

By: Gattis

H.B. No. 2696

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 51.014(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person may appeal from an interlocutory order of a district court, county court at law, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article

1 I, Section 8, of the Texas Constitution, or Chapter 73;

2 (7) grants or denies the special appearance of a
3 defendant under Rule 120a, Texas Rules of Civil Procedure, except
4 in a suit brought under the Family Code;

5 (8) grants or denies a plea to the jurisdiction by a
6 governmental unit as that term is defined in Section 101.001;

7 (9) denies all or part of the relief sought by a motion
8 under Section 74.351(b), except that an appeal may not be taken from
9 an order granting an extension under Section 74.351;

10 (10) grants relief sought by a motion under Section
11 74.351(1); ~~[or]~~

12 (11) denies a motion to dismiss filed under Section
13 90.007; or

14 (12) denies an application to compel or grants an
15 application to stay arbitration.

16 SECTION 2. Section 171.001, Civil Practice and Remedies
17 Code, is amended by adding Subsections (c) and (d) to read as
18 follows:

19 (c) A written arbitration agreement described by Subsection
20 (a)(1) must include a statement, initialed by each party to the
21 agreement, stating that the party has chosen to arbitrate a
22 controversy that exists at the time of the agreement. A written
23 arbitration agreement described by Subsection (a)(2) must include a
24 statement, initialed by each party to the agreement, stating that
25 the party has chosen to arbitrate any controversy that arises
26 between the parties after the date of the agreement. An agreement
27 to arbitrate must be prominently displayed in the document and in

1 12-point bold type.

2 (d) A party to a contract may not require any other party to
3 the contract to agree to arbitration as a condition of the contract.

4 SECTION 3. Section 171.021, Civil Practice and Remedies
5 Code, is amended by adding Subsection (d) to read as follows:

6 (d) An order compelling arbitration may not violate a right
7 protected by the United States Constitution or the Texas
8 Constitution. The provisions of Section 171.098(a) apply to an
9 appeal on constitutional grounds from an order compelling
10 arbitration.

11 SECTION 4. Section 171.022, Civil Practice and Remedies
12 Code, is amended to read as follows:

13 Sec. 171.022. UNCONSCIONABLE AGREEMENTS UNENFORCEABLE. A
14 court may not enforce an agreement to arbitrate if the court finds
15 the agreement was unconscionable at the time the agreement was
16 made. An agreement is unconscionable if enforcement of the
17 agreement will violate a right protected by the United States
18 Constitution or the Texas Constitution.

19 SECTION 5. Section 171.041, Civil Practice and Remedies
20 Code, is amended by adding Subsection (d) to read as follows:

21 (d) An arbitrator appointed under Subsection (b) must
22 satisfy objective qualification standards, including an
23 appropriate level of education, training, and experience. A court
24 may not appoint an unqualified arbitrator. The qualifications of
25 an arbitrator are subject to judicial review. If a court determines
26 that an arbitrator does not satisfy objective qualification
27 standards, an arbitration award of the arbitrator is void and

1 unenforceable.

2 SECTION 6. Section 171.042, Civil Practice and Remedies
3 Code, is amended to read as follows:

4 Sec. 171.042. MAJORITY ACTION BY ARBITRATORS. The powers
5 of the arbitrators are exercised by a majority [~~unless otherwise~~
6 ~~provided by the agreement to arbitrate or this chapter~~].

7 SECTION 7. Section 171.043(a), Civil Practice and Remedies
8 Code, is amended to read as follows:

9 (a) Unless otherwise provided by the agreement to
10 arbitrate, all the arbitrators shall conduct the hearing. A
11 majority of the arbitrators is required to [~~may~~] determine a
12 question and render a final award.

13 SECTION 8. Section 171.044, Civil Practice and Remedies
14 Code, is amended by amending Subsection (b) and adding Subsection
15 (d) to read as follows:

16 (b) The notice must be served not later than the fifth day
17 before the hearing either personally or by registered or certified
18 mail with return receipt requested. Notice may not be waived, and
19 the hearing may not proceed without proper [~~Appearance at the~~
20 ~~hearing waives the~~] notice.

21 (d) Notwithstanding Subsection (c), a hearing may not
22 proceed without notice or waiver of notice in accordance with this
23 section.

24 SECTION 9. Section 171.047, Civil Practice and Remedies
25 Code, is amended to read as follows:

26 Sec. 171.047. RIGHTS OF PARTY AT HEARING. Unless otherwise
27 provided by the agreement to arbitrate, a party at the hearing is

1 entitled to:

2 (1) be heard;

3 (2) present evidence material to the controversy;

4 [~~and~~]

5 (3) cross-examine any witness; and

6 (4) a transcript of the hearing.

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

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

13 (b) A party requesting the transcript is responsible for the
14 cost. A party requesting a copy of the transcript is responsible
15 for the cost of the copy.

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

19 (d) A transcript of a hearing must be prepared by a person
20 authorized by law to record testimony.

21 SECTION 11. Sections 171.049 and 171.055, Civil Practice
22 and Remedies Code, are amended to read as follows:

23 Sec. 171.049. OATH. The arbitrators, or an arbitrator at
24 the direction of the arbitrators, shall [~~may~~] administer to each
25 witness testifying before them the oath required of a witness in a
26 civil action pending in a district court.

27 Sec. 171.055. ARBITRATOR'S FEES AND EXPENSES. Unless

1 otherwise provided in the agreement to arbitrate, the arbitrators'
2 reasonable expenses and fees, with other reasonable expenses
3 incurred in conducting the arbitration, shall be paid as provided
4 in the award.

5 SECTION 12. Section 171.088(a), Civil Practice and Remedies
6 Code, is amended to read as follows:

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

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

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

12 (A) evident partiality by an arbitrator
13 appointed as a neutral arbitrator;

14 (B) corruption in an arbitrator; or

15 (C) misconduct or wilful misbehavior of an
16 arbitrator;

17 (3) the arbitrators:

18 (A) exceeded their powers;

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

21 (C) refused to hear evidence material to the
22 controversy; or

23 (D) conducted the hearing, contrary to Section
24 171.043, 171.044, 171.045, 171.046, or 171.047, in a manner that
25 substantially prejudiced the rights of a party; [~~or~~]

26 (4) there was no agreement to arbitrate, the issue was
27 not adversely determined in a proceeding under Subchapter B, and

1 the party did not participate in the arbitration hearing without
2 raising the objection; or
3 (5) the award clearly violates fundamental public
4 policy.

5 SECTION 13. Section 171.098(a), Civil Practice and Remedies
6 Code, is amended to read as follows:

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

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

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

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

14 (4) modifying or correcting an award; or

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

16 SECTION 14. The change in law made by this Act applies only
17 to arbitration commenced on or after the effective date of this Act.
18 An arbitration commenced before the effective date of this Act is
19 governed by the law applicable to arbitrations immediately before
20 the effective date of this Act, and that law is continued in effect
21 for that purpose.

22 SECTION 15. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2009.