

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 671

1 AN ACT TO PROVIDE THAT ARBITRATION CLAUSES IN CERTAIN
2 CONTRACTS SHALL BE CONSIDERED NONBINDING; TO AMEND SECTIONS
3 11-15-1, 11-15-103, 37-101-15, 65-1-89 AND 65-1-91, MISSISSIPPI
4 CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION; AND FOR
5 RELATED PURPOSES.

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

7 **SECTION 1.** An arbitration clause in any contract between a
8 seller or provider and a citizen of this state shall be considered
9 nonbinding. The citizen shall have all legal remedies available
10 in the courts of this state in any matter that may be subject to
11 the arbitration clause.

12 **SECTION 2.** Section 11-15-1, Mississippi Code of 1972, is
13 amended as follows:

14 11-15-1. (1) All persons, except infants and persons of
15 unsound mind, may, by instrument of writing, submit to the
16 decision of one or more arbitrators any controversy which may be
17 existing between them, which might be the subject of an action,
18 and may, in such submission, agree that the court having
19 jurisdiction of the subject matter shall render judgment on the



20 award made pursuant to such submission. In such case, however,
21 should the parties agree upon a court without jurisdiction of the
22 subject matters of the award, the judgment shall be rendered by
23 the court having jurisdiction in the county of the residence of
24 the party, or some one of them, against whom the award shall be
25 made.

26 (2) Arbitration clauses in any contract executed on or after
27 July 1, 2018, shall be subject to the provisions of Section 1 of
28 this act.

29 **SECTION 3.** Section 11-15-103, Mississippi Code of 1972, is
30 amended as follows:

31 11-15-103. (1) Two (2) or more parties referred to in
32 Section 11-15-101 may agree in writing to submit to arbitration
33 any controversy existing between them at the time of the
34 agreement, or they may include in a written contract a provision
35 for the settlement by arbitration of any controversy thereafter
36 arising between them relating to such contract or the failure or
37 refusal to perform the whole or any part thereof. Such agreement
38 or provision shall be valid, enforceable and irrevocable without
39 regard to the justiciable character of the controversy. * * *
40 However, * * * if either party to such an agreement initiates
41 litigation against the other with respect to such agreement, such
42 arbitration provision shall be deemed waived unless asserted as a
43 defense on or before the responding party is required to answer to
44 such litigation. Whenever a provision for binding arbitration is



45 included in the contract documents of a public contract, any
46 bidder may refuse to accept such clause and shall so state on the
47 bid document before entering into such public contract, and such
48 refusal shall not be cause to reject any bid on, or refuse the
49 award of such public contract.

50 (2) Arbitration clauses in any contract executed on or after
51 July 1, 2018, shall be subject to the provisions of Section 1 of
52 this act.

53 **SECTION 4.** Section 37-101-15, Mississippi Code of 1972, is
54 amended as follows:

55 37-101-15. (a) The Board of Trustees of State Institutions
56 of Higher Learning shall succeed to and continue to exercise
57 control of all records, books, papers, equipment, and supplies,
58 and all lands, buildings, and other real and personal property
59 belonging to or assigned to the use and benefit of the board of
60 trustees formerly supervising and controlling the institutions of
61 higher learning named in Section 37-101-1. The board shall have
62 and exercise control of the use, distribution and disbursement of
63 all funds, appropriations and taxes, now and hereafter in
64 possession, levied and collected, received, or appropriated for
65 the use, benefit, support, and maintenance or capital outlay
66 expenditures of the institutions of higher learning, including the
67 authorization of employees to sign vouchers for the disbursement
68 of funds for the various institutions, except where otherwise
69 specifically provided by law.



70 (b) The board shall have general supervision of the
71 affairs of all the institutions of higher learning, including the
72 departments and the schools thereof. The board shall have the
73 power in its discretion to determine who shall be privileged to
74 enter, to remain in, or to graduate therefrom. The board shall
75 have general supervision of the conduct of libraries and
76 laboratories, the care of dormitories, buildings, and grounds; the
77 business methods and arrangement of accounts and records; the
78 organization of the administrative plan of each institution; and
79 all other matters incident to the proper functioning of the
80 institutions. The board shall have the authority to establish
81 minimum standards of achievement as a prerequisite for entrance
82 into any of the institutions under its jurisdiction, which
83 standards need not be uniform between the various institutions and
84 which may be based upon such criteria as the board may establish.

