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April 18, 2024

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The Hon. Robert E. Craven, Sr.
Chair
House Judiciary Committee
82 Smith Street
Providence, RI 02903

Re: H 7952

Dear Chairman Craven,

On behalf of the American Arbitration Association (AAA), I am writing regarding H 7952, which adds several new sections to Chapter 10-3 of the General Laws regarding arbitration. As the nation's leading provider of alternative dispute resolution (ADR) services, with nearly one hundred years of experience as a not-for-profit public service organization, the AAA is well-positioned to evaluate and provide recommendations on legislation impacting the use of ADR.

Throughout the United States, the AAA administers a broad range of domestic and international cases, including commercial, labor, employment, construction, and consumer disputes. We have a long history of assisting in the prevention and resolution of disputes in Rhode Island, and in fact the AAA Northeast Case Management Center is located in Johnston, Rhode Island.

Several elements of H 7952 are similar to requirements currently in effect in the State of California. The AAA administers thousands of cases yearly in California, which provides us with real-world experience with the issues your legislation seeks to address. We are recommending several technical changes and additions, based on our experience, to make implementation of the bill more efficient and reduce the burdens some elements could impose on the Rhode Island court system and on independent ADR providers.

Implementation Issues

Effective January 1, 2022 California's legislature amended California's Code of Civil Procedure § 1281.97 and § 1281.98. The proposed changes to General Laws Section 10-3-23 and 10-3-24 in H 7952 are largely similar to California's Code of Civil Procedure § 1281.97 and § 1281.98 as amended. Several unintended negative consequences have occurred in California since the law went into effect, and we believe our experience may be helpful to you and other legislators to possibly avoid those same unintended negative impacts if this legislation is promulgated in Rhode Island.



Although we are neutral with regard to disputes about the enforcement of statutes like the one proposed in H 7952, the AAA is forced to expend significant resources when unnecessarily added as a party to litigation related to the alleged non-payment of fees. The AAA has been sued and subpoenaed by both claimant consumers or employees and respondent businesses or employers fighting in court about compliance with Cal. Code Civ. Pro. § 1281.97 and § 1281.98. The AAA's resulting time and cost associated with these lawsuits and subpoenas has not been insignificant. In fact, in one matter to date, *Jimenez v. Central Valley Meat Co., Inc.*, Superior Court of Cal., Kings County, Case No. 22C-0377, the AAA had to retain outside counsel to defend against a Motion to Compel the AAA for an Appearance and Production of Documents and Things at Deposition, for Contempt and for Sanctions. Two AAA employees submitted affidavits about the payments at issue and ultimately, the Court denied Plaintiff's motion to hold the AAA in contempt and denied the deposition. The Court awarded the AAA its attorney's fees incurred in opposing the motion because it found that plaintiff did not act with substantial justification in pursuing the deposition and sanctions against the AAA. Unfortunately, a single ruling by a California trial court will likely not deter other litigants from pointing the finger at the AAA and pursuing the AAA aggressively when they are in litigation resulting in alleged violations of Cal. Code Civ. Pro. § 1281.97 and § 1281.98. The stakes set forth in both Cal. Code Civ. Pro. § 1281.97 and § 1281.98 and proposed General Laws § 10-3-23 and § 10-3-24 are high, and from what the AAA has experienced, parties will look to the arbitral administrator in fighting for and against the repercussions set forth in those statutes. There has also been an impact on the already overburdened court system in California, and we would expect a similar impact on the courts in Rhode Island.

Recommendation

Based on our experience with the similar legislation passed in California, as well as the results of litigation, the AAA is proposing that several additional provisions be added to H 7952. We believe the following suggested language, added as to the end of Sections 10-3-23 and 10-3-24 [as Sections 10-3-23(e) and 10-3-24(e)], would provide clarity on arbitration organization immunity from related litigation and subpoenas:

(e): For any act or omission under this statute: (i) an arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity, (ii) the immunity afforded by this section supplements any immunity under other law, (iii) the failure of an arbitrator or arbitration organization acting in that capacity to comply with this statute does not cause any loss of immunity under this section, (iv) in a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this State acting in a judicial capacity, (v) this subsection does not apply to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration



proceeding, (vi) if a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative pursuant to this statute or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (iv), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

We believe these provisions would facilitate the ADR process and result in a reduced burden on Rhode Island courts to define the role of arbitration organizations in the process, while maintaining the original objectives of your legislation.

We appreciate the opportunity to provide our views and recommendations on H 7952, and stand ready to provide additional information or work with you on effective enhancements.

Best regards,

Eric P. Tuchmann
Executive Vice President,
Chief Legal Officer & Corporate Secretary