

Senate Bill No. 940

CHAPTER 986

An act to add Article 10.1 (commencing with Section 6173) to Chapter 4 of Division 3 of the Business and Professions Code, to add Sections 1799.208 and 1799.209 to the Civil Code, and to amend Sections 1281.9, 1282.6, and 1283.05 of, to add Section 1281.93 to, and to repeal Section 1283.1 of, the Code of Civil Procedure, relating to civil disputes.

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Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 940, Umberg. Civil disputes.

(1) 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 to deliver a copy of a consumer contract to the consumer at the time the contract is signed, and prohibits the waiver of any provisions of the act. Existing law prohibits an employer from requiring specified employees, as a condition of employment, to agree to a provision that would require the employee to adjudicate outside of California a claim arising in California or deprive the employee of the substantive protection of California law with respect to a controversy arising in California, as specified.

This bill, for contracts entered into, modified, or extended on or after January 1, 2025, would prohibit 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 arbitrate outside of California a claim arising in California or to arbitrate a controversy arising in California under the substantive law of a state other than California, as specified.

Existing law, the Small Claims Act, requires each superior court to have a small claims division, and provides that the small claims court has jurisdiction over specified actions.

This bill would give consumers the option to have a dispute adjudicated pursuant to the Small Claims Act if a consumer contract requires a dispute under the contract to be arbitrated and the dispute may be adjudicated pursuant to the Small Claims Act.

(2) Existing law, the California Arbitration Act, provides a statutory framework for the enforcement of contractual arbitration under California law. The act establishes that a written agreement to submit a present or future controversy to arbitration is valid, enforceable, and irrevocable, except to the extent that the contract could otherwise be revoked under general contract law principles. The act defines a neutral arbitrator 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. The act 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 as to the proposed neutral arbitrator's impartiality. The act 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, in a consumer arbitration case, would, except as specified, require the disclosure of any solicitation, as defined, made after January 1, 2025, and 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 act authorizes depositions to be taken and discovery obtained in arbitration proceedings, as specified. The act deems those deposition and discovery provisions to be incorporated into every agreement to arbitrate specified disputes and provides that those provisions are incorporated into other disputes only if the agreement so provides.

This bill would repeal the provisions deeming those deposition and discovery provisions to be incorporated into every agreement to arbitrate specified disputes and providing that those provisions are incorporated into other disputes only if the agreement so provides. The bill would make conforming changes.

(3) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees comprised of appointed and elected members. Existing law authorizes a law corporation to practice law if certain conditions are met.

This bill would require the State Bar to create a program to certify alternative dispute resolution firms, providers, or practitioners that includes specified components, including procedures for a firm, provider, or practitioner to become a certified alternative dispute resolution firm, provider, or practitioner, as specified, and different levels of tiers for certification, as specified. The bill would authorize the State Bar to charge a fee to cover the reasonable costs of administering the program, as specified.

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

SECTION 1. Article 10.1 (commencing with Section 6173) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 10.1. Alternative Dispute Resolution Certification Program

6173. (a) (1) The State Bar shall create a program to certify alternative dispute resolution firms, providers, or practitioners.

(2) A program created pursuant to paragraph (1) shall not require a firm, provider, or practitioner to be a licensee of the State Bar in order to be certified under the program.

(b) The program shall include, but shall not be limited to, all of the following:

(1) Procedures established by the State Bar for a firm, provider, or practitioner to become a certified alternative dispute resolution firm, provider, or practitioner that include, but are not limited to, a requirement that the firm, provider, or practitioner verify all of the following:

(A) The firm, provider, or practitioner requires, at a minimum, its arbitrators to comply with the Ethics Standards for Neutral Arbitrators in Contractual Arbitration as adopted by the Judicial Council pursuant to Section 1281.85 of the Code of Civil Procedure.

(B) The firm, provider, or practitioner requires, at a minimum, its mediators to comply with ethical standards that are equivalent to the Rules of Conduct for Mediators in Court-Connected Mediation Programs for General Civil Cases as provided in Rules 3.850 to 3.860, inclusive, of the California Rules of Court.

