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107TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 107–16

ARBITRATION TECHNICAL AMENDMENTS

MARCH 12, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 861]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 861) to make technical amendments to section 10 of title 9, United States Code, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 861 makes technical corrections to subsection 10(a) of title 9 of the United States Code.

BACKGROUND AND NEED FOR THE LEGISLATION

On March 6, 2001, Representative George Gekas (R-Pa.) introduced H.R. 861 for the purpose of making certain technical amendments to subsection 10(a) of title 9 of the United States Code.

89–006

Title 9 of the United States Code pertains to domestic and international arbitration law. Chapter 1 of title 9 contains the title's general provisions, including section 10. Subsection 10(a) enumerates the grounds for which a Federal district court may vacate an arbitration award.[1] It also authorizes the court to order a rehearing, under certain circumstances.

As drafted, subsection 10(a) consists of five paragraphs, four of which enumerate the grounds for vacating an arbitration award. The fifth paragraph, however, is clearly intended to be a separate provision of subsection 10(a) as it specifies the basis of the court's authority to direct a rehearing by the arbitrator.

H.R. 861 simply corrects this drafting error, which has existed from the legislation's original enactment in 1925.[2] The bill simply converts the fifth paragraph into a separate subsection of section 10, namely, subsection 10(b), and makes conforming grammatical and technical revisions to section 10.

H.R. 861 is identical to H.R. 916, which was introduced by Representative George W. Gekas on March 2, 1999. After the Committee reported H.R. 916 on June 10, 1999,[3] the House passed the bill under suspension of the rules by voice vote on July 13, 1999[4] with an unrelated amendment. The Senate did not act upon the House measure. H.R. 2440, legislation identical to H.R. 861, was passed by the House in the 105th Congress. On the last day of the 105th Congress, the Senate passed H.R. 2440 with an unrelated amendment by unanimous consent.[5] The House did not act on the Senate-passed measure.

HEARINGS

No hearings were held on H.R. 861.

COMMITTEE CONSIDERATION

On March 8, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 861 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 861 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House is inapplicable.

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[1] For example, the court, under this provision, may vacate an arbitrator's award procured by corruption, fraud, or undue means. 9 U.S.C. § 10 (a)(1). An arbitrator's award may also be vacated if there is evidence that the arbitrator was guilty of specified misconduct. 9 U.S.C. § 10 (a)(3).

[2] Act of Feb. 12, 1925, ch. 213, § 10, 43 Stat. 885.

[3] H.R. Rep. No. 106–181 (1999).

[4] 145 Cong. Rec. H5375–77 (daily ed. July 13, 1999).

[5] 144 Cong. Rec. S12942–43 (daily ed. Oct. 21, 1998). The amendment pertained to various provisions of the Missing Children's Assistance Act, 42 U.S.C. §§ 5771–80 (1994 & Supp. 1997).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House, the Committee sets forth, with respect to the bill, H.R. 861, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 9, 2001.

Hon. F. JAMES SENSENBRENNER Jr., *Chairman*
Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 861, a bill to make technical amendments to section 10 of title 9, United States Code.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

H.R. 861—A bill to make technical amendments to section 10 of title 9, United States Code.

CBO estimates that enacting H.R. 861 would not have any impact on the federal budget. Because enactment of the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 861 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, and tribal governments.

H.R. 861 would correct punctuation errors and make other minor wording changes to section 10 of title 9, United States Code, which specifies the grounds under which a federal judge can vacate an arbitrator's award. Because these changes are technical and would make no substantive changes to the laws affecting arbitration, CBO estimates that enacting H.R. 861 would not have any budgetary impact.

The CBO staff contact for this estimate is Lanette J. Walker, who can be reached at 226–2860. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House, the Committee finds the authority for this legislation in Article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1.

Vacation of Awards. Section 1 of the bill redesignates paragraph (5) of subsection 10(a) as subsection 10(b) and replaces the word "Where" with "If" in that provision. It also makes a conforming change by redesignating subsection (b) of section 10 as subsection (c). In addition, section 1 adjusts the indentation margins for paragraphs (1) through (4) of subsection (a); corrects punctuation and capitalization errors; and makes other minor conforming corrections.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 10 OF TITLE 9, UNITED STATES CODE

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) **[**Where**]** *where* the award was procured by corruption, fraud, or undue means**[**.**]***;*

(2) **[**Where**]** *where* there was evident partiality or corruption in the arbitrators, or either of them**[**.**]***;*

(3) **[**Where**]** *where* the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced**[**.**]***; or*

(4) **[**Where**]** *where* the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

[(5) Where**]** *(b) If* an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

[(b)**]** *(c)* The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

BUSINESS MEETING

THURSDAY, MARCH 8, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner (chairman of the committee) presiding.

