

Regular Session, 2010

SENATE BILL NO. 457

BY SENATOR APPEL

CIVIL PROCEDURE. Provides relative to the Louisiana Binding Arbitration Law.
(8/15/10)

1 AN ACT

2 To amend and reenact R.S. 9:4203 and 4206, relative to the Louisiana Binding Arbitration
3 Law; to provide certain procedures, requirements, and conditions regarding
4 evidence; to provide relative to payment of deposits, fees, or expenses; and to
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:4203 and 4206 are hereby amended and reenacted to read as
8 follows:

9 §4203. Remedy in case of default; petition and notice; hearing and proceedings

10 A. The party aggrieved by the alleged failure or refusal of another to perform
11 under a written agreement for arbitration, may petition any court of record having
12 jurisdiction of the parties, or of the property, for an order directing that the
13 arbitration proceed in the manner provided for in the agreement. Five days' written
14 notice of the application shall be served upon the party in default. Service shall be
15 made in the manner provided by law for the service of a summons.

16 B. The court shall hear the parties, and upon being satisfied that the making
17 of the agreement for arbitration or the failure to comply therewith is not an issue, the

1 court shall issue an order directing the parties to proceed to arbitration in accordance
2 with the terms of the agreement. If the making of the arbitration agreement or the
3 failure or refusal to perform is an issue, the court shall proceed summarily to the trial
4 thereof.

5 C. If no jury trial is demanded, the court shall hear and determine the issue.
6 Where such an issue is raised, either party may, on or before the return day of the
7 notice of application, demand a jury trial of the issue, and upon such demand the
8 court shall issue an order referring the issue or issues to a jury called and empanelled
9 in the manner provided by law.

10 D. If the jury finds that no agreement in writing for arbitration was made or
11 that there is no default in proceeding thereunder, the proceeding shall be dismissed.
12 If the jury finds that an agreement for arbitration was made in writing and that there
13 is a default in proceeding thereunder, the court shall issue an order summarily
14 directing the parties to proceed with the arbitration in accordance with the terms
15 thereof.

16 **E. Failure to pay within ten business days any deposit, fee, or expense**
17 **required under the arbitration process shall constitute default in the arbitration**
18 **proceeding. A party aggrieved by such default shall be entitled to remove the**
19 **matter under arbitration in its entirety to a court of competent jurisdiction and**
20 **shall be entitled to recovery of attorney fees and costs in addition to other**
21 **remedies as provided in this Section.**

22 * * *

23 §4206. Witnesses; summoning; compelling attendance; **evidence**

24 A. When more than one arbitrator is agreed to, all the arbitrators shall sit at
25 the hearing of the case unless, by consent in writing, all parties agree to proceed with
26 the hearing with a less number. The arbitrators, selected either as prescribed in this
27 Chapter or otherwise, or a majority of them, may, **at the request of a party or**
28 **independently,** summon in writing any person to attend before them or any of them
29 as a witness and in a proper case to bring with him or them any book, record,

1 document, or paper which may be deemed material as evidence in the case. The fees
 2 for attendance shall be the same as the fees of witnesses in courts of general
 3 jurisdiction.

4 **B.** The summons shall issue in the name of the arbitrator or arbitrators, or a
 5 majority of them, and shall be signed by the arbitrator, arbitrators, or a majority of
 6 them, and shall be directed to the person and shall be served in the same manner as
 7 subpoenas to appear and testify before the court. If any person or persons summoned
 8 to testify refuses or neglects to obey the summons, upon petition, the court in and for
 9 the parish in which the arbitrators are sitting may compel the attendance or punish
 10 the person or persons for contempt in the same manner provided by law for securing
 11 the attendance of witnesses or their punishment for neglect or refusal to attend in the
 12 courts of this state.

13 **C.(1) The parties to the arbitration may offer such evidence as is**
 14 **relevant and material to the dispute and shall produce such evidence as the**
 15 **arbitrator or arbitrators may deem necessary to an understanding and**
 16 **determination of the dispute. Strict conformity to legal rules of evidence shall**
 17 **not be necessary, except for laws pertaining to testimonial privileges.**

18 **(2) The arbitrator or arbitrators shall determine the admissibility,**
 19 **relevance, and materiality of the evidence offered, including the admissibility**
 20 **of expert evidence, and may exclude evidence deemed by the arbitrator or**
 21 **arbitrators to be cumulative or irrelevant.**

The original instrument was prepared by Camille Sebastien Perry. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

Appel (SB 457)

Present law provides for the procedures to be used under the Louisiana Binding Arbitration Law.

Proposed law provides that failure to pay within ten business days any required deposit, fee, or expense shall constitute default in the arbitration proceeding and a party aggrieved by such default shall be entitled to remove the matter under arbitration to a court and shall be entitled to recovery of attorney fees and costs in addition to other remedies.

Proposed law provides that the parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrators may deem necessary to an understanding and determination of the dispute, and strict conformity to legal rules of evidence shall not be necessary, except for laws pertaining to testimonial privileges.

Proposed law requires the arbitrators to determine the admissibility, relevance and materiality of the evidence offered, including the admissibility of expert evidence, and authorizes the exclusion of evidence deemed by the arbitrator or arbitrators to be cumulative or irrelevant.

Proposed law provides that an arbitrator or other person authorized by law to summon witnesses or documents may do so upon the request of any party or independently.

Effective August 15, 2010.

(Amends R.S. 9:4203 and 4206)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Provides that failure to pay within ten days any required deposit, fee, or expense in an arbitration process shall constitute a default which entitles the aggrieved party to remove the matter to the court and further entitles the party to attorney fees and costs in addition to other remedies.

Senate Floor Amendments to engrossed bill.

1. Technical amendments.