

STATE OF NEW YORK

7445

2017-2018 Regular Sessions

IN ASSEMBLY

April 25, 2017

Introduced by M. of A. TITONE, WEINSTEIN, KAVANAGH, DINOWITZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to contracts in small print, procedural reciprocity for arbitration agreements in consumer transactions and consumer arbitration; to amend the general obligations law, in relation to the prohibition of certain contractual agreements to arbitrate personal injury and wrongful death claims; to amend the executive law, in relation to powers and duties of the consumer protection division and contracts of adhesion; and to amend the public health law, in relation to protecting against certain contracts of adhesion in the provision of health care

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

1 Section 1. This act shall be known as the access to justice act of
2 2017: remedying injustices arising out of contracts of adhesion in the
3 context of consumer contracts.

4 § 2. Legislative intent. The legislature finds that it is the public
5 policy of this state to ensure access to justice for all New Yorkers.
6 The unified court system in this state supports and encourages arbi-
7 tration in the civil practice context and arbitration is one of a varie-
8 ty of alternative dispute resolution tools which help parties resolve
9 disputes without a trial. Arbitration has proven to be most successful
10 when agreed to between parties of equal bargaining power as part of an
11 arm's length agreement. A vital component of access to justice is to
12 preserve, when possible, the ability of New Yorkers to choose either
13 arbitration or litigation when seeking a remedy if an injury or dispute
14 has occurred. When an arbitration clause is foisted upon a party to a
15 contract, that choice is precluded; thus access to justice may be denied
16 at the very commencement of the parties' relationship. The legislature
17 further finds that the prevalence of arbitration agreements in contracts

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

LBD09878-01-7

1 of adhesion in transactions for personal, family or household services
2 New Yorkers cannot do without - e.g., telephone, internet, nursing home,
3 credit cards - and the interpretation of such arbitration agreements by
4 the courts has resulted in conflicting decisions and substantial inequi-
5 ty between the parties. One area of concern is reflected in the effect
6 of recent arbitrations on contracts affecting the rights, remedies or
7 obligations between health care providers and patients relative to
8 personal injuries to, or wrongful death of, patients. This act amends
9 the law to preclude predatory behavior against some of the most vulner-
10 able New Yorkers against the public policy of this state, to protect
11 fairness in consumer transactions and other types of transactions that
12 affect the health and well-being of New Yorkers, to create remedies
13 targeting unconscionable contracts at the state level and to ensure
14 access to justice for consumers.

15 § 3. Section 7501 of the civil practice law and rules, as amended by
16 chapter 532 of the laws of 1963, is amended to read as follows:

17 § 7501. Effect of arbitration agreement. A written agreement to
18 submit any controversy thereafter arising or any existing controversy to
19 arbitration is enforceable without regard to the justiciable character
20 of the controversy and confers jurisdiction on the courts of the state
21 to enforce it and to enter judgment on an award. In determining any
22 matter arising under this article, the court shall not consider whether
23 the claim with respect to which arbitration is sought is tenable, or
24 otherwise pass upon the merits of the dispute. The commencement of an
25 action in a court of law by any person to enforce a contract entered
26 into by, or delivered to, a resident of this state that involves a
27 consumer transaction, as defined in section forty-five hundred forty-
28 four of this chapter, shall constitute a waiver of the enforceability of
29 the arbitration clause in that contract or agreement. Such waiver shall
30 not apply to any action brought to enforce the arbitration clause, to
31 stay arbitration or in aid of arbitration.

32 § 4. The civil practice law and rules is amended by adding a new
33 section 7515 to read as follows:

34 § 7515. Arbitration of disputes regarding contracts or agreements in a
35 consumer transaction. (a) 1. This section shall govern arbitrations of
36 disputes regarding contracts or agreements entered into by, or delivered
37 to, a resident of this state or entered into in this state that involves
38 a consumer transaction.

39 2. Proceedings pursuant to this section shall be commenced and
40 conducted in accordance with this article, except as otherwise provided
41 by this section and in accordance with rules promulgated and approved by
42 the superintendent of the department of financial services.

43 3. The term "consumer transaction" shall be defined as set forth in
44 section forty-five hundred forty-four of this chapter.

45 4. Except as provided by an express waiver contained in such contract
46 or agreement, either party to a consumer dispute may seek relief in
47 arbitration by way of class action in accordance with the regulations
48 promulgated by the superintendent of the department of financial
49 services pursuant to article nine of this chapter.

50 (b) 1. The rules promulgated by the superintendent of the department
51 of financial services shall set forth standards for panels of arbitra-
52 tors under this section and establish qualifications and compensation of
53 individuals seeking appointment to the arbitration panels. These stand-
54 ards shall require that an arbitrator be impartial and that the arbitra-
55 tor be competent to arbitrate the subject matter of each arbitration to
56 which he or she is appointed as a panel member.

1 2. All costs of arbitration shall be paid by the party providing the
2 money, property or service.

3 3. A consumer that prevails in whole or in part in arbitration under
4 this section shall be awarded reasonable attorney's fees by the arbitra-
5 tor.

6 4. A contract entered into, or delivered to, a resident of this state
7 that provides for arbitration of a dispute shall be void if it provides
8 for arbitration by any arbitrator contrary to the provisions of this
9 section.

10 (c) Decisions by members of the arbitration panel shall: 1. be
11 provided to all parties;

12 2. contain written findings of fact and conclusions of law and an
13 explanation of the calculation of any damages; and

14 3. be based on the applicable substantive law of this state or the law
15 of any other jurisdiction that the arbitrator determines, based upon the
16 choice of law principles of this state.

