

By Senator Ring

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

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

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

77  
78 Be It Enacted by the Legislature of the State of Florida:

79  
80 Section 1. The title of chapter 682, Florida Statutes, is  
81 redesignated as "Arbitration." Chapter 682, Florida Statutes,  
82 shall be divided into parts. Part I of chapter 682, Florida  
83 Statutes, shall consist of sections 682.01 through 682.22,  
84 Florida Statutes, and the title of that part shall be  
85 "Arbitration Code." Part II of chapter 682, Florida Statutes,  
86 shall consist of sections 682.501 through 682.511, Florida  
87 Statutes, and the title of that part shall be "Consumer and

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88 Small Business Arbitration Act."

89 Section 2. Section 682.01, Florida Statutes, is amended to  
90 read:

91 682.01 Short title Florida arbitration code.~~This part~~  
92 ~~Sections 682.01-682.22~~ may be cited as the "Florida Arbitration  
93 Code."

94 Section 3. Part II of chapter 682, Florida Statutes,  
95 consisting of sections 682.501, 682.502, 682.503, 682.504,  
96 682.505, 682.506, 682.507, 682.508, 682.509, 682.510, and  
97 682.511, is created to read:

98 PART II

99 Consumer and Small Business Arbitration Act

100 682.501 Short title.~~This part~~ may be cited as the "Florida  
101 Consumer and Small Business Arbitration Act."

102 682.502 Application in general; definitions.

103 (1) Except as otherwise provided in this part, this part  
104 applies to consumer and small business arbitration agreements.  
105 Notwithstanding any provision of part I of this chapter to the  
106 contrary, part I of this chapter does not apply to any  
107 arbitration agreement to which this part applies.

108 (2) As used in this part, the term:

109 (a) "Arbitration agreement" or "agreement" means any  
110 arbitration agreement involving a consumer or small business to  
111 which this part applies, except as otherwise provided in this  
112 section.

113 (b) "Consumer" means an individual, including a child by  
114 and through its parent or legal guardian and the personal  
115 representative of the estate of a deceased individual regardless  
116 of the cause of death, who seeks or acquires, including by

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117 lease, any goods or services.

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

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

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

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

144 (5) This part does not apply to arbitrations covered under  
145 chapter 718.

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146 (6) Any provision for mandatory binding arbitration within  
147 any pre-dispute arbitration agreement is void and unenforceable  
148 except to the extent federal law provides for its  
149 enforceability.

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

165 682.504 Appointment of arbitrators and umpires;  
166 disclosure.—

167 (1) The parties shall select the arbitrators or umpires  
168 within 30 days after the arbitration has been initiated. If the  
169 parties are unable to come to an agreement, the party compelling  
170 arbitration shall send the responding party a complete list of  
171 certified arbitrators in the responding party's county who  
172 qualify to arbitrate under s. 44.103. The responding party shall  
173 choose three arbitrators from the list within 15 days. The party  
174 compelling arbitration shall then select one arbitrator from the

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175 list of three within 15 days.

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

184 (a) Any personal or financial interest in the outcome of  
185 the arbitration proceeding.

186 (b) Any existing or past relationship with:

187 1. Any of the parties to the agreement to arbitrate or the  
188 arbitration proceeding.

189 2. The parties' industry.

190 3. The parties' counsel or representatives.

191 4. Witnesses.

192 5. Other arbitrators.

193 (c) The number of arbitrations conducted for the past 5  
194 years involving either party, their industry, the attorneys or  
195 their firms, the outcomes of those past arbitrations, and the  
196 dates of decision.

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

202 (4) After receipt of the disclosures required in this  
203 section, any party may object to a prospective arbitrator within

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204 10 days and the parties will then select different prospective  
205 arbitrators.

206 (5) In addition to the other requirements of this section,  
207 a prospective arbitrator shall comply with the standards set  
208 forth in Canon 1 and Canon 3 of the Code of Judicial Conduct.  
209 Failure to comply with the provisions of this part shall be  
210 grounds for disqualification.

211 (6) The prospective arbitrator shall subscribe to an oath  
212 that he or she has reviewed and met all of the standards in this  
213 section and will continue to comply with those standards  
214 throughout the arbitration proceeding. A copy of the oath shall  
215 be served on each party to the arbitration and the other  
216 prospective arbitrators.

217 (7) After appointment, the standards and procedure for  
218 disqualification of an arbitrator or umpire shall be those  
219 provided by general law, rule, and judicial precedent for the  
220 disqualification of judges.

221 682.505 Arbitration process.-

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

225 (2) Arbitrators and umpires must conduct arbitration in a  
226 manner that is fundamentally fair. Fundamental fairness includes  
227 due process, adequate and appropriate notice, and the  
228 opportunity to be heard, present relevant and material evidence,  
229 cross-examine witnesses appearing at the hearing, present  
230 arguments, and cite legal authority before unbiased  
231 decisionmakers.

232 (3) The parties shall be given the opportunity to perform



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233 adequate and appropriate discovery to properly present and prove  
234 their case, and the arbitrators and umpires shall use rules  
235 designed to secure appropriate discovery in a speedy and  
236 inexpensive manner. Arbitrators and umpires may issue subpoenas  
237 for the attendance of witnesses and for the production of books,  
238 records, documents, and other evidence, and shall have the power  
239 to administer oaths, as would otherwise be provided for in a  
240 civil action.

