



H.B. 343

124th General Assembly
(As Introduced)

**Reps. Womer Benjamin, Willamowski, Goodman, Seitz, Hartnett, Allen,
Hagan, Distel, Lendrum, Kearns, Latta**

BILL SUMMARY

- ? Outright repeals the current Arbitration Law and enacts in its place the Uniform Arbitration Act.
- ? States that an agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.
- ? Authorizes a court of record in Ohio that has jurisdiction over the controversy and the parties to enforce an agreement to arbitrate and specifies the proper venue for bringing a petition for judicial relief.
- ? Prescribes the procedures for a court to enforce an arbitration agreement and requires the court on just terms to stay any judicial proceeding involving a claim or controversy alleged to be subject to the arbitration until a final decision is rendered in the enforcement proceedings.
- ? Authorizes a court, before an arbitrator is appointed and is authorized and able to act, to order provisional remedies to protect the effectiveness of the arbitration proceeding and authorizes an arbitrator, after the arbitrator is appointed and is authorized and able to act, to order provisional remedies to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy.
- ? Specifies that a person initiates an arbitration proceeding by filing a petition in a proper court and giving notice in a record to the other parties to the agreement to arbitrate and generally prescribes the circumstances when a person gives notice, has notice, and receives notice.

- ? Generally authorizes a court to order the consolidation of separate arbitration proceedings as to all or some of the claims if certain conditions apply.
- ? Requires that the method for appointing an arbitrator agreed to by the parties to an agreement to arbitrate must be followed unless the method fails and requires the court to appoint an arbitrator if the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed.
- ? Requires an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, to disclose to all parties to the agreement to arbitrate and to other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding.
- ? Requires the exercise by a majority of the arbitrators of the powers given to a single arbitrator and requires all arbitrators serving on a claim or controversy to attend and conduct the arbitration hearing.
- ? Grants an arbitrator or arbitration organization acting in the capacity of an arbitrator immunity from civil liability and generally prevents an arbitrator or representative of an arbitration organization from testifying or producing records during the arbitration proceeding, to the same extent as a judge of an Ohio court acting in a judicial capacity.
- ? Authorizes an arbitrator to conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding, specifies the procedures and requirements for notice and hearing, and authorizes the arbitrator to issue subpoenas, permit depositions and discovery, and issue protective orders among other powers.
- ? Permits a party to an arbitration proceeding in whose favor a preaward ruling is made to request the arbitrator to incorporate the ruling into an award and specifies the requirements for the making of an award by an arbitrator or arbitration organization.
- ? Authorizes an arbitrator to modify or correct an award upon certain grounds, to award punitive damages, other exemplary relief, reasonable attorney's fees, and reasonable arbitration expenses in certain

circumstances, and to order any remedies that the arbitrator considers just and appropriate.

- ? Requires the court, upon a party's motion, to issue an order confirming an arbitrator's award unless the award is modified, corrected, or vacated and specifies the grounds and procedures for the modification, correction, or vacating of an award.
- ? Requires the court, upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, to enter a judgment in conformity with the order and authorizes the court to allow reasonable costs, attorney's fees, and litigation expenses.
- ? Authorizes an appeal to be taken from a final judgment or from certain orders pertaining to the arbitration or the confirming, denying confirmation, modifying, correcting, or vacating an award.
- ? States that its provisions governing the legal effect, validity, or enforceability of electronic records or signatures and of contracts formed or performed with the use of electronic records or signatures conform to the requirements of the Electronic Signatures in Global and National Commerce Act.
- ? Generally authorizes a party to an agreement to arbitrate or to an arbitration proceeding to waive or vary the effect of the bill's requirements to the extent permitted by law and specifies the provisions, requirements, and rights that cannot be waived or restricted or the effect of which cannot be varied.
- ? Retains existing law's exclusion of controversies involving title to or the possession of real estate from arbitration and the exceptions to the exclusion.
- ? States that the bill governs agreements to arbitrate made prior to the bill's effective date if all of the parties to the agreement or to the arbitration proceeding agree, in a record, to opt-in to the bill's requirements.

