

By Senator Deutch

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1 A bill to be entitled

2 An act relating to arbitration; creating s. 682.011, F.S.;
3 providing definitions; creating s. 682.012, F.S.; providing
4 that ch. 682, F.S., the Florida Arbitration Code, does not
5 apply to certain insurance policies; providing that
6 mandatory binding arbitration is void and unenforceable
7 except as otherwise provided by federal law; creating s.
8 682.013, F.S.; providing for the effect of an arbitration
9 agreement; prohibiting the waiver of certain rights and
10 requirements; providing an exception to provisions
11 prohibiting waiving the right of a court to vacate an
12 award; providing that an agreement to a court decision
13 constitutes a waiver of the right to arbitrate; creating s.
14 682.031, F.S.; specifying actions that constitute notice;
15 creating s. 682.032, F.S.; providing procedures for
16 initiating arbitration; amending s. 682.04, F.S.; requiring
17 that the court appoint arbitrators if the parties do not
18 agree on such selection; prohibiting a person having an
19 interest in the outcome of the proceeding from serving as
20 an arbitrator; creating s. 682.041, F.S.; authorizing the
21 court to enter an order for provisional remedies; creating
22 s. 682.042, F.S.; requiring that an arbitrator disclose any
23 facts that may affect the impartiality of the proceeding;
24 providing that a financial or personal interest in the
25 outcome of a proceeding or an existing or past relationship
26 with a party constitutes grounds for removal of the
27 arbitrator; providing for the court to order the removal of
28 the arbitrator and appoint a successor; providing that
29 failure to disclose an interest in the outcome of a

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30 proceeding or to disclose a relationship with a party is
31 evidence of partiality; requiring that an arbitrator sign
32 an oath affirming the absence of certain ties; creating s.
33 682.043, F.S.; providing for the consolidation of separate
34 arbitration proceedings; authorizing the court to
35 consolidate some claims and allow other claims to be
36 resolved separately; amending s. 682.05, F.S.; requiring
37 that all arbitrators to a proceeding conduct certain
38 hearings; creating s. 682.052, F.S.; providing procedures
39 for an arbitration proceeding; requiring that all parties
40 be physically present except in certain cases; providing
41 for a summary disposition of a claim or particular issue;
42 amending s. 682.06, F.S.; revising requirements for
43 conducting the hearing; requiring notice of the right to
44 representation; amending s. 682.07, F.S.; requiring that
45 the parties receive information concerning available
46 assistance; amending s. 682.08, F.S.; requiring that a
47 subpoena be included in the record of the arbitration;
48 providing for dispositions to be conducted under the
49 Florida Rules of Civil Procedure; providing for additional
50 discovery, the issuance of subpoenas, and other orders;
51 authorizing a arbitrator to issue a protective order under
52 limited circumstances; providing for a subpoena or order to
53 be enforced by a court; requiring that witnesses testify
54 under oath; creating s. 682.085, F.S.; providing for
55 judicial enforcement of a preaward ruling; amending s.
56 682.09, F.S.; requiring the award contain findings and
57 damages or other relief; requiring that the award be made a
58 public record; amending s. 682.11, F.S.; providing certain

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59 limitations on expenses and fees; providing for an award of
60 attorney's fees and other expenses of arbitration;
61 authorizing the court to order that the costs of
62 arbitration be shared among the parties; amending s.
63 682.12, F.S.; providing for confirmation of an award by the
64 court; amending s. 682.13, F.S.; providing additional
65 circumstances under which a court may vacate an award;
66 authorizing the parties to an arbitration to contract for
67 judicial review of errors of law in the award; amending s.
68 682.14, F.S.; authorizing the court to modify or correct an
69 award; requiring that a consumer seek to modify or vacate
70 an award issued under a consumer arbitration agreement
71 within a specified period; amending s. 682.15, F.S.;
72 providing for the recording and enforcement of an award;
73 amending s. 682.20, F.S.; providing additional
74 circumstances under which an arbitration decision may be
75 appealed; creating s. 682.202, F.S.; specifying that ch.
76 682, F.S., modifies, limits, and supersedes certain
77 provisions of federal law; creating s. 682.203, F.S.;
78 requiring that certain arbitration organizations make
79 information available to the public concerning the type and
80 number of disputes it handles; requiring that such
81 information be provided free of charge; requiring that an
82 arbitration organization waive the fees for low-income
83 persons involved in a consumer arbitration; requiring that
84 an arbitration organization provide notice of the right to
85 such waiver; prohibiting an arbitrator or arbitration
86 organization from requiring a consumer to pay the fees and
87 costs incurred by an opposing party; authorizing a court to

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88 enjoin such violation and order restitution; creating s.
89 682.204, F.S.; requiring that a party drafting an
90 arbitration agreement disclose filing fees and costs;
91 providing that failure to make such disclosures constitutes
92 a deceptive and unfair trade practice; providing for
93 enforcement of such provision by injunction; providing for
94 application of the act; providing an effective date.

95

96 Be It Enacted by the Legislature of the State of Florida:

97

98 Section 1. Section 682.011, Florida Statutes, is created to
99 read:

100 682.011 Definitions.--As used in this chapter, the term:

101 (1) "Arbitration agreement" means a standardized contract,
102 written by the nonconsumer party, which has a provision requiring
103 that disputes arising after the contract's signing be submitted
104 to binding arbitration, and the other party to the contract is a
105 consumer.

106 (2) "Arbitration organization" means an association,
107 agency, board, commission, or other entity that is neutral and
108 initiates, sponsors, or administers an arbitration proceeding or
109 is involved in the appointment of an arbitrator.

