

SENATE BILL NO. 442—COMMITTEE ON JUDICIARY

MARCH 23, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing arbitration.
(BDR 3-1138)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to arbitration; authorizing the removal of certain arbitrators from an arbitral proceeding under certain circumstances; prohibiting certain arbitrators from consolidating separate arbitral proceedings or other claims under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law establishes the Uniform Arbitration Act of 2000. (NRS 38.206-
2 38.248) Under existing law, a person who is requested to serve as an arbitrator must
3 disclose to all parties to the agreement to arbitrate and arbitral proceeding and to
4 any other arbitrators any facts that a reasonable person would consider likely to
5 affect the impartiality of the arbitrator in the proceeding. Existing law also
6 authorizes a court, upon a timely objection by a party, to vacate an award made by
7 an arbitrator who did not disclose such a fact. (NRS 38.227) **Section 1** of this bill
8 prohibits certain arbitrators from consolidating separate arbitral proceedings or
9 other claims unless all parties expressly agree to such consolidation. **Section 2** of
10 this bill requires a court to remove certain arbitrators who did not disclose such a
11 fact from the arbitral proceeding if an award has not yet been made.

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

1 **Section 1.** NRS 38.224 is hereby amended to read as follows:
2 38.224 1. Except as otherwise provided in subsection 3, upon
3 motion of a party to an agreement to arbitrate or to an arbitral
4 proceeding, the court may order consolidation of separate arbitral
5 proceedings as to all or some of the claims if:



(a) There are separate agreements to arbitrate or separate arbitral proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitral proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitral proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

2. The court may order consolidation of separate arbitral proceedings as to some claims and allow other claims to be resolved in separate arbitral proceedings.

3. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

4. Except as otherwise provided in this subsection, an arbitrator may not consolidate separate arbitral proceedings or other claims unless all parties expressly agree to the consolidation. This subsection does not apply to an arbitral proceeding conducted or administered by a self-regulatory organization, as defined by the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(26), the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq., and any regulations adopted pursuant thereto.

Sec. 2. NRS 38.227 is hereby amended to read as follows:

38.227 1. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitral proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the proceeding, including:

(a) A financial or personal interest in the outcome of the arbitral proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitral proceeding, their counsel or representatives, a witness or another arbitrator.

2. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitral proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.



3. If an arbitrator discloses a fact required by subsection 1 or 2 to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under paragraph (b) of subsection 1 of NRS 38.241 for vacating an award made by the arbitrator.

4. ~~HH~~ *Except as otherwise provided in this subsection, if the arbitrator did not disclose a fact as required by subsection 1 or 2, upon timely objection by a party HH and a determination by the court under paragraph (b) of subsection 1 of NRS 38.241 may vacate that the nondisclosed fact is one that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitral proceeding, the court shall:*

(a) *Vacate an award HH made before the objecting party discovered such fact; or*

(b) *If an award has not been made before discovery of such fact, remove the arbitrator from the arbitral proceeding.*

↪ This subsection does not apply to an arbitral proceeding conducted or administered by a self-regulatory organization, as defined by the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(26), the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq., and any regulations adopted pursuant thereto.

5. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitral proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality for the purposes of paragraph (b) of subsection 1 of NRS 38.241.

6. If the parties to an arbitral proceeding *expressly* agree to the procedures of an arbitral organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under paragraph (b) of subsection 1 of NRS 38.241.

Sec. 3. NRS 38.241 is hereby amended to read as follows:

38.241 1. Upon motion to the court by a party to an arbitral proceeding, the court shall vacate an award made in the arbitral proceeding if:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was:

(1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(2) Corruption by an arbitrator; or

(3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitral proceeding;



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(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to NRS 38.231, so as to prejudice substantially the rights of a party to the arbitral proceeding;

(d) An arbitrator exceeded his or her powers;

(e) There was no agreement to arbitrate, unless the movant participated in the arbitral proceeding without raising the objection under subsection 3 of NRS 38.231 not later than the beginning of the arbitral hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in NRS 38.223 so as to prejudice substantially the rights of a party to the arbitral proceeding.

2. A motion under this section must be made within 90 days after the movant receives notice of the award pursuant to NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS 38.237, unless the movant alleges that the award was procured by *evident partiality*, corruption, fraud or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

3. If the court vacates an award on a ground other than that set forth in paragraph (e) of subsection 1, it may order a rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection 1, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d) or (f) of subsection 1, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection 2 of NRS 38.236 for an award.

4. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Sec. 4. This act becomes effective upon passage and approval.

