

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED MARCH 7, 2019

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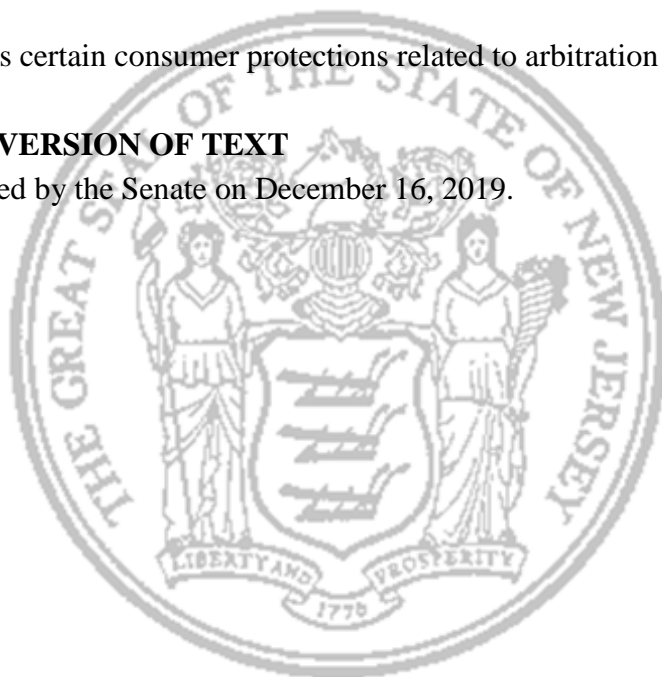
Senator Greenstein

SYNOPSIS

Establishes certain consumer protections related to arbitration organizations.

CURRENT VERSION OF TEXT

As amended by the Senate on December 16, 2019.



(Sponsorship Updated As Of: 1/14/2020)

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

3

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

6

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 who seeks or
10 acquires, including by lease, any goods or services primarily for
11 personal, family, or household purposes including, but not limited
12 to, financial services, healthcare services, or real property.
13 "Consumer" shall not include a business.

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" shall not include an
19 arbitration conducted or administered by a self-regulatory
20 organization as defined by the "Securities Exchange Act of
21 1934" (15 U.S.C. s.78c), the "Commodity Exchange Act"
22 (7 U.S.C. s.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 business²,
26 except that any position-holder in a non-profit organization who is
27 not compensated for holding that position shall not be considered to
28 have a financial interest in the organization²; or

29 (2) ownership of more than ²a² five percent interest in a
30 business.

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

35

36 2. An arbitration organization shall not administer a consumer
37 arbitration, or provide any other services related to a consumer
38 arbitration, if:

39 a. the arbitration organization has, or within the preceding year
40 has had, a financial interest in any party or attorney for a party; or

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted November 14, 2019.

²Senate floor amendments adopted December 16, 2019.

1 3. a. A consumer arbitration shall not require a consumer who
2 is a party to the arbitration to pay the fees and costs incurred by an
3 opposing party if the consumer does not prevail in the arbitration,
4 including, but not limited to, the fees and costs of the arbitrator,
5 arbitration organization, attorney, or witnesses.

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

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

17 (3) Any consumer requesting a waiver of fees or costs may
18 establish eligibility by making a declaration under oath of the
19 consumer's monthly income ¹and the number of persons living in
20 the consumer's household¹ on a form provided by the arbitration
21 organization and signed by the consumer. An arbitration
22 organization shall not require a consumer to provide any further
23 statement or evidence of indigence.

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

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

34 d. This section shall only apply to arbitration pursuant to a
35 standardized contract, written by one party, with a provision
36 requiring that disputes arising after the contract's signing shall be
37 submitted to binding arbitration, and the party not writing the
38 contract is a consumer.

39

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

45 (1) the name of any corporation or other business entity that is
46 party to the arbitration;

47 (2) the type of dispute involved, including, but not limited to,
48 goods, banking, insurance, health care, or employment. In the case

- 1 of arbitration involving employment, the amount of the employees’
2 annual wage divided into the following ranges:
- 3 (a) less than \$100,000;
 - 4 (b) \$100,000 to \$250,000, inclusive; and
 - 5 (c) more than \$250,000;
- 6 (3) whether the consumer was the prevailing party;
- 7 (4) the number of occasions a business entity, which is a party
8 to an arbitration, has previously been a party in an arbitration or
9 mediation administered by the arbitration organization;
- 10 (5) whether the consumer was represented by an attorney;
- 11 (6) the date the arbitration organization received the demand for
12 arbitration, the date the arbitrator was appointed, and the date of
13 disposition by the arbitrator or arbitration organization;
- 14 (7) the type of disposition of the dispute, if known, including
15 withdrawal, abandonment, settlement, award after hearing, award
16 without hearing, default, or dismissal without hearing;
- 17 (8) the amount of the claim, the amount of the award, and any
18 other relief granted, if any; and
- 19 (9) the name of the arbitrator, the total fee for the case, and the
20 percentage of the arbitrator's fee allocated to each party.
- 21 b. If the information required by subsection a. of this section is
22 provided by the arbitration organization in a computer-searchable
23 format through the company's Internet website and may be
24 downloaded without any fee, the company may charge the actual
25 cost of copying to any person who requests the information on
26 paper. If the information required by subsection a. of this section is
27 not accessible through the Internet, the company shall provide that
28 information without charge to any person who requests the
29 information on paper.
- 30 c. An arbitration organization shall not be liable for collecting,
31 publishing, or distributing the information required by this section.
32
- 33 5. This act shall take effect on the first day of the fourth month
34 next following enactment. This act shall apply to consumer
35 arbitration commenced on or after the effective date of this act, and
36 shall operate only prospectively so as not to prohibit the
37 administration of consumer arbitrations on the basis of financial
38 interests held prior to the effective date of this act.