

By: West

S.B. No. 1782

A BILL TO BE ENTITLED

AN ACT

relating to arbitration proceedings.

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 may not violate a right protected by the United States Constitution or the Texas Constitution. The provisions of Section 171.098(a) apply to an 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) An arbitrator appointed under Subsection (b) must satisfy objective qualification standards, including an appropriate level of education, training, and experience. A court may not appoint an unqualified arbitrator.

SECTION 3. Subsection (b), Section 171.044, 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. Notice may not be waived, and the hearing may not proceed without proper [Appearance at the hearing waives the] notice.

SECTION 4. Section 171.047, Civil Practice and Remedies

1 Code, is amended to read as follows:

2 Sec. 171.047. RIGHTS OF PARTY AT HEARING. Unless otherwise
3 provided by the agreement to arbitrate, a party at the hearing is
4 entitled to:

- 5 (1) be heard;
- 6 (2) present evidence material to the controversy;
- 7 ~~[and]~~
- 8 (3) cross-examine any witness; and
- 9 (4) a transcript of the hearing.

10 SECTION 5. Subchapter C, Chapter 171, Civil Practice and
11 Remedies Code, is amended by adding Section 171.0481 to read as
12 follows:

13 Sec. 171.0481. TRANSCRIPT. (a) A transcript of the
14 hearing must be requested by a party before commencement of the
15 hearing or the right to a transcript is waived.

16 (b) A party requesting the transcript and any party
17 requesting a copy of the transcript are responsible for the cost.

18 (c) An arbitrator may consider the cost of the transcript to
19 be an expense incurred in conducting the arbitration as provided by
20 Section 171.055.

21 SECTION 6. Subsection (a), Section 171.088, Civil Practice
22 and Remedies Code, is amended to read as follows:

23 (a) On application of a party, the court shall vacate an
24 award if:

- 25 (1) the award was obtained by corruption, fraud, or
- 26 other undue means;
- 27 (2) the rights of a party were prejudiced by:

1 (A) evident partiality by an arbitrator
2 appointed as a neutral arbitrator;

3 (B) corruption in an arbitrator; or

4 (C) misconduct or wilful misbehavior of an
5 arbitrator;

6 (3) the arbitrators:

7 (A) exceeded their powers;

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

10 (C) refused to hear evidence material to the
11 controversy; or

12 (D) conducted the hearing, contrary to Section
13 171.043, 171.044, 171.045, 171.046, or 171.047, in a manner that
14 substantially prejudiced the rights of a party; ~~or~~

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

19 (5) the award clearly violates fundamental public
20 policy.

21 SECTION 7. Section 171.092, Civil Practice and Remedies
22 Code, is amended by adding Subsections (c) and (d) to read as
23 follows:

24 (c) Notwithstanding a limitation in Section 171.087,
25 171.088, 171.090, or 171.091, the court may vacate, modify, or
26 correct an award as if the award were a judgment entered by a court
27 sitting without a jury.

1 (d) An appellate court reviewing a judgment entered on an
2 award must apply the same standard of review as if the judgment were
3 entered by a court sitting without a jury.

4 SECTION 8. Subsection (a), Section 171.098, Civil Practice
5 and Remedies Code, is amended to read as follows:

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

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

10 (2) granting an application to stay arbitration made
11 under Section 171.023;

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

13 (4) modifying or correcting an award; or

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

15 SECTION 9. Title 7, Civil Practice and Remedies Code, is
16 amended by adding Chapter 181 to read as follows:

17 CHAPTER 181. ARBITRATOR REQUIREMENTS

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 181.001. POLICY; FINDINGS. It is this state's policy
20 to ensure that a person's right to the fair and impartial hearing
21 and resolution of a civil complaint is not infringed. To protect
22 that right, it is in the public interest and is the purpose of this
23 chapter to require the provision of information needed to evaluate
24 whether the public policy supporting arbitration is being served
25 and to establish a basic system for evaluating and ensuring the
26 accountability of arbitrators and arbitration services providers.

27 Sec. 181.002. DEFINITIONS. In this chapter:

1 (1) "Arbitration panel" means a group or panel of
2 arbitrators.

