

# HB4676



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB4676**

Introduced 2/3/2012, by Rep. Esther Golar

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Consumer Remedies Protection Act. Provides that consumer adhesion contracts are void as a matter of public policy. Creates a private right of action for consumers whose rights are violated. Authorizes recovery of actual and statutory damages in addition to attorney's fees and costs. Defines terms.

LRB097 19416 JLS 64669 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Consumer Remedies Protection Act.

6 Section 5. Purpose, findings, and conclusion.

7 (a) This Act shall be broadly construed to effect its  
8 purposes.

9 (b) The General Assembly finds that:

10 (1) for many important goods and services consumers are  
11 unable to purchase any variant of that good or service  
12 without being forced to waive important legal rights;

13 (2) adequate remedies for consumers provide an  
14 essential deterrent effect to prevent widespread consumer  
15 harm;

16 (3) consumer adhesion contracts severely limit the  
17 ability of consumers to seek adequate legal recourse when  
18 harmed;

19 (4) companies often use unenforceable exculpatory  
20 clauses as a means to deter consumers from bringing valid  
21 claims, including by increasing the cost to consumers of  
22 vindicating their legal rights; and

23 (5) consumers currently lack an economically viable

1 method for pursuing recourse when faced with small damages.

2 (c) The General Assembly concludes that this Act is  
3 necessary to prevent the authors of consumer adhesion contracts  
4 from immunizing themselves from liability for widespread  
5 consumer harm.

6 (d) One of the fundamental public policies of this State is  
7 to protect consumers from widespread harm, and this Act shall  
8 further that policy.

9 Section 10. Definitions.

10 "Consumer" means an individual who uses, purchases,  
11 acquires, attempts to purchase or acquire, or is offered or  
12 furnished goods or services, in part or in whole, for personal,  
13 family, or household purposes.

14 "Consumer adhesion contract" means any form or standard  
15 contract with terms and conditions drafted by the non-consumer  
16 party, presented to consumers without the possibility for  
17 meaningful negotiation of terms.

18 "Limiting clause" means any contractual provision  
19 purporting to limit the scope, nature, and effect of remedies  
20 available to consumers. "Limiting clause" shall be interpreted  
21 broadly, and shall include, but is not confined to, clauses  
22 specifying: forum selection, choice of law, waiver or  
23 limitation of liability, mandatory arbitration, class action  
24 waiver, and limitation on damages.

25 "Prima facie demonstration" means the production of enough

1 evidence to allow the trier of fact to infer the fact at issue  
2 and rule in that party's favor without consideration of  
3 rebuttal evidence.

4 "Public injury" means an action with injurious effect that  
5 is:

6 (1) a violation of a statute that has public interest  
7 impact;

8 (2) applied repeatedly to a particular consumer; or

9 (3) aimed at or affects consumers generally.

10 "Substantially superior bargaining power" means the  
11 ability to draft the terms and conditions of the consumer  
12 adhesion contract and present the contract to consumers without  
13 the realistic possibility for negotiation of terms.

14 Section 15. Consumer Contracts.

15 (a) In a dispute arising out of a consumer adhesion  
16 contract, when a party makes a good faith, prima facie  
17 demonstration that a party to the contract with substantially  
18 superior bargaining power has caused public injury, the  
19 consumer adhesion contract at issue shall be presumed void as a  
20 matter of public policy.

21 (b) In a dispute arising out of a consumer adhesion  
22 contract, when it is established that a party to the contract  
23 with substantially superior bargaining power has caused public  
24 injury, the consumer adhesion contract at issue shall be  
25 declared void as a matter of public policy.

1           (c) Any limiting clause in a consumer adhesion contract  
2 that, if enforced, would result, on its face or in practice, in  
3 a consumer having no practical and meaningful remedy shall be  
4 void.

5           Section 20. Private right of action.

6           (a) A consumer whose rights under this Act are violated may  
7 bring an action against any party benefitting from the illegal  
8 consumer adhesion contract.

9           (b) Upon a finding that a consumer adhesion contract or  
10 clause therein is void under to this Act, all consumers subject  
11 to the consumer adhesion contract shall be entitled to the  
12 greater of:

13                 (1) the consumer's actual damages; or

14                 (2) statutory damages of \$10 each, subject to Section  
15 25 of this Act.

16           (c) A consumer who prevails in any action brought under to  
17 this Act shall be entitled to his or her reasonable attorney's  
18 fees and costs.

19           Section 25. Safe harbor. If a party, within 30 days after  
20 the initiation of an action, waives those contractual  
21 provisions made unlawful under this Act, the statutory damages  
22 prescribed in subsection (b) of Section 20 shall not be  
23 awarded. For purposes of this Section, the initiation of an  
24 action includes the filing of a court case, the initiation of

1 arbitration, or a formal demand to waive the offending  
2 contractual provisions.

3 Section 30. Construction. Nothing in this Act shall be  
4 construed to limit any other consumer right under state or  
5 federal law.

6 Section 35. Severability. The provisions of this Act are  
7 severable under Section 1.31 of the Statute on Statutes.