SUBJECT: Prohibiting a court from ordering mediation unless agreed to by the parties

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Hunter, Hughes, Alonzo, Branch, Hartnett, Jackson, Leibowitz, Lewis, Martinez

                0 nays

                2 absent — Madden, Woolley

WITNESSES: For — (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform)

                Against — None

BACKGROUND: The Federal Arbitration Act authorizes individuals in commercial transactions to contract to resolve disputes through arbitration as an alternative to litigation. The Act permits a court to refer a pending dispute between parties for resolution through arbitration.

                Civil Practice and Remedies Code, ch. 154 authorizes a state court to refer a pending dispute for resolution by an alternate dispute resolution procedure, such as mediation or arbitration. The court may order the referral on its own motion or on the motion of a party to the dispute.

                In some Texas counties, courts have adopted a procedure in which the court automatically issues an order for litigating parties to enter into mediation if one of the parties files an answer to the lawsuit, regardless of whether the parties already have executed a contract requiring arbitration. Arbitration and mediation are not identical procedures, and a court that orders mediation between parties that have agreed contractually to arbitration effectively preempts the contract. This has caused unnecessary delays and additional legal costs to parties.

DIGEST: HB 1083 would prohibit a court from ordering mediation in an action that was subject to the Federal Arbitration Act unless the parties to the action agreed to mediate.

HB 1083 would apply only to an action commenced on or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.