(C) The firm, provider, or practitioner has procedures in place for persons to make complaints regarding the failure of an arbitrator or mediator of the firm, provider, or practitioner to comply with the standards described in subparagraph (A) or (B), as applicable. For mediators, those complaint procedures shall be substantially similar to the complaint procedures specified in Article 3 (commencing with Rule 3.865) of Chapter 3 of Division 8 of Title 3 of the California Rules of Court.

(D) The firm, provider, or practitioner has procedures to remedy failures of arbitrators or mediators to comply with the standards described in subparagraph (A) or (B), as applicable.

(2) Different levels or tiers for certification that meet all of the following requirements:

(A) Higher levels or tiers are awarded to firms, providers, or practitioners that demonstrate a higher level of commitment to accountability and consumer protection based on criteria developed by the State Bar.

(B) The levels or tiers do not reflect an assessment of the quality of a firm, provider, or practitioner.

(C) The levels or tiers only reference standards of conduct described in subparagraph (A) or (B) of paragraph (1), as applicable.

(3) Authority for the State Bar to deny or revoke certification for a failure to meet or maintain certification standards.

(c) (1) The State Bar may charge an alternative dispute resolution firm, provider, or practitioner seeking certification pursuant to this section a fee to cover the reasonable costs of administering the program.

(2) The fee charged pursuant to paragraph (1) may be higher in the early years of the program to reimburse the State Bar for costs related to the planning and establishment of the program, including, but not limited to, technology and preliminary staffing costs.

(3) The State Bar shall not use any moneys received from the annual license fees collected pursuant to Section 6140 or 6141 for any costs associated with this section.

(d) For purposes of this article:

(1) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decisionmaking process.

(2) “Program” means the program created pursuant to subdivision (a).

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

1799.208. (a) A seller shall not require a consumer to agree to a provision that would do either of the following:

(1) Require the consumer to arbitrate outside of California a claim arising in California.

(2) Require the consumer to arbitrate a controversy arising in California under the substantive law of a state other than California.

(b) Any provision of a contract that violates subdivision (a) is voidable by the consumer, and if a provision is rendered void at the request of the consumer, the matter shall be adjudicated in California and California law shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award a consumer who is enforcing their rights under this section reasonable attorney’s fees incurred in enforcing those rights.

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

(e) This section applies to a contract entered into, modified, or extended on or after January 1, 2025.

SEC. 3. Section 1799.209 is added to the Civil Code, to read:

1799.209. (a) If a consumer contract requires a dispute under the contract to be arbitrated and the dispute may be adjudicated pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure), the consumer shall be given the option to have the dispute adjudicated pursuant to that act.

(b) This section applies to a contract entered into, modified, or extended on or after January 1, 2025.

SEC. 4. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall 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, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a)

of Section 170.1, the proposed neutral arbitrator shall disclose whether or not they have a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or are participating in, or, within the last two years, have participated in, discussions regarding such prospective employment or service with a party to the proceeding.

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

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

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

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

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

(7) (A) In a consumer arbitration case, any solicitation made after January 1, 2025, and within the last two years by, or at the direction of, the private arbitration company to a party or lawyer for a party to the consumer arbitration.

(B) This paragraph does not apply to an arbitration conducted or administered by a self-regulatory organization, as defined by the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a) or regulations adopted under that act.

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

(c) For purposes of this section:

(1) “Lawyer for a party” includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(2) “Prior cases” means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(3) “Any arbitration” does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

(4) (A) “Solicitation” includes either of the following:

(i) Private presentations made to a party or lawyer for a party by the private arbitration company or the arbitrator.

(ii) Oral or written discussions, meetings, or negotiations to designate the private arbitration company or the arbitrator as the arbitration provider or arbitrator for a party in specific contracts.

(B) “Solicitation” does not include any of the following:

(i) Advertising directed to the general public.

