

By: Representative Perry

To: Judiciary A

## HOUSE BILL NO. 776

1 AN ACT TO ESTABLISH THE UNIFORM ARBITRATION ACT; TO ESTABLISH  
2 THE VALIDITY OF AN ARBITRATION AGREEMENT; TO SET FORTH PROCEDURES  
3 FOR COMPELLING OR STAYING ARBITRATION; TO PROVIDE FOR APPOINTMENT  
4 OF ARBITRATORS BY THE COURT IF THE ARBITRATION AGREEMENT DOES NOT  
5 PROVIDE A METHOD OF APPOINTMENT; TO REQUIRE MAJORITY ACTION BY THE  
6 ARBITRATORS; TO SET FORTH PROCEDURES FOR PREHEARING DISCOVERY OF  
7 EVIDENCE, A HEARING ON THE MATTER, THE ISSUANCE OF SUBPOENAS FOR  
8 WITNESSES AND DOCUMENTS AND AN AWARD IN THE CASE OF ARBITRATION  
9 UNDER THE PROVISIONS OF THIS ACT; TO PROVIDE FOR PAYMENT OF THE  
10 EXPENSES OF ARBITRATION; TO PROVIDE THAT THE COURT SHALL CONFIRM  
11 OR VACATE AN ARBITRATION AWARD; TO PROVIDE FOR MODIFICATION OR  
12 CORRECTION OF AN AWARD; TO SET FORTH JURISDICTION AND VENUE UNDER  
13 THIS ACT; TO PROVIDE PROCEDURES FOR APPEALS FROM AWARDS UNDER THIS  
14 ACT; TO AMEND SECTION 65-1-91, MISSISSIPPI CODE OF 1972, IN  
15 CONFORMITY TO THE PROVISIONS OF THIS ACT; TO REPEAL SECTIONS  
16 11-15-1 THROUGH 11-15-37, MISSISSIPPI CODE OF 1972, WHICH SET  
17 FORTH PROCEDURES FOR SUBMISSION OF DISPUTED MATTERS TO  
18 ARBITRATION; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 SECTION 1. A written agreement to submit any existing  
21 controversy to arbitration or a provision in a written contract to  
22 submit to arbitration any controversy thereafter arising between  
23 the parties is valid, enforceable and irrevocable, save upon such  
24 grounds as exist at law or in equity for the revocation of any  
25 contract. This act also applies to arbitration agreements between  
26 employers and employees or between their respective  
27 representatives (unless otherwise provided in the agreement).

28 SECTION 2. (1) On application of a party showing an  
29 agreement described in Section 1 of this act, and the opposing  
30 party's refusal to arbitrate, the court shall order the parties to  
31 proceed with arbitration, but if the opposing party denies the  
32 existence of the agreement to arbitrate, the court shall proceed  
33 summarily to the determination of the issue so raised and shall  
34 order arbitration if found for the moving party, otherwise the

35 application shall be denied.

36 (2) On application, the court may stay an arbitration  
37 proceeding commenced or threatened on a showing that there is no  
38 agreement to arbitrate. Such an issue, when in substantial and  
39 bona fide dispute, shall be forthwith and summarily tried and the  
40 stay ordered if found for the moving party. If found for the  
41 opposing party, the court shall order the parties to proceed to  
42 arbitration.

43 (3) If an issue referable to arbitration under the alleged  
44 agreement is involved in an action or proceeding pending in a  
45 court having jurisdiction to hear applications under subsection  
46 (1) of this section, the application shall be made therein.  
47 Otherwise and subject to Section 18 of this act, the application  
48 may be made in any court of competent jurisdiction.

49 (4) Any action or proceeding involving an issue subject to  
50 arbitration shall be stayed if an order for arbitration or an  
51 application therefor has been made under this section or, if the  
52 issue is severable, the stay may be with respect thereto only.  
53 When the application is made in such action or proceeding, the  
54 order for arbitration shall include such stay.

55 (5) An order for arbitration shall not be refused on the  
56 ground that the claim in issue lacks merit or is frivolous or  
57 because any fault or grounds for the claim sought to be arbitrated  
58 have not been shown.

