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States' Alternative Dispute Resolution Statutes

State of Texas

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States' Alternative Dispute Resolution Statutes

STATE OF TEXAS

Index

Alternative Dispute Resolution Procedures

Title 7, Chapter 154, Subchapter A.

Current through the end of the 2007 Regular Session

§ 154.001. Definitions

In this chapter:
(1) "Court" includes an appellate court, district court, constitutional county court, statutory county court, family law court, probate court, municipal court, or justice of the peace court.
(2) "Dispute resolution organization" means a private profit or nonprofit corporation, political subdivision, or public corporation, or a combination of these, that offers alternative dispute resolution services to the public.

§ 154.002. Policy

It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

§ 154.003. Responsibility of Courts and Court Administrators

It is the responsibility of all trial and appellate courts and their court administrators to carry out the policy under Section 154.002.

Subchapter B. Alternative Dispute Resolution Procedures

§ 154.021. Referral of Pending Disputes for Alternative Dispute Resolution Procedure

(a) A court may, on its own motion or the motion of a party, refer a pending dispute for resolution by an alternative dispute resolution procedure including:
(1) an alternative dispute resolution system established under Chapter 26, Acts of the 68th Legislature, Regular Session, 1983 (Article 2372aa, Vernon's Texas Civil Statutes);
(2) a dispute resolution organization; or
(3) a nonjudicial and informally conducted forum for the voluntary settlement of citizens' disputes through the intervention of an impartial third party, including those alternative dispute resolution procedures described under this subchapter.
(b) The court shall confer with the parties in the determination of the most appropriate alternative dispute resolution procedure.

§ 154.022. Notification and Objection

(a) If a court determines that a pending dispute is appropriate for referral under Section 154.021, the court shall notify the parties of its determination.

(b) Any party may, within 10 days after receiving the notice under Subsection (a), file a written objection to the referral.

(c) If the court finds that there is a reasonable basis for an objection filed under Subsection (b), the court may not refer the dispute under Section 154.021.

§ 154.023. Mediation

(a) Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

(b) A mediator may not impose his own judgment on the issues for that of the parties.

(c) Mediation includes victim-offender mediation by the Texas Department of Criminal Justice described in Article 56.13, Code of Criminal Procedure.

§ 154.024. Mini-Trial
(a) A mini-trial is conducted under an agreement of the parties.

(b) Each party and counsel for the party present the position of the party, either before selected representatives for each party or before an impartial third party, to define the issues and develop a basis for realistic settlement negotiations.

(c) The impartial third party may issue an advisory opinion regarding the merits of the case.

(d) The advisory opinion is not binding on the parties unless the parties agree that it is binding and enter into a written settlement agreement.

§ 154.025. Moderated Settlement Conference

(a) A moderated settlement conference is a forum for case evaluation and realistic settlement negotiations.

(b) Each party and counsel for the party present the position of the party before a panel of impartial third parties.

(c) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.

(d) The advisory opinion is not binding on the parties.

§ 154.026. Summary Jury Trial

(a) A summary jury trial is a forum for early case evaluation and development of realistic settlement negotiations.

(b) Each party and counsel for the party present the position of the party before a panel of jurors.

(c) The number of jurors on the panel is six unless the parties agree otherwise.

(d) The panel may issue an advisory opinion regarding the liability or damages of the parties or both.

(e) The advisory opinion is not binding on the parties.

§ 154.027. Arbitration

(a) Nonbinding arbitration is a forum in which each party and counsel for the party present the position of the party before an impartial third party, who renders a specific award.

(b) If the parties stipulate in advance, the award is binding and is enforceable in the same manner as any contract obligation. If the parties do not stipulate in advance that the award is binding, the award is not binding and serves only as a basis for the parties' further settlement negotiations.

Subchapter C. Impartial Third Parties

§ 154.051. Appointment of Impartial Third Parties

(a) If a court refers a pending dispute for resolution by an alternative dispute resolution procedure under Section 154.021, the court may appoint an impartial third party to facilitate the procedure.

(b) The court may appoint a third party who is agreed on by the parties if the person qualifies for

appointment under this subchapter.

(c) The court may appoint more than one third party under this section.

§ 154.052. Qualifications of Impartial Third Party

(a) Except as provided by Subsections (b) and (c), to qualify for an appointment as an impartial third party under this subchapter a person must have completed a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court making the appointment.

(b) To qualify for an appointment as an impartial third party under this subchapter in a dispute relating to the parent-child relationship, a person must complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics, child development, and family law.

(c) In appropriate circumstances, a court may in its discretion appoint a person as an impartial third party who does not qualify under Subsection (a) or (b) if the court bases its appointment on legal or other professional training or experience in particular dispute resolution processes.

§ 154.053. Standards and Duties of Impartial Third Parties

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement.

(b) Unless expressly authorized by the disclosing party, the impartial third party may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the settlement process, are confidential and may never be disclosed to anyone, including the appointing court.

(d) Each participant, including the impartial third party, to an alternative dispute resolution procedure is subject to the requirements of Subchapter B, Chapter 261, Family Code, and Subchapter C, Chapter 48, Human Resources Code.

§ 154.054. Compensation of Impartial Third Parties

(a) The court may set a reasonable fee for the services of an impartial third party appointed under this subchapter.

(b) Unless the parties agree to a method of payment, the court shall tax the fee for the services of an impartial third party as other costs of suit.

§ 154.055. Qualified Immunity of Impartial Third Parties

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter or under Chapter 152 relating to an alternative dispute resolution system established by counties, or appointed by the parties whether before or after the institution of formal judicial proceedings, who is a volunteer and who does not act with wanton and wilful disregard of the rights, safety, or property of another, is immune from civil liability for any act or omission within the course and scope of his or her duties or functions as an impartial third party. For purposes of this section, a volunteer impartial third party is a person who does not receive compensation in excess of reimbursement for expenses incurred or a stipend intended as reimbursement for expenses incurred.

(b) This section neither applies to nor is it intended to enlarge or diminish any rights or immunities enjoyed by an arbitrator participating in a binding arbitration pursuant to any applicable statute or treaty.

Subchapter D. Miscellaneous Provisions

§ 154.071. Effect of Written Settlement Agreement

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.

(b) The court in its discretion may incorporate the terms of the agreement in the court's final decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

§ 154.072. Statistical Information on Disputes Referred

The Texas Supreme Court shall determine the need and method for statistical reporting of disputes referred by the courts to alternative dispute resolution procedures.

§ 154.073. Confidentiality of Certain Records and Communications

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

(e) If this section conflicts with other legal requirements for disclosure of communications, records, or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

(f) This section does not affect the duty to report abuse or neglect under Subchapter B, Chapter 261, Family Code, and abuse, exploitation, or neglect under Subchapter C, Chapter 48, Human Resources Code.

(g) This section applies to a victim-offender mediation by the Texas Department of Criminal Justice as described in Article 56.13, Code of Criminal Procedure.

General Arbitration

Title 7, Chapter 171.

Current through the end of the 2007 Regular Session

Subchapter A. General Provisions

§ 171.001. Arbitration Agreements Valid

(a) A written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that:
(1) exists at the time of the agreement; or
(2) arises between the parties after the date of the agreement.
(b) A party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract.

§ 171.002. Scope of Chapter

(a) This chapter does not apply to:
(1) a collective bargaining agreement between an employer and a labor union;
(2) an agreement for the acquisition by one or more individuals of property, services, money, or credit in which the total consideration to be furnished by the individual is not more than $50,000, except as provided by Subsection (b);
(3) a claim for personal injury, except as provided by Subsection (c);
(4) a claim for workers' compensation benefits; or
(5) an agreement made before January 1, 1966.
(b) An agreement described by Subsection (a)(2) is subject to this chapter if:

(1) the parties to the agreement agree in writing to arbitrate; and
(2) the agreement is signed by each party and each party's attorney.
(c) A claim described by Subsection (a)(3) is subject to this chapter if:
(1) each party to the claim, on the advice of counsel, agrees in writing to arbitrate; and
(2) the agreement is signed by each party and each party's attorney.

§ 171.003. Uniform Interpretation

This chapter shall be construed to effect its purpose and make uniform the construction of other states' law applicable to an arbitration.

