

BILL ANALYSIS

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S.B. 1782
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Arbitration Act (Chapter 171, Civil Practice and Remedies Code) governs arbitration proceedings between parties to contracts who agree to submit disputes to the Act. In recent years, however, certain problems have arisen with respect to the use of arbitration. Additionally, the state does not collect information sufficient for certain parties to evaluate the effectiveness of arbitration services in Texas. The public policies supporting the use of arbitration include a quicker and less expensive resolution of disputes than generally available through litigation, but the lack of relative data to evaluate the process creates difficulty in ensuring the accountability of arbitration.

As proposed, S.B. 1782 provides protection for a party from being forced to arbitrate if the order violates the party's constitutional rights. This bill additionally requires arbitrators or arbitration service providers to report certain information to the Office of Court Administration of the Texas Judicial System.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Supreme Court is modified in SECTION 9 (Section 181.101 and 181.102, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(d) Prohibits an order compelling arbitration from violating a right protected by the United States Constitution or the Texas Constitution. Provides that Section 171.098(a), Civil Practice and Remedies Code, applies to an appeal on constitutional grounds from an order compelling arbitration.

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

(d) Requires an arbitrator appointed under Subsection (b) (relating to the provisions under which an arbitrator may be appointed) to satisfy certain objective qualification standards. Prohibits a court from appointing an unqualified arbitrator.

SECTION 3. Amends Section 171.044(b), Civil Practice and Remedies Code, to prohibit notice for the time and place for a hearing from being waived and to prohibit the hearing from proceeding without proper notice. Deletes existing text providing that appearance at the hearing waives the notice.

SECTION 4. Amends Section 171.047, Civil Practice and Remedies Code, to entitle a party at the hearing to a transcript of the hearing (transcript). Makes conforming changes.

SECTION 5. Amends Subchapter C, Chapter 171, Civil Practice and Remedies Code, by adding Section 171.0481, as follows:

Sec. 171.0481. TRANSCRIPT. (a) Requires that the request for a transcript to be made by a party before commencement of the hearing or the right to a transcript is waived.

(b) Provides that a party requesting the transcript and any party requesting a copy of the transcript are responsible for the cost.

(c) Authorizes an arbitrator to consider the cost of the transcript to be an expense incurred in conducting the arbitration as provided by Section 171.055 (Arbitrator's Fees and Expenses), Civil Practice and Remedies Code.

SECTION 6. Amends Section 171.088(a), Civil Practice and Remedies Code, to require the court to vacate an award, on application of a party, if the award clearly violates fundamental public policy.

SECTION 7. Amends Section 171.092, Civil Practice and Remedies Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes the court to vacate, modify, or correct an award as if the award were a judgment entered by a court sitting without a jury, notwithstanding a limitation in Section 171.087 (Confirmation of Award), 171.088 (Vacating Award), 171.090 (Type of Relief Not Factor), or 171.091 (Modifying or Correcting Award), Civil Practice and Remedies Code.

(d) Requires an appellate court reviewing a judgment entered on an award to apply the same standard of review as if the judgment were entered by a court sitting without a jury.

SECTION 8. Amends Section 171.098(a), Civil Practice and Remedies Code, by authorizing a party to appeal a judgment or decree entered under Chapter 171 (General Arbitration), Civil Practice and Remedies Code, or an order granting or denying an application to compel arbitration made under Section 171.021 (Proceeding to Compel Arbitration), Civil Practice and Remedies Code.

SECTION 9. Amends Title 7, Civil Practice and Remedies Code, by adding Chapter 181, as follows:

CHAPTER 181. ARBITRATOR REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. POLICY; FINDINGS. (a) Provides that state and federal policy favors submitting disputes to arbitration. Provides that the benefits of arbitration include quicker and less expensive resolution of disputes than is generally available by litigation.

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

Sec. 181.002. DEFINITIONS. Defines "arbitration panel," "arbitration services provider," "arbitrator," "consumer arbitration," "employment arbitration," and "office of court administration."

Sec. 181.003. APPLICABILITY. (a) Applies the requirements of this chapter to any consumer arbitration or employment arbitration conducted in this state that is subject to Chapter 171, Civil Practice and Remedies Code, or Chapter 1 (General Provisions) of the Federal Arbitration Act, except as provided by Subsection (b).

(b) Provides that this chapter does not apply to an arbitration conducted or administered by a self-regulatory organization as defined by certain federal acts or

regulations adopted under those acts, or a residential construction arbitration to which Chapter 437 (Reporting Requirements), Property Code, applies.

[Reserves Sections 181.004-181.050 for expansion.]

