

Senate Bill No. 33

CHAPTER 480

An act to amend Section 1281.2 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor October 4, 2017. Filed with
Secretary of State October 4, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 33, Dodd. Arbitration agreements.

Existing law requires a court, on petition of a party to an arbitration agreement alleging (1) the existence of a written agreement to arbitrate a controversy and (2) that a party to the agreement refuses to arbitrate the controversy, to order the petitioner and the respondent to arbitrate the controversy if the court determines that an agreement to arbitrate exists, unless the court makes other determinations.

This bill would add to these determinations instances in which a state or federally chartered depository institution is seeking to apply a written agreement to arbitrate, contained in a contract consented to by a respondent consumer, to a purported contractual relationship with that consumer that was created by the petitioner fraudulently without the consumer's consent and by unlawfully using the consumer's personal identifying information, as defined.

The people of the State of California do enact as follows:

SECTION 1. Section 1281.2 of the Code of Civil Procedure is amended to read:

1281.2. On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

- (a) The right to compel arbitration has been waived by the petitioner; or
- (b) Grounds exist for the revocation of the agreement.
- (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to

compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

(d) The petitioner is a state or federally chartered depository institution that, on or after January 1, 2018, is seeking to apply a written agreement to arbitrate, contained in a contract consented to by a respondent consumer, to a purported contractual relationship with that respondent consumer that was created by the petitioner fraudulently without the respondent consumer's consent and by unlawfully using the respondent consumer's personal identifying information, as defined in Section 1798.92 of the Civil Code.

If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.