(ii) Communications indicating a general willingness to serve as an arbitrator or private arbitration company. For purposes of this clause, “communications” include, but are not limited to, standard educational materials about alternative dispute resolution or the provider organization.

(iii) Presentations made by the private arbitration company or the arbitrator at a program or seminar held open to the public.

(iv) Responding to inquiries regarding the arbitration provider’s costs, rules, procedures, or standards.

SEC. 5. Section 1281.93 is added to the Code of Civil Procedure, to read:

1281.93. (a) During the pendency of the consumer arbitration, a solicitation shall not be made of a party to the arbitration or of a lawyer for a party to the arbitration.

(b) For purposes of this section:

(1) “Lawyer for a party” has the same meaning as defined in Section 1281.9.

(2) “Solicitation” has the same meaning as defined in Section 1281.9.

SEC. 6. Section 1282.6 of the Code of Civil Procedure is amended to read:

1282.6. (a) A subpoena requiring the attendance of witnesses, and a subpoena duces tecum for the production of books, records, documents, and other evidence, at an arbitration proceeding or a deposition under Sections 1283 and 1283.05 for the purposes of discovery, shall be issued as provided in this section. In addition, the neutral arbitrator upon their own determination may issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence.

(b) Subpoenas shall be issued, as of course, signed but otherwise in blank, to the party requesting them, by a neutral association, organization, governmental agency, or office if the arbitration agreement provides for administration of the arbitration proceedings by, or under the rules of, a

neutral association, organization, governmental agency or office, or by the neutral arbitrator.

(c) The party serving the subpoena shall fill it in before service. Subpoenas shall be served and enforced in accordance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of this code.

SEC. 7. Section 1283.05 of the Code of Civil Procedure is amended to read:

1283.05. Depositions may be taken and discovery obtained in arbitration proceedings as follows:

(a) After the appointment of the arbitrator or arbitrators, the parties to the arbitration shall have the right to take depositions and to obtain discovery regarding the subject matter of the arbitration, and, to that end, to use and exercise all of the same rights, remedies, and procedures, and be subject to all of the same duties, liabilities, and obligations in the arbitration with respect to the subject matter thereof, as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4, and in Title 4 (commencing with Section 2016.010) of Part 4, as if the subject matter of the arbitration were pending before a superior court of this state in a civil action other than a limited civil case, subject to the limitations as to depositions set forth in subdivision (e) of this section.

(b) The arbitrator or arbitrators themselves shall have power, in addition to the power of determining the merits of the arbitration, to enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery by the imposition of the same terms, conditions, consequences, liabilities, sanctions, and penalties as can be or may be imposed in like circumstances in a civil action by a superior court of this state under the provisions of this code, except the power to order the arrest or imprisonment of a person.

(c) The arbitrator or arbitrators may consider, determine, and make such orders imposing such terms, conditions, consequences, liabilities, sanctions, and penalties, whenever necessary or appropriate at any time or stage in the course of the arbitration, and such orders shall be as conclusive, final, and enforceable as an arbitration award on the merits, if the making of any such order that is equivalent to an award or correction of an award is subject to the same conditions, if any, as are applicable to the making of an award or correction of an award.

(d) For the purpose of enforcing the duty to make discovery, to produce evidence or information, including books and records, and to produce persons to testify at a deposition or at a hearing, and to impose terms, conditions, consequences, liabilities, sanctions, and penalties upon a party for violation of any such duty, such party shall be deemed to include every affiliate of such party as defined in this section. For such purpose:

(1) The personnel of every such affiliate shall be deemed to be the officers, directors, managing agents, agents, and employees of such party to the same degree as each of them, respectively, bears such status to such affiliate; and

(2) The files, books, and records of every such affiliate shall be deemed to be in the possession and control of, and capable of production by, such

party. As used in this section, “affiliate” of the party to the arbitration means and includes any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee, or managing agent of such party or person.

(e) Depositions for discovery shall not be taken unless leave to do so is first granted by the arbitrator or arbitrators.

SEC. 8. Section 1283.1 of the Code of Civil Procedure is repealed.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.