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CONTENT AND OPERATION

Validity of agreement to arbitrate

Existing law¹

Current law states that, except as described below in "Exclusion and exceptions to exclusion," either of the following is *valid, irrevocable, and enforceable*, except upon grounds that exist at law or in equity for the revocation of any contract: (a) a provision in any written contract to settle by arbitration a controversy that subsequently arises out of the contract, or out of the refusal to perform the whole or any part of the contract, or (b) any agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, or arising after the agreement to submit, from a relationship then existing between them or that they simultaneously create (R.C. 2711.01(A)).

Operation of the bill

The bill states that an agreement contained in a *record* (see "Definitions," below) to submit to arbitration any existing or subsequent controversy arising

¹ The discussion of the existing Arbitration Law in this analysis refers to Revised Code sections 2711.01 to 2711.16 that are outright repealed by the bill and are not found in the bill.

between the parties to the agreement is *valid, enforceable, and irrevocable* except upon a ground that exists at law or in equity for the revocation of a contract. If a controversy exists regarding whether an agreement to arbitrate exists or whether a controversy is subject to an agreement to arbitrate, a *court must* make a determination on the question. If a controversy exists regarding whether a condition precedent to arbitration has been fulfilled or whether a contract containing a valid agreement to arbitrate is enforceable, an *arbitrator* (see "*Definitions*," below) *may* make a determination on the question. If a party to a judicial proceeding involving a controversy challenges the existence of, or claims that the controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders. (R.C. 2711.06.)

Jurisdiction to enforce agreement to arbitrate; venue

Existing law

Jurisdiction of judicial proceedings provided for by the current Arbitration Law is generally in the courts of common pleas, and actions and proceedings brought under that Law must be brought either (a) in the court of common pleas of the county designated by the parties to the arbitration agreement, which designation is an irrevocable consent of the parties to the agreement to that jurisdiction or (b) whether or not a designation has been made, in the court of common pleas of any county in which a party in interest resides or may be summoned, or if any party in interest is a corporation, in any county in which the corporation is situated, has or had its principal office or place of business, or has an office or agent, or in any county in which a summons may be served upon the president, chairman or president of the board of directors or trustees, or other chief officer. (R.C. 2711.16.)

Operation of the bill

The bill authorizes a *court* (see "*Definitions*," below) of Ohio having jurisdiction over the controversy and the parties to enforce an agreement to arbitrate. An agreement to arbitrate that provides for the arbitration to occur in Ohio confers exclusive jurisdiction on the court to enter judgment on an award under the bill. (R.C. 2711.25.)

A motion described below in "*Petition for judicial relief*" must be made in the court in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court in which it was held. If the agreement to arbitrate does *not* specify the court in which the arbitration hearing is to be held, the motion may be made in any court of proper jurisdiction in any county in which a party to the agreement resides or has a place of business or, if

no party has a residence or place of business in Ohio, in the court of proper jurisdiction in Franklin County. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs. (R.C. 2711.26.)

Petition for judicial relief

Any *application* to the court of common pleas under the current Arbitration Law must be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise provided in the Arbitration Law (R.C. 2711.01).

Under the bill, except as otherwise provided in the appeal provisions, a *petition for judicial relief* must be made to the court and heard in the manner provided for making and hearing motions. Unless a civil action involving the agreement to arbitrate is pending, notice of the filing of a petition for relief with a court must be served upon the parties in the manner provided by law for the service of a summons in a civil action. If a civil action involving the agreement to arbitrate is pending, the notice of the filing of the petition must be served upon the parties in the manner provided for serving motions in pending cases. (R.C. 2711.05.)

Enforcing arbitration agreement

Existing law

The party 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 written agreement. Five days' notice in writing of that petition must be served upon the party in default. Service of the notice must be made in the manner provided for the service of a summons. The court must hear the parties. Upon being satisfied that the making of the 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. (R.C. 2711.03(A).)