110 (3) "Arbitrator" means a neutral individual appointed to
111 render an award, alone or with others, in a controversy that is
112 subject to an arbitration agreement.

113 (4) "Consumer" means a party to an arbitration agreement
114 who, in the context of that arbitration agreement, is an
115 individual and not a business, who seeks or acquires, including
116 by lease, any goods or services primarily for personal, family,

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117 or household purposes, including, but not limited to,
118 transactions involving banking, credit cards, home loans, or
119 other financial services; health care services; brokerage
120 services; home construction and improvements; insurance;
121 communications; the purchases and lease of motor vehicles and
122 other personal property; and the purchase and lease of real
123 property.

124 (5) "Evident partiality" means that a reasonable person
125 would conclude that the arbitrator was partial to one party to
126 the arbitration, or that it reasonably looks as though the
127 arbitrator would tend to favor one of the parties. Evident
128 partiality does not require the party alleging such partiality to
129 prove that it was actually prejudiced.

130 (6) "Financial interest" means holding a position in a
131 business as officer, director, trustee, or partner; holding any
132 position in management; or ownership of more than 5 percent
133 interest in a business.

134 (7) "Knowledge" means actual knowledge.

135 (8) "Person" means an individual, corporation, business
136 trust, estate, trust, partnership, limited liability company,
137 association, or joint venture; governmental subdivision, agency,
138 or instrumentality thereof; public corporation; or any other
139 legal or commercial entity.

140 (9) "Record" means information that is inscribed on a
141 tangible medium or that is stored in an electronic or other
142 medium and is retrievable in perceivable form.

143 (10) "Small business" means:

144 (a)1. A sole proprietor of an unincorporated business,
145 including a professional practice, whose principal office is in

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146 this state, who is domiciled in this state, and whose business
147 or professional practice has, at the time the action is
148 initiated by a state agency, not more than 25 full-time
149 employees or a net worth of not more than \$2 million, including
150 both personal and business investments;

151 2. A partnership or corporation, including a professional
152 practice, which has its principal office in this state and has
153 at the time the action is initiated by a state agency not more
154 than 25 full-time employees or a net worth of not more than \$2
155 million; or

156 3. An individual whose net worth did not exceed \$2 million
157 at the time the action is initiated by a state agency when the
158 action is brought against that individual's license to engage in
159 the practice or operation of a business, profession, or trade;
160 or

161 (b) Any small business party as defined in subparagraph
162 (a)1., without regard to the number of its employees or its net
163 worth, in any action under s. 72.011 or in any administrative
164 proceeding under that section to contest the legality of any
165 assessment of tax imposed for the sale or use of services as
166 provided in chapter 212, or interest thereon, or penalty
167 therefor.

168 Section 2. Section 682.012, Florida Statutes, is created to
169 read:

170 682.012 Application.--

171 (1) This chapter does not apply to insurance policies made
172 with a consumer or small business, and each provision in any such
173 policy requiring arbitration or restricting a party thereto or
174 beneficiary thereof from enforcing any right under it by usual

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175 legal proceedings or limiting the time to do so is void and
176 unenforceable.

177 (2) A provision for mandatory binding arbitration within
178 any contract is void and unenforceable except to the extent
179 federal law provides for its enforceability.

180 (3) This chapter does not apply to any arbitrator or any
181 arbitration organization in an arbitration proceeding governed by
182 rules adopted by a securities self-regulatory organization and
183 approved by the United States Securities and Exchange Commission
184 under federal law, 15 U.S.C. s. 78.

185 (4) This chapter does not restrict the ability of consumers
186 to pursue arbitration on a group basis; however, this chapter may
187 be applied with respect to arbitrations involving multiple
188 consumer parties.

189 Section 3. Section 682.013, Florida Statutes, is created to
190 read:

191 682.013 Effect of arbitration agreement; nonwaivable
192 provisions.--

193 (1) Except as otherwise provided in subsections (2) and
194 (3), a party to an arbitration agreement or arbitration
195 proceeding may waive, or may vary the effect of, the requirements
196 of this chapter to the extent permitted by law.

197 (2) Before a controversy arises which is subject to an
198 arbitration agreement, a party to the agreement may not:

199 (a) Waive or agree to vary the effect of the requirements
200 of s. 682.012, s. 682.032, s. 682.041, s. 682.042, s. 682.08(1)
201 and (2), s. 682.11, or s. 682.20; or

202 (b) Waive the right under s. 682.07 of a party to an
203 arbitration agreement to be represented by a lawyer at any

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204 proceeding or hearing under this chapter, but an employer and a
205 labor organization may waive the right to representation by a
206 lawyer in a labor arbitration.

207 (3) A party to an arbitration agreement or arbitration
208 proceeding may not waive, or the parties may not vary the effect
209 of, the requirements of this section or s. 682.012(1) or (3), s.
210 682.03, s. 682.085, s. 682.10(4) or (5), s. 682.12, s. 682.13, s.
211 682.14, s. 682.15, or s. 682.202, except that, if there is an
212 agreement to arbitrate disputes over insurance obligations by two
213 or more people engaged in the business of insurance, including,
214 but not limited to, reinsurers, self-insurers, or reinsurance
215 intermediaries, or any combination thereof, the parties to the
216 agreement may waive the right to vacate an award under s. 682.13.

217 (4) A party to an arbitration agreement or arbitration
218 proceeding may not narrow the grounds for vacating an award set
219 forth in s. 682.13, except in a subsequent agreement for
220 consideration made after the controversy that is at issue in the
221 arbitration has arisen.

