

8191

2015-2016 Regular Sessions

I N   A S S E M B L Y

June 11, 2015

---

Introduced by M. of A. TITONE -- read once and referred to the Committee  
on Judiciary

AN ACT to amend the civil practice law and rules, in relation to arbitration agreements

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

1     Section 1. The civil practice law and rules is amended by adding a new  
2     section 7500 to read as follows:

3     S 7500. DEFINITIONS. AS USED IN THIS ARTICLE:

4     (A) "ARBITRATION" MEANS A FORM OF DISPUTE RESOLUTION THAT IS AN ALTER-  
5     NATIVE TO LITIGATION, IN WHICH THE PARTIES AGREE TO BE BOUND BY THE  
6     DETERMINATION OF A NEUTRAL THIRD PARTY ARBITRATOR.

7     (B) "NEUTRAL THIRD PARTY ARBITRATOR" MEANS AN ARBITRATOR OR PANEL OF  
8     ARBITRATORS EACH OF WHOM DOES NOT HAVE AN UNDISCLOSED KNOWN, DIRECT, AND  
9     MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A  
10    KNOWN, EXISTING, AND SUBSTANTIAL RELATIONSHIP WITH A PARTY, COUNSEL, OR  
11    REPRESENTATIVE OF A PARTY.

12    S 2. Section 7501 of the civil practice law and rules, as amended by  
13    chapter 532 of the laws of 1963, is amended to read as follows:

14    S 7501. Effect of arbitration agreement. A written agreement to  
15    submit any controversy thereafter arising or any existing controversy to  
16    arbitration is enforceable without regard to the justiciable character  
17    of the controversy and confers jurisdiction on the courts of the state  
18    to enforce it and to enter judgment on an award; PROVIDED, HOWEVER, THAT  
19    ANY LANGUAGE REQUIRING THE CONTROVERSY BE SUBMITTED TO AN ARBITRATOR OR  
20    ARBITRATION ORGANIZATION THAT IS NOT A NEUTRAL THIRD PARTY ARBITRATOR,  
21    AS THAT TERM IS DEFINED IN SUBDIVISION (B) OF SECTION SEVENTY-FIVE  
22    HUNDRED OF THIS ARTICLE, SHALL BE DEEMED VOID; PROVIDED THAT IT SHALL BE  
23    VALID WITH RESPECT TO THE REQUIREMENT THAT THE CONTROVERSY BE ARBI-  
24    TRATED. THE REQUIREMENT THAT THE CONTROVERSY BE HEARD BY A NEUTRAL THIRD  
25    PARTY ARBITRATOR MAY NOT BE WAIVED BY PARTY PRIOR TO THE SERVICE ON SUCH

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

LBD11404-02-5

1 PARTY OF A DEMAND FOR ARBITRATION. UPON DISCLOSURE PURSUANT TO SECTION  
2 SEVENTY-FIVE HUNDRED FIVE-A OF THIS ARTICLE OF A KNOWN, DIRECT, AND  
3 MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A  
4 KNOWN EXISTING AND SUBSTANTIAL RELATIONSHIP WITH A PARTY, COUNSEL, OR  
5 REPRESENTATIVE OF A PARTY, A PARTY SHALL BE DEEMED TO HAVE WAIVED ANY  
6 OBJECTION TO THE ARBITRATOR OR COMPOSITION OF ANY ARBITRATION PANEL, BY  
7 FAILING TO RAISE SAME PRIOR TO THE COMMENCEMENT OF THE ARBITRATION HEAR-  
8 ING. In determining any matter arising under this article, the court  
9 shall not consider whether the claim with respect to which arbitration  
10 is sought is tenable, or otherwise pass upon the merits of the dispute.

11 SUCH ARBITRATION SHALL BE CONDUCTED BY A NEUTRAL THIRD PARTY ARBITRA-  
12 TOR UNDER REGULATIONS ESTABLISHED BY THE ATTORNEY GENERAL. APPOINTMENT  
13 OF AN ARBITRATOR SHALL ENSURE THE PERSONAL OBJECTIVITY OF ITS ARBITRA-  
14 TORS AND THE RIGHT OF EACH PARTY TO PRESENT ITS CASE, TO BE IN ATTEND-  
15 ANCE DURING ANY PRESENTATION MADE BY THE OTHER PARTY AND TO REBUT OR  
16 REFUTE SUCH PRESENTATION.

