



CONSUMER ATTORNEYS OF CALIFORNIA

Seeking Justice for All

SB 1241

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Addressing harmful Choice of Law, Choice of Forum clauses in consumer contracts

SUMMARY OF THE BILL:

SB 1241 ensures that a California consumer who purchases a good or service in California or works in California is not forced to (1) arbitrate or litigate in a different state, nor (2) give up protections afforded under California law.

BACKGROUND:

Forced Arbitration in Consumer Contracts-

Arbitration is an alternative method of resolving disputes in which two parties present their individual sides to an arbitrator or panel of arbitrators. However, a **forced waiver** or, “**forced arbitration**” is fundamentally inferior. In forced arbitration the California consumer is required to waive her right to sue, to participate in a class action lawsuit, or to appeal their case. Forced arbitration is mandatory, meaning the arbitrator’s decision is binding, and the results are not made public. 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. Unfortunately, forced arbitration clauses are everywhere: They’re in the fine print of car loans and leases, credit cards, checking accounts, insurance, investing accounts, student loans, and even certain employment and nursing home agreements. (In the credit card market alone, arbitration clauses bind as many as 80 million consumers.)

SB 1241 focuses on two of the worst clauses that can appear in a consumer contract:

- (1) **Choice of forum** clauses that require a consumer to go to an arbitration or to a court in an *entirely different state*, and;
- (2) **Choice of law** clauses that intentionally pick what *state’s laws will govern* the arbitration or litigation— thus deciding what the rules are – to disadvantage the consumer.

Choice of Forum: A California consumer, small business or employee should never be forced to travel to a different state to exercise her rights. If a business is selling goods or services in California or employing Californians, it should not be able to force all dispute resolution to take place in Florida, New York or Delaware. The cost of travel alone prevents California consumers who have been harmed by an illegal practice from seeking redress for their harm. Such provisions are solely a way for large businesses to keep consumers and small businesses from exercising their legal rights by making it too expensive to travel to another state to have claims heard.

Choice of Law: A California consumer, small business or employee forced to litigate a claim (or have a claim against them litigated) should never be forced to have a different state’s laws govern their dispute. The only reason an entity doing business in California would want the laws of another state to apply is to disadvantage the consumer because that state’s consumer protection laws are weaker. Our legislature passes some of the best consumer, small business and worker protection laws in the nation. However, such laws are meaningless if large businesses can avoid them by requiring the laws of another state to apply to any legal actions against them.

Without any legislation to guide them, California courts have freely enforced these choice of law and choice of forum provisions, sending California workers to Florida, Illinois, New York, Minnesota, and even out of the country, to resolve their claims and other employment disputes.

SOLUTION- SB 1241:

People and small businesses should not be forced to travel outside of California to have their claims heard. Likewise, it is unconscionable to have to waive your



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rights to have California's laws apply to your claims. SB 1241 addresses this important issue.

California legislators carefully consider, vote on, and pass laws fully expecting that they will be enforced. Unfortunately, some businesses (particularly out-of-state businesses) seek to avoid California law. SB 1241 will ensure that California laws are followed and that our judicial system will hear and decide California disputes.

SUPPORT-

Consumer Attorneys of California
California Employment Lawyers Association