222 (5) A party to an agreement who submits to, or agrees to
223 have, a court decide an issue subject to arbitration, waives the
224 right to arbitrate. This includes, but is not limited to,
225 initiating a suit or responding to a suit in any manner other
226 than by a motion to compel arbitration.

227 Section 4. Section 682.031, Florida Statutes, is created to
228 read:

229 682.031 Notice.--

230 (1) Except as otherwise provided in this chapter, a person
231 gives notice to another person by delivering notice to the
232 person's place of residence by certified or registered mail,

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233 return receipt requested and obtained, or by in-hand delivery
234 with notice of service of process.

235 (2) A person has notice if the person has knowledge of the
236 notice or has received actual notice.

237 Section 5. Section 682.032, Florida Statutes, is created to
238 read:

239 682.032 Initiation of arbitration.--A person shall initiate
240 an arbitration proceeding by giving notice in a record to the
241 other parties to the arbitration agreement by certified or
242 registered mail, return receipt requested and obtained, or by
243 service as authorized for the commencement of a civil action. The
244 notice must describe the nature of the controversy and the remedy
245 sought.

246 Section 6. Section 682.04, Florida Statutes, is amended to
247 read:

248 682.04 Appointment of arbitrators by court.--

249 (1) The parties shall select the arbitrator after the
250 dispute to be arbitrated has arisen. If the parties do not agree
251 on the selection of the arbitrators, the court ~~an agreement or~~
252 ~~provision for arbitration subject to this law provides a method~~
253 ~~for the appointment of arbitrators or an umpire, this method~~
254 ~~shall be followed. In the absence thereof, or if the agreed~~
255 ~~method fails or for any reason cannot be followed, or if an~~
256 ~~arbitrator or umpire who has been appointed fails to act and his~~
257 ~~or her successor has not been duly appointed, the court, on~~
258 ~~application of a party to such agreement or provision shall~~
259 appoint one or more arbitrators or an umpire deemed by both
260 parties to be acceptable. An arbitrator or umpire so appointed

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261 has ~~shall have~~ like powers as if named or provided for in the
262 agreement or provision.

263 (2) An individual may not serve as an arbitrator if the
264 individual has, at the time of arbitration or at some time in the
265 past, a direct and material interest in the outcome of the
266 arbitration proceeding, an existing relationship with a party, or
267 any interest other than a de minimis interest that could be
268 affected by the proceeding.

269 (3) An individual may not serve as an arbitrator if the
270 arbitration service through which the party has been contracted
271 has a direct or indirect interest in the outcome of the
272 arbitration.

273 Section 7. Section 682.041, Florida Statutes, is created to
274 read:

275 682.041 Provisional remedies.--

276 (1) The court, upon motion of a party to an arbitration
277 proceeding and for good cause shown, may enter an order for
278 provisional remedies to protect the effectiveness of the
279 arbitration proceeding to the same extent and under the same
280 conditions as if the controversy were the subject of a civil
281 action.

282 (2) A party does not waive a right of arbitration by making
283 a motion under subsection (1).

284 Section 8. Section 682.042, Florida Statutes, is created to
285 read:

286 682.042 Disclosure by arbitrator.--

287 (1) Before accepting appointment, an individual who is
288 requested to serve as an arbitrator, after making a reasonable
289 inquiry, shall disclose to all parties to the arbitration

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290 agreement or arbitration proceeding and to any other arbitrators
291 any facts that might affect, or appear to affect, the
292 impartiality of the arbitrator in the arbitration proceeding,
293 including any:

294 (a) Financial or personal interest in the outcome of the
295 arbitration proceeding; or

296 (b) Existing or past relationship with any of the parties
297 to the arbitration agreement or arbitration proceeding, their
298 counsel or representatives, a witness, or another arbitrators,
299 including the number of past arbitrations conducted involving
300 either party, the outcomes of those past arbitrations, and the
301 dates of decision.

302 (2) The parties must be informed that information
303 concerning the arbitration service provider's past cases is
304 available in a hard copy or on the provider's website.

305 (3) An arbitrator has a continuing obligation to disclose
306 to all parties to the arbitration agreement and arbitration
307 proceeding and to any other arbitrators involved in the
308 proceeding any facts that the arbitrator learns after accepting
309 appointment which might affect, or appear to affect, the
310 impartiality of the arbitrator, including, but not limited to,
311 the information or facts required to be disclosed under
312 subsection (1).

313 (4) If an arbitrator discloses a fact required by
314 subsection (1) or subsection (3) to be disclosed and a party
315 timely objects to the appointment or continued service of the
316 arbitrator based upon the fact disclosed, the objection may be
317 grounds for the removal of the arbitrator or for vacating an
318 award made by the arbitrator under s. 682.13.

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319 (5) If the arbitrator did not disclose a fact as required
320 by subsection (1) or subsection (2), upon timely objection by a
321 party, the party may make a motion to the court for an expedited
322 order to remove the arbitrator and appoint a successor. Failure
323 of an arbitrator to make such disclosures is grounds for the
324 court to vacate an award under s. 682.13.

325 (6) An arbitrator appointed as a neutral arbitrator who
326 fails to comply with any disclosure requirement of this section
327 is presumed to act with evident partiality under s. 682.13.

328 (7) If no circumstances exist which would affect the
329 impartiality of any designated arbitrator, such arbitrator shall
330 sign an oath provided by the court affirming the absence of such
331 present or preexisting ties.