Subchapter B. Proceedings to Compel or Stay Arbitrations

§ 171.021. Proceeding to Compel Arbitration

(a) A court shall order the parties to arbitrate on application of a party showing:
(1) an agreement to arbitrate; and
(2) the opposing party's refusal to arbitrate.
(b) If a party opposing an application made under Subsection (a) denies the existence of the agreement, the court shall summarily determine that issue. The court shall order the arbitration if it finds for the party that made the application. If the court does not find for that party, the court shall deny the application.

(c) An order compelling arbitration must include a stay of any proceeding subject to Section 171.025.

§ 171.022. Unconscionable Agreements Unenforceable
A court may not enforce an agreement to arbitrate if the court finds the agreement was unconscionable at the time the agreement was made.

§ 171.023. Proceeding to Stay Arbitration

(a) A court may stay an arbitration commenced or threatened on application and a showing that there is not an agreement to arbitrate.

(b) If there is a substantial bona fide dispute as to whether an agreement to arbitrate exists, the court shall try the issue promptly and summarily.

(c) The court shall stay the arbitration if the court finds for the party moving for the stay. If the court finds for the party opposing the stay, the court shall order the parties to arbitrate.

§ 171.024. Place for Making Application

(a) If there is a proceeding pending in a court involving an issue referable to arbitration under an alleged agreement to arbitrate, a party may make an application under this subchapter only in that court.

(b) If Subsection (a) does not apply, a party may make an application in any court, subject to Section

171.096.

§ 171.025. Stay of Related Proceeding

(a) The court shall stay a proceeding that involves an issue subject to arbitration if an order for arbitration or an application for that order is made under this subchapter.

(b) The stay applies only to the issue subject to arbitration if that issue is severable from the remainder of the proceeding.

§ 171.026. Validity of Underlying Claim

A court may not refuse to order arbitration because:
(1) the claim lacks merit or bona fides; or
(2) the fault or ground for the claim is not shown.

Subchapter C. Arbitration

§ 171.041. Appointment of Arbitrators

(a) The method of appointment of arbitrators is as specified in the agreement to arbitrate.

(b) The court, on application of a party stating the nature of the issues to be arbitrated and the qualifications of the proposed arbitrators, shall appoint one or more qualified arbitrators if:
(1) the agreement to arbitrate does not specify a method of appointment;
(2) the agreed method fails or cannot be followed; or
(3) an appointed arbitrator fails or is unable to act and a successor has not been appointed.
(c) An arbitrator appointed under Subsection (b) has the powers of an arbitrator named in the agreement to arbitrate.

§ 171.042. Majority Action by Arbitrators

The powers of the arbitrators are exercised by a majority unless otherwise provided by the agreement to arbitrate or this chapter.

§ 171.043. Hearing Conducted by Arbitrators

(a) Unless otherwise provided by the agreement to arbitrate, all the arbitrators shall conduct the hearing. A majority of the arbitrators may determine a question and render a final award.

(b) If, during the course of the hearing, an arbitrator ceases to act, one or more remaining arbitrators appointed to act as neutral arbitrators may hear and determine the controversy.

§ 171.044. Time and Place of Hearing; Notice

(a) Unless otherwise provided by the agreement to arbitrate, the arbitrators shall set a time and place for the hearing and notify each party.

(b) The notice must be served not later than the fifth day before the hearing either personally or by registered or certified mail with return receipt requested. Appearance at the hearing waives the notice.

(c) The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

§ 171.045. Adjournment or Postponement

Unless otherwise provided by the agreement to arbitrate, the arbitrators may:
(1) adjourn the hearing as necessary; and
(2) on request of a party and for good cause, or on their own motion, postpone the hearing to a time not later than:
(A) the date set by the agreement for making the award; or
(B) a later date agreed to by the parties.

§ 171.046. Failure of Party to Appear

Unless otherwise provided by the agreement to arbitrate, the arbitrators may hear and determine the controversy on the evidence produced without regard to whether a party who has been notified as provided by Section 171.044 fails to appear.

§ 171.047. Rights of Party at Hearing

Unless otherwise provided by the agreement to arbitrate, a party at the hearing is entitled to:
(1) be heard;
(2) present evidence material to the controversy; and
(3) cross-examine any witness.

§ 171.048. Representation by Attorney; Fees

(a) A party is entitled to representation by an attorney at a proceeding under this chapter.

(b) A waiver of the right described by Subsection (a) before the proceeding is ineffective.

(c) The arbitrators shall award attorney's fees as additional sums required to be paid under the award only if the fees are provided for:
(1) in the agreement to arbitrate; or
(2) by law for a recovery in a civil action in the district court on a cause of action on which any part of the award is based.

§ 171.049. Oath

The arbitrators, or an arbitrator at the direction of the arbitrators, may administer to each witness testifying before them the oath required of a witness in a civil action pending in a district court.

§ 171.050. Depositions

(a) The arbitrators may authorize a deposition:
(1) for use as evidence to be taken of a witness who cannot be required by subpoena to appear before the arbitrators or who is unable to attend the hearing; or
(2) for discovery or evidentiary purposes to be taken of an adverse witness.
(b) A deposition under this section shall be taken in the manner provided by law for a deposition in a civil action pending in a district court.

§ 171.051. Subpoenas

(a) The arbitrators, or an arbitrator at the direction of the arbitrators, may issue a subpoena for:
(1) attendance of a witness; or
(2) production of books, records, documents, or other evidence.
(b) A witness required to appear by subpoena under this section may appear at the hearing before the arbitrators or at a deposition.

(c) A subpoena issued under this section shall be served in the manner provided by law for the service of a subpoena issued in a civil action pending in a district court.

(d) Each provision of law requiring a witness to appear, produce evidence, and testify under a subpoena issued in a civil action pending in a district court applies to a subpoena issued under this section.

§ 171.052. Witness Fee

The fee for a witness attending a hearing or a deposition under this subchapter is the same as the fee for a witness in a civil action in a district court.

§ 171.053. Arbitrators' Award
(a) The arbitrators' award must be in writing and signed by each arbitrator joining in the award.

(b) The arbitrators shall deliver a copy of the award to each party personally, by registered or certified mail, or as provided in the agreement.

(c) The arbitrators shall make the award:
(1) within the time established by the agreement to arbitrate; or
(2) if a time is not established by the agreement, within the time ordered by the court on application of a party.
(d) The parties may extend the time for making the award either before or after the time expires. The extension must be in writing.

(e) A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party.

§ 171.054. Modification or Correction to Award

(a) The arbitrators may modify or correct an award:

(1) on the grounds stated in Section 171.091; or
(2) to clarify the award.
(b) A modification or correction under Subsection (a) may be made only:
(1) on application of a party; or
(2) on submission to the arbitrators by a court, if an application to the court is pending under Sections 171.087, 171.088, 171.089, and 171.091, subject to any condition ordered by the court.
(c) A party may make an application under this section not later than the 20th day after the date the award is delivered to the applicant.

(d) An applicant shall give written notice of the application promptly to the opposing party. The notice must state that the opposing party must serve any objection to the application not later than the 10th day after the date of notice.

(e) An award modified or corrected under this section is subject to Sections 171.087, 171.088, 171.089, 171.090, and 171.091.

§ 171.055. Arbitrator's Fees and Expenses

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, with other expenses incurred in conducting the arbitration, shall be paid as provided in the award.

Subchapter D. Court Proceedings

§ 171.081. Jurisdiction

The making of an agreement described by Section 171.001 that provides for or authorizes an arbitration in this state and to which that section applies confers jurisdiction on the court to enforce the agreement and to render judgment on an award under this chapter.

§ 171.082. Application to Court; Fees

(a) The filing with the clerk of the court of an application for an order under this chapter, including a judgment or decree, invokes the jurisdiction of the court.

(b) On the filing of the initial application and the payment to the clerk of the fees of court required to be paid on the filing of a civil action in the court, the clerk shall docket the proceeding as a civil action pending in that court.

§ 171.083. Time for Filing

An applicant for a court order under this chapter may file the application:
(1) before arbitration proceedings begin in support of those proceedings;
(2) during the period the arbitration is pending before the arbitrators; or
(3) subject to this chapter, at or after the conclusion of the arbitration.

§ 171.084. Stay of Certain Proceedings

(a) After an initial application is filed, the court may stay:
(1) a proceeding under a later filed application in another court to:
(A) invoke the jurisdiction of that court; or
(B) obtain an order under this chapter; or
(2) a proceeding instituted after the initial application has been filed.
(b) A stay under this section affects only an issue subject to arbitration under an agreement in accordance with the terms of the initial application.