SUBCHAPTER B. DISCLOSURE PROCEEDINGS

Sec. 181.051. DISCLOSURE FILING. Requires the arbitrator or arbitration panel that conducts a consumer arbitration or employment arbitration in this state, or an arbitration services provider that administers said arbitration, to file an arbitration disclosure with the office of court administration (office) before the 90th day after the date the arbitration award is signed, for each arbitration.

Sec. 181.052. DISCLOSURE INFORMATION. (a) Prohibits the disclosure from revealing the name of any party to the arbitration.

(b) Sets forth certain information required to be contained in the disclosure, subject to Subsection (a).

Sec. 181.053. OPTION TO LIMIT DISCLOSURE. (a) Authorizes the parties to agree to except from disclosure a description of the arbitrator's or the arbitration panel's decision and award, as required by Section 181.052(b)(3), Civil Practice and Remedies Code, notwithstanding Section 181.052, Civil Practice and Remedies Code.

(b) Prohibits an agreement to limit disclosure (agreement) from being entered into before the 20th day after the filing and service of the demand for arbitration, or after the close of the arbitration hearing.

(c) Requires the parties to provide evidence of their agreement by signing a form adopted for that purpose by the office, under the supervision of the chief justice.

(d) Requires the arbitrator or arbitration services provider, if the parties make an agreement, to retain the original agreement in the records of the proceeding until the second anniversary of the date that the award is signed and to provide each party with a copy of the agreement. Requires the arbitrator or arbitration services provider, if the parties make an agreement, to file with the office the information not excepted by this section from disclosure in accordance with this subchapter and to certify to the office that the parties have signed and submitted an agreement.

Sec. 181.054. INTERNET SITE FOR INFORMATION. Requires the office to make the information collected under this subchapter available on its Internet website.

[Reserves Sections 181.055-181.100 for expansion.]

SUBCHAPTER C. ENFORCEMENT PROVISIONS

Sec. 181.101. LATE FILING FEE. (a) Requires the director of the office (director), under the supervision of the chief justice, to implement procedures for the collection of a fee not to exceed \$100 for the late filing of an arbitration disclosure in accordance with rules adopted by the Texas Supreme Court (supreme court) for the efficient administration of justice.

(b) Authorizes a party to an arbitration, or an attorney for the party, to report an overdue filing of the arbitration disclosure to the office.

(c) Provides that an arbitration disclosure that is filed within the period specified by Section 181.051, Civil Practice and Remedies Code, is not subject to a filing fee.

Sec. 181.102. LATE DISCLOSURE FILERS; INELIGIBILITY FOR ARBITRATION ADMINISTRATION. (a) Provides that an arbitrator, including a member of an arbitration panel, or arbitration services provider, is ineligible for court appointment to arbitrate or administer an arbitration under Section 171.041(b), Civil Practice and Remedies Code, during the period in which the arbitrator or panel of which the arbitrator is a member or arbitration services provider fails to file an overdue arbitration disclosure or owes a fee for late filing.

(b) Provides that an arbitrator who personally or as a member of an arbitration panel has failed, or an arbitration services provider that has failed, three times in the preceding 12-month period to timely file arbitration disclosures is ineligible for a court appointment to arbitrate or administer an arbitration under Section 171.041(b), Civil Practice and Remedies Code, until the first anniversary of the date the office receives the third report of an overdue filing with respect to that arbitrator or arbitration services provider.

(c) Requires the office to compile, maintain, and publish on the Internet an updated list of arbitrators and arbitration service providers that are ineligible to conduct or administer a court-ordered arbitration under Subsection (a) or (b).

(d) Requires the director, under the supervision of the chief justice, to implement a procedure by which an arbitrator or arbitration services provider can be removed from the published list, in accordance with rules adopted by the supreme court for the efficient administration of justice.

(e) Requires the office and the Texas Judicial Council to include in the annual report under Section 71.034 (Reports; Investigations), Government Code, a list of the names of all arbitrators or arbitration services providers who have been on the ineligible list during the period included in that report.

[Reserves Sections 181.103-181.150 for expansion.]

SUBCHAPTER D. IMMUNITY

Sec. 181.151. IMMUNITY FROM CIVIL LIABILITY. Provides that an arbitrator or an arbitration services provider is immune from civil liability for providing information required for compliance with this chapter unless the complaining party proves that the arbitrator or arbitration services provider recklessly or knowingly provided false information.

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

(b) Makes application of this Act prospective to January 1, 2008, except as provided by Subsection (c).

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

SECTION 11. Effective date: January 1, 2008.