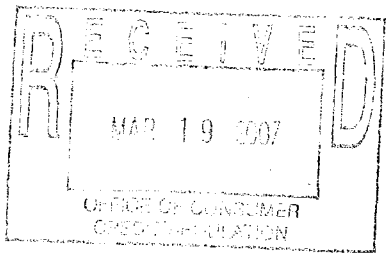
Exhibit 1



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document	No. 1489
S.P. 516	March 19, 2007

An Act To Enhance Fairness in Arbitration

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BOWMAN of York.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 212-B is enacted to read:

CHAPTER 212-B

CONSUMER ARBITRATION AGREEMENTS

§1391. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Consumer. "Consumer" means:

A. An individual who uses, purchases, acquires, attempts to purchase or acquire or is offered or furnished real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes; or

B. An employee of or an individual seeking employment from the other party in a consumer arbitration agreement.

2. Consumer arbitration. "Consumer arbitration" means binding arbitration under a consumer arbitration agreement in which a party to the arbitration is a consumer.

3. Consumer arbitration agreement. "Consumer arbitration agreement" means a standardized contract with a consumer concerning employment or the use, purchase, acquisition, attempt to acquire or purchase, offer or furnishing of real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes in the State that contains a requirement that a consumer submit a dispute under the contract to binding arbitration. "Consumer arbitration agreement" does not include a collective bargaining agreement of a private or public employee, or a requirement that a party to the contract other than the consumer submit to binding arbitration.

4. Financial interest. "Financial interest" means holding a position in a business as an officer, director, trustee, member or partner or any position in management or ownership of more than 5% interest in the business.

5. Indigence. "Indigence" and "indigent" mean having a gross monthly income less than 300% of the federal poverty guidelines published by the United States Department of Health and Human Services.

6. Provider. "Provider" means a private person that provides consumer arbitration or services related to consumer arbitration.

§1392. Consumer arbitration agreements

1. Limitation on agreements. A consumer arbitration agreement not allowed under federal law is void and unenforceable.

2. Costs and fees. A consumer arbitration agreement must clearly and conspicuously disclose the estimated expenses of any arbitration including:

A. The filing fee;

B. The average daily cost for an arbitrator and hearing room;

C. Any other charge that an arbitrator or provider may assess; and

D. The proportion of expenses listed under this subsection borne by each party if the consumer prevails and if the consumer does not prevail.

An expense required to be disclosed under this subsection does not include attorney's fees. A person required to disclose an expense under this subsection does not violate this subsection when an actual expense exceeds an estimate if the estimate was reasonable and made in good faith.

3. Violation. A violation of subsection 2 does not render the consumer arbitration agreement unenforceable but may be considered by a court in a determination of whether the agreement is unconscionable or otherwise unenforceable under another law. If a party violates subsection 2, a person or the Attorney General may request a court of competent jurisdiction to enjoin the party in violation from violating subsection 2 in a subsequent consumer arbitration agreement in which that party is a party. A party found to be in violation of subsection 2 or that conforms to subsection 2 after an action is commenced is liable for the court costs and reasonable attorney's fees of the party bringing the action.

§1393. Arbitration service providers

1. Providers of 50 or more consumer arbitrations a year. A provider involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly and make publicly accessible in paper form upon request and on a computer-searchable publicly accessible website, if the provider has an publicly accessible website, the following information for each consumer arbitration with which the provider was involved for the previous 5 years:

A. The name of every party to the consumer arbitration;

B. The type of dispute involved, such as goods, banking, insurance, health care, debt collection and employment;

C. If the dispute involved employment, the amount of the employee's annual wage divided into the following ranges:

(1) Less than $100,000;

(2) From $100,000 to $250,000; or

(3) More than $250,000;

D. Whether the consumer was the prevailing party;

E. The number of times a business that is a party to the consumer arbitration had previously been a party to a mediation or arbitration in which the provider was involved;

F. Whether the consumer was represented by an attorney;

G. The dates the provider received the demand for arbitration, the arbitrator was appointed and the disposition of the arbitration was rendered;

H. The type of disposition of the arbitration, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default and dismissal without hearing;

I. The amount of the claim and the amount of any award or relief granted; and

J. The name of the arbitrator, the amount of the arbitrator's fee for the arbitration and the percentage of the arbitrator's fee allocated to each party.

If the information required by this subsection is available in a computer-searchable format and downloadable for free on the provider's publicly accessible website, the provider may charge a requestor for the cost of copying the information on paper. If the information required by this subsection is not available for free on the provider's publicly accessible website, the provider may not charge a requestor for the information in paper form.

2. Providers of fewer than 50 consumer arbitrations a year. A provider involved with fewer than 50 arbitrations a year shall collect, publish at least semiannually and provide in paper form upon request the information for each consumer arbitration with which the provider was involved for the past 5 years required in subsection 1 and may not charge a requestor for information provided in paper form.

3. Liability in providing information. A provider has no liability related to providing the information required under subsections 1 and 2.

