

1 A bill to be entitled
2 An act relating to the Florida Consumer and Small Business
3 Arbitration Act; reorganizing provisions of ch. 682, F.S.;
4 amending s. 682.01, F.S.; conforming a short title
5 provision; creating s. 682.501, F.S.; providing a short
6 title; creating s. 682.502, F.S.; providing for
7 applicability; providing definitions; providing that the
8 act does not apply to certain insurance policies and
9 certain arbitrations; providing that mandatory binding
10 arbitration is void and unenforceable except as otherwise
11 provided by federal law; creating s. 682.503, F.S.;
12 providing proceedings to compel arbitration; creating s.
13 682.504, F.S.; providing for the appointment of
14 arbitrators and umpires; prohibiting certain persons from
15 serving as an arbitrator or umpire; providing disclosure
16 requirements; requiring arbitrators and umpires to perform
17 their duties in compliance with certain standards;
18 requiring an oath; creating s. 682.505, F.S.; providing
19 procedures for an arbitration proceeding; requiring
20 arbitrators and umpires to conduct arbitration in a manner
21 that is fundamentally fair; authorizing an arbitrator or
22 umpire to issue subpoenas for the attendance of witnesses
23 and production of documents; providing for discovery and
24 procedures to be conducted by certain rules; requiring
25 that witnesses testify under oath; providing for per diem
26 and travel expenses; providing that a party has a right to
27 be represented by an attorney at an arbitration proceeding
28 or hearing; providing for venue; providing for decisions

29 | to be made by majority vote in certain circumstances;
30 | prohibiting the administration of an arbitration under
31 | certain agreements or rules; prohibiting the award of
32 | certain fees; providing recording requirements; creating
33 | s. 682.506, F.S.; providing requirements for issuing an
34 | arbitration award; requiring that the written award and
35 | agreement or provision for arbitration be entered into the
36 | court of record; requiring the court to confirm the award
37 | under certain circumstances; requiring the judgment to be
38 | recorded, docketed, and enforced as any other judgment in
39 | a civil action; creating s. 682.507, F.S.; authorizing an
40 | arbitrator or umpire to award any relief or damages
41 | allowed by law; requiring the circuit court to establish
42 | the amount of compensation for arbitrators and umpires if
43 | the parties cannot agree; authorizing an arbitrator or
44 | umpire to award attorney's fees and other expenses of
45 | arbitration to the same extent as would be allowed if the
46 | same claim were brought in a court of law; creating s.
47 | 682.508, F.S.; providing circumstances under which a court
48 | may vacate an award; prohibiting parties from narrowing or
49 | expanding the grounds for vacating an award; creating s.
50 | 682.509, F.S.; providing procedures for the modification
51 | and correction of awards; providing that an application to
52 | modify or correct an award may be joined in the
53 | alternative with an application to vacate the award;
54 | authorizing the court to modify or correct awards under
55 | certain circumstances; providing that an application to
56 | modify or correct an award may be joined in the

57 alternative with an application to vacate the award;
 58 requiring a motion to modify or correct an award to be
 59 filed under a certain rule; creating s. 682.510, F.S.;
 60 authorizing the appeal of an arbitration decision;
 61 providing circumstances under which an arbitration
 62 decision may be appealed; specifying rules which may be
 63 reviewed by writ of certiorari; creating s. 682.511, F.S.;
 64 providing information to be included in arbitration
 65 agreement disclosure provisions; providing that failure to
 66 make such disclosures constitutes a deceptive and unfair
 67 trade practice and a waiver of rights to compel
 68 arbitration; providing for the enforcement of such
 69 provision by injunction; providing liability; providing an
 70 effective date.

71

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

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74 Section 1. The title of chapter 682, Florida Statutes, is
 75 redesignated as "Arbitration." Chapter 682, Florida Statutes,
 76 shall be divided into parts. Part I of chapter 682, Florida
 77 Statutes, shall consist of sections 682.01 through 682.22,
 78 Florida Statutes, and the title of that part shall be
 79 "Arbitration Code." Part II of chapter 682, Florida Statutes,
 80 shall consist of sections 682.501 through 682.511, Florida
 81 Statutes, and the title of that part shall be "Consumer and
 82 Small Business Arbitration Act."

