

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 442

(Delegate Rosenberg, *et al.*)

Economic Matters

Finance

Consumer Protection - Transparency in Consumer Arbitrations Act

This bill creates the Transparency in Consumer Arbitrations Act. Under the bill, an arbitration organization that performs 50 or more binding consumer arbitrations during a five-year period must collect, publish, and make publicly available specified information about the parties involved, types of claims handled, and arbitration outcomes. The information must be updated by the organization at least every quarter and may be considered in determining whether a consumer arbitration agreement is unconscionable or unenforceable under law. The bill also grants a consumer the power to seek injunctive relief against an arbitration organization.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. Revenues are not affected.

Local Effect: Potential minimal increase in circuit court workloads as the bill creates a new cause of action for injunctive relief. However, it is difficult to predict the number of cases brought under the bill.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines “consumer arbitration” as a binding arbitration conducted in accordance with a consumer arbitration agreement. Consumer arbitration does not include (1) a binding arbitration in accordance with specified insurance policies; (2) an arbitration governed by rules adopted by a securities self-regulatory organization and approved by the U.S. Securities and Exchange Commission under federal law; or (3) an arbitration between a consumer and a related institution that is licensed by the Department of Health and Mental Hygiene, if the consumer arbitration agreement is not mandated as a condition of admission of the consumer to the related institution.

A “consumer arbitration agreement” is defined as a standardized contract (1) between a consumer and nonconsumer; (2) that provides for the sale or lease of goods, services, real property, or credit primarily for personal, family, or household purposes; and (3) requires that disputes arising under the contract be submitted to binding arbitration. A consumer arbitration agreement does not include a public- or private-sector collective bargaining agreement.

Current Law: Except as otherwise provided by the Maryland Uniform Arbitration Act, a written agreement or provision in a contract to submit any future controversy arising between the parties to arbitration is valid and enforceable. The provision or agreement is irrevocable, except upon grounds that exist at law or in equity for the revocation of a contract.

Background: In July 2009, the Minnesota Attorney General sued the National Arbitration Forum (NAF) accusing it of consumer fraud and widespread conflicts of interest. The Minnesota Attorney General argued that the reportedly independent NAF, which is the largest consumer debt collection arbitrator in the nation, shared common ownership with Mann-Bracken, a debt collection firm with 24 offices nationwide. Under the terms of a settlement with the Minnesota Attorney General, NAF stopped accepting any new consumer debt collection disputes.

In January 2010, the Maryland Collection Agency Licensing Board within the Office of the Commissioner of Financial Regulation suspended all of Mann-Bracken’s consumer debt collection activities, including approximately 27,000 collection actions filed in State courts. The firm stopped operations the same month and was placed into receivership in February 2010.

Following the NAF settlement with the Minnesota Attorney General, the American Arbitration Association (AAA) imposed a moratorium on its consumer debt arbitrations. In late 2009, AAA convened a National Task Force on the Arbitration of Consumer Debt Collection Disputes to consider the effectiveness of arbitrating consumer debt disputes

and, if determined effective, to propose “fairness and due process standards for the equitable resolution of consumer debt disputes.” The task force released *Consumer Debt Collection Due Process Protocol Statement of Principles* on October 19, 2010. However, AAA’s moratorium on debt collection arbitrations remains in effect.

In July 2010, the Federal Trade Commission (FTC) issued a report on debt collection litigation and arbitration practices titled *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*. In its report, FTC raised concerns regarding certain debt collection arbitration practices, including binding consumers to arbitration without meaningful choice or awareness; bias or the appearance of bias in arbitration proceedings; procedural unfairness in arbitration proceedings; and the high cost of participating in arbitration proceedings.

FTC recommended measures to provide consumers with greater transparency in the arbitration process and fairness in the conduct of arbitration proceedings. Among other things, FTC recommended that consumer credit contracts be drafted in a way that consumers are aware of their choice whether to arbitrate; arbitration firms develop and enforce standards to eliminate bias and the appearance of bias; and arbitration firms conduct proceedings in a manner that will make it more likely consumers will participate. FTC also recommended that the U.S. Congress create a nationwide system requiring arbitration forums to report and make public debt collection arbitration decisions.

California and the District of Columbia have enacted similar arbitration disclosure legislation.

Additional Information

Prior Introductions: HB 379 of 2010 passed the House but received an unfavorable report from the Senate Finance Committee.

Cross File: SB 309 (Senator Kelley) - Finance.

Information Source(s): *Baltimore Sun*; *The Daily Record*; Minnesota Office of the Attorney General; Maryland Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Federal Trade Commission; Department of Legislative Services

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