



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0983

Introduced 2/7/2017, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

New Act

710 ILCS 5/1

from Ch. 10, par. 101

815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

815 ILCS 505/10e new

Creates the Limitations on Forced Arbitration Act. Defines terms and contains statements of findings, purpose, and policy. Places conditions limiting the use of forced arbitration agreements on entities doing business with the State. Creates a rebuttable presumption that specified contract terms relating to forced arbitration agreements are unconscionable. Prohibits arbitration agreements in specified situations. Provides that, with specified exceptions, appellate courts do not have jurisdiction to review a trial court's interlocutory order denying a motion to compel arbitration or otherwise concluding that an arbitration agreement is unenforceable or does not apply to a particular claim. Makes other changes, including a corresponding change in the Uniform Arbitration Act. Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that a person may initiate on behalf of the State an action alleging violations of the Act to recover civil penalties on behalf of the State and to seek injunctive, declaratory, or other equitable relief that the State would itself be entitled to seek. Allows such a person a percentage of the recovery. Adds provisions governing: the State's opportunity to intervene and proceed with the action; discovery; prohibition of duplicative actions; settlement; limitations on State actions initiated by a private party; res judicata; relationship to forced arbitration; and severability.

LRB100 07368 HEP 17432 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Article 1. General provisions.

5 Section 1-5. Short title. This Act may be cited as the
6 Limitations on Forced Arbitration Act.

7 Section 1-10. Definitions. As used in this Act:

8 "Consumer" has the meaning provided in subsection (e) of
9 Section 1 of the Consumer Fraud and Deceptive Business
10 Practices Act.

11 "Employee" means any person employed by another as defined
12 by State law, and any person who is not classified by a
13 business as an employee but who claims to be an employee and
14 whose claims against the purported employer relate to this
15 alleged misclassification.

16 "Forced arbitration agreement" means an agreement to
17 subject disputes between the parties to a binding dispute
18 resolution procedure separate from federal or State judicial or
19 administrative process if the agreement:

20 (1) is a condition of entering into a relationship with
21 the party that presented the agreement or is presented in
22 such a way that a reasonable person would consider it to be

1 a condition of entering into a relationship with the party
2 that presented it; and

3 (2) was not negotiated by a labor union through
4 collective bargaining.

5 "Forced arbitration agreement" includes: circumstances in
6 which a business retaliates against a consumer or employee for
7 failing to assent to the agreement or the consumer or employee
8 reasonably fears that the business would retaliate against the
9 consumer or employee for failing to assent to the agreement;
10 and agreements that either contain or do not provide the right
11 to opt-out of the agreement at a later time.

12 Article 5. Conditions on entities
13 doing business with the State.

14 Section 5-5. Findings. To ensure that the State spends its
15 limited funds in the most efficient manner possible, this
16 Article prohibits the State from doing business with entities
17 that form or enforce forced arbitration agreements with their
18 consumers or employees. The secret nature of forced arbitration
19 agreements between entities doing business with the State and
20 their consumers or employees undermines the efficient
21 management of State funds in the following ways:

22 (1) It prevents the State from learning whether goods
23 or services provided by entities doing business with the
24 State are the subject of consumer grievances concerning the

1 quality of the goods or services or whether the employees
2 producing the goods or providing the services complain of
3 unfair and illegal treatment that might interfere with the
4 quality of the goods or services.

5 (2) It obscures the extent to which entities doing
6 business with the State violate the legal rights of
7 consumers or employees, and therefore whether the entities
8 are breaching their obligations to the State or concealing
9 from public scrutiny conduct that interferes with the
10 quality of a good or service provided to the State.

11 (3) It obscures the extent to which entities doing
12 business with the State might be destabilized by the
13 entity's conduct as to consumers or its employees and such
14 destabilization increases the likelihood that the entity
15 will defraud the State or be unable to perform under a
16 contract with the State.

