

# STATE OF NEW YORK

8710

## IN SENATE

May 10, 2018

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to grounds for vacating an arbitration award on the basis of partiality of the arbitrator

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

1 Section 1. Article 75 of the civil practice law and rules is amended  
2 by adding a new section 7500 to read as follows:

3 § 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 § 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 § 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  
26 party of a demand for arbitration. Upon disclosure pursuant to section  
27 seventy-five hundred five-a of this article of a known, direct, and

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

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1 material interest in the outcome of the arbitration proceeding or a  
2 known existing and substantial relationship with a party, counsel, or  
3 representative of a party, a party shall be deemed to have waived any  
4 objection to the arbitrator or composition of any arbitration panel, by  
5 failing to raise same prior to the commencement of the arbitration hear-  
6 ing. In determining any matter arising under this article, the court  
7 shall not consider whether the claim with respect to which arbitration  
8 is sought is tenable, or otherwise pass upon the merits of the dispute.

9 § 3. The civil practice law and rules is amended by adding a new  
10 section 7505-a to read as follows:

11 § 7505-a. Disclosure by arbitrator. (a) Before accepting appointment,  
12 an individual who is requested to serve as an arbitrator, after making a  
13 reasonable inquiry, shall disclose to all parties to the agreement to  
14 arbitrate and the arbitration proceeding and to any other arbitrators  
15 any known facts that a reasonable person would consider likely to affect  
16 the impartiality of the arbitrator in the arbitration proceeding,  
17 including:

18 (1) a financial or personal interest in the outcome of the arbitration  
19 proceeding; and

20 (2) an existing or past relationship with any of the parties to the  
21 agreement to arbitrate or the arbitration proceeding, their counsel or  
22 representatives, a witness, or another arbitrator.

23 (b) An arbitrator has a continuing obligation to disclose to all  
24 parties to the agreement to arbitrate and the arbitration proceeding and  
25 to any other arbitrators any facts that the arbitrator learns after  
26 accepting appointment which a reasonable person would consider likely to  
27 affect the impartiality of the arbitrator.

28 (c) If an arbitrator discloses a fact required by subdivision (a) or  
29 (b) of this section to be disclosed and a party timely objects to the  
30 appointment or continued service of the arbitrator based upon the fact  
31 disclosed, the objection may be a ground for vacating an award made by  
32 the arbitrator.

33 (d) If the arbitrator did not disclose a fact as required by subdivi-  
34 sion (a) or (b) of this section, upon timely objection by a party, the  
35 court may vacate an award.

36 (e) An arbitrator appointed as a neutral arbitrator who does not  
37 disclose a known, direct, and material interest in the outcome of the  
38 arbitration proceeding or a known, existing, and substantial relation-  
39 ship with a party is presumed to act with evident partiality.

40 § 4. This act shall take effect immediately.