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

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

7 (B) providing the services of arbitrators;

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

10 (D) providing lists of arbitrators.

11 (3) "Arbitrator" means a neutral individual,
12 including a member of a panel of neutral individuals, who hears the
13 claims of the parties to a dispute and renders a decision and who
14 is:

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

16 (B) appointed by a court; or

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

19 (4) "Consumer arbitration" means an arbitration that
20 arises out of or relates to a transaction in which an individual
21 acquires or seeks to acquire credit, or the purchase or lease of
22 goods or services, primarily intended to be used for personal,
23 family, or household purposes. This term does not include an
24 arbitration proceeding between members of the same real estate
25 trade association.

26 (5) "Employment arbitration" means an arbitration
27 that arises out of or relates to an employment relationship or

1 prospective employment relationship. The term does not include a
2 grievance or arbitration proceeding subject to a collective
3 bargaining agreement.

4 (6) "Office of court administration" means the Office
5 of Court Administration of the Texas Judicial System.

6 Sec. 181.003. APPLICABILITY. (a) Except as provided by
7 Subsection (b), the requirements of this chapter apply to any
8 consumer arbitration or employment arbitration conducted in this
9 state that is subject to Chapter 171 or Chapter 1, Federal
10 Arbitration Act (9 U.S.C. Sections 1-16).

11 (b) This chapter does not apply to:

12 (1) an arbitration conducted or administered by a
13 self-regulatory organization as defined by the Securities Exchange
14 Act of 1934 (15 U.S.C. Section 78c), the Commodity Exchange Act (7
15 U.S.C. Section 1 et seq.), or regulations adopted under those acts;
16 or

17 (2) a residential construction arbitration to which
18 Chapter 437, Property Code, applies.

19 [Sections 181.004-181.050 reserved for expansion]

20 SUBCHAPTER B. DISCLOSURE PROCEDURES

21 Sec. 181.051. DISCLOSURE FILING. For each consumer
22 arbitration or employment arbitration conducted in this state, the
23 arbitrator or arbitration panel that conducts the arbitration or,
24 if an arbitration services provider administers the arbitration,
25 the arbitration services provider shall file an arbitration
26 disclosure with the office of court administration before the 90th
27 day after the date the arbitration award is signed.

1 Sec. 181.052. DISCLOSURE INFORMATION. (a) The disclosure
2 may not reveal the name of any party to the arbitration.

3 (b) Subject to Subsection (a), the disclosure must contain
4 the following information:

5 (1) the name of the arbitration services provider
6 administering the arbitration, if any;

7 (2) a general statement of the nature of the dispute
8 and the relief requested by each party;

9 (3) a description of the arbitrator's or the
10 arbitration panel's decision and award that states in general terms
11 which party prevailed and if that party received the relief
12 requested;

13 (4) the date the award was signed;

14 (5) the date the arbitrator or arbitration panel was
15 selected or appointed to conduct the arbitration;

16 (6) the fees and expenses charged by each arbitrator;

17 (7) the fees and expenses charged by the arbitration
18 services provider administering the arbitration, if any;

19 (8) a statement of whether the claimant or respondent
20 prevailed in the arbitration; and

21 (9) a description of the general nature of the
22 prevailing party, for example, whether the prevailing party is a
23 business, consumer, employer, employee, or other appropriate
24 category.

25 Sec. 181.053. OPTION TO LIMIT DISCLOSURE.

26 (a) Notwithstanding Section 181.052, the parties may agree to
27 except from disclosure the information required by Section

1 181.052(3).

2 (b) An agreement to limit disclosure may not be entered
3 into:

4 (1) before the 20th day after the filing and service of
5 the demand for arbitration; or

6 (2) after the close of the arbitration hearing.

7 (c) The parties shall provide evidence of their agreement to
8 limit disclosure by signing a form adopted for that purpose by the
9 office of court administration, under the supervision of the chief
10 justice.