§ 171.085. Contents of Application

(a) A court may require that an application filed under this chapter:
(1) show the jurisdiction of the court;
(2) have attached a copy of the agreement to arbitrate;
(3) define the issue subject to arbitration between the parties under the agreement;
(4) specify the status of the arbitration before the arbitrators; and
(5) show the need for the court order sought by the applicant.
(b) A court may not find an application inadequate because of the absence of a requirement listed in Subsection (a) unless the court, in its discretion:
(1) requires that the applicant amend the application to meet the requirements of the court; and
(2) grants the applicant a 10-day period to comply.

§ 171.086. Orders That May be Rendered

(a) Before arbitration proceedings begin, in support of arbitration a party may file an application for a court order, including an order to:
(1) invoke the jurisdiction of the court over the adverse party and to effect that jurisdiction by service of process on the party before arbitration proceedings begin;
(2) invoke the jurisdiction of the court over an ancillary proceeding in rem, including by attachment, garnishment, or sequestration, in the manner and subject to the conditions under which the proceeding may be instituted and conducted ancillary to a civil action in a district court;
(3) restrain or enjoin:
(A) the destruction of all or an essential part of the subject matter of the controversy; or
(B) the destruction or alteration of books, records, documents, or other evidence needed for the arbitration;
(4) obtain from the court in its discretion an order for a deposition for discovery, perpetuation of testimony, or evidence needed before the arbitration proceedings begin;
(5) appoint one or more arbitrators so that an arbitration under the agreement to arbitrate may proceed; or
(6) obtain other relief, which the court can grant in its discretion, needed to permit the arbitration to be conducted in an orderly manner and to prevent improper interference or delay of the arbitration.
(b) During the period an arbitration is pending before the arbitrators or at or after the conclusion of the arbitration, a party may file an application for a court order, including an order:
(1) that was referred to or that would serve a purpose referred to in Subsection (a);
(2) to require compliance by an adverse party or any witness with an order made under this chapter by the arbitrators during the arbitration;

(3) to require the issuance and service under court order, rather than under the arbitrators' order, of a subpoena, notice, or other court process:
(A) in support of the arbitration; or
(B) in an ancillary proceeding in rem, including by attachment, garnishment, or sequestration, in the manner of and subject to the conditions under which the proceeding may be conducted ancillary to a civil action in a district court;
(4) to require security for the satisfaction of a court judgment that may be later entered under an award;
(5) to support the enforcement of a court order entered under this chapter; or
(6) to obtain relief under Section 171.087, 171.088, 171.089, or 171.091.
(c) A court may not require an applicant for an order under Subsection (a)(1) to show that the adverse party is about to, or may, leave the state if jurisdiction over that party is not effected by service of process before the arbitration proceedings begin.

§ 171.087. Confirmation of Award

Unless grounds are offered for vacating, modifying, or correcting an award under Section 171.088 or 171.091, the court, on application of a party, shall confirm the award.

§ 171.088. Vacating Award

(a) On application of a party, the court shall vacate an award if:
(1) the award was obtained by corruption, fraud, or other undue means;
(2) the rights of a party were prejudiced by:
(A) evident partiality by an arbitrator appointed as a neutral arbitrator;
(B) corruption in an arbitrator; or
(C) misconduct or wilful misbehavior of an arbitrator;
(3) the arbitrators:
(A) exceeded their powers;
(B) refused to postpone the hearing after a showing of sufficient cause for the postponement;
(C) refused to hear evidence material to the controversy; or
(D) conducted the hearing, contrary to Section 171.043, 171.044, 171.045, 171.046, or 171.047, in a manner that substantially prejudiced the rights of a party; or
(4) there was no agreement to arbitrate, the issue was not adversely determined in a proceeding under Subchapter B, and the party did not participate in the arbitration hearing without raising the objection.
(b) A party must make an application under this section not later than the 90th day after the date of delivery of a copy of the award to the applicant. A party must make an application under Subsection (a)(1) not later than the 90th day after the date the grounds for the application are known or should have been known.

(c) If the application to vacate is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

§ 171.089. Rehearing After Award Vacated

(a) On vacating an award on grounds other than the grounds stated in Section 171.088(a)(4), the court may order a rehearing before new arbitrators chosen:
(1) as provided in the agreement to arbitrate; or

(2) by the court under Section 171.041, if the agreement does not provide the manner for choosing the arbitrators.
(b) If the award is vacated under Section 171.088(a)(3), the court may order a rehearing before the arbitrators who made the award or their successors appointed under Section 171.041.

(c) The period within which the agreement to arbitrate requires the award to be made applies to a rehearing under this section and commences from the date of the order.

§ 171.090. Type of Relief Not Factor

The fact that the relief granted by the arbitrators could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.

§ 171.091. Modifying or Correcting Award

(a) On application, the court shall modify or correct an award if:
(1) the award contains:
(A) an evident miscalculation of numbers; or
(B) an evident mistake in the description of a person, thing, or property referred to in the award;
(2) the arbitrators have made an award with respect to a matter not submitted to them and the award may be corrected without affecting the merits of the decision made with respect to the issues that were submitted; or
(3) the form of the award is imperfect in a manner not affecting the merits of the controversy.
(b) A party must make an application under this section not later than the 90th day after the date of delivery of a copy of the award to the applicant.

(c) If the application is granted, the court shall modify or correct the award to effect its intent and shall confirm the award as modified or corrected. If the application is not granted, the court shall confirm the award.

(d) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 171.092. Judgment on Award

(a) On granting an order that confirms, modifies, or corrects an award, the court shall enter a judgment or decree conforming to the order. The judgment or decree may be enforced in the same manner as any other judgment or decree.

(b) The court may award:
(1) costs of the application and of the proceedings subsequent to the application; and
(2) disbursements.

§ 171.093. Hearing; Notice

The court shall hear each initial and subsequent application under this subchapter in the manner and with the notice required by law or court rule for making and hearing a motion filed in a pending civil

action in a district court.

§ 171.094. Service of Process for Initial Application

(a) On the filing of an initial application under this subchapter, the clerk of the court shall:
(1) issue process for service on each adverse party named in the application; and
(2) attach a copy of the application to the process.
(b) To the extent applicable, the process and service and the return of service must be in the form and include the substance required for process and service on a defendant in a civil action in a district court.

(c) An authorized official may effect the service of process.

§ 171.095. Service of Process for Subsequent Applications

(a) After an initial application has been made, notice to an adverse party for each subsequent application shall be made in the same manner as is required for a motion filed in a pending civil action in a district court. This subsection applies only if:
(1) jurisdiction over the adverse party has been established by service of process on the party or in rem for the initial application; and
(2) the subsequent application relates to:
(A) the same arbitration or a prospective arbitration under the same agreement to arbitrate; and
(B) the same controversy or controversies.
(b) If Subsection (a) does not apply, service of process shall be made on the adverse party in the manner provided by Section 171.094.

§ 171.096. Place of Filing
(a) Except as otherwise provided by this section, a party must file the initial application:
(1) in the county in which an adverse party resides or has a place of business; or
(2) if an adverse party does not have a residence or place of business in this state, in any county.
(b) If the agreement to arbitrate provides that the hearing before the arbitrators is to be held in a county in this state, a party must file the initial application with the clerk of the court of that county.

(c) If a hearing before the arbitrators has been held, a party must file the initial application with the clerk of the court of the county in which the hearing was held.

(d) Consistent with Section 171.024, if a proceeding is pending in a court relating to arbitration of an issue subject to arbitration under an agreement before the filing of the initial application, a party must file the initial application and any subsequent application relating to the arbitration in that court.

§ 171.097. Transfer

(a) On application of a party adverse to the party who filed the initial application, a court that has jurisdiction but that is located in a county other than as described by Section 171.096 shall transfer the application to a court of a county described by that section.

(b) The court shall transfer the application by an order comparable to an order sustaining a plea of

privilege to be sued in a civil action in a district court of a county other than the county in which an action is filed.

(c) The party must file the application under this section:
(1) not later than the 20th day after the date of service of process on the adverse party; and
(2) before any other appearance in the court by that adverse party, other than an appearance to challenge the jurisdiction of the court.

§ 171.098. Appeal

(a) A party may appeal a judgment or decree entered under this chapter or an order:
(1) denying an application to compel arbitration made under Section 171.021;
(2) granting an application to stay arbitration made under Section 171.023;
(3) confirming or denying confirmation of an award;
(4) modifying or correcting an award; or
(5) vacating an award without directing a rehearing.
(b) The appeal shall be taken in the manner and to the same extent as an appeal from an order or judgment in a civil action.

