

SENATE THIRD READING
STR Bill Id:SB 82 Author:(Umberg)
As Amended Ver:April 10, 2025
Majority vote

SUMMARY

Prohibits dispute resolution terms and conditions of a consumer use agreement from extending beyond the use, payment, or provision of the good, service, money, or credit provided by the agreement.

Major Provisions

- 1) Prohibits dispute resolution terms and conditions of a consumer use agreement from extending beyond the use, payment, or provision of the good, service, money, or credit provided by that consumer use agreement.
- 2) Makes a waiver of 1) contrary to public policy and void and unenforceable.
- 3) Requires 1) to be liberally construed for the purpose of protecting consumers.

COMMENTS

This bill attempts to curb the proliferation of infinite arbitration clauses by limiting dispute resolution terms and conditions of a consumer contract to the use, payment, or provision of the good, service, money, or credit provided by that contract.

The Federal Arbitration Act. The Federal Arbitration Act (FAA) is structured to promote the use of arbitration in order to facilitate efficient settlement of legal disputes. Over the past two decades, the United States Supreme Court has broadened the scope and applicability of the FAA, thereby causing the Act to preempt a growing number of state laws. Section 2 of the FAA makes an agreement to arbitrate a controversy arising out of a contract valid and enforceable, unless there are existing grounds to revoke the contract, or as otherwise provided by the Act.

The opposition contends that SB 82 is likely preempted by the FAA. In support of their position they point to *Chamber of Commerce of the United States v. Bonta*, a recent Ninth Circuit decision that invalidated AB 51 (Gonzalez, Chapter 711, Statutes of 2019). In *Chamber v. Bonta*, the Ninth Circuit reasoned: "AB 51 does not expressly bar arbitration agreements. There is no doubt, though that AB 51 disfavors the formation of agreements that have the essential terms of an arbitration agreement. [...] Because a person who agrees to arbitrate disputes must necessarily waive the right to bring civil actions regarding those disputes in any other forum, AB 51 burdens the defining feature of arbitration agreements." (*Chamber of Commerce of the United States v. Bonta* (2023) 62 F.4th 473, 486.)

The opposition's position appears to rest on the assumption that SB 82 *disfavors* arbitration, and in so doing runs afoul of the FAA much in the same way that the court determined was true of AB 51. However, there are a number of potential points of distinction between SB 82 and AB 51 that may, at the very least, open the door to the potential that SB 82 could withstand legal muster should it be challenged in court.

SB 82 does not appear to bar the imposition of arbitration agreements in consumer contracts in any way. The measure only requires such clauses to apply only to the subject of the relevant contract. There is arguably no indication that the plain language of SB 82 *disfavors* arbitration. Second, Section 2 of the FAA makes arbitration agreements *arising out of a contract* valid and enforceable. Arguably, an attempt by a business to arbitrate a dispute arising out of a contract that does not include an arbitration clause by relying on an arbitration clause in a contract for a separate service provided by the same business does not fall under the scope of Section 2, as the dispute to be arbitrated does not arise out of the contract with the arbitration clause.

In addition to arguing SB 82 would be preempted by the FAA, the opponents also contend the bill would "lead to increased litigation and costs, harming consumers and businesses and further clogging California's courts." As previously stated, nothing in the bill's language prohibits businesses from entering into contracts with arbitration clauses *so long as they are related to the subject of the contract*. A business would be free to incorporate arbitration clauses in every one of their contracts for goods or services they may execute. In the event a consumer opts to challenge the arbitrability of a claim against the business, so long as the claim is related to the contract with the arbitration clause, it seems any such challenge by a consumer could be easily dismissed.

Moreover, assuming SB 82 *does* lead to increased litigation such an increase, in and of itself, does not necessarily lead to the conclusion that there is no merit to the policy proposal. Particularly as the practice of arbitration clauses has become the norm for massive corporations, consumers may have absolutely no way to know that they have agreed to arbitration for entirely unrelated underlying agreements. If the intent of arbitration is to facilitate dispute resolution for *both* parties, it seems a reasonable approach to require that arbitration clauses be related solely to the subject of the underlying contract.