59 SECTION 3. If the arbitration agreement provides a method of  
60 appointment of arbitrators, this method shall be followed. In the  
61 absence thereof, or if the agreed method fails or for any reason  
62 cannot be followed, or when an arbitrator appointed fails or is  
63 unable to act and his successor has not been duly appointed, the  
64 court on application of a party shall appoint one or more  
65 arbitrators. An arbitrator so appointed has all the powers of one  
66 specifically named in the agreement.

67 SECTION 4. The powers of the arbitrators may be exercised by  
68 a majority unless otherwise provided by the agreement or by this  
69 act.

70 SECTION 5. Unless otherwise provided by the agreement:

71 (a) The arbitrators shall appoint a time and place for

72 the hearing and cause notification to the parties to be served  
73 personally or by registered mail not less than five (5) days  
74 before the hearing. Appearance at the hearing waives such notice.

75 The arbitrators may adjourn the hearing from time to time as  
76 necessary and, on request of a party and for good cause, or upon  
77 their own motion, may postpone the hearing to a time not later  
78 than the date fixed by the agreement for making the award unless  
79 the parties consent to a later date. The arbitrators may hear and  
80 determine the controversy upon the evidence produced  
81 notwithstanding the failure of a party duly notified to appear.  
82 The court on application may direct the arbitrators to proceed  
83 promptly with the hearing and determination of the controversy.

84 (b) The parties are entitled to be heard, to present  
85 evidence material to the controversy and to cross-examine  
86 witnesses appearing at the hearing.

87 (c) The hearing shall be conducted by all the  
88 arbitrators, but a majority may determine any question and render  
89 a final award. If, during the course of the hearing, an  
90 arbitrator for any reason ceases to act, the remaining arbitrator  
91 or arbitrators appointed to act as neutrals may continue with the  
92 hearing and determination of the controversy.

93 SECTION 6. A party has the right to be represented by an  
94 attorney at any proceeding or hearing under this act. A waiver  
95 thereof before the proceeding or hearing is ineffective.

96 SECTION 7. (1) The arbitrators may issue or cause to be  
97 issued subpoenas for the attendance of witnesses and for the  
98 production of books, records, documents and other evidence, and  
99 shall have the power to administer oaths. Subpoenas so issued  
100 shall be served and, upon application to the court by a party or  
101 the arbitrators, enforced in the manner provided by law for the  
102 service and enforcement of subpoenas in a civil action.

103 (2) On application of a party and for use as evidence, the  
104 arbitrators may permit a deposition to be taken, in the manner and

105 upon the terms designated by the arbitrators, of a witness who  
106 cannot be subpoenaed or is unable to attend the hearing.

107 (3) All provisions of law compelling a person under subpoena  
108 to testify are applicable.

109 (4) Fees for attendance as a witness shall be the same as  
110 for a witness in the circuit court.

111 SECTION 8. (1) The award shall be in writing and signed by  
112 the arbitrators joining in the award. The arbitrators shall  
113 deliver a copy to each party personally or by registered mail, or  
114 as provided in the agreement.

115 (2) An award shall be made within the time fixed therefor by  
116 the agreement or, if not so fixed, within such time as the court  
117 orders on application of a party. The parties may extend the time  
118 in writing either before or after the expiration thereof. A party  
119 waives the objection that an award was not made within the time  
120 required unless he notifies the arbitrators of his objection  
121 before the delivery of the award to him.

122 SECTION 9. On application of a party or, if an application  
123 to the court is pending under Section 11, 12 or 13 of this act, on  
124 submission to the arbitrators by the court under such conditions  
125 as the court may order, the arbitrators may modify or correct the  
126 award upon the grounds stated in Sections 13(1)(a) and (c) or for  
127 the purpose of clarifying the award. The application shall be  
128 made within twenty (20) days after delivery of the award to the  
129 applicant. Written notice thereof shall be given forthwith to the  
130 opposing party, stating he must serve his objections thereto, if  
131 any, within ten (10) days from the notice. The award so modified  
132 or corrected is subject to the provisions of Sections 11, 12 and  
133 13 of this act.