Arbitration and Conciliation of International Commercial Disputes

Title 7, Chapter 172.

Current through the end of the 2007 Regular Session

Subchapter A. General Provisions

§ 172.001. Scope of Chapter

(a) This chapter applies to international commercial arbitration and conciliation, subject to any agreement that is in force between the United States and another state or states.

(b) This chapter, except Sections 172.174 and 172.175, applies only to arbitration or conciliation in this state.

(c) Except as provided by Subsection (d), this chapter does not affect another state law under which a dispute:
(1) may not be submitted to arbitration; or
(2) may be submitted to arbitration only in accordance with law other than this chapter.
(d) Except as provided by this subsection, this chapter supersedes Subchapters B and C, Chapter 171, with respect to international commercial arbitration and conciliation. This chapter does not supersede Subchapter A or D of that chapter or Section 171.022.

§ 172.002. Definitions

(a) In this chapter:

(1) “Arbitration” includes any arbitration without regard to whether it is administered by a permanent arbitration institution.
(2) “Arbitration agreement” means an agreement to arbitrate a dispute that has arisen or may arise between the parties concerning a defined legal relationship, without regard to whether the legal relationship is contractual. The term includes an arbitration clause in a contract or a separate agreement.
(3) “Arbitration award” means a decision of an arbitration tribunal on the substance of a dispute submitted to it and includes an interim, interlocutory, or partial award.
(4) “Arbitration tribunal” means a sole arbitrator or a panel of arbitrators.
(5) “Claim” includes a counterclaim.
(6) “Conciliation” includes any conciliation without regard to whether it is administered by a permanent conciliation institution.
(7) “Defense” includes a defense to a counterclaim.
(8) “Party” means a party to an arbitration or conciliation agreement.
(b) The meanings assigned by this section to “claim” and “defense” do not apply in Sections 172.114(a) and 172.118(b)(1).

§ 172.003. International Agreement

(a) An arbitration or conciliation agreement is international if:
(1) the places of business of the parties to the agreement are located in different states when the agreement is concluded;
(2) any of the following places is located outside any state in which a party has a place of business:
(A) the place of arbitration or conciliation determined under the arbitration or conciliation agreement;
(B) a place where a substantial part of the obligations of the commercial relationship is to be performed; or
(C) the place with which the subject matter of the dispute is most closely connected;
(3) each party has expressly agreed that the subject matter of the arbitration or conciliation agreement relates to commercial interests in more than one state; or
(4) the arbitration or conciliation agreement arises out of a legal relationship that has another reasonable relation with more than one state.
(b) Subsection (a)(4) applies without regard to whether the legal relationship is contractual.

(c) For purposes of this section, the place of business of a party who has more than one place of business is the place that has the closest relationship to the arbitration or conciliation agreement. If a party does not have a place of business, the party's place of business is the party's habitual residence.

(d) For purposes of this section, the states of the United States and the District of Columbia are one state.

§ 172.004. Commercial Agreement

An arbitration or conciliation agreement is commercial if it arises out of a relationship of a commercial nature, including:
(1) a transaction for the supply or exchange of goods or services;
(2) a distribution agreement;
(3) a commercial representation or agency;

(4) an exploitation agreement or concession;
(5) a joint venture or other related form of industrial or business cooperation;
(6) the carriage of goods or passengers by air, sea, rail, or road;
(7) a relationship involving:
(A) construction;
(B) insurance;
(C) licensing;
(D) factoring;
(E) leasing;
(F) consulting;
(G) engineering;
(H) financing;
(I) banking;
(J) professional services; or
(K) intellectual or industrial property, including trademarks, patents, copyrights, and software programs; or
(8) the transfer of data or technology.

§ 172.005. Date Written Communications Received

(a) Except as agreed by the parties, a written communication is received on the day that it is delivered:
(1) to the addressee personally; or
(2) at the addressee's place of business, habitual residence, or mailing address.
(b) If a place described by Subsection (a) cannot be found after a reasonable inquiry, a written communication is received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered mail or other means that provides a record of the attempt to deliver it.

(c) This section does not apply to a written communication relating to a court proceeding.

§ 172.006. Waiver of Right to Object

(a) A party who proceeds with the arbitration knowing that a provision of this chapter or the arbitration agreement has not been complied with waives the right to object to the noncompliance unless the party states the objection:
(1) without undue delay; or
(2) if a period is provided for stating that objection, within that period.
(b) Subsection (a) applies only to a provision of this chapter as to which the parties may agree to act in a different manner.

§ 172.007. Delegation of Certain Determinations

The parties may authorize a third party, including an institution, to determine any issue the parties may determine under this chapter, other than a determination under Section 172.102.

Subchapter B. Arbitration Agreements

§ 172.031. Arbitration Agreements Valid

(a) A written arbitration agreement is valid and enforceable if the agreement is to arbitrate a controversy that:
(1) exists at the time of the agreement; or
(2) arises between the parties after the date of the agreement.
(b) A party may revoke the agreement only on a ground that exists at law or in equity for the revocation of a contract.

§ 172.032. Requirements for Arbitration Agreement

(a) An arbitration agreement must be in writing. The agreement is in writing if it is contained in:
(1) a document signed by each party;
(2) an exchange of letters, telexes, telegrams, or other means of telecommunication that provide a record of the agreement; or
(3) an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another.
(b) A contract reference to a document containing an arbitration clause is an arbitration agreement if the contract is in writing and the reference is sufficient to make that clause part of the contract.

§ 172.033. Rules Referred to in Agreement

An agreement of the parties under this chapter includes any arbitration or conciliation rules referred to by that agreement.

Subchapter C. Arbitrators

§ 172.051. Number of Arbitrators
An arbitration has one arbitrator unless the parties agree to additional arbitrators.

§ 172.052. Nationality of Arbitrator

A person of any nationality may be an arbitrator.

§ 172.053. Appointment of Arbitration Tribunal

(a) Subject to Sections 172.054(b), (c), and (d) and Section 172.055, the parties may agree on a procedure for appointing the arbitration tribunal.

(b) If an agreement is not made under Subsection (a), in an arbitration with three arbitrators and two parties, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator.

§ 172.054. Appointment by Court

(a) On request of a party, the district court of the county in which the place of arbitration is located shall appoint each arbitrator if:

(1) an agreement is not made under Section 172.053(a) in an arbitration with a sole arbitrator and the parties fail to agree on the arbitrator; or
(2) the appointment procedure in Section 172.053(b) applies and:
(A) a party fails to appoint an arbitrator not later than the 30th day after the date of receipt of a request to do so from the other party; or
(B) the two appointed arbitrators fail to agree on the third arbitrator not later than the 30th day after the date of their appointment.
(b) On request of a party, the district court of the county in which the place of arbitration is located may take necessary measures if under an appointment procedure agreed to by each party:
(1) a party fails to act as required under that procedure;
(2) the parties or two appointed arbitrators fail to reach an agreement expected of them under that procedure; or
(3) a third party, including an institution, fails to perform a function assigned to the party under that procedure.
(c) Subsection (b) does not apply if the agreement on the appointment procedure provides other means for securing the appointment.

(d) A decision of the district court under this section is final and not subject to appeal.

§ 172.055. Factors Considered

In appointing an arbitrator, the district court shall consider:
(1) each qualification required of the arbitrator by the arbitration agreement;
(2) any consideration making more likely the appointment of an independent and impartial arbitrator; and
(3) in the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than that of any party.