85 (c) The board shall exercise all the powers and
86 prerogatives conferred upon it under the laws establishing and
87 providing for the operation of the several institutions herein
88 specified. The board shall adopt such bylaws and regulations from
89 time to time as it deems expedient for the proper supervision and
90 control of the several institutions of higher learning, insofar as
91 such bylaws and regulations are not repugnant to the Constitution
92 and laws, and not inconsistent with the object for which these
93 institutions were established. The board shall have power and
94 authority to prescribe rules and regulations for policing the



95 campuses and all buildings of the respective institutions, to
96 authorize the arrest of all persons violating on any campus any
97 criminal law of the state, and to have such law violators turned
98 over to the civil authorities.

99 (d) For all institutions specified herein, the board
100 shall provide a uniform system of recording and of accounting
101 approved by the State Department of Audit. The board shall
102 annually prepare, or cause to be prepared, a budget for each
103 institution of higher learning for the succeeding year which must
104 be prepared and in readiness for at least thirty (30) days before
105 the convening of the regular session of the Legislature. All
106 relationships and negotiations between the State Legislature and
107 its various committees and the institutions named herein shall be
108 carried on through the board of trustees. No official, employee
109 or agent representing any of the separate institutions shall
110 appear before the Legislature or any committee thereof except upon
111 the written order of the board or upon the request of the
112 Legislature or a committee thereof.

113 (e) For all institutions specified herein, the board
114 shall prepare an annual report to the Legislature setting forth
115 the disbursements of all monies appropriated to the respective
116 institutions. Each report to the Legislature shall show how the
117 money appropriated to the several institutions has been expended,
118 beginning and ending with the fiscal years of the institutions,
119 showing the name of each teacher, officer, and employee, and the



120 salary paid each, and an itemized statement of each and every item
121 of receipts and expenditures. Each report must be balanced, and
122 must begin with the former balance. If any property belonging to
123 the state or the institution is used for profit, the reports shall
124 show the expense incurred in managing the property and the amount
125 received therefrom. The reports shall also show a summary of the
126 gross receipts and gross disbursements for each year and shall
127 show the money on hand at the beginning of the fiscal period of
128 the institution next preceding each session of the Legislature and
129 the necessary amount of expense to be incurred from * * * that
130 date to January 1 following. The board shall keep the annual
131 expenditures of each institution herein mentioned within the
132 income derived from legislative appropriations and other sources,
133 but in case of emergency arising from acts of providence,
134 epidemics, fire or storm with the written approval of the Governor
135 and by written consent of a majority of the senators and of the
136 representatives it may exceed the income. The board shall require
137 a surety bond in a surety company authorized to do business in
138 this state, of every employee who is the custodian of funds
139 belonging to one or more of the institutions mentioned herein,
140 which bond shall be in a sum to be fixed by the board in an amount
141 that will properly safeguard the * * * funds, the premium for
142 which shall be paid out of the funds appropriated for * * * those
143 institutions.



144 (f) The board shall have the power and authority to
145 elect the heads of the various institutions of higher learning and
146 to contract with all deans, professors, and other members of the
147 teaching staff, and all administrative employees of * * * those
148 institutions for a term of not exceeding four (4) years. The
149 board shall have the power and authority to terminate any such
150 contract at any time for malfeasance, inefficiency, or
151 contumacious conduct, but never for political reasons. It shall
152 be the policy of the board to permit the executive head of each
153 institution to nominate for election by the board all subordinate
154 employees of the institution over which he presides. It shall be
155 the policy of the board to elect all officials for a definite
156 tenure of service and to reelect during the period of satisfactory
157 service. The board shall have the power to make any adjustments
158 it thinks necessary between the various departments and schools of
159 any institution or between the different institutions.

160 (g) The board shall keep complete minutes and records
161 of all proceedings which shall be open for inspection by any
162 citizen of the state.

