

## HOUSE BILL 26-032

By Senator(s) Daugherty  
also Representative(s) Gomes, Cardenas

**AN ACT****CONCERNING THE LIMITATION OF MANDATORY ARBITRATION AGREEMENTS, AND, IN CONNECTION THEREWITH, ENSURING ACCESS TO THE COURTS FOR DISPUTE RESOLUTION.**

Be It Enacted by the General Assembly of the State of San Andreas:

**SECTION 1. SHORT TITLE.**

This act shall be known and may be cited as the “Fair Access to Courts Act.”

**SECTION 2. LEGISLATIVE DECLARATION.**

The general assembly hereby finds and declares that:

- (a) Mandatory arbitration agreements are frequently imposed in employment and consumer contracts as a condition of participation, including through standardized or adhesion contracts;
- (b) Such agreements often limit access to the courts and reduce transparency, limit public accountability, and restrict the development of legal precedent in dispute resolution;
- (c) Individuals should retain meaningful access to a judicial forum for the resolution of disputes; and
- (d) It is therefore necessary to eradicate coercive privatized justice system interferences and ensure that arbitration is used only when knowingly and voluntarily agreed to, free from coercion, misrepresentation, or unequal bargaining pressure.

**SECTION 3. DEFINITIONS.**

For the purposes of this act, unless the context otherwise requires:

- (a) “Arbitration agreement” means an agreement requiring a dispute to be resolved by arbitration rather than in a court of law, including any clause that limits participation in class or collective proceedings.
- (b) “Pre-dispute arbitration agreement” means any arbitration agreement entered into before a dispute arises.
- (c) “Covered contract”, whether written, electronic, or implied, including any modification, renewal, or extension thereof, means any agreement involving:
  - (I) Employment;

- (II) Consumer goods or services;
- (III) Housing or tenancy; or
- (IV) Insurance services, including banking, lending, credit, and investment services.
- (d) “Post-dispute arbitration” means arbitration agreed to by all parties after a dispute has arisen.
- (e) ‘Knowing and voluntary’ means assent given with clear understanding of the rights waived and without material imbalance in bargaining power.
- (f) ‘Adhesion contract’ means a standardized contract drafted by one party and presented to the other on a take-it-or-leave-it basis without a meaningful opportunity to negotiate.

**SECTION 4. PROHIBITION ON PRE-DISPUTE ARBITRATION.**

- (a) A person or entity shall not directly or indirectly require a pre-dispute arbitration agreement as a condition of:
  - (I) Employment or continued employment, including as a condition of promotion, compensation, or receipt of benefits;
  - (II) The purchase or use of consumer goods or services, including through clickwrap or browsewrap agreements;
  - (III) Access to housing or rental agreements;
  - (IV) Access to financial or insurance services; or
  - (V) The continued use of a digital platform, application, or online service.
- (b) Commercial Dispute Exception. Notwithstanding any other provision of this act, pre-dispute arbitration agreements remain valid and enforceable in all contracts valued at over one million dollars, regardless of the relative bargaining power of the parties.
- (c) Criminal Penalties. Any corporate officer who knowingly includes a prohibited pre-dispute arbitration clause in a consumer or employment contract commits a class 2 misdemeanor.

**SECTION 5. PERMITTED ARBITRATION.**

- (a) Arbitration may be used only where all parties voluntarily agree after a dispute has arisen, and such agreement shall be revocable by any party within fourteen days of execution.
- (b) Arbitration may also be used in disputes between commercial entities of comparable bargaining power as demonstrated by the totality of the circumstances, where the agreement:
  - (I) Is individually negotiated, and not presented on a take-it-or-leave-it basis;
  - (II) Clearly discloses the waiver of the right to a judicial forum; and
  - (III) Provides for a neutral arbitrator, not compensated by the corporate entity, or person(s) hired from the corporate entity seeking arbitration, and reasonable discovery procedures.
- (c) This section does not apply where arbitration is required by federal law, including where preemption applies under the Federal Arbitration Act.
- (d) Nothing in this section shall be construed to permit arbitration agreements that waive substantive statutory rights.

**SECTION 6. PRESERVATION OF COURT ACCESS.**

- (a) Any person subject to an agreement prohibited under this act retains the right to:
- (I) Bring an action in a court of competent jurisdiction, notwithstanding any agreement to the contrary;
  - (II) Participate in a class or collective action as otherwise permitted by law, and no agreement may waive such participation prior to the existence of a dispute; and
  - (III) Seek public injunctive relief where authorized by law
- (b) Any waiver of rights described in this section is void and unenforceable, and any such provision shall be severed in favor of preserving court access.
- (c) Any ambiguity in an agreement shall be construed in favor of access to a judicial forum.
- (d) Courts shall resolve any doubts concerning the enforceability of arbitration agreements in favor of permitting access to judicial proceedings.
- (e) Class Action Rights. The right to participate in a class or collective action is an inalienable right. any waiver of class action participation in any dispute resolution forum is null, void, and unenforceable, without exception.

**SECTION 7. DISCLOSURE REQUIREMENTS.**

- (a) Any arbitration agreement permitted under this act shall:
- (I) Be in writing, signed or explicitly electronically affirmed by all parties;
  - (II) Be clear and conspicuous, in at fourteen-point font, or its digital equivalent;
  - (III) State that arbitration is voluntary and not required as a condition of service or employment; and
  - (IV) be provided in the primary language spoken by the consumer or employee.
- (b) Failure to comply with this section renders the agreement unenforceable.
- (c) The party seeking to enforce an arbitration agreement shall bear the burden of proving compliance with this section.

**SECTION 8. ENFORCEMENT.**

- (a) The attorney general, including through civil penalties not to exceed \$5,000 per violation, may bring an action to enforce this act.
- (b) A person aggrieved by a violation of this act may bring a civil action, individually or as part of a class or collective action, for:
- (I) Declaratory or injunctive relief;
  - (II) Actual damages, including statutory damages of not less than \$2,500 per violation; and
  - (III) Reasonable attorney fees and court costs.
- (c) Bilateral Attorney Fees. In any civil action brought under this act, the prevailing party shall be entitled to reasonable attorney fees and costs, regardless of whether the plaintiff brought the claim in good faith.

**SECTION 9. SEVERABILITY.**

If any provision of this act or its application to any person or circumstance is held invalid, such invalidity does not affect other provisions of the act that can be given effect without the invalid provision or application.