

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN SENATE APRIL 16, 2001

SENATE BILL

No. 475

Introduced by Senator Escutia

February 22, 2001

An act to amend Sections 639, 1281.6, 1281.9, and 1286.2 of, and to add ~~Section 640.5~~ *Sections 640.5, 1281.85, and 1281.91* to, the Code of Civil Procedure, relating to dispute resolution.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Escutia. Dispute resolution: referees and arbitrators.

Existing law provides that when the parties to an action do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in certain cases.

This bill would specifically provide that the appointment shall be subject to the procedures specified in a provision of existing law.

Existing law requires the Judicial Council to collect specified information on the use of references in certain cases in which the parties do not consent to the appointment of a referee and to make a specified report thereof to the Legislature by January 1, 2003.

This bill would also require the Judicial Council to collect specified information from the trial courts on the use of referees in discovery matters whether appointed upon agreement of the parties or when the parties do not consent. Further, this bill would require the Judicial Council to report thereon to the Legislature by January 1, 2004.

Existing law ~~provides that a written agreement to submit to arbitration is valid.~~ Existing law establishes standards for arbitration.

This bill would require ~~that, beginning July 1, 2002,~~ arbitrators ~~must~~ to comply with ethical standards adopted by the Judicial Council *beginning July 1, 2002*. This bill would also require the Judicial Council, consistent with the standards established for arbitrators in the judicial arbitration program, to adopt ethics standards that address the disclosure of ~~actual and potential~~ conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, the acceptance of gifts, and the establishment of future professional relationships. *The bill would also specify the grounds upon which a proposed neutral arbitrator may be disqualified.*

Existing law requires the court to vacate an arbitration award if the arbitrator, upon receipt of a timely demand, fails to disqualify ~~themselves~~ *himself or herself* from the proceedings.

This bill would *also* require the courts ~~also~~ to dismiss an arbitration award if the arbitrator failed to disclose, within the time required for disclosure, grounds for disqualification of which the arbitrator was ~~than~~ *then* aware.

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

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

1 SECTION 1. Section 639 of the Code of Civil Procedure is
2 amended to read:

3 639. (a) When the parties do not consent, the court may, upon
4 the written motion of any party, or of its own motion, appoint a
5 referee in the following cases pursuant to the provisions of
6 subdivision (b) of Section 640:

7 (1) When the trial of an issue of fact requires the examination
8 of a long account on either side; in which case the referees may be
9 directed to hear and decide the whole issue, or report upon any
10 specific question of fact involved therein.

11 (2) When the taking of an account is necessary for the
12 information of the court before judgment, or for carrying a
13 judgment or order into effect.

14 (3) When a question of fact, other than upon the pleadings,
15 arises upon motion or otherwise, in any stage of the action.

16 (4) When it is necessary for the information of the court in a
17 special proceeding.



1 (5) When the court in any pending action determines that it is
2 necessary for the court to appoint a referee to hear and determine
3 any and all discovery motions and disputes relevant to discovery
4 in the action and to report findings and make a recommendation
5 thereon.

6 (b) In a discovery matter, a motion to disqualify an appointed
7 referee pursuant to Section 170.6 shall be made to the court by a
8 party either:

9 (A) Within 10 days after notice of the appointment, or if the
10 party has not yet appeared in the action, a motion shall be made
11 within 10 days after the appearance, if a discovery referee has been
12 appointed for all discovery purposes.

13 (B) At least five days before the date set for hearing, if the
14 referee assigned is known at least 10 days before the date set for
15 hearing and the discovery referee has been assigned only for
16 limited discovery purposes.

17 (c) When a referee is appointed pursuant to paragraph (5) of
18 subdivision (a), the order shall indicate whether the referee is
19 being appointed for all discovery purposes in the action.

20 (d) All appointments of referees pursuant to this section shall
21 be by written order and shall include the following:

22 (1) When the referee is appointed pursuant to paragraph (1),
23 (2), (3), or (4) of subdivision (a), a statement of the reason the
24 referee is being appointed.

