

HOUSE BILL 379

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01r0396

By: **Delegates Rosenberg, Feldman, and Frick**

Introduced and read first time: January 28, 2010

Assigned to: Economic Matters

A BILL ENTITLED

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, may constitute an unfair or deceptive trade
13 practice under the Maryland Consumer Protection Act under certain
14 circumstances, and may be considered as a factor in making a certain
15 determination about a consumer arbitration agreement; authorizing a consumer
16 or the Attorney General to seek an injunction to prohibit an arbitration
17 organization from taking certain actions; providing that an arbitration
18 organization is liable to a certain person for certain attorney's fees and costs
19 under certain circumstances; defining certain terms; and generally relating to
20 consumer arbitrations.

21 BY adding to

22 Article – Commercial Law

23 Section 14–3801 through 14–3805 to be under the new subtitle “Subtitle 38.
24 Transparency in Consumer Arbitrations Act”

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2009 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Commercial Law

2 SUBTITLE 38. TRANSPARENCY IN CONSUMER ARBITRATIONS ACT.

3 14–3801.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.6 (B) “ARBITRATION ACTIVITY” MEANS THE INITIATION, CONDUCT,
7 SPONSORSHIP, OR ADMINISTRATION OF, OR THE APPOINTMENT OF AN
8 ARBITRATOR IN, A CONSUMER ARBITRATION.9 (C) “ARBITRATION ORGANIZATION” MEANS A NONGOVERNMENTAL
10 ASSOCIATION, AGENCY, BOARD, COMMISSION, CORPORATION, OR OTHER ENTITY
11 THAT PERFORMS ARBITRATION ACTIVITIES.

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

13 (1) A RESIDENT OF THE STATE; AND

14 (2) AN ACTUAL OR PROSPECTIVE PURCHASER OR LESSEE OF ANY
15 GOODS, SERVICES, REAL PROPERTY, OR CREDIT PRIMARILY FOR PERSONAL,
16 FAMILY, OR HOUSEHOLD PURPOSES.17 (E) “CONSUMER ARBITRATION” MEANS A BINDING ARBITRATION
18 CONDUCTED IN ACCORDANCE WITH A CONSUMER ARBITRATION AGREEMENT.19 (F) (1) “CONSUMER ARBITRATION AGREEMENT” MEANS A
20 STANDARDIZED CONTRACT THAT:21 (I) IS BETWEEN A CONSUMER AND ANOTHER PERSON WHO
22 IS NOT A CONSUMER;23 (II) PROVIDES FOR THE SALE OR LEASE OF ANY GOODS,
24 SERVICES, REAL PROPERTY, OR CREDIT PRIMARILY FOR PERSONAL, FAMILY, OR
25 HOUSEHOLD PURPOSES; AND26 (III) REQUIRES THAT DISPUTES ARISING UNDER THE
27 CONTRACT BE SUBMITTED TO BINDING ARBITRATION.28 (2) “CONSUMER ARBITRATION AGREEMENT” DOES NOT INCLUDE
29 A PUBLIC OR PRIVATE SECTOR COLLECTIVE BARGAINING AGREEMENT.

1 14-3802.

2 THIS SUBTITLE APPLIES TO AN ARBITRATION ORGANIZATION THAT
3 PERFORMS AN ARBITRATION ACTIVITY RELATED TO 50 OR MORE CONSUMER
4 ARBITRATIONS DURING A 5-YEAR PERIOD.

5 14-3803.

6 (A) AN ARBITRATION ORGANIZATION SUBJECT TO THIS SUBTITLE
7 SHALL COLLECT, PUBLISH, AND MAKE AVAILABLE TO THE PUBLIC THE
8 FOLLOWING INFORMATION REGARDING EACH CONSUMER ARBITRATION FOR
9 WHICH IT PERFORMED AN ARBITRATION ACTIVITY DURING THE PRECEDING
10 5-YEAR PERIOD:

11 (1) IF THE NONCONSUMER PARTY IS A CORPORATION OR OTHER
12 BUSINESS ENTITY, THE NAME OF THAT PARTY;

13 (2) WHETHER THE DISPUTE INVOLVED GOODS, SERVICES, REAL
14 PROPERTY, OR CREDIT;

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

16 (4) WHETHER THE CONSUMER OR NONCONSUMER PARTY WAS
17 THE PREVAILING PARTY;

