ASSEMBLY, No. 2150



STATE OF NEW JERSEY

217th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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District 18 (Middlesex)

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SYNOPSIS

Establishes certain consumer protections related to arbitration organizations.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning arbitration organizations and supplementing P.L.2003, c.95 (C.2A:23B-1 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

"Consumer" means a party to an arbitration agreement who, in the context of that agreement, is an individual, not a business, who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, healthcare services, or real property.

“Consumer arbitration” means arbitration pursuant to a standardized contract, written by one party, with a provision requiring that disputes arising after the contract's signing shall be submitted to binding arbitration, and the party not writing the contract is a consumer. “Consumer arbitration” does not include an arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Section 78C), the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), or regulations adopted under those acts.

"Financial interest" means:

(1) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management of the business; or

(2) Ownership of more than 5% interest in a business.

"Indigent consumer" means a consumer having a gross monthly income that is less than 300 percent of the federal poverty guidelines issued annually by the United States Department of Health and Human Services.

2. No arbitration organization shall administer a consumer arbitration, or provide any other services related to a consumer arbitration, if:

a. The arbitration organization has, or within the preceding year has had, a financial interest in any party or attorney for a party.

b. Any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the arbitration organization.

3. a. No consumer arbitration shall require a consumer who is a party to the arbitration to pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, arbitration organization, attorney, or witnesses.

b. (1) All fees and costs charged to or assessed upon a consumer by an arbitration organization in a consumer arbitration, exclusive of arbitrator fees, shall be waived for an indigent consumer.

(2) Before requesting or obtaining any fee, an arbitration organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to the consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(3) Any consumer requesting a waiver of fees or costs may establish his or her eligibility by making a declaration under oath on a form provided to the consumer by the arbitration organization for signature stating his or her monthly income and the number of persons living in his or her household. No arbitration organization may require a consumer to provide any further statement or evidence of indigence.

(4) Any information obtained by an arbitration organization regarding a consumer's identity, financial condition, income, wealth, or fee waiver request shall be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except an arbitration organization may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

c. Nothing in this section shall affect the ability of an arbitration organization to shift fees that would otherwise be charged or assessed upon a consumer party to another party.

4. a. Any arbitration organization that administers or otherwise is involved in more than 50 consumer arbitrations per year shall collect, publish at least quarterly, and make available to the public, all of the following information regarding each consumer arbitration within the preceding five years:

(1) The name of any corporation or other business entity that is party to the arbitration.

(2) The type of dispute involved, including, but not limited to, goods, banking, insurance, health care, or employment. In the case of arbitration involving employment, the amount of the employees’ annual wage divided into the following ranges:

(a) less than $100,000;

(b) $100,000 to $250,000, inclusive; and

(c) more than $250,000.

(3) Whether the consumer was the prevailing party.

(4) The number of occasions, if any, a business entity which is a party to an arbitration, has previously been a party in an arbitration or mediation administered by the arbitration organization.

(5) Whether the consumer was represented by an attorney.

(6) The date the arbitration organization received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration organization.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

b. If the information required by subsection a. is provided by the arbitration organization in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required by subsection a. is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

c. No arbitration organization shall be liable for collecting, publishing, or distributing the information required by this section.

5. This act shall take effect on the 90th day following enactment. This act shall apply to consumer arbitration commenced on or after January 1, 2011, and shall operate only prospectively so as not to prohibit the administration of consumer arbitrations on the basis of financial interests held prior to January 1, 2011.

STATEMENT

This bill regulates arbitration organizations. Increasingly, when a contract is signed between an individual and a business in a consumer transaction, the contract contains an arbitration clause that requires an arbitration organization to administer the arbitration. The arbitration organization typically dictates the rules governing the dispute and how the arbitrator is chosen. Under New Jersey’s current law, there are rules governing arbitrators and arbitration generally, but there are no rules pertaining to the regulation of arbitration organizations.

This bill prohibits a neutral arbitrator or arbitration organization from administering any consumer arbitration that requires a non-prevailing consumer who is a party to the arbitration to pay the opposing party’s costs or fees. The bill requires an arbitration organization to waive the fees and costs of arbitration, exclusive of arbitrator fees, for an indigent consumer. The bill also requires an arbitration organization to provide written notice to any consumer of the right to obtain a fee waiver and to keep specified information concerning a consumer confidential.

This bill prohibits an arbitration organization from administering consumer arbitration, or providing any other services related to consumer arbitration, if the company has, or within the preceding year has had, a financial interest in any party or attorney for a party. The bill imposes similar limitations on the provision of services by private arbitration companies based on the financial interests of any party or attorney for a party in the arbitration organization.

This bill also requires an arbitration organization involved in consumer arbitration cases to make certain information regarding those cases available to the public.

Finally, the bill would not apply to arbitrations conducted or administered by a self-regulatory organization, as defined by the Securities Exchange Act of 1934, the Commodity Exchange Act or regulations adopted under those acts.