

AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3029

Introduced by ~~Committee on Judiciary (Corbett (Chair), Dutra, Jackson, Longville, Shelley, Steinberg, and Wayne)~~ Assembly Member Steinberg

March 12, 2002

An act to amend ~~Section 1281.9~~ of Sections 1280 and 1281.6 of, and to add Sections 1281.89 and 1281.93 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 3029, as amended, ~~Committee on Judiciary Steinberg. Arbitration~~ Consumer arbitration agreements: private judging companies.

Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would define attorney for a party, consumer arbitration, consumer party, neutral arbitrator, and private judging company for these purposes. The bill would specify that if a consumer arbitration agreement, entered into or renewed on or after January 1, 2003, designates one or more specific arbitrators or private judging companies or incorporates the arbitration rules of a private judging company, the consumer party shall have the option, after a dispute arises, to choose a different arbitrator or private judging company, and the arbitration agreement shall plainly notify the consumer of this right in the arbitration clause, as well of as the right to obtain information

about private judging companies, as specified. The bill would prohibit an arbitrator or private judging company from administering or otherwise participating in a consumer arbitration unless the agreement complies with these requirements and the consumer chooses the arbitrator or private judging company after the dispute arises. The bill would also prohibit a private judging company from administering a consumer arbitration if, on or after January 1, 2003, it provides specified services or products to a party or attorney for a party to arbitration. The bill would specify the remedies for these violations.

The bill would also prohibit certain solicitations, as specified, regarding consumer arbitration cases, and prohibit a private judging company from making certain representations regarding consumer arbitration, adopting or enforcing specified rules governing consumer arbitration, or giving or receiving remuneration for referrals, as specified.

~~Existing law regulates the arbitration of disputes subject to an arbitration agreement, as specified.~~

~~This bill would make a technical, nonsubstantive change in that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—Section 1281.9 of the Code of Civil Procedure~~
- 2 SECTION 1. Section 1280 of the Code of Civil Procedure is
- 3 amended to read:
- 4 1280. As used in this title:
- 5 (a) “Agreement” includes but is not limited to agreements
- 6 providing for valuations, appraisals and similar proceedings and
- 7 agreements between employers and employees or between their
- 8 respective representatives.
- 9 (b) “Attorney for a party” includes any attorney actually
- 10 representing a party and any attorney currently associated in the
- 11 practice of law with an attorney hired to represent a party.
- 12 (c) “Award” includes but is not limited to an award made
- 13 pursuant to an agreement not in writing.
- 14 ~~(e)~~



1 (d) “Consumer arbitration” means an arbitration conducted
2 under a predispute arbitration provision contained in a contract
3 that meets both of the following criteria:

4 (1) The contract is with a “consumer party.”

5 (2) The arbitration provision is contained in a printed form
6 agreement or was drafted by or on behalf of, or inserted by or on
7 behalf of, the nonconsumer party.

8 (e) “Consumer party” means a party to an arbitration
9 agreement who, for the purpose of that agreement, is any of the
10 following:

11 (1) An individual who seeks or acquires, including by purchase,
12 lease, or license, any goods or services primarily for personal,
13 family, or household purposes, including financial services,
14 insurance, and other goods and services, as defined in Section
15 1761 of the Civil Code.

16 (2) An individual who is an enrollee, a subscriber, or an insured
17 under a health care service plan, within the meaning of Section
18 1345 of the Health and Safety Code, or a health care insurance
19 plan, within the meaning of Section 106 of the Insurance Code.

20 (3) An individual with a medical malpractice claim that is
21 subject to arbitration pursuant to a predispute arbitration
22 agreement.

23 (4) An employee or applicant for employment in a dispute
24 arising out of, or relating to, his or her employment or prospective
25 employment, except a dispute under or arising out of a collective
26 bargaining agreement between an employer and its employees or
27 between their respective representatives, and negotiated executive
28 employment agreements providing an annual salary of more than
29 one hundred fifty thousand dollars (\$150,000) per year.

30 (f) “Controversy” means any question arising between parties
31 to an agreement whether such question is one of law or of fact or
32 both.

33 ~~(d)~~

34 (g) “Neutral arbitrator” means an arbitrator who is ~~(1) selected~~
35 ~~jointly selected or appointed by one of the following methods:~~

36 (1) Jointly by the parties or by the arbitrators selected by the
37 parties ~~or (2) appointed by.~~

38 (2) By the court when the parties or the arbitrators selected by
39 the parties fail to select an arbitrator who was to be selected jointly
40 by them.