If the making of the arbitration agreement or the failure to perform it is *in issue* in a petition filed as described in the preceding paragraph, the court must proceed summarily to the trial of that issue. If no jury trial is demanded, the court must hear and determine that issue. Except as described in the following paragraph, if the issue of the making of the arbitration agreement or the failure to perform it is raised, either party, on or before the return day of the notice of the petition, may demand a jury trial of that issue. Upon the party's demand for a jury trial, the court must make an order referring the issue to a jury called and

impaneled in the manner provided in civil actions. If the jury finds that *no agreement* in writing for arbitration was made or that there is *no default* in proceeding under the agreement, the proceeding must be *dismissed*. If the jury finds that an agreement for arbitration was made in writing and that there *is a default* in proceeding under the agreement, the court must make an order summarily directing the parties to proceed with the arbitration in accordance with that agreement. (R.C. 2711.03(B).)

If a written agreement for arbitration is included in a *commercial construction contract* (see **COMMENT 1**) and the making of the arbitration agreement or the failure to perform it is *in issue* in a petition filed as described above, the court must proceed summarily to the trial of that issue, and the *court* (instead of a jury) must hear and determine that issue (R.C. 2711.03(C)).

Operation of the bill

Under the bill, when a *person* (see "**Definitions**," below) has filed a petition with a court that shows an agreement to arbitrate and alleges another person's refusal to arbitrate pursuant to the agreement, both of the following apply (R.C. 2711.07(A)):

(1) If the refusing party does not appear or does not oppose the petition, the court must order the parties to arbitrate.

(2) If the refusing party opposes the petition, the court must proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

If a person files a petition with a court alleging that an arbitration proceeding has been initiated or threatened but that there is *no agreement to arbitrate*, the court must proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it must order the parties to arbitrate. If the court finds that there is no enforceable agreement, it cannot order the parties to arbitrate as described above. A court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established. (R.C. 2711.07(B) and (C).)

If a proceeding involving a claim or controversy that is referable to arbitration under an alleged agreement to arbitrate is *pending in court*, a motion or petition as described above must be made in *that court*. If a proceeding involving a claim or controversy that is referable to arbitration under an alleged agreement to arbitrate is *not pending in court*, a motion must be made in *any court* as described above in "**Jurisdiction to enforce agreement to arbitrate; venue**." (R.C. 2711.07(D).)

The bill does not have provisions as in existing law pertaining to a *jury* hearing and making a determination of an issue of the making of an arbitration agreement or a failure to perform it, and distinguishing the hearing of that issue and the making of that determination by a *court* if a written agreement to arbitrate is included in a commercial construction contract.

Stay of judicial proceedings

Existing law

If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, on application of one of the parties, must stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration. Except as described in the following paragraph, 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, the Appeals Law. If an action is brought as described above upon any issue referable to arbitration under an agreement in writing for arbitration that is included in a *commercial construction contract* (see **COMMENT 1**), an order that *denies* 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, the Appeals Law. (R.C. 2711.02.)

Operation of the bill

Under the bill, if a party makes a petition or motion to the court to order arbitration, the court on just terms *must* stay any judicial proceeding that involves a claim or controversy alleged to be subject to the arbitration until the court renders a final decision as described above in "**Enforcing arbitration agreement.**" If a court orders arbitration, the court, on just terms, *must* stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim. (R.C. 2711.07(E) and (F).)

The bill does not provide for the general *denial* of a stay of the trial pending arbitration as in existing law.

Provisional remedies

Under the bill, *before an arbitrator is appointed and is authorized and able to act*, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action (R.C. 2711.08(A)).

After an arbitrator is appointed and is authorized and able to act, both of the following apply (R.C. 2711.08(B)):

(1) The arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) A party to an arbitration proceeding may move the court for a provisional remedy *only* if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

A party does not waive a right to arbitration by making any of the motions described above (R.C. 2711.08(C)).

Initiation of arbitration

A person initiates an arbitration proceeding under the bill by filing a *petition* in a proper court and giving *notice* (see "Notice," below) in a record to the other parties to the agreement to arbitrate in the manner agreed between the parties. In the absence of an agreement, a person initiates an arbitration proceeding by filing a petition in a proper court and by giving notice to the other parties by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. (R.C. 2711.09(A).)