332 Section 9. Section 682.043, Florida Statutes, is created to
333 read:

334 682.043 Consolidation of separate arbitration
335 proceedings.--

336 (1) Except as otherwise provided in subsection (3), upon
337 motion of a party to an arbitration agreement or arbitration
338 proceeding, the court shall order consolidation of separate
339 arbitration proceedings as to all or some of the claims if:

340 (a) There are separate arbitration agreements or separate
341 arbitration proceedings between the same persons or one of them
342 is a party to a separate arbitration agreement or separate
343 arbitration proceeding with a third person;

344 (b) The claims subject to the arbitration agreements arise
345 in substantial part from the same transaction or series of
346 related transactions;

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347 (c) The existence of a common issue of law or fact creates
348 the possibility of conflicting decisions in the separate
349 arbitration proceedings; and

350 (d) Prejudice resulting from a failure to consolidate is
351 not outweighed by the risk of undue delay or prejudice to the
352 rights of or hardship to parties opposing consolidation.

353 (2) The court may order consolidation of separate
354 arbitration proceedings as to some claims and allow other claims
355 to be resolved in separate arbitration proceedings.

356 (3) This section does not prohibit a party from
357 participating in a class action lawsuit.

358 Section 10. Section 682.05, Florida Statutes, is amended to
359 read:

360 682.05 Majority action by arbitrators.--The powers of the
361 arbitrators must ~~may~~ be exercised by a majority of their number,
362 but all arbitrators shall conduct the hearing under s. 682.052
363 ~~unless otherwise provided in the agreement or provision for~~
364 ~~arbitration.~~

365 Section 11. Section 682.052, Florida Statutes, is created
366 to read:

367 682.052 Arbitration process.--

368 (1) An arbitrator must conduct an arbitration in a manner
369 that is fundamentally fair. Fundamental fairness includes notice,
370 opportunity to be heard, opportunity to present relevant and
371 material evidence, opportunity for argument before the
372 decisionmakers, and a decisionmaker who is not biased.

373 (2) The authority conferred upon the arbitrator includes
374 the power to hold conferences with the parties to the arbitration
375 proceeding before the hearing and, among other matters, determine

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376 the admissibility, relevance, materiality, and weight of any
377 evidence in accordance with Florida Rules of Evidence and Florida
378 Rules of Civil Procedure.

379 (3) Unless both parties agree or in cases of extreme
380 hardship, both parties or their attorneys must be physically
381 present at all hearings and conferences with the arbitrator.

382 (4) An arbitrator may decide a request for summary
383 disposition of a claim or particular issue:

384 (a) If all interested parties agree to permit summary
385 disposition of the issue; or

386 (b) Upon request of one party to the arbitration proceeding
387 if that party gives actual, written notice to all other parties
388 to the proceeding in the manner provided in s. 682.031, and the
389 other parties are given 30 days to respond after receiving such
390 notice.

391 Section 12. Section 682.06, Florida Statutes, is amended to
392 read:

393 682.06 Hearing.--Unless otherwise provided by the agreement
394 or provision for arbitration:

395 (1) (a) The arbitrators shall appoint a time and place for
396 the hearing and cause notification to the parties to be served
397 personally or by registered or certified mail not less than 30 ~~5~~
398 days before the hearing. The notice must include a statement that
399 a party is entitled to representation. Appearance at the hearing
400 does not waive ~~waives~~ a party's right to object to the proceeding
401 on the basis of insufficient or lack of such notice. The
402 arbitrators may adjourn their hearing from time to time upon
403 their own motion and shall do so upon the request of any party to
404 the arbitration for good cause shown, provided that no

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405 adjournment or postponement of their hearing shall extend beyond
406 the date fixed in the agreement or provision for making the award
407 unless the parties consent to a later date. An umpire authorized
408 to hear and decide the cause upon failure of the arbitrators to
409 agree upon an award shall, in the course of his or her
410 jurisdiction, have like powers and be subject to like limitations
411 thereon.

412 (b) The arbitrators, or umpire in the course of his or her
413 jurisdiction, may hear and decide the controversy upon the
414 evidence produced notwithstanding the failure or refusal of a
415 party duly notified of the time and place of the hearing to
416 appear. The court on application may direct the arbitrators, or
417 the umpire in the course of his or her jurisdiction, to proceed
418 promptly with the hearing and making of the award.

419 (2) The parties are entitled to be heard, to present
420 evidence material to the controversy and to cross-examine
421 witnesses appearing at the hearing in accordance with the Florida
422 Rules of Evidence and the Florida Rules of Civil Procedure.

423 (3) The hearing shall be conducted by all of the
424 arbitrators but a majority may determine any question and render
425 a final award. An umpire authorized to hear and decide the cause
426 upon the failure of the arbitrators to agree upon an award shall
427 sit with the arbitrators throughout their hearing but shall not
428 be counted as a part of their quorum or in the making of their
429 award. If, during the course of the hearing, an arbitrator for
430 any reason ceases to act, a replacement arbitrator must be
431 appointed in accordance with s. 628.04 to continue the proceeding
432 and resolve the controversy ~~the remaining arbitrator, arbitrators~~

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433 ~~or umpire appointed to act as neutrals may continue with the~~
434 ~~hearing and determination of the controversy.~~

435 Section 13. Section 682.07, Florida Statutes, is amended to
436 read:

437 682.07 Representation by attorney.--A party has the right
438 to be represented by an attorney at any arbitration proceeding
439 or hearing under this law. A waiver thereof prior to the
440 proceeding or hearing is ineffective. The parties to an
441 arbitration must be provided with information concerning
442 institutions that might offer assistance, such as bar
443 associations, legal service associations, civil rights
444 organizations, and trade unions.

