

5473

2009-2010 Regular Sessions

I N S E N A T E

May 8, 2009

Introduced by Sen. MONSERRATE -- read twice and ordered printed, and
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to arbitration
organizations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 399-c of the general business law
2 is amended by adding a new paragraph e to read as follows:

3 E. THE TERM "ARBITRATION ORGANIZATION" MEANS AN ASSOCIATION, AGENCY,
4 BOARD, COMMISSION, OR OTHER ENTITY THAT IS NEUTRAL AND INITIATES, SPON-
5 SORS, OR ADMINISTERS AN ARBITRATION PROCEEDING OR IS INVOLVED IN THE
6 APPOINTMENT OF AN ARBITRATOR.

7 S 2. Section 399-c of the general business law is amended by adding
8 three new subdivisions 3, 4 and 5 to read as follows:

9 3. A. ANY PRIVATE ARBITRATION ORGANIZATION THAT ADMINISTERS OR IS
10 OTHERWISE INVOLVED IN FIFTY OR MORE CONSUMER ARBITRATIONS A YEAR SHALL
11 COLLECT, PUBLISH AT LEAST QUARTERLY, AND MAKE AVAILABLE TO THE PUBLIC IN
12 A COMPUTER-SEARCHABLE DATABASE THAT PERMITS SEARCHING WITH MULTIPLE
13 SEARCH TERMS IN THE SAME SEARCH, WHICH SHALL BE ACCESSIBLE AT THE INTER-
14 NET WEBSITE OF THE PRIVATE ARBITRATION ORGANIZATION, IF ANY, AND ON
15 PAPER UPON REQUEST, ALL OF THE FOLLOWING INFORMATION REGARDING EACH
16 CONSUMER ARBITRATION IT HAS ADMINISTERED OR OTHERWISE BEEN INVOLVED IN
17 WITHIN THE PRECEDING FIVE YEARS:

18 (1) THE NAME OF THE NON-CONSUMER PARTY, IF THE NON-CONSUMER PARTY IS A
19 CORPORATION OR OTHER BUSINESS ENTITY;

20 (2) THE TYPE OF DISPUTE INVOLVED, INCLUDING GOODS, BANKING, INSURANCE,
21 HEALTH CARE, EMPLOYMENT, AND, IF IT INVOLVES EMPLOYMENT, THE AMOUNT OF
22 THE EMPLOYEE'S ANNUAL WAGE DIVIDED INTO THE FOLLOWING RANGES: LESS THAN
23 ONE HUNDRED THOUSAND DOLLARS, ONE HUNDRED THOUSAND DOLLARS TO TWO
24 HUNDRED FIFTY THOUSAND DOLLARS, INCLUSIVE, AND OVER TWO HUNDRED FIFTY
25 THOUSAND DOLLARS;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (3) WHETHER THE CONSUMER WAS THE PREVAILING PARTY;

2 (4) ON HOW MANY OCCASIONS, IF ANY, THE NON-CONSUMER PARTY HAS PREVI-
3 OUSLY BEEN A PARTY IN AN ARBITRATION OR MEDIATION ADMINISTERED BY THE
4 PRIVATE ARBITRATION ORGANIZATION;

5 (5) WHETHER THE CONSUMER PARTY WAS REPRESENTED BY AN ATTORNEY AND, IF
6 SO, THE IDENTIFYING INFORMATION FOR THAT ATTORNEY, INCLUDING THE ATTOR-
7 NEY'S NAME, THE NAME OF THE ATTORNEY'S FIRM, AND THE CITY IN WHICH THE
8 ATTORNEY'S OFFICE IS LOCATED;

9 (6) THE DATE THE PRIVATE ARBITRATION ORGANIZATION RECEIVED THE DEMAND
10 FOR ARBITRATION, THE DATE THE ARBITRATOR WAS APPOINTED, AND THE DATE OF
11 DISPOSITION BY THE ARBITRATOR OR PRIVATE ARBITRATION ORGANIZATION;

12 (7) THE TYPE OF DISPOSITION OF THE DISPUTE, IF KNOWN, INCLUDING WITH-
13 DRAWAL, ABANDONMENT, SETTLEMENT, AWARD AFTER HEARING, AWARD WITHOUT
14 HEARING, DEFAULT, OR DISMISSAL WITHOUT HEARING;

15 (8) THE AMOUNT OF THE CLAIM, THE AMOUNT OF THE AWARD, AND ANY OTHER
16 RELIEF GRANTED, IF ANY; AND

17 (9) THE NAME OF THE ARBITRATOR, THE ARBITRATOR'S TOTAL FEE FOR THE
18 CASE, AND THE PERCENTAGE OF THE ARBITRATOR'S FEE ALLOCATED TO EACH
19 PARTY.

