

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 963 Dispute Resolution  
**SPONSOR(S):** Judiciary Committee; Harrison  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Cary	Bond
2) Justice Appropriations Subcommittee	10 Y, 5 N	Toms	Jones Darity
3) Judiciary Committee	16 Y, 0 N, As CS	Cary	Havlicak

### SUMMARY ANALYSIS

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

This bill may have a fiscal impact on the State Court System due to the potential for increased judicial workload because of additional provisions to the Arbitration Act that may require judicial oversight. However, if the bill increases the use of arbitration, the increased workload of the courts may be offset due to less cases going to trial. See "fiscal section".

The effective date of this bill is July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Many contracts, especially in a commercial context, contain an agreement by the parties to submit to binding arbitration rather than litigation for disputes arising out of the contract. Florida's current arbitration code is based on the 1955 Uniform Arbitration Act (UAA). This bare bones act remains largely unchanged since Florida adopted the UAA in 1957<sup>1</sup> and modified it in 1967<sup>2</sup>, even as the use of binding arbitration has become more widespread.

##### **Effect of Proposed Changes**

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

##### Notice

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

##### Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate. It also applies retrospectively if all parties agree to apply the revised act. On July 1, 2015, the revised act will apply to all arbitration agreements, regardless of whether the parties agree to apply it retroactively or not.

##### Effect of Agreement to Arbitrate

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

##### Judicial Relief

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

##### Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition

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<sup>1</sup> Chapter 57-402, L.O.F.

<sup>2</sup> Chapter 67-254, L.O.F.

precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration continues during a court challenge of this nature unless the court orders otherwise.

### Compelling or Staying Arbitration

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

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

### Provisional Remedies

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

### Initiation of Arbitration

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

### Consolidation of Separate Arbitration Proceedings

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

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if there were separate arbitration proceedings; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately, however the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

### Appointment of Arbitrators by the Court

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

### Disclosure by Arbitrator

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

### Majority Action by Arbitrators

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

### Immunity of Arbitrator

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

### Hearing

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

### Representation by Attorney

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

### Witnesses, Subpoenas, and Depositions

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

laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

### Judicial Enforcement of Preaward Ruling by an Arbitrator

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

### Award

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

### Change of Award by Arbitrators

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

### Remedies, Fees and Expenses of Arbitration Proceeding

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

### Confirming or Vacating an Award

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

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

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

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party should have known of

such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

#### Modification or Correction of Award

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

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

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

#### Judgment or Decree on Award

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

#### Jurisdiction

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

#### Venue

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

#### Appeals

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

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

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

## Electronic Signatures in Global and National Commerce Act

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

### Effective Date and Applicability

The bill provides an effective date of July 1, 2012. The revised act does not affect an action or proceeding commenced or right accrued before the revised act takes effect.

### Disputes Excluded

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

### Mediation Alternatives to Judicial Action

The bill renames ch. 44, F.S., as "Alternative Dispute Resolution" and amends ss. 44.104, 44. 107, and 731.401 F.S., removing references to binding arbitration. This ensures that the revised act is the sole statute in Florida pertaining to binding arbitration. The bill also requires a trial resolution judge who has agreed to serve in that capacity to be a member of The Florida Bar in good standing for 5 years or more. The bill also amends ss. 440.1926 and 489.144, F.S., to correctly cross-reference the revised act. The bill directs the Division of Statutory Revision to replace the phrase "the effective date of this act" with the date this act becomes a law.

The bill provides an effective date of July 1, 2012.

## B. SECTION DIRECTORY:

Section 1 amends s. 682.01, F.S., relating to Florida Arbitration Code.

Section 2 creates s. 682.011, F.S., relating to definitions.

Section 3 creates s. 682.012, F.S., relating to notice.

Section 4 creates s. 682.013, F.S., relating to applicability of the revised code.

Section 5 creates s. 682.014, F.S., relating to effect of agreements to arbitrate.

Section 6 creates s. 682.015, F.S., relating to petition for judicial relief.

