Jamal S. Mahmood
JSM INJURY FIRM APC

California targets "infinite arbitration clauses" in consumer transactions

CIVIL CODE § 1670.15, EFFECTIVE JANUARY 1, 2026, STOPS OVERBROAD DRAFTING OF ARBITRATION CLAUSES, AS OFTEN FOUND IN "CLICKWRAP"

A consumer clicks "I agree" to stream movies, join a gym, open an account, or buy a ticket. Months or years later, that same consumer is injured in a parking lot, sues over a data breach, or brings a claim involving an entirely different product or affiliate. The company points back to the old clickwrap and says everything should be resolved by arbitration. Senate Bill 82 is California's answer to that move with the enactment of Civil Code section 1670.15, effective January 1, 2026. The code aims to end what the Legislature called the "infinite arbitration clause" – the provision that uses a single consumer transaction to cover every future dispute between the company and the consumer. (Stats. 2025, ch. 350; Civ. Code, § 1670.15.)

For plaintiffs' lawyers, section 1670.15 provides a direct challenge to overbroad dispute-resolution clauses in consumer and injury cases. But it is not self-executing magic. The statute was drafted with the Federal Arbitration Act (FAA) in mind, and the central fight will be preemption. Defendants will argue the statute disfavors arbitration; plaintiffs should emphasize that it regulates contractual scope and consent, not arbitration itself. Until appellate guidance emerges, section 1670.15 is a live and useful law for plaintiffs.

What the statute says

Section 1670.15 is concise and deliberate. It defines a "consumer use agreement" as a contract entered into to use or obtain a good, service, money, or credit. It then provides that the "dispute resolution terms and conditions" of that agreement "shall be limited to the use, payment, or provision of the good, service, money, or credit provided by that consumer use agreement." It declares any waiver void and unenforceable, directs that the statute be liberally construed to protect consumers, and states that its duties and obligations are cumulative with other law and do not limit other rights or remedies. (Civ. Code, § 1670.15, subd. (b).)

Two drafting choices stand out. First, the Legislature did not say "arbitration clauses." It said, "dispute resolution terms and conditions." That broader phrasing supports the argument that California did not single out arbitration for disfavored treatment. Second, the statute focuses on scope. It does not ban arbitration. It says only that the dispute-resolution provision in that consumer use agreement is limited to disputes involving the use, payment, or provision of the good, service, money, or credit provided by that agreement. A business can still draft an arbitration clause. What it cannot do – if section 1670.15 survives preemption – is use a streaming-service clause to compel arbitration of a theme-park injury claim, or use a membership agreement to force arbitration of some later, unrelated tort claim. (Civ. Code, § 1670.15.)

The statute invites the court to ask a narrow question: *What dispute did this consumer actually agree to resolve under this specific agreement?* That is a contract-scope inquiry, not an anti-arbitration penalty.

Why Sacramento chose a "scope rule"

Legislative committee analyses describe a growing use of broad provisions that purport to require consumers to resolve claims in private dispute resolution for matters far beyond the product or service covered by the contract they signed. The oft-invoked example was a Disney+ arbitration clause cited to arbitrate a later wrongful-death claim involving a park restaurant.

The policy choice was to draft a scope rule rather than an outright anti-arbitration measure: Civil Code section 1670.15 does not bar arbitration clauses; it requires that they apply only to the subject matter of the relevant contract. This approach matters because sweeping attacks on arbitration have repeatedly failed under the FAA. By focusing on scope and assent, the Legislature aims to fit within traditional contract principles.

A second objective is consumer clarity. "Infinite" clauses impose a form of perpetual private adjudication that consumers do not reasonably expect when clicking "I agree." Section 1670.15 restores a logical fit between agreement and dispute: one transaction, one set of covered disputes.

