

Here Come the "Readability" Police

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As if dealers and finance companies didn't have enough on their compliance plates with the Consumer Financial Protection Bureau, the Federal Trade Commission, state attorneys general, *The New York Times*, and Elizabeth Warren, along comes a state agency with a new concept in regulation - credit contracts that people can actually understand.

OK, that's a small stretch - the CFPB has the "know before you owe" program aimed at simplifying mortgage disclosures, and a few states have had "plain language" laws on the books for awhile, but there has been no discernible move by other states to follow the readability route. Until now.

As part of the Texas Plain Language Law, the Texas Office of Consumer Credit Commissioner has published model safe harbor forms. Recently, the OCCC, through the Texas Finance Commission's rulemaking process, amended its model forms for all types of credit, including motor vehicle installment sale contracts under Chapter 348. The new regulations were effective on November 5, but compliance isn't mandated until January 1, 2017. Nevertheless, the OCCC has suggested that creditors amend their contracts before the 2017 deadline, and if submitted in compliance with the plain language law in advance of January 1, 2017, contracts must comply with the new provisions. Notice of the final rule was published in the October 30, 2015, *Texas Register*.

The new regulations mandate varying levels of "readability" for the contracts. Motor vehicle retail installment sale contracts must have a reading difficulty no higher than grade 11.

Requiring that documents be written in language an 11th grader can understand seems perfectly reasonable. However, requiring that legal documents setting forth the rights and duties of parties to a transaction involving tens of thousands of dollars be written in 11th grade prose? Not so reasonable.

Think of the concepts embodied in a typical motor vehicle retail installment sale contract. The buyer agrees to buy a vehicle and pay for it and for the costs of financing over time, grants a security interest in the vehicle, agrees that certain actions or inactions are events of default, agrees to remedies for the creditor in case of default, and agrees to provide and maintain specified types of insurance, among other things.

These legal concepts don't lend themselves to simple descriptions. Add to that the problem posed by federal- and state-mandated disclosures and warnings, often drafted by regulators without readability scores in mind, and pass the aspirin to the poor soul who must produce a readable document.

We will see more of this. The CFPB continues to make noises about readability. Don't look for the CFPB to do something as straightforward as adopting a regulation that mandates a specified readability level,

though. The CFPB's preferred method of regulation is through case-by-case enforcement instead of clear rules. With its prohibitions against "unfair" and "abusive" acts and practices by creditors, it has all the tools it needs to launch a readability enforcement drive.

And don't assume that the drive will be limited to the English language. It won't take long for the consumer advocates to begin agitating for simple-language contracts in Spanish and other languages.

And, just to give you some notion about readability scores, this article came in at a grade level of 13.3.

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