134 SECTION 10. Unless otherwise provided in the agreement to  
135 arbitrate, the arbitrators' expenses and fees, together with other  
136 expenses, not including attorneys fees, incurred in the conduct of  
137 the arbitration, shall be paid as provided in the award.

138        SECTION 11. Upon application of a party, the court shall  
139 confirm an award unless, within the time limits hereinafter  
140 imposed, grounds are urged for vacating or modifying or correcting  
141 the award, in which case the court shall proceed as provided in  
142 Sections 12 and 13 of this act.

143        SECTION 12. (1) Upon application of a party, the court  
144 shall vacate an award where:

145            (a) The award was procured by corruption, fraud or  
146 other undue means;

147            (b) There was evident partiality by an arbitrator  
148 appointed as a neutral or corruption in any of the arbitrators or  
149 misconduct prejudicing the rights of any party;

150            (c) The arbitrators exceed their powers;

151            (d) The arbitrators refused to postpone the hearing  
152 upon sufficient cause being shown therefor or refused to hear  
153 evidence material to the controversy or otherwise so conducted the  
154 hearing, contrary to the provisions of Section 5 of this act, as  
155 to prejudice substantially the rights of a party; or

156            (e) There was no arbitration agreement and the issue  
157 was not adversely determined in proceedings under Section 2 of  
158 this act, and the party did not participate in the arbitration  
159 hearing without raising the objection; but the fact that the  
160 relief was such that it could not or would not be granted by a  
161 court of law or equity is not grounds for vacating or refusing to  
162 confirm the award.

163        (2) An application under this section shall be made within  
164 ninety (90) days after delivery of a copy of the award to the  
165 applicant, except that, if predicated upon corruption, fraud, or  
166 other undue means, it shall be made within ninety (90) days after  
167 such grounds are known or should have been known.

168        (3) In vacating the award on grounds other than that stated  
169 in subsection (1)(e), the court may order a rehearing before new  
170 arbitrators chosen as provided in the agreement, or in the absence

171 thereof, by the court in accordance with Section 3 of this act,  
172 or, if the award is vacated on grounds set forth in subsections  
173 (1)(c) and (d) of this section, the court may order a rehearing  
174 before the arbitrators who made the award or their successors  
175 appointed in accordance with Section 3 of this act. The time  
176 within which the agreement requires the award to be made is  
177 applicable to the rehearing and commences from the date of the  
178 order.

179 (4) If the application to vacate is denied and no motion to  
180 modify or correct the award is pending, the court shall confirm  
181 the award.

182 SECTION 13. (1) Upon application made within ninety (90)  
183 days after delivery of a copy of the award to the applicant, the  
184 court shall modify or correct the award where:

185 (a) There was an evident miscalculation of figures or  
186 an evident mistake in the description of any person, thing or  
187 property referred to in the award;

188 (b) The arbitrators have awarded upon a matter not  
189 submitted to them, and the award may be corrected without  
190 affecting the merits of the decision upon the issues submitted; or

191 (c) The award is imperfect as a matter of form, not  
192 affecting the merits of the controversy.

193 (2) If the application is granted, the court shall modify  
194 and correct the award so as to effect its intent and shall confirm  
195 the award as so modified and corrected. Otherwise, the court  
196 shall confirm the award as made.

197 (3) An application to modify or correct an award may be  
198 joined in the alternative with an application to vacate the award.

199 SECTION 14. Upon the granting of an order confirming,  
200 modifying or correcting an award, a judgment or decree shall be  
201 entered in conformity therewith and be enforced as any other  
202 judgment or decree. Costs of the application and of the  
203 proceeding subsequent thereto, and disbursements may be awarded by

204 the court.

205       SECTION 15. (1) On entry of judgment or decree, the clerk  
206 shall prepare the judgment roll consisting, to the extent filed,  
207 of the following:

208           (a) The agreement and each written extension of the  
209 time within which to make the award;

210           (b) The award;

211           (c) A copy of the order confirming, modifying or  
212 correcting the award; and

213           (d) A copy of the judgment or decree.

