

FORTY- FIFTH LEGISLATURE
FIRST SESSION, 2001

March 3, 2001

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred
HOUSE BILL 768

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 2, between lines 3 and 4, insert the following
new paragraph:

"(4) "disabling civil dispute clause" means a
provision modifying or limiting procedural rights necessary or
useful to a consumer, borrower, tenant or employee in the
enforcement of substantive rights against a party drafting a
standard form contract or lease, such as, by way of example, a
clause requiring the consumer, tenant or employee to:

(a) assert a claim against the party who
prepared the form in a forum that is less convenient, more costly
or more dilatory than a judicial forum established in this state
for resolution of the dispute;

(b) assume a risk of liability for the legal
fees of the party preparing the contract, but a seller, lessor or
lender may exact for a buyer, tenant or borrower an obligation to
reimburse the seller, lessor or lender for a reasonable fee paid to
secure enforcement of a promise to pay money;

(c) forego access to the discovery of
evidence as provided in the rules of procedure of a convenient
judicial forum available to hear and decide a dispute between the
parties;

(d) present evidence to a purported neutral
person who may reasonably be expected to regard the party preparing
the contract as more likely to be a future employer of the neutral
person;

(e) forego recourse to appeal from a decision
not based on substantial evidence or disregarding the legal rights
of the consumer, tenant or employee;

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(f) decline to participate in a class action;
or

(g) forego an award of attorney fees, civil penalties or multiple damages otherwise available in a judicial proceeding;".

2. Renumber the succeeding paragraphs accordingly.

3. On page 2, line 10, strike "and" and on line 14, strike the period and insert in lieu thereof "; and".

4. On page 2, between lines 14 and 15, insert the following new paragraph:

"(8) "standard form contract or lease" means a written instrument prepared by a party for whom its use is routine in business transactions with consumers of goods or services, borrowers, tenants or employees."

5. On page 4, between lines 13 and 14, insert the following new section:

"Section 5. DISABLING CIVIL DISPUTE CLAUSE VOIDABLE.--In the arbitration of a dispute between a consumer, borrower, tenant or employee and another party, a disabling civil dispute clause contained in a document relevant to the dispute is unenforceable against and voidable by the consumer, borrower, tenant or employee. If the enforcement of such a clause is at issue as a preliminary matter in connection with arbitration, the consumer, borrower, tenant or employee may seek judicial relief to have the clause declared unenforceable in a court having personal jurisdiction of the parties and subject matter jurisdiction of the issue."

6. Renumber the succeeding sections accordingly.

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Respectfully submitted,

W. Ken Martinez, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Cervantes, Garcia, Rios, Taylor

Absent: None

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