

# SENATE BILL REPORT

## SB 6081

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As of January 23, 2024

**Title:** An act relating to plain language requirements for consumer contracts.

**Brief Description:** Providing plain language requirements for consumer contracts.

**Sponsors:** Senators Kuderer, Stanford, Dhingra, Liias, Salomon, Shewmake, Valdez, Wellman, Wilson, C. and Wilson, J..

**Brief History:**

**Committee Activity:** Law & Justice: 1/23/24.

**Brief Summary of Bill**

- Requires every consumer contract and insurance contract to be written in plain language and be appropriately divided and captioned by its various sections.
- Establishes civil penalties and other relief for violation of the plain language requirement.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Ryan Giannini (786-7285)

**Background:** Washington Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. The attorney general is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state. A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. The courts may increase awarded damages up to three times the actual damages sustained.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Office of the Insurance Commissioner. The Office of the Insurance Commissioner (OIC) provides oversight to the insurance industry in Washington through insurance producer and insurance company licensing. The OIC also reviews and approves the insurance products that carriers and insurers sell, making sure policies conform to state laws and regulations.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Every consumer contract and insurance contract must be written in plain language and be appropriately divided and captioned by the contract's various sections.

Exceptions to the plain language requirement include any standards of readability required by a federal or state law; and specific words or phrases required, recommended, or endorsed by a federal or state law. Consumer contracts and insurance contracts may include customary technical terms to describe services or property.

Any violation of the plain language requirement for consumer contracts is an unfair or deceptive act under the CPA. The insurance commissioner may take action under the insurance code for any violation of the plain language requirement for insurance contracts.

A court is allowed to reform or limit a provision to avoid an unfair result if:

- a material provision of the contract violates the plain language requirement;
- the violation caused the consumer to be confused about the contract; and
- the violation has caused or is likely to cause financial detriment to the consumer.

Any claim for violation of the plain language requirement for consumer contracts must be raised within six years of the contract execution date. Any claim for the violation of the plain language requirement for insurance contracts must be raised within six years of the contract execution date or a covered event. Any consumer contract or insurance contract executed before the effective date of this act is not affected, unless such a contract is renewed after the effective date of this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2027.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: This bill is about protecting consumers by ensuring that Washingtonians can easily understand the contract they are signing. Plain language enhances accessibility by removing jargon and replacing such jargon with language that everyone can all easily understand. This empowers

consumers to make better informed decisions. With plain language, consumers are better able to understand their rights, obligations, and potential risks. Requiring plain language aligns with the goal of protecting consumers from unfair practices. Using clear, straightforward language makes it easier for regulators to enforce consumer protection laws. Using plain language in contracts actually reduces the potential for lawsuits by encouraging clear and transparent communication. Plain language requirements also improves translation into other languages. According to the 2020 Census, Washington is becoming increasingly language-diverse. Washington would be joining five other states that already have plain language consumer contract laws. The OIC does not have any readability standards when they read contracts. That would change if this bill becomes law. Companies that currently use clear, understandable language, should have no trouble complying with the requirements of this bill. There is a plain language movement in trends across businesses as some are already moving towards this standard. The goal of this bill is to ensure that consumers, regardless of their educational background, primary language, or disability status, are protected across the board in all consumer contracts.

CON: Insurance contracts are different than other contracts. Insurance contracts go through OIC for review, and are regulated by statute. There are clear and explicit grounds for disapproval of insurance contracts in statute. The insurance commissioner must approve every form before an insurance company can use the form in the state. Not every state has prior approval of forms like Washington. Homeowners' policies must use the New York standard fire policy. If insurers do not use this policy, then insurance companies may only use a form if the form is written in clear, understandable language that is more favorable to the consumer than the New York standard fire policy. The insurance industry knows that it is heavily regulated. Contracts are going to be a little more complicated than what insurers would like. This is because words matter and insurance companies have to make sure they comply with the law while ensuring customers get all the benefits of the contract that the customer purchased. We are concerned about moving to a standard that is not clearly defined, which may lead to more litigation. There are concerns that terms that have been litigated would subsequently be relitigated if every single contract was required to be rewritten, refiled, and reapproved. This would be extremely time-consuming. Contracts for home remodels are not easily described in simple terms. Simplifying contracts may work against consumers' ability to understand nuance and complicated terms. The construction and homebuilding industry should be exempted from this bill.

OTHER: We are supportive of concept of making sure that members of member-owned credit unions understand the agreements they are entering into. Credit unions are federally and state regulated as depository institutions ensured at the federal level. Credit unions cover a broad range of agreements that are entered into with consumers. When sampling contracts that some members use, in some cases, it is abundantly clear that some members are already using plain language. There have been some movement in the past decade to provide clarity and understanding when possible with contracts. Other contracts could be argued to comply with plain language requirement, while others may need work to remove legalese. Additional work is needed on the definition of plain language. There are some

methods to measure plain language that have been developed that provide very explicit clarity. If objective measurements could be developed or utilized, it would be helpful. Some consistency and objectivity in measuring whether contracts are appropriately captioned and divided would also be helpful. We are unsure if some federal language used in contracts will align with the federal exemption from the plain language requirement.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor.

CON: Brent Ludeman, Building Industry Association of Washington; Jean Leonard, WA Insurers; Kris Tefft, American Property Casualty Insurance Association (APCIA).

OTHER: Joe Adamack, Washington's Credit Unions - GWCUA.

**Persons Signed In To Testify But Not Testifying:** No one.