17 § 5. The general obligations law is amended by adding a new section
18 5-336 to read as follows:

19 § 5-336. Prohibition of contractual provisions requiring arbitration
20 of claims for personal injuries or wrongful death where the party
21 asserting the contractual right to arbitrate has liability insurance
22 applicable to the claim. Except where otherwise provided by state stat-
23 ute, any contractual provision requiring arbitration of claims for
24 personal injuries or wrongful death shall be deemed without effect where
25 the party asserting the contractual right to arbitrate has liability
26 insurance applicable to the claim.

27 § 6. Subdivision a of section 5-702 of the general obligations law is
28 amended by adding a new paragraph 3 to read as follows:

29 3. Written in clear and legible print no less than eight points in
30 depth or five and one-half points in depth for upper case type. The
31 portion of any printed contract or agreement involving a consumer trans-
32 action or a lease for space to be occupied for residential purposes
33 where the print does not comply with this paragraph may not be received
34 in evidence in any trial, hearing or proceeding on behalf of the party
35 who printed or prepared such contract or agreement, or who caused said
36 agreement or contract to be printed or prepared. No provision of any
37 contract or agreement waiving the provisions of this section shall be
38 effective. The provisions of this paragraph shall not apply to agree-
39 ments or contracts entered into or agreements effective prior to the
40 effective date of this paragraph.

41 § 7. Paragraphs 14 and 15 of subdivision 3 of section 94-a of the
42 executive law, as added by section 21 of part A of chapter 62 of the
43 laws of 2011, are amended to read as follows:

44 (14) cooperate with and assist consumers in class actions in proper
45 cases; ~~and~~

46 (15) (i) determine, upon an application by a consumer, whether a
47 contract or agreement or any provision therein between the consumer and
48 any person, firm, corporation or association or agent or employee there-
49 of violates the public policy of the state of New York under the laws of
50 this state, including but not limited to the provisions of this section,
51 article twenty-two-A of the general business law or section twenty-eight
52 hundred one-h of the public health law, prohibiting unscrupulous or
53 questionable business practices or unconscionable contracts, or requir-
54 ing the consumer to enter into an unconscionable contract to obtain the
55 benefits of such contract or agreement, and (ii) refer such determi-

1 nation to the appropriate unit of the department, or federal, state or
2 local agency authorized by law for appropriate action; and

3 (16) create an internet website or webpage pursuant to section three
4 hundred ninety-c of the general business law.

5 § 8. Section 94-a of the executive law is amended by adding a new
6 subdivision 6 to read as follows:

7 6. Right of action. If within sixty days after an application is made
8 by a consumer under paragraph fifteen of subdivision three of this
9 section an action is not commenced by any federal, state or local agen-
10 cy, the consumer may bring an action in his or her own name on behalf of
11 the state to obtain such a determination and seek to enjoin enforcement
12 of the contract or agreement or any of its provisions determined to be
13 void under such subdivision, recover his or her actual damages or both.
14 In such action, preliminary relief may be granted under article sixty-
15 three of the civil practice law and rules. The court may, in its
16 discretion, increase the award of damages to an amount not to exceed
17 three times the actual damages up to one thousand dollars in each
18 instance, if the court finds the defendant willfully or knowingly
19 engaged in an unscrupulous or questionable business practice or required
20 the consumer to enter such contract or agreement to obtain its benefits.
21 Any amount of damages awarded to plaintiff in excess of actual damages
22 shall be payable to the state. The court may award reasonable attorney's
23 fees to a prevailing plaintiff.

24 § 9. The public health law is amended by adding a new section 2801-h
25 to read as follows:

26 § 2801-h. Prohibition of contractual provisions in health care provid-
27 er contracts affecting the rights, remedies or obligations between
28 health care providers and patients relative to personal injuries to, or
29 wrongful death of, patients. 1. Any written contract that a health care
30 provider requires a person to sign as a condition to providing health
31 care services which attempts to affect any legal rights, remedies or
32 obligations relative to personal injuries to, or wrongful death of,
33 patients which may be occasioned in connection with the health care
34 services rendered shall be deemed unconscionable and entered into by the
35 person under duress, and is prohibited as against the public policy of
36 the state.

37 2. For the purpose of this section, the term "health care provider"
38 shall include, but is not limited to: (a) hospitals, nursing homes, and
39 residential health care facilities as defined in section twenty-eight
40 hundred one of this article; (b) home care service agencies as defined
41 in section thirty-six hundred two of this chapter; and (c) physicians,
42 nurses, dentists, podiatrists, chiropractors, orthodontists, nurse
43 midwives, nurse practitioners, physician assistants, acupuncturists,
44 physical therapists, occupational therapists, speech therapists, home
45 health aides, nutritionists, medical technicians and dental hygienists,
46 as well as any groups, corporations, partnerships or joint ventures that
47 provides such services.

48 3. Nothing herein shall be deemed to prohibit or otherwise invalidate
49 an otherwise legally valid consent form being executed by or on behalf
50 of a person undergoing a medical, dental, podiatric or chiropractic
51 treatment or procedure where such consent is required, provided that the
52 document does not attempt to define any rights, remedies or obligations
53 relative to personal injuries to, or wrongful death of, patients arising
54 or resulting from, or contributed to by, the health care services
55 rendered.

1 § 10. If any provision of this chapter or its application to any
2 person or circumstance is held invalid, the invalidity does not affect
3 any other provisions or application of the provisions of the remainder
4 to any other person or circumstance, and to this end the provisions of
5 this chapter are severable.

6 § 11. This act shall take effect immediately and apply to contracts
7 entered into or agreements effective on or after the date on which it
8 shall have become a law; provided, however, that section four of this
9 act shall apply to all pending and future actions in which judgment has
10 not yet been entered.