

AMENDED IN SENATE JUNE 26, 2002

AMENDED IN SENATE JUNE 20, 2002

AMENDED IN ASSEMBLY MAY 14, 2002

AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3029

Introduced by Assembly Member Steinberg

March 12, 2002

An act to amend 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, Steinberg. Consumer arbitration agreements: private arbitration 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 arbitration 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 arbitration companies or incorporates the arbitration rules of a private arbitration company, the consumer party shall have the option, as specified, after a dispute arises, to choose a different arbitrator or private arbitration

company, and the arbitration agreement shall plainly notify the consumer of this right, as specified, as well as the right to obtain information about private arbitration companies, as specified. The bill would prohibit an arbitrator or private arbitration 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 arbitration company after the dispute arises. The bill would also prohibit a private arbitration 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 arbitration 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. The bill would specify that it applies to all consumer arbitration proceedings subject to the provisions of the bill or conducted in California. The bill would also specify that the application of certain provisions of the bill to health care service plans shall become operative on January 1, 2004.

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



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

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

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

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

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

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

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

24 (4) An employee or applicant for employment in a dispute
25 arising out of, or relating to, his or her employment or prospective
26 employment, except a dispute under or arising out of a collective
27 bargaining agreement between an employer and its employees or
28 between their respective representatives.

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

31 (g) “Neutral arbitrator” means an arbitrator who is selected or
32 appointed by one of the following methods:

33 (1) Jointly by the parties or by the arbitrators selected by the
34 parties.

35 (2) By the court when the parties or the arbitrators selected by
36 the parties fail to select an arbitrator who was to be selected jointly
37 by them.

38 (3) By a private arbitration company, under an agreement of the
39 parties or applicable rules.



1 (h) “Party to the arbitration” means a party to the arbitration
2 agreement:

3 (1) Who seeks to arbitrate a controversy pursuant to the
4 agreement;

5 (2) Against whom the arbitration is sought pursuant to the
6 agreement; or

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

11 (i) “Private arbitration company” means any
12 nongovernmental entity or individual that holds itself out as
13 managing, coordinating, or administering arbitrations, or
14 providing the services of neutral arbitrators, or making referrals or
15 appointments to, or providing lists of, neutral arbitrators. “Private
16 arbitration company” includes any entity owned, in whole or in
17 part, by any individual or affiliated with, a private arbitration
18 company, but does not include ~~individuals who self-administer~~
19 ~~cases in which they are appointed~~ *individuals appointed* to serve
20 as the arbitrator; entities that administer, make referrals or
21 appointments to, or provide lists of arbitrators in, fewer than five
22 consumer arbitration cases per year; or any self-regulatory
23 organization (SRO) as defined in the Securities and Exchange Act
24 of 1934 (15 U.S.C. 78c(a)(26)) or the federal Commodity
25 Exchange Act (7 U.S.C. 1 et seq.) and regulations adopted in
26 implementation of that act.

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

30 SEC. 2. Section 1281.6 of the Code of Civil Procedure is
31 amended to read:

32 1281.6. (a) Except as provided in subdivision (b), if the
33 arbitration agreement provides a method of appointing an
34 arbitrator, that method shall be followed.

35 (b) If a consumer arbitration agreement entered into or
36 renewed on or after January 1, 2003, designates one or more
37 exclusive arbitrators, private arbitration companies, or SROs, or
38 incorporates the arbitration rules of a private arbitration company
39 or SRO, the consumer party shall have the option, after a dispute
40 arises, to choose a different arbitrator, private arbitration company,



1 or SRO, as the case may be, and the arbitration agreement shall
2 plainly notify the consumer of this right, as well as of the right to
3 obtain information about private arbitration companies as
4 provided by Section 1281.96 in the arbitration clause. This notice
5 shall also be provided to the consumer party by the private
6 arbitration company in the first communication from the private
7 arbitration company to the consumer party regarding the
8 arbitration, and in the rules of procedure governing the arbitration.
9 The option to choose a different arbitrator or private arbitration
10 company may be exercised by the consumer party within 75 days
11 from the date the consumer party serves a demand for arbitration,
12 the nonconsumer party serves a demand for arbitration specifying
13 an arbitrator, private arbitration company, or SRO, or a court
14 issues an order compelling arbitration. No consumer arbitration
15 may be self-administered by a party. No arbitrator or private
16 arbitration company may administer or otherwise participate in a
17 consumer arbitration unless the arbitration agreement complies
18 with this subdivision and the consumer chooses the arbitrator,
19 private arbitration company, or SRO after the dispute arises, or
20 fails to timely exercise the option to choose another arbitrator,
21 private arbitration company, or SRO. Any arbitration award
22 rendered in violation of this section shall be vacated at the request
23 of the consumer party pursuant to Section 1286.2. This
24 subdivision shall apply to all consumer arbitration agreements
25 subject to this article, and to all consumer arbitration proceedings
26 conducted in California.

