

HOUSE CS FOR CS FOR SENATE BILL NO. 319(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/8/98
Referred: Rules

Sponsor(s): SENATOR PHILLIPS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules
2 of Civil Procedure; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.43.010 is amended to read:

5 **Sec. 09.43.010. Arbitration agreements valid [; APPLICATION OF**
6 **ARTICLE].** A written agreement **that is subject to and complies with**
7 **AS 09.43.015, or that is not subject to AS 09.43.015,** to submit a [AN EXISTING]
8 controversy **existing at the time the agreement is entered into** to arbitration, or a
9 provision in a written **agreement that is subject to and complies with AS 09.43.015,**
10 **or that is not subject to AS 09.43.015,** [CONTRACT] to submit to arbitration a
11 [SUBSEQUENT] controversy between the parties **occurring after the agreement is**
12 **entered into** is valid, enforceable, and irrevocable, except **on** [UPON] grounds that
13 exist at law or in equity for the revocation of a contract. [HOWEVER, AS 09.43.010 -
14 09.43.180 DO NOT APPLY TO A LABOR-MANAGEMENT CONTRACT UNLESS

1 THEY ARE INCORPORATED INTO THE CONTRACT BY REFERENCE OR
2 THEIR APPLICATION IS PROVIDED FOR BY STATUTE.]

3 * **Sec. 2.** AS 09.43 is amended by adding new sections to read:

4 **Sec. 09.43.013. Application to labor-management agreements.**

5 AS 09.43.010 - 09.43.180 do not apply to a labor-management agreement unless
6 AS 09.43.010 - 09.43.180 are incorporated into the agreement by reference or their
7 application is provided for by statute.

8 **Sec. 09.43.015. Arbitration agreement requirement.** (a) In order for an
9 agreement to provide for arbitration, the agreement must contain a notice that states
10 that a party may have the option to compel arbitration or to bind the other party to the
11 arbitration decision, and that the arbitration may limit the rights and remedies
12 otherwise available under the law. The notice must also state whether parties to an
13 arbitration agreement waive their rights to obtain a judicial determination of whether
14 a dispute is arbitrable. This notice must be typed in capital letters within the
15 agreement or on a separate document. If an agreement fails to contain the notice
16 required by this subsection, a party may not compel arbitration, an arbitration decision
17 is not binding, and otherwise available rights and remedies are not limited.

18 (b) Language in substantially the following form satisfies the notice
19 requirement of (a) of this section:

20 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION
21 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU MAY BE
22 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS
23 CONTRACT TO MANDATORY BINDING ARBITRATION.
24 HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT
25 WAIVE YOUR RIGHT TO OBTAIN A JUDICIAL
26 DETERMINATION OF WHETHER A PARTICULAR
27 DISPUTE IS ARBITRABLE. BY SIGNING THIS
28 CONTRACT WITH AN ARBITRATION CLAUSE, YOU
29 WILL BE OR MAY BE LIMITING OR WAIVING YOUR
30 RIGHTS TO

31 (1) HAVE A DISPUTE UNDER THE CONTRACT RESOLVED

1 IN A COURT OF LAW, EVEN WHERE THE CONTRACT
 2 WITH THE ARBITRATION CLAUSE IS VOID OR
 3 VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD,
 4 DURESS, MISTAKE, OR OTHER GROUNDS;

5 (2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF
 6 LAW;

7 (3) EXERCISE STATUTORY REMEDIES, SUCH AS A LIEN,
 8 INJUNCTION, OR CLAIM FOR DAMAGES;

9 (4) HAVE THE DISPUTE DECIDED BY A DECISION MAKER
 10 WITH APPROPRIATE TRAINING TO DECIDE THE
 11 DISPUTE;

12 (5) USE DISCOVERY AND OTHER EVIDENCE-GATHERING
 13 PROCEDURES OTHERWISE AVAILABLE IN AN ACTION
 14 BEFORE A COURT OF LAW;

15 (6) OBTAIN A DECISION CONSISTENT WITH THE LAW AND
 16 THE FACTS;

17 (7) OBTAIN A WRITTEN STATEMENT OF THE LEGAL AND
 18 FACTUAL BASES OF THE DECISION;

19 (8) RECOVER PUNITIVE DAMAGES IF THE PARTIES'
 20 CONTRACTOR ARBITRATION AGREEMENT EXPRESSLY
 21 EXCLUDES A RIGHT TO RECOVER PUNITIVE DAMAGES;

22 (9) RECOVER ATTORNEY FEES AND COSTS.