17 Section 5-10. Definition. As used in this Article:

18 "Doing business with the State" means an entity or any of
19 its subsidiaries or parent entities receiving State funds
20 exceeding \$100,000 in exchange for goods or services provided
21 to the State or a third party. "Doing business with the State"
22 includes, but is not limited to, persons or entities performing
23 public work on State contracts, merchants of goods or services
24 purchased by the State, and persons or entities providing
25 services to third parties in exchange for funds provided

1 directly from the State.

2 Section 5-15. Prohibitions.

3 (a) An entity that includes forced arbitration clauses in
4 any of its contracts with consumers or employees is prohibited
5 from doing business with the State, unless 180 days before
6 doing business with the State, the entity or its parent entity
7 or subsidiary provides reasonable notice to its consumers or
8 employees that it will cease enforcing forced arbitration
9 clauses in consumer or employment contracts if the clauses
10 exist in consumer or employment contracts.

11 (b) An entity or any of its parent entities or subsidiaries
12 is prohibited from doing business with the State if that entity
13 or any of its parent entities or subsidiaries enforces forced
14 arbitration agreements against any of its employees or
15 consumers.

16 Section 5-20. Enforcement.

17 (a) Before the privilege of doing business with the State
18 is granted to any entity, the State agency representing the
19 State in the business relationship shall confirm that the
20 entity, its parent entities, and its subsidiaries do not form
21 or enforce forced arbitration agreements with consumers or
22 employees and shall ensure, when appropriate, that a contract
23 between the State and the entity includes a provision
24 prohibiting that entity, its parent entities, and its

1 subsidiaries from forming or enforcing forced arbitration
2 agreements. A person or its parent entities or subsidiaries
3 forms forced arbitration clauses in its contracts with
4 consumers or employees under this Article if current contracts
5 with consumers or employees include forced arbitration
6 clauses, unless, 180 days before doing business with the State,
7 the entity or its parent entity or subsidiary provides
8 reasonable notice to its consumers or employees that it will
9 cease enforcing forced arbitration clauses in consumer or
10 employment contracts.

11 (b) If the Attorney General, after giving an entity doing
12 business with the State notice and an opportunity to be heard,
13 concludes that the entity has violated Section 5-15, the
14 Attorney General shall notify all State agencies doing business
15 with the entity about the violation and may seek actual damages
16 caused to the State by the violation.

17 (c) If a State agency receives notice from the Attorney
18 General that an entity with whom the agency does business has
19 violated Section 5-15, the agency shall terminate its business
20 dealings with the entity as soon as practical.

21 Section 5-25. Severability. The provisions of this Article
22 are severable under Section 1.31 of the Statute on Statutes.

23 Article 10. Unconscionable terms.

1 Section 10-5. Findings. The inclusion of unconscionable
2 terms in standard form contracts regarding dispute resolution
3 is unfair not only because any resulting dispute resolution
4 proceeding is unfair to the party forced to agree to the
5 unconscionable terms, but also because the unconscionable
6 terms discourage valid claims. Furthermore, when the
7 provisions are challenged, courts may simply strike the
8 unconscionable terms but enforce the remainder of the agreement
9 regarding dispute resolution. As a result, businesses have
10 little incentive not to include these terms. Finally, in the
11 context of form contracts, it is unlikely that there is any
12 meeting of the minds over a dispute resolution agreement that
13 does not include severed unconscionable terms.

14 Section 10-10. Unconscionable terms. There is a rebuttable
15 presumption that the following contractual terms are
16 unconscionable if they are included in a standard form contract
17 to which only one of the parties to the contract is an
18 individual and that individual does not draft the contract:

19 (1) A requirement that resolution of legal claims take
20 place in an inconvenient venue. As used in this Article,
21 "inconvenient venue" means for State law claims a place
22 other than the county in which the individual resides or
23 the contract was consummated, and for federal law claims a
24 place other than the federal judicial district in which the
25 individual resides or the contract was consummated.

1 (2) A waiver of the individual's right to assert claims
2 or seek remedies provided by State or federal statute.

3 (3) A waiver of the individual's right to seek punitive
4 damages as provided by law.

5 (4) A provision limiting the time that an individual
6 may bring an action to a period shorter than the applicable
7 statute of limitations.

