
OLR Bill Analysis

HB 6598

AN ACT CONCERNING OFFERS OF COMPROMISE IN CONSTRUCTION CONTRACT ARBITRATION PROCEEDINGS AND MEDIATION AND ARBITRATION OF CONSTRUCTION CONTRACTS.

SUMMARY:

This bill creates a procedure for parties in an arbitration proceeding related to certain construction contracts to send the opposing party an offer of compromise, offering to settle the underlying claim for a specified amount. It requires a court to add 8% annual interest to an arbitration award, and award reasonable attorney's fees and costs, if the opposing party rejected an offer of compromise that was less than the amount awarded to the recovering party following arbitration. These procedures are similar to those in existing law for offers of compromise in civil actions (CGS § 52-192a).

The bill also specifies that the existing prohibition on provisions in commercial construction contracts that require disputes to be adjudicated in another state or according to the laws of another state includes provisions concerning mediation or arbitration, as well as other types of adjudication.

EFFECTIVE DATE: October 1, 2011

OFFERS OF COMPROMISE

Applicable Contracts

The bill's provisions on offers of compromise apply to contracts entered into on or after October 1, 2011 for construction, renovation, or rehabilitation in Connecticut, including improvements to real property associated with such work, or a subcontract for such work, between an owner and contractor, a contractor and subcontractor, or two subcontractors. However, these provisions do not apply to (1) contracts with any state or the federal government or (2) contracts or

projects that are funded or insured by the U.S. Department of Housing and Urban Development (HUD).

Offer

The bill provides that after a party to a construction contract has demanded arbitration under the contract's dispute resolution provision, and before a final arbitration award is rendered, the party may send to the opposing party or his or her attorney a written offer of compromise, offering to settle the arbitration claims for a certain amount of money. A party may send such an offer only once.

The bill specifies that the offer must be signed by the party or attorney, and directed to the opposing party or attorney. It must be sent by certified mail, return receipt requested.

Acceptance

If the party receiving the offer of compromise wishes to accept it, the party must do so within 30 days of being notified of it and before a final arbitration award is rendered. The acceptance must be in writing, sent by the accepting party or that party's attorney. It must be sent by certified mail, return receipt requested.

If the party receiving the offer, or his or her attorney, does not accept it within this time frame, the offer is rejected and cannot be accepted.

Interest, Attorney's Fees, and Costs

After a party to a construction contract applies to confirm, vacate, modify, or correct a final arbitration award, the party to the arbitration who made an unaccepted offer of compromise may file proof of that offer with the court. If the court confirms the arbitration award and determines from the record that the recovering party was awarded an amount at least equal to the amount in that party's offer of compromise, the court must add 8% annual interest to the award. This interest must be computed from the date the arbitration began, and is in addition to any interest awarded by the arbitrator. The court must also award reasonable attorney's fees and court costs for bringing the

court action on the arbitration award, and render judgment accordingly. However, the bill does not affect the parties' contractual rights concerning attorney's fees.

PROHIBITION ON CONSTRUCTION CONTRACTS REQUIRING DISPUTES TO BE DECIDED IN ANOTHER STATE

The bill specifies that construction contract provisions requiring disputes under the contract to be mediated or arbitrated in another state, or according to another state's laws, are invalid. This prohibition applies to contracts for work at construction sites in Connecticut, regardless of whether the contract was signed here. But it does not apply to:

1. building contracts with any state, a municipality or other political subdivision of this or any state, or the federal government;
2. contracts or projects that are funded or insured by HUD;
3. contracts between an owner and a contractor for \$25,000 or less, or a subcontract resulting from such a contract; or
4. contracts for buildings intended for residential occupancy containing less than five units (CGS § 42-158i).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (04/06/2011)