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

9523

I N A S S E M B L Y

March 10, 2016

Introduced by M. of A. DINOWITZ, WEINSTEIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to prohibiting state agencies from entering into contracts with entities which enforce mandatory arbitration clauses in contracts with consumers and employees

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

Section 1. Section 165 of the state finance law is amended by adding a new subdivision 9 to read as follows:

9. MANDATORY ARBITRATION CLAUSES PROHIBITED. A. FOR THE PURPOSES OF THIS SUBDIVISION "MANDATORY ARBITRATION CLAUSE" SHALL MEAN A TERM OR PROVISION CONTAINED IN A WRITTEN CONTRACT FOR THE SALE OR PURCHASE OF CONSUMER GOODS WHICH REQUIRES THE PARTIES TO SUCH CONTRACT TO SUBMIT ANY CONTROVERSY THEREAFTER ARISING UNDER SUCH CONTRACT TO ARBITRATION PRIOR TO THE COMMENCEMENT OF ANY LEGAL ACTION TO ENFORCE THE PROVISIONS OF SUCH CONTRACT AND WHICH ALSO FURTHER PROVIDES LANGUAGE TO THE EFFECT THAT THE DECISION OF THE ARBITRATOR OR PANEL OF ARBITRATORS IN ITS APPLICATION TO THE CONSUMER PARTY SHALL BE FINAL AND NOT SUBJECT TO COURT REVIEW. THIS SHALL NOT INCLUDE ARBITRATION THAT IS MANDATED BY A COLLECTIVE BARGAINING AGREEMENT BETWEEN SUCH VENDOR AND EMPLOYEE AND/OR INDEPENDENT CONTRACTOR.

B. STATE AGENCIES SHALL NOT CONTRACT OR DO BUSINESS FOR THE SUPPLY OF COMMODITIES, SERVICES OR CONSTRUCTION WITH ANY CONTRACTOR OR VENDOR, OR THE PARENT COMPANY OR ANY SUBSIDIARY OF SUCH CONTRACTOR OR VENDOR, WHO INCLUDES AND ENFORCES MANDATORY ARBITRATION CLAUSES IN CONTRACTS WITH ITS EMPLOYEES OR CONSUMERS. WHERE MANDATORY ARBITRATION CLAUSES EXIST IN ANY SUCH CONTRACTS THE CONTRACTOR OR VENDOR SHALL, WITHIN ONE HUNDRED EIGHTY DAYS BEFORE DOING BUSINESS WITH THE STATE, PROVIDE REASONABLE NOTICE TO ITS CONSUMERS OR EMPLOYEES THAT IT WILL CEASE ENFORCING ARBITRATION CLAUSES IN CONSUMER OR EMPLOYMENT CONTRACTS.

C. A PERSON "DOES BUSINESS WITH THE STATE" WHEN IT OR ANY OF ITS SUBSIDIARIES OR PARENT ENTITIES RECEIVES STATE FUNDS EXCEEDING ONE HUNDRED THOUSAND DOLLARS IN EXCHANGE FOR GOODS OR SERVICES PROVIDED TO

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

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THE STATE OR A THIRD PARTY. PERSONS "DOING BUSINESS WITH THE STATE" INCLUDE, BUT ARE NOT LIMITED TO, PERSONS PERFORMING PUBLIC WORK ON STATE CONTRACTS, MERCHANTS OF GOODS OR SERVICES PURCHASED BY THE STATE, AND PERSONS PROVIDING SERVICES TO THIRD PARTIES IN EXCHANGE FOR FUNDS PROVIDED DIRECTLY FROM THE STATE.

D. UPON RECEIVING INFORMATION THAT A CONTRACTOR IS IN VIOLATION OF THE PROVISIONS OF THIS SECTION, THE STATE ATTORNEY GENERAL SHALL REVIEW SUCH INFORMATION AND OFFER THE CONTRACTOR AN OPPORTUNITY TO RESPOND. IF THE ATTORNEY GENERAL FINDS THAT A VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES OR DECLARING THE CONTRACTOR IN DEFAULT.

E. BEFORE CONTRACTING WITH ANY VENDOR OR CONTRACTOR, THE STATE AGENCY SHALL CONFIRM THAT SUCH CONTRACTOR OR VENDOR, OR ITS PARENT ENTITIES AND ITS SUBSIDIARIES, DOES NOT INCLUDE OR ENFORCE MANDATORY ARBITRATION CLAUSES WITH CONSUMERS OR EMPLOYEES, AND SHALL ENSURE, WHEN APPROPRIATE, THAT A CONTRACT BETWEEN THE STATE AGENCY AND THE CONTRACTOR INCLUDES A PROVISION PROHIBITING THAT CONTRACTOR, ITS PARENT ENTITIES AND ITS SUBSIDIARIES, FROM INCLUDING OR ENFORCING MANDATORY ARBITRATION CLAUSES.

S 2. This act shall take effect immediately and shall apply to state contracts entered into on and after such date.