83 Section 2. Section 682.01, Florida Statutes, is amended to
 84 read:

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112 (c) "Court" means any court of competent jurisdiction of
113 this state. The making of an agreement or provision for
114 arbitration subject to this part and providing for arbitration
115 in this state shall, whether made within or outside this state,
116 confer jurisdiction on the court to enforce the agreement or
117 provision under this part, refuse to enforce the agreement,
118 enter judgment on an award duly rendered in an arbitration
119 thereunder, or vacate, modify, or correct an award rendered
120 thereunder for such cause and in the manner provided in this
121 part.

122 (d) "Small business" means an independently owned and
123 operated business concern that employs no more than 200
124 permanent full-time employees or that, together with its
125 affiliates, has a net worth of not more than \$10 million or any
126 firm based in this state which has a Small Business
127 Administration 8(a) certification.

128 (3) Every provision in an insurance policy requiring
129 arbitration or restricting a party or beneficiary from enforcing
130 any right under the policy by legal proceedings or limiting the
131 time to do so is void and unenforceable.

132 (4) This part does not apply to any arbitrator,
133 arbitration organization, or umpire in an arbitration proceeding
134 governed by rules adopted by a securities self-regulatory
135 organization and approved by the United States Securities and
136 Exchange Commission under the Securities and Exchange Act of
137 1934, 15 U.S.C. s. 78s, as amended.

138 (5) This part does not apply to arbitrations covered under
139 chapter 718.

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140 (6) Any provision for mandatory binding arbitration within
141 any pre-dispute arbitration agreement is void and unenforceable
142 except to the extent federal law provides for its
143 enforceability.

144 682.503 Proceedings to compel arbitration.--A party to an
145 agreement or provision for arbitration which is subject to this
146 part who claims the neglect or refusal of another party to
147 comply, or who claims that the agreement or provision does not
148 apply, may make application to the court for an order
149 determining applicability, including validity, of the agreement
150 or provision to the case or controversy or the application of
151 this part. The court shall take evidence and hear and determine
152 the issue as soon as practicable and shall attempt to expedite
153 the issue on its calendar. If the court is satisfied that no
154 substantial issue exists as to the making of the agreement or
155 provision, that an arbitratable issue exists, that the
156 arbitration agreement is not void as against public policy, and
157 that the right to arbitration has not been waived, it shall
158 grant the application.

159 682.504 Appointment of arbitrators and umpires;
160 disclosure.--

161 (1) The parties shall select the arbitrators or umpires
162 within 30 days after the arbitration has been initiated. If the
163 parties are unable to come to an agreement, the party compelling
164 arbitration shall send the responding party a complete list of
165 certified arbitrators in the responding party's county who
166 qualify to arbitrate under s. 44.103. The responding party shall
167 choose three arbitrators from the list within 15 days. The party

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168 compelling arbitration shall then select one arbitrator from the
169 list of three within 15 days.

170 (2) Before accepting appointment, an individual or
171 arbitration organization asked to serve as an arbitrator or
172 umpire, hereinafter referred to as the "prospective arbitrator,"
173 shall disclose to all parties and to any other arbitrators or
174 umpires involved in the proceeding any facts that might affect,
175 or appear to affect, the impartiality of the arbitrator or
176 umpire in the arbitration proceeding, including, but not limited
177 to:

178 (a) Any personal or financial interest in the outcome of
179 the arbitration proceeding.

180 (b) Any existing or past relationship with:

181 1. Any of the parties to the agreement to arbitrate or the
182 arbitration proceeding.

183 2. The parties' industry.

184 3. The parties' counsel or representatives.

185 4. Witnesses.

186 5. Other arbitrators.

187 (c) The number of arbitrations conducted for the past 5
188 years involving either party, their industry, the attorneys or
189 their firms, the outcomes of those past arbitrations, and the
190 dates of decision.

