



California Senate Bill 940 (SB 940) goes into effect on January 1, 2025.

SB 940 introduces new restrictions and requirements that will change how consumer disputes are arbitrated in California. The law has potentially broad consequences that will affect arbitration provisions in consumer terms of service, discovery obligations of arbitrating parties, and disclosure requirements for arbitrators and arbitration providers. Most of SB 940's provisions apply to contracts "entered into, modified, or extended on or after January 1, 2025."

SB 940's Key Provisions

SB 940 introduces forum and choice-of-law restrictions for consumer arbitrations. Businesses can no longer require that consumers arbitrate outside of California a claim arising in California. The new law also

prohibits arbitrating a controversy arising in California under the substantive law of a state other than California. Any contractual provision to the contrary is voidable by the consumer, and a court may award attorneys' fees incurred in enforcing these new rights.

SB 940 establishes minimum discovery standards for consumer arbitrations. Under the new law, parties in a consumer arbitration “shall have the right to take depositions and to obtain discovery ... as if the subject matter of the arbitration were pending before a superior court” of California. But depositions “shall not be taken unless leave to do so is first granted by the arbitrator.”

SB 940 gives consumers the choice to resolve eligible disputes in small-claims court. If a consumer contract requires a dispute to be arbitrated and the dispute “may be adjudicated pursuant to the [California] Small Claims Act ... the consumer shall be given the option to have the dispute adjudicated pursuant to that act.” In California small-claims court, consumers can file disputes involving up to \$12,500, parties cannot be represented by counsel, and plaintiffs generally cannot appeal the court's decision.

SB 940 imposes arbitrator disclosures. Arbitrators must disclose any solicitation for work made within the last two years by either the arbitrator or the arbitrator's firm to a party or lawyer involved in a current arbitration. An arbitrator also may not solicit work from a party to an arbitration or their lawyer while the arbitration is pending. And an arbitrator who has served or is serving as an arbitrator for a party or a lawyer for a party must disclose “the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any.”

SB 940 requires the California State Bar to create an arbitration-certification program. The new law requires the California Bar to certify that alternative dispute resolution firms adhere to certain standards, including verification that they have procedures in place for receiving complaints and to remedy an arbitrator's failure to comply with the certification standards.

Conclusion

Given the significant new prohibitions and requirements of SB 940—and likely challenges to its enforcement—companies should engage counsel to review their arbitration agreements and advise them on strategies to best comply with California's new law.

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