

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 693	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Civil Justice Subcommittee; Moraitis	118 Y's	0 N's
COMPANION BILLS:	(CS/SB 530)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 693 passed the House on May 1, 2013, as CS/SB 530. The bill adopts the revised Uniform Arbitration Act.

The Florida Arbitration Code, based on a 1955 model act, was passed in 1957 and revised in 1967, and has since remained mostly unchanged. This bill creates the Revised Florida Arbitration Act based on the 2000 model act. The bill includes provisions that were not included in the original act, such as the ability for arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, conflict disclosure requirements, providing for immunity of arbitrators, and other substantive changes to the law. The bill provides a detailed framework for arbitration conducted under Florida law.

This bill may have an indeterminate fiscal impact on the state courts. This bill does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on June 28, 2013, ch. 2013-232, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Arbitration is a form of alternative dispute resolution, where an arbitrator, or a panel of arbitrators, hears a case instead of a court.¹ Generally, the agreement provides for terms of the arbitration, but the Arbitration Code provides some default rules where the agreement is silent.² An arbitration clause is often included in contracts, and it is a well-established principle that arbitration is generally favored by the courts where agreed to by the parties.³ It is the public policy of both the federal⁴ and state⁵ governments to favor arbitration.

Current Situation

Florida's current arbitration code⁶ is based on the 1955 Uniform Arbitration Act (UAA). This bare-bones act remains largely unchanged since Florida adopted the UAA in 1957⁷ and modified it in 1967⁸, even as the use of binding arbitration has become more widespread.

Effect of Proposed Changes

This bill largely adopts the provisions of the 2000 revision of the UAA, as approved by the National Conference of Commissioners on Uniform State Laws. The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is generally provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Delivery to the person's residence or place of business, or another location held out by the person as a place of delivery is also sufficient to provide notice.

Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised code. The revised code applies prospectively for agreements to arbitrate. It also applies retrospectively if all parties agree to apply the revised act. On July 1, 2016, the revised code will apply to all arbitration agreements.

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., providing that a party may waive procedural requirements of the revised code except that a party may not waive certain relief or remedies, jurisdiction, the right to appeal, notice, right to disclosure, or the right to an attorney, before a controversy arises. A party may not waive other procedural requirements that would fundamentally undermine the arbitration agreement at any time.

¹ Black's Law Dictionary, 6th Ed., defines "arbitration" as "[a] process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard."

² For instance, if the agreement does not provide a method for picking the arbitrator(s), the court may appoint one or more arbitrators, in accordance with s. 682.04, F.S.

³ *Roger E. Freilich, D.M.D., P.A. v. Shochet*, 96 So.3d 1135 (Fla. 4th DCA 2012), citing *Roe v. Amica Mut. Ins. Co.*, 533 So.2d 279, 281 (Fla. 1988).

⁴ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).

⁵ See *Jackson v. Shakespeare Foundation, Inc.*, 2013 WL 362786 (Fla. 2013).

⁶ Chapter 682, F.S.

⁷ Chapter 57-402, L.O.F.

⁸ Chapter 67-254, L.O.F.

Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration continues during a court challenge of this nature unless the court orders otherwise.

Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate, however the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court with jurisdiction, however if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court 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. After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely matter or provide an adequate remedy. If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator must state in the award the factual findings and legal basis for the award. A party may then petition to confirm or vacate the provisional remedy.

Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if there were separate arbitration proceedings; and
- 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 consolidate some claims while allowing other claims to be resolved separately, however the court may not order consolidation if the agreement to arbitrate prohibits consolidation. The bill clarifies that this section of the bill is not intended to affect commencing, maintaining, or certifying a claim as a class action.

Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method, or the agreed upon method fails, or one or more parties failed to respond to the demand for arbitration, or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

Disclosure by Arbitrator

The bill creates s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. A neutral arbitrator is presumed to act with evident partiality if he or she does not disclose a known, direct, and material interest in the arbitration proceeding. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator, powers of the arbitrator must be exercised by a majority of the arbitrators.

Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees if the court decides that the arbitrator has civil liability.

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary judgment if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least 5 days notice prior to the beginning of the hearing. The arbitrator then has control of the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena laws apply to arbitration proceedings, and out-of-state subpoenas are treated like they would be in a civil action.

Judicial Enforcement of Preaward Ruling by an Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must summarily decide the motion and issue an order, however, a party must petition the court to confirm or vacate a provisional remedy.

Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties of the arbitration.

Change of Award by Arbitrators

The bill amends s. 682.10, F.S., to provide conditions for the modification or correction of an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, resulted in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. A motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

Remedies, Fees and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may motion the court to confirm the award and provide a confirming order.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- The award was procured by corruption, fraud, or other undue means;
- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;
- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the code so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded the arbitrator's powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party should have known of such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- There is an evident miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court will modify and correct the award. If not, the court will confirm the award.

Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this code must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in the court in the county in which the arbitration was conducted. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse party has a residence or place of business in Florida, the petition may be filed in any Florida county.

Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying a motion to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised code conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15. U.S.C. s. 7002.

Effective Date and Applicability

The bill provides an effective date of July 1, 2013. The revised code does not affect an action or proceeding commenced or right accrued before the revised code takes effect.

Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised code does not apply to any dispute involving child custody, visitation, or child support.

Other

The bill amends ss. 440.1926, 489.1402, and 731.401, F.S., to provide updated cross-references.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments section.

2. Expenditures:

The Office of State Courts Administrator has stated this bill may result in additional judicial time being devoted to matters relating to arbitration proceedings. However, the increase in the use of more streamlined arbitration proceedings should result in fewer cases going to trial.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator expects a potential reduction in revenue if the bill results in fewer civil filings.¹⁰ This could impact any trust fund that receives funds from the revenue generated from those filings; possible trust funds impacted are the Clerks of Court Trust Fund, the State Court Revenues Trust Fund, and the Court Education Trust Fund. However, the Office of State Courts Administrator cannot accurately determine the potential revenues impacted as a result of the bill due to the unavailability of data needed to establish the potential decrease resulting from more cases going through arbitration causing fewer cases to go to trial.¹¹

⁹ *Office of State Courts Administrator 2013 Judicial Impact Statement*, SB530, revised April 29, 2013, (on file with Civil Justice Subcommittee).

¹⁰ *Id.*

¹¹ *Id.*