

MAINE STATE LEGISLATURE

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No. 1489

S.P. 516

March 19, 2007

An Act To Enhance Fairness in Arbitration

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BOWMAN of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 212-B** is enacted to read:

3 **CHAPTER 212-B**

4 **CONSUMER ARBITRATION AGREEMENTS**

5 **§1391. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Consumer.** "Consumer" means:

9 A. An individual who uses, purchases, acquires, attempts to purchase or acquire or is
10 offered or furnished real or personal property, tangible or intangible goods, services
11 or credit for personal, family or household purposes; or

12 B. An employee of or an individual seeking employment from the other party in a
13 consumer arbitration agreement.

14 **2. Consumer arbitration.** "Consumer arbitration" means binding arbitration under
15 a consumer arbitration agreement in which a party to the arbitration is a consumer.

16 **3. Consumer arbitration agreement.** "Consumer arbitration agreement" means a
17 standardized contract with a consumer concerning employment or the use, purchase,
18 acquisition, attempt to acquire or purchase, offer or furnishing of real or personal
19 property, tangible or intangible goods, services or credit for personal, family or household
20 purposes in the State that contains a requirement that a consumer submit a dispute under
21 the contract to binding arbitration. "Consumer arbitration agreement" does not include a
22 collective bargaining agreement of a private or public employee, or a requirement that a
23 party to the contract other than the consumer submit to binding arbitration.

24 **4. Financial interest.** "Financial interest" means holding a position in a business as
25 an officer, director, trustee, member or partner or any position in management or
26 ownership of more than 5% interest in the business.

27 **5. Indigence.** "Indigence" and "indigent" mean having a gross monthly income less
28 than 300% of the federal poverty guidelines published by the United States Department
29 of Health and Human Services.

30 **6. Provider.** "Provider" means a private person that provides consumer arbitration
31 or services related to consumer arbitration.

32 **§1392. Consumer arbitration agreements**

33 **1. Limitation on agreements.** A consumer arbitration agreement not allowed under
34 federal law is void and unenforceable.

1 **2. Costs and fees.** A consumer arbitration agreement must clearly and
2 conspicuously disclose the estimated expenses of any arbitration including:

3 A. The filing fee;

4 B. The average daily cost for an arbitrator and hearing room;

5 C. Any other charge that an arbitrator or provider may assess; and

6 D. The proportion of expenses listed under this subsection borne by each party if the
7 consumer prevails and if the consumer does not prevail.

8 An expense required to be disclosed under this subsection does not include attorney's
9 fees. A person required to disclose an expense under this subsection does not violate this
10 subsection when an actual expense exceeds an estimate if the estimate was reasonable
11 and made in good faith.

12 **3. Violation.** A violation of subsection 2 does not render the consumer arbitration
13 agreement unenforceable but may be considered by a court in a determination of whether
14 the agreement is unconscionable or otherwise unenforceable under another law. If a party
15 violates subsection 2, a person or the Attorney General may request a court of competent
16 jurisdiction to enjoin the party in violation from violating subsection 2 in a subsequent
17 consumer arbitration agreement in which that party is a party. A party found to be in
18 violation of subsection 2 or that conforms to subsection 2 after an action is commenced is
19 liable for the court costs and reasonable attorney's fees of the party bringing the action.

20 **§1393. Arbitration service providers**

21 **1. Providers of 50 or more consumer arbitrations a year.** A provider involved in
22 50 or more consumer arbitrations a year shall collect, publish at least quarterly and make
23 publicly accessible in paper form upon request and on a computer-searchable publicly
24 accessible website, if the provider has an publicly accessible website, the following
25 information for each consumer arbitration with which the provider was involved for the
26 previous 5 years:

27 A. The name of every party to the consumer arbitration;

28 B. The type of dispute involved, such as goods, banking, insurance, health care, debt
29 collection and employment;

30 C. If the dispute involved employment, the amount of the employee's annual wage
31 divided into the following ranges:

32 (1) Less than \$100,000;

33 (2) From \$100,000 to \$250,000; or

34 (3) More than \$250,000;

35 D. Whether the consumer was the prevailing party;

36 E. The number of times a business that is a party to the consumer arbitration had
37 previously been a party to a mediation or arbitration in which the provider was
38 involved;

- 1 F. Whether the consumer was represented by an attorney;
2 G. The dates the provider received the demand for arbitration, the arbitrator was
3 appointed and the disposition of the arbitration was rendered;
4 H. The type of disposition of the arbitration, including withdrawal, abandonment,
5 settlement, award after hearing, award without hearing, default and dismissal without
6 hearing;
7 I. The amount of the claim and the amount of any award or relief granted; and
8 J. The name of the arbitrator, the amount of the arbitrator's fee for the arbitration and
9 the percentage of the arbitrator's fee allocated to each party.

10 If the information required by this subsection is available in a computer-searchable
11 format and downloadable for free on the provider's publicly accessible website, the
12 provider may charge a requestor for the cost of copying the information on paper. If the
13 information required by this subsection is not available for free on the provider's publicly
14 accessible website, the provider may not charge a requestor for the information in paper
15 form.

16 **2. Providers of fewer than 50 consumer arbitrations a year.** A provider involved
17 with fewer than 50 arbitrations a year shall collect, publish at least semiannually and
18 provide in paper form upon request the information for each consumer arbitration with
19 which the provider was involved for the past 5 years required in subsection 1 and may not
20 charge a requestor for information provided in paper form.

21 **3. Liability in providing information.** A provider has no liability related to
22 providing the information required under subsections 1 and 2.

23 **4. Fees.** A consumer may not be required to pay the fee or related costs incurred by
24 the opposing party if the consumer does not prevail in a consumer arbitration. The
25 provisions of subsection 5 do not prevent a provider from shifting a waived fee or cost
26 under subsection 5 to another party in the consumer arbitration.

