



OFFICE OF THE GOVERNOR

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To the Members of the California State Assembly:

Assembly Bill 465 would outlaw the use of mandatory arbitration agreements as a condition of employment, making California the only state in the country to have this particular prohibition.

I have reviewed in depth the arguments from both sides about the fairness and utility of mandatory arbitration agreements. While most evidence shows that arbitration is quicker and more cost-effective than litigation, there is significant debate about whether arbitration is less fair to employees. The evidence on actual outcomes in arbitration versus litigation is conflicting and unclear, with some studies showing employees receive more in arbitration while other studies show the opposite.

While I am concerned about ensuring fairness in employment disputes, I am not prepared to take the far-reaching step proposed by this bill for a number of reasons.

California courts have addressed the issue of unfairness by insisting that employment arbitration agreements must include numerous protections to be enforceable, including neutrality of the arbitrator, adequate discovery, no limitation on damages or remedies, a written decision that permits some judicial review, and limitations on the costs of arbitration. See, e.g., *Armendariz v. Foundation Health Psychcare Services, Inc.* 24 Cal. 4th 83 (2000). If abuses remain, they should be specified and solved by targeted legislation, not a blanket prohibition.

In addition, a blanket ban on mandatory arbitration agreements is a far-reaching approach that has been consistently struck down in other states as violating the Federal Arbitration Act ("FAA"). Recent decisions by both the California and United States Supreme Courts have found that state policies which unduly impede arbitration are invalid. Indeed, the U.S. Supreme Court is currently considering two more cases arising out of California courts involving preemption of state arbitration policies under the FAA. Before enacting a law as broad as this, and one that will surely result in years of costly litigation and legal uncertainty, I would prefer to see the outcome of those cases.

For these reasons, I am returning AB 465 without my signature.

Sincerely,


Edmund G. Brown Jr.