17 S 3. The civil practice law and rules is amended by adding a new  
18 section 7505-a to read as follows:

19 S 7505-A. DISCLOSURE BY ARBITRATOR. (A) BEFORE ACCEPTING APPOINTMENT,  
20 AN INDIVIDUAL WHO IS REQUESTED TO SERVE AS AN ARBITRATOR, AFTER MAKING A  
21 REASONABLE INQUIRY, SHALL DISCLOSE TO ALL PARTIES TO THE AGREEMENT TO  
22 ARBITRATE AND THE ARBITRATION PROCEEDING AND TO ANY OTHER ARBITRATORS  
23 ANY KNOWN FACTS THAT A REASONABLE PERSON WOULD CONSIDER LIKELY TO AFFECT  
24 THE IMPARTIALITY OF THE ARBITRATOR IN THE ARBITRATION PROCEEDING,  
25 INCLUDING:

26 (1) A FINANCIAL OR PERSONAL INTEREST IN THE OUTCOME OF THE ARBITRATION  
27 PROCEEDING; AND

28 (2) AN EXISTING OR PAST RELATIONSHIP WITH ANY OF THE PARTIES TO THE  
29 AGREEMENT TO ARBITRATE OR THE ARBITRATION PROCEEDING, THEIR COUNSEL OR  
30 REPRESENTATIVES, A WITNESS, OR ANOTHER ARBITRATOR.

31 (B) AN ARBITRATOR HAS A CONTINUING OBLIGATION TO DISCLOSE TO ALL  
32 PARTIES TO THE AGREEMENT TO ARBITRATE AND THE ARBITRATION PROCEEDING AND  
33 TO ANY OTHER ARBITRATORS ANY FACTS THAT THE ARBITRATOR LEARNS AFTER  
34 ACCEPTING APPOINTMENT WHICH A REASONABLE PERSON WOULD CONSIDER LIKELY TO  
35 AFFECT THE IMPARTIALITY OF THE ARBITRATOR.

36 (C) IF AN ARBITRATOR DISCLOSES A FACT REQUIRED BY SUBDIVISION (A) OR  
37 (B) OF THIS SECTION TO BE DISCLOSED AND A PARTY TIMELY OBJECTS TO THE  
38 APPOINTMENT OR CONTINUED SERVICE OF THE ARBITRATOR BASED UPON THE FACT  
39 DISCLOSED, THE OBJECTION MAY BE A GROUND FOR VACATING AN AWARD MADE BY  
40 THE ARBITRATOR.

41 (D) IF THE ARBITRATOR DID NOT DISCLOSE A FACT AS REQUIRED BY SUBDIVI-  
42 SION (A) OR (B) OF THIS SECTION, UPON TIMELY OBJECTION BY A PARTY, THE  
43 COURT MAY VACATE AN AWARD.

44 (E) AN ARBITRATOR APPOINTED AS A NEUTRAL ARBITRATOR WHO DOES NOT  
45 DISCLOSE A KNOWN, DIRECT, AND MATERIAL INTEREST IN THE OUTCOME OF THE  
46 ARBITRATION PROCEEDING OR A KNOWN, EXISTING, AND SUBSTANTIAL RELATION-  
47 SHIP WITH A PARTY IS PRESUMED TO ACT WITH EVIDENT PARTIALITY.

48 S 4. Section 7506 of the civil practice law and rules is amended to  
49 read as follows:

50 S 7506. Hearing. (a) Oath of arbitrator. Before hearing any testimony,  
51 an arbitrator shall be sworn to hear and decide the controversy faith-  
52 fully and fairly by an officer authorized to administer an oath.

53 (b) Time and place. The arbitrator shall appoint a time and place for  
54 the hearing and notify the parties in writing personally or by regis-  
55 tered or certified mail not less than eight days before the hearing. The  
56 arbitrator may adjourn or postpone the hearing. The court, upon applica-

tion of any party, may direct the arbitrator to proceed promptly with the hearing and determination of the controversy.

(c) Evidence. The parties are entitled to be heard, to present evidence and to cross-examine witnesses.