Unless a person objects, not later than the beginning of the arbitration hearing, for lack or insufficiency of notice of the hearing as described below in "Hearing and notice" under "Arbitration procedure," the person by appearing at the hearing waives any objection to lack of notice or insufficiency of notice (R.C. 2711.09(B)).

Notice

Except as otherwise provided in the bill, a *person gives notice* to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires *knowledge* (see "**Definitions**," below) of the notice. A *person has notice* if the person has knowledge of the notice or has received notice. A *person receives notice* when it comes to the person's attention or the notice is delivered at the person's place of residence, person's place of business, or another location held out by the person as a place of delivery of communications. (R.C. 2711.02.)

Consolidation of separate arbitration proceedings

Under the bill, except if the agreement to arbitrate prohibits consolidation, upon the motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if all of the following apply (R.C. 2711.10(A)):

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person.

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions.

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings.

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court *may order* consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings. The court *may not order* consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation. (R.C. 2711.10(B) and (C).)

Appointment of arbitrator

Existing law

If, in the arbitration agreement, provision is made for a method of naming or appointing an arbitrator or an umpire, that method must be followed. If no method is provided in the arbitration agreement, if a method is provided and any

party to the agreement fails to avail of that method, or if for any other reason there is a lapse in the naming of an arbitrator or an umpire or in filling a vacancy, upon the application of either party to the controversy the court of common pleas in the county in which the arbitration is to be held, within 15 days after the application is made, must appoint an arbitrator or umpire, who must act under the agreement with the same effect as if the arbitrator or umpire had been specifically named in the arbitration agreement. Unless otherwise provided in the agreement, the arbitration must be by a single arbitrator. (R.C. 2711.04.)

Operation of the bill

Under the bill, if the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an appointed arbitrator fails or is unable to act and a successor has not been appointed, the court, upon the motion of a party to the arbitration proceeding, must appoint the arbitrator. An arbitrator appointed by a court has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party cannot serve as an arbitrator under an agreement requiring the arbitrator to be neutral. (R.C. 2711.11.)

Disclosure by arbitrator

The bill requires that before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, must disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including, but not limited to, either of the following (R.C. 2711.12(A)):

(1) A financial or personal interest in the outcome of the arbitration proceeding;

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any

facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator (R.C. 2711.12(B)).

Ground for vacating award

If an arbitrator discloses a fact required to be disclosed as described above and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under paragraph (2) in "**Grounds for vacating award**" under "**Vacating of award**," below, for vacating an award made by the arbitrator. If the arbitrator did not disclose a fact required to be disclosed as described above, upon timely objection by a party, the court under that paragraph (2) may vacate an award made by the arbitrator. (R.C. 2711.12(C) and (D).)

An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under paragraph (2) referred to in the preceding paragraph. If the parties to an arbitration proceeding agree to the procedures of an *arbitration organization* (see "**Definitions**," below) or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under paragraph (2) referred to in the preceding paragraph. (R.C. 2711.12(E) and (F).)

Powers of majority arbitrators

Under existing law, when more than one arbitrator is agreed to, all the arbitrators must sit at the hearing of the controversy unless, by consent in writing, all parties agree to proceed with the hearing with a less number (R.C. 2711.06).

Under the bill, if there is more than one arbitrator hearing a claim or controversy, the powers given a single arbitrator must be exercised by a majority of the arbitrators. *All* arbitrators serving on a claim or controversy must attend and conduct the hearing as described below in "**Hearing and notice**" under "**Arbitration procedure**." (R.C. 2711.13.)

Immunity of arbitrator; competency to testify

The bill grants an arbitrator or an arbitration organization acting in the capacity of an arbitrator immunity from civil liability to the same extent as a judge of a court of Ohio acting in a judicial capacity. This immunity supplements any other immunity available to an arbitrator or an arbitration organization under Ohio law. The failure of an arbitrator to make a disclosure required as described above

in "Disclosure by arbitrator" does not cause any loss of immunity under the bill. (R.C. 2711.14(A).)

