

By: Christian

H.B. No. 2920

A BILL TO BE ENTITLED

AN ACT

relating to revision of Texas arbitration laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 171.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 171.001. ARBITRATION AGREEMENTS VALID. (a) It is the policy of this state to encourage the fair, neutral and cost-effective resolution of disputes by arbitration.

~~(ab)~~ A written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that:

(1) exists at the time of the agreement; or

(2) arises between the parties or persons claiming through a party after the date of the agreement.

~~(bc)~~ A party or person claiming through a party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract.

(d) For purposes of this section, "written agreement" shall include

(1) a document signed by the parties; or

(2) a set of the terms and conditions under which a person receives goods or services if before the events giving rise to the controversy the service provider gave the person notice of the terms and conditions.

(e) For purposes of Subsection (d), a service provider gives

1 notice to a person by taking action that is reasonably necessary to  
2 inform the person in ordinary course, which includes the mailing of  
3 terms and conditions of service to persons, whether or not a  
4 particular person acquires actual knowledge of the terms and  
5 conditions of service.

6 SECTION 2. Section 171.002, Civil Practice and Remedies  
7 Code, is amended to read as follows:

8 Sec. 171.002. SCOPE OF CHAPTER. (a) This chapter does not  
9 apply to:

10 (1) a collective bargaining agreement between an  
11 employer and a labor union;

12 ~~(2) [an agreement for the acquisition by one or more~~  
13 ~~individuals of property, services, money or credit in which the~~  
14 ~~total consideration to be furnished by the individual is not more~~  
15 ~~than \$50,000, except as provided by Subsection (b).]~~

16 ~~(23)~~ (23) a claim for personal injury, except as provided  
17 by Subsection ~~(b)~~ (e);

18 (34) a claim for workers' compensation benefits; or

19 (45) an agreement made before January 1, 1966.

20 ~~[(b) An agreement described by Subsection (a)(2) is subject~~  
21 ~~to this chapter if:]~~

22 ~~[(1) the parties to the agreement agree in writing to~~  
23 ~~arbitrate, and]~~

24 ~~[(2) the agreement is signed by each party and each~~  
25 ~~party's attorney.]~~

26 ~~(e)~~ (e) A claim described by Subsection (a)(~~32~~) is subject to  
27 this chapter if:

1 (1) each party to the claim, on the advice of counsel,  
2 agrees in writing to arbitrate; and

3 (2) the agreement is signed by each party and each  
4 party's attorney.

5 SECTION 3. Section 171.004, Civil Practice and Remedies  
6 Code, is added to read as follows:

7 Sec. 171.004. LIMIT ON CONSUMER ARBITRATION FEES. (a) For  
8 purposes of this section, "consumer" shall mean an individual, or a  
9 partnership or corporation having revenues of less than \$500,000 in  
10 the previous calendar year, who seeks or acquires by purchase any  
11 goods or services.

12 (b) A clause in an arbitration agreement shall be  
13 unenforceable to the extent it requires a consumer who does not  
14 prevail in the arbitration to pay the fees and costs incurred by an  
15 opposing party. If a consumer prevails in an arbitration, the  
16 arbitrator may require the opposing party to reimburse the  
17 consumer for the arbitration fee charged to the consumer pursuant  
18 to Subsection (c).

19 (c) For a consumer arbitration in which the amount in  
20 controversy is \$10,000 or less, the administrative fees charged to  
21 a consumer shall be \$125 or the amount in controversy, whichever is  
22 less. For a consumer arbitration in which the amount in controversy  
23 is more than \$10,000 but less than \$75,000, the administrative fees  
24 charged to the consumer shall be \$375. For a consumer arbitration  
25 in which the amount in controversy is \$75,000 or more, the  
26 administrative fees charged to a consumer shall be as set by the  
27 arbitrator. The administrative fees specified in this Subsection

1 shall be adjusted annually in accordance with the percentage  
2 increase or decrease for the previous year in the Consumer Price  
3 Index for Urban Consumers published by the Bureau of Labor  
4 Statistics of the United States Department of Labor.

5 (d) All fees and costs charged to or assessed upon a  
6 consumer by an arbitrator in a consumer arbitration shall be waived  
7 for an indigent consumer.

8 (1) For the purposes of this Subsection (d), "indigent  
9 consumer" means an individual having a gross monthly income that is  
10 less than 200 percent of the federal poverty guidelines.

