STATE OF NEW YORK

3208

2019-2020 Regular Sessions

IN SENATE

February 4, 2019

Introduced by Sens. COMRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

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 Section 399-c of the general business law is REPEALED and a new section 399-c is added to read as follows:

§ 399-c. Prohibited mandatory arbitration agreements. 1. Definitions. (a) The term "consumer dispute" shall mean a dispute between an individual who seeks or acquires real or personal property, services (including services relating to securities and other investments), money, or credit for personal, family or household purposes and the seller or provider of such property, services, money or credit.

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

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

2. Prohibited mandatory consumer and employment arbitration agreements. Notwithstanding any other provision of this article, no mandatory arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute or consumer dispute.

3. Prohibition of effect of certain mandatory arbitration clauses or agreements. Mandatory arbitration clauses or agreements covering consumers and employee disputes are contrary to the established public

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

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policy of this state. Because employees and consumers are required to assent to these agreements as a condition of being an employee or consumer before any dispute has arisen with the employer or merchant, these agreements do not offer employees and consumers a meaningful choice about how to resolve their disputes with the employer or merchant. In addition, mandatory arbitration agreements prevent employees and consumers from effectively vindicating their rights under state law. For these reasons, except when inconsistent with federal law, the state prohibits the formation and enforcement of mandatory arbitration agreements in employment and consumer contracts.

4. Prohibition of mandatory arbitration clauses in insurance agreements. A mandatory arbitration agreement within or part of any written contract for insurance with a consumer or other written agreement involving the offering of insurance to a consumer is invalid, unenforceable and void. Any such arbitration agreement shall be considered severable, and all other provisions of the contract for insurance shall remain in effect and given full force.

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

(b) The provisions of this section shall not apply to agreements negotiated with any labor union through collective bargaining.

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

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