

CHAPTER.....

AN ACT relating to trade practices; making provisions in certain contracts that require arbitration void and unenforceable under certain circumstances; requiring certain disclosures by arbitral organizations; requiring certain disclosures in agreements to arbitrate; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 6 of this bill mandates the inclusion of certain disclosures relating to the costs of arbitration in consumer contracts.

Section 10 of this bill mandates certain disclosures by certain arbitral organizations.

Sections 11 and 13 of this bill prohibit the conduct of consumer arbitration proceedings by arbitral organizations under certain circumstances.

Section 12 of this bill provides for waiver of arbitration fees that would otherwise be charged or assessed against a consumer under certain circumstances.

Section 14 of this bill provides for injunctive relief and other remedies for certain violations by arbitral organizations.

Sections 18 and 19 of this bill revise provisions establishing the circumstances under which remedies may be awarded by a court or arbitrator. (NRS 38.222, 38.238)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *As used in sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Consumer” means a person who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any personal property, tangible or intangible goods, services or credit for personal, family or household purposes.*

Sec. 4. *“Consumer arbitration agreement” means a standardized contract where one party drafts a provision that requires disputes arising after the signing of the contract to be submitted to binding arbitration and the other party is a consumer. Such an agreement does not include a public or private sector collective bargaining agreement.*



Sec. 5. (Deleted by amendment.)

Sec. 6. 1. A person drafting a consumer arbitration agreement shall clearly and conspicuously disclose in regard to any arbitration:

(a) The filing fee;

(b) The average daily cost for an arbitrator and hearing room if the consumer elects to appear in person;

(c) Other charges that the arbitrator or arbitration service provider will assess in conjunction with an arbitration where the consumer appears in person; and

(d) The proportion of these costs which each party bears in the event that the consumer prevails and in the event that the consumer does not prevail.

2. The costs specified in subsection 1 need not include attorney's fees and, to the extent that, with regard to the disclosures required by subsection 1, precise amounts of the fees, costs and charges are not known, the disclosures may be based on reasonable, good faith estimates. A person providing a reasonable, good faith estimate is not liable in any manner for the fact that the actual fees, costs and charges of a particular arbitration vary from the estimate provided.

3. Failure to comply with this section is not grounds to refuse to enforce a consumer arbitration agreement. However, the information provided in the disclosure can be considered in a determination of whether a consumer arbitration agreement is unconscionable or otherwise not enforceable under other law.

4. Whenever this section is violated, any affected person or entity, including the Attorney General, may request a court to enjoin the drafting party from violating this section as to agreements the drafting party enters in the future. The drafting party is liable to the person or entity requesting the injunction for the reasonable attorney's fees and costs of the person requesting the injunction where the court issues an injunction or where, after the action is commenced, the drafting party voluntarily complies with this section.

Sec. 7. Chapter 38 of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 14, inclusive, of this act.

Sec. 8. "Consumer" means a person who has a dispute relating to that person's status as:

1. A user of, purchaser of or person who attempts to use or purchase any personal property, tangible or intangible goods, services or credit for personal, family or household purposes;



2. An enrollee, subscriber or insured under a health care plan or health care insurance, or a person with a medical malpractice claim; or

3. An employee or applicant for employment, except where an arbitration is pursuant to the terms of a public or private sector collective bargaining agreement.

Sec. 9. "Consumer arbitration" means a binding arbitration where one party is a consumer.

Sec. 10. 1. Any arbitral organization that administers or is otherwise involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which must be accessible on the Internet website of the arbitral organization, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding 5 years:

(a) The name of any corporation or other business entity that is a party to the arbitration;

(b) The type of dispute involved, including, without limitation, goods, banking, insurance, health care, debt collection, employment and, if the dispute involves employment, the amount of the employee's annual wage divided into the following ranges:

(1) Less than one hundred thousand dollars;

(2) One hundred thousand dollars or more but not more than two hundred fifty thousand dollars; and

(3) More than two hundred fifty thousand dollars;

(c) Whether the consumer was the prevailing party;

(d) On how many occasions, if any, a business entity that is a party to an arbitration has previously been a party in an arbitration or mediation administered by the arbitral organization;

(e) Whether the consumer was represented by an attorney;

(f) The date the arbitral organization received the demand for arbitration, the date the arbitrator was appointed and the date of disposition by the arbitrator or arbitral organization;

(g) The type of disposition of the dispute, if known, including, without limitation, withdrawal, abandonment, settlement, award after hearing, award without hearing, default or dismissal without hearing;

(h) The amount of the claim, the amount of the award and any other relief granted; and

(i) The name of the arbitrator, his total fee for the case and the percentage of the arbitrator's fee allocated to each party.

