



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

SB 20-093

FINAL FISCAL NOTE

| | | | |
|-------------------------|---|------------------------|---|
| Drafting Number: | LLS 20-0374 | Date: | August 24, 2020 |
| Prime Sponsors: | Sen. Foote; Fenberg Rep. Jackson; Weissman | Bill Status: | Postponed Indefinitely |
| | | Fiscal Analyst: | Katie Ruedebusch 303-866-3001 Katie.Ruedebusch@state.co.us |

Bill Topic: CONSUMER AND EMPLOYEE DISPUTE RESOLUTION FAIRNESS

| | | |
|----------------------------------|---|--|
| Summary of Fiscal Impact: | <input checked="" type="checkbox"/> State Revenue | <input type="checkbox"/> TABOR Refund |
| | <input checked="" type="checkbox"/> State Expenditure | <input type="checkbox"/> Local Government |
| | <input type="checkbox"/> State Transfer | <input type="checkbox"/> Statutory Public Entity |

The bill would have created 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 would have minimally increased state revenue, expenditures, and workload on an ongoing basis.

Appropriation Summary: No appropriation was required.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

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. 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 outside Colorado; 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 increase by a minimal amount to handle additional filings concerning arbitration. No change in Judicial Department appropriations is needed.

Effective Date

The bill was postponed indefinitely by the House Finance Committee on June 4, 2020.

State and Local Government Contacts

Judicial Law