

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7161 PCB CJS 14-06 Arbitration

SPONSOR(S): Civil Justice Subcommittee; Passidomo

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	11 Y, 0 N, As CS	Cary	Bond
1) Judiciary Committee	15 Y, 0 N	Cary	Havlicak

SUMMARY ANALYSIS

In 2013, the Legislature passed the Revised Florida Arbitration Code (Code). Parties may generally adopt procedures in an arbitration agreement, however, certain provisions of the Code may not be waived. The provisions that may not be waived are generally procedural requirements that are fundamental to the fairness of arbitration. A provision that may not be waived in the current statute refers to the “remedies provided under s. 682.12,” F.S. This appears to be a scrivener’s error, as remedies are in s. 682.11, F.S., while 682.12, F.S., relates to the right to confirm an award. This bill amends s. 682.014(3)(f), F.S., to correct the scrivener’s error by replacing “remedies” with the “right to confirmation of an award.” The bill applies retroactively to the effective date of the Revised Florida Arbitration Code, July 1, 2013.

This bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In 2013, the Legislature passed, and the Governor signed, the Revised Florida Arbitration Code.¹ The Revised Arbitration Code was based on the 2000 model act and was the first major upgrade to Florida's Arbitration Code since 1957.

Arbitration is a form of alternative dispute resolution, where an arbitrator, or a panel of arbitrators, hears a case instead of a court.² Generally, the agreement provides for terms of the arbitration, but the Arbitration Code provides some default rules where the agreement is silent.³ 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.⁴ It is the public policy of both the federal⁵ and state⁶ governments to favor arbitration.

Arbitration generally occurs independent of the court system, however certain aspects of arbitration may require court action. For example, a party may need to go to court to compel or stay an arbitration proceeding.⁷ Also, after a decision is made in an arbitration to provide an award to a party to the arbitration, the award may be confirmed by the court to provide a legal effect.⁸

Effect of the Bill

Parties may generally adopt rules and procedures by contract because the procedures contained in the Revised Arbitration Code serves as a gap filler. However, certain provisions may not be waived. The provisions that may not be waived are generally procedural requirements that would fundamentally undermine the arbitration agreement. One such provision in the current statute refers to the "remedies provided under s. 682.12," F.S.⁹ This appears to be a scrivener's error, as remedies are in s. 682.11, F.S., while 682.12, F.S., relates to the right to confirm an award. This bill amends s. 682.014(3)(f), F.S., to correct the scrivener's error by replacing "remedies" with the "right to confirmation of an award." This correction appears to be consistent with the apparent intent of the 2013 legislation and is remedial in nature.

The bill applies retroactively to July 1, 2013, which was the date that the Revised Florida Arbitration Code became a law.

B. SECTION DIRECTORY:

Section 1 amends s. 682.014, F.S., relating to effect of an agreement to arbitrate and nonwaivable provisions.

Section 2 provides that the bill is retroactive to July 1, 2013.

¹ Chapter 2013-232, L.O.F.

² 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."

³ 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.

⁴ *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).

⁵ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).

⁶ See *Jackson v. Shakespeare Foundation, Inc.*, 2013 WL 362786 (Fla. 2013).

⁷ Section 682.03, F.S.

⁸ Section 682.12, F.S.

⁹ Section 682.014(3)(f), F.S.

Section 3 provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

"A statute is presumed not to have retroactive application, but the presumption is rebuttable by clear evidence that the legislature intended that the statute be applied retroactively."¹⁰ The bill provides that some changes are intended to clarify existing law, are remedial in nature, and apply retroactively, making the legislative intent clear.

The Florida Constitution guarantees to all persons the right to acquire, possess and protect property. Article I, s. 9 provides that "[n]o person shall be deprived of life, liberty or property without due process of law."¹¹ "In determining whether a statute applies retroactively, we [the Supreme Court of Florida] consider two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional."¹²

¹⁰ *Essex Ins. Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947, 951 (Fla. 2d DCA 2013).

¹¹ Art. I, s. 9, FLA. CONST.

¹² 10A Fla. Jur 2d Constitutional Law §394, citing *Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc.*, 986 So.2d 1279 (Fla. 2008).

The first prong of the test appears to clearly by met by section 2 of the bill, which contains an explicit statement of retroactivity. The second prong looks to see if a vested right is impaired.

A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment. To be vested a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.¹³

"Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes"¹⁴

Thus, a retroactive law of this type should be upheld unless a court finds that a party had a substantive, vested right to a contract provision that allowed for another party to waive an award confirmation.¹⁵

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹³ *School Bd. Of Miami-Dade County v. Carralero*, 992 So.2d 353 (Fla. 3d DCA 2008)(internal citations omitted).

¹⁴ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

¹⁵ *In re Will of Martell*, 457 So.2d 1064 (Fla. 2d DCA 1984).