445 Section 14. Section 682.08, Florida Statutes, is amended to
446 read:

447 682.08 Witnesses, subpoenas, depositions, discovery--

448 (1) Arbitrators, or an umpire authorized to hear and decide
449 the cause upon failure of the arbitrators to agree upon an award,
450 in the course of her or his jurisdiction, may issue subpoenas for
451 the attendance of witnesses and for the production of books,
452 records, documents, and other evidence, and shall have the power
453 to administer oaths. Subpoenas so issued shall be served, and
454 upon application to the court by a party to the arbitration or
455 the arbitrators, or the umpire, enforced in the manner provided
456 by law for the service and enforcement of subpoenas in a civil
457 action. The issuance of a subpoena must be included in the record
458 of the arbitration.

459 (2) On application of a party to the arbitration and for
460 use as evidence, the arbitrators, or the umpire in the course of
461 her or his jurisdiction, may permit a deposition to be taken, in

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462 the manner and upon the terms designated by them or her or him of
463 a witness who cannot be subpoenaed or is unable to attend the
464 hearing. Any deposition must be given in the manner provided by
465 the Florida Rules of Civil Procedure. A copy of any deposition
466 given by a witness called to testify during the arbitration must
467 be included in the record of the arbitration.

468 (3) A party must, without awaiting a discovery request from
469 the arbitrator, provide to the arbitrator and the other parties:

470 (a) The name and, if known, the address and telephone
471 number of each individual likely to have discoverable
472 information, along with the subjects of that information, which
473 the disclosing party seeks authorization to use to support its
474 claims or defenses; and

475 (b) A copy, or a description by category and location, of
476 all documents, electronically stored information, and tangible
477 things that the disclosing party has in its possession, custody,
478 or control and may use to support its claims or defenses.

479
480 All information furnished under this subsection shall be entered
481 into the record of the arbitration.

482 (4) Discovery shall be conducted in a manner consistent
483 with the Florida Rules of Civil Procedure and state law.

484 (5) A party to an arbitration may petition an arbitrator to
485 permit such additional discovery, as provided by the Florida
486 Rules of Civil Procedure and consistent with state law, as the
487 arbitrator decides is appropriate in the circumstances, taking
488 into account the needs of the parties to the arbitration
489 proceeding and other affected persons and the desirability of
490 making the proceeding fair, expeditious, and cost-effective.

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491 (6) The arbitrator may order a party to the arbitration
492 proceeding to comply with the arbitrator's discovery-related
493 orders, issue subpoenas for the attendance of a witness and for
494 the production of records and other evidence at a discovery
495 proceeding, and take action against a noncomplying party to the
496 extent a court could if the controversy were the subject of a
497 civil action in this state.

498 (7) An arbitrator may issue a protective order only to
499 prevent the disclosure of privileged information, confidential
500 information, or trade secrets and only to the extent that a court
501 could if the arbitrator makes a finding on the record that any
502 public interest in disclosure of information relevant to the
503 protection of public health and safety is outweighed by a
504 specific and substantial harm that would result from disclosure.

505 (8)~~(3)~~ All provisions of law compelling a person under
506 subpoena to testify are applicable.

507 (9) The court may enforce a subpoena or discovery-related
508 order for the attendance of a witness within this state and for
509 the production of records and other evidence issued or considered
510 by an arbitrator in connection with an arbitration proceeding in
511 another state and consistent with the laws of the jurisdiction. A
512 subpoena or discovery-related order issued by an arbitrator in
513 another state must be served in the manner provided by law for
514 service of subpoenas in a civil action in this state and, upon
515 motion to the court by a party to the arbitration proceeding or
516 the arbitrator, enforced in the manner provided by law for
517 enforcement of subpoenas in a civil action in this state.

518 (10) All witnesses must be under oath during testimony,
519 including testimony that is given during a deposition.

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520 ~~(11)(4)~~ Fees for attendance as a witness shall be the same
521 as for a witness in the circuit court.

522 Section 15. Section 682.085, Florida Statutes, is created
523 to read:

524 682.085 Judicial enforcement of preaward ruling.--Any party
525 may request the arbitrator to incorporate a preaward ruling in
526 favor of a party to the arbitration proceeding into an award
527 under s. 682.09. The court shall issue an order to confirm the
528 award unless the court vacates, modifies, or corrects the award
529 under ss. 682.13 and 682.14.

530 Section 16. Section 682.09, Florida Statutes, is amended to
531 read:

532 682.09 Award.--

533 (1) The award shall be in writing and shall contain a
534 summary of the issues considered, the arbitrators' findings on
535 the issues, their reasons, the damages and any other relief
536 requested and awarded, a statement of any other issues resolved,
537 the discovery list required under s. 682.08, and a statement
538 regarding the disposition of any statutory claims. The award
539 shall be signed by the arbitrators joining in the award or by the
540 umpire in the course of his or her jurisdiction. A copy of the
541 award shall be delivered ~~They or he or she shall deliver a copy~~
542 to each party to the arbitration ~~either~~ personally or by
543 registered or certified mail, ~~or as provided in the agreement or~~
544 ~~provision.~~

545 (2) An award shall be made within the time fixed therefor
546 by the agreement or provision for arbitration or, if not so
547 fixed, within such time as the court may order on application of
548 a party to the arbitration. The parties may, by written

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549 agreement, extend the time either before or after the expiration
550 thereof. Any objection that an award was not made within the time
551 required is waived unless the objecting party notifies the
552 arbitrators or umpire in writing of his or her objection prior to
553 the delivery of the award to him or her.