8 (5) A requirement that the individual pay fees and
9 costs to bring a legal claim substantially in excess of the
10 fees and costs that this State's courts require to bring a
11 State law claim or that federal courts require to bring a
12 federal law claim.

13 Section 10-15. Relation to common law and the Uniform
14 Commercial Code. In determining whether the terms described in
15 Section 10-10 are unenforceable, the court shall consider the
16 principles that normally guide courts in this State in
17 determining whether unconscionable terms are enforceable.
18 Additionally, the common law and Uniform Commercial Code shall
19 guide courts in determining the enforceability of unfair terms
20 not specifically identified in Section 10-10.

21 Section 10-20. Severability. There is a rebuttable
22 presumption that a term in a standard form contract that is
23 found to be unconscionable is not severable from the agreement
24 in which it is situated. In determining whether this

1 presumption has been rebutted, the court shall consider general
2 State law principles regarding the severability of
3 unenforceable terms.

4 Section 10-25. Violation. It is an unlawful practice under
5 the Consumer Fraud and Deceptive Business Practices Act to
6 include one of the presumptively unconscionable terms
7 identified in Section 10-10 in a standard form contract in
8 which only one of the parties to the contract is an individual
9 and that individual does not draft the contract. Notwithstanding
10 any other State law to the contrary, a party who prevails in a
11 claim under this Section is entitled to \$1,000 in statutory
12 damages per violation. An action under this Section may be
13 maintained by an employee against his or her employer
14 regardless of whether the Consumer Fraud and Deceptive Business
15 Practices Act otherwise allows for such a claim.

16 Article 15. Prohibition of
17 forced arbitration agreements.

18 Section 15-5. Findings; policy. Forced arbitration
19 agreements binding upon consumers and employees are contrary to
20 the public policy of this State. Because employees and
21 consumers are forced to assent to these agreements as a
22 condition of being an employee or consumer before any dispute
23 has arisen with the employer or merchant, these agreements do

1 not offer employees and consumers a meaningful choice about how
2 to resolve disputes with the employer or merchant. In addition,
3 forced arbitration agreements prevent employees and consumers
4 from effectively enforcing their rights under State law. For
5 these reasons, except when inconsistent with federal law, it is
6 the policy of this State to prohibit the formation and
7 enforcement of forced arbitration agreements in employment and
8 consumer contracts.

9 Section 15-10. Arbitration clauses in insurance
10 agreements. A forced arbitration agreement that is part of any
11 written contract for insurance with a consumer or other written
12 agreement involving the offering of insurance to a consumer is
13 invalid, unenforceable, and void. Any such forced arbitration
14 agreement shall be considered severable, and all other
15 provisions of the contract for insurance shall remain in effect
16 and be given full force.

17 Section 15-15. Arbitration clauses in employment
18 contracts. A forced arbitration agreement that is part of any
19 written contract of employment of seamen, railroad employees,
20 or any other class of workers engaged in foreign or interstate
21 commerce or otherwise exempted from the Federal Arbitration Act
22 is unenforceable and void. Any such forced arbitration
23 agreement shall be considered severable, and all other
24 provisions of the employment contract shall remain in effect

1 and given full force.

2 Section 15-20. Arbitration clauses not governed by federal
3 law. Any forced arbitration agreement or portion thereof in an
4 employment or consumer contract is invalid, unenforceable, and
5 void if the enforceability of the forced arbitration agreement,
6 or the portion at issue, is governed by State law. Any such
7 forced arbitration agreement shall be considered severable,
8 and all other provisions of the employment contract shall
9 remain in effect and given full force.

10 Section 15-25. Severability. The provisions of this
11 Article are severable under Section 1.31 of the Statute on
12 Statutes.

13 Article 20. Appellate jurisdiction.

14 Section 20-5. Jurisdiction. Appellate courts do not have
15 jurisdiction to review a trial court's interlocutory order
16 denying a motion to compel arbitration or otherwise concluding
17 that an arbitration agreement is unenforceable or does not
18 apply to a particular claim. Appellate review of the denial of
19 a motion to compel arbitration may be had after a final
20 judgment has been issued. An interlocutory appeal is allowed if
21 the trial court orders arbitration and dismisses the suit or
22 orders arbitration and stays the litigation.