1 ~~(e)~~
2 (3) *By a private judging company, under an agreement of the*
3 *parties or applicable rules.*

4 (h) “Party to the arbitration” means a party to the arbitration
5 agreement:

6 (1) Who seeks to arbitrate a controversy pursuant to the
7 agreement;

8 (2) Against whom such arbitration is sought pursuant to the
9 agreement; or

10 (3) Who is made a party to such arbitration by order of the
11 neutral arbitrator upon such party’s application, upon the
12 application of any other party to the arbitration or upon the neutral
13 arbitrator’s own determination.

14 ~~(f)~~
15 (i) “Private judging company” means any nongovernmental
16 entity or individual that holds itself out as managing,
17 coordinating, administering, or providing the services of neutral
18 arbitrators, or making referrals or appointments to, or providing
19 lists of, neutral arbitrators. “Private judging company” includes
20 any entity owned, in whole or in part, by any individual or
21 affiliated with, a private judging company, but does not include
22 entities or individuals that make referrals or appointments to, or
23 provide lists of arbitrators in, fewer than five consumer arbitration
24 cases per year.

25 (j) “Written agreement” shall be deemed to include a written
26 agreement which has been extended or renewed by an oral or
27 implied agreement.

28 SEC. 2. Section 1281.6 of the Code of Civil Procedure is
29 amended to read:

30 1281.6. ~~¶~~(a) *Except as provided in subdivision (b), if the*
31 *arbitration agreement provides a method of appointing an*
32 *arbitrator, that method shall be followed.*~~¶~~

33 (b) *If a consumer arbitration agreement entered into or*
34 *renewed on or after January 1, 2003, designates one or more*
35 *exclusive arbitrators or private judging companies, or*
36 *incorporates the arbitration rules of a private judging company,*
37 *the consumer party shall have the option, after a dispute arises, to*
38 *choose a different arbitrator or private judging company, and the*
39 *arbitration agreement shall plainly notify the consumer of this*
40 *right in the arbitration clause, as well as of the right to obtain*



1 *information about private judging companies as provided by*
2 *Section 1281.96. No arbitrator or private judging company may*
3 *administer or otherwise participate in a consumer arbitration*
4 *unless the agreement complies with this subdivision and the*
5 *consumer chooses the arbitrator or private judging company after*
6 *the dispute arises. Any arbitration award rendered in violation of*
7 *this section shall be vacated pursuant to Section 1286.2.*

8 (c) *If the arbitration agreement does not provide a method for*
9 *appointing an arbitrator, the parties to the agreement who seek*
10 *arbitration and against whom arbitration is sought may agree on*
11 *a method of appointing an arbitrator and that method shall be*
12 *followed.*~~It~~

13 (d) *In the absence of an agreed method, or if the agreed method*
14 *fails or for any reason cannot be followed, or*~~when~~ *if an arbitrator*
15 *appointed fails to act and his or her successor has not been*
16 *appointed, the court, on petition of a party to the arbitration*
17 *agreement, shall appoint the arbitrator.*

18 ~~When~~

19 (e) *If a petition is made to the court to appoint a neutral*
20 *arbitrator, the court shall nominate five persons from lists of*
21 *persons supplied jointly by the parties to the arbitration or obtained*
22 *from a governmental agency concerned with arbitration or a*
23 *private disinterested association concerned with arbitration. The*
24 *parties to the agreement who seek arbitration and against whom*
25 *arbitration is sought may within five days of receipt of notice of*
26 *the nominees from the court jointly select the arbitrator whether*
27 *or not the arbitrator is among the nominees. If the parties fail to*
28 *select an arbitrator within the five-day period, the court shall*
29 *appoint the arbitrator from the nominees.*

30 *SEC. 3. Section 1281.89 is added to the Code of Civil*
31 *Procedure, to read:*

32 *1281.89. (a) A solicitation regarding a consumer arbitration*
33 *case may not be made by or on behalf of a private judging company*
34 *to any party, prospective party, or attorney for a party or*
35 *prospective party, unless the solicitation is protected from*
36 *abridgment by the Constitution of the United States or by the*
37 *Constitution of the State of California.*

38 (b) *For the purpose of this section, solicitation includes an oral*
39 *or written request for arbitration business or any other*



1 communication concerning the availability for arbitration
2 business in which a significant motive is pecuniary gain.

3 (c) A private judging company may not make any
4 representation regarding consumer arbitration that promises or
5 implies specific results or that favors one party or prospective
6 party or one type of disputant or industry over another.

7 (d) A private judging company may not adopt or enforce any
8 rule governing consumer arbitration that is inconsistent with any
9 statement of principle, guideline, protocol, or other nonbinding
10 policy representation made or adopted by the private judging
11 company. A private judging company may not adopt any statement
12 of principle, guideline, protocol, or other nonbinding policy
13 statement regarding consumer arbitration that is inconsistent with
14 the rules under which consumer arbitration is actually conducted
15 or administered by the private judging company.

