

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE APRIL 18, 2016

AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 1241

Introduced by Senator Wieckowski

February 18, 2016

An act to add Section 1799.208 to the Civil Code, and to add Section 925 to the Labor Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1241, as amended, Wieckowski. Contracts.

Existing law, the Consumer Contract Awareness Act, *Act of 1990*, defines a consumer contract as a writing prepared by a seller that provides for the sale or lease of goods or services or the extension of credit, as specified, for personal, family, or household purposes, among other provisions. The act requires a seller, which includes financial institutions, to deliver a copy of a consumer contract to the consumer at the time the contract is signed, and it prohibits the waiver of any provisions of the act.

This bill would provide, for contracts entered into, modified, or extended on or after January 1, 2017, that a provision in a consumer contract that purports to designate the venue in which a controversy arising from the consumer contract is litigated, or the choice of law to be applied, is voidable by the consumer, with respect to a controversy arising in California, if the provision would deprive the consumer of the protection of California law or require the consumer to litigate the controversy out of state. The bill would prohibit a seller from requiring a consumer to agree to these voidable provisions as a condition of

entering into a contract regulated by the act, and would provide that such provisions, if required, are inoperative and California law applies in its place. The bill would specify that injunctive relief is available in this context and that a court may award a plaintiff reasonable attorney's fees. The bill would include arbitration with litigation for purposes of these provisions.

This bill also would create an analogous set of rights, prohibitions, and requirements, as described above, in connection with employment contracts. *The bill would except from these provisions a contract with an employee who is represented by legal counsel, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1799.208 is added to the Civil Code, to
2 read:

3 1799.208. (a) Notwithstanding any other law, a provision in
4 a consumer contract that purports to designate the venue in which
5 a controversy arising from the consumer contract may be litigated,
6 or the choice of law to be applied, is voidable by the consumer if
7 the provision would do either of the following:

8 (1) Deprive the consumer of the protection of California law
9 with respect to a controversy arising in California.

10 (2) Require the consumer to litigate outside of California a claim
11 arising in California.

12 (b) A seller shall not require a consumer to agree to a provision
13 as described in subdivision (a) as a condition of entering into a
14 contract regulated by this title, and if such a provision is required,
15 it shall be inoperative and California law shall apply in its place.

16 (c) In addition to injunctive relief and any other remedies
17 available, a court may award a plaintiff who is enforcing his or
18 her rights under this section reasonable attorney's fees.

19 (d) For purposes of this section, litigation includes arbitration.

20 (e) This section shall apply to a contract entered into, modified,
21 or extended on or after January 1, 2017.

22 SEC. 2. Section 925 is added to the Labor Code, to read:

23 925. (a) Notwithstanding any other law, a provision in an
24 employment contract that purports to designate the venue in which
25 a controversy arising from the employment contract may be

1 litigated, or the choice of law to be applied, is voidable by the
2 employee if the provision would do either of the following:

3 (1) Deprive the employee of the protection of California law
4 with respect to a controversy arising in California.

5 (2) Require the employee to litigate outside of California a claim
6 arising in California.

7 (b) An employer shall not require a person to agree to a
8 provision as described in subdivision (a) as a condition of entering
9 into an employment contract, and if such a provision is required,
10 it shall be inoperative and California law shall apply in its place.

11 (c) In addition to injunctive relief and any other remedies
12 available, a court may award a plaintiff who is enforcing his or
13 her rights under this section reasonable attorney's fees.

14 (d) For purposes of this section, litigation includes arbitration.

15 (e) *This section shall not apply to a contract with an employee
16 who is individually represented by legal counsel in negotiating
17 the terms of an agreement to designate the venue in which a
18 controversy arising from the employment contract may be litigated
19 or the choice of law to be applied.*

20 (f)

21 (f) This section shall apply to a contract entered into, modified,
22 or extended on or after January 1, 2017.