20 B. IF THE INFORMATION REQUIRED BY PARAGRAPH A OF THIS SUBDIVISION IS
21 PROVIDED BY THE PRIVATE ARBITRATION ORGANIZATION IN A COMPUTER-SEARCHA-
22 BLE FORMAT AT THE ORGANIZATION'S INTERNET WEBSITE AND MAY BE DOWNLOADED
23 WITHOUT ANY FEE, THE ORGANIZATION MAY CHARGE THE ACTUAL COST OF COPYING
24 TO ANY PERSON WHO REQUESTS THE INFORMATION ON PAPER. IF THE INFORMATION
25 REQUIRED BY PARAGRAPH A OF THIS SUBDIVISION IS NOT ACCESSIBLE THROUGH
26 THE USE OF THE INTERNET, THE ORGANIZATION SHALL PROVIDE THAT INFORMATION
27 WITHOUT CHARGE TO ANY PERSON WHO REQUESTS THE INFORMATION ON PAPER.

28 C. THIS SUBDIVISION SHALL APPLY TO ANY CONSUMER ARBITRATION COMMENCED
29 ON OR AFTER JANUARY FIRST, TWO THOUSAND TEN.

30 D. NO PRIVATE ARBITRATION ORGANIZATION SHALL HAVE ANY LIABILITY FOR
31 COLLECTING, PUBLISHING OR DISTRIBUTING THE INFORMATION REQUIRED BY THIS
32 SUBDIVISION.

33 4. A. NO PRIVATE ARBITRATION ORGANIZATION MAY ADMINISTER A CONSUMER
34 ARBITRATION TO BE CONDUCTED IN THIS STATE, OR PROVIDE ANY OTHER SERVICES
35 RELATED TO A CONSUMER ARBITRATION, IF:

36 (1) THE ORGANIZATION HAS, OR WITHIN THE PRECEDING YEAR HAS HAD, A
37 FINANCIAL INTEREST IN ANY PARTY OR ATTORNEY FOR A PARTY; OR

38 (2) ANY PARTY OR ATTORNEY FOR A PARTY HAS, OR WITHIN THE PRECEDING
39 YEAR HAS HAD, ANY TYPE OF FINANCIAL INTEREST IN THE PRIVATE ARBITRATION
40 ORGANIZATION.

41 B. THIS SUBDIVISION SHALL OPERATE ONLY PROSPECTIVELY SO AS NOT TO
42 PROHIBIT THE ADMINISTRATION OF CONSUMER ARBITRATIONS ON THE BASIS OF
43 FINANCIAL INTERESTS HELD PRIOR TO JANUARY FIRST, TWO THOUSAND TEN.

44 C. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "FINANCIAL INTEREST"
45 MEANS OWNERSHIP OF MORE THAN A ONE PERCENT LEGAL OR EQUITABLE INTEREST
46 IN A PARTY, OR A LEGAL OR EQUITABLE INTEREST IN A PARTY OF A FAIR MARKET
47 VALUE IN EXCESS OF ONE THOUSAND FIVE HUNDRED DOLLARS, OR A RELATIONSHIP
48 AS DIRECTOR, ADVISOR OR OTHER ACTIVE PARTICIPANT IN THE AFFAIRS OF A
49 PARTY, EXCEPT AS FOLLOWS:

50 (1) OWNERSHIP IN A MUTUAL OR COMMON INVESTMENT FUND THAT HOLDS SECURI-
51 TIES IS NOT A "FINANCIAL INTEREST" IN THOSE SECURITIES UNLESS THE JUDGE
52 PARTICIPATES IN THE MANAGEMENT OF THE FUND.

53 (2) AN OFFICE IN AN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR
54 CIVIC ORGANIZATION IS NOT A "FINANCIAL INTEREST" IN SECURITIES HELD BY
55 THE ORGANIZATION.

1 (3) THE PROPRIETARY INTEREST OF A POLICYHOLDER IN A MUTUAL INSURANCE
2 ORGANIZATION, OR A DEPOSITOR IN A MUTUAL SAVINGS ASSOCIATION, OR A SIMI-
3 LAR PROPRIETARY INTEREST, IS A "FINANCIAL INTEREST" IN THE ORGANIZATION
4 ONLY IF THE OUTCOME OF THE PROCEEDING COULD SUBSTANTIALLY AFFECT THE
5 VALUE OF THE INTEREST.

6 5. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
7 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
8 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
9 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
10 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
11 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
12 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN
13 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
14 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
15 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
16 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
17 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
18 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
19 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
20 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
21 THAN TWO THOUSAND DOLLARS FOR SUCH VIOLATION. EACH WRITTEN CONTRACT
22 OFFERED BY A NON-CONSUMER PARTY AND SUBSEQUENTLY ENTERED INTO IN
23 VIOLATION OF SUBDIVISION TWO OF THIS SECTION SHALL CONSTITUTE A SEPARATE
24 VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTOR-
25 NEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE
26 RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRAC-
27 TICE LAW AND RULES.

28 S 3. This act shall take effect on the one hundred eightieth day after
29 it shall have become a law.