

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 82 (Umberg)
Version: April 10, 2025
Hearing Date: April 22, 2025
Fiscal: No
Urgency: No
AM

SUBJECT

Contracts: consumer goods and services: dispute resolution provisions

DIGEST

This bill limits the dispute resolution terms and conditions in a consumer use agreement to the use, payment, or provision of the good, service, money, or credit provided by the consumer use agreement. The bill provides these provisions are to be liberally construed for the purpose of protecting consumers, and that a waiver of these provisions is contrary to public policy and void and unenforceable.

EXECUTIVE SUMMARY

Recently, there has been a trend by companies arguing that clauses inserted into consumer contracts require consumers to resolve all claims against that company, regardless if the claim the consumer is pursuing arises from the specific transaction of the original contract. This bill seeks to address this issue by limiting dispute resolution terms and conditions in a contract with a consumer to the use, payment, or provision of the good, service, money, or credit that arises from the transaction in the consumer contract. The bill is sponsored by the Consumer Attorneys of California, the Consumer Federation of California, and Consumer Watchdog. The bill is supported by various organizations, including those that represent consumers, persons with disabilities, and employees. The bill is opposed by a coalition of associations representing various businesses and local chambers of commerce, including the Civil Justice Association, California Chamber of Commerce, and the California Retailers Association. Should the bill pass out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing state law:

- 1) Provides that various types of contracts are unlawful and therefore void and unenforceable. (Civ. Code §§ 1667 et. seq.)
- 2) Provides that if the court, as a matter of law, finds a contract or any clause of a contract to have been unconscionable at the time it was made then the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result. (Civ. Code § 1670.5.)

This bill:

- 1) Requires dispute resolution terms and conditions of a consumer use agreement to be limited to the use, payment, or provision of the good, service, money, or credit provided by that consumer use agreement.
- 2) Provides that a waiver of these provisions is contrary to public policy and void and unenforceable.
- 3) Provides that these provisions are to be liberally construed for the purpose of protecting consumers.
- 4) Specifies that the duties and obligations imposed by these provisions are cumulative with duties or obligations imposed under any other law, and are not to be construed to relieve any party from any duties or obligations imposed under any other law, and do not limit any rights or remedies under any other law.
- 5) Defines the following terms for these purposes:
 - a) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.
 - b) "Consumer use agreement" means a contract between a person and a consumer that the consumer enters into in order to use, receive, or otherwise enjoy a good, service, money, or credit.
 - c) "Person" means an individual, partnership, corporation, limited liability company, association, or other group, however organized.

COMMENTS

1. Stated need for the bill

The author writes:

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. Companies are increasingly using clauses in contracts to expand agreements beyond the original parties and contract duration. This raises concerns about fairness and enforceability. Courts have often struck down such broad clauses, citing unfairness and lack of clear agreement. However, examples continue to emerge. Therefore, SB 82 aims to ensure that contracts between consumers and businesses apply only to the specific product or service covered by the agreement.

2. Issue this bill seeks to address

A troubling trend has arisen where companies are attempting to argue that clauses in consumer contracts require consumers to resolve *all claims* against that company, regardless if the claim the consumer is pursuing arises from the specific transaction of the original contract. The most egregious and recent example of this is from 2024. Kanokporn Tangsuan tragically suffered an allergic reaction at a restaurant in Disney World and ultimately passed away.¹ Her husband, Jeffrey Piccolo, brought a wrongful death suit against the company; however, Disney argued that the case had to go through arbitration instead of court and pointed to a clause in the terms of use conditions that Jeffrey Piccolo signed in 2019 when he created a Disney+ account for a month-long trial.² Disney argued that when the account was created, Jeffrey Piccolo agreed to arbitrate “all disputes” that arise “in contract, tort, warranty, statute, regulation, or other legal or equitable basis” against the Walt Disney company or its affiliates and that this language covered the current wrongful death claim.³ Attorneys for Jeffrey Piccolo responded that:

The notion that terms agreed to by a consumer when creating a Disney+ free trial account would forever bar that consumer's right to a jury trial in any dispute with any Disney affiliate or subsidiary, is so outrageously unreasonable and unfair as to shock the judicial conscience, and this Court should not enforce such an agreement [...]

¹ Rachel Treisman, *Disney backtracks on request to toss wrongful death suit over Disney+ agreement*, NPR. (Aug. 20, 2024), available at <https://www.npr.org/2024/08/14/nx-s1-5074830/disney-wrongful-death-lawsuit-disney>.

² *Ibid.*

³ *Ibid.*

In effect, WDPR [Walt Disney Parks & Resorts] is explicitly seeking to bar its 150 million Disney+ subscribers from ever prosecuting a wrongful death case against it in front of a jury even if the case facts have nothing to with Disney+[...]⁴

Disney ultimately dropped its attempts to force the suit into arbitration after public backlash,⁵ not because it believed its arguments were without merit, but because the “unique circumstances” of the case warranted a “sensitive approach.”⁶

This bill seeks to address the scenario above by requiring the dispute resolution terms and conditions in a consumer use agreement to be limited to the use, payment, or provision of the good, service, money, or credit provided by that consumer use agreement. Any waiver of these provisions is contrary to public policy, void, and unenforceable. The bill provides that these provisions are to be liberally construed for the purpose of protecting consumers. Under the bill, a “consumer” is defined as any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes. A “consumer use agreement” means a contract between a person and a consumer that the consumer enters into in order to use, receive, or otherwise enjoy a good, service, money, or credit. A “person” is defined as an individual, partnership, corporation, limited liability company, association, or other group, however organized.