11 (2) Any consumer requesting a waiver of fees or costs  
12 under this Subsection (d) may establish his or her eligibility by  
13 making a declaration under oath on a form provided to the consumer  
14 by the arbitrator for signature stating his or her monthly income  
15 and the number of persons living in his or her household. An  
16 arbitrator may require a consumer to provide further statement or  
17 evidence of indigence, including but not limited to federal income  
18 tax returns or federal W-2 forms for prior years.

19 (3) Any information obtained by an arbitrator about a  
20 consumer's identity, financial condition, income, wealth, or fee  
21 waiver request shall be kept confidential and may not be disclosed  
22 to any adverse party or any nonparty to the arbitration, except an  
23 arbitrator may not keep confidential the number of waiver requests  
24 received or granted, or the total amount of fees waived.

25 (e) This section applies to all arbitration proceedings  
26 conducted in Texas in which a consumer is a party.

27 SECTION 4. Section 171.021(a), Civil Practice and Remedies

1 Code, is amended to read as follows:

2 (a) A court shall order the parties to arbitrate all  
3 disputes and issues they have agreed to arbitrate on application of  
4 a party showing:

5 (1) an agreement to arbitrate; and

6 (2) the opposing party's refusal to arbitrate.

7 SECTION 5. Section 171.022, Civil Practice and Remedies  
8 Code, is amended to read as follows:

9 Sec. 171.022. UNCONSCIONABLE AGREEMENTS UNENFORCEABLE. A  
10 court may not enforce an agreement to arbitrate if the court finds  
11 the agreement was unconscionable under general principles of law at  
12 the time the agreement was made.

13 SECTION 6. Section 171.026, Civil Practice and Remedies  
14 Code, is amended to read as follows:

15 Sec. 171.026. VALIDITY OF UNDERLYING CLAIM. A court may not  
16 refuse to order arbitration of any issue agreed by the parties  
17 because:

18 (1) the claim lacks merit or bona fides; or

19 (2) the fault or ground for the claim is not shown.

20 SECTION 7. Section 171.027, Civil Practice and Remedies  
21 Code, is added to read as follows:

22 Sec. 171.027. PROVISIONS DISFAVORING ARBITRATION  
23 UNENFORCEABLE. (a) All issues relating to the making, effect,  
24 interpretation and enforcement of agreements to arbitrate shall be  
25 exclusively determined according to the provisions of this chapter.

26 (b) No law, regulation, rule, or ordinance shall impair,  
27 restrict, modify, limit or prohibit any agreement to arbitrate any

1 dispute involving a claim for monetary damages. No particular  
2 language, font size, color, location, placement or position in an  
3 agreement to arbitrate shall be required for enforcement of the  
4 agreement. No subdivision or agency of Texas shall require the  
5 filing or approval of arbitration language, provisions or clauses.

6 (c) Subsection (b) of this section shall not prohibit an  
7 administrative agency from enforcing laws and regulations,  
8 including laws and regulations requiring the approval of tariffs  
9 and charges where required by law or providing for administrative,  
10 civil or criminal penalties; provided, however, that  
11 administrative rules or regulations shall not impair, restrict,  
12 modify, limit or prohibit any agreement to arbitrate any dispute  
13 involving a claim for monetary damages.

14 SECTION 8. Section 171.028, Civil Practice and Remedies  
15 Code, is added to read as follows:

16 Sec. 171.028. VENUE. (a) Arbitration proceedings in which  
17 a consumer is a party shall be conducted in the county in which the  
18 consumer resides. Arbitration proceedings in which neither party  
19 is a consumer shall be conducted as agreed by the parties or at a  
20 time and place set by the arbitrator.

21 (b) For purposes of this section, "consumer" shall have the  
22 meaning assigned in Section 171.004 of this chapter.

23 SECTION 9. Section 171.0495, Civil Practice and Remedies  
24 Code, is added to read as follows:

25 Sec. 171.0495. DISCOVERY. An arbitrator may permit such  
26 discovery as the arbitrator decides is appropriate in the  
27 circumstances, taking into account the needs of the parties to the

1 arbitration proceeding and other affected persons and the  
2 desirability of making the proceeding fair, expeditious, and cost  
3 effective.

4 SECTION 10. Section 171.0525, Civil Practice and Remedies  
5 Code, is added to read as follows:

6 Sec. 171.0525. SUMMARY DISPOSITION. An arbitrator may  
7 decide a request for summary disposition of a claim or particular  
8 issue (1) if all interested parties agree; or (2) upon request of  
9 one party to the arbitration proceeding if that party gives notice  
10 to all other parties to the proceeding, and the other parties have a  
11 reasonable opportunity to respond.

12 SECTION 11. This Act takes effect September 1, 2003 and  
13 applies to all arbitration agreements entered into on or after that  
14 date.