23 (c) In this section, "agreement" does not include an agreement to submit to
 24 arbitration a controversy between the parties occurring after the agreement is entered
 25 into, if the agreement

26 (1) relates to claims arising out of personal injury, whether based on
 27 contract or tort;

28 (2) is by an individual for the acquisition of real or personal property,
 29 services, money, or credit and if the total consideration to be paid or furnished by the
 30 individual does not exceed the jurisdictional limit set out in AS 22.15.040 at the time
 31 the controversy arose; or

1 (3) concerns or relates to insurance policies or annuity contracts, except
2 for contracts between insurance companies.

3 * **Sec. 3.** AS 09.43.020(a) is amended to read:

4 (a) On application of a party showing an agreement described in AS 09.43.010,
5 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed
6 with arbitration, but, if the opposing party denies the existence of the agreement to
7 arbitrate **or alleges that the agreement is subject to but does not comply with**
8 **AS 09.43.015**, the court shall proceed [SUMMARILY] to **determine** [THE
9 DETERMINATION OF] the issue and, if the agreement is found to exist **and, if**
10 **subject to AS 09.43.015, to comply with AS 09.43.015**, shall order arbitration.

11 * **Sec. 4.** AS 09.43.020(b) is amended to read:

12 (b) On application, the court may stay an arbitration proceeding commenced
13 or threatened on a showing that there is no agreement to arbitrate **or that the**
14 **agreement is subject to but does not comply with AS 09.43.015**. The issue, when
15 in substantial and bona fide dispute, shall be **determined** [IMMEDIATELY AND
16 SUMMARILY TRIED] and the stay ordered if no agreement is found to exist **or if the**
17 **agreement is subject to but does not comply with AS 09.43.015**. If found for the
18 opposing party, the court shall order the parties to proceed to arbitration.

19 * **Sec. 5.** AS 09.43.020 is amended by adding a new subsection to read:

20 (f) When a party challenges under (a) or (b) of this section the existence of
21 an agreement to arbitrate or the compliance of the agreement with AS 09.43.015, the
22 court shall immediately proceed with an expedited hearing.

23 * **Sec. 6.** AS 09.43.120(a) is amended to read:

24 (a) On application of a party, the court shall vacate an award if
25 (1) the award was procured by fraud or other undue means;
26 (2) there was evident partiality by an arbitrator appointed as a neutral
27 or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
28 (3) the arbitrators exceeded their powers;
29 (4) the arbitrators refused to postpone the hearing upon sufficient cause
30 being shown for postponement or refused to hear evidence material to the controversy
31 or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as

1 to prejudice substantially the rights of a party; [OR]

2 (5) there was no arbitration agreement and the issue was not adversely
3 determined in proceedings under AS 09.43.020 and the party did not participate in the
4 arbitration hearing without raising the objection; or

5 **(6) the arbitration agreement is subject to but does not comply with**
6 **AS 09.43.015.**

7 * **Sec. 7.** AS 09.43.190, 09.43.200, 09.43.210, and 09.43.220 are repealed.

8 * **Sec. 8.** COURT RULE CHANGES. The provisions of sec. 5 of this Act have the effect
9 of changing

10 (1) Rule 77(g), Alaska Rules of Civil Procedure, by changing the requirements
11 for having an expedited hearing and removing in certain situations the court's discretion
12 whether to expedite a hearing;

13 (2) Rule 57(a), Alaska Rules of Civil Procedure, by removing in certain
14 situations, which may include a declaratory judgment, the court's discretion whether to order
15 a speedy hearing.

16 * **Sec. 9.** APPLICABILITY. Sections 1 - 6 of this Act only apply to an arbitration
17 proceeding that is in progress or begun on or after the effective date of this Act, except that,
18 if an award has been made by the arbitrator in the proceeding and the time for a request to
19 modify or vacate the award has expired, secs. 1 - 6 of this Act do not apply to the proceeding.

20 * **Sec. 10.** Section 5 of this Act takes effect only if sec. 8 of this Act receives the two-
21 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
22 Alaska.

23 * **Sec. 11.** This Act takes effect January 1, 1999.