



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

Civil Rights Cases Don't Belong in Forced Arbitration

SUMMARY OF THE BILL-

Assembly Bill 2667 recognizes the policy of the State of California to ensure that all persons have the full benefit of the rights, penalties, remedies, forums, and procedures established by the Unruh Civil Rights Act and that individuals shall not be deprived of those rights, penalties, remedies, forums, or procedures through the use of involuntary or coerced waivers. AB 2667 is modeled after existing law related to hate crimes (AB 2617 Weber) and states that a person shall not require another person to waive any legal right, penalty, remedy, forum or procedure for civil rights violations as a condition of entering into a contract for goods or services.

People should not be forced into pre-dispute forced arbitration, and it is unconscionable to require consumers and employees to waive public enforcement of crucial civil rights.

BACKGROUND-

Current law: Under the Unruh Civil Rights Act, all persons are entitled to full and equal accommodations, advantages, facilities, privileges or services in all business establishments.

The landmark California Unruh Civil Rights Act of 1959 (and its federal counterpart the Civil Rights Act of 1964),¹ protect all persons against arbitrary and unreasonable discrimination by a business establishment, including housing and public accommodations because of:

- Race
- Religion
- Age
- National Origin
- Disability;
- Sex (which includes pregnancy, childbirth, gender, and gender expression)



AB 2667

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- Sexual Orientation
- Citizenship
- Immigration Status, among others categories.

Forced Arbitration - No Transparency, No Review:

Despite the tremendous progress that our nation has made since the passage of these civil rights laws, people continue to face discrimination by businesses. Enforcement of civil rights laws has become increasingly difficult with the pervasive use of forced arbitration waivers that require you to surrender your legal rights, including civil rights, to receive goods or service from a business. Forced arbitration of civil rights claims are harmful to our public justice system because they eliminate important procedural guarantees of fairness and due process that are hallmarks of our judicial system.

In forced arbitration there is NO transparency and NO review. Additionally, it is critical that courts have the opportunity to develop case law, especially in the area of civil rights. This simply does not happen in private, secret arbitration proceedings.

In general, arbitration is an alternative method of resolving disputes in which two parties present their individual sides to an arbitrator or panel of arbitrators. However, **forced** waivers or arbitration agreements are fundamentally inferior. Businesses often require them as a condition of receiving a good or service, meaning a consumer does not get the good or service if they do not give up their rights to resolve any dispute in a court of law. Businesses craft the terms of the forced arbitration provisions and typically select the arbitration services providers for the dispute. This creates a "repeat player advantage" that favors the business utilizing the same

¹ Cal. Civil Code section 51; Civil Rights Act (1964).



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provider to resolve their consumer disputes and disadvantages individual who are one-time participants in the process.

Finally, these waivers are neither knowing nor voluntary and are only agreed to because they are imposed as a mandatory condition of receiving the good or service.

Example: The need for AB 2667 is highlighted by a recent sexual orientation discrimination case against Uber involving a driver who shouted obscenities at a passenger and kicking him out of the vehicle, after the man shared a kiss with another passenger. Similar actions have been brought against other drivers for discriminating against blind passengers, as well as reported sexual assaults of female passengers by Uber drivers. ***Uber includes arbitration clauses in all of its agreements.***² The right to enforce California's civil rights laws, especially within the context of the Unruh Civil Rights Act, should be protected at all costs. Perpetrators of civil rights violations should not be able to avoid the public scrutiny and public review that is available in the civil justice system.

SOLUTION – AB 2667: The bill ensures that waivers of civil rights under the Unruh Act, including the right to go to court, are entered into with the consent of the consumer requiring that such waivers be knowing, voluntary and in writing. Such waivers shall also not expressly be made as a condition of entering into a contract.

PREVIOUS LEGISLATION- In 2014, the Legislature passed and the Governor signed AB 2617 (Weber), enacting these same protections against mandatory waivers of Civil Rights Hate Crimes protections.

SUPPORT-

Consumer Attorneys of California (sponsor)
NAACP (sponsor)
Asian Americans Advancing Justice
CA Conference Board of the Amalgamated Transit Union
CA Conference of Machinists

CA Employment Lawyers Ass'n (CELA)
Congress of California Seniors
Consumer Federation of California
Engineer & Scientists of California, Local 20
International Longshore and Warehouse Union
Mexican American Bar Ass'n of LA County
MALDEF
Professional & Technical Engineers, Local 21
Teamsters
UNITE-HERE
Utilities Workers Union of America, Local 132

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² <https://www.uber.com/legal/usa/terms>