

By: Frost

H.B. No. 3091

A BILL TO BE ENTITLED

AN ACT

relating to dispute resolution.

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

SECTION 1. Title 1, Civil Practice and Remedies Code, is amended by adding Chapter 3 to read as follows:

CHAPTER 3. CERTAIN AGREEMENTS AFFECTING DISPUTE RESOLUTION

Sec. 3.001. AGREEMENT AFFECTING DISPUTE RESOLUTION FORUM.

A written agreement entered into before a dispute arises may not waive or have the practical effect of waiving the rights of a party to the agreement to resolve a future dispute by obtaining a hearing or other dispute resolution forum in which the party can present evidence in person.

Sec. 3.002. AGREEMENTS AFFECTING RELIEF AVAILABLE. A

written agreement entered into before a dispute arises may not waive or have the practical effect of waiving the rights of a party to the agreement to resolve a future dispute by obtaining:

(1) injunctive, declaratory, or other equitable relief;

(2) relief on a class-wide basis;

(3) exemplary damages;

(4) multiple or minimum damages as specified by statute; or

(5) attorney's fees and costs as specified by statute or as available at common law.

1 Sec. 3.003. CERTAIN AGREEMENTS AFFECTING CONFIDENTIALITY.

2 (a) A written agreement entered into before a dispute arises may not
3 require or have the practical effect of requiring that any aspect of
4 a resolution of a future dispute between the parties to the
5 agreement be kept confidential.

6 (b) This section does not affect the rights of the parties
7 to agree that certain specified information is a trade secret or
8 otherwise confidential or to later agree, after the dispute arises,
9 to keep the resolution of the dispute confidential.

10 Sec. 3.004. PROVISIONS VOID. A provision of a written
11 agreement that violates this chapter is void and unenforceable.

12 SECTION 2. Title 7, Civil Practice and Remedies Code, is
13 amended by adding Chapter 174 to read as follows:

14 CHAPTER 174. CONSUMER ARBITRATIONS

15 SUBCHAPTER A. CONSUMER ARBITRATION AGREEMENTS

16 Sec. 174.001. DEFINITIONS. In this subchapter:

17 (1) "Consumer" means an individual who:

18 (A) uses, purchases, acquires, attempts to
19 purchase or acquire, or is offered or furnished any real or personal
20 property, tangible or intangible goods, services, or credit for
21 personal, family, or household purposes; or

22 (B) is an employee of or seeks employment from
23 the other party to the agreement.

24 (2) "Consumer arbitration agreement" means a
25 standardized contract in which one party drafts a provision that
26 requires disputes arising under the contract after the contract is
27 executed be submitted to binding arbitration and the other party is

1 a consumer. The term does not include a public or private sector
2 collective bargaining agreement.

3 Sec. 174.002. ENFORCEABILITY OF CONSUMER ARBITRATION
4 AGREEMENT. A consumer arbitration agreement is void and
5 unenforceable except to the extent federal law provides for the
6 agreement's enforcement.

7 Sec. 174.003. REQUIRED DISCLOSURES RELATED TO CONSUMER
8 ARBITRATION AGREEMENT. (a) A person who drafts a consumer
9 arbitration agreement shall clearly and conspicuously disclose in
10 regard to any required arbitration:

11 (1) the filing fee;
12 (2) the average daily cost for an arbitrator and
13 hearing room if the consumer elects to appear in person;

14 (3) other charges that the arbitrator or arbitration
15 service provider will assess in conjunction with an arbitration in
16 which the consumer appears in person; and

17 (4) the proportion of those costs that each party
18 bears if the consumer prevails and if the consumer does not prevail.

19 (b) The costs disclosed under Subsection (a) are not
20 required to include attorney's fees.

21 (c) To the extent that, with respect to a cost required to be
22 disclosed under Subsection (a), the person drafting the consumer
23 arbitration clause does not know the precise amount, the disclosure
24 may be based on a reasonable, good faith estimate. A party
25 providing a reasonable, good faith estimate of a cost under this
26 subsection is not liable in any manner for the fact that the actual
27 cost of a particular arbitration varies from the estimate provided.

1 (d) Failure to comply with this section is not grounds to
2 refuse to enforce an arbitration agreement. However, the
3 information provided in the disclosure may be considered in making
4 a determination of whether an arbitration agreement is
5 unconscionable or otherwise is not enforceable under other law.

6 (e) If this section is violated, the attorney general or any
7 other person may request a court to enjoin the drafting party from
8 violating this section in agreements the drafting party enters into
9 in the future. The drafting party is liable to the person bringing
10 the action for the person's reasonable attorney's fees and costs if
11 the court issues an injunction or if, after the action is commenced,
12 the drafting party voluntarily complies with this section.

