

ASSEMBLY BILL

No. 456

Introduced by Assembly Member Wagner

February 15, 2011

An act to amend Sections 1281.4 of, and to amend and repeal Section 1281.5 of, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 456, as introduced, Wagner. Arbitration: self-executing arbitration agreements.

(1) Existing law requires a court in this state, upon motion of a party to an action or proceeding, to stay the action or proceeding if another court has issued an order to arbitrate a controversy that is also an issue pending before the state court until the arbitration is conducted in accordance with the court's order or an earlier time specified by the court. Existing law also requires a state court, upon motion of a party, to stay an action or proceeding that is pending before the court if an application has been made in another court for an order to arbitrate a controversy that is an issue in the action or proceeding pending in the court, until the court determines whether to issue an order to arbitrate and, if the court issues an order to arbitrate, until the arbitration is conducted in accordance with the court's order or an earlier time specified by the court.

This bill would require a court also to stay an action or proceeding, upon motion of a party to the action, until arbitration is conducted in accordance with a self-executing agreement to arbitrate, as specified, or an earlier time specified by the court.

(2) Existing law provides that any person who records and enforces a mechanic's lien does not waive any right of arbitration if the person

takes certain measures. Existing law also provides that a defendant waives his or her right to compel arbitration if the defendant does not file a petition to arbitrate at or before the time the defendant answers a complaint to enforce a mechanic’s lien.

This bill would provide that a defendant’s right to arbitrate would also be waived if the defendant fails to commence arbitration pursuant to a self-executing agreement to arbitrate at or before the time of filing an answer.

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 1281.4 of the Code of Civil Procedure
 2 is amended to read:
 3 1281.4. (a) If a court of competent jurisdiction, ~~whether in~~
 4 ~~this State or not, in any state~~ has ordered arbitration of a
 5 controversy ~~which that~~ is an issue ~~involved~~ in an action or
 6 proceeding pending before a court of this ~~State~~ *state*, the court in
 7 which ~~such~~ *the* action or proceeding is pending shall, upon motion
 8 of a party to ~~such~~ *the* action or proceeding, stay the action or
 9 proceeding until ~~an~~ *the* arbitration is ~~had~~ *conducted* in accordance
 10 with the *court’s* order ~~to arbitrate~~, or until ~~such~~ *an* earlier time ~~as~~
 11 *specified* by the court ~~specifies~~.
 12 If
 13 (b) *If* an application has been made to a court of competent
 14 jurisdiction, ~~whether in this State or not, in any state~~ for an order
 15 to arbitrate a controversy ~~which that~~ is an issue ~~involved~~ in an
 16 action or proceeding pending before a court of this ~~State~~ *and such*
 17 ~~application is undetermined~~ *state*, the court in which ~~such~~ *the*
 18 action or proceeding is pending shall, upon motion of a party to
 19 ~~such~~ *the* action or proceeding, stay the action or proceeding until
 20 ~~the application for court determines whether to issue~~ an order to
 21 arbitrate ~~is determined~~ and, if arbitration ~~of such~~ *controversy* is
 22 ordered, until ~~an~~ *the* arbitration is ~~had~~ *conducted* in accordance
 23 with the *court’s* order ~~to arbitrate~~, or until ~~such~~ *an* earlier time ~~as~~
 24 *specified* by the court ~~specifies~~.
 25 (c) *If the parties to an action or proceeding before a court of*
 26 *this state have entered into a self-executing agreement to arbitrate*
 27 *with respect to a controversy that is an issue in the action or*

1 *proceeding, the court in which the action or proceeding is pending*
2 *shall, upon motion of a party, stay the action or proceeding until*
3 *the arbitration is conducted in accordance with the self-executing*
4 *agreement to arbitrate, or until an earlier time specified by the*
5 *court.*

6 ¶

7 (d) *If the issue which is the controversy subject to arbitration is*
8 *severable, the stay may be with respect to that issue only.*

9 (e) *As used in this chapter, an agreement to arbitrate is*
10 *self-executing if it provides for arbitration under rules incorporated*
11 *in the agreement.*

