

AMENDED IN ASSEMBLY JUNE 20, 2016

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE APRIL 18, 2016

AMENDED IN SENATE MARCH 29, 2016

**SENATE BILL**

**No. 1241**

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**Introduced by Senator Wieckowski**

February 18, 2016

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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 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~~, *prohibit*, 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: a seller from requiring a consumer, as a condition of entering into a contract, to agree to a provision that would require the consumer to adjudicate outside of California a claim arising in California or deprive the consumer of the protection of California law with respect to a controversy arising in California. The bill would make any choice of venue or choice of law provision voidable, upon request of the consumer, if the provision would violate either of those prohibitions as provided. The bill would specify that make injunctive relief is available in this context and that a court may and would authorize a court to award a plaintiff consumer reasonable attorney’s fees. The bill would include arbitration with litigation provide that adjudication includes litigation and arbitration 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 *employment* 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) A seller shall not require a consumer, as a  
 4     condition of entering into a contract, to agree to a provision that  
 5     would do either of the following:  
 6     (1) Require the consumer to adjudicate outside of California a  
 7     claim arising in California.  
 8     (2) Deprive the consumer of the protection of California law  
 9     with respect to a controversy arising in California.  
 10    (b) Any choice of venue or choice of law provision is voidable,  
 11    upon request of the consumer, if the provision would do either of  
 12    the following:  
 13    (1) Require the consumer to adjudicate outside of California a  
 14    claim arising in California.

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

3 (c) If a provision is rendered void at the request of the consumer,  
4 as described in subdivision (b), the matter shall be adjudicated in  
5 California and California law shall govern the dispute.

6 (d) In addition to injunctive relief and any other remedies  
7 available, a court may award a consumer who is enforcing his or  
8 her rights under this section reasonable attorney's fees.

9 (e) For purposes of this section, adjudication includes litigation  
10 and arbitration.

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

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

14 925. (a) An employer shall not require an employee or job  
15 applicant, as a condition of employment, to agree to a provision  
16 that would do either of the following:

17 (1) Require the employee to adjudicate outside of California a  
18 claim arising in California.

19 (2) Deprive the employee of the protection of California law  
20 with respect to a controversy arising in California.

21 (b) Any choice of venue or choice of law provision is voidable,  
22 upon request of the employee, if the provision would do either of  
23 the following:

24 (1) Require the employee to adjudicate outside of California a  
25 claim arising in California.

26 (2) Deprive the employee of the protection of California law  
27 with respect to a controversy arising in California.

28 (c) If a provision is rendered void at the request of the employee,  
29 as described in subdivision (b), the matter shall be adjudicated in  
30 California and California law shall govern the dispute.

31 (d) In addition to injunctive relief and any other remedies  
32 available, a court may award an employee who is enforcing his  
33 or her rights under this section reasonable attorney's fees.

34 (e) For purposes of this section, adjudication includes litigation  
35 and arbitration.

36 (f) This section shall not apply to a contract with an employee  
37 who is in fact individually represented by legal counsel in  
38 negotiating the terms of an agreement to designate either the venue  
39 or forum in which a controversy arising from the employment  
40 contract may be adjudicated or the choice of law to be applied.

1 (g) *This section shall apply to a contract entered into, modified,*  
2 *or extended on or after January 1, 2017.*

3 ~~SECTION 1. Section 1799.208 is added to the Civil Code, to~~  
4 ~~read:~~

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

10 ~~(1) Deprive the consumer of the protection of California law~~  
11 ~~with respect to a controversy arising in California.~~

12 ~~(2) Require the consumer to litigate outside of California a claim~~  
13 ~~arising in California.~~

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

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

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

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

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

25 ~~925. (a) Notwithstanding any other law, a provision in an~~  
26 ~~employment contract that purports to designate the venue in which~~  
27 ~~a controversy arising from the employment contract may be~~  
28 ~~litigated, or the choice of law to be applied, is voidable by the~~  
29 ~~employee if the provision would do either of the following:~~

30 ~~(1) Deprive the employee of the protection of California law~~  
31 ~~with respect to a controversy arising in California.~~

32 ~~(2) Require the employee to litigate outside of California a claim~~  
33 ~~arising in California.~~

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

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

- 1 ~~(d) For purposes of this section, litigation includes arbitration.~~  
2 ~~(e) This section shall not apply to a contract with an employee~~  
3 ~~who is individually represented by legal counsel in negotiating the~~  
4 ~~terms of an agreement to designate the venue in which a~~  
5 ~~controversy arising from the employment contract may be litigated~~  
6 ~~or the choice of law to be applied.~~  
7 ~~(f) This section shall apply to a contract entered into, modified,~~  
8 ~~or extended on or after January 1, 2017.~~