191 (3) If a prospective arbitrator fails to comply with the
192 disclosure in this section within 10 days after notice of
193 appointment, the prospective arbitrator may not serve as an
194 arbitrator absent the written consent of all parties and a new
195 prospective arbitrator shall be selected.

196 (4) After receipt of the disclosures required in this
 197 section, any party may object to a prospective arbitrator within
 198 10 days and the parties will then select different prospective
 199 arbitrators.

200 (5) In addition to the other requirements of this section,
 201 a prospective arbitrator shall comply with the standards set
 202 forth in Canon 1 and Canon 3 of the Code of Judicial Conduct.
 203 Failure to comply with the provisions of this part shall be
 204 grounds for disqualification.

205 (6) The prospective arbitrator shall subscribe to an oath
 206 that he or she has reviewed and met all of the standards in this
 207 section and will continue to comply with those standards
 208 throughout the arbitration proceeding. A copy of the oath shall
 209 be served on each party to the arbitration and the other
 210 prospective arbitrators.

211 (7) After appointment, the standards and procedure for
 212 disqualification of an arbitrator or umpire shall be those
 213 provided by general law, rule, and judicial precedent for the
 214 disqualification of judges.

215 682.505 Arbitration process.--

216 (1) The purpose of this part is to secure the just,
 217 speedy, inexpensive, and fair resolution of disputes between the
 218 parties to consumer or small business arbitration.

219 (2) Arbitrators and umpires must conduct arbitration in a
 220 manner that is fundamentally fair. Fundamental fairness includes
 221 due process, adequate and appropriate notice, and the
 222 opportunity to be heard, present relevant and material evidence,
 223 cross-examine witnesses appearing at the hearing, present

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224 arguments, and cite legal authority before unbiased
225 decisionmakers.

226 (3) The parties shall be given the opportunity to perform
227 adequate and appropriate discovery to properly present and prove
228 their case, and the arbitrators and umpires shall use rules
229 designed to secure appropriate discovery in a speedy and
230 inexpensive manner. Arbitrators and umpires may issue subpoenas
231 for the attendance of witnesses and for the production of books,
232 records, documents, and other evidence, and shall have the power
233 to administer oaths, as would otherwise be provided for in a
234 civil action.

235 (4) Unless the parties agree otherwise, the scope of
236 discovery and the procedure for any hearings and trials shall be
237 governed by Rule 7.020 of the Florida Small Claims Rules.

238 (5) All witnesses must be under oath during testimony.
239 Witnesses shall serve without compensation but shall be entitled
240 to receive reimbursement for per diem and travel expenses as
241 provided in s. 112.061.

242 (6) A party has the right to be represented by an attorney
243 at any arbitration proceeding or hearing under this part. A
244 waiver thereof before the proceeding or hearing shall be void.

245 (7) Venue shall be governed by s. 682.19.

246 (8) If the parties agree to arbitration with more than one
247 arbitrator or umpire, then all decisions shall be by majority
248 vote, unless the parties agree otherwise.

249 (9) Notwithstanding any other provision of law, an
250 arbitrator or umpire may not administer an arbitration under any
251 agreement or rule requiring that a consumer or small business

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252 who is a party to the arbitration pay the fees and costs
253 incurred by any opposing party if the consumer or small business
254 does not prevail in the arbitration, including, but not limited
255 to, the fees and costs of the arbitrator, provider organization,
256 attorney, or witnesses.

257 (10) The arbitrators and umpires shall maintain a record
258 of all activity in any arbitration proceeding.

259 682.506 Award, opinion, and judgment.--

260 (1) An arbitrator's or umpire's award shall be in writing
261 and shall contain an opinion with findings addressing the issues
262 raised and the damages awarded, if any. The award shall be
263 issued within a reasonable time after the final hearing but not
264 more than 60 days after the date of the final hearing, unless an
265 extension is granted by the court upon a demonstration of good
266 cause. The parties may, by written agreement, extend the
267 deadline; however, in no case shall a party disclose indirectly
268 or directly to the arbitrator or umpire that the other party
269 refuses to agree to extend the deadline. The award shall be
270 signed by the arbitrators joining in the award or by the umpire
271 in the course of his or her jurisdiction. A copy of the award
272 shall be delivered to each party to the arbitration personally
273 or by registered or certified mail.

