S T A T E O F N E W Y O R K

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:

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

E. THE TERM "ARBITRATION ORGANIZATION" SHALL MEAN AN ASSOCIATION, AGENCY, BOARD, COMMISSION, OR OTHER ENTITY THAT IS NEUTRAL AND INITIATES, SPONSORS, OR ADMINISTERS AN ARBITRATION PROCEEDING OR IS INVOLVED IN THE APPOINTMENT OF AN ARBITRATOR.

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

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

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

(2) THE STATE AND ZIP CODE IN WHICH THE CONSUMER PARTY RESIDED AT THE TIME OF ARBITRATION;

(3) THE TYPE OF DISPUTE INVOLVED, INCLUDING GOODS, BANKING, INSURANCE, HEALTH CARE, EMPLOYMENT, AND, IF IT INVOLVES EMPLOYMENT, THE AMOUNT OF 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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ONE HUNDRED THOUSAND DOLLARS, ONE HUNDRED THOUSAND DOLLARS TO TWO HUNDRED FIFTY THOUSAND DOLLARS, INCLUSIVE, AND OVER TWO HUNDRED FIFTY THOUSAND DOLLARS;

(4) WHETHER THE CONSUMER WAS THE PREVAILING PARTY;

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

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

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

(8) THE TYPE OF DISPOSITION OF THE DISPUTE, IF KNOWN, INCLUDING WITHDRAWAL, ABANDONMENT, SETTLEMENT, AWARD AFTER HEARING, AWARD WITHOUT HEARING, DEFAULT, OR DISMISSAL WITHOUT HEARING;

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

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

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

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

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

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

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

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

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

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

(1) OWNERSHIP IN A MUTUAL OR COMMON INVESTMENT FUND THAT HOLDS SECURITIES IS NOT A "FINANCIAL INTEREST" IN THOSE SECURITIES UNLESS THE ARBITRATOR PARTICIPATES IN THE MANAGEMENT OF THE FUND.

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

(3) THE PROPRIETARY INTEREST OF A POLICYHOLDER IN A MUTUAL INSURANCE ORGANIZATION, OR A DEPOSITOR IN A MUTUAL SAVINGS ASSOCIATION, OR A SIMILAR PROPRIETARY INTEREST, IS A "FINANCIAL INTEREST" IN THE ORGANIZATION ONLY IF THE OUTCOME OF THE PROCEEDING COULD SUBSTANTIALLY AFFECT THE VALUE OF THE INTEREST.

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

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