



NEW YORK  
CITY BAR

**REPORT ON LEGISLATION BY THE ARBITRATION COMMITTEE,  
INTERNATIONAL COMMERCIAL DISPUTES COMMITTEE,  
AND INSURANCE LAW COMMITTEE**

**A.1189 (AM Dinowitz) / S.2752 (Sen. Comrie) – PROPOSED AMENDMENTS**

Prohibits mandatory arbitration agreements in consumer and employment contracts

**A.1464-A (AM Dinowitz) / S.697-A (Sen. Hoylman) – PROPOSED AMENDMENTS**

Requires employment and consumer dispute arbitrations to be submitted to neutral third party arbitrators, and establishes prohibited arbitration agreements and provisions

**A.1605 (AM Dinowitz) / S.2100 (Sen. Sepulveda) – OPPOSED**

Relates to providing for vacation of an arbitration award on the ground that the arbitrator was affiliated with a party, or has a financial interest in a party or the outcome

**A.2503 (AM Weinstein) / S.565 (Sen. Hoylman) – OPPOSED**

Authorizes the vacating of an arbitration award on the basis of arbitrator disregard of the law

**A.1514 (AM Dinowitz) / S.1345 (Sen. Hoylman) – PROPOSED AMENDMENTS**

Relates to prohibiting certain conditions or preconditions of employment

**A.2193 (AM Dinowitz) / S.4914 (Sen. Lanza) – PROPOSED AMENDMENTS**

Provides that arbitration awards in consumer and employment disputes, where the arbitration is conducted pursuant to a contract, shall include all issues in dispute and findings thereon

**EXECUTIVE SUMMARY**

These aforementioned bills are opposed because as currently drafted, the bills would (1) be ineffective in protecting employees and consumers in arbitration; and (2) have a substantially negative impact on New York's national and international leadership position in the competitive market for business-to-business arbitration. This Executive Summary provides an overview of the City Bar's opposition and recommendations for protecting consumers and employees in arbitration proceedings while avoiding unnecessary consequences. Please see the enclosed report "Recommendations Concerning Pending Legislation to Ensure New York Continues to Support Long-Established Practices of Business-to-Business Arbitration Proceedings" for more information.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

CURRENT APPROACHES	RELATED BILLS	REASONS FOR OPPOSITION	RECOMMENDATIONS
Banning or limiting arbitration clauses in employment and consumer cases	A.1189 / S.2752; A.1614-A / S.697-A	Legislation would be pre-empted by Federal law	
Amending CPLR Art. 75 to address perceived shortcomings in the arbitration process ( <i>see below for specific changes being proposed</i> )	A.1605 / S.2100; A.2503 / S.565; A.2193 / S.4914; A.1614-A / S.697-A	These types of amendments should be made to the General Business Law so they will not impair parties freedom of contract in business to business disputes	
Permitting courts to vacate awards where “the arbitrator evidenced a manifest disregard of the law in rendering the award”	A.1614-A / S.697-A; A.2503 / S.565	This is a judicially-created & often-criticized federal doctrine which New York courts have rejected; CPLR 7511 already includes “exceeding [the arbitrator’s] power” as a ground for setting aside an award; would ensure more litigation; is at least as likely to be invoked against consumers and employees as it is against businesses	
Require that all arbitrators be “neutral third-party arbitrator(s)”	A.1614-A / S.697-A; A.1605 / S.2100	Some industries have a long-established practice of “non-neutral” party-appointed arbitrators who together select a neutral chair (i.e. reinsurance contracts and maritime arbitration) & this requirement could undermine these practices & drive arbitrations to other venues; failing to limit the provision to non-negotiated arbitration agreements would go beyond the scope of protecting consumers and employees who lack bargaining power	Expressly limit to consumer and employment arbitrations as defined by the Fair Labor Standards Act (this approach is taken in A.1614-A/S.697-A)
Permitting parties to delay the assertion of challenges until the eve of the arbitration hearing	A.1605 / S.2100; A.1614-A / S.697-A	Would disrupt the orderly administration of arbitrations; invite abusive use of challenges	

CURRENT APPROACHES	RELATED BILLS	REASONS FOR OPPOSITION	RECOMMENDATIONS
<p>Allow vacatur of an award based on the mere fact that a challenge has been made to an arbitrator regardless of the outcome of the challenge</p>	<p>A.1614-A / S.697-A; A.1605 / S.2100</p>	<p>Increases the likelihood of the abusive use of challenge &amp; objection procedures</p>	<p>No need for legislation. CPLR 7511 (b) (1) (ii) already authorizes courts to vacate arbitration awards based on a finding of “partiality of an arbitrator appointed as a neutral...”.</p>
<p>Requiring arbitration awards set forth the arbitrators “findings of fact and conclusions of law”</p>	<p>A.1614-A / S.697-A</p>	<p>Would multiply costs &amp; produce considerable delay; requirement would be particularly onerous for consumers &amp; employees who have neither the resources nor the expertise to prepare</p>	<p>Relocate amendments to General Business Law; replace language with terminology that is recognized &amp; has long been in use in the arbitration community (i.e. “the award shall state the issues in dispute and shall set forth an explanation of the reasons of the award. The award shall contain a decision on all issues submitted to the arbitrator”).</p>

**OVERALL RECOMMENDATIONS**

1. Enact due process principles into the General Business Law
2. Amend the General Business Law, not the Civil Practice Law and Rules
3. Avoid overbroad definitions of employment and consumer relationships
4. Limit enforcement rights to parties with a direct interest in the action or designated regulatory agencies

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