



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20-0374
Prime Sponsors: Sen. Foote; Fenberg
Rep. Jackson

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Bill Status: Senate Judiciary
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Bill Topic: CONSUMER AND EMPLOYEE DISPUTE RESOLUTION FAIRNESS

- Summary of Fiscal Impact:
[X] State Revenue
[X] State Expenditure
[X] State Transfer
[ ] TABOR Refund
[ ] Local Government
[ ] Statutory Public Entity

The bill creates the Consumer and Employee Arbitration Fairness Act, which establishes ethical standards for arbitrators, disclosure and protection of information requirements, and clarifies when damages are awarded. The bill minimally increases state revenue, expenditures, and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

This bill creates the Consumer and Employee Arbitration Fairness Act, which establishes ethical standards for arbitrators, disclosure and protection of information requirements, and the damages and appeals processes. Provisions of the bill are discussed in more detail below.

Pre-dispute and timely objection waivers. Parties to a consumer or employee agreement may not waive the right to challenge an arbitration unless the waiver is in writing and signed by all parties. The right of a party to challenge the evident partiality of an arbitrator based on disclosures or conflicts is waived if a party does not object to the designated arbitrator within a reasonable time from learning of the partiality or undisclosed information.

Arbitration services provider public disclosures. To be able to conduct arbitrations, an arbitration services provider that arbitrates in a consumer or employee matter must collect, publish, and make reasonably available free of charge online and in writing, upon request, a cumulative report containing information regarding each consumer or employment arbitration administered in the last five years. This report must be made available in a spreadsheet format that can be downloaded or exported and is searchable and sortable. This spreadsheet must include certain information, including, but not limited to: the names of the parties involved; the nature of the dispute; the number of times that the parties to the arbitration have previously been a party to an arbitration administered by the arbitration services provider; and the name of the arbitrator and various fee collection and allocation information. An arbitration service provider is not liable for damages for failure to collect, publish, or distribute this information.

**Arbitration conflicts disclosure.** An arbitrator is required to disclose certain information before an arbitrator or arbitrator service provider agrees to serve in a consumer or employee arbitration. The arbitrator must disclose:

- any financial interest in the arbitration;
- whether the arbitrator has been paid any amount above \$500 by certain parties;
- whether the arbitrator has worked in a similar industry as one of the parties;
- the arbitrator's experience;
- any previously existing relationships with the parties;
- a list of all arbitrations conducted by the arbitrator in the last five years; and
- certain information regarding the parties in the last five years of arbitrations.

Unless another time period is agreed upon, within 21 days, an arbitration service provider must disclose this information along with any information likely to affect the impartiality of the arbitrator in the proceedings.

**Protection of confidential information.** An arbitration service provider is not required to disclose any information that is subject to attorney-client privilege or immunity from disclosure. When information is subject to attorney-client privilege or immunity, the fact that such information exists must be disclosed as specified in the bill.

**Standard form contract.** For contracts where one of the parties has little to no ability to negotiate for goods or services, real or personal property, or employment, some contractual terms are deemed to be unenforceable and void. These contractual terms include: requiring that consumers or employees adjudicate a Colorado claim more than 100 miles from their residence or where the contract was executed; waiving consumers or employees rights to damages or limiting the time frame for asserting claims; requiring that one party is allowed to select the arbitrator; or limiting the awards and damages in a manner that is inconsistent with current Colorado law.

## **State Revenue**

Beginning in the FY 2020-21, this bill may increase state cash fund revenue from district court civil filing fees by a minimal amount. Revenue will increase if more motions are filed challenging arbitration service providers. However, this fiscal note assumes that arbitration service providers will comply with the provisions of this bill. For informational purposes, the filing fee for district court is \$235. Civil filing fees are subject to TABOR.

## **State Expenditures**

Beginning in the FY 2019-20, district court workload will be increased by a minimal amount to handle additional filings concerning arbitration. No change in Judicial Department appropriations is needed.

**TABOR refunds.** The bill is expected to increase state General Fund obligations for TABOR refunds by a minimal amount in FY 2020-21 and FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the measure will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature and applies to actions including arbitrations filed on or after this date.

**State and Local Government Contacts**

Judicial                      Law