(D) POSTPONEMENTS AND ADJOURNMENTS. THE ARBITRATOR MAY FOR GOOD CAUSE POSTPONE OR ADJOURN THE HEARING UPON REQUEST OF A PARTY OR UPON THE ARBITRATOR'S OWN INITIATIVE. Notwithstanding the failure of a party duly notified to appear, the arbitrator may hear and determine the controversy upon the evidence produced. IF A PARTY TO AN ARBITRATION INTENDS TO INTRODUCE AN EXPERT WITNESS AT THE HEARING, THE IDENTITY OF THE EXPERT WITNESS MUST BE GIVEN TO ALL PARTIES AT LEAST SEVEN CALENDAR DAYS PRIOR TO THE HEARING.

[(d)] (E) Representation by attorney. A party has the right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. If a party is represented by an attorney, papers to be served on the party shall be served upon his attorney. PERSONS HAVING A DIRECT INTEREST IN THE ARBITRATION ARE ENTITLED TO ATTEND HEARINGS. IT SHALL BE DISCRETIONARY WITH THE ARBITRATOR TO PERMIT THE ATTENDANCE OF ANY OTHER PERSONS.

[(e)] (F) Determination by majority. The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render an award.

[(f)] (G) Waiver. Except as provided in subdivision [(d)](E), a requirement of this section may be waived by written consent of the parties and it is waived if the parties continue with the arbitration without objection.

S 5. Section 7507 of the civil practice law and rules, as amended by chapter 952 of the laws of 1981, is amended to read as follows:

S 7507. Award; form; time; delivery. (A) Except as provided in section 7508, the award shall be in writing, signed and affirmed by the arbitrator making it within the time fixed by the agreement, or, if the time is not fixed, within such time as the court orders.

(B) THE AWARD SHALL STATE THE ISSUES IN DISPUTE AND SHALL CONTAIN THE ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE AWARD SHALL CONTAIN A DECISION ON ALL ISSUES SUBMITTED TO THE ARBITRATOR.

(C) The parties may in writing extend the time either before or after its expiration. A party waives the objection that an award was not made within the time required unless he notifies the arbitrator in writing of his objection prior to the delivery of the award to him OR HER.

(D) The arbitrator shall deliver a copy of the award to each party in the manner provided in the agreement, or, if no provision is so made, personally or by registered or certified mail, return receipt requested.

S 6. Subparagraph (iv) of paragraph 1 of subdivision (b) of section 7511 of the civil practice law and rules is amended and two new subparagraphs (v) and (vi) are added to read as follows:

(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection[.]; OR

(V) WHERE THE ARBITRATOR WAS GUILTY OF MISCONDUCT IN REFUSING TO POSTPONE THE HEARING, UPON SUFFICIENT CAUSE SHOWN, OR IN REFUSING TO HEAR EVIDENCE PERTINENT AND MATERIAL TO THE CONTROVERSY; OR OF ANY OTHER MISBEHAVIOR BY WHICH THE RIGHTS OF ANY PARTY HAVE BEEN PREJUDICED; OR

(VI) THE ARBITRATOR EVIDENCED A MANIFEST DISREGARD OF THE LAW IN RENDERING THE AWARD.

1 S 7. The civil practice law and rules is amended by adding three new  
2 sections 7515, 7516 and 7517 to read as follows:

3 S 7515. PROHIBITED PREDISPUTE ARBITRATION AGREEMENTS. (A) THE TERM  
4 "CONSUMER DISPUTE" MEANS A DISPUTE BETWEEN AN INDIVIDUAL WHO SEEKS OR  
5 ACQUIRES REAL OR PERSONAL PROPERTY, SERVICES (INCLUDING SERVICES RELAT-  
6 ING TO SECURITIES AND OTHER INVESTMENTS), MONEY, OR CREDIT FOR PERSONAL,  
7 FAMILY, OR HOUSEHOLD PURPOSES AND THE SELLER OR PROVIDER OF SUCH PROPER-  
8 TY, SERVICES, MONEY, OR CREDIT;

9 (B) THE TERM "EMPLOYMENT DISPUTE" MEANS A DISPUTE BETWEEN AN EMPLOYER  
10 AND EMPLOYEE ARISING OUT OF THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE AS  
11 DEFINED IN SECTION 3 OF THE FAIR LABOR STANDARDS ACT OF 1938 (29 U.S.C.  
12 203); AND

13 (C) THE TERM "PREDISPUTE ARBITRATION AGREEMENT" MEANS ANY AGREEMENT TO  
14 ARBITRATE A DISPUTE THAT HAD NOT YET ARISEN AT THE TIME OF THE MAKING OF  
15 THE AGREEMENT.