12 SEC. 2. Section 1281.5 of the Code of Civil Procedure, as
13 amended by Section 1 of Chapter 22 of the Statutes of 2003, is
14 amended to read:

15 1281.5. (a) Any person who proceeds to record and enforce a
16 claim of lien by commencement of an action pursuant to Title 15
17 (commencing with Section 3082) of Part 4 of Division 3 of the
18 Civil Code, does not thereby waive any right of arbitration the
19 person may have pursuant to a written agreement to arbitrate, if,
20 in filing an action to enforce the claim of lien, the claimant does
21 either of the following:

22 (1) Includes an allegation in the complaint that the claimant
23 does not intend to waive any right of arbitration, and intends to
24 move the court, within 30 days after service of the summons and
25 complaint, for an order to stay further proceedings in the action.

26 (2) At the same time that the complaint is filed, the claimant
27 files an application that the action be stayed pending the arbitration
28 of any issue, question, or dispute that is claimed to be arbitrable
29 under the agreement and that is relevant to the action to enforce
30 the claim of lien.

31 (b) Within 30 days after service of the summons and complaint,
32 the claimant shall file and serve a motion and notice of motion
33 pursuant to Section 1281.4 to stay the action pending the arbitration
34 of any issue, question, or dispute that is claimed to be arbitrable
35 under the agreement and that is relevant to the action to enforce
36 the claim of lien. The failure of a claimant to comply with this
37 subdivision is a waiver of the claimant's right to compel arbitration.

38 (c) The failure of a defendant *either* to file a petition pursuant
39 to Section 1281.2 *or to commence arbitration pursuant to a*
40 *self-executing agreement to arbitrate* at or before the time the

1 defendant answers the complaint filed pursuant to subdivision (a)
2 is a waiver of the defendant’s right to compel arbitration.

3 (d) *This section shall become inoperative on July 1, 2012, and,*
4 *as of January 1, 2013, is repealed, unless a later enacted statute,*
5 *that becomes operative on or before January 1, 2013, deletes or*
6 *extends the dates on which it becomes inoperative and is repealed.*

7 SEC. 3. Section 1281.5 of the Code of Civil Procedure, as
8 amended by Section 25 of Chapter 697 of the Statutes of 2010, is
9 amended to read:

10 1281.5. (a) Any person who proceeds to record and enforce a
11 claim of lien by commencement of an action pursuant to Chapter
12 4 (commencing with Section 8400) of Title 2 of Part 6 of Division
13 4 of the Civil Code, does not thereby waive any right of arbitration
14 the person may have pursuant to a written agreement to arbitrate,
15 if, in filing an action to enforce the claim of lien, the claimant does
16 either of the following:

17 (1) Includes an allegation in the complaint that the claimant
18 does not intend to waive any right of arbitration, and intends to
19 move the court, within 30 days after service of the summons and
20 complaint, for an order to stay further proceedings in the action.

21 (2) At the same time that the complaint is filed, the claimant
22 files an application that the action be stayed pending the arbitration
23 of any issue, question, or dispute that is claimed to be arbitrable
24 under the agreement and that is relevant to the action to enforce
25 the claim of lien.

26 (b) Within 30 days after service of the summons and complaint,
27 the claimant shall file and serve a motion and notice of motion
28 pursuant to Section 1281.4 to stay the action pending the arbitration
29 of any issue, question, or dispute that is claimed to be arbitrable
30 under the agreement and that is relevant to the action to enforce
31 the claim of lien. The failure of a claimant to comply with this
32 subdivision is a waiver of the claimant’s right to compel arbitration.

33 (c) The failure of a defendant *either* to file a petition pursuant
34 to Section 1281.2 *or to commence arbitration pursuant to a*
35 *self-executing agreement to arbitrate* at or before the time the
36 defendant answers the complaint filed pursuant to subdivision (a)
37 is a waiver of the defendant’s right to compel arbitration.

38 (d) *This section shall become operative on July 1, 2012.*

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