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SB-1078 Civil procedure: arbitration. (2015-2016)

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ENROLLED SEPTEMBER 02, 2016
PASSED IN SENATE AUGUST 30, 2016
PASSED IN ASSEMBLY AUGUST 29, 2016
AMENDED IN ASSEMBLY AUGUST 19, 2016
AMENDED IN ASSEMBLY JUNE 14, 2016
AMENDED IN SENATE MAY 10, 2016
AMENDED IN SENATE APRIL 14, 2016
AMENDED IN SENATE APRIL 04, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

NO. 1078

Introduced by Senator Jackson

February 17, 2016

An act to amend Section 1281.9 of, and to add Section 1281.65 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, Jackson. Civil procedure: arbitration.

Existing law governs arbitration in civil proceedings. Under existing law, a neutral arbitrator is defined as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. Existing law requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt as to the proposed neutral arbitrator's impartiality. Existing law requires the disclosure to include, among other things, whether or not the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral with a party to the proceeding, or is participating in, or has participated within the last 2 years in, discussions regarding such prospective employment or service.

This bill, in a consumer arbitration case, would also require the disclosure of any solicitation made within the last 2 years by, or at the direction of, a private arbitration company to a party or lawyer for a party. The bill would only require disclosure of solicitations made after January 1, 2017. The bill would specify what is, and what is not, a solicitation for purposes of this disclosure. The bill

would prohibit the solicitation of a party or lawyer for a party during the pendency of the arbitration. The bill would also prohibit an arbitrator, from the time of appointment until the conclusion of the arbitration, from entertaining or accepting any offers of employment or offers of new professional relationships, and, in a consumer arbitration case, would prohibit the arbitrator from entertaining or accepting any offers of employment as a dispute resolution neutral in another case from a party or lawyer for a party in the pending arbitration, except as provided.

This bill would exempt specified self-regulatory organizations from the application of the bill. The bill would provide that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1281.65 is added to the Code of Civil Procedure, to read:

1281.65. (a) From the time of appointment until the conclusion of the arbitration, an arbitrator shall not entertain or accept either of the following:

- (1) Any offers of employment or new professional relationships as a lawyer, expert witness, or consultant from a party or lawyer for a party in the pending arbitration.
- (2) In a consumer arbitration case, any offers of employment as a dispute resolution neutral in another case involving a party or lawyer for a party in the pending arbitration unless all parties to the pending arbitration, including the lawyers in the arbitration, have conferred and agreed in writing, before any solicitation of the arbitrator, to allow offers of future employment as a dispute resolution neutral to be made to the arbitrator.

(b) This section does not apply to an arbitration conducted or administered by a self-regulatory organization, as defined by the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a) or regulations adopted under that act. This section also does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

(c) For purposes of this section, "lawyer for a party" has the same definition as that term is defined in Section 1281.9.

SEC. 2. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

- (1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.
- (2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.
- (3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for a party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.
- (4) The names of the parties to all prior or pending noncollective bargaining cases involving a party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.
- (5) Any attorney-client relationship the proposed neutral arbitrator has or had with a party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with a party to the arbitration proceeding or lawyer for a party.

(7) (A) For a consumer arbitration case, any solicitation made within the last two years by, or at the direction of, the private arbitration company to a party or lawyer for a party to the consumer arbitration. During the pendency of the consumer arbitration, no solicitation shall be made of a party to the arbitration or of a lawyer for a party to the arbitration. Any solicitation made before January 1, 2017, is not required to be disclosed pursuant to this paragraph.

(B) This paragraph does not apply to an arbitration conducted or administered by a self-regulatory organization, as defined by the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a) or regulations adopted under that act.

(C) (i) For purposes of this paragraph, "solicitation" includes either of the following:

(I) Private presentations made to a party or lawyer for a party by the private arbitration company or the arbitrator.

(II) Oral or written discussions, meetings, or negotiations to designate the private arbitration company or the arbitrator as the arbitration provider or arbitrator for a party in specific contracts.

(ii) For purposes of this paragraph, "solicitation" does not include any of the following:

(I) Advertising directed to the general public.

(II) Communications indicating a general willingness to serve as an arbitrator or private arbitration company. For purposes of this subclause, "communications" include, but are not limited to, standard educational materials about alternative dispute resolution or the provider organization.

(III) Presentations made by the private arbitration company or the arbitrator at a program or seminar held open to the public.

(IV) Responding to inquiries regarding the arbitration provider's costs, rules, procedures, or standards.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, "prior cases" means noncollective bargaining cases in which an arbitration award was rendered within five years before the date of the proposed nomination or appointment.

(e) For purposes of this section, "any arbitration" does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

SEC. 3. The provisions of this bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.