554 (3) The written record, including all evidence required to
555 be filed under this chapter, the opinion, and the award shall be
556 entered into the public record by filing with the clerk of the
557 court of the proper jurisdiction over the arbitration.

558 Section 17. Section 682.11, Florida Statutes, is amended to
559 read:

560 682.11 Remedies; fees and expenses of arbitration
561 proceeding.--

562 (1) An arbitrator may award punitive damages or other
563 exemplary relief to the extent that he or she would be authorized
564 by law in a civil action involving the same claim and the
565 evidence produced at the hearing justifies the award under the
566 legal standards otherwise applicable to the claim.

567 (2) Unless otherwise agreed to by the parties to the
568 arbitration, the circuit court shall establish the amount of
569 compensation, if any, which each arbitrator or umpire shall
570 receive for services rendered in each case. ~~Unless otherwise~~
571 ~~provided in the agreement or provision for arbitration,~~ The
572 arbitrators' and umpire's expenses and fees, together with other
573 expenses, ~~not including counsel fees,~~ incurred in the conduct of
574 the arbitration, shall be paid as provided in the award. All fees
575 must be itemized in the award. Expenses and fees may not exceed
576 the limits of court fees awarded in a civil action involving the
577 same claim.

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578 (3) An arbitrator may award reasonable attorney's fees and
579 other reasonable expenses of arbitration to the extent that such
580 fees and expenses are authorized by law in a civil action
581 involving the same claim or as provided by agreement of the
582 parties to the arbitration proceeding.

583 (4) Upon a showing by the consumer, by an affidavit that
584 includes a statement of financial resources possessed by the
585 consumer, that the consumer is unable to pay the costs of
586 arbitration, the court may order such costs to be shared between
587 the two parties in an equitable manner. A nonconsumer may be
588 ordered to pay the entire cost of the arbitration where a lack of
589 financial resources would make it create a financial hardship to
590 continue the arbitration proceeding.

591 (5) If an arbitrator awards punitive damages or other
592 exemplary relief under subsection (1), the arbitrator shall
593 specify in the award the basis in fact justifying and the basis
594 in law authorizing the award and state separately the amount of
595 the punitive damages or other exemplary relief.

596 Section 18. Section 682.12, Florida Statutes, is amended to
597 read:

598 682.12 Confirmation of an award.--After a party to an
599 arbitration proceeding receives notice of an award and upon
600 application of a party to the arbitration, the court shall
601 confirm an award, unless within the time limits hereinafter
602 imposed grounds are urged for vacating or modifying or correcting
603 the award, in which case the court shall proceed as provided in
604 ss. 682.13 and 682.14.

605 Section 19. Section 682.13, Florida Statutes, is amended to
606 read:

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607 682.13 Vacating an award.--

608 (1) Upon application of a party, the court shall vacate an
609 award when:

610 (a) The award was procured by corruption, fraud, or other
611 undue means.

612 (b) There was evident partiality by an arbitrator appointed
613 as a neutral or corruption in any of the arbitrators or umpire or
614 misconduct prejudicing the rights of any party. Partiality may be
615 demonstrated by the appearance of bias if the bias is apparent
616 based upon established facts. Such facts are not limited to those
617 facts disclosed by the arbitrator or arising during the course of
618 the arbitration. The mere nondisclosure of facts that demonstrate
619 potential arbitrator bias is evidence of partiality.

620 (c) The arbitrators or the umpire in the course of her or
621 his jurisdiction exceeded their powers.

622 (d) The arbitrators or the umpire in the course of her or
623 his jurisdiction refused to postpone the hearing upon sufficient
624 cause being shown therefor or refused to hear evidence material
625 to the controversy or otherwise so conducted the hearing,
626 contrary to the provisions of s. 682.06, as to prejudice
627 substantially the rights of a party.

628 (e) There was no agreement or provision for arbitration
629 subject to this law, unless the matter was determined in
630 proceedings under s. 682.03 and unless the party participated in
631 the arbitration hearing without raising the objection.

632 (f) The arbitration was conducted without proper notice of
633 the initiation of any stage of arbitration as required in s.
634 682.043 so as to substantially prejudice the rights of a party to
635 the arbitration proceeding.

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636 (g) The arbitrator's award is inconsistent with applicable
637 law.

638 (h) The arbitrator's award violates public policy.

639 (i) The arbitrator's award is arbitrary and capricious, or
640 completely irrational.

641 (j) The arbitrator's award is not supported by substantial
642 evidence on the record as a whole.

643

644 But the fact that the relief was such that it could not or would
645 not be granted by a court of law or equity is not ground for
646 vacating or refusing to confirm the award.

647 (2) In addition to the grounds to vacate an award set forth
648 in subsection (1), the parties may contract in the arbitration
649 agreement for judicial review of errors of law in the arbitration
650 award. If the parties have so contracted, the court shall vacate
651 the award if the arbitrator has committed an error of law
652 substantially prejudicing the rights of a party.

653 (3)~~(2)~~ An application under this section shall be made
654 within 90 days after delivery of a copy of the award to the
655 applicant, except that, if predicated upon corruption, fraud or
656 other undue means, it shall be made within 90 days after such
657 grounds are known or should have been known. A court may extend
658 the time limitation in this subsection upon a showing of good
659 cause.