16 (D) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, NO PREDISPUTE  
17 ARBITRATION AGREEMENT SHALL BE VALID OR ENFORCEABLE IF IT REQUIRES ARBI-  
18 TRATION OF AN EMPLOYMENT DISPUTE, CONSUMER DISPUTE, ANTITRUST DISPUTE,  
19 OR CIVIL RIGHTS DISPUTE.

20 S 7516. PROHIBITED PROVISIONS. (A) PROHIBITION OF EFFECT OF CERTAIN  
21 ARBITRATION CLAUSES OR AGREEMENTS. FORCED ARBITRATION CLAUSES OR AGREE-  
22 MENTS COVERING CONSUMERS AND EMPLOYEES ARE CONTRARY TO THE ESTABLISHED  
23 PUBLIC POLICY OF THIS STATE. BECAUSE EMPLOYEES AND CONSUMERS ARE FORCED  
24 TO ASSENT TO THESE AGREEMENTS AS A CONDITION OF BEING AN EMPLOYEE OR  
25 CONSUMER BEFORE ANY DISPUTE HAS ARISEN WITH THE EMPLOYER OR MERCHANT,  
26 THESE AGREEMENTS DO NOT OFFER EMPLOYEES AND CONSUMERS A MEANINGFUL  
27 CHOICE ABOUT HOW TO RESOLVE THEIR DISPUTES WITH THE EMPLOYER OR  
28 MERCHANT. IN ADDITION, FORCED ARBITRATION AGREEMENTS PREVENT EMPLOYEES  
29 AND CONSUMERS FROM EFFECTIVELY VINDICATING THEIR RIGHTS UNDER STATE LAW.  
30 FOR THESE REASONS, EXCEPT WHEN INCONSISTENT WITH FEDERAL LAW, THE STATE  
31 PROHIBITS THE FORMATION AND ENFORCEMENT OF FORCED ARBITRATION AGREEMENTS  
32 IN EMPLOYMENT AND CONSUMER CONTRACTS.

33 (B) PROHIBITION OF ARBITRATION CLAUSES IN INSURANCE AGREEMENTS. A  
34 FORCED ARBITRATION AGREEMENT WITHIN OR PART OF ANY WRITTEN CONTRACT FOR  
35 INSURANCE WITH A CONSUMER OR OTHER WRITTEN AGREEMENT INVOLVING THE  
36 OFFERING OF INSURANCE TO A CONSUMER IS INVALID, UNENFORCEABLE, AND VOID.  
37 ANY SUCH ARBITRATION AGREEMENT SHALL BE CONSIDERED SEVERABLE, AND ALL  
38 OTHER PROVISIONS OF THE CONTRACT FOR INSURANCE SHALL REMAIN IN EFFECT  
39 AND GIVEN FULL FORCE.

40 (C) PROHIBITION OF ARBITRATION CLAUSES IN EMPLOYMENT CONTRACTS FOR  
41 WORKERS EXEMPTED FROM THE FEDERAL ARBITRATION ACT. A FORCED ARBITRATION  
42 AGREEMENT WITHIN OR PART OF ANY WRITTEN CONTRACT OF EMPLOYMENT OF  
43 SEAMEN, RAILROAD EMPLOYEES, OR ANY OTHER CLASS OF WORKERS ENGAGED IN  
44 FOREIGN OR INTERSTATE COMMERCE IS UNENFORCEABLE AND VOID. ANY SUCH ARBI-  
45 TRATION AGREEMENT SHALL BE CONSIDERED SEVERABLE, AND ALL OTHER  
46 PROVISIONS OF THE EMPLOYMENT CONTRACT SHALL REMAIN IN EFFECT AND GIVEN  
47 FULL FORCE.