25 (2) When the referee is appointed pursuant to paragraph (5) of
26 subdivision (a), the exceptional circumstances requiring the
27 reference, which must be specific to the circumstances of the
28 particular case.

29 (3) The subject matter or matters included in the reference.

30 (4) The name, business address, and telephone number of the
31 referee.

32 (5) The maximum hourly rate the referee may charge and, at the
33 request of any party, the maximum number of hours for which the
34 referee may charge. Upon the written application of any party or
35 the referee, the court may, for good cause shown, modify the
36 maximum number of hours subject to any findings as set forth in
37 paragraph (6).

38 (6) (A) Either a finding that no party has established an
39 economic inability to pay a pro rata share of the referee's fee or a
40 finding that one or more parties has established an economic



1 inability to pay a pro rata share of the referee's fees and that another
2 party has agreed voluntarily to pay that additional share of the
3 referee's fee. A court shall not appoint a referee at a cost to the
4 parties if neither of these findings is made.

5 (B) In determining whether a party has established an inability
6 to pay the referee's fees under subparagraph (A), the court shall
7 consider only the ability of the party, not the party's counsel, to pay
8 these fees. If a party is proceeding in forma pauperis, the party
9 shall be deemed by the court to have an economic inability to pay
10 the referee's fees. However, a determination of economic inability
11 to pay the fees shall not be limited to parties that proceed in forma
12 pauperis. For those parties who are not proceeding in forma
13 pauperis, the court, in determining whether a party has established
14 an inability to pay the fees, shall consider, among other things, the
15 estimated cost of the referral and the impact of the proposed fees
16 on the party's ability to proceed with the litigation.

17 (e) In any matter in which a referee is appointed pursuant to
18 paragraph (5) of subdivision (a), a copy of the order appointing the
19 referee shall be forwarded to the office of the presiding judge of
20 the court. The Judicial Council shall, by rule, collect information
21 on the use of these references and the reference fees charged to
22 litigants, and shall report thereon to the Legislature by January 1,
23 2003. This subdivision shall become inoperative on January 1,
24 2004.

25 SEC. 2. Section 640.5 is added to the Code of Civil Procedure,
26 to read:

27 640.5. It is the intent of the Legislature that the practice and
28 cost of referring discovery disputes to outside referees be
29 thoroughly reviewed. Therefore, in addition to the requirements of
30 subdivision (e) of Section 639, the Judicial Council shall collect
31 information from the trial courts on the use of referees in discovery
32 matters pursuant to either Sections 638 and 639. The collected data
33 shall include information on the number of referees, the cost to the
34 parties, and the time spent by the discovery referee. The Judicial
35 Council shall report thereon to the Legislature by January 1, 2004.

36 SEC. 3. Section 1281.6 of the Code of Civil Procedure is
37 amended to read:

38 1281.6. If the arbitration agreement provides a method of
39 appointing an arbitrator, that method shall be followed. If the
40 arbitration agreement does not provide a method for appointing an



1 arbitrator, the parties to the agreement who seek arbitration and
2 against whom arbitration is sought may agree on a method of
3 appointing an arbitrator and that method shall be followed. In the
4 absence of an agreed method, or if the agreed method fails or for
5 any reason cannot be followed, or when an arbitrator appointed
6 fails to act and his or her successor has not been appointed, the
7 court, on petition of a party to the arbitration agreement, shall
8 appoint the arbitrator.

9 When a petition is made to the court to appoint a neutral
10 arbitrator, the court shall nominate five persons from lists of
11 persons supplied jointly by the parties to the arbitration or obtained
12 from a governmental agency concerned with arbitration or private
13 disinterested association concerned with arbitration. The parties to
14 the agreement who seek arbitration and against whom arbitration
15 is sought may within five days of receipt of notice of the nominees
16 from the court jointly select the arbitrator whether or not the
17 arbitrator is among the nominees. If the parties fail to select an
18 arbitrator within the five-day period, the court shall appoint the
19 arbitrator from the nominees.

