

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1078

Introduced by Senator Jackson

February 17, 2016

An act to amend ~~Section 1280~~ of *Sections 1281.85 and 1281.9* of, and to add *Section 1281.65* to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, Jackson. Civil procedure: arbitration.

Existing law governs arbitration in civil proceedings. Under existing law, a neutral arbitrator is defined as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. ~~Existing law provides that a party to an arbitration includes the party seeking to arbitrate the agreement, a party against whom arbitration is sought, or a party who is made a party by any of the parties to an agreement, including the arbitrator. Existing law also provides that a written arbitration agreement includes a written agreement that is extended or renewed by an implied or oral agreement. Existing law requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial. Existing law requires the disclosure to include, among other things, whether or not the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral with a party to the proceeding, or is participating in, or has participated within the last 2 years in, discussions regarding such prospective employment or service.~~

~~This bill would make a technical, nonsubstantive change to these provisions:~~

This bill, in a consumer arbitration case, would also require the disclosure of any solicitation made within the last 2 years by, or at the direction of, a private arbitration company to a party or lawyer for a party. The bill would prohibit the solicitation of a party or lawyer for a party during the pendency of the arbitration. The bill would also prohibit an arbitrator, from the time of appointment until the conclusion of the arbitration, from entertaining or accepting any offers of employment, offers of new professional relationships, or offers of employment as a dispute resolution neutral in another case from a party or lawyer for a party in the pending arbitration.

Existing law requires a person serving as a neutral arbitrator pursuant to an arbitration agreement to comply with the ethics standards for arbitrators adopted by the Judicial Council, as specified.

This bill would authorize a party to recover arbitration proceeding costs from a private arbitration company if the arbitration award is vacated because of a violation of the Judicial Council ethical standards or a violation of the disclosure requirements described above. The bill would also authorize a party to petition the court to recover arbitration proceeding costs from a private arbitration company if the arbitrator is dismissed during the pendency of the arbitration because of a violation of the Judicial Council ethical standards or a violation of the disclosure requirements described above.

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 1281.65 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1281.65. From the time of appointment until the conclusion of
- 4 the arbitration, an arbitrator shall not entertain or accept either
- 5 of the following:
- 6 (a) Any offers of employment or new professional relationships
- 7 as a lawyer, expert witness, or consultant from a party or lawyer
- 8 for a party in the pending arbitration.
- 9 (b) Any offers of employment as a dispute resolution neutral in
- 10 another case involving a party or lawyer for a party in the pending
- 11 arbitration unless all parties to the pending arbitration, including

1 *the lawyers in the arbitration, have conferred and agreed in*
2 *writing, before any solicitation of the arbitrator, to allow offers*
3 *of future employment as a dispute resolution neutral to be made*
4 *to the arbitrator.*

5 *SEC. 2. Section 1281.85 of the Code of Civil Procedure is*
6 *amended to read:*

7 1281.85. (a) Beginning July 1, 2002, a person serving as a
8 neutral arbitrator pursuant to an arbitration agreement shall comply
9 with the ethics standards for arbitrators adopted by the Judicial
10 Council pursuant to this section. The Judicial Council shall adopt
11 ethical standards for all neutral arbitrators effective July 1, 2002.
12 These standards shall be consistent with the standards established
13 for arbitrators in the judicial arbitration program and may expand
14 but ~~may~~ *shall* not limit the disclosure and disqualification
15 requirements established by this chapter. The standards shall
16 address the disclosure of interests, relationships, or affiliations that
17 may constitute conflicts of interest, including prior service as an
18 arbitrator or other dispute resolution neutral entity,
19 disqualifications, acceptance of gifts, and establishment of future
20 professional relationships.

21 (b) Subdivision (a) does not apply to an arbitration conducted
22 pursuant to the terms of a public or private sector collective
23 bargaining agreement.

24 (c) The ethics requirements and standards of this chapter are
25 nonnegotiable and shall not be waived.

26 (d) *A party may recover costs incurred in an arbitration*
27 *proceeding from a private arbitration company if the arbitration*
28 *award is vacated because of a violation of the ethical standards*
29 *adopted by the Judicial Council pursuant to this section or a*
30 *violation of the disclosure requirements established by this chapter.*
31 *A party may also petition the court to recover costs incurred in an*
32 *arbitration proceeding from a private arbitration company if the*
33 *arbitrator is dismissed during the pendency of the arbitration*
34 *because of a violation of the ethical standards adopted by the*
35 *Judicial Council pursuant to this section or a violation of the*
36 *disclosure requirements established by this chapter.*

37 *SEC. 3. Section 1281.9 of the Code of Civil Procedure is*
38 *amended to read:*

39 1281.9. (a) In any arbitration pursuant to an arbitration
40 agreement, when a person is to serve as a neutral arbitrator, the

1 proposed neutral arbitrator shall disclose all matters that could
2 cause a person aware of the facts to reasonably entertain a doubt
3 that the proposed neutral arbitrator would be able to be impartial,
4 including all of the following:

5 (1) The existence of any ground specified in Section 170.1 for
6 disqualification of a judge. For purposes of paragraph (8) of
7 subdivision (a) of Section 170.1, the proposed neutral arbitrator
8 shall disclose whether or not he or she has a current arrangement
9 concerning prospective employment or other compensated service
10 as a dispute resolution neutral or is participating in, or, within the
11 last two years, has participated in, discussions regarding such
12 prospective employment or service with a party to the proceeding.