1 Article 90. Amendatory provisions.

2 Section 90-5. The Uniform Arbitration Act is amended by
3 changing Section 1 as follows:

4 (710 ILCS 5/1) (from Ch. 10, par. 101)

5 Sec. 1. Validity of arbitration agreement. A written
6 agreement to submit any existing controversy to arbitration or
7 a provision in a written contract to submit to arbitration any
8 controversy thereafter arising between the parties is valid,
9 enforceable and irrevocable save upon such grounds as exist for
10 the revocation of any contract, except: (1) as provided in the
11 Limitations on Forced Arbitration Act; and (2) ~~that~~ any
12 agreement between a patient and a hospital or health care
13 provider to submit to binding arbitration a claim for damages
14 arising out of (A) ~~(1)~~ injuries alleged to have been received
15 by a patient, or (B) ~~(2)~~ death of a patient, due to hospital or
16 health care provider negligence or other wrongful act, but not
17 including intentional torts, is also subject to the Health Care
18 Arbitration Act.

19 (Source: P.A. 80-1012; 80-1031.)

20 Section 90-10. The Consumer Fraud and Deceptive Business
21 Practices Act is amended by changing Section 2Z and by adding
22 Section 10e as follows:

1 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

2 Sec. 2Z. Violations of other Acts. Any person who knowingly
3 violates the Automotive Repair Act, the Automotive Collision
4 Repair Act, Section 10-25 of the Limitations on Forced
5 Arbitration Act, the Home Repair and Remodeling Act, the Dance
6 Studio Act, the Physical Fitness Services Act, the Hearing
7 Instrument Consumer Protection Act, the Illinois Union Label
8 Act, the Job Referral and Job Listing Services Consumer
9 Protection Act, the Travel Promotion Consumer Protection Act,
10 the Credit Services Organizations Act, the Automatic Telephone
11 Dialers Act, the Pay-Per-Call Services Consumer Protection
12 Act, the Telephone Solicitations Act, the Illinois Funeral or
13 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
14 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
15 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
16 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
17 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
18 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
19 Internet Caller Identification Act, paragraph (6) of
20 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
21 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
22 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
23 Residential Real Property Disclosure Act, the Automatic
24 Contract Renewal Act, the Reverse Mortgage Act, Section 25 of
25 the Youth Mental Health Protection Act, or the Personal

1 Information Protection Act commits an unlawful practice within
2 the meaning of this Act.

3 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642,
4 eff. 7-28-16.)

5 (815 ILCS 505/10e new)

6 Sec. 10e. Delegation of State enforcement authority.

7 (a) Findings. Limits on the availability of public
8 enforcement resources have deleterious effects on the
9 marketplace by allowing abuses targeting consumers and workers
10 to persist unprosecuted. To ensure the robust enforcement of
11 this Act, while simultaneously minimizing the outlay of scarce
12 State funds, this Section provides for private individuals to
13 represent the State's enforcement interests in certain
14 contexts in which the State does not have the means to fully
15 enforce State consumer and worker protections.

16 (b) Civil penalties. Unless this Act or other State law
17 provides a different amount as the civil penalty recoverable by
18 the State for violations of this Act, a person who commits a
19 violation of this Act is subject to a civil penalty as provided
20 in Section 7 of this Act.

21 (c) Private party suits. A person may initiate on behalf of
22 the State an action alleging violations of this Act to recover
23 civil penalties on behalf of the State and to seek injunctive,
24 declaratory, or other equitable relief that the State would
25 itself be entitled to seek.

1 In initiating an action under this Section, a person may
2 allege multiple violations that have affected different
3 consumers or employees, as long as those violations are of a
4 sufficiently similar kind that they can be efficiently managed
5 in a single action.

