



April 1, 2025

The Honorable Thomas Umberg
1021 O Street, Suite 7510
Sacramento, CA 95814

RE: SB 82 (Umberg), as Amended March 17, 2025 – OPPOSE – Overly restricts arbitration clauses in sales and lease contracts for goods and services

Dear Senator Umberg:

The Civil Justice Association of California (CJAC) and the organizations listed below respectfully **OPPOSE** your **SB 82**, which would require an arbitration agreement to be limited to a claim “arising out of and relating to” the contract containing the agreement to arbitrate.

Below are the reasons for our opposition:

1. SB 82 will require excessive contracts, frustrating consumers.

Arbitration agreements are used commonly at the start of a relationship between consumers and businesses. It is standard practice for a single arbitration agreement to cover any claim that may arise during the course of that relationship.

Under SB 82, because of the narrow “arising out of and relating to” language, companies would have to enter into a contract for each interaction with their customers, to allow for arbitration of a claim based on that interaction. As a result, California consumers will likely be inundated with agreements each time they order a product or service or otherwise interact with a company. This will slow California commerce and lead to contract fatigue, as consumers will be required to agree to the same terms over and over again.

Moreover, the bill may force consumers to litigate claims they bring against businesses simultaneously in court and arbitration. Claims “arising out of and relating to” the contract directly (such as breach of contract claims) would go to arbitration. But claims relating to the transaction—but not arising directly out of the contract, such as false advertising claims—now would go to court. Because customers often want to bring both types of claims, SB 82 would deprive consumers from efficiently resolving all of their claims relating to the transaction in a single forum. This places an enormous added burden on our courts.

2. SB 82 is likely preempted by the Federal Arbitration Act (FAA).

State and federal courts have long held that the Federal Arbitration Act supersedes state laws aimed at

curtailing arbitration, be it overtly or in an ostensibly neutral way.

The Ninth Circuit recently found that California's 2019 bill, AB 51 (Gonzales), which would have prohibited employers from making it a condition of employment that the employee agree to resolve disputes through arbitration, is preempted by the Federal Arbitration Act. See *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473 (9th Cir. 2023).

In *Bonta*, the Ninth Circuit noted that state rules that burden the formation of arbitration agreements stand as an obstacle to the FAA. The Court further agreed with two sister circuits that the FAA preempts a state rule that discriminates against arbitration by discouraging or prohibiting the formation of an arbitration agreement. The Ninth Circuit explained that the FAA will preempt even seemingly neutral state laws when they "evin[c] hostility towards arbitration." *Id.* at 487.

SB 82 is likely preempted by the FAA because it disfavors a key feature of arbitration, which is the ability to define the scope of arbitrable disputes. SB 82 legislates around this feature by providing that the agreements be limited to a claim arising out of the contract containing the agreement. This is an outright restriction on the formation of the agreement, which courts have found to be hostile to the FAA.

3. SB 82 will lead to increased litigation, further clogging California's courts.

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.

Recent studies show that employees and consumers fare better with arbitration. Arbitration is faster and employees are three times more likely to win in arbitration than in court. Employees on average win twice as much in arbitration than in court, and consumers on average win more as well. The group that benefits the least from arbitration are plaintiffs' lawyers. The more that cases drag on in court, the higher their billable hours and attorneys' fees awards.

Additionally, as noted above, not only would SB 82 significantly narrow the claims that could go to arbitration in connection with a contract, requiring those cases to be added to crowded court dockets, but the bill would also potentially result in hundreds of thousands of new cases litigating arbitrability of claims. Lawyers on both sides of these cases would collect thousands of billable hours, while simple consumer disputes are denied access to timely justice.

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.

For the foregoing reasons, this coalition respectfully **OPPOSES SB 82**.

If you have any questions or need further information, please contact: Chris Micheli at (916) 743-6802, cmicheli@snodgrassmicheli.com.

Sincerely,



Kyla Christoffersen Powell
President and Chief Executive Officer

On behalf of the below-listed organizations:

Civil Justice Association of California

American Property Casualty Insurance Association – Mark Sektnan

Brea Chamber of Commerce – Lacey Schoen

California Business Properties Association – Skyler Wonnacott

California Chamber of Commerce – Robert Moutrie

California Grocers Association – Daniel Conway

California Hispanic Chambers of Commerce – Yolanda Benson

California Retailers Association – Ryan Allain

Carlsbad Chamber of Commerce – Bret Schanzenbach

Council of Business and Industries – Raully Butler

Family Business Association of California – Robert Rivinius

Greater Conejo Valley Chamber of Commerce – Josh Gray

Oceanside Chamber of Commerce – Scott Ashton

Orange County Business Council – Jeffrey Ball

cc: Members, Senate Judiciary Committee
 Amanda Mattson, Senate Judiciary Counsel
 Morgan Branch, Senate Republican Caucus