

2024 -- H 7952

LC005047

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE IN PARTICULAR
ACTIONS -- ARBITRATION

Introduced By: Representative Robert E. Craven

Date Introduced: March 05, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 10-3-2 and 10-3-4 of the General Laws in Chapter 10-3 entitled
2 "Arbitration" are hereby amended to read as follows:

3 ~~10-3-2. Agreements to arbitrate subject to chapter.~~ Agreements to arbitrate subject
4 to chapter - Notice.

5 (a) When clearly written and expressed, a provision in a written contract to settle by
6 arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the
7 whole or any part thereof, or an agreement in writing between two (2) or more persons to submit
8 to arbitration any controversy existing between them at the time of the agreement to submit shall
9 be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the
10 revocation of any contract; provided, however, that the provisions of this chapter shall not apply to
11 collective contracts between employers and employees, or between employers and associations of
12 employees, in respect to terms or conditions of employment; and provided further, that in all
13 contracts of primary insurance, wherein the provision for arbitration is not placed immediately
14 before the testimonium clause or the signature of the parties, the arbitration procedure may be
15 enforced at the option of the insured, and in the event the insured exercises the option to arbitrate,
16 then the provisions of this chapter shall apply and be the exclusive remedy available to the insured.

17 (b) Notice of intention to arbitrate. A party may serve upon another party a demand for
18 arbitration or a notice of intention to arbitrate, specifying the agreement pursuant to which

1 arbitration is sought and the name and address of the party serving the notice, or of an officer or
2 agent thereof if such party is an association or corporation, and stating that unless the party served
3 applies to stay the arbitration within twenty (20) days after such service they shall thereafter be
4 precluded from objecting that a valid agreement was not made or has not been complied with and
5 from asserting in court the bar of a limitation of time. Such notice or demand shall be served in the
6 same manner as a summons or by registered or certified mail, return receipt requested. An
7 application to stay arbitration shall be made by the party served within twenty (20) days after
8 service upon the party of the notice or demand, or they shall be so precluded. Notice of such
9 application shall be served in the same manner as a summons or by registered or certified mail,
10 return receipt requested. Service of the application may be made upon the adverse party, or upon
11 their attorney if the attorneys' name appears on the demand for arbitration or the notice of intention
12 to arbitrate. Service of the application by mail shall be timely if such application is posted within
13 the prescribed period. Any provision in an arbitration agreement or arbitration rules which waives
14 the right to apply for a stay of arbitration or prescribes a manner of notifying a party of an intention
15 to commence arbitration that is more burdensome than that described in this section is hereby
16 declared null and void.

17 (c) The party required to send notice pursuant to subsection (b) of this section shall
18 affirmatively include in the notice the rights being waived by failure to apply for the stay of
19 arbitration. Said notice shall be done in bold print and highlighted.

20 **10-3-4. Petition for arbitration — Service, hearing, and reference.**

21 The party aggrieved by the alleged failure, neglect, or refusal of another to perform under
22 a written agreement for arbitration may petition the superior court for the county in which any of
23 the parties reside or has his or her place of business for an order directing that the arbitration proceed
24 in the manner provided for in the agreement. If there are multiple parties seeking arbitration against
25 the same party or parties, the proceeding may be brought in any court and county where any of the
26 parties seeking arbitration resides or is doing business or where the arbitration was held or is
27 pending. Five (5) days' notice in writing of the application shall be served upon the party in default.
28 Service thereof shall be made in the manner provided by law for the service of a writ of summons.
29 The court shall hear the parties, and upon being satisfied that the making of the agreement for
30 arbitration or the failure to comply therewith is not in issue, the court shall make an order directing
31 the parties to proceed to arbitration in accordance with the terms of the agreement.

32 SECTION 2. Chapter 10-3 of the General Laws entitled "Arbitration" is hereby amended
33 by adding thereto the following sections:

34 **10-3-22. Right to representation.**

1 A party has the right to be represented by an attorney and may claim such right at any time
2 as to any part of the arbitration or hearings which have not taken place. This right may not be
3 waived. If a party is represented by an attorney, papers to be served on the party shall be served
4 upon his attorney. Any agreement which discriminates against or penalizes a party for retaining the
5 services of counsel in an arbitration is null and void.

6 **10-3-23. Fees and costs of arbitration initiation; invoice; breach of agreement;**
7 **sanctions.**

8 (a)(1) In an employment or consumer arbitration that requires, either expressly or through
9 application of state or federal law or the rules of the arbitration provider, unless there is a mutually
10 agreed upon provision to split costs equally, the drafting party, unless otherwise specified, is to pay
11 certain fees and costs before the arbitration can proceed. If the fees or costs to initiate an arbitration
12 proceeding are not paid within thirty (30) days after the due date the drafting party is in material
13 breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel
14 arbitration under § 10-3-4.

15 (2) After an employee or consumer meets the filing requirements necessary to initiate an
16 arbitration, the arbitration provider shall immediately provide an invoice for any fees and costs
17 required before the arbitration can proceed to all of the parties to the arbitration. The invoice shall
18 be provided in its entirety, shall state the full amount owed and the date that payment is due, and
19 shall be sent to all parties by the same means on the same day. To avoid delay, absent an express
20 provision in the arbitration agreement stating the number of days in which the parties to the
21 arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to
22 the parties as due upon receipt.