27 (c) If the arbitration agreement does not provide a method for
28 appointing an arbitrator, the parties to the agreement who seek
29 arbitration and against whom arbitration is sought may agree on
30 a method of appointing an arbitrator and that method shall be
31 followed.

32 (d) In the absence of an agreed method, or if the agreed method
33 fails or for any reason cannot be followed, or if an arbitrator
34 appointed fails to act and his or her successor has not been
35 appointed, the court, on petition of a party to the arbitration
36 agreement, shall appoint the arbitrator.

37 (e) If a petition is made to the court to appoint a neutral
38 arbitrator, the court shall nominate five persons from lists of
39 persons supplied jointly by the parties to the arbitration or obtained
40 from a governmental agency concerned with arbitration or a



1 private disinterested association concerned with arbitration. The
2 parties to the agreement who seek arbitration and against whom
3 arbitration is sought may within five days of receipt of notice of
4 the nominees from the court jointly select the arbitrator whether
5 or not the arbitrator is among the nominees. If the parties fail to
6 select an arbitrator within the five-day period, the court shall
7 appoint the arbitrator from the nominees.

8 SEC. 3. Section 1281.89 is added to the Code of Civil
9 Procedure, to read:

10 1281.89. (a) A solicitation regarding an existing or future
11 consumer arbitration case may not be made by or on behalf of a
12 private arbitration company to any party, prospective party, or
13 attorney for a party or prospective party, unless the solicitation is
14 protected from abridgment by the Constitution of the United States
15 or by the Constitution of the State of California.

16 (b) For the purpose of this section, solicitation includes an oral
17 or written request for arbitration business. Nothing in this section
18 prohibits a private arbitration company from indicating a general
19 willingness to serve as a private arbitration company.

20 (c) A private arbitration company may not make any
21 representation regarding consumer arbitration that promises or
22 implies specific results or favoritism towards one party or
23 prospective party or one type of disputant or industry.

24 (d) A private arbitration company may not adopt or enforce any
25 rule governing consumer arbitration that is inconsistent with any
26 statement of principle, guideline, protocol, or other nonbinding
27 policy representation regarding consumer arbitration made or
28 adopted by the private arbitration company. A private arbitration
29 company may not adopt any statement of principle, guideline,
30 protocol, or other nonbinding policy statement regarding
31 consumer arbitration that is inconsistent with the rules under
32 which consumer arbitration is actually conducted or administered
33 by the private arbitration company.

34 (e) A private arbitration company may not give or receive any
35 commission, rebate, or other remuneration for the referral of
36 consumer arbitration cases, prospective consumer arbitration
37 cases, consumer arbitration parties, or prospective consumer
38 arbitration parties.



1 (f) This section applies to all consumer arbitration agreements
2 subject to this article, and to all consumer arbitration proceedings
3 conducted in California.

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

6 1281.93. (a) A private arbitration company may not
7 administer a consumer arbitration if, on or after January 1, 2003,
8 it has provided any paid or unpaid consulting, management, or
9 other business service or product to any party to the consumer
10 arbitration or to any attorney for a party in the arbitration, other
11 than arbitration, mediation, or other methods of resolving specific,
12 identified disputes. Nothing in this section prohibits a private
13 arbitration company from conducting training programs regarding
14 the arbitration or mediation process in general, ~~provided that these~~
15 ~~programs do not create the appearance of a potential conflict of~~
16 ~~interest.~~

17 (b) Any arbitration award rendered in an arbitration
18 administered by a private arbitration company in violation of this
19 section shall be vacated at the request of the consumer party
20 pursuant to Section 1286.2.

21 (c) This section applies to all consumer arbitration agreements
22 subject to this article, and to all consumer arbitration proceedings
23 conducted in California.

24 SEC. 5. The exclusion of self-regulatory organizations from
25 the definition of private arbitration company in Section 1280 of the
26 Code of Civil Procedure is not intended to affect the application
27 to SROs of the arbitrator ethics standards promulgated by the
28 Judicial Council pursuant to Section 1281.85 of the Code of Civil
29 Procedure, because this act does not relate to those issues. This act
30 may not be given retroactive effect with respect to the definitions
31 set forth in Section 1280 of the Code of Civil Procedure.

32 SEC. 6. The obligation under Section 1281.6 of the Code of
33 Civil Procedure to notify consumers of their rights in the
34 arbitration agreement shall become operative *on January 1, 2004*,
35 as to health care service plans regulated by the Department of
36 Managed Health Care ~~on January 1, 2004~~.

