

SENATE BILL 309

I3

11r2322
CF HB 442

By: **Senator Kelley**

Introduced and read first time: February 2, 2011

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2011

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection – Transparency in Consumer Arbitrations Act**

3 FOR the purpose of requiring certain arbitration organizations to collect, publish, and
4 make available to the public certain information relating to certain binding
5 arbitrations to which a consumer is a party; requiring the information to be
6 reported beginning on a certain day and to be updated at certain intervals
7 thereafter; requiring the information to be made available to the public in a
8 certain manner; providing that the information may be considered in making a
9 certain determination; providing that an arbitration organization is not liable
10 for collecting, publishing, or distributing certain information; providing that
11 failure to comply with certain provisions of this Act may not be the sole reason
12 to refuse to enforce a certain award and may be considered as a factor in
13 making a certain determination about a consumer arbitration agreement;
14 authorizing a consumer or the Attorney General to seek an injunction to
15 prohibit an arbitration organization from taking certain actions; providing that
16 an arbitration organization is liable to a certain person for certain attorney's
17 fees and costs under certain circumstances; defining certain terms; and
18 generally relating to consumer arbitrations.

19 BY adding to

20 Article – Commercial Law

21 Section 14–3901 through 14–3905 to be under the new subtitle “Subtitle 39.

22 Transparency in Consumer Arbitrations Act”

23 Annotated Code of Maryland

24 (2005 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Commercial Law**

4 **SUBTITLE 39. TRANSPARENCY IN CONSUMER ARBITRATIONS ACT.**

5 **14-3901.**

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) “ARBITRATION ACTIVITY” MEANS THE INITIATION, CONDUCT,
9 SPONSORSHIP, OR ADMINISTRATION OF, OR THE APPOINTMENT OF AN
10 ARBITRATOR IN, A CONSUMER ARBITRATION.

11 (C) “ARBITRATION ORGANIZATION” MEANS A NONGOVERNMENTAL
12 ASSOCIATION, AGENCY, BOARD, COMMISSION, CORPORATION, OR OTHER ENTITY
13 THAT PERFORMS ARBITRATION ACTIVITIES.

14 (D) “CONSUMER” MEANS AN INDIVIDUAL WHO IS:

15 (1) A RESIDENT OF THE STATE; AND

16 (2) AN ACTUAL OR PROSPECTIVE PURCHASER OR LESSEE OF ANY
17 GOODS, SERVICES, REAL PROPERTY, OR CREDIT PRIMARILY FOR PERSONAL,
18 FAMILY, OR HOUSEHOLD PURPOSES.

19 (E) (1) “CONSUMER ARBITRATION” MEANS A BINDING ARBITRATION
20 CONDUCTED IN ACCORDANCE WITH A CONSUMER ARBITRATION AGREEMENT.

21 (2) “CONSUMER ARBITRATION” DOES NOT INCLUDE:

22 (i) ~~A~~ A BINDING ARBITRATION CONDUCTED IN
23 ACCORDANCE WITH THE PROVISIONS OF A POLICY OF PROPERTY INSURANCE,
24 CASUALTY INSURANCE, OR SURETY INSURANCE, AS THOSE TERMS ARE DEFINED
25 IN § 1-101 OF THE INSURANCE ARTICLE;

26 (ii) AN ARBITRATION GOVERNED BY RULES ADOPTED BY A
27 SECURITIES SELF-REGULATORY ORGANIZATION AND APPROVED BY THE
28 UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER FEDERAL
29 LAW; OR

1 **(III) AN ARBITRATION BETWEEN A CONSUMER AND A**
2 **RELATED INSTITUTION THAT IS LICENSED BY THE DEPARTMENT OF HEALTH**
3 **AND MENTAL HYGIENE, IF THE CONSUMER ARBITRATION AGREEMENT**
4 **BETWEEN THE CONSUMER AND THE RELATED INSTITUTION IS NOT MANDATED**
5 **AS A CONDITION OF ADMISSION OF THE CONSUMER TO THE RELATED**
6 **INSTITUTION.**

