

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Thanks for joining today's podcast on the enactment of Senate Bill 707 by Wieckowski that was signed on October the 13th as Chapter 870.

In Section One of the bill, there are six legislative findings and declarations including statements that private contracts that violate public policy are unenforceable. Also, that the California Supreme Court has concluded that an employee arbitration agreement cannot require the employee to bear additional expenses that would not otherwise be required in a court action.

In addition, a company's failure to pay arbitration service provider fees, hinders the efficient resolution of disputes. And a company's strategic non-payment of fees severely prejudices the ability of employees and consumers to vindicate their rights.

In addition, two cases from the Ninth Circuit Court of Appeals are cited regarding an employer's refusal to pay fees or to participate in arbitration that constitute a material breach of the arbitration agreement. Finally, it notes that it's the intent of the Legislature to affirm three different state court decisions regarding a company's failure to pay arbitration fees that constitute a breach of the arbitration agreement.

Section Two of this bill amends Section 1280 of the Code of Civil Procedure by adding three definitions for consumer, drafting party, and employee. Section Three of the bill amends Section 1281.96 of the Code of Civil Procedure to add specified information that needs to be collected. Under existing law, a private arbitration company that administers or is otherwise involved in a consumer arbitration must collect and publish at least quarterly and make available to the public on its internet website a single cumulative report that contains specified information regarding each consumer arbitration within the preceding five years.

Now the bill adds a twelfth category of specified information. As a result, the following information must also be collected by the private arbitration company and that is demographic data reported in the aggregate relative to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation of all arbitrators and self-reported by the arbitrators. Demographic data disclosure released pursuant to this paragraph shall also indicate the percentage of respondents who decline to respond.

Section Four of the bill add section 1281.97 to the Code of Civil Procedure. It says that either employment or consumer arbitrations that require the drafting party to pay certain fees and costs before the arbitration can proceed, that the drafting parties deem to be a material breach of the agreement is in default and thereby waives its rights to compel arbitration if the fees or costs to initiate an arbitration are not paid within 30 days after their due date. If the drafting party materially breaches the agreement and is in default then the consumer or the employee can either withdraw the claim from arbitration or they can proceed to civil court, or they can compel arbitration, in which case the drafting party must pay all the fees and costs.

If the consumer or employee proceeds with a court action and the statute of limitations is tolled, and if the civil court action proceeds, then the court must actually impose sanctions on the drafting party.

Section Five of the bill adds section 1281.98 to the Code of Civil Procedure, which is similar to the prior new section of the law and in either employment or consumer arbitration that require the payment of fees and costs by the drafting party, the drafting party is deemed to be a material breach of the agreement and is in default and therefore waives their rights to compel arbitration, if the fees or costs to continue the arbitration are not paid within 30 days after their due date.

Then in Section Six of the bill, it adds new Code of Civil Procedure section 1281.99. This new section requires a court to impose a monetary sanction against a drafting party that materially breaches an arbitration agreement. If the court imposes such a sanction, then the drafting party must be ordered to pay the reasonable expenses including attorney's fees and costs that are incurred by the employee or the consumer as a result of that material breach.

In addition to the monetary sanction, a court may order additional sanctions against the drafting party unless the court finds that the party acted with substantial justification or the other circumstances make the imposition of the sanction to be unjust. The additional sanctions can include an evidence sanction or a terminating sanction. Thanks for joining this podcast on Senate Bill 707.