

604--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 UNLESS SUCH INVOLVEMENT IS LIMITED
7 TO A CONTRACTUAL RELATIONSHIP THAT AUTHORIZES THE USE OF ARBITRATION.
8 S 2. Section 399-c of the general business law is amended by adding
9 three new subdivisions 3, 4 and 5 to read as follows:
10 3. A. ANY PRIVATE ARBITRATION ORGANIZATION THAT ADMINISTERS OR IS
11 OTHERWISE INVOLVED IN FIFTY OR MORE CONSUMER ARBITRATIONS A YEAR SHALL
12 COLLECT, PUBLISH AT LEAST QUARTERLY, AND MAKE AVAILABLE TO THE PUBLIC IN
13 A COMPUTER-SEARCHABLE DATABASE THAT PERMITS SEARCHING WITH MULTIPLE
14 SEARCH TERMS IN THE SAME SEARCH, WHICH SHALL BE ACCESSIBLE AT THE INTER-
15 NET WEBSITE OF THE PRIVATE ARBITRATION ORGANIZATION, IF ANY, AND ON
16 PAPER UPON REQUEST, ALL OF THE FOLLOWING INFORMATION REGARDING EACH
17 CONSUMER ARBITRATION IT HAS ADMINISTERED OR OTHERWISE BEEN INVOLVED IN
18 WITHIN THE PRECEDING FIVE YEARS:
19 (1) THE NAME OF THE NON-CONSUMER PARTY, IF THE NON-CONSUMER PARTY IS A
20 CORPORATION OR OTHER BUSINESS ENTITY;
21 (2) THE STATE AND ZIP CODE IN WHICH THE CONSUMER PARTY RESIDED AT THE
22 TIME OF ARBITRATION;

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

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(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 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 FIFTEEN.

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 FIFTEEN.

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

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

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

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

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