20 SEC. 4. *Section 1281.85 is added to the Code of Civil*
21 *Procedure, to read:*

22 *1281.85. Beginning July 1, 2002, a person serving as a*
23 *neutral arbitrator pursuant to an arbitration agreement shall*
24 *comply with the ethics standards for arbitrators adopted by the*
25 *Judicial Council pursuant to this section. The Judicial Council*
26 *shall adopt ethical standards for all neutral arbitrators effective*
27 *July 1, 2002. These standards shall be consistent with the*
28 *standards established for arbitrators in the judicial arbitration*
29 *program and may expand but shall not limit the disclosure and*
30 *disqualification requirements established by this chapter. The*
31 *standards shall address the disclosure of interests, relationships,*
32 *or affiliations that may constitute conflicts of interest, including*
33 *prior service as an arbitrator or other dispute resolution neutral*
34 *entity, disqualifications, acceptance of gifts, and establishment of*
35 *future professional relationships.*

36 SEC. 5. Section 1281.9 of the Code of Civil Procedure is
37 amended to read:

38 1281.9. (a) In any arbitration pursuant to an arbitration
39 agreement, when a person is to serve as a neutral arbitrator, ~~that~~
40 ~~person shall:~~



1 ~~(1) Comply with the disclosure and disqualification~~
2 ~~requirements established by this section.~~

3 ~~(2) Comply with the requirements of subdivision (a) of Section~~
4 ~~1297.121.~~

5 ~~(3) Beginning July 1, 2002, comply with the ethics standards~~
6 ~~for arbitrators adopted by the Judicial Council pursuant to this~~
7 ~~section. The Judicial Council shall adopt ethics standards effective~~
8 ~~July 1, 2002, applicable to all arbitrators who are subject to this~~
9 ~~section. The standards adopted by the Judicial Council shall~~
10 ~~address the disclosure of actual and potential conflicts of interest,~~
11 ~~including prior service as an arbitrator or other dispute resolution~~
12 ~~neutral entity, disqualifications, acceptance of gifts, and~~
13 ~~establishment of future professional relationships. These~~
14 ~~standards shall be consistent with the standards established for~~
15 ~~arbitrators in the judicial arbitration program and may expand but~~
16 ~~shall not contract the disclosure and disqualification requirements~~
17 ~~established by this chapter.~~

18 ~~(b) Subject only to the disclosure requirements of law, the~~
19 ~~proposed neutral arbitrator shall disclose in writing within 10~~
20 ~~calendar days of service of notice of the proposed nomination or~~
21 ~~appointment, to all parties, all of the following:~~

22 ~~(1) the proposed neutral arbitrator shall disclose all matters~~
23 ~~that could cause a person aware of the facts to reasonably doubt~~
24 ~~the proposed neutral arbitrator's ability to conduct the arbitration~~
25 ~~proceedings impartially, including of all following:~~

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

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

31 (3) The names of the parties to all prior or pending
32 noncollective bargaining cases in which the proposed neutral
33 arbitrator served or is serving as a party arbitrator for any party to
34 the arbitration proceeding or for a lawyer for a party and the results
35 of each case arbitrated to conclusion, including the date of the
36 arbitration award, identification of the prevailing party, the names
37 of the parties' attorneys and the amount of monetary damages
38 awarded, if any. In order to preserve confidentiality, it shall be
39 sufficient to give the name of any party who is not a party to the



1 pending arbitration as “claimant” or “respondent” if the party is
2 an individual and not a business or corporate entity.

3 ~~(2)~~

4 (4) The names of the parties to all prior or pending
5 noncollective bargaining cases involving any party to the
6 arbitration or lawyer for a party for which the proposed neutral
7 arbitrator served or is serving as neutral arbitrator, 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 not a party to the pending
13 arbitration as “claimant” or “respondent” if the party is an
14 individual and not a business or corporate entity.

15 ~~(3)~~

16 (5) Any attorney-client relationship the proposed neutral
17 arbitrator has or had with any party or lawyer for a party to the
18 arbitration proceeding.

