

AMENDED IN ASSEMBLY APRIL 28, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1715

Introduced by Committee on Judiciary (Corbett (Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

(Coauthors: Senators Burton, Escutia, and Kuehl)

February 26, 2003

An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 12952 to the Government Code, relating to employment arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Committee on Judiciary. Employment arbitration agreements.

Existing law provides that written agreements to submit controversies to arbitration are valid and enforceable.

This bill would invalidate arbitration agreements between employers and employees that relate to employment practices covered by the Fair Employment and Housing Act (FEHA) that are required as a condition of employment or continued employment. It would further establish that on and after January 1, 2004, any waiver of rights or procedures under the FEHA must be knowing, voluntary, and not made as a condition of employment or continued employment. The bill also provides that an employer has the burden to prove that a waiver or

arbitration agreement was knowing, voluntary, and not a condition of employment or continued employment.

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. The Legislature finds and declares that it is the
2 public policy of the State of California to ensure that employees
3 have the full benefit of the rights and procedures contained in the
4 Fair Employment and Housing Act and that employees not be
5 deprived of those rights or ~~protections~~ *procedures* by the use of
6 coerced and involuntary waivers. It is the purpose of this act to
7 ensure that any agreement between an employer and employee to
8 waive any rights or procedures under the FEHA, including any
9 agreement to arbitrate any claim arising under the FEHA , is a
10 matter of voluntary consent and not coercion.

11 The Legislature finds and declares that involuntary arbitration
12 provisions that limit an employee’s access to the Department of
13 Fair Employment and Housing or limit the authority of the
14 department to investigate and pursue meritorious claims of
15 discrimination as a condition of employment or continued
16 employment are against the public policy of this state.

17 SEC. 2. Section 1281 of the Code of Civil Procedure is
18 amended to read:

19 1281. (a) Except as provided in subdivision (b), a written
20 agreement to submit to arbitration an existing controversy or a
21 controversy thereafter arising is valid, enforceable, and
22 irrevocable, save upon grounds that exist for the revocation of any
23 contract.

24 (b) Subdivision (a) does not apply to any arbitration agreement
25 between an employer and employee that violates Section 12952 of
26 the Government Code.

27 SEC. 3. Section 12952 is added to the Government Code, to
28 read:

29 12952. (a) It is an unlawful employment practice, on or after
30 January 1, 2004, for an employer subject to this part to require as
31 a condition of employment or continued employment that an
32 employee or potential employee waive any rights or procedures
33 provided for in this part, including, but not limited to, the right to



1 file a complaint with the department pursuant to Section 12960 or
2 the right to file and pursue a civil action pursuant to Section 12965.

3 (b) It is an unlawful employment practice, on or after January
4 1, 2004, for an employer, as defined in subdivision (d) of Section
5 12926, to refuse to hire, harass, discharge, expel, or otherwise
6 discriminate against an employee or potential employee because
7 he or she refuses to waive rights or procedures provided for in this
8 part.

9 (c) Any waiver of rights or procedures provided under the Fair
10 Employment and Housing Act must be knowing, voluntary, and
11 not made a condition of employment or continued employment.

12 Any such waiver, including an agreement to arbitrate a FEHA
13 claim, that is required as a condition of employment or continued
14 employment in violation of subdivision (a), shall be deemed
15 involuntary, unconscionable, against public policy, and
16 unenforceable.

17 (d) The employer has the burden of proving that any waiver of
18 rights or procedures provided under the Fair Employment and
19 Housing Act, including any agreement to arbitrate a claim under
20 the FEHA, was knowing, voluntary, and not made a condition of
21 employment or continued employment. This subdivision shall
22 apply to any agreement to *waive any rights or procedures under the*
23 *FEHA, including an agreement to arbitrate* ~~an~~ *a FEHA claim that*
24 *is entered into, altered, modified, renewed, or extended on or after*
25 *January 1, 2004.*