2. If the information that is required pursuant to subsection 1 is provided by the arbitral organization in a computer-searchable



format on the company's Internet website and may be downloaded without any fee, the arbitral organization may charge the actual cost of copying to any person who requests the information on paper. If the information required is not accessible on the Internet, the arbitral organization shall provide that information without charge to any person who requests the information on paper.

3. An arbitral organization that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subsection 1 semiannually, provide the information only on paper and charge the actual cost of copying.

4. No arbitral organization has any liability for collecting, publishing or distributing the information in compliance with this section.

Sec. 11. No arbitral organization may administer a consumer arbitration to be conducted in this State or provide any other services related to that consumer arbitration, if:

1. The arbitral organization has, or within the preceding year has had, a financial interest in any party or attorney for a party to the arbitration; or

2. Any party or attorney for a party to the arbitration has, or within the preceding year has had, any type of financial interest in the arbitral organization.

Sec. 12. 1. All fees and costs charged to or assessed in this State upon a consumer by an arbitral organization in a consumer arbitration must be waived for any person having a gross monthly income that is less than 300 percent of the federal poverty guidelines.

2. Nothing in this section affects the ability of an arbitral organization to shift fees that would otherwise be charged or assessed upon a consumer to another party.

3. Prior to requesting or obtaining any fee, an arbitral organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, without limitation, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules or code of procedure.

4. Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the arbitral organization indicating the monthly income of the consumer and the number of persons living in the



household of the consumer. No arbitral organization may require a consumer to provide any further statement or evidence of indigency.

5. Any information obtained by an arbitral organization about a consumer's identity, financial condition, income, wealth or fee waiver request must be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except that an arbitral organization may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

Sec. 13. A neutral arbitrator or an arbitral organization shall not administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, without limitation, the fees and costs of the arbitrator, arbitral organization, attorney or witnesses.

Sec. 14. Whenever a provision of sections 10 to 14, inclusive, of this act is violated, any affected person or entity, including the Attorney General, may request a court to enjoin the arbitral organization from violating the applicable provision of sections 10 to 14, inclusive, of this act and order such restitution as appropriate. The arbitral organization is liable for the reasonable attorney's fees and costs of that person or entity where that person or entity prevails or where, after the action is commenced, the arbitral organization voluntarily complies with the provisions of sections 10 to 14, inclusive, of this act.

Sec. 15. NRS 38.207 is hereby amended to read as follows:

38.207 As used in NRS 38.206 to 38.248, inclusive, and sections 8 to 14, inclusive, of this act, the words and terms defined in NRS 38.208 to 38.213, inclusive, and sections 8 and 9 of this act have the meanings ascribed to them in those sections.

Sec. 16. NRS 38.216 is hereby amended to read as follows:

38.216 1. NRS 38.206 to 38.248, inclusive, and sections 8 to 14, inclusive, of this act govern an agreement to arbitrate made on or after October 1, 2001.

2. NRS 38.206 to 38.248, inclusive, and sections 8 to 14, inclusive, of this act govern an agreement to arbitrate made before October 1, 2001, if all the parties to the agreement or to the arbitral proceeding so agree in a record.

3. On or after October 1, 2003, NRS 38.206 to 38.248, inclusive, and sections 8 to 14, inclusive, of this act govern an agreement to arbitrate whenever made.



Sec. 17. (Deleted by amendment.)

Sec. 18. NRS 38.222 is hereby amended to read as follows:

38.222 1. *Except as otherwise provided in section 13 of this act:*

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitral proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitral proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

~~(2)~~ (b) After an arbitrator is appointed and is authorized and able to act:

~~(a)~~ (1) The arbitrator may issue such orders for provisional remedies, including interim awards, as he finds necessary to protect the effectiveness of the arbitral proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

~~(b)~~ (2) A party to an arbitral proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

~~(3)~~ 2. A party does not waive a right of arbitration by making a motion under subsection 1. ~~(or 2.)~~

Sec. 19. NRS 38.238 is hereby amended to read as follows:

38.238 *Except as otherwise provided in section 13 of this act:*

1. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitral proceeding.

2. As to all remedies other than those authorized by subsection 1, an arbitrator may order such remedies as he considers just and appropriate under the circumstances of the arbitral proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under NRS 38.239 or for vacating an award under NRS 38.241.

3. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

Secs. 20-25. (Deleted by amendment.)

