

By: Gattis

H.B. No. 3885

A BILL TO BE ENTITLED

AN ACT

relating to binding arbitration.

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

SECTION 1. Section 171.021, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) An order compelling arbitration shall not violate any rights protected by the constitution of the United States or of this state. The provisions of Section 171.098(a) apply to any appeal on constitutional grounds from an order compelling arbitration.

SECTION 2. Section 171.041, Civil Practice and Remedies Code, is amended by adding Subsection (d) to read as follows:

(d) Proposed arbitrators must satisfy objective qualification standards that consider education, training and experience. A court shall not appoint unqualified arbitrators.

SECTION 3. Section 171.044(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) The notice must be served not later than the fifth day before the hearing either personally or by registered or certified mail with return receipt requested. The notice requirement may not be waived, and the hearing cannot proceed without proper notice of the hearing under this section [~~Appearance at the hearing waives the notice~~].

SECTION 4. Section 171.047, Civil Practice and Remedies Code, is amended to read as follows:

1 Sec. 171.047. Rights of Party at Hearing. (a) Unless
2 otherwise provided by the agreement to arbitrate, a party at the
3 hearing is entitled to:

4 (1) be heard;

5 (2) present evidence material to the controversy;

6 ~~[and]~~

7 (3) cross-examine any witness; and

8 (4) a stenographic recording of the hearing.

9 (b) A stenographic recording before any officer authorized
10 by law to record testimony must be requested by any party prior to
11 the commencement of the hearing or the right to a recording is
12 waived. The cost of a stenographic recording shall be borne by any
13 party requesting the recording and any party requesting a copy of
14 the recording. The cost of a stenographic recording may be
15 considered by the arbitrator to be an expense incurred in
16 conducting the arbitration under Section 171.055.

17 SECTION 5. Section 171.088(a), Civil Practice and Remedies
18 Code, is amended to read as follows:

19 (a) On application of a party, the court shall vacate the
20 award if:

21 (1) the award was obtained by corruption, fraud, or
22 other undue means;

23 (2) the rights of a party were prejudiced by:

24 (A) evident partiality by an arbitrator
25 appointed as a neutral arbitrator;

26 (B) corruption in an arbitrator; or

27 (C) misconduct or willful misbehavior of an

1 arbitrator;

2 (3) the arbitrators:

3 (A) exceeded their powers;

4 (B) refused to postpone the hearing after a
5 showing of sufficient cause for the postponement;

6 (C) refused to hear evidence material to the
7 controversy; or

8 (D) conducted the hearing, contrary to Section
9 171.043, 171.044, 171.045, 171.046, or 171.047, in a manner that
10 substantially prejudiced the rights of a party; [~~or~~]

11 (4) there was no agreement to arbitrate, the issue was
12 not adversely determined in a proceeding under Subchapter B, and
13 the party did not participate in the arbitration hearing without
14 raising the objection; or

15 (5) the award clearly violates fundamental public
16 policy.

17 SECTION 6. Section 171.092, Civil Practice and Remedies
18 Code, is amended by adding Subsections (c) and (d) to read as
19 follows:

20 (c) Notwithstanding any limitations in Sections 171.087,
21 171.088, 171.090, or 171.091 of this code, the court may also
22 vacate, modify, or correct an award as if the award was a judgment
23 entered by a court sitting without a jury.

24 (d) An appellate court reviewing a judgment entered on an
25 award must apply the same standard of review as if the judgment was
26 one entered by a court sitting without a jury.

27 SECTION 7. Section 171.098(a), Civil Practice and Remedies

1 Code, is amended to read as follows:

2 (a) A party may appeal a judgment or decree entered under
3 this chapter or an order:

4 (1) granting or denying an application to compel
5 arbitration made under Section 171.021;

6 (2) granting an application to stay arbitration made
7 under Section 171.023;

8 (3) confirming or denying confirmation of an award;

9 (4) modifying or correcting an award; or

10 (5) vacating an award without directing a rehearing.

11 SECTION 8. (a) Except as otherwise provided by Subsection
12 (b), the change in the law made by this Act applies to an
13 arbitration commenced on or after the effective date. The law in
14 effect immediately prior to the effective date of this Act applies
15 to an arbitration commenced prior to the effective date of this Act
16 and is continued for that purpose.

17 (b) Section 6 of this Act applies to an arbitrators award
18 signed by an arbitrator on or after the effective date of this Act.

19 SECTION 9. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect on the 91st day after the last day of the
24 legislative session.