660 (4)~~(3)~~ In vacating the award on grounds other than those
661 stated in paragraph (1)(e), the court may order a rehearing
662 before new arbitrators chosen as provided in the agreement or
663 provision for arbitration or by the court in accordance with s.
664 682.04, or, if the award is vacated on grounds other than those

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665 stated ~~set forth~~ in paragraphs (1)(a) and (b) ~~(1)(c) and (d)~~, the
666 court may order a rehearing before the arbitrators or umpire who
667 made the award or their successors appointed in accordance with
668 s. 682.04. The time within which the agreement or provision for
669 arbitration requires the award to be made is applicable to the
670 rehearing and commences from the date of the order therefor.

671 (5) ~~(4)~~ If the application to vacate is denied and no motion
672 to modify or correct the award is pending, the court shall
673 confirm the award.

674 Section 20. Section 682.14, Florida Statutes, is amended to
675 read:

676 682.14 Modification or correction of award.--

677 (1) Upon application made within 90 days after delivery of
678 a copy of the award to the applicant, the court shall modify or
679 correct the award when:

680 (a) There is an evident miscalculation of figures or an
681 evident mistake in the description of any person, thing or
682 property referred to in the award.

683 (b) The arbitrators or umpire have awarded upon a matter
684 not submitted to them or him or her and the award may be
685 corrected without affecting the merits of the decision upon the
686 issues submitted.

687 (c) The award is imperfect as a matter of form, not
688 affecting the merits of the controversy, including such cases
689 where fees awarded exceed the amount that would be assessed in a
690 comparable civil claim in state court.

691 (2) If the application is granted, the court shall modify
692 and correct the award so as to effect its intent and shall

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693 confirm the award as so modified and corrected. Otherwise, the
694 court shall confirm the award as made.

695 (3) An application to modify or correct an award may be
696 joined in the alternative with an application to vacate the
697 award.

698 (4) Irrespective of the time periods established in ss.
699 682.13 and 682.14, a consumer may also seek to modify or vacate
700 an award issued pursuant to an arbitration agreement within 30
701 days after receiving notice of a motion to confirm the award.

702 Section 21. Section 682.15, Florida Statutes, is amended to
703 read:

704 682.15 Judgment or decree on award.--Upon the granting of
705 an order confirming, modifying, or correcting an award or
706 vacating an award without directing a rehearing, judgment or
707 decree shall be entered in conformity therewith and be enforced
708 as any other judgment or decree. The judgment may be recorded,
709 docketed, and enforced as any other judgment in a civil action.
710 Costs of the application and of the proceedings subsequent
711 thereto, and disbursements may be awarded by the court.

712 Section 22. Section 682.20, Florida Statutes, is amended to
713 read:

714 682.20 Appeals.--

715 (1) An appeal may be taken from the arbitration to a court
716 having proper jurisdiction, upon any of the following bases:

717 (a) An order denying or granting an application to compel
718 arbitration made under s. 682.03.

719 (b) An order granting an application to stay arbitration
720 made under s. 682.03(2)-(4).

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721 (c) Any decision regarding the impartiality or lack of
722 conflict on the part of the arbitrator.

723 (d) Any evidentiary ruling, except as provided in paragraph
724 (2) (a), but only after final award or decision.

725 (2) The following rules may be reviewed by writ of
726 certiorari:

727 (a) A ruling concerning evidentiary privileges or
728 confidentiality rights of the parties.

729 (b) A grant of a protective order preventing the disclosure
730 of privileged information, confidential information, or trade
731 secrets under s. 682.08.

732 (3) An appeal may be taken from a circuit or county court
733 to a court of appeals on the basis of any decision made in
734 subsection (1) or subsection (2) and upon any of the following
735 bases:

736 (a) ~~(e)~~ An order confirming or denying confirmation of an
737 award.

738 (b) ~~(d)~~ An order modifying or correcting an award.

739 (c) ~~(e)~~ An order vacating an award without directing a
740 rehearing.

741 (d) ~~(f)~~ A judgment or decree entered pursuant to the
742 provisions of this law.

743 (4) ~~(2)~~ The appeal or petition for certiorari shall be taken
744 in the manner and to the same extent as from orders or judgments
745 in a civil action.

746 Section 23. Section 682.202, Florida Statutes, is created
747 to read:

748 682.202 Relationship to the Electronic Signatures in Global
749 and National Commerce Act.--This chapter modifies, limits, and

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750 supersedes the federal Electronic Signatures in Global and
751 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not
752 modify, limit, or supersede s. 101(c) of that act or authorize
753 electronic delivery of any of the notices described in s. 103(b)
754 of that act.

755 Section 24. Section 682.203, Florida Statutes, is created
756 to read:

757 682.203 Regulation of arbitration organizations.--

758 (1) Any arbitration organization that administers or is
759 otherwise involved in 10 or more consumer arbitrations per year
760 shall collect, publish at least quarterly, and make available to
761 the public in a computer-searchable, sortable, and downloadable
762 database that allows searching through the use of multiple search
763 terms in the same search and that is prominent and accessible at
764 the Internet website of the private arbitration organization, and
765 on paper upon request, all of the following information regarding
766 the arbitration organization within the preceding 5 years:

767 (a) The name of any corporation or other business entity
768 that is party to the arbitration.

769 (b) The subject matter of and type of transaction that gave
770 rise to the dispute and the type of dispute involved, including,
771 but not limited to, goods, banking, insurance, health care, debt
772 collection, employment, and, if it involves employment, the
773 amount of the employee's annual wage divided into the following
774 ranges:

775 1. Less than \$100,000;

776 2. One hundred thousand dollars to \$250,000, inclusive; and

777 3. More than \$250,000.

778 (c) The name of the prevailing party.

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779 (d) The number of occasions, if any, in which a corporation
780 or business entity that is a party to an arbitration has
781 previously been a party in an arbitration or mediation
782 administered by the arbitration organization.

