

TESTIMONY BEFORE THE MARYLAND GENERAL ASSEMBLY ON HB 431

My name is Jeff Sovern and I am the Michael Millemann Professor of Consumer Protection Law at the University of Maryland Francis King Carey School of Law. Thank you for allowing me to testify in this matter. I make my statements in my individual capacity and do not represent any organization.

In most cases, Maryland provides for a three-year statute of limitations.¹ But sometimes businesses use fine print in contracts to shorten that time, taking advantage of consumers who don't understand complex contract terms, lack the bargaining power to negotiate contract terms, and so don't bother reading small print. HB 431 blocks bad actors from using such tactics. Many other states have adopted similar provisions and indeed, Maryland has already done so for insurance contracts.

Businesses should not be able to take advantage of consumers by burying terms in fine print that make businesses unaccountable for their misconduct. Shortening limitations periods allows unscrupulous businesses to take advantage of consumers who cannot protect themselves because they cannot understand contract terms, do not read fine print, and have no power to negotiate form contracts. This point is dramatically illustrated by the company that jokingly inserted a term in its contract obliging consumers to surrender their soul upon request, only to discover that 88% of its customers agreed to do so.²

Studies have confirmed that consumers don't read contracts.³ Among those who have acknowledged not reading contract terms before agreeing to them are Chief Justice Roberts,⁴ former Court of Appeals Judge and legal luminary Richard Posner,⁵ consumer law professors,⁶ and even the lawyers who draft such contracts.⁷

One reason consumers may not read contracts is that they cannot understand them. Numerous studies, including some I was involved with, show that consumers have difficulty understanding contract clauses that affect their rights.⁸ It is simply unfair to allow companies to strip away consumers' rights when consumers cannot understand the provisions doing so.

¹ See Md. Code Ann., Cts. & Jud. Proc. § 5-101.

² See 7,500 Online Shoppers Unknowingly Sold Their Souls, FOX NEWS (Apr. 15, 2010).

³ See Florencia Marotta-Wurgler, *Does Contract Disclosure Matter?* 168 J. INSTITUTIONAL & THEORETICAL ECON. 94, 96–97 (2012) (finding that the overwhelming majority of consumers do not read their contracts).

⁴ See Debra Cassens Weiss, *Chief Justice Roberts Admits He Doesn't Read the Computer Fine Print*, ABAJ (Oct. 20, 2010).

⁵ Debra Cassens Weiss, *Judge Posner Admits He Didn't Read Boilerplate for Home Equity Loan*, ABAJ (June 23, 2010).

⁶ See Jeff Sovern, *Another survey of consumer law professors fails to find any who always reads consumer contracts before signing them*, CONSUMER L. & POL'Y BLOG (June 17, 2019).

⁷ See Jeff Sovern, *Poll finds majority of consumer financial services lawyers rarely or never read consumer contracts before agreeing to them*, CONSUMER L. & POL'Y BLOG (NOV. 21, 2023); See Jeff Sovern, *Lawyer who created use of arbitration clauses to prevent class actions doesn't read consumer contracts*, CONSUMER L. & POL'Y BLOG (APR. 10, 2022).

⁸ See, e.g., Roseanna Sommers, *What Do Consumers Understand About Predispute Arbitration Agreements? An Empirical Investigation*, 19 PLOS ONE 1 (2024); Jeff Sovern, Elayne E. Greenberg, Paul F. Kirgis & Yuxiang Liu, *"Whimsy Little Contracts" with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of*

Ceccone v. Carroll Home Services, 165 A.3d 475 (Md. 2017) illustrates the unfairness of contract terms reducing statutes of limitations. That case involved a maintenance agreement for an oil-heated furnace. Obviously, furnaces are expected to last much longer than a year, but the agreement limited the time in which the consumer could sue to one year—though nothing in the contract shortened the statute of limitations for claims that the company could bring. The clause appeared on the back of a printed form with eighteen paragraphs; some sentences were printed entirely in capital letters, drawing attention to them, but the limitations clause was not. For the reasons discussed above, consumers are simply not in a position to protect themselves against such one-sided clauses. The Court determined that such clauses are enforceable if they satisfy several conditions, including that they are reasonable. Unfortunately, few consumers have the resources to litigate questions of whether contract terms are reasonable and so for many consumer transactions, a reasonableness test is no better than a blanket rule allowing such terms to stand.

Similar statutes. Many states, including red states, bar businesses from using contracts to reduce the period in which injured parties can assert claims against them. For example, Idaho provides that such clauses are “void as it is against the public policy of Idaho.”⁹ Similarly, Mississippi mandates that such limits “shall be absolutely null and void, the object of this section being to make the period of limitations for the various causes of action the same for all litigants.”¹⁰ Other states that have adopted such laws includes Alabama, Arkansas, and Nebraska.¹¹ HB 431 would bring Maryland law into line with these other states.

Maryland already prevents insurers from reducing the time in which policy holders can sue them.¹² If barring companies from reducing the period in which injured parties can sue them doesn’t make sense for insurance policies—as it doesn’t—it likewise doesn’t make sense for other consumer contracts.

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Shortening duly enacted statutes of limitations is one way for bad actors to take advantage of consumers. Maryland has adopted its statutes of limitations for a reason and it should stand by its laws. For these reasons, I respectfully urge the Maryland General Assembly to VOTE FAVORABLE on HB 431.

Respectfully submitted,

Jeff Sovern

Arbitration Agreements, 75 Maryland LAW Review 1 (2015); Jeff Sovern & Nahal Heydari, *Not-So-Smartphone Disclosures*, 76 Arkansas Law Review 437 (2023).

⁹ See Idaho Code Ann. § 29-110.

¹⁰ See Miss. Code Ann. § 15-1-5.

¹¹ See Ala. Code § 6-2-15; Ark. Code Ann. § 23-79-202(b) (West); Neb. Rev. Stat. Ann. § 44-357 (West).

¹² See Md. Code Ann., Ins. § 12-104 (West) (“(a) A provision in an insurance contract or surety contract that sets a shorter time to bring an action under or on the insurance contract or surety contract than required by the law of the State when the insurance contract or surety contract is issued or delivered is against State public policy, illegal, and void.”).