



2013 SENATE BILL 594

February 13, 2014 - Introduced by Senators MILLER, LEHMAN, CARPENTER and HARRIS, cosponsored by Representatives HEBL, BERCEAU, KESSLER and WACHS. Referred to Committee on Judiciary and Labor.

- 1 **AN ACT** *to create* 134.495 of the statutes; **relating to:** contract and lease
2 language that limits a party's access to procedural or substantive rights.

Analysis by the Legislative Reference Bureau

This bill creates limits on contracts and leases between consumers who purchase goods or services and the person who provides those goods or services. Under the bill, a provision in a contract or lease is void if that provision modifies or limits otherwise available necessary or useful procedural or substantive rights of a consumer, borrower, tenant, or employee in a court action or arbitration proceeding to enforce those rights against a party to the contract or lease.

Examples in the bill of provisions that modify or limit otherwise available necessary or useful procedural or substantive rights include provisions that require the consumer, borrower, tenant, or employee to do any of the following:

1. Assert a claim against the person who prepared the contract or lease in a forum that is not in this state.
2. Forego access to evidence otherwise obtainable under the rules of procedure of a convenient judicial forum.
3. Forego the right to appeal a decision that is not based on substantial evidence or that disregards his or her legal rights.
4. Require the commencement of a proceeding sooner than would be required by the applicable statute or limitations.
5. Forego an award of attorney fees, civil penalties, or punitive damages otherwise available by law.
6. Waive the right to access to a judicial forum or to a jury trial, unless the contract or lease includes judicial review of any arbitration agreement.

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The bill specifies that these provisions do not apply to collective bargaining agreements or to certain contracts of employment for compensation in excess of \$100,000 per year. The bill also permits a party to a contract or lease to seek judicial review of the enforceability of one of these provisions as a preliminary matter in a court action or arbitration proceeding in which such a provision is at issue.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.495 of the statutes is created to read:

2 **134.495 Limitations on contract and lease provisions. (1)** In this section:

3 (a) “Consumer” means a person who enters into a contract for the purchase of
4 goods or services.

5 (b) “Rights enforcement disabling provision” is a provision in a contract or lease
6 that modifies or limits otherwise available procedural or substantive rights in a court
7 action or arbitration proceeding that are necessary or useful to a consumer, borrower,
8 tenant, or employee in the enforcement of rights against a person who is a party to
9 the contract or lease.

10 **(2)** A rights enforcement disabling provision in a contract or lease is void and
11 unenforceable if the provision requires the consumer, borrower, tenant, or employee
12 who is a party to the contract or lease to do any of the following:

13 (a) For any contract or lease entered into in this state, assert a claim against
14 the person who prepared the contract or lease in a forum that is not in this state.

15 (b) Assume a risk of liability for the legal fees of the person who prepared the
16 contract or lease, unless those fees are authorized by statute, reasonable in amount,
17 and incurred to enforce a promise to pay money.

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1 (c) Forego access to evidence otherwise obtainable under the rules of procedure
2 of a convenient judicial forum that is available to hear and decide a dispute between
3 the parties to the contract or lease.

4 (d) Present evidence regarding the contract or lease to a purported neutral
5 person who may reasonably be expected to regard the person who prepared the
6 contract or lease as more likely to be a future employer of the neutral person than
7 is the consumer, borrower, tenant, or employee who is a party to the contract or lease.

8 (e) Forego the right to appeal a decision that is not based on substantial
9 evidence or that disregards the legal rights of the consumer, borrower, tenant, or
10 employee.

11 (f) Require the commencement of a proceeding regarding the contract or lease
12 sooner than would be required by the otherwise applicable statute of limitations.

13 (g) Decline his or her right to participate in a class action.

14 (h) Forego an award of attorney fees, civil penalties, punitive damages, or of
15 multiple damages otherwise available by law.

16 (i) Waive the right of access to a judicial forum or to a jury trial, unless the
17 contract or lease includes an arbitration agreement that is subject to judicial review.

18 (j) Agree to any other provision in the contract or lease that modifies or limits
19 his or her otherwise procedural or substantive rights in a court action or arbitration
20 proceeding.

21 **(3)** This section does not apply to any of the following:

22 (a) A collective bargaining agreement.

23 (b) A contract of employment for compensation in excess of \$100,000 per year
24 unless that contract includes a rights enforcement disabling provision that the
25 parties did not specifically negotiate separately in good faith.

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SECTION 1

1 (4) If the existence or enforcement of a rights enforcement disabling provision
2 is at issue in a court or arbitration proceeding, a party to the contract or lease may
3 seek judicial review as a preliminary matter to have the provision declared void and
4 unenforceable.

5

(END)