

AN ACT

To amend sections 2711.02 and 2711.03 of the Revised Code to make certain changes applicable to commercial construction contracts in the Arbitration Law.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2711.02 and 2711.03 of the Revised Code be amended to read as follows:

Sec. 2711.02. (A) As used in this section and section 2711.03 of the Revised Code, "commercial construction contract" means any written contract or agreement for the construction of any improvement to real property, other than an improvement that is used or intended to be used as a single-family, two-family, or three-family detached dwelling house and accessory structures incidental to that use.

(B) If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration. ~~And~~

(C) Except as provided in division (D) of this section, an order under division (B) of this section that grants or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

(D) If an action is brought under division (B) of this section upon any issue referable to arbitration under an agreement in writing for arbitration that is included in a commercial construction contract, an order under that division that denies a stay of a trial of the action pending arbitration,

including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Sec. 2711.03. (A) The party aggrieved by the alleged failure of another to perform under a written agreement for arbitration may petition any court of common pleas having jurisdiction of the party so failing to perform for an order directing that ~~such the~~ arbitration proceed in the manner provided for in ~~such the written~~ agreement. Five days' notice in writing of ~~such application that petition~~ shall be served upon the party in default. Service ~~thereof of the notice~~ shall be made in the manner provided for the service of a summons. The court shall hear the parties, and, upon being satisfied that the making of the agreement for arbitration or the failure to comply ~~therewith with the agreement~~ is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the agreement. ~~If~~

(B) If the making of the arbitration agreement or the failure to perform it is in issue in a petition filed under division (A) of this section, the court shall proceed summarily to the trial thereof of that issue If no jury trial is demanded as provided in this division, the court shall hear and determine ~~such that~~ issue. ~~When such an~~ Except as provided in division (C) of this section, if the issue of the making of the arbitration agreement or the failure to perform it is raised, either party may, on or before the return day of the notice of application, the petition, may demand a jury trial of such that issue; and upon such. Upon the party's demand for a jury trial, the court shall make an order referring the issue to a jury called and impaneled in the manner provided in civil actions. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding ~~thereunder under the agreement~~, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding ~~thereunder under the agreement~~, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with ~~such that~~ agreement.

(C) If a written agreement for arbitration is included in a commercial construction contract and the making of the arbitration agreement or the failure to perform it is in issue in a petition filed under division (A) of this section, the court shall proceed summarily to the trial of that issue, and the court shall hear and determine that issue.

SECTION 2. That existing sections 2711.02 and 2711.03 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 401

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____