274 (2) The written award and the agreement or provision for
275 arbitration shall be entered into the court record by filing
276 them with the clerk of the court having jurisdiction over the
277 arbitration at such time as entry of judgment is sought. If a
278 court file has not been previously opened, the party seeking
279 entry of judgment shall pay the applicable filing fee and file

280 the documents specified in this section before a judgment is
 281 entered.

282 (3) After a party to an arbitration proceeding receives
 283 notice of the filing of the arbitration opinion as required by
 284 subsection (2), the court shall confirm the award unless the
 285 court modifies or vacates an award as provided in s. 682.508 or
 286 s. 682.509.

287 (4) Upon the granting of an order directing a rehearing or
 288 confirming, vacating, modifying, or correcting an award, the
 289 judgment or decree shall be entered in conformity therewith and
 290 be enforced as any other judgment or decree.

291 (5) The judgment shall be recorded, docketed, and enforced
 292 as any other judgment in a civil action.

293 682.507 Remedies; fees and expenses of arbitration.--

294 (1) An arbitrator or umpire may award any relief or
 295 damages allowed by law and otherwise awardable under the legal
 296 standards that would apply to the same claim if brought in a
 297 court of law.

298 (2) Arbitration fees and expenses shall be reasonable. A
 299 consumer or small business may not be subject to any arbitration
 300 fee or cost amounts greater than the consumer or small business
 301 would be if the action were brought in a court of law. Unless
 302 otherwise agreed by the parties to the arbitration after the
 303 arbitration proceeding has been instituted, the circuit court
 304 shall establish the amount of compensation, if any, that each
 305 arbitrator or umpire shall receive. The court may order that the
 306 arbitrator's and umpire's fees, the cost of facilities for the
 307 arbitration, and the arbitration expenses be apportioned between

308 the parties in an equitable manner so as to make a prevailing
 309 consumer or small business whole.

310 (3) An arbitrator or umpire shall award reasonable
 311 attorney's fees and other reasonable expenses of arbitration to
 312 the extent authorized by law in a civil action involving the
 313 same claims.

314 682.508 Vacating an award.--

315 (1) Upon application of a party within 90 days after the
 316 applicant knew or should have known, the court shall vacate an
 317 award if:

318 (a) The award was procured by corruption, fraud, or other
 319 undue or unjust means; or

320 (b) The arbitrator or umpire failed to meet the standards
 321 in s. 682.504.

322 (2) Upon application of a party within 90 days after the
 323 date of delivery of a copy of the award to the applicant, the
 324 court shall vacate an award if:

325 (a) The arbitrator or umpire exceeded his or her powers;

326 (b) The arbitrator or umpire conducted the hearing
 327 contrary to the provisions of this part or without proper notice
 328 of the initiation of any stage of arbitration as required by
 329 this part, or otherwise failed to comply with s. 682.505;

330 (c) The arbitration award is inconsistent with applicable
 331 law, violates public policy, is arbitrary or capricious or lacks
 332 a rational basis, or is not supported by substantial evidence as
 333 reflected in the record; or

334 (d) The arbitration was conducted in a manner that was not
 335 fundamentally fair.

336 (3) Parties may not narrow or expand the grounds for
337 vacating an award as provided in this section. A motion to
338 vacate an arbitration award shall be filed under Rule 1.540 of
339 the Florida Rules of Civil Procedure.

340 682.509 Modification or correction of award.--

341 (1) Upon application made within 90 days after the date of
342 delivery of a copy of the award to the applicant, the court
343 shall modify or correct the award if:

344 (a) There is an evident miscalculation of figures or an
345 evident mistake in the description of any person, thing, or
346 property referenced in the award;

347 (b) The arbitrator or umpire has made an award upon a
348 matter not submitted to him or her, and the award may be
349 corrected without affecting the merits of the decision upon the
350 issues actually submitted; or

351 (c) The award is imperfect as a matter of form, not
352 affecting the merits of the controversy.