19 ~~(4)~~

20 (6) Any professional or significant personal relationship the
21 proposed neutral arbitrator or his or her spouse or minor child
22 living in the household has or has had with any party to the
23 arbitration proceeding or lawyer for a party.

24 ~~(e) A proposed neutral arbitrator shall be disqualified if he or~~
25 ~~she fails to comply with subdivision (b) and any party entitled to~~
26 ~~receive the disclosure serves a notice of disqualification within 15~~
27 ~~calendar days after the proposed nominee or appointee fails to~~
28 ~~comply with subdivision (b). A proposed neutral arbitrator shall~~
29 ~~be deemed to have complied with subdivision (b) with respect to~~
30 ~~any arbitration commenced prior to January 1, 1995, if the person~~
31 ~~declares in writing that he or she has disclosed all required~~
32 ~~information pertaining to those arbitrations within his or her~~
33 ~~knowledge or possession and has made a good faith effort to obtain~~
34 ~~the required information from any arbitration service~~
35 ~~administering those prior cases.~~

36 ~~(d) (1) If the proposed neutral arbitrator complies with~~
37 ~~subdivision (b), the proposed neutral arbitrator shall be~~
38 ~~disqualified on the basis of the disclosure statement after any party~~
39 ~~entitled to receive the disclosure serves a notice of~~



1 ~~disqualification, within 15 calendar days after service of the~~
2 ~~disclosure statement.~~

3 ~~(2) A party shall have the right to disqualify one~~
4 ~~court-appointed arbitrator without cause in any one arbitration,~~
5 ~~and may petition the court to disqualify a subsequent appointee~~
6 ~~only upon a showing of cause.~~

7 ~~(e) The right of a party to disqualify a proposed neutral~~
8 ~~arbitrator pursuant to this section shall be waived if the party fails~~
9 ~~to serve the notice pursuant to the times set forth in this section,~~
10 ~~unless the proposed nominee or appointee makes a material~~
11 ~~omission or material misrepresentation in his or her disclosure. In~~
12 ~~no event may a notice of disqualification be given after a hearing~~
13 ~~of any contested issue of fact relating to the merits of the claim or~~
14 ~~after any ruling by the arbitrator regarding any contested matter.~~
15 ~~Nothing in this subdivision shall limit the right of a party to vacate~~
16 ~~an award pursuant to Section 1286.2, or to disqualify an arbitrator~~
17 ~~pursuant to any other law or statute.~~

18 ~~(f) An arbitrator shall disclose to all parties the existence of any~~
19 ~~grounds specified in Section 170.1 for disqualification of a judge;~~
20 ~~and, if any such ground exists, shall disqualify himself or herself~~
21 ~~upon demand of any party made before the conclusion of the~~
22 ~~arbitration proceeding. However, this subdivision does not apply~~
23 ~~to arbitration proceedings conducted under a collective bargaining~~
24 ~~agreement between employers and employees or their respective~~
25 ~~representatives.~~

26 ~~(g)~~

27 ~~(b) Subject only to the disclosure requirements of law, the~~
28 ~~proposed neutral arbitrator shall disclose all matters required to~~
29 ~~be disclosed pursuant to this section to all parties in writing within~~
30 ~~10 calendar days of service of notice of the proposed nomination~~
31 ~~or appointment.~~

32 ~~(c) For purposes of this section, “lawyer for a party” includes~~
33 ~~any lawyer or law firm currently associated in the practice of law~~
34 ~~with the lawyer hired to represent a party.~~

35 ~~(h) For purposes of this section, “prior cases” means~~
36 ~~noncollective bargaining cases in which an arbitration award was~~
37 ~~rendered within one of the following time periods:~~

38 ~~(1) Three years prior to the date of the proposed nomination or~~
39 ~~appointment if the proposed nomination or appointment occurs on~~
40 ~~or between January 1, 1995, and December 31, 1995.~~



1 ~~(2) Four years prior to the date of the proposed nomination or~~
2 ~~appointment if the proposed nomination or appointment occurs on~~
3 ~~or between January 1, 1996, and December 31, 1996.~~

