

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1664

INTRODUCER: Judiciary Committee

SUBJECT: Arbitration

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Cibula</u>	<u>Cibula</u>		JU SPB 7078 as Introduced
1.	<u>Cibula</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1664 corrects a scrivener’s error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session. The bill clarifies that parties to an arbitration agreement may waive the right to a remedy, not the right to the confirmation of an arbitration award by a court.

II. Present Situation:

Arbitration Generally

Arbitration is an alternative dispute resolution process in which the parties submit a “dispute to one or more impartial persons for a final and binding decision, known as an ‘award.’”¹ Arbitration is intended to be a speedy and economical alternative to court litigation, which is often slow, time-consuming, and expensive.² Parties to arbitration voluntarily give up safeguards that litigants in court proceedings enjoy, such as a jury trial or a right to appeal and rules of evidence.³

Revised Florida Arbitration Code

During the 2013 Legislative Session, the Legislature passed CS/SB 530, codified as ch. 213-232, L.O.F. The bill substantially revised or repealed the then existing arbitration code in ch. 682, F.S., and replaced it with the “Revised Florida Arbitration Code,” based on the 2000 revision of

¹ American Arbitration Association, *Arbitration*, http://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration;jsessionid=2jX0RZLCyKPV4wMPSrcvCkSmCLsbXCrLZvRsLrhVNnhFChmSSnKj!-1600829671?_afLoop=832669183421451&_afWindowMode=0&_afWindowId=null (last visited March 9, 2014).

² *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009).

³ *United Ins. Co. of America v. Office of Ins. Regulation*, 985 So. 2d 665, 668 (Fla. 1st DCA 2008); *Murton Roofing Corp. v. FF Fund Corp.*, 930 So. 2d 772, 774 (Fla. 3d DCA 2006).

the Uniform Arbitration Act by the National Conference of Commissioners on Uniform State Laws.

Among the various provisions of the revised code, the code authorizes an arbitrator to award provisional remedies before a final award is made to protect the effectiveness of the arbitration proceeding.⁴ An arbitrator may also award punitive damages or other exemplary relief and other remedies that the arbitrator considers just and appropriate.⁵ A party awarded a provisional remedy or final award may enforce the award by having it confirmed by a court.⁶

The revised arbitration code generally allows parties to an arbitration agreement to waive or vary the effect of the code's requirements. However, the code lists a number of provisions that the parties to an agreement may not waive until a controversy arises and provisions that may not be waived at all.

According to s. 682.014(3), F.S., one of the requirements that may not be waived is "The remedies provided under s. 682.012." In this instance, the requirement, however, is internally inconsistent because the cross-reference of "s. 682.012" relates, not to remedies, but a party's right to enforce the award by having a court enter an order confirming the award. In this case, the cross-reference is correct, but its description is incorrect. Remedies for a breach of contract are often waived or limited by agreement. However, if a party to an arbitration agreement waives the right to enforce an award, there would be little or no reason to arbitrate any disputes.

III. Effect of Proposed Changes:

This bill corrects scrivener's error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session.

The revised code lists a number of provisions or rights that the parties to an arbitration agreement may not waive. One of these is "The remedies provided under s. 682.12[, F.S]." The description, "remedies," is inconsistent with the cross-reference to s. 682.12, F.S, which relates to the right of a party to have a court enter an order confirming the award. As corrected by the bill, a party to an arbitration agreement may waive a remedy, not the right to the confirmation of the award by a court.

The bill takes effect upon becoming a law and applies retroactively⁷ to July 1, 2013, which was the effective date of the legislation enacting the Revised Florida Arbitration Code.

⁴ See s. 682.031, F.S.

⁵ Section 682.11, F.S.

⁶ Sections 682.081 and 682.11, F.S.

⁷ See *Pembroke Lakes Mall Ltd. v. McGruder*, 2014 WL 714706, *4 (Fla. 4th DCA) (providing that the rule against retroactive application of statutes does not apply to procedural or remedial changes); *Maronda Homes, Inc., of Florida v. Lakeview Reserve Homeowners Ass'n Inc.*, 127 So. 3d 1258, 1273-1274 (Fla. 2013) (stating that a remedial statute does not "create new obligations or duties, but rather provides the remedy of clarification of an existing right").

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By correcting a scrivener's error in the Revised Florida Arbitration Code, litigation relating to the error may be avoided.

C. Government Sector Impact:

By correcting a scrivener's error in the Revised Florida Arbitration Code, litigation relating to the error may be avoided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 682.014.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