13 [Sections 174.004-174.050 reserved for expansion]

14 SUBCHAPTER B. CONSUMER ARBITRATION COMPANIES

15 Sec. 174.051. DEFINITIONS. In this subchapter:

16 (1) "Consumer" means an individual who has a dispute
17 relating to the individual's status as:

18 (A) a user, purchaser, or one who attempts to use
19 or purchase, any real or personal property, tangible or intangible
20 goods, services, or credit for personal, family, or household
21 purposes;

22 (B) a person entitled to coverage under a health
23 benefit plan;

24 (C) an individual with a medical malpractice
25 claim; or

26 (D) an employee or applicant for employment,
27 except where an arbitration is pursuant to the terms of a public or

1 private sector collective bargaining agreement.

2 (2) "Consumer arbitration" is a binding arbitration in
3 which one party is a consumer.

4 (3) "Financial interest" means:

5 (A) a position in a business as an officer,
6 director, trustee, or partner or in management; or

7 (B) ownership of more than five percent interest
8 in a business.

9 Sec. 174.052. PUBLICATION REQUIREMENTS. (a) A private
10 arbitration company that administers or is otherwise involved in 50
11 or more consumer arbitrations in a year shall collect, publish at
12 least quarterly, and make available to the public in a
13 computer-searchable format, accessible at the company's Internet
14 website, if any, and on paper on request, all of the following
15 information regarding each consumer arbitration administered by
16 the company in the preceding five years:

17 (1) the name of each corporation or other business
18 entity that is a party to the arbitration;

19 (2) the type of dispute involved, including goods,
20 banking, insurance, health care, debt collection, employment, and,
21 if the dispute involves employment, into which of the following
22 ranges the employee's annual wages fall:

23 (A) less than \$100,000;

24 (B) \$100,000 to \$250,000; and

25 (C) more than \$250,000;

26 (3) whether the consumer was the prevailing party;

27 (4) on how many occasions, if any, a business entity

1 that is a party to the arbitration has previously been a party in an
2 arbitration or mediation administered by the company;

3 (5) whether the consumer was represented by an
4 attorney in the arbitration;

5 (6) the date the company received the demand for
6 arbitration, the date the arbitrator was appointed, and the date of
7 disposition by the arbitrator or company;

8 (7) the type of disposition of the dispute, if known,
9 including withdrawal, abandonment, settlement, award after
10 hearing, award without hearing, default, or dismissal without
11 hearing;

12 (8) the amount of the claim, the amount of the award,
13 and any other relief granted; and

14 (9) the name of the arbitrator, the arbitrator's total
15 fee for the case, and the percentage of the arbitrator's fee
16 allocated to each party.

17 (b) If the required information is provided by the private
18 arbitration company in a computer-searchable format at the
19 company's Internet website and may be downloaded without a fee, the
20 company may charge the actual cost of copying to any person who
21 requests the information on paper. If the information required is
22 not accessible to be downloaded free of charge, the company shall
23 provide the information without charge to any person who requests
24 the information on paper.

25 (c) A private arbitration company that administers or
26 conducts fewer than 50 consumer arbitrations a year shall collect
27 and publish the information specified by Subsection (a)

1 semiannually. The company may provide the information on paper
2 only and charge the actual cost of copying the information.

3 (d) A private arbitration company that collects, publishes,
4 or distributes information in the manner provided by this section
5 is not liable for any damages that may result from the information.

6 Sec. 174.053. COSTS OF ARBITRATION. (a) A private
7 arbitration company shall waive all fees and costs charged or
8 assessed in this state to a consumer in a consumer arbitration for
9 any person having a gross monthly income that is less than 300
10 percent of federal poverty guidelines.

11 (b) This section does not affect the ability of a private
12 arbitration company to shift fees that would otherwise be charged
13 or assessed to a consumer party to another party.

14 (c) Before requesting or obtaining a fee, a private
15 arbitration company shall provide written notice of the possibility
16 of obtaining a waiver of fees in a manner calculated to bring the
17 matter to the attention of a reasonable consumer, including a
18 prominently placed notice in the company's first written
19 communication with a consumer or in any invoice, bill, submission
20 form, fee schedule, rules, or code of procedure.

21 (d) A consumer requesting a waiver of fees or costs may
22 establish eligibility by making a declaration under oath on a form
23 provided by the private arbitration company indicating the
24 consumer's monthly income and the number of persons living in the
25 consumer's household. A private arbitration company may not
26 require a consumer to provide any further statement or evidence of
27 indigence.

1 (e) A private arbitration company shall keep any
2 information obtained by the company about a consumer's identity,
3 financial condition, income, wealth, or fee waiver request
4 confidential and may not disclose the information to any adverse
5 party or any nonparty to the arbitration. A private arbitration
6 company may not keep confidential the number of waiver requests
7 received or granted or the total amount of fees waived.

8 (f) A neutral arbitrator or private arbitration company may
9 not administer a consumer arbitration under any agreement or rule
10 requiring that a consumer who is a party to the arbitration pay the
11 fees and costs incurred by an opposing party if the consumer does
12 not prevail in the arbitration, including the fees and costs of the
13 arbitrator, provider organization, attorney, or witnesses.