783 (e) Whether the consumer in each prior arbitration was
784 represented by an attorney and, if so, the identifying
785 information for that attorney, including the attorney's name, law
786 firm affiliation, business telephone number, and the address of
787 the attorney's law firm.

788 (f) The date that the arbitration organization received the
789 demand for arbitration, the date that the arbitrator was
790 appointed, and the date of disposition by the arbitrator or
791 arbitration organization.

792 (g) The type of disposition of the dispute, if known,
793 including withdrawal, abandonment, settlement, award after
794 hearing, award without hearing, default, or dismissal without
795 hearing.

796 (h) The amount of the claim, the amount of the award, and
797 any other relief granted, if any.

798 (i) The name of the arbitrator, his or her fee for the
799 case, and the percentage of the arbitrator's fee allocated to
800 each party.

801 (2) If the required information is provided by the
802 arbitration organization in a computer-searchable format at the
803 company's Internet website and may be downloaded without any fee,
804 the organization may charge the actual cost of copying to any
805 person who requests the information on paper. If the information
806 required is not accessible by the Internet, the organization

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807 shall provide that information without charge to any person who
808 requests the information on paper.

809 (3) All fees and costs charged to or assessed in this state
810 against a consumer by an arbitration organization in a consumer
811 arbitration shall be waived for any person having a gross monthly
812 income that is less than 500 percent of the poverty line as
813 defined in 42 U.S.C. s. 9902(2).

814 (4) Before requesting or obtaining any fee, an arbitration
815 organization shall provide written notice of the right to obtain
816 a waiver of fees in a manner calculated to bring the matter to
817 the attention of a reasonable consumer, including, but not
818 limited to, prominently placing a notice in its first written
819 communication to a consumer and in any invoice, bill, submission
820 form, fee schedule, rule, or code of procedure.

821 (5) Any person requesting a waiver of fees or costs may
822 establish eligibility by making a declaration under oath on a
823 form provided by the arbitration organization indicating the
824 person's monthly income and the number of persons living in the
825 household. An arbitration organization may not require a person
826 to provide any further statement or evidence of indigence. The
827 form and the information contained therein is confidential and
828 may not be disclosed to an adverse party or a nonparty to the
829 arbitration.

830 (6) An arbitration organization may not keep confidential
831 the number of waiver requests received or granted or the total
832 amount of fees waived, and must disclose all fees charged.

833 (7) An arbitrator or arbitration organization may not
834 administer an arbitration under any agreement or rule requiring
835 that a consumer who is a party to the arbitration pay the fees

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836 and costs incurred by any opposing party if the consumer does not
837 prevail in the arbitration, including, but not limited to, the
838 fees and costs of the arbitrator, provider organization,
839 attorney, or witnesses.

840 (8) An arbitration organization may not administer a
841 consumer arbitration to be conducted in this state, or provide
842 any other services related to such a consumer arbitration, if:

843 (a) The arbitration organization has, or within the
844 preceding year has had, a financial interest in any party or
845 attorney for a party involved in the arbitration; or

846 (b) Any party or attorney for a party has, or within the
847 preceding year has had, any type of financial interest in the
848 arbitration organization.

849 (9) Upon a violation of any provision of this section, the
850 affected person or entity, including the Office of the Attorney
851 General, may request a court to enjoin the arbitration
852 organization from such violation and order appropriate
853 restitution. The arbitration organization is liable for that
854 person or entity's reasonable attorney's fees and costs if that
855 person or entity prevails or if, after the action is commenced,
856 the arbitration organization voluntarily complies with the
857 provision.

858 Section 25. Section 682.204, Florida Statutes, is created
859 to read:

860 682.204 Disclosure of arbitration costs.--

861 (1) A party drafting an arbitration agreement shall clearly
862 and conspicuously disclose in regard to any arbitration:

863 (a) The filing fee;

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864 (b) The average daily cost for an arbitrator and hearing
865 room if the consumer elects to appear in person;

866 (c) Other charges that the arbitrator or arbitration
867 organization will assess in conjunction with an arbitration where
868 the consumer appears in person; and

869 (d) The proportion of these costs which each party bears in
870 the event that the consumer prevails, and in the event that the
871 consumer does not prevail.

872 (2) The costs specified in subsection (1) need not include
873 attorney's fees, and, to the extent that, with regard to the
874 disclosures required by subsection (1), a precise amount is not
875 known, the disclosures may be based on a reasonable, good faith
876 estimate. A party providing a reasonable, good faith cost
877 estimate is not liable if the actual costs of a particular
878 arbitration varies within reason from the estimate provided.

879 (3) Failure to comply with this section constitutes a
880 deceptive act pursuant to the Florida Deceptive and Unfair Trade
881 Practices Act. In addition, the information provided in the
882 disclosure may be considered in a determination of whether an
883 arbitration agreement is unconscionable or is otherwise not
884 enforceable under other law.

885 (4) If a party drafting an arbitration agreement violates
886 any provision of this section, any person or entity, including
887 the Office of the Attorney General, may request a court to enjoin
888 the drafting party from such violation as to agreements it enters
889 into in the future. The drafting party is liable to the person or
890 entity bringing such an action for that person or entity's
891 reasonable attorney's fees and costs if the court issues an

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892 | injunction or if, after the action is commenced, the drafting
893 | party voluntarily complies with the provisions of this section.

894 | Section 26. This act shall take effect July 1, 2008, and
895 | applies to agreements and provisions for arbitration entered into
896 | on or after that date.