Pursuant to Notice, I call up the bill H.R. 861, a bill making technical corrections to Section 10 of Title 9 of the United States Code for purposes of markup, and move its favorable recommendation to the House.

[H.R. 861 follows:]

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(Original Signature of Member)

107TH CONGRESS
1ST SESSION

H. R. 861

IN THE HOUSE OF REPRESENTATIVES

Mr. GEKAS introduced the following bill; which was referred to the Committee on _____

A BILL

To make technical amendments to section 10 of title 9, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. VACATION OF AWARDS.

Section 10 of title 9, United States Code, is amended—

(1) by indenting the margin of paragraphs (1) through (4) of subsection (a) 2 ems;

(2) by striking "Where" in such paragraphs and inserting "where";

(3) by striking the period at the end of paragraphs (1), (2), and (3) of subsection (a) and inserting a semicolon and by adding "or" at the end of paragraph (3);

(4) by redesignating subsection (b) as subsection (c); and

(5) in paragraph (5), by striking "Where an award" and inserting "If an award", by inserting a comma after "expired", and by redesignating the paragraph as subsection (b).

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point, and I recognize myself.

H.R. 861 makes technical corrections to Section 10 of Title 9 of the U.S. Code, the title of the Federal Code dealing with arbitration. This bill is identical to legislation reported by the committee during the last two congresses. In the 105th Congress the bill was passed by the House, and then a non-germane amendment was attached by the Senate. The House did not act on the amended bill. In the last Congress, the version ultimately considered and passed by the House, under suspension of the rules, contained unrelated provisions concerning the Communications Assistant for Law Enforcement Act. The Senate did not act on the House-passed bill, and we have taken this other unrelated stuff out of it.

I now yield to Mr. Gekas, the sponsor of the bill, for further explanation, and the Chair recognizes the gentleman from Pennsylvania for 5 minutes.

Mr. GEKAS. I thank the Chair. The Chairman is correct, this probably is much ado about something, in that the last two congresses did have to consider it. Attention to it was brought to us by the gentleman from New York, Mr. Nadler, whose constituent, an attorney—I will let Mr. Nadler elucidate on this—but the point is that this is a correction that much be made for the predictable future, and so we support the bill and ask that the members cast a favorable vote. I would yield to the gentleman from New York.

Mr. NADLER. Thank you. I thank the gentleman for yielding. The necessity for this bill, and for those in the audience who may still be in school, this bill illustrates the necessity of placing a comma in the right place. The entire purpose of this bill is to move a comma, which having been placed by Congress or perhaps by the typographer in the wrong place in the sentence, changed the meaning of the law from what it was intended to be, and has created a lot of confusion over the years. This whole bill is designed to move the comma. I don't, frankly, remember what the confusion was or even what the subject matter containing it was, but it was brought to my attention by a constituent a number of years ago. Everybody who has looked at it agrees that the comma being in the wrong place distorts the intention of the law and causes confusion, and I urge the committee to pass this very necessary measure. Thank you.

Chairman SENSENBRENNER. And let me say this bill has a better chance of becoming law than most of what we talk about around here.

[Laughter.]

Chairman SENSENBRENNER. Are there any amendments to the bill?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. Let me first of all acknowledge the good work of the members of this committee, and thank the Chairman for amendments that we have already gotten in to the legislation, includes amendments dealing with—I am sorry.

Excuse me, Mr. Chairman. Let me get refreshed. Have we moved to our budget priorities?

Chairman SENSENBRENNER. No, we are not quite there yet. We are——

Ms. JACKSON LEE. I am rushing to judgment.

Chairman SENSENBRENNER. We are dealing with how many angels can dance on the head of a comma.

Ms. JACKSON LEE. I am telling, Mr. Chairman, I can't count those, but I am waiting on those budget priorities. Thank you very much.

Chairman SENSENBRENNER. Okay. Are there amendments to this bill?

Hearing none, the question is on the motion to report the bill H.R. 861 favorably. All those in favor will say aye.

Opposed, no.

The ayes clearly have it, and the motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes, and all members will be given 2 days, as provided by the House rules, in which to submit additional dissenting, supplemental or minority views.

Now, pursuant to notice, I call up the committee's budget views and estimates as for purposes of markup, and move as favorable recommendation to the House Budget Committee.

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