163 (h) The board shall have the power to enter into an
164 energy performance contract, energy services contract, on a
165 shared-savings, lease or lease-purchase basis, for energy
166 efficiency services and/or equipment as prescribed in Section
167 31-7-14.



168 (i) The Board of Trustees of State Institutions of
169 Higher Learning, for and on behalf of Jackson State University, is
170 hereby authorized to convey by donation or otherwise easements
171 across portions of certain real estate located in the City of
172 Jackson, Hinds County, Mississippi, for right-of-way required for
173 the Metro Parkway Project.

174 (j) In connection with any international contract
175 between the board or one (1) of the state's institutions of higher
176 learning and any party outside of the United States, the board or
177 institution that is the party to the international contract is
178 hereby authorized and empowered to include in the contract a
179 provision for the resolution by arbitration of any controversy
180 between the parties to the contract relating to such contract or
181 the failure or refusal to perform any part of the contract. Such
182 provision shall be valid, enforceable and irrevocable without
183 regard to the justiciable character of the controversy. * * *
184 However, * * * if either party to such contract initiates
185 litigation against the other with respect to the contract, the
186 arbitration provision shall be deemed waived unless asserted as a
187 defense on or before the responding party is required to answer
188 such litigation. Arbitration clauses in any contract executed on
189 or after July 1, 2018, shall be subject to the provisions of
190 Section 1 of this act.

191 (k) The Board of Trustees of State Institutions of
192 Higher Learning ("board"), on behalf of any institution under its



193 jurisdiction, shall purchase and maintain business property
194 insurance and business personal property insurance on all
195 university-owned buildings and/or contents as required by federal
196 law and regulations of the Federal Emergency Management Agency
197 (FEMA) as is necessary for receiving public assistance or
198 reimbursement for repair, reconstruction, replacement or other
199 damage to those buildings and/or contents caused by the Hurricane
200 Katrina Disaster of 2005 or subsequent disasters. The board is
201 authorized to expend funds from any available source for the
202 purpose of obtaining and maintaining that property insurance. The
203 board is authorized to enter into agreements with the Department
204 of Finance and Administration, local school districts,
205 community/junior college districts, community hospitals and/or
206 other state agencies to pool their liabilities to participate in a
207 group business property and/or business personal property
208 insurance program, subject to uniform rules and regulations as may
209 be adopted by the Department of Finance and Administration.

210 (1) The Board of Trustees of State Institutions of
211 Higher Learning, or its designee, may approve the payment or
212 reimbursement of reasonable travel expenses incurred by candidates
213 for open positions at the board's executive office or at any of
214 the state institutions of higher learning, when the job candidate
215 has incurred expenses in traveling to a job interview at the
216 request of the board, the Commissioner of Higher Education or a
217 state institution of higher learning administrator.



218 **SECTION 5.** Section 65-1-89, Mississippi Code of 1972, is
219 amended as follows:

220 65-1-89. (1) Every formal contract made by or on behalf of
221 the Mississippi Transportation Commission for the construction of
222 any building, highway, or work, or the doing of any repairs shall
223 contain and include a provision for settlement by arbitration, if
224 requested by either party to the contract, of all claims and
225 disputes and other matters arising out of such contract, or the
226 failure or refusal to perform the whole or any part thereof.

227 (2) Arbitration clauses in any contract executed on or after
228 July 1, 2018, shall be subject to the provisions of Section 1 of
229 this act.

230 **SECTION 6.** Section 65-1-91, Mississippi Code of 1972, is
231 amended as follows:

232 65-1-91. (1) Upon demand for arbitration by any party to a
233 contract with the Mississippi Transportation Commission for the
234 construction of any building, highway or work, or the doing of any
235 repairs, such arbitration shall proceed in all respects and shall
236 have the same effect as authorized and provided by Sections
237 11-15-1 through 11-15-37. Any arbitration decision shall be
238 binding.

239 (2) Arbitration clauses in any contract executed on or after
240 July 1, 2018, shall be subject to the provisions of Section 1 of
241 this act.



242 **SECTION 7.** This act shall take effect and be in force from
243 and after July 1, 2018.