23 (b) If the drafting party materially breaches the arbitration agreement and is in default under
24 subsection (a) of this section, the employee or consumer may do either of the following:

25 (1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction;
26 or

27 (2) Compel arbitration in which the drafting party shall pay reasonable attorneys' fees and
28 costs related to the arbitration.

29 (c) If the employee, consumer, or other involved party withdraws the claim from arbitration
30 and proceeds with an action in a court of appropriate jurisdiction under subsection (b)(1) of this
31 section, the statute of limitations with regard to all claims brought or that relate back to any claim
32 brought in arbitration shall be tolled as of the date of the first filing of a claim in a court, arbitration
33 forum, or other dispute resolution forum.

34 (d) If the employee or consumer proceeds with an action in a court of appropriate

1 jurisdiction, the court shall impose sanctions on the drafting party in accordance with § 10-3-25.

2 **10-3-24. Material breach of agreement - Remedies.**

3 (a)(1) In an employment or consumer arbitration that requires, either expressly or through
4 application of state or federal law or the rules of the arbitration provider, that the drafting party pay
5 certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required
6 to continue the arbitration proceeding are not paid within thirty (30) days after the due date, the
7 drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and
8 waives its right to compel the employee or consumer to proceed with that arbitration as a result of
9 the material breach.

10 (2) The arbitration provider shall provide an invoice for any fees and costs required for the
11 arbitration proceeding to continue to all of the parties to the arbitration. The invoice shall be
12 provided in its entirety, shall state the full amount owed and the date that payment is due, and shall
13 be sent to all parties by the same means on the same day. To avoid delay, absent an express
14 provision in the arbitration agreement stating the number of days in which the parties to the
15 arbitration must pay any required fees or costs, the arbitration provider shall issue all invoices to
16 the parties as due upon receipt. Any extension of time for the due date shall be agreed upon by all
17 parties.

18 (b) If the drafting party materially breaches the arbitration agreement and is in default under
19 subsection (a) of this section, the employee or consumer may unilaterally elect to do any of the
20 following:

21 (1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction.
22 If the employee or consumer withdraws the claim from arbitration and proceeds with an action in
23 a court of appropriate jurisdiction, the statute of limitations, with regard to all claims brought or
24 that relate back to any claim brought in arbitration, shall be tolled as of the date of the first filing
25 of a claim in any court, arbitration forum, or other dispute resolution forum;

26 (2) Continue the arbitration proceeding, if the arbitration provider agrees to continue
27 administering the proceeding, notwithstanding the drafting party's failure to pay fees or costs. The
28 neutral arbitrator or arbitration provider may institute a collection action at the conclusion of the
29 arbitration proceeding against the drafting party that is in default of the arbitration for payment of
30 all fees associated with the employment or consumer arbitration proceeding, including the cost of
31 administering any proceedings after the default;

32 (3) Petition the court for an order compelling the drafting party to pay all arbitration fees
33 that the drafting party is obligated to pay under the arbitration agreement or the rules of the
34 arbitration provider; or

1 (4) Pay the drafting party's fees and proceed with the arbitration proceeding. As part of the
2 award, the employee or consumer shall recover all arbitration fees paid on behalf of the drafting
3 party without regard to any findings on the merits in the underlying arbitration.

4 (c) If the employee or consumer withdraws the claim from arbitration and proceeds in a
5 court of appropriate jurisdiction pursuant to subsection (b)(1) of this section, both of the following
6 apply:

7 (1) The employee or consumer may bring a motion, or a separate action, to recover all
8 attorneys' fees and all costs associated with the abandoned arbitration proceeding. The recovery of
9 arbitration fees, interest, and related attorneys' fees shall be without regard to any findings on the
10 merits in the underlying action or arbitration; and

11 (2) The court shall impose sanctions on the drafting party in accordance with § 10-3-25.

12 (d) If the employee or consumer continues in arbitration pursuant to subsection (b)(2)
13 through (4) of this section, inclusive, the arbitrator shall impose appropriate sanctions on the
14 drafting party, including monetary sanctions, issue sanctions, evidence sanctions, or terminating
15 sanctions.

16 **10-3-25. Breach of arbitration agreement; court sanctions; additional sanctions.**

17 (a) The court shall impose a monetary sanction against a drafting party that materially
18 breaches an arbitration agreement pursuant to § 10-3-23(a) or § 10-3-24(a), by ordering the drafting
19 party to pay the reasonable expenses, including attorneys' fees and costs, incurred by the employee
20 or consumer as a result of the material breach.

21 (b) In addition to the monetary sanction described in subsection (a) of this section, the court
22 may order any of the following sanctions against a drafting party that materially breaches an
23 arbitration agreement pursuant to § 10-3-23(a) or § 10-3-24(a), unless the court finds that the one
24 subject to the sanction acted with substantial justification or that other circumstances make the
25 imposition of the sanction unjust:

26 (1) An evidence sanction by an order prohibiting the drafting party from conducting
27 discovery in the civil action;

28 (2) A terminating sanction by one of the following orders:

29 (i) An order striking out the pleadings or parts of the pleadings of the drafting party;

30 (ii) An order rendering a judgment by default against the drafting party; and

31 (3) A contempt sanction by an order finding the drafting party in contempt of court.

32 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE IN PARTICULAR
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1 This act would spell out additional notice provisions, fees and costs of the arbitration
2 process, from initiation to default provisions and potential court sanctions for breach of the
3 arbitration agreement.

4 This act would take effect upon passage.

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