4 ~~(3) Five years prior to the date of the proposed nomination or~~
5 ~~appointment if the proposed nomination or appointment occurs on~~
6 ~~or after January 1, 1997.~~

7 ~~(i)~~

8 *(d) For purposes of this section, “prior cases” means*
9 *noncollective bargaining cases in which an arbitration award was*
10 *rendered within five years prior to the date of the proposed*
11 *nomination or appointment.*

12 *(e) For purposes of this section, “any arbitration” does not*
13 *include an arbitration conducted pursuant to the terms of a public*
14 *or private sector collective bargaining agreement.*

15 ~~SEC. 5.~~

16 *SEC. 6. Section 1281.91 is added to the Code of Civil*
17 *Procedure, to read:*

18 *1281.91. (a) A proposed neutral arbitrator shall be*
19 *disqualified if he or she fails to comply with Section 1281.9 and*
20 *any party entitled to receive the disclosure serves a notice of*
21 *disqualification within 15 calendar days after the proposed*
22 *nominee or appointee fails to comply with Section 1281.9.*

23 *(b) (1) If the proposed neutral arbitrator complies with*
24 *Section 1281.9, the proposed neutral arbitrator shall be*
25 *disqualified on the basis of the disclosure statement after any party*
26 *entitled to receive the disclosure serves a notice of disqualification*
27 *within 15 calendar days after service of the disclosure statement.*

28 *(2) A party shall have the right to disqualify one*
29 *court-appointed arbitrator without cause in any single*
30 *arbitration, and may petition the court to disqualify a subsequent*
31 *appointee only upon a showing of cause.*

32 *(c) Except as provided in subdivision (d), the right of a party to*
33 *disqualify a proposed neutral arbitrator pursuant to this section*
34 *shall be waived if the party fails to serve the notice pursuant to the*
35 *times set forth in this section, unless the proposed nominee or*
36 *appointee makes a material omission or material*
37 *misrepresentation in his or her disclosure. In no event may a notice*
38 *of disqualification be given after a hearing of any contested issue*
39 *of fact relating to the merits of the claim or after any ruling by the*
40 *arbitrator regarding any contested matter. Nothing in this*



1 *subdivision shall limit the right of a party to vacate an award*
2 *pursuant to Section 1286.2, or to disqualify an arbitrator pursuant*
3 *to any other law or statute.*

4 *(d) If any ground specified in Section 170.1 exists, an arbitrator*
5 *shall disqualify himself or herself upon the demand of any party*
6 *made before the conclusion of the arbitration proceeding.*
7 *However, this subdivision does not apply to arbitration*
8 *proceedings conducted under a collective bargaining agreement*
9 *between employers and employees or their respective*
10 *representatives.*

11 *SEC. 7.* Section 1286.2 of the Code of Civil Procedure is
12 amended to read:

13 1286.2. Subject to Section 1286.4, the court shall vacate the
14 award if the court determines any of the following:

15 (a) The award was procured by corruption, fraud or other
16 undue means.

17 (b) There was corruption in any of the arbitrators.

18 (c) The rights of the party were substantially prejudiced by
19 misconduct of a neutral arbitrator.

20 (d) The arbitrators exceeded their powers and the award cannot
21 be corrected without affecting the merits of the decision upon the
22 controversy submitted.

23 (e) The rights of the party were substantially prejudiced by the
24 refusal of the arbitrators to postpone the hearing upon sufficient
25 cause being shown therefor or by the refusal of the arbitrators to
26 hear evidence material to the controversy or by other conduct of
27 the arbitrators contrary to the provisions of this title.

28 (f) An arbitrator making the award was subject to
29 disqualification upon grounds specified in Section 1281.9, but
30 either: (1) failed to disclose within the time required for disclosure
31 a ground for disqualification of which the arbitrator was then
32 aware; or (2) failed upon receipt of timely demand to disqualify
33 himself or herself as required by that provision. However, this
34 subdivision does not apply to arbitration proceedings conducted
35 under a collective bargaining agreement between employers and
36 employees or between their respective representatives.

