

**CS FOR SENATE BILL NO. 319(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/13/98  
Referred: Judiciary

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 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. The notice must also state that parties to an arbitration  
 22 agreement do not waive their rights to obtain a judicial determination of whether a  
 23 dispute is arbitrable. This notice must be typed in capital letters within the agreement  
 24 or on a separate document. If an agreement fails to contain the notice required by this  
 25 subsection, a party may not compel arbitration, an arbitration decision is not binding,  
 26 and otherwise available rights and remedies are not limited.

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

29 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION  
 30 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU CAN BE  
 31 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS

1 CONTRACT TO MANDATORY BINDING ARBITRATION.  
2 HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT  
3 WAIVE YOUR RIGHT TO OBTAIN A JUDICIAL  
4 DETERMINATION OF WHETHER A PARTICULAR  
5 DISPUTE IS ARBITRABLE. BY SIGNING THIS  
6 CONTRACT WITH AN ARBITRATION CLAUSE, YOU  
7 WILL BE OR MAY BE LIMITING OR WAIVING YOUR  
8 RIGHTS TO

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

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

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

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

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

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

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

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

22 (a) On application of a party, the court shall vacate an award if  
23 (1) the award was procured by fraud or other undue means;  
24 (2) there was evident partiality by an arbitrator appointed as a neutral  
25 or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;  
26 (3) the arbitrators exceeded their powers;  
27 (4) the arbitrators refused to postpone the hearing upon sufficient cause  
28 being shown for postponement or refused to hear evidence material to the controversy  
29 or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as  
30 to prejudice substantially the rights of a party; [OR]  
31 (5) there was no arbitration agreement and the issue was not adversely

1 determined in proceedings under AS 09.43.020 and the party did not participate in the  
2 arbitration hearing without raising the objection; or

3 **(6) the arbitration agreement does not comply with AS 09.43.015.**

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

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

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

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

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

17 \* **Sec. 11.** Section 6 of this Act takes effect only if sec. 9 of this Act receives the two-  
18 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of  
19 Alaska.

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