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

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

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

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

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

255 (9) Notwithstanding any other provision of law, an  
256 arbitrator or umpire may not administer an arbitration under any  
257 agreement or rule requiring that a consumer or small business  
258 who is a party to the arbitration pay the fees and costs  
259 incurred by any opposing party if the consumer or small business  
260 does not prevail in the arbitration, including, but not limited  
261 to, the fees and costs of the arbitrator, provider organization,

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262 attorney, or witnesses.

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

265 682.506 Award, opinion, and judgment.—

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

280 (2) The written award and the agreement or provision for  
281 arbitration shall be entered into the court record by filing  
282 them with the clerk of the court having jurisdiction over the  
283 arbitration at such time as entry of judgment is sought. If a  
284 court file has not been previously opened, the party seeking  
285 entry of judgment shall pay the applicable filing fee and file  
286 the documents specified in this section before a judgment is  
287 entered.

288 (3) After a party to an arbitration proceeding receives  
289 notice of the filing of the arbitration opinion as required by  
290 subsection (2), the court shall confirm the award unless the

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291 court modifies or vacates an award as provided in s. 682.508 or  
292 s. 682.509.

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

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

299 682.507 Remedies; fees and expenses of arbitration.-

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

303 (2) Arbitration fees and expenses shall be reasonable. A  
304 consumer or small business may not be subject to any arbitration  
305 fee or cost amounts greater than the consumer or small business  
306 would be if the action were brought in a court of law. Unless  
307 otherwise agreed by the parties to the arbitration after the  
308 arbitration proceeding has been instituted, the circuit court  
309 shall establish the amount of compensation, if any, that each  
310 arbitrator or umpire shall receive. The court may order that the  
311 arbitrator's and umpire's fees, the cost of facilities for the  
312 arbitration, and the arbitration expenses be apportioned between  
313 the parties in an equitable manner so as to make a prevailing  
314 consumer or small business whole.

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

319 682.508 Vacating an award.-

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

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

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

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

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

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

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

339 (d) The arbitration was conducted in a manner that was not  
340 fundamentally fair.

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

345 682.509 Modification or correction of award.—

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

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349 (a) There is an evident miscalculation of figures or an  
350 evident mistake in the description of any person, thing, or  
351 property referenced in the award;

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

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

358 (2) If the application is granted, the court shall modify  
359 and correct the award so as to effect its intent and shall  
360 confirm the award as modified and corrected. Otherwise, the  
361 court shall confirm the award as made.

362 (3) An application to modify or correct an award may be  
363 joined in the alternative with an application to vacate the  
364 award. However, the filing of a motion to modify or correct an  
365 award shall toll the time for taking any other action under this  
366 part as to the award or opinion.

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

369 682.510 Appeals.—

370 (1) A final appeal, or an interlocutory appeal if  
371 appropriate, may be taken from a circuit or county court to the  
372 appropriate court of appeals as a result of:

373 (a) An order denying or granting an application to compel  
374 arbitration made under s. 682.503, pursuant to Rule 9.130 of the  
375 Florida Rules of Appellate Procedure;

376 (b) An order denying or granting an application to stay  
377 arbitration made under s. 682.503, pursuant to Rule 9.130 of the

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- 378 Florida Rules of Appellate Procedure;
- 379 (c) A decision regarding the impartiality or lack of
- 380 conflict on the part of the arbitrator or umpire;
- 381 (d) An evidentiary ruling, except as provided in paragraph
- 382 (2) (a), after final award or decision;
- 383 (e) An order confirming or denying confirmation of an
- 384 award;
- 385 (f) An order modifying or correcting an award;
- 386 (g) An order on a motion to vacate an award; or
- 387 (h) A judgment or decree entered under this part.
- 388 (2) The following may be reviewed by writ of certiorari:
- 389 (a) A ruling concerning evidentiary privileges or
- 390 confidentiality rights of the parties; or
- 391 (b) A ruling concerning a protective order relating to the
- 392 disclosure of privileged information, confidential information,
- 393 or trade secrets.
- 394 (3) The appeal or petition for certiorari shall be taken in
- 395 the manner and to the same extent as from orders or judgments in
- 396 a civil action.
- 397 682.511 Disclosure provisions.—
- 398 (1) An arbitration agreement shall clearly and
- 399 conspicuously, in bold type no smaller than 18 point and on a
- 400 separate piece of paper, disclose the following:
- 401 (a) The filing fee for the arbitration proceeding.
- 402 (b) The average daily cost for an arbitrator, umpire, and
- 403 hearing room.
- 404 (c) Other charges that the arbitrator or umpire will assess
- 405 in conjunction with an arbitration.
- 406 (d) The proportion of these costs that each party bears if

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407 the consumer or small business prevails or if the consumer or  
408 small business does not prevail.

409 (e) A place on the consumer or agreement where a consumer  
410 may choose not to arbitrate, and in that area of the agreement  
411 the agreement shall prominently state that opting not to  
412 arbitrate does not affect the right of the consumer or small  
413 business to goods or services.

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

417 (2) Failure to provide disclosures under subsection (1)  
418 constitutes a deceptive and unfair trade practice under the  
419 Florida Deceptive and Unfair Trade Practices Act as provided in  
420 part II of chapter 501 and a waiver of rights to compel  
421 arbitration pursuant to the arbitration agreement. Further, the  
422 information provided in the disclosure may be considered in a  
423 determination of whether an arbitration agreement is  
424 unconscionable or is otherwise not enforceable under applicable  
425 law.

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

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436 Practices Act as provided in part II of chapter 501.

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