

AMENDED IN ASSEMBLY MAY 23, 2013

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 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 *solely for injunctive relief to enjoin a material violation of 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 (c), a private arbitration company that administers or is otherwise
 5 involved in a consumer arbitration, shall collect, publish at least
 6 quarterly, and make available to the public on the Internet Web
 7 site of the private arbitration company, if any, and on paper upon
 8 request, a single cumulative report that contains all of the following
 9 information regarding each consumer arbitration within the
 10 preceding five years:
 11 (1) Whether arbitration was demanded pursuant to a pre-dispute
 12 arbitration clause and, if so, whether the pre-dispute arbitration
 13 clause designated the administering private arbitration company.
 14 (2) Whether the arbitration was administered pursuant to, or as
 15 a result of, a petition to compel arbitration.
 16 (3) The name of the nonconsumer party, if the nonconsumer
 17 party is a corporation or other business entity, and whether the
 18 nonconsumer party was the initiating party or the responding party.
 19 (4) The state in which the arbitration occurred and the state in
 20 which each party resides.
 21 (5) The nature of the dispute involved as one of the following:
 22 goods; credit; other banking or finance; insurance; health care;
 23 construction; real estate; telecommunications, including software
 24 and Internet usage; debt collection; personal injury; or employment.
 25 If the dispute involved employment, the amount of the employee's
 26 annual wage divided into the following ranges: less than one
 27 hundred thousand dollars (\$100,000), one hundred thousand dollars
 28 (\$100,000) to two hundred fifty thousand dollars (\$250,000),
 29 inclusive, and over two hundred fifty thousand dollars (\$250,000).

- 1 (6) Whether any counterclaims or cross-claims were requested
2 or allowed, and whether class arbitration was requested or granted.
- 3 (7) Whether the consumer or nonconsumer party was the
4 prevailing party as defined in Section 1032.
- 5 (8) The total number of occasions, if any, the nonconsumer
6 party has previously been a party in an arbitration.
- 7 (9) The total number of occasions, if any, the nonconsumer
8 party has previously been a party in a mediation administered by
9 the private arbitration company.
- 10 (10) Whether the consumer party was represented by an attorney
11 and, if so, the name of the attorney and the full name of the law
12 firm that employs the attorney, if any.
- 13 (11) The date the private arbitration company received the
14 demand for arbitration, the date the arbitrator was appointed, and
15 the date of disposition by the arbitrator or private arbitration
16 company.
- 17 (12) The type of disposition of the dispute, if known, identified
18 as one of the following: withdrawal, abandonment, settlement,
19 award after hearing, award without hearing, default, or dismissal
20 without hearing. If a case was administered in a hearing, indicate
21 whether the hearing was conducted in person, by telephone or
22 video conference, or by documents only.
- 23 (13) Whether the private arbitration company rejected or
24 declined to administer the dispute and, if so, the reasons upon
25 which the decision was based.
- 26 (14) Whether the private arbitration company terminated
27 administration of the dispute for nonpayment of fees and, if so,
28 the party or parties that failed to pay the required fees.
- 29 (15) The amount of the claim, whether equitable relief was
30 requested or awarded, the amount of any monetary award, the
31 amount of any attorney's fees awarded, and any other relief
32 granted, if any.
- 33 (16) The name of the arbitrator, his or her total fee for the case,
34 the percentage of the arbitrator's fee allocated to each party, and
35 whether the fee allocation was included in the underlying award.
- 36 (17) The total amount of the private arbitration company's fees,
37 the percentage of those fees allocated to each party, whether a
38 waiver of any fees was granted for an indigent party, and, if so,
39 the amount of the waiver.

1 (18) The rules governing the arbitration, including whether the
2 parties were permitted full discovery, whether the arbitrator was
3 required to apply the law, whether the arbitrator was required to
4 follow the rules of evidence, and whether the parties were entitled
5 to all legal remedies.

6 (b) The information required by this section shall be made
7 available as raw data in an open standard format that allows the
8 public to search, extract, organize, and analyze the information,
9 and shall be directly accessible from a conspicuously displayed
10 link on the Internet Web site home page, if any, of the private
11 arbitration company with the identifying description: “consumer
12 case information.” The information shall be presented
13 alphabetically by nonconsumer party name, and within that order,
14 chronologically based on the filing date of the arbitration.

15 (c) (1) If the information required by subdivision (a) is provided
16 by the private arbitration company in compliance with subdivision
17 (b) and may be downloaded without a fee, the company may charge
18 the actual cost of copying to any person who requests the
19 information on paper. If the information required by subdivision
20 (a) is not accessible by the Internet in compliance with subdivision
21 (b), the company shall provide that information without charge to
22 any person who requests the information on paper.

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

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

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

35 (f) Within 30 days of closing a consumer arbitration case subject
36 to this section, a private arbitration company shall provide each
37 party with a copy of this section and the specific information that
38 the company proposes to report pursuant to subdivision (a). The
39 private arbitration company shall provide the parties with a

1 reasonable period of time to notify it of any errors and shall
2 promptly correct any errors.

3 (g) ~~(1)~~ A consumer or public prosecutor, as described in Section
4 17204 of the Business and Professions Code, may bring an action
5 to enforce compliance with this section and to prevent a private
6 arbitration company from administering further consumer
7 arbitrations until the company is in compliance. *solely for injunctive*
8 *relief to enjoin a material violation of this section. A technical,*
9 *clerical, or de minimus violation shall not constitute a material*
10 *violation.*

11 ~~(2)~~ A court may impose, in its discretion, a civil penalty from
12 ten thousand dollars (\$10,000) to twenty-five thousand dollars
13 (\$25,000) to be deposited in the state account established for the
14 distribution of funds to support dispute resolution programs as
15 provided in Section 470.5 of the Business and Professions Code.

16 ~~(3)~~ The court shall award a prevailing consumer or public
17 prosecutor reasonable attorney's fees and costs incurred in ensuring
18 compliance with this section.