

ASSEMBLY, No. 3471

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED OCTOBER 19, 2006

Sponsored by:

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Concerns certain arbitration provisions for certain consumer contracts.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning arbitration and conditions on certain consumer
2 contracts and amending and supplementing P.L.2003, c.95 and
3 amending P.L.1981, c.464.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. Section 4 of P.L.2003, c.95 (C.2A:23B-4) is amended to read
9 as follows:

10 4. Effect of Agreement to Arbitrate; Nonwaivable Provisions.

11 a. Except as otherwise provided in subsections b. and c. of this
12 section, a party to an agreement to arbitrate or to an arbitration
13 proceeding may waive or, the parties may vary the effect of, the
14 requirements of this act to the extent permitted by law.

15 b. Before a controversy that is subject to an agreement to
16 arbitrate arises, a party to the agreement may not:

17 (1) waive or agree to vary the effect of the requirements of
18 section 5a., 6a., 8, 17a., 17b., 26, or 28 of this act;

19 (2) agree to unreasonably restrict the right to notice of the
20 initiation of an arbitration proceeding pursuant to section 9 of this
21 act;

22 (3) agree to unreasonably restrict the right to disclosure of any
23 facts by an arbitrator pursuant to section 12 of this act; **[or]**

24 (4) waive the right of a party to an agreement to arbitrate to be
25 represented by a lawyer pursuant to section 16 of this act at any
26 proceeding or hearing pursuant to this act ; or

27 (5) waive the right of a party to introduce into evidence certain
28 repeating patterns of negligence in certain agreements to arbitrate as
29 set forth in section 2 of P.L. c. (C.)(pending before the
30 legislature as section 2 of this bill).

31 c. A party to an agreement to arbitrate or arbitration proceeding
32 may not waive, or the parties may not vary the effect of, the
33 requirements of this section or section 3a., 3c., 7, 14, 18, 20d., 20e.,
34 22, 23, 24, 25a., 25b., 29, 30, 34 or 35. Provided however, that
35 nothing in this act shall preclude the parties from expanding the
36 scope of judicial review of an award by expressly providing for
37 such expansion in a record.

38 (cf: P.L.2003,c.95,s.4)

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40 2. (New section) a. A party to a consumer contract as defined
41 in subsection b. of this section may not waive the right to introduce
42 into evidence certain repeating patterns of negligence by any party
43 to the consumer contract for consideration in arbitration
44 proceedings if these patterns of negligence would be relevant in any
45 arbitration proceeding concerning that consumer contract as set

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 forth in paragraph (5) of subsection b. of section 4 of P.L.2003,
2 C.95 (C.2A:23B-4).

3 b. As used in this section “consumer contract” means a written
4 agreement in which an individual contracts for services including
5 professional services, for cash or on credit and the money, property
6 or services are obtained for personal, family or household
7 purposes. "Consumer contract" includes writings required to
8 complete the consumer transaction.

9
10 3. Section 9 of P.L.1981, c.464 (C.56:12-4.1) is amended to read
11 as follows:

12 9. In addition to the remedies provided in this act, a court
13 reviewing a consumer contract may reform or limit a provision so
14 as to avoid an unfair result if it finds that:

15 a. a material provision of the contract violates this act;

16 b. the violation caused the consumer to be substantially
17 confused about any of the rights, obligations or remedies of the
18 contract; and

19 c. the violation has caused or is likely to cause financial
20 detriment to the consumer.

21 If the court reforms or limits a provision of a consumer contract,
22 the court shall also make orders necessary to avoid unjust
23 enrichment. Bringing a claim for relief pursuant to this section does
24 not entitle a consumer to withhold performance of an otherwise
25 valid contractual obligation. No relief shall be granted pursuant to
26 this section unless the claim is brought before the obligations of the
27 contract have been fully performed, including any obligation to
28 arbitrate subject to the provisions of section 2 of P.L. c.
29 (C.)(pending before the legislature as section 2 of this bill).
30 (cf:P.L.1981, c.464, s.9)

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32 4. This act shall take effect immediately.

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STATEMENT

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37 This bill provides that a party to a consumer contract as defined
38 in this bill may not waive the right to introduce into evidence
39 certain repeating patterns of negligence by any party to the
40 consumer contract for consideration in arbitration proceedings if
41 these patterns of negligence would be relevant in any arbitration
42 proceeding concerning that consumer contract.

43 The bill amends section 4 of P.L.2003, C.95 (C.2A:23B-4)
44 concerning the effect of agreements to arbitrate and nonwaivable
45 provisions. It provides that the right of a party to introduce into
46 evidence certain repeating patterns of negligence in certain
47 agreements to arbitrate as set forth in section 2 of this bill may not
48 be waived. The bill defines “consumer contract” to mean a written

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1 agreement in which an individual contracts for services including
2 professional services, for cash or on credit and the money, property
3 or services are obtained for personal, family or household
4 purposes. "Consumer contract" includes writings required to
5 complete the consumer transaction.

6 The bill amends section 9 of P.L.1981, c.464 (C.56:12-4.1)
7 concerning a court's ability to review a consumer contract to reform
8 or limit a provision so as to avoid an unfair result to include a
9 reference to this new provision concerning arbitration as created by
10 this bill.