In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of Ohio acting in a judicial capacity. This incapacity to testify or to produce records does not apply to either of the following (R.C. 2711.14(B)):

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding;

(2) To a hearing on a motion to vacate an award under paragraph (1) or (2) in "Grounds for vacating award" under "Vacating of award," below, if the movant provides prima-facie evidence that grounds for vacating the award exist.

Attorney's fees and litigation expenses

If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of the above prohibition, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court must award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation (R.C. 2711.14(C)).

Arbitration procedure

The bill authorizes an arbitrator to conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, to determine the admissibility, relevance, materiality, and weight of any evidence.

An arbitrator may decide a request for summary disposition of a claim or particular issue if all interested parties agree or upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

Hearing and notice

If an arbitrator orders a hearing, the arbitrator must set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to the lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision. (R.C. 2711.15(C).)

At a hearing described above, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing. A party to an arbitration proceeding may be represented by an attorney. (R.C. 2711.15(D) and (F).)

Replacement arbitrator

If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with the bill as described above in "**Appointment of arbitrator**," to continue the proceeding and to resolve the controversy (R.C. 2711.15(E)).

Subpoena; deposition; discovery

Existing law

The arbitrators selected either as prescribed in the existing Arbitration Law, or otherwise, or a majority of them, may (a) administer oaths or affirmations to witnesses, (b) fix the time and place of their hearings, (c) adjourn their meetings from day to day or for a longer time, and also from place to place, and (d) subpoena in writing any person to attend before any of them as a witness and in a proper case to bring with the person any book, record, document, or paper that is deemed material as evidence in the case. The fees for attendance are the same as the fees of witnesses in the court of common pleas. The subpoena must issue in the name of and be signed by the arbitrators, or a majority of them. The subpoena must be directed to the person and served in the same manner as subpoenas to appear and testify before that court. If any person so subpoenaed refuses or neglects to obey the subpoena, upon petition, the court of common pleas in the

county in which the arbitrators, or a majority of them, are sitting may compel the attendance of the person before the arbitrators, or punish the person for contempt in the same manner provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in that court. (R.C. 2711.06.)

Upon petition approved by the arbitrators, or by a majority of them, the court of common pleas may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in that court (R.C. 2711.07).

Operation of the bill

Subpoena. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or upon motion of the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. (R.C. 2711.16(A).)

Deposition. Upon the request of a party to or upon the request of a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator must determine the conditions under which the deposition is taken. (R.C. 2711.16(B).)

Discovery. An arbitrator may permit any discovery that the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective. If an arbitrator permits discovery, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in Ohio. (R.C. 2711.16(C) and (D).)

Protective order. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in Ohio (R.C. 2711.16(E)).

Fees and enforcement. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery

proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in Ohio.

The court may enforce a subpoena or discovery-related order for the attendance of a witness within Ohio and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in Ohio and, upon motion to the court by a party to the arbitration proceeding or upon motion of the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in Ohio. (R.C. 2711.16(F) and (G).)

Judicial enforcement of preaward ruling of arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the bill authorizes the party to request the arbitrator to incorporate the ruling into an award as described below in "**Award by arbitrator**." A prevailing party may make a motion to the court for an expedited order to confirm the award as described below in "**Confirmation of award**," and the court must summarily decide the motion. The court must issue an order to confirm the award unless the court vacates, modifies, or corrects the award as described below in "**Vacating of award**" or "**Modification or correction of award**." (R.C. 2711.17.)

Award by arbitrator

Existing law

The award made in an arbitration proceeding under the current Arbitration Law must be in writing and must be signed by a majority of the arbitrators. A true copy of the award must be delivered without delay to each of the parties in interest. The parties to the arbitration agreement may designate in the agreement the county in which the arbitration must be held and the award made. (R.C. 2711.08.)

Operation of the bill

The bill requires an arbitrator to make a record of an award. Any arbitrator who concurs with the award must sign or otherwise authenticate the record. The arbitrator or the arbitration organization must give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

An arbitrator or arbitration organization must make an award within the time specified by the agreement to arbitrate or, if not specified in that agreement,

within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time for making the award and may do so within or after the time specified or ordered for making the award. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award. (R.C. 2711.18.)