11 (d) If the parties agree to limit disclosure:

12 (1) the arbitrator or arbitration services provider
13 shall:

14 (A) retain the original agreement to limit
15 disclosure in the records of the proceeding until the second
16 anniversary of the date on which the award is signed; and

17 (B) provide each party with a copy of the
18 agreement; and

19 (2) the arbitrator or arbitration services provider,
20 as applicable, shall file with the office of court administration
21 the information not excepted by this section from disclosure in
22 accordance with this subchapter and shall certify to the office of
23 court administration that the parties have signed and submitted an
24 agreement to limit disclosure.

25 Sec. 181.054. INTERNET SITE FOR INFORMATION. The office of
26 court administration shall make the information collected under
27 this subchapter available on its Internet website.

1 [Sections 181.055-181.100 reserved for expansion]

2 SUBCHAPTER C. ENFORCEMENT PROVISIONS

3 Sec. 181.101. LATE FILING FEE. (a) The director of the
4 office of court administration, under the supervision of the chief
5 justice, shall implement procedures for the collection of a fee not
6 to exceed \$100 for the late filing of an arbitration disclosure in
7 accordance with rules adopted by the supreme court for the
8 efficient administration of justice.

9 (b) A party to an arbitration, or an attorney for the party,
10 may report an overdue filing of the arbitration disclosure to the
11 office of court administration.

12 (c) An arbitration disclosure that is filed within the
13 period specified by Section 181.051 is not subject to a filing fee.

14 Sec. 181.102. LATE DISCLOSURE FILERS; INELIGIBILITY FOR
15 ARBITRATION ADMINISTRATION. (a) An arbitrator, including a
16 member of an arbitration panel, or arbitration services provider is
17 ineligible for a court appointment to arbitrate or administer an
18 arbitration under Section 171.041(b) during the period in which the
19 arbitrator or panel of which the arbitrator is a member or
20 arbitration services provider:

21 (1) fails to file an overdue arbitration disclosure;
22 or

23 (2) owes a fee for late filing.

24 (b) An arbitrator who personally or as a member of an
25 arbitration panel has failed, or an arbitration services provider
26 that has failed, three times in the preceding 12-month period to
27 timely file arbitration disclosures is ineligible for a court

1 appointment to arbitrate or administer an arbitration under Section
2 171.041(b) until the first anniversary of the date the office of
3 court administration receives the third report of an overdue filing
4 with respect to that arbitrator or arbitration services provider.

5 (c) The office of court administration shall compile,
6 maintain, and publish on the Internet an updated list of
7 arbitrators and arbitration services providers that are ineligible
8 to conduct or administer a court-ordered arbitration under
9 Subsection (a) or (b).

10 (d) The director of the office of court administration,
11 under the supervision of the chief justice, shall implement a
12 procedure by which an arbitrator or arbitration services provider
13 can be removed from the published list, in accordance with rules
14 adopted by the supreme court for the efficient administration of
15 justice.

16 (e) The office of court administration and the Texas
17 Judicial Council shall include in the annual report under Section
18 71.034, Government Code, a list of the names of all arbitrators or
19 arbitration services providers who have been on the ineligible list
20 during the period included in that report.

21 [Sections 181.103-181.150 reserved for expansion]

22 SUBCHAPTER D. IMMUNITY

23 Sec. 181.151. IMMUNITY FROM CIVIL LIABILITY. An arbitrator
24 or arbitration services provider is immune from civil liability for
25 providing information required for compliance with this chapter
26 unless the complaining party proves that the arbitrator or
27 arbitration services provider recklessly or knowingly provided

1 false information.

2 SECTION 10. (a) For the purposes of this section, the date
3 an arbitration is commenced is the date an arbitrator, as defined by
4 Section 181.002, Civil Practice and Remedies Code, as added by this
5 Act, is selected or appointed.

6 (b) Except as provided by Subsection (c) of this section,
7 the change in law made by this Act applies only to arbitration
8 commenced on or after January 1, 2008. An arbitration commenced
9 before January 1, 2008, is governed by the law applicable to
10 arbitrations immediately before January 1, 2008, and that law is
11 continued in effect for that purpose.

12 (c) Section 171.092, Civil Practice and Remedies Code, as
13 amended by this Act, applies to an arbitration award signed by an
14 arbitrator on or after January 1, 2008.

15 SECTION 11. This Act takes effect January 1, 2008.