

ASSEMBLY, No. 4972

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JANUARY 28, 2019

Sponsored by:

Assemblyman PAUL D. MORIARTY
District 4 (Camden and Gloucester)

SYNOPSIS

Establishes certain consumer protections related to arbitration organizations.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning arbitration organizations and supplementing
2 P.L.2003, c.95 (C.2A:23B-1 et seq.).

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

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7 1. As used in this act:

8 "Consumer" means a party to an arbitration agreement who, in
9 the context of that agreement, is an individual, not a business, who
10 seeks or acquires, including by lease, any goods or services
11 primarily for personal, family, or household purposes including, but
12 not limited to, financial services, healthcare services, or real
13 property.

14 "Consumer arbitration" means arbitration pursuant to a
15 standardized contract, written by one party, with a provision
16 requiring that disputes arising after the contract's signing shall be
17 submitted to binding arbitration, and the party not writing the
18 contract is a consumer. "Consumer arbitration" does not include an
19 arbitration conducted or administered by a self-regulatory
20 organization as defined by the "Securities Exchange Act of 1934"
21 (15 U.S.C. Section 78C), the "Commodity Exchange Act" (7 U.S.C.
22 Section 1 et seq.), or regulations adopted under those acts.

23 "Financial interest" means:

24 (1) Holding a position in a business as officer, director, trustee,
25 or partner, or holding any position in management of the business;
26 or

27 (2) Ownership of more than five percent interest in a business.

28 "Indigent consumer" means a consumer having a gross monthly
29 income that is less than 300 percent of the federal poverty
30 guidelines issued annually by the United States Department of
31 Health and Human Services.

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33 2. No arbitration organization shall administer a consumer
34 arbitration, or provide any other services related to a consumer
35 arbitration, if:

36 a. The arbitration organization has, or within the preceding
37 year has had, a financial interest in any party or attorney for a
38 party; or

39 b. Any party or attorney for a party has, or within the preceding
40 year has had, any type of financial interest in the arbitration
41 organization.

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43 3. a. No consumer arbitration shall require a consumer who is
44 a party to the arbitration to pay the fees and costs incurred by an
45 opposing party if the consumer does not prevail in the arbitration,
46 including, but not limited to, the fees and costs of the arbitrator,
47 arbitration organization, attorney, or witnesses.

1 b. (1) All fees and costs charged to or assessed upon a
2 consumer by an arbitration organization in a consumer arbitration,
3 exclusive of arbitrator fees, shall be waived for an indigent
4 consumer.

5 (2) Before requesting or obtaining any fee, an arbitration
6 organization shall provide written notice of the right to obtain a
7 waiver of fees in a manner calculated to bring the matter to the
8 attention of a reasonable consumer, including, but not limited to,
9 prominently placing a notice in its first written communication to
10 the consumer and in any invoice, bill, submission form, fee
11 schedule, rules, or code of procedure.

12 (3) Any consumer requesting a waiver of fees or costs may
13 establish his or her eligibility by making a declaration under oath on
14 a form provided to the consumer by the arbitration organization for
15 signature stating his or her monthly income and the number of
16 persons living in his or her household. No arbitration organization
17 may require a consumer to provide any further statement or
18 evidence of indigence.

19 (4) Any information obtained by an arbitration organization
20 regarding a consumer's identity, financial condition, income,
21 wealth, or fee waiver request shall be kept confidential and may not
22 be disclosed to any adverse party or any nonparty to the arbitration,
23 except an arbitration organization may not keep confidential the
24 number of waiver requests received or granted, or the total amount
25 of fees waived.

26 c. Nothing in this section shall affect the ability of an
27 arbitration organization to shift fees that would otherwise be
28 charged or assessed upon a consumer party to another party.