48 (D) PROHIBITION OF ARBITRATION CLAUSES THAT ARE NOT GOVERNED BY FEDER-  
49 AL LAW. ANY FORCED ARBITRATION AGREEMENT, OR PORTION THEREOF, IN AN  
50 EMPLOYMENT OR CONSUMER CONTRACT IS INVALID, UNENFORCEABLE, AND VOID,  
51 WHEN THE ENFORCEABILITY OF SUCH ARBITRATION AGREEMENT, OR THE PORTION AT  
52 ISSUE, IS GOVERNED BY STATE LAW. ANY SUCH ARBITRATION AGREEMENT SHALL BE  
53 CONSIDERED SEVERABLE, AND ALL OTHER PROVISIONS OF THE EMPLOYMENT  
54 CONTRACT SHALL REMAIN IN EFFECT AND GIVEN FULL FORCE.

55 S 7517. REQUIREMENTS. (A) ANY PRIVATE ENTITY THAT ADMINISTERS FIVE OR  
56 MORE ARBITRATIONS A YEAR IN THIS STATE INVOLVING A CONSUMER OR EMPLOYEE

1 SHALL COLLECT AND PUBLISH THE FOLLOWING INFORMATION ABOUT EACH OF ITS  
2 ARBITRATIONS FOR AT LEAST FIVE YEARS AFTER THE ARBITRATION HAS  
3 COMPLETED:

4 (1) THE NAMES OF THE PARTIES TO THE ARBITRATION;

5 (2) THE PARTY THAT FILED THE ARBITRATION CLAIM;

6 (3) THE TYPE OF DISPUTE INVOLVED, INCLUDING GOODS OR SERVICES, INSUR-  
7 ANCE, CREDIT, DEBT COLLECTION, OR EMPLOYMENT;

8 (4) THE PREVAILING PARTY;

9 (5) WHETHER THE CONSUMER OR EMPLOYEE WAS REPRESENTED BY AN ATTORNEY;

10 (6) THE DATE THE COMPANY ADMINISTERING THE ARBITRATION RECEIVED THE  
11 DEMAND FOR ARBITRATION, THE DATE THE ARBITRATOR WAS APPOINTED, AND THE  
12 DATE OF THE ARBITRATION'S DISPOSITION;

13 (7) WHETHER THE ARBITRATION RESULTED IN AN IN-PERSON HEARING;

14 (8) WHETHER THE PARTIES PROVIDED EACH OTHER WITH ANY PRE-HEARING  
15 DISCOVERY;

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

18 (10) THE NAME OF THE ARBITRATOR, HIS OR HER TOTAL FEE FOR THE CASE,  
19 AND THE PERCENTAGE OF THE ARBITRATOR'S FEE PAID BY EACH PARTY; AND

20 (11) THE ARBITRATOR'S PROFESSIONAL AFFILIATIONS.

21 (B) INFORMATION PUBLISHED PURSUANT TO THIS SECTION SHALL BE UPDATED AT  
22 LEAST QUARTERLY, AND MADE AVAILABLE TO THE PUBLIC IN A COMPUTER-SEARCHA-  
23 BLE FORMAT, WHICH SHALL BE ACCESSIBLE AT THE WEBSITE OF THE PRIVATE  
24 COMPANY ADMINISTERING THE ARBITRATIONS, IF ANY, AND ON PAPER UPON  
25 REQUEST.

26 (C) NO PRIVATE COMPANY SHALL HAVE ANY LIABILITY FOR COLLECTING,  
27 PUBLISHING, OR DISTRIBUTING THE INFORMATION IN ACCORD WITH THIS SECTION.

28 (D) THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO REQUIRE THE  
29 DISCLOSURE OF ANY INFORMATION NOT SPECIFICALLY REQUIRED TO BE DISCLOSED  
30 PURSUANT TO SUBDIVISION (A) OF THIS SECTION.

31 S 8. Enforcement. Any private person and any enforcement agency or  
32 official responsible for enforcing the provisions of this act may bring  
33 suit for injunctive relief against an entity that violates such  
34 provisions, and may recover reasonable attorney fees and other costs if  
35 an injunction or equivalent relief is awarded. Injunctive relief shall  
36 be the only relief available in a suit arising from failure to comply  
37 with this act.

38 S 9. Severability. If any provision of this act or the application  
39 thereof to any person or circumstance is held invalid, such invalidity  
40 shall not affect other provisions or applications of this act that can  
41 be given effect without the invalid provision or application, and to  
42 that end the provisions of this act are declared to be severable.

43 S 10. This act shall take effect on the first of January next succeed-  
44 ing the date on which it shall have become a law.