The federal preemption wall

The defense will lead with the FAA, and for good reason. Section 2 of the FAA provides that a written arbitration provision "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2.) The United States Supreme Court has repeatedly used that language to strike down state rules that either openly or covertly burden arbitration. (See, e.g., *Perry v. Thomas* (1987) 482 U.S. 483, 489–491; *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339–352; and *Kindred Nursing Centers Ltd. Partnership v. Clark* (2017) 581 U.S. 246, 251–260.)

Defense lawyers will argue that limiting a clause's scope is tantamount to limiting arbitration itself. Expect defense briefs arguing that Civil Code section 1670.15 is "tailored to arbitration in operation, if not in text," and therefore preempted. (See *Chamber of Commerce of U.S. v. Bonta* (9th Cir. 2023) 62 F.4th 473.)

The state-law survival lane

The FAA does not require arbitration

at all costs; it requires enforcement of arbitration agreements in accordance with their terms. *Volt* teaches that the FAA's purpose is to enforce private agreements, not to mandate arbitration beyond what the parties agreed. (*Volt Information Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.* (1989) 489 U.S. 468, 474–478.) *First Options* teaches that arbitration is a matter of consent and that courts do not assume parties agreed to arbitrate unless there is a contractual basis for that conclusion. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 942–947.)

California also has examples of state rules surviving FAA scrutiny when those rules are genuinely evenhanded. Unconscionability remains a valid defense if not applied in an arbitration-hostile way. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 910–912.) The public-injunction rule survives preemption. (*McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 961–967; *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 827–831.) The most current California example is *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310, holding that Code of Civil Procedure section 1281.98 is not preempted – but only after construing it to be in harmony with generally applicable forfeiture principles to avoid automatic waiver for non-willful late payments. (*Id.* at pp. 325–336.)

Section 1670.15 is designed to fall within this lane. It regulates the *scope* of any dispute-resolution mechanism. If a provision exceeds the reasonable bounds of the underlying transaction, it is void to that extent. That is classic contract law. And contract-scope rules, so long as they apply equally to non-arbitration provisions (as Civ. Code, § 1670.15 expressly does), should remain enforceable under the FAA.

Legislative intent: Why section 1670.15 exists

Civil Code section 1670.15 addresses a practical litigation problem: Companies using a one-time consumer click and stretching it across every future dispute loosely connected to the business. Four trends kept surfacing in legislative committee testimony, letters from stakeholders, and case files. They all shaped the text seen in Civil Code section 1670.15, as follows.

Existing extreme "affiliate sweep" arbitration clauses

Some existing arbitration clauses covered parents, subsidiaries, affiliates, contractors, franchisees, and future assignees of the contracting party. A single transaction could be invoked to arbitrate claims involving entirely different entities with which the consumer never interacted. Civil Code section 1670.15 reins this in by tying the scope back to the specific goods, service, money, or credit at issue.

Clickwrap expansion

As courts routinely enforced online terms – even those consumers never saw – companies loaded them with broad dispute-resolution language. The Legislature viewed this as an invitation for companies to draft "catch-all" provisions untethered from the current transaction. Section 1670.15 preserves assent but limits the consequences of clickwrap provisions.

The "perpetual consent" problem

Companies relied on years-old acceptance events to compel arbitration of later, unrelated disputes. Civil Code section 1670.15 rejects the idea that one initial click creates perpetual and permanent consent.

The collapse of meaningful assent

Online terms grew longer, layered, and hyperlink-dependent. The Legislature concluded consumers had no realistic notice of everything they were purportedly agreeing to. Section 1670.15 restores a narrower, transaction-specific scope so that consent remains meaningful.

The litigation fights ahead

Retroactivity

Section 1670.15 contains no express retroactivity clause. Under Civil Code section 3, statutes operate prospectively unless expressly declared otherwise. (Civ. Code, § 3; see *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840–842.) Expect disputes over what counts as a new agreement: post-January 1, 2026, click-through updates, amended terms of use, automatic renewals, membership extensions, and new purchases under an older relationship. Plaintiffs should identify every post-effective-date acceptance event that can be characterized as a new consumer use agreement.

