

HOUSE BILL 2388

By Carter

AN ACT to amend Tennessee Code Annotated, Title 29
and Title 47, relative to arbitration of consumer
contracts.

WHEREAS, parties must waive significant rights in order to participate in binding arbitration. In addition to the constitutionally guaranteed right to trial by jury, participants must surrender significant due process rights (both substantive and procedural) incorporated into the protections afforded by the Tennessee Rules of Evidence, Tennessee Rules of Civil Procedure, and Tennessee Rules of Appellate Procedure, as well as the Tennessee Code Annotated and common law; and

WHEREAS, merchants and service providers are free to voluntarily waive such rights with regard to business agreements negotiated between them. However, with regard to agreements between them and Tennessee consumers, merchants and service providers are not free to require consumers to agree in advance to a compulsory waiver of rights as a requirement and condition precedent for doing business with them; and

WHEREAS, the inclusion of non-negotiable mandatory arbitration clauses in consumer leases, contracts, service agreements, or terms of service constitutes a compulsory waiver of rights granted Tennessee residents under our constitution and the laws of this state. We therefore find their use in such circumstances to be unconscionable and a violation of public policy; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-5-101, is amended by deleting the section in its entirety and substituting instead the following:

(a) All causes of action, whether there be a suit pending or not, may be submitted to the decision of one (1) or more arbitrators, except in any of the following cases:

(1) Where one (1) of the parties to the controversy is an infant or a person adjudicated incompetent;

(2) One (1) respecting a claim to an estate in real property, in fee or for life. Not included in the exception are:

(A) A controversy in regard to an estate or term for one (1) year or less or of years not exceeding five (5); or

(B) Respecting the partition of real property, or the boundaries of lands; or

(3) Where the cause of action arises out of a consumer contract that was entered into or renewed on or after July 1, 2016.

(b) For purposes of this section:

(1) "Consumer contract" means a writing prepared by a seller and signed, or to be signed, by a consumer that provides for:

(A) The sale or lease of goods or services that are purchased or leased primarily for personal, family, or household purposes; or

(B) Extension of credit, the proceeds of which are used primarily for personal, family, or household purposes; and

(2) "Seller" means any person making sales, leases, or rentals of goods or services.

SECTION 2. This act shall take effect July 1, 2016, the public welfare requiring it.