Section 7 amends s. 682.02, F.S., relating to arbitration agreements made valid, irrevocable and enforceable.

Section 8 amends s. 682.03, F.S., relating to proceedings to compel and to stay arbitration.

Section 9 creates s. 682.031, F.S., relating to provisional remedies.

Section 10 creates s. 682.032, F.S., relating to initiation of arbitration.

Section 11 creates s. 682.033, F.S., relating to consolidation of separate arbitration proceedings.

Section 12 amends s. 682.04, F.S., relating to appointment of arbitrators by court.

Section 13 creates s. 682.041, F.S., relating to disclosure by arbitrator.

Section 14 amends s. 682.05, F.S., relating to majority action by arbitrators.

Section 15 creates s. 682.051, F.S., relating to immunity of arbitrator.

Section 16 amends s. 682.06, F.S., relating to hearings.

Section 17 amends s. 682.07, F.S., relating to representation by attorney.

Section 18 amends s. 682.08, F.S., relating to witnesses, subpoenas, and depositions.

Section 19 creates s. 682.081, F.S., relating to judicial enforcement of a preaward ruling by arbitrator.

Section 20 amends s. 682.09, F.S., relating to awards.

Section 21 amends s. 682.10, F.S., relating to change of award by arbitrators.

Section 22 amends s. 682.11, F.S., relating to remedies, fees and expenses of arbitration.

Section 23 amends s. 682.12, F.S., relating to confirmation of an award.

Section 24 amends s. 682.13, F.S., relating to vacating an award.

Section 25 amends s. 682.14, F.S., relating to modification or correction of an award.

Section 26 amends s. 682.15, F.S., relating to judgment or decree on award.

Section 27 repeals s. 682.16, F.S., relating to judgment roll and docketing.

Section 28 repeals s. 682.17, F.S., relating to application to court.

Section 29 repeals s. 682.18, F.S., relating to court definition and jurisdiction.

Section 30 creates s. 682.181, F.S., relating to jurisdiction.

Section 31 amends s. 682.19, F.S., relating to venue.

Section 32 amends s. 682.20, F.S., relating to appeals.

Section 33 repeals s. 682.21, F.S., relating to retroactivity.

Section 34 repeals s. 682.22, F.S., relating to severability.

Section 35 creates s. 682.23, F.S., relating to relationship to electronic signatures in Global and National Commerce Act.

Section 36 creates s. 682.25, F.S., relating to excluded disputes.

Section 37 amends s. 44.104, F.S., relating to voluntary trial resolution.

Section 38 amends s. 44.107, F.S., relating to immunity for arbitrators.

Section 39 amends s. 440.1926, F.S., relating to alternate dispute resolution.

Section 40 amends s. 489.1402, F.S., relating to Homeowners' Construction Recovery Fund.

Section 41 amends s. 731.401, F.S., relating to arbitration of disputes.

Section 42 provides direction to the Division of Statutory Revision.

Section 43 provides an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill may have a fiscal impact on the State Court System due to the potential for increased judicial workload because of additional provisions to the Arbitration Act that may require judicial oversight. However, if the bill increases the use of arbitration, the increased workload of the courts may be offset due to less cases going to trial.<sup>3</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>3</sup> Staff analysis by the Office of State Courts Administrator, revised February 23, 2012.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 24, 2012, the Judiciary Committee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment made numerous stylistic and technical changes throughout and also:

- Added provisions requiring the arbitrator to state the factual findings and legal basis for a provisional remedy for injunctive or equitable relief;
- Allows a party to a provisional remedy to make a motion to the court seeking to confirm or vacate the award, and requires the court to confirm the award if it satisfies the legal standards for such an award or to vacate the award if it does not;
- Includes a requirement for a trial resolution judge who has agreed to serve in that capacity to be a member of The Florida Bar in good standing for 5 years or more;
- Removes a provision that would have allowed a trial resolution judge to wear a judicial robe; and
- Removes a provision that would have granted judicial immunity to trial resolution judges.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.