7 **(F) (1) “CONSUMER ARBITRATION AGREEMENT” MEANS A**
8 **STANDARDIZED CONTRACT THAT:**

9 **(I) IS BETWEEN A CONSUMER AND ANOTHER PERSON WHO**
10 **IS NOT A CONSUMER;**

11 **(II) PROVIDES FOR THE SALE OR LEASE OF ANY GOODS,**
12 **SERVICES, REAL PROPERTY, OR CREDIT PRIMARILY FOR PERSONAL, FAMILY, OR**
13 **HOUSEHOLD PURPOSES; AND**

14 **(III) REQUIRES THAT DISPUTES ARISING UNDER THE**
15 **CONTRACT BE SUBMITTED TO BINDING ARBITRATION.**

16 **(2) “CONSUMER ARBITRATION AGREEMENT” DOES NOT INCLUDE**
17 **A PUBLIC OR PRIVATE SECTOR COLLECTIVE BARGAINING AGREEMENT.**

18 **(G) “RELATED INSTITUTION” HAS THE MEANING STATED IN § 19-301 OF**
19 **THE HEALTH – GENERAL ARTICLE.**

20 **14-3902.**

21 **THIS SUBTITLE APPLIES TO AN ARBITRATION ORGANIZATION THAT**
22 **PERFORMS AN ARBITRATION ACTIVITY RELATED TO 50 OR MORE CONSUMER**
23 **ARBITRATIONS DURING A 5-YEAR PERIOD.**

24 **14-3903.**

25 **(A) AN ARBITRATION ORGANIZATION SUBJECT TO THIS SUBTITLE**
26 **SHALL COLLECT, PUBLISH, AND MAKE AVAILABLE TO THE PUBLIC THE**
27 **FOLLOWING INFORMATION REGARDING EACH CONSUMER ARBITRATION FOR**
28 **WHICH IT PERFORMED AN ARBITRATION ACTIVITY DURING THE PRECEDING**
29 **5-YEAR PERIOD:**

30 **(1) IF THE NONCONSUMER PARTY IS A CORPORATION OR OTHER**
31 **BUSINESS ENTITY, THE NAME OF THAT PARTY;**

32 **(2) WHETHER THE DISPUTE INVOLVED GOODS, SERVICES, REAL**
33 **PROPERTY, OR CREDIT;**

1 **(3) THE TYPE OF CLAIM OR CAUSE OF ACTION ALLEGED;**

2 **(4) WHETHER THE CONSUMER OR NONCONSUMER PARTY WAS**
3 **THE PREVAILING PARTY;**

4 **(5) THE NUMBER OF TIMES DURING THE REPORTING PERIOD**
5 **THAT THE NONCONSUMER PARTY HAS BEEN A PARTY IN A CONSUMER**
6 **ARBITRATION FOR WHICH THE ARBITRATION ORGANIZATION PERFORMED AN**
7 **ARBITRATION ACTIVITY;**

8 **(6) WHETHER THE CONSUMER PARTY WAS REPRESENTED BY AN**
9 **ATTORNEY AND, IF SO, THE NAME OF THE ATTORNEY;**

10 **(7) THE DATE THE ARBITRATION ORGANIZATION RECEIVED THE**
11 **DEMAND FOR THE CONSUMER ARBITRATION, THE DATE THE ARBITRATOR WAS**
12 **APPOINTED, AND THE DATE OF DISPOSITION BY THE ARBITRATOR OR**
13 **ARBITRATION ORGANIZATION;**

14 **(8) IF KNOWN, THE TYPE OF DISPOSITION OF THE DISPUTE,**
15 **INCLUDING WITHDRAWAL, ABANDONMENT, SETTLEMENT, AWARD AFTER**
16 **HEARING, AWARD WITHOUT HEARING, DEFAULT, OR DISMISSAL WITHOUT**
17 **HEARING;**

18 **(9) THE AMOUNT OF THE CLAIM, THE AMOUNT OF THE AWARD,**
19 **AND ANY OTHER RELIEF GRANTED;**

20 **(10) THE NAME OF THE ARBITRATOR, THE ARBITRATOR'S TOTAL**
21 **FEE FOR CONDUCTING THE CONSUMER ARBITRATION, AND THE PERCENTAGE**
22 **OF THE ARBITRATOR'S FEE ALLOCATED TO EACH PARTY; AND**

