

SENATE BILL NO. 319

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR PHILLIPS

Introduced: 2/16/98

Referred: Labor and Commerce, Judiciary

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 article.** A
6 written agreement **that complies with AS 09.43.015** to submit a [AN EXISTING]
7 controversy **existing at the time the agreement is entered into** to arbitration or a
8 provision in a written contract to submit to arbitration a subsequent controversy
9 between the parties is valid, enforceable, and irrevocable, except **on** [UPON] grounds
10 that exist at law or in equity for the revocation of a contract. [HOWEVER,
11 AS 09.43.010 - 09.43.180 DO NOT APPLY TO A LABOR-MANAGEMENT
12 CONTRACT UNLESS THEY ARE INCORPORATED INTO THE CONTRACT BY
13 REFERENCE OR THEIR APPLICATION IS PROVIDED FOR BY STATUTE.]

14 * **Sec. 2.** AS 09.43.010 is amended by adding a new subsection to read:

1 (b) A provision in a written agreement that complies with AS 09.43.015 to
 2 submit to arbitration a controversy between the parties occurring after the agreement
 3 is entered into is valid and enforceable except on grounds that exist at law or in equity
 4 for the revocation of a contract. This subsection does not apply to

5 (1) claims arising out of personal injury, whether based on contract or
 6 tort;

7 (2) a contract by an individual for the acquisition of real or personal
 8 property, services, money, or credit if the total consideration to be paid or furnished
 9 by the individual does not exceed the jurisdictional limit set out in AS 22.15.040 at
 10 the time the controversy arose;

11 (3) an agreement concerning or relating to insurance policies or annuity
 12 contracts, except for contracts between insurance companies; or

13 (4) a labor-management agreement unless AS 09.43.020 - 09.43.180 are
 14 incorporated into the contract by reference or their application is provided for by
 15 statute.

16 * **Sec. 3.** AS 09.43 is amended by adding a new section to read:

17 **Sec. 09.43.015. Arbitration agreement requirement.** (a) In order for an
 18 agreement to provide for arbitration, the agreement must contain a notice that states
 19 that a party has the option to compel arbitration and to bind the other party to the
 20 arbitration decision, and that arbitration limits the rights and remedies otherwise
 21 available under the law. This notice must be typed in capital letters within the
 22 agreement or on a separate document. If an agreement fails to contain the notice
 23 required by this subsection, a party may not compel arbitration, an arbitration decision
 24 is not binding, and otherwise available rights and remedies are not limited.

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

27 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION
 28 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU CAN BE
 29 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS
 30 CONTRACT TO MANDATORY BINDING ARBITRATION.
 31 BY SIGNING THIS CONTRACT WITH AN ARBITRATION

1 CLAUSE, YOU WILL BE OR MAY BE LIMITING OR
2 WAIVING YOUR RIGHTS TO

- 3 (1) HAVE A DISPUTE UNDER THE CONTRACT RESOLVED
4 IN A COURT OF LAW, EVEN WHERE THE CONTRACT
5 WITH THE ARBITRATION CLAUSE IS VOID OR
6 VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD,
7 DURESS, MISTAKE, OR OTHER GROUNDS;
8 (2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF
9 LAW;
10 (3) EXERCISE STATUTORY REMEDIES, SUCH AS A LIEN,
11 INJUNCTION, OR CLAIM FOR DAMAGES;
12 (4) OBTAIN JUDICIAL DETERMINATION OF WHETHER A
13 DISPUTE UNDER THE CONTRACT IS ARBITRABLE;
14 (5) HAVE THE DISPUTE DECIDED BY A DECISION MAKER
15 WITH APPROPRIATE TRAINING TO DECIDE THE
16 DISPUTE;
17 (6) USE DISCOVERY AND OTHER EVIDENCE-GATHERING
18 PROCEDURES OTHERWISE AVAILABLE IN AN ACTION
19 BEFORE A COURT OF LAW;
20 (7) OBTAIN A DECISION CONSISTENT WITH THE LAW AND
21 THE FACTS;
22 (8) OBTAIN A WRITTEN STATEMENT OF THE LEGAL AND
23 FACTUAL BASES OF THE DECISION;
24 (9) RECOVER PUNITIVE DAMAGES;
25 (10) RECOVER ATTORNEY FEES AND COSTS.

26 * **Sec. 4.** AS 09.43.020(a) is amended to read:

27 (a) On application of a party showing an agreement described in AS 09.43.010,
28 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed
29 with arbitration, but, if the opposing party denies the existence of the agreement to
30 arbitrate **or alleges that the agreement does not comply with AS 09.43.015**, the court
31 shall proceed [SUMMARILY] to **determine** [THE DETERMINATION OF] the issue

1 and, if the agreement is found to exist **and to comply with AS 09.43.015**, shall order
2 arbitration.

3 * **Sec. 5.** AS 09.43.020(b) is amended to read:

4 (b) On application, the court may stay an arbitration proceeding commenced
5 or threatened on a showing that there is no agreement to arbitrate **or that the**
6 **agreement does not comply with AS 09.43.015**. The issue, when in substantial and
7 bona fide dispute, shall be **determined** [IMMEDIATELY AND SUMMARILY
8 TRIED] and the stay ordered if no agreement is found to exist **or if the agreement**
9 **does not comply with AS 09.43.015**. If found for the opposing party, the court shall
10 order the parties to proceed to arbitration.

11 * **Sec. 6.** AS 09.43.020 is amended by adding a new subsection to read:

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

15 * **Sec. 7.** AS 09.43.120(a) is amended to read:

16 (a) On application of a party, the court shall vacate an award if
17 (1) the award was procured by fraud or other undue means;
18 (2) there was evident partiality by an arbitrator appointed as a neutral
19 or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
20 (3) the arbitrators exceeded their powers;
21 (4) the arbitrators refused to postpone the hearing upon sufficient cause
22 being shown for postponement or refused to hear evidence material to the controversy
23 or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as
24 to prejudice substantially the rights of a party; [OR]
25 (5) there was no arbitration agreement and the issue was not adversely
26 determined in proceedings under AS 09.43.020 and the party did not participate in the
27 arbitration hearing without raising the objection; **or**
28 **(6) the arbitration agreement does not comply with AS 09.43.015.**

29 * **Sec. 8.** AS 09.43.190, 09.43.200, 09.43.210, and 09.43.220 are repealed.

30 * **Sec. 9.** COURT RULE CHANGES. The provisions of sec. 6 of this Act have the effect
31 of changing

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

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

7 * **Sec. 10.** APPLICABILITY. Sections 1 - 7 of this Act only apply to an arbitration
8 proceeding that is in progress or begun on or after the effective date of this Act, except that,
9 if an award has been made by the arbitrator in the proceeding and the time for a request to
10 modify or vacate the award has expired, secs. 1 - 7 of this Act do not apply to the proceeding.

11 * **Sec. 11.** Section 5 of this Act takes effect only if sec. 9 of this Act receives the two-
12 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
13 Alaska.

14 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).