

8431

2011-2012 Regular Sessions

I N   A S S E M B L Y

June 15, 2011

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Introduced by M. of A. DINOWITZ -- 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  
25     ONE HUNDRED THOUSAND DOLLARS, ONE HUNDRED THOUSAND DOLLARS TO TWO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (2) AN OFFICE IN AN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR  
55 CIVIC ORGANIZATION IS NOT A "FINANCIAL INTEREST" IN SECURITIES HELD BY  
56 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.