18 (5) THE NUMBER OF TIMES DURING THE REPORTING PERIOD
19 THAT THE NONCONSUMER PARTY HAS BEEN A PARTY IN A CONSUMER
20 ARBITRATION FOR WHICH THE ARBITRATION ORGANIZATION PERFORMED AN
21 ARBITRATION ACTIVITY;

22 (6) WHETHER THE CONSUMER PARTY WAS REPRESENTED BY AN
23 ATTORNEY AND, IF SO, THE NAME OF THE ATTORNEY;

24 (7) THE DATE THE ARBITRATION ORGANIZATION RECEIVED THE
25 DEMAND FOR THE CONSUMER ARBITRATION, THE DATE THE ARBITRATOR WAS
26 APPOINTED, AND THE DATE OF DISPOSITION BY THE ARBITRATOR OR
27 ARBITRATION ORGANIZATION;

28 (8) IF KNOWN, THE TYPE OF DISPOSITION OF THE DISPUTE,
29 INCLUDING WITHDRAWAL, ABANDONMENT, SETTLEMENT, AWARD AFTER
30 HEARING, AWARD WITHOUT HEARING, DEFAULT, OR DISMISSAL WITHOUT
31 HEARING;

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

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

6 **(11) THE ADDRESS OF THE PREMISES WHERE THE CONSUMER**
7 **ARBITRATION WAS CONDUCTED AND THE NAME OF THE OWNER OR LESSEE OF**
8 **THE PREMISES.**

9 **(B) (1) THE INFORMATION REQUIRED UNDER SUBSECTION (A) OF**
10 **THIS SECTION:**

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

14 **(II) SHALL BE UPDATED AT LEAST QUARTERLY**
15 **THEREAFTER.**

16 **(2) AN ARBITRATION ORGANIZATION THAT BECOMES SUBJECT TO**
17 **THIS SUBTITLE BEFORE JULY 1, 2015, SHALL REPORT THE INFORMATION**
18 **REQUIRED UNDER SUBSECTION (A) OF THIS SECTION TO THE EXTENT IT IS**
19 **AVAILABLE.**

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

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

23 **(I) IS ACCESSIBLE AT THE INTERNET WEBSITE OF THE**
24 **ARBITRATION ORGANIZATION; AND**

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

26 **(2) IN WRITING:**

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

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

30 **14-3804.**

1 **THE INFORMATION PROVIDED BY AN ARBITRATION ORGANIZATION**
2 **UNDER § 14-3803 OF THIS SUBTITLE MAY BE CONSIDERED IN DETERMINING**
3 **WHETHER A CONSUMER ARBITRATION AGREEMENT IS UNCONSCIONABLE OR**
4 **OTHERWISE UNENFORCEABLE UNDER LAW.**

5 **14-3805.**

6 **(A) AN ARBITRATION ORGANIZATION IS NOT LIABLE FOR COLLECTING,**
7 **PUBLISHING, OR DISTRIBUTING THE INFORMATION REQUIRED UNDER §**
8 **14-3803 OF THIS SUBTITLE.**

9 **(B) FAILURE TO COMPLY WITH § 14-3803 OF THIS SUBTITLE:**

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

12 **(2) MAY CONSTITUTE AN UNFAIR OR DECEPTIVE TRADE**
13 **PRACTICE UNDER § 13-301 OF THIS ARTICLE, AS DETERMINED BY A COURT OF**
14 **COMPETENT JURISDICTION; AND**

15 **(3) MAY BE CONSIDERED AS A FACTOR IN DETERMINING**
16 **WHETHER A CONSUMER ARBITRATION AGREEMENT IS UNCONSCIONABLE OR**
17 **OTHERWISE UNENFORCEABLE UNDER LAW.**

18 **(C) (1) A CONSUMER OR THE ATTORNEY GENERAL MAY SEEK AN**
19 **INJUNCTION TO PROHIBIT AN ARBITRATION ORGANIZATION THAT HAS**
20 **ENGAGED IN OR IS ENGAGING IN A VIOLATION OF § 14-3803 OF THIS SUBTITLE**
21 **FROM CONTINUING OR ENGAGING IN THE VIOLATION.**

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

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

26 **(II) THE ARBITRATION ORGANIZATION VOLUNTARILY**
27 **COMPLIES WITH § 14-3803 OF THIS SUBTITLE AFTER THE ACTION IS FILED.**

28 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
29 **July 1, 2010.**