According to the Author

SB 82 ensures that contract terms between businesses and consumers apply only to the specific product or service covered by the agreement at the time of signing.

Arbitration is a formal method of alternative dispute resolution (ADR) involving a neutral third party who makes a binding decision. An arbitration decision or award is legally binding on both sides and enforceable in the courts unless parties stipulate otherwise. Arbitration clauses were traditionally limited to disputes related to the contract they were part of. However, "infinite" arbitration clauses try to require arbitration for all future disputes, even those unrelated to the original agreement. Courts have often struck down such broad clauses, citing unfairness and lack of clear agreement. However, examples continue to emerge.

Companies are increasingly using infinite arbitration clauses to expand agreements beyond the original parties and contract duration. This raises concerns about fairness and enforceability. Therefore, SB 82 aims to ensure that arbitration clauses between consumers and businesses apply only to the specific product or service covered by the agreement.

Arguments in Support

This bill is sponsored by the Consumer Attorneys of California, the Consumer Federation of California, and Consumer Watchdog. It is further supported by a number of consumer protection advocacy organizations, civil rights advocates, and labor unions. In support of the measure, the Consumer Attorneys of California submit:

SB 82 addresses the growing and troubling use of infinite arbitration clauses in consumer contracts. These overly broad clauses unfairly bind individuals to arbitration for disputes that may arise far beyond the scope of their original agreement, often without their knowledge or meaningful consent.

Recent cases, such as the tragic wrongful death lawsuit against Disney highlight the dangers of these clauses. In this case, a grieving husband seeking justice for his wife's preventable death was initially forced into arbitration due to a clause buried in the terms of a Disney+ trial subscription he had signed years earlier. While public backlash ultimately led Disney to reverse course, the attempt to exploit such a clause underscores why legislative action is necessary.

[...]

SB 82 offers a common-sense solution by ensuring that arbitration clauses apply only to the specific product or service covered by the agreement at the time of signing. This bill does not ban arbitration; rather, it restores fairness and transparency by preventing corporations from using arbitration clauses to shield themselves from legal accountability in unrelated matters.

Arguments in Opposition

SB 82 is opposed by a broad coalition of business advocates including the Chamber of Commerce and the Civil Justice association of California (CJAC) and the California Bankers Association. They submit the following:

SB 82 significantly narrows the claims that could go to arbitration in connection with a contract. It limits dispute resolution solely to disputes pertaining to the "use, payment, or provision" of the good, service, money, or credit. Moreover, the bill does not specify that it applies to contracts newly entered after January 1, 2026, making it retroactive and would unconstitutionally impair contracts.

This language leaves many potential questions about what is within scope of the dispute resolution. For example, if a consumer purchases a television, does a dispute over whether the television can be returned fit within the use, payment, or provision of the television? Is the store required to enter into another contract to ensure returns are subject to arbitration?

The questions created by SB 82 could result in businesses requiring customers to enter multiple contracts for each interaction with a business, which will be burdensome and frustrating for both sides. SB 82 could also result in hundreds of thousands of new cases litigating a host of disputes or issues reasonably related to a sale, lease, or credit contract, and whether they are or are not within the scope of arbitration. Lawyers would collect thousands of billable hours, while simple consumer disputes that could have been resolved quickly are now bogged down in endless litigation – first over whether the dispute is arbitrable, and then finally to resolve the dispute itself.

At a time when Californians are struggling under economic pressures and the state has severe deficits, SB 82, if enacted, will mean more costs for everyone.

FISCAL COMMENTS

None

VOTES

SENATE FLOOR: 28-10-2

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener
NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ABS, ABST OR NV: Hurtado, Reyes

ASM JUDICIARY: 8-3-1

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Papan, Stefani, Zbur

NO: Dixon, Macedo, Sanchez

ABS, ABST OR NV: Pacheco

UPDATED

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CONSULTANT: Manuela Boucher / JUD. / (916) 319-2334

FN: 0001060