14 Sec. 174.054. CONFLICTS OF INTEREST. A private arbitration
15 company may not administer a consumer arbitration in this state or
16 provide other services related to the arbitration if:

17 (1) the private arbitration company has, or within the
18 preceding year has had, a financial interest in any party to a
19 consumer arbitration or attorney for a party to a consumer
20 arbitration; or

21 (2) any party to a consumer arbitration or attorney
22 for a party to a consumer arbitration has, or within the preceding
23 year has had, any type of financial interest in the private
24 arbitration company.

25 Sec. 174.055. ENFORCEMENT OF SUBCHAPTER. (a) The attorney
26 general or a person affected by a private arbitration company's
27 violation of this subchapter may bring an action to request a court

1 to enjoin the company from violating this subchapter and order any
2 appropriate restitution.

3 (b) A private arbitration company is liable to a person
4 bringing an action under this section for the person's reasonable
5 attorney's fees and costs if that person prevails or if, after the
6 action is commenced, the company voluntarily complies with this
7 subchapter.

8 SECTION 3. Subtitle C, Title 5, Insurance Code, is amended
9 by adding Chapter 565 to read as follows:

10 CHAPTER 565. PROHIBITED PRACTICES RELATED TO DISPUTE RESOLUTION

11 Sec. 565.001. APPLICABILITY OF CHAPTER. This chapter
12 applies to an insurance policy or other coverage agreement acquired
13 by the covered person for personal, family, or household purposes
14 issued by a company regulated by the commissioner, including:

15 (1) a domestic or foreign, stock or mutual, life,
16 health, or accident insurance company;

17 (2) a domestic or foreign, stock or mutual, fire or
18 casualty insurance company;

19 (3) a Mexican casualty company;

20 (4) a domestic or foreign Lloyd's plan;

21 (5) a domestic or foreign reciprocal or interinsurance
22 exchange;

23 (6) a domestic or foreign fraternal benefit society;

24 (7) a domestic or foreign title insurance company;

25 (8) an attorney's title insurance company;

26 (9) a stipulated premium company;

27 (10) a nonprofit legal service corporation;

- 1 (11) a health maintenance organization;
- 2 (12) a statewide mutual assessment company;
- 3 (13) a local mutual aid association;
- 4 (14) a local mutual burial association;
- 5 (15) an association exempt under Section 887.102;
- 6 (16) a nonprofit hospital, medical, or dental service
7 corporation, including a company subject to Chapter 842;
- 8 (17) a county mutual insurance company; and
- 9 (18) a farm mutual insurance company.

10 Sec. 565.002. PROVISION REQUIRING ARBITRATION PROHIBITED.

11 (a) An insurance policy or other coverage agreement may not require
12 the covered person to submit to arbitration a dispute related to the
13 coverage that arises after the agreement is entered into.

14 (b) If a written agreement that involves the provision of
15 insurance and other services, goods, property, or credit includes a
16 provision that requires a dispute under the agreement to be
17 submitted to arbitration, the agreement must include a clear and
18 conspicuous disclosure that the mandatory arbitration provision
19 does not apply to any insurance-related dispute under the
20 agreement.

21 (c) A provision in an insurance policy or other coverage
22 agreement that violates this section is void and unenforceable.

23 Sec. 565.003. LIABILITY. (a) A person described by Section
24 565.001 that issues a coverage agreement that violates this section
25 is liable to the covered person for:

- 26 (1) the covered person's actual damages sustained as a
27 result of the violation;

1 (2) \$100, regardless of whether actual damages are
2 sustained; and

3 (3) the covered person's attorney's fees and costs to
4 recover under this subsection.

5 (b) A contract provision that requires an action to enforce
6 this section to be submitted to arbitration is void and
7 unenforceable.

8 SECTION 4. (a) Chapter 3, Civil Practice and Remedies Code,
9 as added by this Act, applies only to a written agreement entered
10 into on or after the effective date of this Act. A written
11 agreement entered into before the effective date of this Act is
12 governed by the law in effect immediately before that date, and that
13 law is continued in effect for that purpose.

14 (b) Subchapter A, Chapter 174, Civil Practice and Remedies
15 Code, as added by this Act, applies only to a consumer arbitration
16 agreement entered into on or after the effective date of this Act.
17 A consumer arbitration agreement entered into before the effective
18 date of this Act is governed by the law in effect immediately before
19 that date, and that law is continued in effect for that purpose.

20 (c) Chapter 565, Insurance Code, as added by this Act,
21 applies only to an insurance policy or other coverage agreement
22 delivered, issued for delivery, or renewed on or after January 1,
23 2008. An insurance policy or coverage agreement delivered, issued
24 for delivery, or renewed before January 1, 2008, is governed by the
25 law as it existed immediately before the effective date of this Act,
26 and that law is continued for that purpose.

27 SECTION 5. This Act takes effect September 1, 2007.