

AMENDED IN ASSEMBLY MAY 13, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 802

Introduced by Assembly Member Wieckowski

February 21, 2013

An act to amend Section 1281.96 of the Code of Civil Procedure, relating to consumer arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 802, as amended, Wieckowski. Private arbitration companies: disclosures.

Existing law regulates arbitration conducted pursuant to an arbitration agreement, as specified. Existing law requires a private arbitration company involved in consumer arbitration cases to collect and make certain information regarding those cases available to the public in a computer-searchable format, accessible at the Internet Web site of the private arbitration company, if it has an Internet Web site, and on paper upon request.

This bill would require that information, made available to the public in a computer-searchable format on a private arbitration company's Internet Web site, to also be available in a sortable database format. a private arbitration company to collect additional information related to a consumer arbitration case, as specified, and to provide the information in a single cumulative report. The bill would require a private arbitration company to make the report available as raw data in an open standard format that allows the public to search, extract, organize, and analyze the information, and to make the report accessible on the home page of the private arbitration company's Internet Web site, as specified. The bill would, within 30 days of the closing of a

consumer arbitration case, require a private arbitration company to provide each party with the specific information that the company proposes to report, and to provide the parties with a reasonable period of time to notify it of any errors. The bill also would authorize a consumer or public prosecutor to bring an action to enforce these provisions, as specified.

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 1281.96 of the Code of Civil Procedure
 2 is amended to read:
 3 1281.96. (a) Except as provided in paragraph (2) of subdivision
 4 ~~(b)~~ (c), a private arbitration company that administers or is
 5 otherwise involved ~~in~~, in a consumer arbitration, shall collect,
 6 publish at least quarterly, and make available to the public ~~in a~~
 7 ~~computer-searchable and sortable database format, which shall be~~
 8 ~~accessible at~~ on the Internet Web site, ~~if any~~, site of the private
 9 arbitration company, *if any*, and on paper upon request, *a single*
 10 *cumulative report that contains* all of the following information
 11 regarding each consumer arbitration within the preceding five
 12 years:
 13 (1) *Whether arbitration was demanded pursuant to a pre-dispute*
 14 *arbitration clause and, if so, whether the pre-dispute arbitration*
 15 *clause designated the administering private arbitration company.*
 16 (2) *Whether the arbitration was administered pursuant to, or*
 17 *as a result of, a petition to compel arbitration.*
 18 ~~(1)~~
 19 (3) *The name of the nonconsumer party, if the nonconsumer*
 20 *party is a corporation or other business entity, and whether the*
 21 *nonconsumer party was the initiating party or the responding*
 22 *party.*
 23 (4) *The state in which the arbitration occurred and the state in*
 24 *which each party resides.*
 25 ~~(2) The type~~
 26 (5) *The nature of the dispute involved, including goods,*
 27 ~~banking, insurance, health care, employment, and, if it involves~~
 28 *involved as one of the following: goods; credit; other banking or*
 29 *finance; insurance; health care; construction; real estate;*

1 *telecommunications, including software and Internet usage; debt*
2 *collection; personal injury; or employment. If the dispute involved*
3 *employment, the amount of the employee's annual wage divided*
4 *into the following ranges: less than one hundred thousand dollars*
5 *(\$100,000), one hundred thousand dollars (\$100,000) to two*
6 *hundred fifty thousand dollars (\$250,000), inclusive, and over two*
7 *hundred fifty thousand dollars (\$250,000).*

8 *(6) Whether any counterclaims or cross-claims were requested*
9 *or allowed, and whether class arbitration was requested or*
10 *granted.*

11 ~~(3)~~

12 *(7) Whether the consumer or nonconsumer party was the*
13 *prevailing party as defined in Section 1032.*

14 ~~(4) On how many~~

15 *(8) The total number of occasions, if any, the nonconsumer party*
16 *has previously been a party in an arbitration or mediation*
17 *administered by the private arbitration company.*

18 *(9) The total number of occasions, if any, the nonconsumer*
19 *party has previously been a party in a mediation administered by*
20 *the private arbitration company.*

21 ~~(5)~~

22 *(10) Whether the consumer party was represented by an attorney*
23 *and, if so, the name of the attorney and the full name of the law*
24 *firm that employs the attorney, if any.*

25 ~~(6)~~

26 *(11) The date the private arbitration company received the*
27 *demand for arbitration, the date the arbitrator was appointed, and*
28 *the date of disposition by the arbitrator or private arbitration*
29 *company.*

