

AMENDED IN ASSEMBLY JULY 3, 2017
AMENDED IN ASSEMBLY JUNE 13, 2017
AMENDED IN SENATE MAY 16, 2017
AMENDED IN SENATE MAY 9, 2017
AMENDED IN SENATE APRIL 24, 2017
AMENDED IN SENATE MARCH 23, 2017

SENATE BILL

No. 33

Introduced by Senator Dodd
(Principal coauthor: Senator Wieckowski)
(Principal coauthor: Assembly Member Dababneh)
(Coauthor: Senator Hertzberg)
(Coauthor: Assembly Member Chiu)

December 5, 2016

An act to amend Section 1281.2 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as amended, Dodd. Arbitration agreements.

Existing law requires a court, on petition of a party to an arbitration agreement alleging (1) the existence of a written agreement to arbitrate a controversy and (2) that a party to the agreement refuses to arbitrate the controversy, to order the petitioner and the respondent to arbitrate the controversy if the court determines that an agreement to arbitrate exists, unless the court makes other determinations.

This bill would add to these determinations instances in which a financial institution, as defined, ~~seeks~~ *is seeking* to apply a written

agreement to arbitrate, contained in a contract consented to by a consumer, to a purported contractual relationship with that consumer *that was created fraudulently* by the petitioner *fraudulently* without the consumer's consent and by unlawfully using the consumer's personal identifying information, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1281.2 of the Code of Civil Procedure
2 is amended to read:

3 1281.2. On petition of a party to an arbitration agreement
4 alleging the existence of a written agreement to arbitrate a
5 controversy and that a party thereto refuses to arbitrate such
6 controversy, the court shall order the petitioner and the respondent
7 to arbitrate the controversy if it determines that an agreement to
8 arbitrate the controversy exists, unless it determines that:

9 (a) The right to compel arbitration has been waived by the
10 petitioner; or

11 (b) Grounds exist for the revocation of the agreement.

12 (c) A party to the arbitration agreement is also a party to a
13 pending court action or special proceeding with a third party,
14 arising out of the same transaction or series of related transactions
15 and there is a possibility of conflicting rulings on a common issue
16 of law or fact. For purposes of this section, a pending court action
17 or special proceeding includes an action or proceeding initiated
18 by the party refusing to arbitrate after the petition to compel
19 arbitration has been filed, but on or before the date of the hearing
20 on the petition. This subdivision shall not be applicable to an
21 agreement to arbitrate disputes as to the professional negligence
22 of a health care provider made pursuant to Section 1295.

23 (d) The petitioner is a financial institution that, on or after
24 January 1, 2018, ~~seeks~~ *is seeking* to apply a written agreement to
25 arbitrate, contained in a contract consented to by a consumer, to
26 a purported contractual relationship with that consumer *that was*
27 ~~created fraudulently~~ by the petitioner *fraudulently* without the
28 consumer's consent and by unlawfully using the consumer's
29 personal identifying information, as defined in Section 1798.92
30 of the Civil Code. For purposes of this subdivision, "financial

1 institution” means a person who is licensed pursuant to Division
2 1.1 (commencing with Section 1000), Division 5 (commencing
3 with Section 14000), or Division 7 (commencing with Section
4 18000) of the Financial Code, or Division 1 (commencing with
5 Section 25000) of Title 4 of the Corporations Code; is a federally
6 chartered depository institution; or is a broker, dealer, or investment
7 advisor required to register with the Securities and Exchange
8 Commission.

9 If the court determines that a written agreement to arbitrate a
10 controversy exists, an order to arbitrate such controversy may not
11 be refused on the ground that the petitioner’s contentions lack
12 substantive merit.

13 If the court determines that there are other issues between the
14 petitioner and the respondent which are not subject to arbitration
15 and which are the subject of a pending action or special proceeding
16 between the petitioner and the respondent and that a determination
17 of such issues may make the arbitration unnecessary, the court
18 may delay its order to arbitrate until the determination of such
19 other issues or until such earlier time as the court specifies.

20 If the court determines that a party to the arbitration is also a
21 party to litigation in a pending court action or special proceeding
22 with a third party as set forth under subdivision (c) herein, the
23 court (1) may refuse to enforce the arbitration agreement and may
24 order intervention or joinder of all parties in a single action or
25 special proceeding; (2) may order intervention or joinder as to all
26 or only certain issues; (3) may order arbitration among the parties
27 who have agreed to arbitration and stay the pending court action
28 or special proceeding pending the outcome of the arbitration
29 proceeding; or (4) may stay arbitration pending the outcome of
30 the court action or special proceeding.