

# ASSEMBLY, No. 2150

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# STATE OF NEW JERSEY

## 217th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Establishes certain consumer protections related to arbitration organizations.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. As used in this act:

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

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

23 "Financial interest" means:

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

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

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

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

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

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

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

47 b. (1) All fees and costs charged to or assessed upon a  
48 consumer by an arbitration organization in a consumer arbitration,

1 exclusive of arbitrator fees, shall be waived for an indigent  
2 consumer.

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

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

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

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

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

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

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

39 (a) less than \$100,000;

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

41 (c) more than \$250,000.

42 (3) Whether the consumer was the prevailing party.

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

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

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

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

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

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

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

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

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

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#### STATEMENT

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

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

**A2150 DIEGNAN, MORIARTY**

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

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

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