

MAINE STATE LEGISLATURE

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Date: 3/11/10

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 875, L.D. 1256, Bill, "An Act To Prohibit Predispute Mandatory Binding Arbitration Clauses in Consumer Contracts"

Amend the bill by striking out the title and substituting the following:

'An Act To Provide Protections for Consumers Subject to Mandatory Arbitration Clauses'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 10 MRSA §1391, sub-§1, as enacted by PL 2007, c. 250, §1 and amended by c. 273, Pt. B, §6, is repealed.

Sec. 2. 10 MRSA §1391, sub-§2, as enacted by PL 2007, c. 250, §1, is amended to read:

2. Consumer. "Consumer" means an individual who uses, purchases, acquires, attempts to purchase or acquire or is offered or furnished credit or a loan goods or services, other than insurance, for personal, family or household purposes.

Sec. 3. 10 MRSA §1391, sub-§4, as enacted by PL 2007, c. 250, §1, is amended to read:

4. Consumer arbitration agreement. "Consumer arbitration agreement" means a standard contract with a consumer concerning the use of, purchase of, acquisition of, attempt to purchase or acquire, offer of or furnishing of credit or a loan goods or services, other than insurance, for personal, family or household purposes.

Sec. 4. 10 MRSA §1391, sub-§4-A is enacted to read:

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

Sec. 5. 10 MRSA §1392, as enacted by PL 2007, c. 250, §1, is repealed.

COMMITTEE AMENDMENT

1 **Sec. 6. 10 MRSA §1393** is enacted to read:

2 **§1393. Consumer arbitration agreements**

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

5 **2. Costs and fees.** In a provider's initial notice or communication to a consumer, the
6 provider must clearly and conspicuously disclose the estimated expenses of any
7 arbitration, including:

8 A. The filing fee;

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

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

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

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

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

25 **Sec. 7. 10 MRSA §1394** is enacted to read:

26 **§1394. Arbitration service providers**

27 **1. Providers of consumer arbitrations.** Beginning January 1, 2011, a provider
28 shall collect, publish at least quarterly and make available to the public in a computer-
29 searchable format, which must be available on the publicly accessible website of the
30 provider, if any, and on paper upon request, all of the following information for each
31 consumer arbitration with which the provider was involved:

32 A. The name of the nonconsumer party, if the nonconsumer party is a corporation or
33 other business entity;

34 B. The type of dispute involved, such as goods, banking, wireless communications,
35 health care, debt collection and employment;

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

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

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

(3) More than \$250,000;

D. Whether the consumer was the prevailing party;

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

F. Whether the consumer was represented by an attorney;

G. The dates the provider received the demand for arbitration, the arbitrator was appointed and the disposition of the arbitration was rendered;

H. The type of disposition of the arbitration, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default and dismissal without hearing;

I. The amount of the claim and the amount of any award or relief granted;

J. The name of the arbitrator, the amount of the arbitrator's fee for the arbitration and the percentage of the arbitrator's fee allocated to each party; and

K. Whether the provider has or within the preceding year had a financial interest in a party or the legal representation of a party in the arbitration or a party or legal representative of a party in the arbitration has or within the preceding year had a financial interest in the provider.

Once the information is published and made available, it must remain available for at least 5 years. If the information required by this subsection is available in a computer-searchable format and downloadable for free on the provider's publicly accessible website, the provider may charge a requestor for the cost of copying the information on paper. If the information required by this subsection is not available for free on the provider's publicly accessible website, the provider may not charge a requestor for the information in paper form.

2. Notice to Attorney General; links on website. A provider that provides arbitration services in this State shall notify the consumer protection division of the Office of the Attorney General in writing of any website upon which the information required under subsection 1 is posted. The provider shall inform the consumer protection division of the Office of the Attorney General if it discontinues the use of any website previously reported. The Attorney General shall include the links to the providers on the Attorney General's publicly accessible website.

3. Liability in providing information. A provider has no liability for collecting, publishing or distributing the information required under subsection 1.'

SUMMARY

This amendment replaces the bill.

The amendment amends the current law concerning consumer arbitration agreements. It amends the definition of "consumer" and "consumer arbitration agreement" to cover all goods and services, other than insurance, for personal, family or household purposes.

2012

COMMITTEE AMENDMENT "A" to H.P. 875, L.D. 1256

1 The amendment defines "financial interest" to mean holding a position in a business
2 as an officer, director, trustee, member or partner or any position in management or
3 ownership of more than 5% interest in the business. It is used in the context of reporting
4 consumer arbitrations.

5 The amendment repeals the existing requirement that arbitration providers that
6 provide arbitration services related to credit or loans for personal, family or household
7 purposes report to the Superintendent of Consumer Credit Protection within the
8 Department of Professional and Financial Regulation.

9 The amendment provides that a consumer arbitration agreement that is not allowed
10 under federal law is void and unenforceable.

11 The amendment requires a provider of consumer arbitration to disclose the estimated
12 expenses of any arbitration.

13 The amendment requires reporting by arbitration providers in order to make available
14 information about consumer arbitrations occurring in this State. The language is modeled
15 on the California requirements. Starting January 1, 2011, this amendment requires
16 providers of consumer arbitrations to publish on publicly accessible websites specific
17 information about consumer arbitrations conducted in this State. It requires providers to
18 provide written notice to the consumer protection division of the Office of the Attorney
19 General concerning the websites on which the information is posted. The Attorney
20 General will provide links to the websites.

21 **FISCAL NOTE REQUIRED**

22 **(See attached)**

COMMITTEE AMENDMENT



Approved: 02/24/10 *MAC*

124th MAINE LEGISLATURE

LD 1256

LR 1377(02)

An Act To Prohibit Predispute Mandatory Binding Arbitration Clauses in Consumer Contracts

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits.
The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.