

BILL ANALYSIS

Senate Research Center
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S.B. 1216
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Ordinarily, people involved in a dispute have the right to settle their dispute in court if the alleged harm is legally redressable. However, if the parties choose to do so, they may voluntarily enter into a contract that surrenders their right to appear in court and requires them to present their case to an arbitrator instead. In cases where a valid and enforceable arbitration agreement has been signed, the courts refuse to interfere, since each party has voluntarily surrendered its right to appear in court.

In order for a contract to be enforceable, the parties to it must have reached their agreement voluntarily and in the absence of fraud. Arbitration agreements are themselves contracts, so the same rules of enforceability should, in theory, apply.

Where evidence can be produced demonstrating that a party was defrauded or forced into signing an arbitration clause, the courts refuse to compel arbitration. However, due to the questionable holding of the United States Supreme Court in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-404 (1967), the foregoing is not true in cases where the arbitration clause is part of a larger contract. Under the holding of *Prima Paint*, if A holds a gun to B's head and forces him to sign a contract with 15 terms, one of which is an arbitration agreement, the case will be referred to the arbitrator specified in the contract. The courts treat the contract as valid even though it was obtained at gunpoint. Worse, the issue of the contract's validity must then be tried by the arbitrator specified by the invalid agreement, who is not likely to be impartial if B was enough of a bad actor to pull a gun on A in the first place. This is an illogical inversion of the entire theoretical underpinning of arbitration. If A did not agree to the entire contract, how can he be said to have agreed to a provision contained therein? A person who is tricked or forced into signing an arbitration agreement has not voluntarily surrendered his right to appear in court.

This bill will amend the Texas General Arbitration Act to require the issue of an arbitration agreement's validity to be tried by a court, regardless of whether the agreement is part of a larger contract or not. *Prima Paint* is federal law and, as such, cannot be overturned by the Texas Legislature. Practically, this means the bill will only affect cases that do not involve interstate commerce or workers' compensation.

As proposed, S.B. 1216 amends current law relating to determination of the validity and enforceability of a contract containing an arbitration agreement.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 171, Civil Practice and Remedies Code, by adding Section 171.027 as follows:

Sec. 171.027. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE. (a) Requires a court, if

a party opposing an application to compel arbitration or making an application to stay arbitration asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, to try the issue promptly and authorizes the court to order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) Provides that a determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2011.