353 (2) If the application is granted, the court shall modify
354 and correct the award so as to effect its intent and shall
355 confirm the award as modified and corrected. Otherwise, the
356 court shall confirm the award as made.

357 (3) An application to modify or correct an award may be
358 joined in the alternative with an application to vacate the
359 award. However, the filing of a motion to modify or correct an
360 award shall toll the time for taking any other action under this
361 part as to the award or opinion.

362 (4) A motion to modify or correct an award shall be filed
363 under Rule 1.540, Florida Rules of Civil Procedure.

364 682.510 Appeals.--
 365 (1) A final appeal, or an interlocutory appeal if
 366 appropriate, may be taken from a circuit or county court to the
 367 appropriate court of appeals as a result of:
 368 (a) An order denying or granting an application to compel
 369 arbitration made under s. 682.503, pursuant to Rule 9.130 of the
 370 Florida Rules of Appellate Procedure;
 371 (b) An order denying or granting an application to stay
 372 arbitration made under s. 682.503, pursuant to Rule 9.130 of the
 373 Florida Rules of Appellate Procedure;
 374 (c) A decision regarding the impartiality or lack of
 375 conflict on the part of the arbitrator or umpire;
 376 (d) An evidentiary ruling, except as provided in paragraph
 377 (2) (a), after final award or decision;
 378 (e) An order confirming or denying confirmation of an
 379 award;
 380 (f) An order modifying or correcting an award;
 381 (g) An order on a motion to vacate an award; or
 382 (h) A judgment or decree entered under this part.
 383 (2) The following may be reviewed by writ of certiorari:
 384 (a) A ruling concerning evidentiary privileges or
 385 confidentiality rights of the parties; or
 386 (b) A ruling concerning a protective order relating to the
 387 disclosure of privileged information, confidential information,
 388 or trade secrets.
 389 (3) The appeal or petition for certiorari shall be taken
 390 in the manner and to the same extent as from orders or judgments
 391 in a civil action.

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392 682.511 Disclosure provisions.--

393 (1) An arbitration agreement shall clearly and
394 conspicuously, in bold type no smaller than 18 point and on a
395 separate piece of paper, disclose the following:

396 (a) The filing fee for the arbitration proceeding.

397 (b) The average daily cost for an arbitrator, umpire, and
398 hearing room.

399 (c) Other charges that the arbitrator or umpire will
400 assess in conjunction with an arbitration.

401 (d) The proportion of these costs that each party bears if
402 the consumer or small business prevails or if the consumer or
403 small business does not prevail.

404 (e) A place on the consumer or agreement where a consumer
405 may choose not to arbitrate, and in that area of the agreement
406 the agreement shall prominently state that opting not to
407 arbitrate does not affect the right of the consumer or small
408 business to goods or services.

409 (f) Any and all conditions precedent that must occur
410 before any party may demand arbitration or enforce rights under
411 the contract.

412 (2) Failure to provide disclosures under subsection (1)
413 constitutes a deceptive and unfair trade practice under the
414 Florida Deceptive and Unfair Trade Practices Act as provided in
415 part II of chapter 501 and a waiver of rights to compel
416 arbitration pursuant to the arbitration agreement. Further, the
417 information provided in the disclosure may be considered in a
418 determination of whether an arbitration agreement is

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419 unconscionable or is otherwise not enforceable under applicable
420 law.

421 (3) Upon a violation of this section by a party
422 responsible for providing disclosures under subsection (1), any
423 person or entity, including the Office of the Attorney General,
424 may petition a court to enjoin the party from violating this
425 section as to arbitration agreements into which it enters in the
426 future. The party violating subsection (1) is liable to the
427 person or entity bringing such an action for that person's or
428 entity's reasonable attorney's fees and costs if the court
429 issues an injunction or if, after the action is commenced, the
430 party voluntarily complies with the Florida Deceptive and Unfair
431 Trade Practices Act as provided in part II of chapter 501.

432 Section 4. This act shall take effect July 1, 2009.