Modification of award by arbitrator

The bill provides that upon motion to an arbitrator by a party to an arbitration proceeding, the *arbitrator* may modify or correct an award in any of the following manners (R.C. 2711.19(A)):

- (1) Upon a ground described in paragraph (1) or (3) below in "**Operation of the bill**" under "**Modification or correction of award**";
- (2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding;
- (3) To clarify the award.

A movant must make a motion as described above and must give notice of the motion to all parties to the arbitration proceeding within 20 days after the movant receives notice of the award. A party to the arbitration proceeding must give notice of any objection to a motion within ten days after receipt of the notice. (R.C. 2711.19(B) and (C).)

If a motion to the court is pending as described below in "**Confirmation of award**," "**Vacating of award**," or "**Modification or correction of award**," the court may submit the claim to the arbitrator to consider whether to modify or correct the award in any of the manners as described above in clauses (1), (2), and (3). An award that is modified or corrected as described above is subject to the first paragraph above in "**Award by arbitrator**" regarding a record of the award, authentication of the record, and notice of the award, and to the provisions described below in "**Confirmation of award**," "**Vacating of award**," or "**Modification or correction of award**." (R.C. 2711.19(D) and (E).)

Remedies; fees and expenses of arbitration proceeding

The bill authorizes an arbitrator to award punitive damages or other exemplary relief if the award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if an award

of that nature is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

As to all remedies other than those authorized as described in the preceding paragraph, an arbitrator may order any remedies that the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that any remedy could not or would not be granted by the court is not a ground for refusing to confirm an award as described below in "Confirmation of award" or for vacating an award as described below in "Vacating of award."

The arbitrator must specify in an award the amount of and manner of payment of the arbitrator's expenses and fees and of other expenses, and the parties must pay those expenses and fees as provided in the award. If an arbitrator awards punitive damages or other exemplary relief as described above, the arbitrator must specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief. (R.C. 2711.20.)

Confirmation of award

Under the current Arbitration Law, at any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. The court must grant that type of order and enter judgment on the order, unless the award is vacated, modified, or corrected as prescribed in that Law. Notice in writing of the application must be served upon the adverse party or the party's attorney five days before the hearing on the application. (R.C. 2711.09.)

Under the bill, after a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award. The court, upon receipt of the motion, must issue a confirming order unless the award is modified or corrected as described above in "Modification of award by arbitrator" or below in "Modification or correction of award," or is vacated as described below in "Vacating of award." (R.C. 2711.21.)

Vacating of award

Existing law

In any of the following cases under the current Arbitration Law, the court of common pleas must make an order vacating the award upon the application of any party to the arbitration if (R.C. 2711.10):

- (1) The award was procured by corruption, fraud, or undue means.

(2) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(3) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

(4) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may direct a rehearing by the arbitrators.

Filing and notice of motion. After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award. Notice of the motion must be served upon the adverse party or the party's attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. (R.C. 2711.13.)

Operation of the bill

Grounds for vacating award. Upon a motion to the court by a party to an arbitration proceeding, the court must vacate an award made in the arbitration proceeding if any of the following apply (R.C. 2711.22(A)):

(1) The award was procured by corruption, fraud, or *other* undue means (similar to existing law).

(2) There was evident partiality by an arbitrator appointed as a neutral arbitrator, corruption by an arbitrator, or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to the procedures described above in "**Arbitration procedure**," so as to prejudice substantially the rights of a party to the arbitration proceeding.

(4) An arbitrator exceeded the arbitrator's powers (existing law).

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection as described above in "Arbitration procedure" not later than the beginning of the arbitration hearing.

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required and described above in "Initiation of arbitration," so as to prejudice substantially the rights of a party to the arbitration proceeding.

Filing of motion. A party must file a motion to vacate the award within 90 days after the movant receives notice of the award as described above in "Award by arbitrator" or within 90 days after the movant receives notice of a modified or corrected award as described above in "Modification of award by arbitrator." If the movant alleges that the award was procured by corruption, fraud, or other undue means, the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant. (R.C. 2711.22(B).)