§ 172.056. Disclosure of Grounds for Challenge

(a) Except as otherwise provided by this chapter, a person who is contacted in connection with the person's possible appointment or designation as an arbitrator or conciliator or who is appointed or designated shall, not later than the 21st day after the date of the contact, appointment, or designation, disclose to each party any information that might cause the person's impartiality or independence to be questioned, including information that:
(1) the person:
(A) has a personal bias or prejudice concerning a party;
(B) has personal knowledge of a disputed evidentiary fact concerning the proceeding;
(C) served as an attorney in the matter in controversy;
(D) is or has been associated with another who has participated in the matter during the association;
(E) has been a material witness concerning the matter;
(F) served as an arbitrator or conciliator in another proceeding involving a party to the proceeding; or
(G) has a close personal or professional relationship with a person who:
(i) is or has been a party to the proceeding or an officer, director, or trustee of a party;
(ii) is acting or has acted as an attorney or representative in the proceeding;
(iii) is or expects to be nominated as an arbitrator or conciliator in the proceeding;

(iv) is known to have an interest that could be substantially affected by the outcome of the proceeding; or
(v) is likely to be a material witness in the proceeding;
(2) the person, individually or as a fiduciary, or the person's spouse or minor child residing in the person's household has:
(A) a financial interest in:
(i) the subject matter in controversy; or
(ii) a party to the proceeding; or
(B) any other interest that could be substantially affected by the outcome of the proceeding; or
(3) the person, the person's spouse, a person within the third degree of relationship to either of them, or the spouse of that person:
(A) is or has been a party to the proceeding or an officer, director, or trustee of a party;
(B) is acting or has acted as an attorney in the proceeding;
(C) is known to have an interest that could be substantially affected by the outcome of the proceeding; or
(D) is likely to be a material witness in the proceeding.
(b) Except as provided by this subsection, the parties may agree to waive the disclosure under Subsection (a). A party may not waive the disclosure for a person serving as:
(1) the sole arbitrator or conciliator; or
(2) the chief or prevailing arbitrator or conciliator.
(c) After appointment and throughout the arbitration or conciliation, an arbitrator or conciliator shall promptly disclose to each party any circumstance described by Subsection (a) that was not previously disclosed.

§ 172.057. Grounds for Challenge; Limitation

Except as provided by agreement of the parties or the rules governing the arbitration, a party may challenge an arbitrator only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, independence, or possession of a qualification on which the parties have agreed.

§ 172.058. Challenge After Appointment

A party who appointed or participated in the appointment of an arbitrator may challenge that arbitrator only for a reason that the party becomes aware of after the appointment is made.

§ 172.059. Challenge Procedure

(a) The parties may agree on a procedure for challenging an arbitrator. A decision reached under that procedure is final.

(b) If there is not an agreement under Subsection (a), a party challenging an arbitrator shall send a written statement of the reason for the challenge to the arbitration tribunal. The party shall send the statement not later than the 15th day after the later date the party becomes aware of:
(1) the constitution of the tribunal; or
(2) a circumstance referred to in Section 172.057 or 172.058.

(c) Unless the arbitrator challenged under Subsection (b) withdraws from office or the other party agrees to the challenge, the arbitration tribunal shall decide the challenge.

§ 172.060. Appeal of Unsuccessful Challenge

(a) If a challenge under Sections 172.059(b) and (c) is unsuccessful, the challenging party, not later than the 30th day after the date the party receives notice of the decision rejecting the challenge, may request the district court of the county in which the place of arbitration is located to decide the challenge.

(b) The court shall sustain the challenge if the facts support a finding that grounds under Section 172.057 fairly exist.

(c) The decision of the court is final and not subject to appeal.

(d) While a request under Subsection (a) is pending, the arbitration tribunal, including the challenged arbitrator, may continue the arbitration and make an award.

§ 172.061. Failure or Impossibility to Act

(a) The mandate of an arbitrator terminates if the arbitrator:
(1) is unable to perform the arbitrator's functions or for another reason fails to act without undue delay; and
(2) withdraws from office or each party agrees to the termination.
(b) If there is a controversy concerning the termination of the arbitrator's mandate under Subsection (a), a party may request the district court of the county in which the place of arbitration is located to decide the termination. The decision of the court is not subject to appeal.

§ 172.062. Termination of Mandate
The mandate of an arbitrator terminates:
(1) on withdrawal from office;
(2) when the parties agree; or
(3) as provided by Section 172.059, 172.060, or 172.061.

§ 172.063. Substitution of Arbitrator

(a) When the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(b) Except as agreed by the parties:
(1) if the sole or presiding arbitrator is replaced, a hearing previously held shall be repeated; and
(2) if an arbitrator other than the sole or presiding arbitrator is replaced, a hearing previously held may be repeated at the discretion of the arbitration tribunal.
(c) Except as agreed by the parties, an order or ruling of the arbitration tribunal made before the replacement of an arbitrator under this section is not invalid because there has been a change in the composition of the tribunal.

§ 172.064. Withdrawal of Arbitrator

The withdrawal of an arbitrator from office or the agreement of a party to the termination of the mandate of an arbitrator under Section 172.059(c) or Section 172.061 does not imply acceptance of the validity of a ground referred to in Section 172.057, 172.058, or 172.061.

Subchapter D. Arbitration Tribunal

§ 172.081. Decision of Arbitration Tribunal

(a) Except as agreed by the parties or as provided by Subsection (b), in an arbitration with more than one arbitrator, a decision of the arbitration tribunal must be made by a majority of its members.

(b) If authorized by the parties or all the members of the arbitration tribunal, a presiding arbitrator may decide a procedural question.

§ 172.082. Determination of Jurisdiction of Arbitration Tribunal

(a) The arbitration tribunal may rule on its own jurisdiction, including an objection with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that is part of a contract is an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is void does not make the arbitration clause invalid.

(b) A party may not plead that the arbitration tribunal does not have jurisdiction after the submission of the statement of defense. A party is not precluded from pleading because the party has appointed or participated in the appointment of an arbitrator.

(c) A party may plead that the arbitration tribunal is exceeding the scope of its authority only when the matter alleged to be beyond the scope of its authority is raised during the arbitration.

(d) The arbitration tribunal may allow a plea after the period described by Subsection (b) or (c) if the tribunal considers the delay justified.

(e) The arbitration tribunal may rule on a plea described by Subsection (b), (c), or (d) as a preliminary question or in an award on the merits.

(f) If the arbitration tribunal rules as a preliminary question that it has jurisdiction, a party waives objection to the ruling unless the party, not later than the 30th day after the date the party receives notice of that ruling, requests the district court of the county in which the place of arbitration is located to decide the matter. The decision of the court is not subject to appeal.

(g) While a request under Subsection (f) is pending before the court, the arbitration tribunal may continue the arbitration and make an award.

§ 172.083. Interim Measures Ordered by Arbitration Tribunal

(a) Except as agreed by the parties, the arbitration tribunal, at the request of a party, may order a party

to take an interim measure of protection that the tribunal considers necessary concerning the subject matter of the dispute.

(b) The arbitration tribunal may require a party to provide appropriate security in connection with the interim measure ordered.

Subchapter E. Arbitration Proceedings

§ 172.101. Equal Treatment of Parties

The arbitration tribunal shall:
(1) treat each party with equality; and
(2) give each party a full opportunity to present the party's case.

§ 172.102. Substantive Rules

(a) The arbitration tribunal shall decide the dispute according to the rules of law designated by the parties as applicable to the substance of the dispute.

(b) Unless otherwise expressed, a designation by the parties of the law or legal system of a given state refers to the substantive law of that state and not to conflict-of-laws rules.

(c) If the parties do not make a designation under Subsection (a), the arbitration tribunal shall apply the law determined by the conflict-of-laws rules that the tribunal considers applicable.

(d) The arbitration tribunal shall decide ex aequo et bono or as amiable compositeur if each party has expressly authorized it to do so.

(e) In each case, the arbitration tribunal shall:
(1) decide in accordance with the terms of the contract; and
(2) take into account the usages of the trade applicable to the transaction.

§ 172.103. Rules of Procedure

(a) The parties may agree on the procedure to be followed by the arbitration tribunal in conducting the arbitration, subject to this chapter.

(b) If the parties do not agree, the arbitration tribunal may conduct the arbitration in the manner it considers appropriate, subject to this chapter.

§ 172.104. Rules of Evidence

The power of the arbitration tribunal under Section 172.103(b) includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

§ 172.105. Subpoena

(a) The arbitration tribunal may issue a subpoena as provided by Section 171.051.

(b) Section 171.052 applies with respect to a subpoena issued under this section.

§ 172.106. Place of Arbitration

(a) The parties may agree on the place of arbitration.

(b) If the parties do not agree, the arbitration tribunal shall determine the place of arbitration considering the circumstances of the case, including the convenience of the parties.

(c) Except as agreed by each party, the arbitration tribunal may meet at any place it considers appropriate for:
(1) consultation among its members;
(2) hearing of witnesses, experts, or the parties; or
(3) inspection of documents, goods, or other property.

§ 172.107. Commencement of Arbitration

Except as agreed by the parties, the arbitration begins on the date a request for the dispute to be referred to arbitration is received by the respondent.

§ 172.108. Language

(a) The parties may agree on the language or languages to be used in the arbitration.

