

Arbitration Reform

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The [Court Administration Task Force](#) has issued its recommendations regarding Arbitration Reform.

During the last session of the Texas Legislature, bills amending the Texas Arbitration Act ("TAA") were introduced in both the House and Senate, but none passed. These bills addressed concerns regarding perceived inadequate disclosure and negotiation of arbitration clauses, especially in the consumer context, as well as issues of arbitration procedure and judicial review. The State Bar of Texas Court Administration Task Force was asked to review the proposed legislation and make recommendations. Much of arbitration law is subject to federal preemption under the Federal Arbitration Act ("FAA"), the Task Force recognizes that many legislative goals must be achieved at the federal level, however, the Task Force feels that making amendments to the TAA is an excellent first step.

The Task Force recommends raising the threshold at which the signature of an attorney is required to enforce an arbitration agreement under the TAA from \$50,000 to \$150,000. The Task Force has also drafted amendments to the proposed legislation that would exempt consumer transactions (borrowing definitions from the Deceptive Trade Practices Act) and exempt employment disputes.

The Task Force has recommended statutory language establishing a non-waivable five-day minimum notice period for all arbitral hearings, and a non-waivable right to a stenographic recording at the cost of the party requesting such record.

The Task Force further recommends arbitrators to be objectively qualified. Finally, the Task Force recommends remedies to provide interlocutory appeals of certain interlocutory arbitration orders to the same extent permitted under the FAA.

The Task Force did not recommend unlimited judicial review of arbitral awards. The Task Force did, however, recommend adding violation of public policy as a statutory ground for vacatur of an arbitral award. Such grounds are recognized by existing federal law and would probably survive a preemption attack under the FAA. The Task Force also recommends that the statutory language permitting vacatur of unconscionable agreements be amended to make clear that violations of state and federal constitutional rights may render an arbitration contract unconscionable.