16 (e) A private judging company may not give or receive any
17 commission, rebate, or other remuneration for the referral of
18 consumer arbitration cases, prospective consumer arbitration
19 cases, consumer arbitration parties, or prospective consumer
20 arbitration parties.

21 SEC. 4. Section 1281.93 is added to the Code of Civil
22 Procedure, to read:

23 1281.93. (a) A private judging company may not administer
24 a consumer arbitration if, on or after January 1, 2003, it has
25 provided any paid or unpaid consulting, management, or other
26 business service or product to any party to the consumer
27 arbitration or to any attorney for a party in the arbitration, other
28 than arbitration, mediation, or other dispute resolution services.

29 (b) Any arbitration award rendered in violation of this section
30 shall be vacated pursuant to Section 1286.2.

31 ~~is amended to read:~~

32 ~~1281.9. (a) In any arbitration pursuant to an arbitration~~
33 ~~agreement, when a person is to serve as a neutral arbitrator, the~~
34 ~~proposed neutral arbitrator shall disclose all matters which could~~
35 ~~cause a person aware of the facts to reasonably entertain a doubt~~
36 ~~that the proposed neutral arbitrator would be able to be impartial,~~
37 ~~including all of the following:~~

38 ~~(1) The existence of any ground specified in Section 170.1 for~~
39 ~~disqualification of a judge.~~



1 ~~(2) Any matters required to be disclosed by the ethics standards~~
2 ~~for neutral arbitrators adopted by the Judicial Council pursuant to~~
3 ~~this chapter.~~

4 ~~(3) The names of the parties to all prior or pending~~
5 ~~noncollective bargaining cases in which the proposed neutral~~
6 ~~arbitrator served or is serving as a party arbitrator for any party to~~
7 ~~the arbitration proceeding or for a lawyer for a party and the results~~
8 ~~of each case arbitrated to conclusion, including the date of the~~
9 ~~arbitration award, identification of the prevailing party, the names~~
10 ~~of the parties' attorneys and the amount of monetary damages~~
11 ~~awarded, if any. In order to preserve confidentiality, it shall be~~
12 ~~sufficient to give the name of any party who is not a party to the~~
13 ~~pending arbitration as "claimant" or "respondent" if the party is~~
14 ~~an individual and not a business or corporate entity.~~

15 ~~(4) The names of the parties to all prior or pending~~
16 ~~noncollective bargaining cases involving any party to the~~
17 ~~arbitration or lawyer for a party for which the proposed neutral~~
18 ~~arbitrator served or is serving as neutral arbitrator, and the results~~
19 ~~of each case arbitrated to conclusion, including the date of the~~
20 ~~arbitration award, identification of the prevailing party, the names~~
21 ~~of the parties' attorneys and the amount of monetary damages~~
22 ~~awarded, if any. In order to preserve confidentiality, it shall be~~
23 ~~sufficient to give the name of any party not a party to the pending~~
24 ~~arbitration as "claimant" or "respondent" if the party is an~~
25 ~~individual and not a business or corporate entity.~~

26 ~~(5) Any attorney-client relationship the proposed neutral~~
27 ~~arbitrator has or had with any party or lawyer for a party to the~~
28 ~~arbitration proceeding.~~

29 ~~(6) Any professional or significant personal relationship the~~
30 ~~proposed neutral arbitrator or his or her spouse or minor child~~
31 ~~living in the household has or has had with any party to the~~
32 ~~arbitration proceeding or lawyer for a party.~~

33 ~~(b) Subject only to the disclosure requirements of law, the~~
34 ~~proposed neutral arbitrator shall disclose all matters required to be~~
35 ~~disclosed pursuant to this section to all parties in writing within 10~~
36 ~~calendar days of service of notice of the proposed nomination or~~
37 ~~appointment.~~

38 ~~(c) For purposes of this section, "lawyer for a party" includes~~
39 ~~any lawyer or law firm currently associated in the practice of law~~
40 ~~with the lawyer hired to represent a party.~~



1 ~~(d) For purposes of this section, “prior cases” means~~
2 ~~noncollective bargaining cases in which an arbitration award was~~
3 ~~rendered within five years prior to the date of the proposed~~
4 ~~nomination or appointment.~~

5 ~~(e) For purposes of this section, “any arbitration” does not~~
6 ~~include an arbitration conducted pursuant to the terms of a public~~
7 ~~or private sector collective bargaining agreement.~~