13 (2) Any matters required to be disclosed by the ethics standards
14 for neutral arbitrators adopted by the Judicial Council pursuant to
15 this chapter.

16 (3) The names of the parties to all prior or pending noncollective
17 bargaining cases in which the proposed neutral arbitrator served
18 or is serving as a party arbitrator for any party to the arbitration
19 proceeding or for a lawyer for a party and the results of each case
20 arbitrated to conclusion, including the date of the arbitration award,
21 identification of the prevailing party, the names of the parties'
22 ~~attorneys~~ *attorneys*, and the amount of monetary damages awarded,
23 if any. In order to preserve confidentiality, it shall be sufficient to
24 give the name of any party who is not a party to the pending
25 arbitration as "claimant" or "respondent" if the party is an
26 individual and not a business or corporate entity.

27 (4) The names of the parties to all prior or pending noncollective
28 bargaining cases involving any party to the arbitration or lawyer
29 for a party for which the proposed neutral arbitrator served or is
30 serving as neutral arbitrator, and the results of each case arbitrated
31 to conclusion, including the date of the arbitration award,
32 identification of the prevailing party, the names of the parties'
33 attorneys and the amount of monetary damages awarded, if any.
34 In order to preserve confidentiality, it shall be sufficient to give
35 the name of any party not a party to the pending arbitration as
36 "claimant" or "respondent" if the party is an individual and not a
37 business or corporate entity.

38 (5) Any attorney-client relationship the proposed neutral
39 arbitrator has or had with any party or lawyer for a party to the
40 arbitration proceeding.

1 (6) Any professional or significant personal relationship the
2 proposed neutral arbitrator or his or her spouse or minor child
3 living in the household has or has had with any party to the
4 arbitration proceeding or lawyer for a party.

5 (7) *For a consumer arbitration case, any solicitation made*
6 *within the last two years by, or at the direction of, the private*
7 *arbitration company to a party or lawyer for a party to the*
8 *consumer arbitration. During the pendency of the consumer*
9 *arbitration, no solicitation shall made of a party to the arbitration*
10 *or of a lawyer for a party to the arbitration. For purposes of this*
11 *paragraph, “solicitation” includes an oral or written request for*
12 *arbitration business, but does not include advertising directed to*
13 *the general public or communications indicating a general*
14 *willingness to serve as an arbitrator or private arbitration*
15 *company.*

16 (b) Subject only to the disclosure requirements of law, the
17 proposed neutral arbitrator shall disclose all matters required to
18 be disclosed pursuant to this section to all parties in writing within
19 10 calendar days of service of notice of the proposed nomination
20 or appointment.

21 (c) For purposes of this section, “lawyer for a party” includes
22 any lawyer or law firm currently associated in the practice of law
23 with the lawyer hired to represent a party.

24 (d) For purposes of this section, “prior cases” means
25 noncollective bargaining cases in which an arbitration award was
26 rendered within five years prior to the date of the proposed
27 nomination or appointment.

28 (e) For purposes of this section, “any arbitration” does not
29 include an arbitration conducted pursuant to the terms of a public
30 or private sector collective bargaining agreement.

31 ~~SECTION 1. Section 1280 of the Code of Civil Procedure is~~
32 ~~amended to read:~~

33 ~~1280. As used in this title:~~

34 ~~(a) “Agreement” includes but is not limited to agreements~~
35 ~~providing for valuations, appraisals and similar proceedings and~~
36 ~~agreements between employers and employees or between their~~
37 ~~respective representatives.~~

38 ~~(b) “Award” includes but is not limited to an award made~~
39 ~~pursuant to an agreement not in writing.~~

- 1 ~~(e) “Controversy” means any question arising between parties~~
2 ~~to an agreement whether such question is one of law or of fact or~~
3 ~~both.~~
- 4 ~~(d) “Neutral arbitrator” means an arbitrator who is either~~
5 ~~(1) selected jointly by the parties or by the arbitrators selected by~~
6 ~~the parties or (2) appointed by the court when the parties or the~~
7 ~~arbitrators selected by the parties fail to select an arbitrator who~~
8 ~~was to be selected jointly by them.~~
- 9 ~~(e) “Party to the arbitration” means a party to the arbitration~~
10 ~~agreement:~~
 - 11 ~~(1) Who seeks to arbitrate a controversy pursuant to the~~
12 ~~agreement;~~
 - 13 ~~(2) Against whom such arbitration is sought pursuant to the~~
14 ~~agreement; or~~
 - 15 ~~(3) Who is made a party to such arbitration by order of the~~
16 ~~neutral arbitrator upon such party’s application, upon the~~
17 ~~application of any other party to the arbitration or upon the neutral~~
18 ~~arbitrator’s own determination.~~
- 19 ~~(f) “Written agreement” shall be deemed to include a written~~
20 ~~agreement which has been extended or renewed by an oral or~~
21 ~~implied agreement.~~