

AMENDED IN ASSEMBLY APRIL 12, 2011

AMENDED IN ASSEMBLY MARCH 17, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 456

Introduced by Assembly Member Wagner

February 15, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 456, as amended, Wagner. Arbitration: ~~action to record and enforce a mechanics lien~~. *liens*.

Existing law requires a court in this state, upon motion of a party to an action or proceeding, to stay an 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. A state court is also required to stay an action if an application has been made in another court for an order to arbitrate a controversy until the other court determines whether to issue an order to arbitrate and, if the court issues an order to arbitrate, until the arbitration is conducted.

Existing law provides that, in an action to record and enforce a mechanics lien, a person does not waive any right of arbitration if the person takes certain measures, including filing and serving a motion to stay the action pending arbitration within 30 days, as specified.

This bill would authorize the claimant to make a motion to stay the action pending arbitration even if an application for an order to arbitrate has not been filed, *unless a party opposes the motion and the court makes certain findings*.

Existing law specifies that a defendant’s failure to file a petition to arbitrate is a waiver of his or her right to arbitrate.

This bill would specify that the defendant’s failure to either file the petition or to demand arbitration pursuant to an agreement constitutes a waiver of his or her right to arbitrate.

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 1281.5 of the Code of Civil Procedure,
 2 as amended by Section 1 of Chapter 22 of the Statutes of 2003, is
 3 amended to read:

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

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

15 (2) At the same time that the complaint is filed, the claimant
 16 files ~~an application~~ *a motion* that the action be stayed pending the
 17 arbitration of any issue, question, or dispute that is claimed to be
 18 arbitrable under the agreement and that is relevant to the action to
 19 enforce the claim of lien.

20 (b) Within 30 days after service of the summons and complaint,
 21 the claimant shall file and serve a motion and notice of motion
 22 pursuant to Section 1281.4 to stay the action 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. Notwithstanding Section 1281.4, the claimant
 26 may make a motion to stay the action pending arbitration even if
 27 none of the parties to the action has filed an application for an
 28 order to arbitrate the controversy, *provided that, if any party*
 29 *opposes the motion to stay the action on the ground that the party*
 30 *objects to arbitration of the dispute, the court shall determine*

1 *whether the claim of lien or any relevant issue, question, or dispute*
2 *is subject to arbitration before staying the action.* The failure of
3 a claimant to comply with this subdivision is a waiver of the
4 claimant's right to compel arbitration.

5 (c) The failure of a defendant either to file a petition for a court
6 order to arbitrate pursuant to Section 1281.2 or to ~~commence~~
7 *demand* arbitration pursuant to an agreement to arbitrate at or
8 before the time the defendant answers the complaint filed pursuant
9 to subdivision (a) is a waiver of the defendant's right to compel
10 arbitration.

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

15 SEC. 2. Section 1281.5 of the Code of Civil Procedure, as
16 amended by Section 25 of Chapter 697 of the Statutes of 2010, is
17 amended to read:

18 1281.5. (a) Any person who proceeds to record and enforce a
19 claim of lien by commencement of an action pursuant to Chapter
20 4 (commencing with Section 8400) of Title 2 of Part 6 of Division
21 4 of the Civil Code, does not thereby waive any right of arbitration
22 the person may have pursuant to a written agreement to arbitrate,
23 if, in filing an action to enforce the claim of lien, the claimant does
24 either of the following:

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

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

34 (b) Within 30 days after service of the summons and complaint,
35 the claimant shall file and serve a motion and notice of motion
36 pursuant to Section 1281.4 to stay the action pending the arbitration
37 of any issue, question, or dispute that is claimed to be arbitrable
38 under the agreement and that is relevant to the action to enforce
39 the claim of lien. Notwithstanding Section 1281.4, the claimant
40 may make a motion to stay the action pending arbitration even if

1 none of the parties to the action has filed an application for an
2 order to arbitrate the controversy, *provided that, if any party*
3 *opposes the motion to stay the action on the ground that the party*
4 *objects to arbitration of the dispute, the court shall determine*
5 *whether the claim of lien or any relevant issue, question, or dispute*
6 *is subject to arbitration before staying the action.* The failure of
7 a claimant to comply with this subdivision is a waiver of the
8 claimant's right to compel arbitration.

9 (c) The failure of a defendant either to file a petition for a court
10 order to arbitrate pursuant to Section 1281.2 or to ~~commence~~
11 *demand* arbitration pursuant to an agreement to arbitrate at or
12 before the time the defendant answers the complaint filed pursuant
13 to subdivision (a) is a waiver of the defendant's right to compel
14 arbitration.

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