



Sub. H.B. 401

123rd General Assembly
(As Passed by the General Assembly)

Reps. Salerno, Mottley, Robinson, Corbin, Cates, Buchy, Amstutz, Jones

Effective date: *

ACT SUMMARY

- Eliminates the right of a party aggrieved by the alleged failure of another to perform under an arbitration agreement in a commercial construction contract to have a jury trial of the issue of whether there is an arbitration agreement or whether there is a failure to perform under the agreement for arbitration and provides that the court must hear and determine that issue.
- Provides that only an order that *denies* (not an order that *grants*) a stay of a trial of any action pending arbitration under an arbitration agreement in a commercial construction contract is a final, appealable order.

CONTENT AND OPERATION

Enforcing arbitration agreement

Prior law

Under the continuing Arbitration Law, a party who is aggrieved by the alleged failure of another to perform under a written agreement for arbitration may petition any court of common pleas having jurisdiction of the party so failing to perform for an order directing that the arbitration proceed in the manner provided for in the agreement. Five days' notice in writing of the application must be served upon the party in default in the manner provided for the service of a summons. The court must hear the parties, and, upon being satisfied that the making of the

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

agreement for arbitration or the failure to comply with the agreement is *not* in issue, the court must make an order directing the parties to proceed to arbitration in accordance with the agreement.

Under prior law, if the making of the arbitration agreement or the failure to perform it was *in issue* in a petition as described in the preceding paragraph, the court was required to proceed summarily to the trial of the issue. The court was required to hear and determine that issue if no jury trial was demanded. On or before the return day of the notice of application, either party could demand a jury trial of the issue of the making of the arbitration agreement or the failure to perform it. If a jury trial was demanded, the court was required to make an order referring the involved issue to a jury. The jury was called and impaneled in the manner provided in civil actions. If the jury found that no agreement in writing for arbitration was made or that there was no default in proceeding under the agreement for arbitration, then the proceeding on the issue was required to be dismissed. If the jury found that an agreement for arbitration was made in writing and that there was a default in proceeding under the agreement for arbitration, the court was required to make an order summarily directing the parties to proceed with the arbitration in accordance with the agreement. (R.C. 2711.03.)

Operation of the act

The act eliminates a party's right to demand a jury trial of the issue of whether there is a written agreement for arbitration or whether there is a failure to comply with the agreement to arbitrate when the party who is aggrieved by an alleged failure to perform under a written agreement for arbitration that is included in a *commercial construction contract* (see "**Definition**," below) files a petition in a court of common pleas for an order directing that the arbitration proceed in the manner provided for in the agreement. The act provides that if a written agreement for arbitration is included in a commercial construction contract and if the making of the arbitration agreement or the failure to perform it is *in issue* in the petition, the court must proceed summarily to the trial of that issue, and the *court must hear and determine that issue*. (R.C. 2711.03(C).)

Appealability of court order pertaining to stay of trial

Continuing law

Under the continuing Arbitration Law, if any action is brought upon any issue that is referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending must order the *stay of the trial* of the action until the arbitration of the issue has been had in accordance with the agreement if all of the following apply: (a) one of the parties makes an application for stay of the trial, (b) the applicant for the stay is not in default in proceeding



with arbitration, and (c) the court is satisfied that the issue involved in the action is referable to arbitration under the agreement in writing for arbitration. An order that *grants* or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a *final order* and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, R.C. Chapter 2505. (Appeals Law). (R.C. 2711.02.)

Operation of the act

Under the act, if an action is brought upon any issue that is referable to arbitration under an agreement in writing for arbitration that is included in a *commercial construction contract* (see "**Definition**," below), only an order that *denies* (not an order that *grants*) a stay of a trial of the action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a *final order* and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, R.C. Chapter 2505. (R.C. 2711.02(D).) (See **COMMENT 2**.)

Definition

For purposes of its provisions, the act defines "commercial construction contract" as any written contract or agreement for the construction of any improvement to real property, *other than* an improvement that is used or intended to be used as a single-family, two-family, or three-family detached dwelling house and accessory structures incidental to that use (R.C. 2711.02(A)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-24-99	p. 965
Reported, H. Civil & Commercial Law	04-04-00	p. 1753
Passed House (95-0)	05-02-00	pp. 1848-1849
Reported, S. Judiciary	11-16-00	p. 2250
Passed Senate (33-0)	11-16-00	p. 2264

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