(b) If the parties do not agree, the arbitration tribunal shall determine the language or languages to be used in the arbitration.

(c) Except as provided by the agreement or determination, the agreement or determination applies to each:
(1) written statement by a party;
(2) hearing; and
(3) award, decision, or other communication by the arbitration tribunal.
(d) The arbitration tribunal may order that documentary evidence be accompanied by a translation into the selected language or languages.

§ 172.109. Statement of Claim or Defense

(a) Within the period agreed on by the parties or determined by the arbitration tribunal:
(1) the claimant shall state:
(A) the facts supporting the claim;
(B) the points at issue; and
(C) the relief or remedy sought; and
(2) the respondent shall state the defense.
(b) A party may submit with the party's statement any document the party considers relevant or may add a reference to a document or other evidence the party will submit.

(c) The parties may otherwise agree as to the required elements of the statements required by Subsection (a).

§ 172.110. Supplement or Amendment to Statement

A party may amend or supplement a claim or defense during the arbitration unless:
(1) the parties have otherwise agreed; or
(2) the arbitration tribunal considers it inappropriate to allow the amendment or supplement considering the delay in making the amendment or supplement.

§ 172.111. Hearings

(a) Except as agreed by the parties, the arbitration tribunal shall decide whether to:
(1) hold oral hearings for the presentation of evidence or for oral argument; or
(2) conduct the arbitration on the basis of documents and other materials.
(b) Unless the parties have agreed that oral hearings are not to be held, the arbitration tribunal shall, on request of a party, hold an oral hearing at an appropriate stage of the arbitration.

(c) Each party shall be given sufficient advance notice of a hearing or meeting of the arbitration tribunal to permit inspection of documents, goods, or other property.

§ 172.112. Hearing or Meeting in Camera

Except as agreed by the parties, the arbitration tribunal shall hold in camera:
(1) an oral hearing; or
(2) a meeting in the arbitration.

§ 172.113. Written Information

(a) A statement, document, or other information supplied to or an application made to the arbitration tribunal by a party shall be communicated to the other party.

(b) An expert report or evidentiary document on which the arbitration tribunal may rely in making a decision shall be communicated to each party.

§ 172.114. Default of Party

(a) Except as agreed by the parties, the arbitration tribunal shall terminate the arbitration if the claimant without showing sufficient cause fails to communicate the statement of claim required under Section 172.109.

(b) Except as agreed by the parties, if the respondent without showing sufficient cause fails to communicate the statement of defense as provided by Section 172.109, the arbitration tribunal shall continue the arbitration without treating that failure as an admission of the claimant's allegations.

§ 172.115. Award After Party Fails to Appear or Produce Evidence

Except as agreed by the parties, if a party without showing sufficient cause fails to appear at an oral hearing or to produce documentary evidence, the arbitration tribunal may continue the arbitration and make the arbitration award based on the evidence before it.

§ 172.116. Appointed Expert

(a) Except as agreed by the parties, the arbitration tribunal may:
(1) appoint an expert to report to it on a specific issue to be determined by the tribunal; and
(2) require a party to:
(A) give the expert relevant information; or
(B) produce or provide access to relevant documents, goods, or other property.
(b) Except as agreed by the parties, if a party requests or if the arbitration tribunal considers it necessary, the expert shall, after delivery of a written or oral report, participate in an oral hearing at which each party may:
(1) question the expert; and
(2) present an expert witness on the issue.

§ 172.117. Settlement

(a) An arbitration tribunal may:
(1) encourage settlement of the dispute; and
(2) with the agreement of the parties, use mediation, conciliation, or another procedure at any time during the arbitration to encourage settlement.
(b) The arbitration tribunal shall terminate the arbitration if the parties settle the dispute.

(c) If requested by the parties and not objected to by the arbitration tribunal, the tribunal shall record the settlement in the form of an award on agreed terms.

§ 172.118. Termination of Proceedings

(a) An arbitration is terminated by the final arbitration award or by an order of the arbitration tribunal under Subsection (b). The award is final on the expiration of the applicable period under Section 172.147.

(b) The arbitration tribunal shall issue an order for the termination of the arbitration if:
(1) the claimant withdraws the claim, unless the respondent objects to the order and the arbitration tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;
(2) the parties agree to the termination of the arbitration; or
(3) the tribunal finds that continuation of the arbitration is unnecessary or impossible.
(c) Subject to Sections 172.147, 172.148, and 172.149, the mandate of the arbitration tribunal ends with the termination of the arbitration.

Subchapter F. Arbitration Award

§ 172.141. Form and Content of Arbitration Award

(a) An arbitration award must be in writing and signed by all the members of the arbitration tribunal. In an arbitration with more than one arbitrator, the signatures of the majority of the members of the tribunal are sufficient if the reason for an omitted signature is stated.

(b) The arbitration award must state the reasons on which it is based, unless the parties have agreed that no reasons are to be given, or the award is an award on agreed terms under Section 172.117.

(c) The arbitration award must state its date and the place of arbitration as determined under Section 172.106. The award is considered to have been made at that place.

§ 172.142. Delivery of Award

After the arbitration award is made, a signed copy shall be delivered to each party.

§ 172.143. Interim Award

(a) The arbitration tribunal may, at any time during the arbitration, make an interim arbitration award on a matter with respect to which it may make a final award.

(b) An interim arbitration award is enforceable in the same manner as a final award.

§ 172.144. Interest

Except as agreed by the parties, the arbitration tribunal may award interest.

§ 172.145. Costs

(a) Except as agreed by the parties, an award of costs of an arbitration is at the discretion of the arbitration tribunal.

(b) In making an order for costs:
(1) the arbitration tribunal may include any expenses incurred in connection with the arbitration, including:
(A) the fees and expenses of the arbitrators and expert witnesses;
(B) legal fees and expenses; and
(C) administration fees of the institution supervising the arbitration; and
(2) the tribunal may specify:
(A) the party entitled to costs;
(B) the party required to pay costs;
(C) the amount of costs or method of determining that amount; and
(D) the manner in which the costs are to be paid.

§ 172.146. Award on Agreed Terms

(a) The arbitration tribunal shall make an award on agreed terms as provided by Section 172.117. An award on agreed terms must state that it is an arbitration award.

(b) An award on agreed terms has the same status and effect as any other arbitration award on the substance of the dispute.

§ 172.147. Correction and Interpretation of Awards

(a) Not later than the 30th day after the date of receipt of the arbitration award, unless another period has been agreed to by the parties, a party may request the arbitration tribunal to:
(1) correct in the award a computation, clerical, or typographical error or a similar error; and
(2) interpret a part of the award, if agreed by the parties.
(b) If the arbitration tribunal considers a request under Subsection (a) to be justified, it shall make the correction or give the interpretation not later than the 30th day after the date of receipt of the request. The interpretation or correction becomes part of the arbitration award.

(c) The arbitration tribunal may correct an error described by Subsection (a)(1) on its own initiative not later than the 30th day after the date of the arbitration award.

§ 172.148. Additional Award

(a) Except as agreed by the parties, a party may request, not later than the 30th day after the date of receipt of the arbitration award, that the arbitration tribunal make an additional award for a claim presented in the arbitration but omitted from the award.

(b) If the arbitration tribunal considers the request to be justified, the tribunal shall make the additional award not later than the 60th day after the date of receipt of the request.

§ 172.149. Extension of Time

The arbitration tribunal may, if necessary, extend the period within which it may make a correction, give an interpretation, or make an additional award under Section 172.147 or 172.148.

§ 172.150. Applicable Law

Sections 172.141, 172.142, 172.144, and 172.145 apply to:
(1) a correction or interpretation of an arbitration award under Section 172.147; or
(2) an additional award made under Section 172.148.

Subchapter G. Judicial Proceedings

§ 172.171. Role of Court

A court may not intervene in a matter governed by this chapter except as provided by this chapter or federal law.

§ 172.172. Assistance in Taking Evidence

The arbitration tribunal or a party with the approval of the tribunal may request assistance from a district court in taking evidence, and the court may provide the assistance according to its rules on

taking evidence. The tribunal or a party shall select the district court in the manner provided by Section 171.096.

§ 172.173. Consolidation

(a) If the parties to two or more arbitration agreements agree, in the respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of the agreements, a district court, on application by a party with the consent of each other party to the agreements, may:
(1) order the arbitrations consolidated on terms the court considers just and necessary;
(2) if all the parties cannot agree on a tribunal for the consolidated arbitration, appoint an arbitration tribunal as provided by Section 172.055; and
(3) if all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order the court considers necessary.
(b) The arbitration tribunal or the party shall select the district court in the manner provided by Section 171.096.

