

# STATE OF NEW YORK

5240

2017-2018 Regular Sessions

## IN ASSEMBLY

February 7, 2017

Introduced by M. of A. DINOWITZ, WEINSTEIN, SEPULVEDA -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibited mandatory arbitration agreements; and to repeal section 399-c of such law relating to prohibiting mandatory arbitration clauses in certain consumer contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 399-c of the general business law is REPEALED and a  
2 new section 399-c is added to read as follows:

3 § 399-c. Prohibited mandatory arbitration agreements. 1. Definitions.

4 (a) The term "consumer dispute" shall mean a dispute between an indi-  
5 vidual who seeks or acquires real or personal property, services  
6 (including services relating to securities and other investments),  
7 money, or credit for personal, family or household purposes and the  
8 seller or provider of such property, services, money or credit.

9 (b) The term "employment dispute" shall mean a dispute between an  
10 employer and employee arising out of the relationship of employer and  
11 employee as defined in section 3 of the Fair Labor Standards Act of 1938  
12 (29 U.S.C. 203).

13 (c) The term "mandatory arbitration agreement" shall mean any agree-  
14 ment to arbitrate a dispute that had not yet arisen at the time of the  
15 making of the agreement.

16 2. Prohibited mandatory consumer and employment arbitration agree-  
17 ments. Notwithstanding any other provision of this article, no mandato-  
18 ry arbitration agreement shall be valid or enforceable if it requires  
19 arbitration of an employment dispute or consumer dispute.

20 3. Prohibition of effect of certain mandatory arbitration clauses or  
21 agreements. Mandatory arbitration clauses or agreements covering  
22 consumers and employee disputes are contrary to the established public  
23 policy of this state. Because employees and consumers are required to

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

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1 assent to these agreements as a condition of being an employee or  
2 consumer before any dispute has arisen with the employer or merchant,  
3 these agreements do not offer employees and consumers a meaningful  
4 choice about how to resolve their disputes with the employer or  
5 merchant. In addition, mandatory arbitration agreements prevent employ-  
6 ees and consumers from effectively vindicating their rights under state  
7 law. For these reasons, except when inconsistent with federal law, the  
8 state prohibits the formation and enforcement of mandatory arbitration  
9 agreements in employment and consumer contracts.

10 4. Prohibition of mandatory arbitration clauses in insurance agree-  
11 ments. A mandatory arbitration agreement within or part of any written  
12 contract for insurance with a consumer or other written agreement  
13 involving the offering of insurance to a consumer is invalid, unenforce-  
14 able and void. Any such arbitration agreement shall be considered sever-  
15 able, and all other provisions of the contract for insurance shall  
16 remain in effect and given full force.

17 5. Prohibition of mandatory arbitration clauses in employment  
18 contracts for workers exempted from the Federal Arbitration Act. (a) A  
19 mandatory arbitration agreement within or part of any written contract  
20 of employment of seamen, railroad employees or any other class of work-  
21 ers engaged in foreign or interstate commerce is unenforceable and void.  
22 Any such arbitration agreement shall be considered severable, and all  
23 other provisions of the employment contract shall remain in effect and  
24 given full force.

25 (b) The provisions of this section shall not apply to agreements nego-  
26 tiated with any labor union through collective bargaining.

27 6. Prohibition of mandatory arbitration clauses that are not governed  
28 by federal law. Any mandatory arbitration agreement, or portion there-  
29 of, in an employment or consumer contract is invalid, unenforceable and  
30 void, when the enforceability of such arbitration agreement, or the  
31 portion at issue, is governed by state law. Any such arbitration agree-  
32 ment shall be considered severable, and all other provisions of the  
33 employment contract shall remain in effect and given full force.

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