GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2003

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(Public)

SENATE DRS65183-LD-74 (03/26)

Short Title: Fair Bargain Act.

Sponsors:	Senator Horton.
Referred to:	

1	A BILL TO BE ENTITLED				
2	AN ACT TO ENACT THE FAIR BARGAIN ACT OF 2003 TO ENABLE	E CERTAIN			
3	PARTIES TO REVOKE UNFAIR CONTRACT PROVISIONS WH	IEN THEY			
4	ENTER INTO STANDARD FORM CONTRACTS THAT	CONTAIN			
5	PROVISIONS THAT MODIFY OR LIMIT THE PARTIES' PRO	CEDURAL			
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	" <u>Article 3.</u>				
11	"Unfair Standard Form Contracts.				
12	" <u>§ 22B-20. Short title.</u>				
13	This Article shall be known as the Fair Bargain Act of 2003.				
14	" <u>§ 22B-21. Legislative findings.</u>				
15	The General Assembly makes the following findings:				
16	(1) Standard form contracts, in whatever form recorded, do not	t necessarily			
17	express the voluntary and informed assent of both parties.				
18	(2) The party drafting a standard form contract will often for				
19	disputes with one or more of the parties to whom it is su				
20	acceptance, while the party accepting a standard form c				
21	seldom foresee such a legal dispute or prudently evaluate	e the loss of			
22	procedural rights affecting its outcome.				
23	(3) The party drafting a standard form contract can, unless re				
24	law, exploit the inadvertence, imprudence, or limited lite				
25	party to whom it is presented for acceptance by including				
26	disabling that party's procedural rights necessary or us	seful to the			

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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) 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 party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants, or employees. 10 (2) Livestock or poultry grower. – A person engaged in the business of raising and caring for livestock or poultry in accordance with a growout contract, marketing agreement, or other arrangement under which a livestock or poultry grower raises and cares for livestock or poultry. in accordance with a growout contract, marketing agreement, or other arrangement under which a livestock or poultry grower raises and cares for livestock or poultry. in accordance with a growout contract, marketing acreating in the person or by another person. 16 (3) Rights enforcement disabling provision. – A provision modifying or limiting otherwise available procedural rights against a party drafting a standard form contract or lease, including a clause requiring the consumer, borrower, tenant, livestock or poultry grower, employee, or small business in the enforcement of substantive rights against a party drafting a standard form contract or lease, including a clause requiring a laudical forum established in this State for the resolution of the dispute. 21 the consumer, borrower, tenant, livestock or poultry grower, employee, or franchisee to do any one or more of the following:<	1			cement of substantive rights otherwise purportedly conferred by
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36likely to be a future employer of the neutral than is that party's adversary.37adversary.38e.Forego recourse to appeal from a decision not based on substantial evidence or disregarding his or her legal rights.40f.Require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations.			<u>d.</u>	
37adversary.38e.Forego recourse to appeal from a decision not based on substantial evidence or disregarding his or her legal rights.40f.Require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations.				
38e.Forego recourse to appeal from a decision not based on substantial evidence or disregarding his or her legal rights.39f.Require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations.				likely to be a future employer of the neutral than is that party's
39substantial evidence or disregarding his or her legal rights.40f.41Require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations.	37			<u>adversary.</u>
40f.Require commencement of a proceeding sooner than would be required by the otherwise applicable statute of limitations.	38		<u>e.</u>	Forego recourse to appeal from a decision not based on
41 required by the otherwise applicable statute of limitations.	39			substantial evidence or disregarding his or her legal rights.
			<u>f.</u>	
42 g. Decline to participate in a class action.	41			
	42		<u>g.</u>	Decline to participate in a class action.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

1		h.	Forego an award of attorneys' fees, civil penalties, punitive
2			damages, or multiple damages otherwise available under the
3			law.
4	" <u>§ 22B-23. Rig</u>	hts enf	forcement disabling provision revocable.
5	A rights enf	orceme	ent disabling provision that is included in a standard form contract
6	or lease is revo	ocable	by the consumer, borrower, tenant, livestock or poultry grower,
7	employee, or sr	nall bu	siness. Revocation shall be in writing and communicated within a
8	reasonable time	e after	a dispute between the parties to the contract has arisen and the
9	consumer, borr	ower,	tenant, livestock or poultry grower, employee, or franchisee has
10	<u>had an opportu</u>	inity to	seek counsel on the effect of the provision. A party seeking to
11	enforce such a	provisi	on after it has been revoked shall be liable for any resulting legal
12	•	-	nable attorneys' fees.
13	" <u>§ 22B-24. Exe</u>	empt co	ontracts.
14	This Article		ot apply to a provision in any of the following contracts:
15	<u>(1)</u>		ontract for the sale or lease of property or for the delivery of
16			ces having a value in excess of two hundred thousand dollars
17			0,000) or for a loan in excess of that amount.
18	<u>(2)</u>		ontract of employment providing for compensation in excess of
19			nundred thousand dollars (\$100,000) a year.
20	<u>(3)</u>		ntract that is an agreement to maintain a local business franchise
21		havii	ng gross receipts in excess of one million dollars (\$1,000,000) a
22		<u>year.</u>	
23	<u>(4)</u>	-	ntract that is a commercial letter of credit.
24			<u>its to arbitrate future disputes preserved.</u>
25	-		Article precludes parties from making a binding agreement to
26		-	te provided that the arbitration agreement does not impose on any
27			enant, livestock or poultry grower, employee, or franchisee any of
28			t disabling provisions under sub-subdivisions (a) through (h) of
29	subdivision (3)		
30	" <u>§ 22B-26. Sev</u>		
31			this Article are severable. The invalidity of any application of any
32			the for any reason shall not affect other applications, nor shall the
33			sion affect the validity of other provisions."
34 25			2. This act becomes effective September 1, 2003, and applies to
35	contracts and le	eases er	ntered into on or after that date.