23 **(11) THE ADDRESS OF THE PREMISES WHERE THE CONSUMER**
24 **ARBITRATION WAS CONDUCTED.**

25 **(B) (1) THE INFORMATION REQUIRED UNDER SUBSECTION (A) OF**
26 **THIS SECTION:**

27 **(I) SHALL BE REPORTED BEGINNING ON THE FIRST DAY OF**
28 **THE MONTH IMMEDIATELY FOLLOWING THE MONTH AN ARBITRATION**
29 **ORGANIZATION BECOMES SUBJECT TO THIS SUBTITLE; AND**

30 **(II) SHALL BE UPDATED AT LEAST QUARTERLY**
31 **THEREAFTER.**

1 **(2) AN ARBITRATION ORGANIZATION THAT BECOMES SUBJECT TO**
2 **THIS SUBTITLE BEFORE JULY 1, 2016, SHALL REPORT THE INFORMATION**
3 **REQUIRED UNDER SUBSECTION (A) OF THIS SECTION TO THE EXTENT IT IS**
4 **AVAILABLE.**

5 **(C) THE INFORMATION REQUIRED UNDER SUBSECTION (A) OF THIS**
6 **SECTION SHALL BE MADE AVAILABLE TO THE PUBLIC:**

7 **(1) IN A COMPUTER-SEARCHABLE FORMAT THAT:**

8 **(I) IS ACCESSIBLE AT THE INTERNET WEB SITE OF THE**
9 **ARBITRATION ORGANIZATION; AND**

10 **(II) MAY BE DOWNLOADED WITHOUT A FEE; AND**

11 **(2) IN WRITING:**

12 **(I) ON REQUEST; AND**

13 **(II) AT A FEE THAT DOES NOT EXCEED THE ACTUAL COST TO**
14 **THE ARBITRATION ORGANIZATION OF COPYING THE INFORMATION.**

15 **14-3904.**

16 **THE INFORMATION PROVIDED BY AN ARBITRATION ORGANIZATION**
17 **UNDER § 14-3903 OF THIS SUBTITLE MAY BE CONSIDERED IN DETERMINING**
18 **WHETHER A CONSUMER ARBITRATION AGREEMENT IS UNCONSCIONABLE OR**
19 **OTHERWISE UNENFORCEABLE UNDER LAW.**

20 **14-3905.**

21 **(A) AN ARBITRATION ORGANIZATION IS NOT LIABLE FOR COLLECTING,**
22 **PUBLISHING, OR DISTRIBUTING THE INFORMATION REQUIRED UNDER §**
23 **14-3903 OF THIS SUBTITLE.**

24 **(B) FAILURE TO COMPLY WITH § 14-3903 OF THIS SUBTITLE:**

25 **(1) MAY NOT BE THE SOLE REASON TO REFUSE TO ENFORCE AN**
26 **AWARD MADE IN A CONSUMER ARBITRATION; AND**

27 **(2) MAY BE CONSIDERED AS A FACTOR IN DETERMINING**
28 **WHETHER A CONSUMER ARBITRATION AGREEMENT IS UNCONSCIONABLE OR**
29 **OTHERWISE UNENFORCEABLE UNDER LAW.**

1 **(C) (1) A CONSUMER OR THE ATTORNEY GENERAL MAY SEEK AN**
2 **INJUNCTION TO PROHIBIT AN ARBITRATION ORGANIZATION THAT HAS**
3 **ENGAGED IN OR IS ENGAGING IN A VIOLATION OF § 14-3903 OF THIS SUBTITLE**
4 **FROM CONTINUING OR ENGAGING IN THE VIOLATION.**

5 **(2) THE ARBITRATION ORGANIZATION IS LIABLE TO THE PERSON**
6 **BRINGING THE ACTION FOR AN INJUNCTION FOR THE PERSON'S REASONABLE**
7 **ATTORNEY'S FEES AND COSTS IF:**

8 **(I) THE COURT ISSUES THE INJUNCTION; OR**

9 **(II) THE ARBITRATION ORGANIZATION VOLUNTARILY**
10 **COMPLIES WITH § 14-3903 OF THIS SUBTITLE AFTER THE ACTION IS FILED.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 July 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.