

April 25, 2016

Pending California Legislation Threatens to Eviscerate Consumer and Employment Contractual Choice of Law and Venue Provisions

Out-of-state companies doing business in California would be well-advised to look closely at a new bill pending in the California State Legislature. If you are concerned about defending litigation cases in the most plaintiff-friendly venues, or having some of the most anti-business/pro-consumer laws in the nation applied to your company, pay attention to California Senate Bill 1241, which threatens to remove any home-court advantage built into your consumer and employment contracts and apply California law to those types of disputes. Brownstein Hyatt Farber Schreck's Government Relations team can assist companies in preventing this bill from being enacted, but time is short.

California Senate Bill 1241, which is likely to be voted on in a Senate committee in the next week, would strip companies of the ability to designate the state in which consumer and employment lawsuits would be venued and what law should be applied. This new bill is a significant expansion of the Consumer Contract Awareness Act of 1990 (Cal. Civ. Code §§ 1799.200, *et seq.*) and includes a proposed addition to the Labor Code. As amended on April 18, 2016, it would prohibit companies from requiring consumers or employees to agree to provisions choosing non-California law or a venue outside of California for claims arising within California, whether in litigation or arbitration. If required, or even agreed to by the parties, such provisions are inoperative and **voidable** by the consumer or employee. The bill will apply not just to all consumer or employment contracts entered into after January 1, 2017, but also those modified or extended after that date. The stated goal of the bill is to ensure that consumers and employees are not deprived of the protection of California law or their local courts with respect to controversies arising in the state (frequently, California law is among the most pro-consumer and anti-business in the country). Individuals enforcing their rights under the proposed law would be entitled to injunctive relief and other remedies available, as well as attorney's fees.

What this means is that companies that sell products in the state of California, or allow people in the state of California to buy products from their websites, or hire employees in California, will be stripped of the ability to designate another state's law – such as the state where the company is based – to apply to disputes. The option of pre-selecting the venue for any disputes will also be lost. For example, on many companies' websites, a choice of law and forum are included in the "Terms and Conditions of Use." These provisions frequently set forth the state law that will control any disputes and where actions can be brought. The reasons for doing so are simple: to protect the companies' best interests by preselecting familiar law the companies know they are in compliance with and venues that are favorable and convenient. If SB 1241 becomes law, companies will no longer be able to pre-select venue or applicable law. Companies may be hauled into the California court of the consumer's or employee's choosing, and California's often less business-friendly laws will apply. SB 1241 would eradicate companies' current state protections.

If enacted, the law will doubtless expand the claims available to plaintiffs. The plaintiffs' bar will argue that including a non-California choice of law or venue provision in an agreement is a violation of

April 25, 2016

California's public policy, thus giving rise to claims under common law, the California Private Attorney General Act, and unfair competition law, particularly in the employment context.

While this issue is critical, it is not too late to take action. After SB 1241 makes it out of the Committee, it will go to the floor for a vote by the full Senate. Following an affirmative vote, the bill will go to the California Assembly for committee hearings, and ultimately a vote. It is imperative that companies communicate their concerns regarding SB 1241 to the California Legislature.

Brownstein's bipartisan team of seasoned political strategists possess the practical experience and political know-how you need to work with the California Legislature, Governor's office and state agencies and departments to address this bill. We are uniquely comprised of attorney-lobbyists with strong relationships in Sacramento, institutional knowledge and a deep-rooted understanding of how policies are adopted—or rejected. Our team includes Don Perata, the former president pro tem of the California State Senate, known for his multi-pronged political strategy and the ability to set clients' issues in front of the right people.

If you are interested in helping to stop this bill or if you have any questions, please contact your Brownstein attorney or [Rosanna Carvacho](#), senior policy advisor and counsel, in our Sacramento office, who is coordinating the government relations effort.

This document is intended to provide you with information regarding SB 1241. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact one of the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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