A particularly important battleground will be apps and online platforms that routinely issue "updated terms of service." Many companies argue that consumers are bound to new terms when they continue using the platform. Plaintiffs should challenge continued-use theories where the platform did not require affirmative acceptance.

Who decides scope (delegation)

Courts decide gateway arbitrability questions unless clearly delegated. Parties may delegate arbitrability, but only with clear and unmistakable evidence – and a valid delegation agreement. (*First Options, supra,* 514 U.S. at pp. 942–947; *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 67–72.) If there is a delegation provision, the challenge must be directed specifically at the delegation clause; otherwise, the arbitrator decides scope. (*Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 586 U.S. 63, 67–70.)

Civil Code section 1670.15 creates a new argument: If the delegation clause is embedded inside an overbroad provision that is rendered void in part, plaintiffs can argue that the *delegation clause itself* falls with that overbreadth. Delegation cannot survive if its only purpose was to funnel disputes arising from other, unrelated transactions into arbitration.

Claim splitting

Section 1670.15 guarantees fights over mixed cases. If one claim is closely tied to the consumer contract but another is not, defendants will argue that the covered claim must go to arbitration, even if the uncovered claims stay in court. That argument has force: the FAA tolerates piecemeal proceedings. (*Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 218–221; *Viking River, supra*, 596 U.S. at pp. 653–663.)

Plaintiffs should use claim splitting strategically. Keep core tort claims in court where possible, oppose severance when it undermines efficiency, and accept severance when tactically beneficial.

Severability

Section 1670.15 says overbroad waivers are void and unenforceable, but it does not answer whether a court should sever offending language or refuse enforcement altogether. Civil Code section 1670.5 may enter the mix. If the overbreadth is a stray phrase, a court may sever. If the clause is built around affiliate sweeps, future-dispute language, and all-relationship coverage, plaintiffs should argue the defect is foundational, and the drafter should not receive a blue pencil after writing precisely the kind of "infinite" clause the Legislature meant to stop. The more intentional the overbreadth, the stronger the argument that severance would reward bad drafting and undermine legislative policy.

Emerging battlegrounds

Loyalty programs and rewards platforms

Companies increasingly use rewards accounts to argue that any dispute relating to any product, location, or service falls under the loyalty program's arbitration clause. Section 1670.15 squarely undermines that approach. If the consumer joined a program to accrue points, a later slip-and-fall at a store is not "use, payment, or provision" of the rewards program.

Ticketing platforms

Ticketing companies often insert arbitration clauses purporting to cover all disputes with event venues. A negligence claim against a venue cannot be forced into an arbitration clause tied to a ticketing platform agreement unless the injury arises from the ticketing transaction itself.

Gym and membership contracts

Gyms and clubs routinely include affiliates, trainers, landlords, parent companies, and future assignees. Plaintiffs should argue that the "consumer use agreement" covers only the membership contract, not unrelated claims – e.g., an injury in a parking lot owned by a different entity.

Subscription services

These agreements are fertile ground for infinite clauses. Plaintiffs should emphasize the mismatch between the service purchased and the later dispute.

Finance, credit, and auto-loan agreements

Finance agreements sometimes purport to cover all disputes with dealerships, manufacturers, and third-party service providers. Civil Code section 1670.15 limits that scope to disputes involving the use, payment, or provision of credit itself.

How plaintiffs should use section 1670.15

Plaintiffs should begin their analysis with the contract itself rather than unconscionability, because section 1670.15 makes scope the most direct and powerful starting point. The first question in any case should be whether the dispute involves the "use, payment, or provision" of the specific good, service, money, or credit that the consumer actually obtained under the agreement. If the claim has nothing to do with that transaction, the statute resolves the issue cleanly. Plaintiffs should make that mismatch concrete at the outset of a motion to compel, using transaction maps, screenshots, or simple visual timelines to show how far the later dispute strays from the original purchase or membership. Courts respond well to clear contrasts; showing rather than telling often makes the overreach self-evident.