Rehearing. If the court vacates an award on a ground other than that set forth as described above in paragraph (5), it may order a rehearing. If the award is vacated on a ground as described above in paragraph (1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground as described above in paragraph (3), (4), or (6), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time for an award as described above in "Award by arbitrator."

If the court denies a motion to vacate an award, it must confirm the award unless a motion to modify or correct the award is pending. (R.C. 2711.22(C) and (D).)

Modification or correction of award

Existing law

In any of the following cases under the current Arbitration Law, the court of common pleas in the county in which an award was made in an arbitration proceeding must make an order modifying or correcting the award upon the application of any party to the arbitration if (R.C. 2711.11):

(1) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(2) The arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted.

(3) The award is imperfect in matter of form not affecting the merits of the controversy.

The order must modify and correct the award, so as to effect its intent and promote justice between the parties.

The procedure for the filing and notice of the motion to modify or correct an award is as described above in "Vacating of award" under "Existing law," "Filing and notice of motion."

Operation of the bill

Under the bill, upon motion made within 90 days after the movant receives notice of the award as described above in "Award by arbitrator" or within 90 days after the movant receives notice of a modified or corrected award as described above in "Modification of award by arbitrator," the court must modify or correct the award if any of the following apply (R.C. 2711.23):

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award.

(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision upon the claims submitted.

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

If a motion made as described above is granted, the court must modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court must confirm the award. A movant may join a motion to modify or correct an award with a motion to vacate the award. (R.C. 2711.23(B) and (C).)

Judgment on award; attorney's fees and litigation expenses

Existing law

Upon the granting of an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding, the court must enter judgment in conformity with the order (R.C. 2711.12).

Any party to a proceeding for an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding must, at the time the application is filed with the clerk of the court of common pleas, also file the following papers with the clerk (R.C. 2711.14):

(1) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time within which to make the award;

(2) The award;

(3) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment entered in that type of proceeding must be docketed as if rendered in an action. The judgment so entered has in all respects the same effect as, and be subject to all laws relating to, a judgment in an action. That judgment may be enforced as if rendered in an action in the court in which it is entered. (R.C. 2711.14.)

Operation of the bill

Under the bill, upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court must enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action. (R.C. 2711.24(A).)

A court may allow reasonable costs of the motion and subsequent judicial proceedings. On application of a prevailing party to a contested judicial proceeding as described above in "**Confirmation of award**," "**Vacating of award**," or "**Modification or correction of award**," the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award. (R.C. 2711.24(B) and (C).)

Appeal

Under existing law, an appeal may be taken from an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding or from judgment entered upon an award (R.C. 2711.15).

The bill provides that an appeal may be taken from any of the following (R.C. 2711.27(A)):

- (1) An order denying a motion to compel arbitration;
- (2) An order granting a motion to stay arbitration;
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing;
- (6) A final judgment entered pursuant to the bill.

An appeal must be taken as from an order or a judgment in a civil action (R.C. 2711.27(B)).

Relationship to Electronic Signatures in Global and National Commerce Act

The bill provides that its provisions governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of electronic records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (R.C. 2711.28).

Waiver; nonwaivable provisions

The bill provides that except as otherwise described below, a party to an agreement to arbitrate or to an arbitration proceeding may waive or vary the effect of the requirements of the bill to the extent permitted by law (R.C. 2711.04(A)).

Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not do any of the following (R.C. 2711.04(B)):

- (1) Waive or agree to vary the effect of the requirements of (a) the filing and hearing of a petition for judicial relief in the manner provided for making and hearing motions (see first paragraph in "**Petition for judicial relief**," above), (b) the validity, enforceability, and irrevocability generally of an agreement to arbitrate (see first paragraph in "**Validity of agreement to arbitrate**," above), (c) the grant of provisional remedies (see "**Provisional remedies**," above), (d) the issuance and service of subpoenas and the taking of depositions (see "**Subpoena; deposition; discovery**," above), (e) the enforcement of an agreement to arbitrate by a court having jurisdiction over the controversy (see "**Jurisdiction to enforce agreement to arbitrate**," above), or (f) the provisions relating to appeals (see "**Appeal**," above);

(2) Restrict or agree to restrict the right to notice of the initiation of an arbitration proceeding as described above in "Initiation of arbitration";

(3) Restrict or agree to restrict the right to the disclosure of facts by an arbitrator as described above in "Disclosure by arbitrator";

(4) Except as described in the following paragraph, waive the right as described above in "Arbitration procedure" of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under the bill.

