

SENATE BILL SB-22

Introduced by Senator Thomas Umberg (D-34)

An act relating to The Fair Arbitration Enforcement Act..

LEGISLATIVE COUNSEL'S DIGEST

SB-22, Thomas Umberg (D-34). The Fair Arbitration Enforcement Act..

This bill restores the simple "late means late" rule a recent court decision had weakened, and makes sure the protection clearly covers everyday consumer contracts.

Vote: Majority. **Appropriations/fiscal:** no. **Local program:** no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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SECTION 1. *The Legislature finds and declares all the following:*

(a) The Legislature enacted Code of Civil Procedure to prevent a business or employer that drafts an arbitration agreement from using its superior bargaining power to stall an employee's or consumer's claim by failing to timely pay required arbitration fees.

(b) Recent judicial interpretation has required an employee or consumer to prove that a drafting party's failure to pay arbitration fees was willful, grossly negligent, or fraudulent before that failure may be treated as a material breach entitling the employee or consumer to withdraw from arbitration and proceed in court.

(c) This intent-based standard undermines the law, and reintroduces a delay and litigation over the drafting party's state of mind that should be enacted to eliminate, and leaves consumers vulnerable given their limited resources to litigate the reason for a late payment.

(d) It is the intent of the Legislature in enacting this act to restore a clear, predictable rule that protects employees and consumers regardless of a drafting party's intent, and to make explicit that these protections apply to arbitration arising from consumer service contracts.

SECTION 2. *The Civil Procedure Code is amended to read:*

(a) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach, regardless of whether the failure to pay by the due date was willful, negligent, inadvertent, or otherwise excusable. No showing of prejudice, intent, or degree of fault by the employee or consumer shall be required to establish a material breach under this paragraph.

(b) A party may elect to withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction, or to continue the arbitration proceeding should the provider agree to continue. This is available to the employee or consumer regardless of any defense asserted by the drafting party based on substantial compliance, subsequent cure, or lack of prejudice.

(c) For purposes of this section, “consumer arbitration” includes an arbitration coming from a contract for consumer services, including, but not limited to, a contract for employees’ telecommunications, financial, insurance, or subscription-based services, in which the arbitration provision was drafted by, or on behalf of, the business providing those services.

(d) A provision in an arbitration agreement that waives, limits, or conditions the protections afforded by this section is contrary to public policy and is unenforceable.