When a clause contains a delegation provision, plaintiffs must challenge it expressly and directly. Because the delegation clause typically sits inside the same overbroad dispute-resolution language that section 1670.15 renders void, it cannot survive independently. The plaintiff should therefore assert that the delegation clause rises and falls with the overbreadth of the overall provision and that the court, not an arbitrator, must decide the scope issue. This keeps the gateway question where it belongs – before a judge – rather than allowing an arbitrator to determine the reach of a provision that the Legislature has already limited.

Plaintiffs should also examine whether the consumer accepted updated terms or made new purchases after January 1, 2026, because a post-effective-date acceptance creates a new consumer use agreement subject to section 1670.15 and avoids retroactivity disputes. Renewals, updated-terms prompts, re-logins requiring a click, or new transactions under the same account can all qualify. Identifying these events gives plaintiffs an independent, statutory path to defeating motions based on older agreements.

Another essential component of plaintiff's strategy is planning for claim splitting and using it as leverage. Mixed cases – where some claims arguably fall within the consumer use agreement, and others do not – can create procedural advantages. Plaintiffs should decide early whether severance helps or harms their position. The key is not to treat claim splitting as automatic; plaintiffs should frame it as a discretionary management decision and explain why their proposed approach best preserves fairness and efficiency.

Severability requires equally careful framing. Plaintiffs should emphasize that overbroad language – such as affiliate sweeps, lifetime coverage, and pre-/post-relationship language – is not an accidental drafting glitch but the fundamental architecture of the clause. A court should not "blue pencil" a new contract where the original drafting was deliberately expansive. Arguing that the defect is foundational, rather than superficial, aligns cleanly with the Legislature's purpose in prohibiting dispute-resolution provisions that reach beyond the transaction actually entered.

Finally, plaintiffs should frame the relief they seek with precision. Courts benefit from clear directions: an order denying the motion as to disputes outside section 1670.15; a declaration that the overbroad language is void and unenforceable; limitations ensuring any remaining arbitration is confined to disputes about the specific transaction; and a case-management plan that avoids gamesmanship or delay. Supporting this argument with an organized evidentiary record strengthens credibility – product-specific purchase confirmations, screenshots of acceptance flows, renewal notices, contract excerpts showing the breadth of the clause, and organizational evidence identifying which corporate entity actually provided the product or service.

Beyond class actions

Section 1670.15 matters outside classic consumer class actions. Personal-injury lawyers should pay attention whenever a defendant points to a loyalty program, online terms of use, ticket purchase, subscription agreement, financing agreement, or membership contract as the basis for compelling arbitration of a tort claim. The statute was drafted for exactly that type of overreach. If the defense wants arbitration of a later, separate dispute, make them prove a tight nexus between the claim and the particular transaction embodied in the agreement they invoke.

Conclusion

In short, the purpose of Civil Code section 1670.15 is not to ban arbitration but to prevent overbroad drafting. It restores a simple rule – the dispute-resolution clause covers the transaction the consumer actually agreed to, and nothing more.

Whether the statute survives FAA scrutiny will turn on characterization. If courts see the code as an anti-arbitration measure, the defense has strong federal cases to cite. If courts see it for what the Legislature says it is – a rule about contractual scope, consumer assent, and the permissible reach of dispute-resolution terms in a single consumer use agreement – California has a real argument for the code's survival. In the meantime, treat section 1670.15 as live, useful law – use it early, precisely, and to force defendants back to the right question: *What dispute did this consumer actually agree to arbitrate under this contract?*

Jamal S. Mahmood is the founder of JSM Injury Firm APC, *representing plaintiffs in catastrophic injury, wrongful death, auto accident, and premises-liability cases in California. He holds a B.A. from the University of Oregon and graduated magna cum laude from Western State College of Law. He can be reached at jamal@jsminjuryfirm.com.*