

By: West

S.B. No. 997

A BILL TO BE ENTITLED

AN ACT

relating to making the award of an arbitration an open record.

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

SECTION 1. Section 171.086(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) During the period an arbitration is pending before the arbitrators or at or after the conclusion of the arbitration, a party may file an application for a court order, including an order:

(1) that was referred to or that would serve a purpose referred to in Subsection (a);

(2) to require compliance by an adverse party or any witness with an order made under this chapter by the arbitrators during the arbitration;

(3) to require the issuance and service under court order, rather than under the arbitrators' order, of a subpoena, notice, or other court process:

(A) in support of the arbitration; or

(B) in an ancillary proceeding in rem, including by attachment, garnishment, or sequestration, in the manner of and subject to the conditions under which the proceeding may be conducted ancillary to a civil action in a district court;

(4) to require security for the satisfaction of a court judgment that may be later entered under an award;

(5) to support the enforcement of a court order

1 entered under this chapter;

2 (6) to seal the award of the arbitration under Section
3 177.053; or

4 (7) [~~6~~] to obtain relief under Section 171.087,
5 171.088, 171.089, or 171.091.

6 SECTION 2. Title 7, Civil Practice and Remedies Code, is
7 amended by adding Chapter 177 to read as follows:

8 CHAPTER 177. OPEN RECORDS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 177.001. OPEN RECORDS POLICY. (a) It is this state's
11 policy to provide open access to the records of all decisions in
12 civil disputes, whether adjudicated or arbitrated, to create
13 precedential guidance for future cases.

14 (b) It is this state's policy to ensure that a person's right
15 to the fair and impartial hearing and resolution of a civil
16 complaint is not infringed. To protect that right, it is in the
17 public interest and the purpose of this chapter to require the
18 provision of information needed to evaluate whether the public
19 policy supporting mandatory arbitration is being served and to
20 establish a basic system for evaluating and ensuring the
21 accountability of arbitrators and arbitration services providers.

22 (c) Arbitration awards that qualify may be sealed in
23 accordance with Section 177.053 in order to ensure that procedures
24 relating to records in arbitration cases are commensurate with
25 those within the court system.

26 Sec. 177.002. DEFINITIONS. In this chapter:

27 (1) "Arbitration" means the procedure for dispute

1 resolution described by Section 154.027.

2 (2) "Arbitration services provider" means a person
3 that holds itself out as:

4 (A) managing, coordinating, or administering
5 arbitrations;

6 (B) providing the services of arbitrators;

7 (C) making referrals or appointments to
8 arbitrators; or

9 (D) providing lists of arbitrators.

10 (3) "Arbitrator" means a neutral individual who hears
11 the claims of the parties to a dispute and renders a decision and
12 who is:

13 (A) chosen by the parties to the dispute;

14 (B) appointed by a court; or

15 (C) selected by an arbitration services provider
16 under an agreement of the parties or applicable rules.

17 (4) "Office of Court Administration" means the Office
18 of Court Administration of the Texas Judicial System.

19 Sec. 177.003. APPLICABILITY. The requirements of this
20 chapter supplement, in any arbitration held in this state, the
21 arbitration law of this state and any other state and the Federal
22 Arbitration Act (9 U.S.C. Sections 1-16) and apply to any
23 arbitration subject to those laws.

24 [Sections 177.004-177.050 reserved for expansion]

25 SUBCHAPTER B. AWARD FILING PROCEDURES

26 Sec. 177.051. AWARD FILING. For each arbitration, the
27 arbitrator who conducts the arbitration or, if an arbitration

1 services provider administers the arbitration, the services
2 provider shall file the arbitration award before the 31st day after
3 the date of the arbitration award with the Office of Court
4 Administration.

5 Sec. 177.052. AWARD INFORMATION. The award filed must
6 contain the following information:

- 7 (1) the names of the parties to the dispute;
8 (2) the name of each party's attorney, if any;
9 (3) the name of the arbitrator conducting the
10 arbitration;
11 (4) the name of the arbitration services provider
12 administering the arbitration, if any;
13 (5) the arbitrator's award; and
14 (6) the date of the arbitrator's award.

