

1036

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Consumer Affairs and 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 ASSEMBLY, 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" SHALL MEAN AN ASSOCIATION,
4 AGENCY, BOARD, COMMISSION, OR OTHER ENTITY THAT IS NEUTRAL AND INITI-
5 ATES, SPONSORS, OR ADMINISTERS AN ARBITRATION PROCEEDING OR IS INVOLVED
6 IN THE 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 STATE AND ZIP CODE IN WHICH THE CONSUMER PARTY RESIDED AT THE
21 TIME OF ARBITRATION;
22 (3) THE TYPE OF DISPUTE INVOLVED, INCLUDING GOODS, BANKING, INSURANCE,
23 HEALTH CARE, EMPLOYMENT, AND, IF IT INVOLVES EMPLOYMENT, THE AMOUNT OF
24 THE EMPLOYEE'S ANNUAL WAGE DIVIDED INTO THE FOLLOWING RANGES: LESS THAN

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

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1 ONE HUNDRED THOUSAND DOLLARS, ONE HUNDRED THOUSAND DOLLARS TO TWO
2 HUNDRED FIFTY THOUSAND DOLLARS, INCLUSIVE, AND OVER TWO HUNDRED FIFTY
3 THOUSAND DOLLARS;

4 (4) WHETHER THE CONSUMER WAS THE PREVAILING PARTY;

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

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

12 (7) THE DATE THE PRIVATE ARBITRATION ORGANIZATION RECEIVED THE DEMAND
13 FOR ARBITRATION, THE DATE THE ARBITRATOR WAS APPOINTED, AND THE DATE OF
14 DISPOSITION BY THE ARBITRATOR OR PRIVATE ARBITRATION ORGANIZATION;

15 (8) THE TYPE OF DISPOSITION OF THE DISPUTE, IF KNOWN, INCLUDING WITH-
16 DRAWAL, ABANDONMENT, SETTLEMENT, AWARD AFTER HEARING, AWARD WITHOUT
17 HEARING, DEFAULT, OR DISMISSAL WITHOUT HEARING;

18 (9) THE AMOUNT OF THE CLAIM, THE AMOUNT OF THE AWARD, AND ANY OTHER
19 RELIEF GRANTED, IF ANY; AND

20 (10) THE NAME OF THE ARBITRATOR, THE ARBITRATOR'S TOTAL FEE FOR THE
21 CASE, AND THE PERCENTAGE OF THE ARBITRATOR'S FEE ALLOCATED TO EACH
22 PARTY.

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

31 C. THIS SUBDIVISION SHALL APPLY TO ANY CONSUMER ARBITRATION COMMENCED
32 ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN.

33 D. THIS SUBDIVISION SHALL NOT APPLY TO ARBITRATIONS INVOLVING DISPUTES
34 BETWEEN CONSUMERS.

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

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

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

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

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

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

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

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

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

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