30 ~~(7) The~~

31 *(12) The type of disposition of the dispute, if known, including*
32 *identified as one of the following: withdrawal, abandonment,*
33 *settlement, award after hearing, award without hearing, default,*
34 *or dismissal without hearing. If a case was administered in a*
35 *hearing, indicate whether the hearing was conducted in person,*
36 *by telephone or video conference, or by documents only.*

37 *(13) Whether the private arbitration company rejected or*
38 *declined to administer the dispute and, if so, the reasons upon*
39 *which the decision was based.*

1 (14) Whether the private arbitration company terminated
 2 administration of the dispute for nonpayment of fees and, if so, the
 3 party or parties that failed to pay the required fees.

4 ~~(8)~~

5 (15) The amount of the claim, whether equitable relief was
 6 requested or awarded, the amount of ~~the~~ any monetary award, the
 7 amount of any attorney’s fees awarded, and any other relief
 8 granted, if any.

9 ~~(9)~~

10 (16) The name of the arbitrator, his or her total fee for the case,
 11 ~~and~~ the percentage of the arbitrator’s fee allocated to each party,
 12 and whether the fee allocation was included in the underlying
 13 award.

14 (17) The total amount of the private arbitration company’s fees,
 15 the percentage of those fees allocated to each party, whether a
 16 waiver of any fees was granted for an indigent party, and, if so,
 17 the amount of the waiver.

18 (18) The rules governing the arbitration, including whether the
 19 parties were permitted full discovery, whether the arbitrator was
 20 required to apply the law, whether the arbitrator was required to
 21 follow the rules of evidence, and whether the parties were entitled
 22 to all legal remedies.

23 (b) The information required by this section shall be made
 24 available as raw data in an open standard format that allows the
 25 public to search, extract, organize, and analyze the information,
 26 and shall be directly accessible from a conspicuously displayed
 27 link on the Internet Web site home page, if any, of the private
 28 arbitration company with the identifying description: “consumer
 29 case information.” The information shall be presented
 30 alphabetically by nonconsumer party name, and within that order,
 31 chronologically based on the filing date of the arbitration.

32 ~~(b)~~

33 (c) (1) If the information required by subdivision (a) is provided
 34 by the private arbitration company in a ~~computer-searchable and~~
 35 ~~sortable database format at the company’s Internet Web site~~
 36 ~~compliance with subdivision (b)~~ and may be downloaded without
 37 a fee, the company may charge the actual cost of copying to any
 38 person who requests the information on paper. If the information
 39 required by subdivision (a) is not accessible by the Internet *in*
 40 *compliance with subdivision (b)*, the company shall provide that

1 information without charge to any person who requests the
2 information on paper.

3 (2) Notwithstanding paragraph (1), a private arbitration company
4 that receives funding pursuant to Chapter 8 (commencing with
5 Section 465) of Division 1 of the Business and Professions Code
6 and that administers or conducts fewer than 50 consumer
7 arbitrations per year may collect and publish the information
8 required by subdivision (a) semiannually, provide the information
9 only on paper, and charge the actual cost of copying.

10 ~~(e)~~

11 (d) This section shall apply to any consumer arbitration
12 commenced on or after January 1, 2003.

13 ~~(d)~~

14 (e) A private arbitration company shall not have any liability
15 for collecting, publishing, or distributing the information required
16 by this section.

17 (f) *Within 30 days of closing a consumer arbitration case subject*
18 *to this section, a private arbitration company shall provide each*
19 *party with a copy of this section and the specific information that*
20 *the company proposes to report pursuant to subdivision (a). The*
21 *private arbitration company shall provide the parties with a*
22 *reasonable period of time to notify it of any errors and shall*
23 *promptly correct any errors.*

24 (g) (1) *A consumer or public prosecutor, as described in Section*
25 *17204 of the Business and Professions Code, may bring an action*
26 *to enforce compliance with this section and to prevent a private*
27 *arbitration company from administering further consumer*
28 *arbitrations until the company is in compliance.*

29 (2) *A court may impose, in its discretion, a civil penalty from*
30 *ten thousand dollars (\$10,000) to twenty-five thousand dollars*
31 *(\$25,000) to be deposited in the state account established for the*
32 *distribution of funds to support dispute resolution programs as*
33 *provided in Section 470.5 of the Business and Professions Code.*

34 (3) *The court shall award a prevailing consumer or public*
35 *prosecutor reasonable attorney's fees and costs incurred in*
36 *ensuring compliance with this section.*

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