15 Sec. 177.053. SEALING OF AWARD. (a) Except as provided by
16 this section, a party to an arbitration may apply to a court in the
17 county in which the arbitration is held to have the arbitrator's
18 award sealed in accordance with the standards and procedures under
19 Paragraphs 1 through 6, Rule 76a, Texas Rules of Civil Procedure.

20 (b) The party seeking to have an award sealed or unsealed
21 shall post notice as required by Paragraph 3, Rule 76a, Texas Rules
22 of Civil Procedure, except that on the day notice is posted the
23 party must:

24 (1) file a verified copy of the posted notice with the
25 clerk of the court in which the motion to seal or unseal was filed
26 and with the Office of Court Administration; and

27 (2) notify all other parties to the arbitration of the

1 motion to seal or unseal by a method of service described by Rule
2 21a, Texas Rules of Civil Procedure.

3 (c) A party to an arbitration may request that the court
4 issue a temporary sealing order according to the method of
5 Paragraph 5, Rule 76a, Texas Rules of Civil Procedure, if the
6 requesting party notifies all other parties to the arbitration by a
7 method of service described by Rule 21a, Texas Rules of Civil
8 Procedure.

9 (d) The court receiving the application shall treat the
10 award of the arbitrator as if it were a court record under Paragraph
11 2, Rule 76a, Texas Rules of Civil Procedure.

12 (e) If the court grants or denies the application for
13 sealing the award, the court shall notify the parties to the
14 dispute, the arbitrator, the arbitration services provider, if any,
15 the clerk of the court, and the Office of Court Administration of
16 its decision.

17 (f) If the court grants the request for sealing, the parties
18 to the dispute, the arbitrator, the arbitration services provider,
19 if any, the clerk of the court, and the Office of Court
20 Administration shall treat the award as if it were a court record
21 sealed under Rule 76a, Texas Rules of Civil Procedure, and may not
22 disclose it unless the award is later unsealed.

23 (g) The rules for unsealing of court records, continuing
24 jurisdiction, and appeal under Paragraphs 6, 7, and 8, Rule 76a,
25 Texas Rules of Civil Procedure, apply to an award sealed under this
26 section.

27 [Sections 177.054-177.100 reserved for expansion]

1 SUBCHAPTER C. ENFORCEMENT PROVISIONS

2 Sec. 177.101. LATE FILING FEE. (a) The Office of Court
3 Administration by rule shall establish a fee not to exceed \$100 for
4 the late filing of an arbitration award and procedures for the
5 collection of that fee.

6 (b) A party to an arbitration, or an attorney for the party,
7 may report an overdue filing of the arbitration award to the Office
8 of Court Administration.

9 Sec. 177.102. LATE AWARD FILERS; INELIGIBILITY FOR
10 ARBITRATION ADMINISTRATION. (a) An arbitrator or arbitration
11 services provider that has failed more than three times in the
12 preceding 12-month period to timely file arbitration awards is
13 ineligible to administer a court-ordered arbitration.

14 (b) The Office of Court Administration shall compile and
15 publish at least twice each year an updated list of arbitrators or
16 arbitration services providers that are ineligible to administer a
17 court-ordered arbitration under Subsection (a).

18 (c) The Office of Court Administration shall by rule
19 establish procedures by which an arbitrator or arbitration services
20 provider can be removed from the published list.

21 SECTION 3. (a) For the purpose of this section, the date an
22 arbitration is commenced is the date an arbitrator is selected or
23 appointed.

24 (b) This Act takes effect January 1, 2004, and the changes
25 in law made by this Act apply only to an arbitration commenced on or
26 after that date. An arbitration commenced before January 1, 2004,
27 is governed by the law applicable to arbitrations immediately

S.B. No. 997

1 before January 1, 2004, and that law is continued in effect for that
2 purpose.