6 For the purpose of encouraging the enforcement of public
7 protections, a court may award a person who initiates a claim
8 under this Section an incentive award of up to 25% percent of
9 the total monetary recovery if that person pursues the action
10 to final judgment as the prevailing party, or up to 10% percent
11 of the total recovery if the State intervenes in the action and
12 pursues it to final judgment as the prevailing party, including
13 after settlement. In deciding an appropriate incentive award,
14 the court shall consider the complexity of the case, the
15 resources dedicated to prosecuting the case, whether the
16 private party obtained equitable relief on behalf of the State
17 and the extent of the relief, and the importance of the case as
18 measured by the extent of actual damages caused by the
19 wrongdoing to consumers or employees.

20 If a private party or the State prevails in an action
21 originally brought under this Section, the private party and
22 the State shall each be entitled to reasonable attorney's fees
23 and costs, based on their participation in the action.

24 (d) State's opportunity to intervene and proceed with the
25 action. A person initiating an action under this Section shall
26 serve a copy of the complaint and a letter describing the

1 action on the Attorney General, at which point the action shall
2 be stayed for 30 days. The State may intervene in the action
3 and proceed with any and all claims in the action:

4 (1) As of right within the 30-day stay; or

5 (2) For good cause, as determined by the court, after
6 the expiration of the 30-day stay.

7 (e) Discovery. Regardless of whether the State proceeds
8 with the action, upon a showing by the State that certain
9 actions of discovery by the person initiating the action would
10 interfere with the State's investigation or prosecution of a
11 criminal or civil matter arising out of the same facts, the
12 court may stay the discovery for a period of not more than 60
13 days. Such a showing shall be made in camera. The court may
14 extend the 60-day period upon a further showing in camera that
15 the State has pursued the criminal or civil investigation or
16 proceedings with reasonable diligence and any proposed
17 discovery in the action will interfere with the ongoing
18 criminal or civil investigation or proceedings.

19 (f) Prohibition of duplicative actions. No action may be
20 brought by a private party acting pursuant to this Section for
21 any violations already alleged as the basis for an action
22 brought by the State, or by another private party pursuant to
23 this Section, and no action may be brought by the State for any
24 violations already alleged as the basis for an action brought
25 by a private party pursuant to this Section. Furthermore, when
26 a person initiates an action under this Section, no person

1 other than the State may intervene or bring a related action
2 under this Section based on the facts underlying the pending
3 action.

4 (g) Settlement. The court in which the action is filed
5 shall review and approve any proposed settlement of an action
6 brought under this Section to ensure that the settlement
7 provisions are reasonable in light of State law. The court
8 shall also ensure that any incentive fees and attorney's fees
9 or costs included in a settlement are reasonable and that the
10 private party does not recover, as an incentive payment, more
11 than 25% percent of the recovery remitted to the State under
12 the proposed settlement. The proposed settlement shall be
13 submitted to the Attorney General at the same time that it is
14 submitted to the court. If the Attorney General opposes the
15 settlement by filing a motion with the court, the court shall
16 deny approval of the settlement.

17 (h) Limitations on State actions initiated by a private
18 party. The State may make a motion to dismiss any action in
19 which it decides to intervene under subsection (d) of this
20 Section and the court shall grant the motion notwithstanding
21 the objections of the person who initiated the action.

22 The State may settle any action in which it decides to
23 intervene under subsection (d) of this Section notwithstanding
24 the objections of the person who initiated the action.

25 (i) Res judicata. Notwithstanding any other provision of
26 law, an action initiated by a private party under this Section

1 shall not bar that person or any other individual from filing a
2 private action based on the same nucleus of operative facts,
3 nor shall a prior private action based on the same nucleus of
4 operative facts bar an action under this Section.

5 (j) Relationship to forced arbitration. Actions under this
6 Section are prosecuted on behalf of the State and not an
7 individual, and forced arbitration agreements between private
8 parties do not apply to actions under this Section. No contract
9 shall waive or limit a private party's right to act as a
10 private party under this Section by waiving that party's right
11 to bring such an action in a public forum or by preventing the
12 party from being able to bring an action alleging multiple
13 violations committed against multiple consumers or employees
14 pursuant to subsection (c) of this Section.

15 (k) Severability. The provisions of this Section are
16 severable under Section 1.31 of the Statute on Statutes.