27 **5. Waiver of fees.** Upon request of a consumer or if the provider knows the
28 consumer is indigent, the provider must waive the arbitration fee and all costs related to a
29 consumer arbitration for an indigent consumer. A consumer may establish indigence by
30 making a declaration under oath on a form provided by the provider indicating the
31 consumer's monthly income and the number of persons living in the consumer's
32 household. A provider may not require any other information to establish indigence. A
33 provider shall provide clear and conspicuous written notice of the requirements of this
34 subsection prior to requesting or obtaining a fee from a consumer for involvement in a
35 consumer arbitration in the provider's first written communication and in any invoice,
36 bill, submission form, fee schedule, rules or code of procedure provided to the consumer
37 by the provider.

38 **6. Confidentiality.** Except for the number of waiver requests received or granted or
39 the total amount of fees waived, and except for the information required to be disclosed
40 by subsections 1 and 2, any information obtained by a provider about a consumer's
41 identity, financial condition, income, wealth, fee waiver or fee waiver request must be

1 kept confidential and may not be disclosed to any person, including the opposing party in
2 the arbitration.

3 7. Financial interest. A provider may not be involved with a consumer arbitration
4 if:

5 A. The provider has or within the preceding year had a financial interest in a party or
6 the legal representation of a party in the arbitration; or

7 B. A party or legal representative of a party in the arbitration has or within the
8 preceding year had a financial interest in the provider.

9 8. Violation. If a provider violates this section, a person or the Attorney General
10 may request a court of competent jurisdiction to enjoin the provider from violating this
11 section and order restitution if the court determines restitution is appropriate. A provider
12 found to be in violation of this section or that conforms to this section after an action is
13 commenced is liable for the court costs and reasonable attorney's fees of the party
14 bringing the action.

15 **Sec. 2. 14 MRSA §5927-A** is enacted to read:

16 **§5927-A. Preservation of legal rights**

17 1. Written agreement. A written agreement under section 5927 may not waive or
18 have the practical effect of waiving a right of a party to that agreement to resolve a
19 dispute by obtaining:

20 A. Injunctive, declaratory or other equitable relief;

21 B. Relief on a class-wide basis;

22 C. Punitive damages;

23 D. Multiple or minimum damages as specified by statute;

24 E. Attorney's fees and costs as specified by statute or allowed by common law; or

25 F. A hearing at which a party may present evidence in person.

26 2. Confidentiality. A written agreement under section 5927 may not require or have
27 the practical effect of requiring that any aspect of a resolution of a dispute between the
28 parties to the agreement be kept confidential, not including certain information that is a
29 trade secret or proprietary or similarly sensitive information.

30 3. Severability. If a court determines that a provision of a written agreement under
31 section 5927 is in violation of this section, the court may order that the provision of the
32 agreement or the agreement as a whole is void and unenforceable as the court determines
33 appropriate.

34 4. Right of action. A party to a written agreement under section 5927 may bring a
35 private right of action to enforce a provision of this section. If a court finds that the
36 provision of the agreement is in violation of this section or if the provision is modified by
37 the parties to conform to this section after an action is commenced, the party who drafted

1 that provision is liable for the reasonable court costs and attorney's fees of the party
2 bringing the action.

3 **Sec. 3. 24-A MRSA §11**, as enacted by PL 1969, c. 132, §1, is amended to read:

4 **§11. Particular provisions prevail**

5 Provisions Except for the provisions of section 14, provisions of this Title as to a
6 particular kind of insurance, type of insurer or matter shall prevail over provisions
7 relating to insurance, insurers or matters in general.

8 **Sec. 4. 24-A MRSA §14** is enacted to read:

9 **§14. Arbitration**

10 **1. Consumer defined.** For purposes of this section, "consumer" means an individual
11 who uses, purchases, acquires, attempts to purchase or acquire or is offered or furnished
12 insurance for personal, family or household purposes.

13 **2. Mandatory arbitration prohibited.** A written insurance contract with a
14 consumer or other written agreement that offers insurance to a consumer may not require
15 mandatory arbitration, including mandatory arbitration in a dispute over an action brought
16 under subsection 5.

17 **3. Severability.** A provision of a contract or written agreement in violation of
18 subsection 2 is severable and does not affect another lawful provision of the contract or
19 agreement, which remains in full effect.

20 **4. Other written agreement.** A written agreement other than an insurance contract
21 that offers insurance to a consumer along with goods, property, credit or another service
22 and requires mandatory arbitration must include a clear and conspicuous disclosure that
23 the mandatory arbitration provision does not apply to a dispute involving the insurance.

24 **5. Exception.** This section does not apply to an agreement to mandatory arbitration
25 by a consumer after an action is filed or the opposing party is informed of the violation.

26 **6. Violation.** A person in violation of this section is liable to the consumer in an
27 amount equal to the sum of actual damages incurred by the consumer due to the violation,
28 reasonable costs and attorney's fees and an additional \$100 even if no damages are
29 proved.

30 **SUMMARY**

31 This bill concerns binding arbitration agreements in the following ways. It:

32 1. Limits binding consumer arbitration agreements with a consumer concerning
33 employment and the use, purchase, acquisition, attempt to acquire or purchase, offer or
34 furnishing of real or personal property, tangible or intangible goods, services or credit for
35 personal, family or household purposes in the State to those allowed by federal law and
36 regulates those agreements and the providers of consumer arbitration;

- 1 2. Preserves certain legal rights of a party when entering into a binding arbitration
- 2 agreement; and
- 3 3. Prohibits binding arbitration provisions in insurance contracts.