



LAWSUIT REFORM ALLIANCE OF NEW YORK

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OPPOSE

BILL NUMBER:	S.3684 (Hoylman) / A.3265 (Dinowitz)
SUBJECT:	Prohibited arbitration agreements and provisions.
DATE:	March 4, 2019
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Summary:

This legislation would establish prohibited arbitration agreements and provisions.

Why we oppose this legislation:

Runs counter to policy favored by Chief Judge Janet DiFiore and the OCA

- During her recent State of the Judiciary address, New York Court of Appeals Chief Judge Janet DiFiore said, “Here are the simple facts: mediation and arbitration have a proven track record of settling a high percentage of civil cases—and of narrowing the disputed issues, reducing the cost of litigation.”¹ The truth is, courts already can and do protect employees and consumers by striking down arbitration agreements which are “unconscionable.” Arbitration and mediation typically yield cost savings when compared to litigation—in the context of state contracts, banning arbitration clauses will mean higher costs that are passed on to taxpayers. This legislation would force claimants into the tort system, even if both parties would prefer otherwise — essentially subsidizing the class action bar with taxpayer funds.

Alternative dispute resolution is often a superior option for all parties

- The arbitration process is often a superior option for all parties. Commonly, especially in employment dispute cases, claimants desire privacy and confidentiality—however, in a lawsuit sensitive details about a case may be disclosed publicly. Moreover, the cost of retaining an attorney can present a barrier for an employee to pursue a claim—arbitration allows resolution without high legal costs and lengthy delays. For these reasons, many claimants prefer arbitration to litigation. Barring certain types of claims from the safe-guards and ease of mediation is unjustified. Empirical evidence shows the consumer friendliness of arbitration: when it comes to debt collection, consumers prevail more often in arbitration than in the court system. One of the key findings in the Searle Civil Justice Institute's Consumer Arbitration Task Force's report on creditor claims in arbitration was that “creditors prevailed less often (that is, consumers prevailed more often) in the arbitrations studied than in court.”²

¹ Clark, D. M. (2019, Feb. 26). DiFiore Renews Call for Lawmakers to Restructure NY Court System. New York Law Journal. Accessed from : <https://www.law.com/newyorklawjournal/2019/02/26/difiore-renews-call-for-lawmakers-to-restructure-ny-court-system/>

² Searle Civil Justice Institute. (2009). Consumer Arbitration. Northwestern University School of Law. Accessed from: https://www.adr.org/sites/default/files/document_repository/Searle%20Civil%20Justice%20Institute%20Report%20on%20Consumer%20Arbitration.pdf

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