214       (2) The judgment or decree shall be docketed as if rendered  
215 in an action.

216       SECTION 16. Except as otherwise provided, an application to  
217 the court under this act shall be by motion and shall be heard in  
218 the manner and upon the notice provided by law or rule of court  
219 for the making and hearing of motions. Unless the parties have  
220 agreed otherwise, notice of an initial application for an order  
221 shall be served in the manner provided by law for the service of a  
222 summons in an action.

223       SECTION 17. The term "court" means circuit or chancery court  
224 of the county wherein the agreement was made or performed. The  
225 making of an agreement described in Section 1 of this act  
226 providing for arbitration in this state confers jurisdiction on  
227 the court to enforce the agreement under this act and to enter  
228 judgment on an award thereunder.

229       SECTION 18. An initial application shall be made to the  
230 appropriate court of the county in which the agreement provides  
231 the arbitration hearing shall be held or, if the hearing has been  
232 held, in the county in which it was held. Otherwise, the  
233 application shall be made in the county where the adverse party  
234 resides or has a place of business or, if he has no residence or  
235 place of business in this state, to the circuit or chancery court  
236 of any county. All subsequent applications shall be made to the

237 court hearing the initial application unless the court otherwise  
238 directs.

239 SECTION 19. (1) An appeal may be taken from:

240 (a) An order denying an application to compel  
241 arbitration made under Section 2 hereof;

242 (b) An order granting an application to stay  
243 arbitration made under Section 2(2) hereof;

244 (c) An order confirming or denying confirmation of an  
245 award;

246 (d) An order modifying or correcting an award;

247 (e) An order vacating an award without directing a  
248 rehearing; or

249 (f) A judgment or decree entered under the provisions  
250 of this act.

251 (2) The appeal shall be taken in the manner and to the same  
252 extent as from orders or judgments in a civil action.

253 SECTION 20. This act applies to agreements containing  
254 arbitration provisions made after July 1, 1999.

255 SECTION 21. This act shall be so construed as to effectuate  
256 its general purpose to make uniform the law of those states which  
257 enact it.

258 SECTION 22. If any provision of this act or the application  
259 thereof to any person or circumstance is held invalid, the  
260 invalidity shall not affect other provisions or applications of  
261 the act which can be given without the invalid provision or  
262 application, and to this end the provisions of this act are  
263 severable.

264 SECTION 23. The provisions of Sections 1 through 22 of this  
265 act may be cited as the "Uniform Arbitration Act."

266 SECTION 24. Section 65-1-91, Mississippi Code of 1972, is  
267 amended as follows:

268 65-1-91. Upon demand by any party to a contract with the  
269 Mississippi State Highway Department for arbitration, such



270 arbitration shall proceed in all respects and shall have the same  
271 effect as authorized and provided by Sections 1 through 22 of this  
272 act. Any arbitration decision shall be binding unless set aside  
273 by the commission.

274 SECTION 25. Sections 11-15-1, 11-15-3, 11-15-5, 11-15-7,  
275 11-15-9, 11-15-11, 11-15-13, 11-15-15, 11-15-17, 11-15-19,  
276 11-15-21, 11-15-23, 11-15-25, 11-15-27, 11-15-29, 11-15-31,  
277 11-15-33, 11-15-35 and 11-15-37, Mississippi Code of 1972, which  
278 set forth the procedure and requirements for submission of  
279 disputed matters to arbitration, are repealed.

280 SECTION 26. The provisions of Sections 1 through 22 of this  
281 act shall be supplemental to the provisions of, and shall not be  
282 considered as amending or repealing:

283 (a) Sections 11-15-101 through 11-15-143, which relate  
284 to arbitration of controversies arising from construction  
285 contracts and related agreements; or

286 (b) Sections 65-1-93 through 65-1-109, which provide  
287 for the manner of settling disputes between the Mississippi State  
288 Highway Department and contractors which have commenced before  
289 July 1, 1972.

290 SECTION 27. This act shall take effect and be in force from  
291 and after July 1, 1999.