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30 4. a. Any arbitration organization that administers or otherwise
31 is involved in more than 50 consumer arbitrations per year shall
32 collect, publish at least quarterly, and make available to the public,
33 all of the following information regarding each consumer
34 arbitration within the preceding five years:

35 (1) The name of any corporation or other business entity that is
36 party to the arbitration;

37 (2) The type of dispute involved, including, but not limited to,
38 goods, banking, insurance, health care, or employment. In the case
39 of arbitration involving employment, the amount of the employees'
40 annual wage divided into the following ranges:

41 (a) less than \$100,000;

42 (b) \$100,000 to \$250,000, inclusive; and

43 (c) more than \$250,000;

44 (3) Whether the consumer was the prevailing party;

45 (4) The number of occasions, if any, a business entity which is a
46 party to an arbitration, has previously been a party in an arbitration
47 or mediation administered by the arbitration organization;

48 (5) Whether the consumer was represented by an attorney;

- 1 (6) The date the arbitration organization received the demand
2 for arbitration, the date the arbitrator was appointed, and the date of
3 disposition by the arbitrator or arbitration organization;
- 4 (7) The type of disposition of the dispute, if known, including
5 withdrawal, abandonment, settlement, award after hearing, award
6 without hearing, default, or dismissal without hearing;
- 7 (8) The amount of the claim, the amount of the award, and any
8 other relief granted, if any; and
- 9 (9) The name of the arbitrator, his or her total fee for the case,
10 and the percentage of the arbitrator's fee allocated to each party.
- 11 b. If the information required by subsection a. of this section is
12 provided by the arbitration organization in a computer-searchable
13 format through the company's Internet website and may be
14 downloaded without any fee, the company may charge the actual
15 cost of copying to any person who requests the information on
16 paper. If the information required by subsection a. of this section is
17 not accessible through the Internet, the company shall provide that
18 information without charge to any person who requests the
19 information on paper.
- 20 c. No arbitration organization shall be liable for collecting,
21 publishing, or distributing the information required by this section.

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23 5. This act shall take effect on the 90th day following
24 enactment. This act shall apply to consumer arbitration commenced
25 on or after January 1, 2019, and shall operate only prospectively so
26 as not to prohibit the administration of consumer arbitrations on the
27 basis of financial interests held prior to January 1, 2019.

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30 STATEMENT

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32 This bill regulates arbitration organizations. Increasingly, when
33 a contract is signed between an individual and a business in a
34 consumer transaction, the contract contains an arbitration clause
35 that requires an arbitration organization to administer the
36 arbitration. The arbitration organization typically dictates the rules
37 governing the dispute and how the arbitrator is chosen. Under New
38 Jersey's current law, there are rules governing arbitrators and
39 arbitration generally, but there are no rules pertaining to the
40 regulation of arbitration organizations.

41 This bill prohibits a neutral arbitrator or arbitration organization
42 from administering any consumer arbitration that requires a non-
43 prevailing consumer who is a party to the arbitration to pay the
44 opposing party's costs or fees. The bill requires an arbitration
45 organization to waive the fees and costs of arbitration, exclusive of
46 arbitrator fees, for an indigent consumer. The bill also requires an
47 arbitration organization to provide written notice to any consumer

1 of the right to obtain a fee waiver and to keep specified information
2 concerning a consumer confidential.

3 The bill further prohibits an arbitration organization from
4 administering consumer arbitration, or providing any other services
5 related to consumer arbitration, if the company has, or within the
6 preceding year has had, a financial interest in any party or attorney
7 for a party. The bill imposes similar limitations on the provision of
8 services by private arbitration companies based on the financial
9 interests of any party or attorney for a party in the arbitration
10 organization.

11 This bill also requires an arbitration organization involved in
12 consumer arbitration cases to make certain information regarding
13 those cases available to the public.

14 Finally, the bill does not apply to arbitrations conducted or
15 administered by a self-regulatory organization, as defined by the
16 federal "Securities Exchange Act of 1934," the "Commodity
17 Exchange Act," or regulations adopted under those acts.