4. Fees. A consumer may not be required to pay the fee or related costs incurred by the opposing party if the consumer does not prevail in a consumer arbitration. The provisions of subsection 5 do not prevent a provider from shifting a waived fee or cost under subsection 5 to another party in the consumer arbitration.

5. Waiver of fees. Upon request of a consumer or if the provider knows the consumer is indigent, the provider must waive the arbitration fee and all costs related to a consumer arbitration for an indigent consumer. A consumer may establish indigence by making a declaration under oath on a form provided by the provider indicating the consumer's monthly income and the number of persons living in the consumer's household. A provider may not require any other information to establish indigence. A provider shall provide clear and conspicuous written notice of the requirements of this subsection prior to requesting or obtaining a fee from a consumer for involvement in a consumer arbitration in the provider's first written communication and in any invoice, bill, submission form, fee schedule, rules or code of procedure provided to the consumer by the provider.

6. Confidentiality. Except for the number of waiver requests received or granted or the total amount of fees waived, and except for the information required to be disclosed by subsections 1 and 2, any information obtained by a provider about a consumer's identity, financial condition, income, wealth, fee waiver or fee waiver request must be

kept confidential and may not be disclosed to any person, including the opposing party in the arbitration.

7. Financial interest. A provider may not be involved with a consumer arbitration if:

A. The provider has or within the preceding year had a financial interest in a party or the legal representation of a party in the arbitration; or

B. A party or legal representative of a party in the arbitration has or within the preceding year had a financial interest in the provider.

8. Violation. If a provider violates this section, a person or the Attorney General may request a court of competent jurisdiction to enjoin the provider from violating this section and order restitution if the court determines restitution is appropriate. A provider found to be in violation of this section or that conforms to this section after an action is commenced is liable for the court costs and reasonable attorney's fees of the party bringing the action.

Sec. 2. 14 MRSA §5927-A is enacted to read:

§5927-A. Preservation of legal rights

1. Written agreement. A written agreement under section 5927 may not waive or have the practical effect of waiving a right of a party to that agreement to resolve a dispute by obtaining:

A. Injunctive, declaratory or other equitable relief;

B. Relief on a class-wide basis;

C. Punitive damages;

D. Multiple or minimum damages as specified by statute;

E. Attorney's fees and costs as specified by statute or allowed by common law; or

F. A hearing at which a party may present evidence in person.

2. Confidentiality. A written agreement under section 5927 may not require or have the practical effect of requiring that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential, not including certain information that is a trade secret or proprietary or similarly sensitive information.

3. Severability. If a court determines that a provision of a written agreement under section 5927 is in violation of this section, the court may order that the provision of the agreement or the agreement as a whole is void and unenforceable as the court determines appropriate.

4. Right of action. A party to a written agreement under section 5927 may bring a private right of action to enforce a provision of this section. If a court finds that the provision of the agreement is in violation of this section or if the provision is modified by the parties to conform to this section after an action is commenced, the party who drafted

that provision is liable for the reasonable court costs and attorney's fees of the party bringing the action.

Sec. 3. 24-A MRSA §11, as enacted by PL 1969, c. 132, §1, is amended to read:

§11. Particular provisions prevail

~~Provisions~~ Except for the provisions of section 14, provisions of this Title as to a particular kind of insurance, type of insurer or matter ~~shall~~ prevail over provisions relating to insurance, insurers or matters in general.

Sec. 4. 24-A MRSA §14 is enacted to read:

§14. Arbitration

1. Consumer defined. For purposes of this section, "consumer" means an individual who uses, purchases, acquires, attempts to purchase or acquire or is offered or furnished insurance for personal, family or household purposes.

2. Mandatory arbitration prohibited. A written insurance contract with a consumer or other written agreement that offers insurance to a consumer may not require mandatory arbitration, including mandatory arbitration in a dispute over an action brought under subsection 5.

3. Severability. A provision of a contract or written agreement in violation of subsection 2 is severable and does not affect another lawful provision of the contract or agreement, which remains in full effect.

4. Other written agreement. A written agreement other than an insurance contract that offers insurance to a consumer along with goods, property, credit or another service and requires mandatory arbitration must include a clear and conspicuous disclosure that the mandatory arbitration provision does not apply to a dispute involving the insurance.

5. Exception. This section does not apply to an agreement to mandatory arbitration by a consumer after an action is filed or the opposing party is informed of the violation.

6. Violation. A person in violation of this section is liable to the consumer in an amount equal to the sum of actual damages incurred by the consumer due to the violation, reasonable costs and attorney's fees and an additional $100 even if no damages are proved.

SUMMARY

This bill concerns binding arbitration agreements in the following ways. It:

1. Limits binding consumer arbitration agreements with a consumer concerning employment and the use, purchase, acquisition, attempt to acquire or purchase, offer or furnishing of real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes in the State to those allowed by federal law and regulates those agreements and the providers of consumer arbitration;

2. Preserves certain legal rights of a party when entering into a binding arbitration agreement; and

3. Prohibits binding arbitration provisions in insurance contracts.