(c) This section does not prevent the parties to two or more arbitrations from agreeing to consolidate those arbitrations and taking any step necessary to effect that consolidation.

§ 172.174. Stay of Court Proceedings

(a) On request of a party, a court in which a pending judicial proceeding is being brought by a party to an arbitration agreement to obtain relief with respect to a matter covered by the arbitration agreement shall:
(1) stay the judicial proceeding; and
(2) refer the parties to arbitration.
(b) A party may not make a request for a stay after the time the requesting party submits the party's first statement on the substance of the dispute.

(c) The court may not stay the proceeding if it finds that the agreement is void, inoperable, or incapable of being performed.

(d) An arbitration may begin or continue, and an arbitration tribunal may make an award, while an action described in this section is pending before the court.

§ 172.175. Interim Orders

(a) A party to an arbitration agreement may request an interim measure of protection from a district court before or during an arbitration.

(b) A party to an arbitration may request from the court enforcement of an order of an arbitration tribunal granting an interim measure of protection under Section 172.083. The court shall grant enforcement as provided by the law applicable to the type of interim relief requested.

(c) In connection with a pending arbitration, the court may take appropriate action, including:
(1) ordering an attachment issued to assure that the award to which the applicant may be entitled is not rendered ineffectual by the dissipation of party assets; or

(2) granting a preliminary injunction to protect a trade secret or to conserve goods that are the subject matter of the dispute.
(d) In considering a request for interim relief, the court shall give preclusive effect to a finding of fact of the arbitration tribunal in the arbitration, including a finding of fact relating to the probable validity of the claim that is the subject of the order for interim relief that the tribunal has granted, if the interim order is consistent with public policy.

(e) If the arbitration tribunal has not ruled on an objection to its jurisdiction, the court may not grant preclusive effect to the tribunal's finding until the court makes an independent finding as to the jurisdiction of the tribunal. If the court rules that the tribunal did not have jurisdiction under applicable law, the court shall deny the application for interim measures of relief.

Subchapter H. Provisions Relating Only to Conciliation

§ 172.201. Policy

It is the policy of this state to encourage parties to an international commercial agreement or transaction that qualifies for arbitration or conciliation under this chapter to resolve disputes arising from those agreements or transactions through conciliation.

§ 172.202. Appointment of Conciliator

The parties to an agreement or transaction may select or permit an arbitration tribunal or other third party to select one or more persons to serve as the conciliator or conciliators to assist the parties in an independent and impartial manner to reach an amicable settlement of the dispute.

§ 172.203. Conduct of Conciliation
(a) A conciliator:
(1) shall be guided by principles of objectivity, fairness, and justice; and
(2) shall consider, among other things:
(A) the rights and obligations of the parties;
(B) the usages of the trade concerned; and
(C) the circumstances surrounding the dispute, including any previous practices between the parties.
(b) The conciliator may conduct the conciliation in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a speedy settlement of the dispute.

(c) Except as provided by this chapter, a law of this state governing procedure, other than this chapter, does not apply to conciliation under this chapter.

§ 172.204. Representation and Assistance

In a conciliation proceeding, each party may appear in person or be represented or assisted by a person of the party's choice.

§ 172.205. Draft Conciliation Settlement

(a) At any time during the conciliation, the conciliator may prepare a draft conciliation settlement and send a copy to each party, stating the time within which each party must approve the settlement. The draft conciliation settlement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a proposed conciliation settlement.

§ 172.206. Confidentiality

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible in evidence, and disclosure of that evidence may not be compelled in an arbitration or civil action in which, under law, testimony may be compelled to be given.

(b) Except as provided by a document prepared for the purpose of, in the course of, or pursuant to the conciliation, the document or a copy of the document is not admissible in evidence, and disclosure of the document may not be compelled in an arbitration or civil action in which, under law, testimony may be compelled to be given.

(c) Subsection (a) does not limit the admissibility of evidence if each party participating in conciliation consents to the disclosure.

(d) If evidence is offered in violation of this section, the arbitration tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case without prejudice.

§ 172.207. Stay of Arbitration and Resort to Other Proceedings

(a) The agreement of the parties to submit a dispute to conciliation is an agreement of the parties to stay a judicial proceeding or arbitration from the beginning of conciliation until the termination of conciliation.

(b) Each applicable limitation period, including a period of prescription, is tolled or extended on the beginning of a conciliation under this chapter for each party to the conciliation until the 10th day following the date of termination of the conciliation.

(c) For purposes of this section, conciliation begins when a party requests conciliation of a dispute and each other party agrees to participate in the conciliation.

§ 172.208. Termination of Conciliation

(a) A conciliation proceeding may be terminated as to each party by:
(1) a written declaration of each conciliator, after consultation with the parties, that further efforts at conciliation are not justified, on the date of the declaration;
(2) a written declaration of each party addressed to each conciliator that the conciliation is terminated, on the date of the declaration; or
(3) the signing of a settlement agreement by each party, on the date of the agreement.
(b) The conciliation proceedings may be terminated as to particular parties by:

(1) a written declaration of a party to each other party and each conciliator, if appointed, that the conciliation is terminated as to that party, on the date of the declaration; or
(2) the signing of a settlement agreement by some of the parties, on the date of the agreement.

§ 172.209. Conflict of Interest

Except as provided by rules adopted for the conciliation or arbitration, a person who has served as conciliator may not be appointed as an arbitrator for or take part in an arbitration or judicial proceeding in the same dispute unless each party consents to the participation.

§ 172.210. Participation Not Waiver of Rights

(a) A party by submitting to conciliation does not waive a right or remedy that party would have had if conciliation had not been initiated.

(b) Subsection (a) does not apply to the waiver of a right or remedy stated in a settlement resulting from the conciliation.

§ 172.211. Enforceability
A conciliation agreement has the same force and effect as a final arbitration award if the agreement:
(1) settles the dispute;
(2) is in writing; and
(3) is signed by each conciliator and each party or a representative of each party.

§ 172.212. Costs

(a) On termination of the conciliation proceedings, the conciliator shall set the costs of the conciliation and give written notice of the costs to each party.

(b) The parties shall bear the costs equally unless the settlement agreement provides for a different apportionment. A party shall bear any other expense incurred by that party.

(c) In this section, “costs” includes only:
(1) a reasonable fee to be paid to each conciliator;
(2) travel and other reasonable expenses of each conciliator and each witness requested by the conciliator with the consent of each party;
(3) the cost of expert advice requested by the conciliator with the consent of each party; and
(4) any court cost.

§ 172.213. No Consent to Jurisdiction

A request for conciliation, a consent to participate or participation in the conciliation, or the entering into a conciliation agreement or settlement is not consent to the jurisdiction of a court in this state if conciliation fails.

§ 172.214. Not Subject to Service of Process

A conciliator, party, or representative of a conciliator or party, while present in this state to arrange for or participate in conciliation under this chapter, is not subject to service of process in a civil matter related to the conciliation.

§ 172.215. Conciliator Immune

A conciliator is not liable in an action for damages resulting from an act or omission in the performance of the person's role as a conciliator in a proceeding subject to this chapter.

Arbitration of Seed Performance Disputes

Title 5, Chapter 64.

Current through the end of the 2007 Regular Session

§ 64.001. Applicability

This chapter applies only to claims or counterclaims due to the failure of seed purchased in a seed bag or package that contains or has attached the notice required by Section 64.003 of this code.

§ 64.002. Requirement of Arbitration

(a) When a purchaser of seed designed for planting claims to have been damaged by the failure of the seed to produce or perform as represented by warranty or by the label required to be attached to the seed under this subtitle or as a result of negligence, the purchaser must submit the claim to arbitration as provided by this chapter not later than the 10th day after the date on which the purchaser discovered or reasonably should have discovered the defect as a prerequisite to the exercise of the purchaser's right to maintain a legal action against the labeler or any other seller of the seed.

(b) Any period of limitations that applies to the claim shall be tolled until the 11th day after the date of filing with the commissioner of the report of arbitration by the board of arbitration.

(c) A claim of damages due to the failure of the seed as described by Subsection (a) of this section may not be asserted as a counterclaim or defense in any action brought by a seller against a purchaser until the purchaser has submitted a claim to arbitration.

