

Texas Legislature Considers New Arbitration Rules — Maybe Next Time?

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Amidst increasing political fury about mandatory arbitration, the Texas Senate passed a bill in April that would create another option for a party seeking to undo an award made in an arbitration proceeding and would attempt to track arbitration outcomes to evaluate the effectiveness of the system. The bill is currently in committee in the House. The bill's author, Senator Royce West, indicated in his Statement of Intent that the bill was designed to address certain problems relating to arbitration that have arisen, such as ensuring that arbitration is truly a quicker and less expensive form of dispute resolution than litigation.

The legislation would create another basis for a party to have an arbitration award vacated by the courts. In addition to the current bases of fraud, the arbitrator's bias, misconduct or failure to comply with appropriate regulations, and compelled arbitration without agreement, this bill would also allow the courts to vacate arbitration awards that "clearly violate[] fundamental public policy." In 2002, the Texas Supreme Court recognized public policy as a common law basis for vacating an arbitration award, although it made it clear that there were limits to its applicability. In *CVN Group, Inc. v. Delgado*, 95 S.W.3d 234 (Tex. 2002), the Court held that "an arbitration award cannot be set aside on public policy grounds except in an extraordinary case in which the award clearly violates carefully articulated, fundamental policy." This common law doctrine has been interpreted narrowly in Texas, as courts have held that alleged misapplication of the law by an arbitrator is not a public policy argument and thus not an issue reviewable by the courts and that, where an arbitrator did not "manifestly disregard the law," the award does not violate public policy. Whether the courts will change their analysis of the public policy issue if it becomes statutory rather than common law remains to be seen.

The bill also would set up a system by which the Office of Court Administration would track results for consumer arbitration and employment arbitration proceedings in Texas. Without revealing the parties to the arbitration, the arbitrator would be required to disclose certain information to the office relating to the decision and award. In particular, the bill requires the arbitrator to describe whether the prevailing party is a business or a consumer or an employer or employee. This provision seems designed to evaluate the common perception that arbitrators tend to favor businesses and employers over consumers and employees.

Although the bill has been passed by the Senate, the House referred it to the Committee on Civil Practices in early May. With the end of the 80th Legislature's Regular Session, it may be 2009 and the 81st Legislature before the issue is taken up again. It should be noted that the bill passed overwhelmingly in the Senate by a vote of 28-3.