3. Federal Preemption and the Federal Arbitration Act (FAA)

Section 2 of the FAA generally provides that a written provision in any contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in Chapter 4. (See 9 U.S.C. Sec. 2; similar language is contained within the CAA at Code Civ. Proc. § 1281.)

The concept of preemption derives from the “supremacy clause” of the federal Constitution, which provides that the laws of the United States “shall be the supreme Law of the Land.”⁷ Courts have typically identified three circumstances in which federal preemption of state law occurs:

(1) express preemption, where Congress explicitly defines the extent to which its enactments preempt state law; (2) field preemption, where state law attempts to regulate conduct in a field that Congress intended the federal law exclusively to

⁴ *Ibid.*

⁵ Danielle Braff, *Did you read the small print? 'Infinite' arbitration clauses are on the rise*, ABA Journal, (Sept. 6, 2024), available at <https://www.abajournal.com/web/article/did-you-read-the-small-print-forced-arbitration-cases-are-on-the-rise>.

⁶ *Ibid.*

⁷ U.S. Const., art. VI, cl. 2.

occupy; and (3) conflict preemption, where it is impossible to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.⁸

In assessing whether a state law is preempted by the FAA, three key aspects of the law surrounding arbitration and preemption are especially relevant. First, the federal courts have ruled that the FAA was intended to promote arbitration.⁹ Second, state laws or rules that interfere with the enforcement of arbitration agreements are preempted, except on such grounds as exist at law or in equity for the revocation of any contract.¹⁰ Third, state laws that explicitly or covertly discriminate against arbitration agreements as compared to other contracts are also preempted.¹¹

Opposition to the bill argues that the bill is likely preempted under the FAA claiming it disfavors arbitration because it restricts the ability to define which disputes can be arbitrated. However, this may not be the case. The bill applies across the board to all consumer use contracts and any dispute resolution terms in the contract, whether through arbitration or in court. The bill states that the dispute resolution terms have to be limited to the transaction for which the contract was entered into with the consumer. This follows basic principles of contract law and also the language of the FAA its self, which states that the FAA applies to a “written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction[.]” The bill does not prohibit arbitration in consumer use contracts or limit the types of disputes in a consumer use contract that can be arbitrated. It simply requires a consumer use contract’s dispute resolution terms to apply to the transaction for which the contract was entered into with the consumer.

4. Statements in support

The sponsors of the bill, the Consumer Attorneys of California, the Consumer Federation of California, and Consumer Watchdog, write:

SB 82 ensures that dispute resolution contracts, including arbitration clauses, apply only to the specific product or service agreed upon at the time of signing, protecting consumers from overreach. Currently, these infinite clauses often extend beyond what the consumer intended, encompassing unrelated products, family members, and even future claims.[...]

⁸ *English v. Gen. Elec. Co.* (1990) 496 U.S. 72, 78-80.

⁹ *Epic Sys. Corp. v. Lewis* (2018) 584 U.S. 497, 505.

¹⁰ 9 U.S.C. Sec. 2; *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.

¹¹ *Epic Sys. Corp. v. Lewis* (2018) 584 U.S. 497, 548-549

SB 82 restores balance by preventing corporations from using infinite arbitration clauses to deny accountability for harm unrelated to the original transaction. We urge your strong support for this necessary reform.

5. Statements in opposition

A coalition of associations representing various business and local chambers of commerce, including the Civil Justice Association of California, California Chamber of Commerce, and the California Retailers Association, write in opposition. Their concerns are that the bill is likely preempted under the FAA, and that the bill will increase litigation and further clog state courts. The opposition coalition writes:

[...] SB 82 flies in the face of long-established principles underlying arbitration, which is to promote speedy and fair resolution of claims rather than requiring parties to undergo the lengthy and costly route of pursuing a lawsuit in the courts. Arbitration is a critical means for reducing litigation that wastes the time and resources of consumers, the courts, and employers.[...]

At a time when our state is under extreme economic pressure, SB 82, if enacted, will waste resources. The wide use of arbitration agreements in California creates the potential for significant caseload increases for our clogged courts. The state will also be on the hook for significant costs if SB 82 is challenged in court as preempted by the FAA like AB 51, which was litigated for over three years.

SUPPORT

Consumer Attorneys of California (sponsor)
Consumer Federation of California (sponsor)
Consumer Watchdog (sponsor)
AARP
California Advocates for Nursing Home Reform
California Alliance for Retired Americans
California Employment Lawyers Association
California Long Term Care Ombudsman Association
California Low-income Consumer Coalition
California School Employees Association
California Teamsters Public Affairs Council
Common Sense Media
Consumers for Auto Reliability and Safety
Disability Rights California
Elder Law and Advocacy
Equal Rights Advocates
Fund Her
Housing and Economic Rights Advocates (HERA)

Indivisible CA: Statestrong
Public Advocates

OPPOSITION

American Property Casualty Insurance Association
Brea Chamber of Commerce
California Business Properties Association
California Chamber of Commerce
California Grocers Association
California Hispanic Chambers of Commerce
California Retailers Association
Carlsbad Chamber of Commerce
Civil Justice Association of California
Council of Business and Industries
Family Business Association of California
Greater Conejo Valley Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.
