard. Within 60 days, the attorney general would have to: 1) certify the contract was in compliance; 2) decline to certify it and note the objections; or 3) decline to review the contract. The attorney general could decline to review a contract because it was not subject to the plain language requirement or because it was the subject of pending litigation, and could otherwise decline by referring the party who submitted the contract to other previously certified contracts of the same type. The attorney general could charge up to \$50 for a contract review. The action of the attorney general could be appealed under the Administrative Procedures Act. The certification of a contract would apply only to its compliance with plain language requirements and would not otherwise attest to its legality or legal effect. The failure to submit a contract for review would not show a lack of good faith nor would

it raise a presumption that the contract violated the provisions of the bill. The same assumption would apply to the failure to use a previously certified contract.

** Allow the attorney general (or a local prosecutor) to seek a restraining order in circuit court if it appeared probable that someone had violated or was about to violate the plain English requirement. Unless waived by the court for good cause shown, a restraining order could only be sought after the party had been properly notified and offered the opportunity to confer with the attorney general in person or through counsel or other representative. The notice could be made by postage prepaid mail sent to the defendant's usual place of business, last known address, or if the defendant were a corporation, to an officer of the corporation or to the corporation's resident agent. The attorney general could accept "an assurance of discontinuance" of an alleged violation, which would not be considered an admission of guilt and could not be used in another proceeding except to show the existence of a persistent and knowing violation. An assurance of discontinuance could be accompanied by restitution for an aggrieved person, the voluntary payment of the costs of an investigation, or an amount to be held in escrow pending the outcome of an action. A prosecuting attorney could conduct an investigation and institute and prosecute actions in the same manner as the attorney general. The attorney general or prosecuting attorney would not be required to pay a filing fee to commence an action under the act or for motions made during such an action.

** Authorize a civil fine of up to \$10,000 to be assessed by a circuit court for each "persistent and knowing" violation of the law. Such a violation would require a finding that the defendant had violated the act, and a finding that the defendant had also either violated an assurance of discontinuance, or had been previously judged guilty of violating the act for using the same contract language and the final judgement in that case was not under appeal.

** Allow a consumer to bring an action to enjoin a person violating the act, whether or not the consumer also sought monetary damages, and allow a consumer who suffered a loss due to a violation to bring a class action on behalf of injured consumers. A class action suit could be brought for actual damages or \$10,000, whichever is less; other suits involving consumers who had suffered losses could be brought for actual damages and a penalty of \$50, together with attorneys' fees. Any action under the act could not be brought more than three years after the contract that was the subject of the action had been offered for signature or signed by the consumer, or after the contract had been fully performed, whichever was later. A defendant could require a person who had prepared, sold, or furnished the form in question to join in defending an action. A defendant who attempted in good faith to comply with the bill would not be liable for more than actual damages in any action.

** Prosecuting attorneys and law enforcement officers who received notice of an alleged violation of the act, or of an order or assurance related to the act, would be required to notify the attorney general in writing immediately, and court clerks would be required to send the attorney general copies of complaints and of orders and judgments stemming from actions under the bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.