An employer and a labor organization may waive the right to representation by an attorney in a labor arbitration (R.C. 2711.04(C)).

A party to an agreement to arbitrate or to an arbitration proceeding *may not waive or vary the effect* of (a) the requirements as described above in this part, (b) the requirements pertaining to the applicability of the bill to agreements to arbitrate that become effective on or after the bill's effective date (see "Applicability to agreements to arbitrate," below, and COMMENT 2), (c) the provisions described above in "Enforcing arbitration agreement," "Stay of judicial proceeding," "Immunity of arbitrator; competency to testify," or "Judicial enforcement of preaward ruling by arbitrator," (d) the requirements of notice of any objection to a motion to modify or correct an award or the submission of the claim by the court to an arbitrator to consider whether to modify or correct an award if a motion is pending to confirm, vacate, or modify or correct an award (see "Modification of award by arbitrator," above), (e) the provisions described above in "Confirmation of award," "Vacating of award," or "Modification or correction of award," (f) the requirements for a judgment in conformity with a court order confirming, vacating without directing a rehearing, modifying, or correcting an award or the allowance of reasonable costs (see "Judgment on award; attorney's fees and litigation expenses," above), or (g) the provisions described above in "Relationship to Electronic Signatures in Global and National Commerce Act."

Exclusion and exceptions to exclusion

Existing law

The current Arbitration Law does *not* apply to controversies involving the title to or the possession of real estate, with the following exceptions (R.C. 2711.01(B)(1)):

(1) Controversies involving the amount of increased or decreased valuation of the property at the termination of certain periods, as provided in a lease;

(2) Controversies involving the amount of rentals due under any lease;

(3) Controversies involving the determination of the value of improvements at the termination of any lease;

(4) Controversies involving the appraisal of property values in connection with making or renewing any lease;

(5) Controversies involving the boundaries of real estate.

The existing Arbitration Law does not apply to controversies involving international commercial arbitration or conciliation that are subject to R.C. Chapter 2712. (R.C. 2711.01(B)(2)).

Operation of the bill

The bill provides that its provisions do *not* apply to controversies involving the title to or the possession of real estate (existing law), with the same exceptions as described above in "**Existing law**" (R.C. 2711.01(B)).

Except as otherwise provided in R.C. Chapter 2712. (added by the bill), the bill's provisions do not apply to controversies involving international commercial arbitration or conciliation that are subject to R.C. Chapter 2712. (R.C. 2711.01(C)).

Applicability to agreements to arbitrate

The bill governs an agreement to arbitrate that becomes effective on or after the effective date of the section. The bill governs an agreement to arbitrate made prior to the effective date of the section if all of the parties to either the agreement to arbitrate or to the arbitration proceeding agree, in a record, to opt-in to the requirements of the bill. (R.C. 2711.03.)

Definitions

As used in the bill (R.C. 2711.01(A)):

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of record in Ohio.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, or association; public corporation; any department, commission, board, publicly supported college or university, division, institution, bureau, or other instrumentality of the state; any county, township, municipal corporation, school district, or other political subdivision of the state; or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Miscellaneous

The bill makes conforming changes in existing law relating to arbitration in county courts; arbitration of medical, dental, optometric, or chiropractic claims; arbitration agreements for controversies involving hospital or medical care, diagnosis, or treatment; and arbitration of controversies arising out of construction contracts. (R.C. 1907.41, 2711.31, 2711.32, 2711.33, 2711.34, and 5525.23.)

COMMENT

1. Current law 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)).

2. The bill's reference to "division (A) or (C) of section 2711.03" is incorrect since that section has no division (C).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-21-01	p. 819

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