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**SB-762 Contracts.** (2021-2022)

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**Senate Bill No. 762**

**CHAPTER 222**

An act to add Section 1657.1 to the Civil Code, and to amend Sections 1281.97 and 1281.98 of the Code of Civil Procedure, relating to contracts.

[ Approved by Governor September 22, 2021. Filed with Secretary of State September 22, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 762, Wieckowski. Contracts.

Existing law generally regulates the nature of contracts and establishes principles for the interpretation of contracts.

This bill would require any time specified in a contract of adhesion for the performance of an act required to be performed to be reasonable.

Existing law provides that if an employment or consumer arbitration requires the party which drafted the arbitration agreement to pay fees and costs before arbitration can proceed or during the pendency of an arbitration, the drafting party is in breach of the agreement, in default of arbitration, and waives its right to compel arbitration if it does not pay the fees within 30 days after the date they are due.

This bill would require the arbitration provider to provide invoices for the fees and costs described above, in their entirety, to all parties to the arbitration on the same day and by the same means. The bill would require those invoices to be issued as due upon receipt unless the arbitration agreement expressly provides a different time for payment. For fees and costs due during the pendency of the arbitration, the bill would require any extension of time for the due date to be agreed upon by all parties to the arbitration. The bill would make technical and conforming changes.

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

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

**SECTION 1.** Section 1657.1 is added to the Civil Code, to read:

**1657.1.** Any time specified in a contract of adhesion for the performance of an act required to be performed shall be reasonable.

**SEC. 2.** Section 1281.97 of the Code of Civil Procedure is amended to read:

**1281.97.** (a) (1) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, the drafting party to pay certain fees and costs before the arbitration can proceed, if the

fees or costs to initiate an arbitration proceeding are not paid within 30 days after the due date the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under Section 1281.2.

(2) After an employee or consumer meets the filing requirements necessary to initiate an arbitration, the arbitration provider shall immediately provide an invoice for any fees and costs required before the arbitration can proceed to all of the parties to the arbitration. The invoice shall be provided in its entirety, shall state the full amount owed and the date that payment is due, and shall be sent to all parties by the same means on the same day. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt.

(b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may do either of the following:

(1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction.

(2) Compel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration.

(c) If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction under paragraph (1) of subdivision (b), the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in a court, arbitration forum, or other dispute resolution forum.

(d) If the employee or consumer proceeds with an action in a court of appropriate jurisdiction, the court shall impose sanctions on the drafting party in accordance with Section 1281.99.

**SEC. 3.** Section 1281.98 of the Code of Civil Procedure is amended to read:

**1281.98.** (a) (1) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach.

(2) The arbitration provider shall provide an invoice for any fees and costs required for the arbitration proceeding to continue to all of the parties to the arbitration. The invoice shall be provided in its entirety, shall state the full amount owed and the date that payment is due, and shall be sent to all parties by the same means on the same day. To avoid delay, absent an express provision in the arbitration agreement stating the number of days in which the parties to the arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to the parties as due upon receipt. Any extension of time for the due date shall be agreed upon by all parties.

(b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may unilaterally elect to do any of the following:

(1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction. If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction, the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in any court, arbitration forum, or other dispute resolution forum.

(2) Continue the arbitration proceeding, if the arbitration provider agrees to continue administering the proceeding, notwithstanding the drafting party's failure to pay fees or costs. The neutral arbitrator or arbitration provider may institute a collection action at the conclusion of the arbitration proceeding against the drafting party that is in default of the arbitration for payment of all fees associated with the employment or consumer arbitration proceeding, including the cost of administering any proceedings after the default.

(3) Petition the court for an order compelling the drafting party to pay all arbitration fees that the drafting party is obligated to pay under the arbitration agreement or the rules of the arbitration provider.

(4) Pay the drafting party's fees and proceed with the arbitration proceeding. As part of the award, the employee or consumer shall recover all arbitration fees paid on behalf of the drafting party without regard to any findings on the merits in the underlying arbitration.

(c) If the employee or consumer withdraws the claim from arbitration and proceeds in a court of appropriate jurisdiction pursuant to paragraph (1) of subdivision (b), both of the following apply:

(1) The employee or consumer may bring a motion, or a separate action, to recover all attorney's fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorney's fees shall be without regard to any findings on the merits in the underlying action or arbitration.

(2) The court shall impose sanctions on the drafting party in accordance with Section 1281.99.

(d) If the employee or consumer continues in arbitration pursuant to paragraphs (2) through (4) of subdivision (b), inclusive, the arbitrator shall impose appropriate sanctions on the drafting party, including monetary sanctions, issue sanctions, evidence sanctions, or terminating sanctions.