(d) When the court in which an action has been filed by a seller of seed described by Subsection (c) of this section receives from the purchaser a copy of the purchaser's complaint filed in arbitration, accompanied by a written notice of intention to use the claim as a counterclaim or defense in the action, the seller's action shall be stayed. Any period of limitations that applies to the claim is suspended until the 11th day after the date of filing with the commissioner of the report of arbitration by the board of arbitration.

§ 64.003. Notice of Arbitration Requirement

(a) Conspicuous language calling attention to the requirement for arbitration under this chapter shall be included on the analysis label required under this subtitle or otherwise attached to the seed bag or

package.

(b) The required notice shall read substantially as follows:

Under the seed laws of Texas, arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed. Information about this requirement may be obtained from the state commissioner of agriculture.
NOTICE OF REQUIRED ARBITRATION

§ 64.004. Effect of Arbitration

In any litigation involving a complaint that has been the subject of arbitration under this chapter, any party may introduce the report of arbitration as evidence of the facts found in the report, and the court may give such weight to the arbitration board's findings of fact, conclusions of law, and recommendations as to damages and costs as the court determines advisable. The court may also take into account any findings of the board of arbitration with respect to the failure of any party to cooperate in the arbitration proceedings, including the arbitration board's ability to determine the facts of the case.

§ 64.005. Arbitration Board

(a) The State Seed and Plant Board, as constituted under Section 62.002 of this code, is the board of arbitration for complaints filed under this chapter.

(b) As a board of arbitration, the State Seed and Plant Board shall conduct arbitration as provided by this chapter. The arbitration board may be called into session by the commissioner or the chairman of the State Seed and Plant Board to consider matters referred to the arbitration board by the commissioner or the chairman.

(c) The State Seed and Plant Board shall also be given the authority to hire an outside arbitrator who is not an employee of the Department of Agriculture or a member of the arbitration board.

§ 64.006. Arbitration Procedures

(a) A purchaser may begin arbitration by filing with the commissioner a sworn complaint and a filing fee, as provided by department rule. The purchaser shall send a copy of the complaint to the seller by certified mail.

(b) Not later than the 15th day after the date the seller receives a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and send a copy of the answer to the purchaser by certified mail.

(c) The commissioner shall refer the complaint and the answer to the arbitration board for investigation, findings, and recommendations.

(d) On referral of the complaint for investigation, the arbitration board shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the

commissioner not later than the 60th day after the date of the referral, or before a later date determined by the parties.

(e) The report of the arbitration board shall include findings of fact, conclusions of law, and recommendations as to costs, if any. If there is a cost, the commissioner shall assess the cost of arbitration against any party found responsible.

(f) In the course of its investigation, the arbitration board or any of its members may:
(1) examine the purchaser and the seller on all matters that the arbitration board considers relevant;
(2) grow to production a representative sample of the seed through the facilities of the commissioner or a designated university under the commissioner's supervision; or
(3) hold informal hearings at the time and place the chairman of the State Seed and Plant Board directs, with reasonable notice to all parties.
(g) The arbitration board may delegate all or any part of any investigation to one or more of its members. Any delegated investigation shall be summarized in writing and considered by the arbitration board in its report.

(h) The arbitration board shall consider any field inspection or other data submitted by either party in its report and recommendation.

(i) The members of the arbitration board serve without compensation but are entitled to reimbursement for expenses incurred in the performance of their duties in the amounts provided by the General Appropriations Act.

(j) After the arbitration board has filed a report of arbitration, the commissioner shall promptly transmit the report by certified mail to all parties.

§ 64.0065. Effect of Noncompliance

The arbitration board may dismiss a purchaser's claim to arbitration if the purchaser fails to submit the claim within the period prescribed by Section 64.002(a).

§ 64.007. Department Rules

The department may adopt rules necessary to carry out the purposes of this chapter.

Seed Arbitration
Title 4. Tex. Admin. Code Chapter 6.
Current through 2008

§ 6.1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The State Seed and Plant Board as established under the Texas Agriculture Code, § 62.002

which is the board of arbitration for complaints filed under this chapter. As a board of arbitration, the State Seed and Plant Board, also referred to as the Seed Arbitration Board in that capacity, shall conduct arbitration as provided by the Texas Agriculture Code, Chapter 64.

(2) Chairman--The chairman of the State Seed and Plant Board.

(3) Commissioner--The commissioner of the Texas Department of Agriculture or his designee.

(4) Complaint--Unless otherwise noted, a sworn statement filed under the Texas Agriculture Code, Chapter 64, alleging loss or damages incurred as a result of the failure of the seed to produce or perform as represented by warranty or by the label required to be attached to the seed under the Texas Agriculture Code, Chapter 64 or as a result of negligence.

(5) Department--The Texas Department of Agriculture.

§ 6.2. Field Inspection

Except in the case of seed that has not been planted, the complaint must be filed within the time necessary to permit effective inspection of the plants which are the subject of the arbitration complaint under field conditions. The Board, in its discretion, may allow an inspection conducted of the plants which are the subject of the arbitration complaint as part of a department investigation on a seed complaint filed under the Texas Agriculture Code, Chapter 61, to be used to meet this requirement.

§ 6.3. Notification Requirements

The purchaser must file the sworn complaint with the commissioner, as required in the Texas Agriculture Code, § 64.006(a), and at the same time a copy shall be sent to the seller by certified mail.

§ 6.4. Cost of Arbitration

(a) Arbitration filing fee. A nonrefundable filing fee of $300 shall accompany the sworn complaint and must be sent to the Texas Department of Agriculture, P.O. Box 629, Giddings, Texas 78942. If the board recommends to award damages to the complainant, the filing fee may be included in the arbitration costs assessed to the responsible party.

(b) Arbitration expenses. Upon recommendation of the board, all costs of arbitration shall be assessed by the commissioner against any party found responsible by the board. This includes costs incurred from:
(1) the hiring of an outside investigator;

(2) any investigation expenses (i.e., telephone costs, mail costs, copy costs, costs for weather reports, costs involved in growing out a representative sample of the seed involved, and any other relevant costs);

(3) travel expenses incurred by the board, any outside investigator and department employees involved in the investigation and/or arbitration proceedings;

(4) the hiring of an outside arbitrator; and

(5) any arbitration proceeding expenses (i.e., meeting room costs, telephone costs, mail costs, copy costs, rental of additional equipment requested by the board or parties involved, and any other relevant costs).

Negotiation and Mediation of Certain Contract Disputes
Title 1. Tex. Admin. Code Chapter 68.

Current through 2008

§ 68.47. Agreement to Mediate

The parties may agree to mediate a claim through an impartial third party. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, § 154.023. The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. The parties may be assisted in the mediation by legal counsel or other individual.

§ 68.49. Qualifications and Immunity of the Mediator

The mediator shall possess the qualifications required under the Civil Practice and Remedies Code, § 154.052, be subject to the standards and duties prescribed by the Civil Practice and Remedies Code, § 154.053 and have the qualified immunity prescribed by the Civil Practice and Remedies Code § 154.055, if applicable.

§ 68.51. Confidentiality of Mediation and Final Settlement Agreement

(a) A mediation conducted under this subchapter is confidential in accordance with the Government Code, § 2009.054.

(b) The confidentiality of a final settlement agreement to which a unit of state government is a signatory that is reached as a result of the mediation is governed by the Public Information Act, Government Code, Chapter 552.

§ 68.53. Costs of Mediation

Unless the parties agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with a mediation, including without limitation, costs of document reproduction, attorney's fees, consultant fees and expert fees, and the cost of the mediator shall be divided equally between the parties.

§ 68.55. Settlement Approval Procedures

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject

matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§ 68.57. Initial Settlement Agreement

Any settlement agreement reached during a mediation shall be signed by representatives of the contractor and the unit of state government, and shall describe any procedures that the parties must follow to obtain final and binding approval of the agreement.

§ 68.59. Final Settlement Agreement

A final settlement agreement reached during or as a result of a mediation that resolves an entire claim or counterclaim, or any designated and severable portion of a claim or counterclaim, shall comply with § 68.33 of subchapter B of this chapter (relating to Settlement Agreement).

§ 68.61. Referral to State Office of Administrative Hearings

If mediation does not resolve the claim to the satisfaction of the contractor, the contractor may request that the claim be referred to SOAH in accordance with § 68.37 of Subchapter B of this chapter (relating to Request for Contested Case Hearing.)