

1 IN THE HOUSE BY JOSEPHSON

2 HOUSE BILL NO. 299

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a uniform arbitration  
7 law."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 09 is amended by adding a new chapter to  
10 read:

11 CHAPTER 43. UNIFORM ARBITRATION LAW.

12 Sec. 09.43.010. ARBITRATION AGREEMENTS VALID. A  
13 written agreement to submit an existing controversy to arbi-  
14 tration or a provision in a written contract to submit to  
15 arbitration a subsequent controversy between the parties is  
16 valid, enforceable and irrevocable, except upon such grounds  
17 as exist at law or in equity for the revocation of a con-  
18 tract.

19 Sec. 09.43.020. PROCEEDINGS TO COMPEL OR STAY ARBITRA-  
20 TION. (a) On application of a party showing an agreement  
21 described in sec. 10 of this chapter, and the opposing party's  
22 refusal to arbitrate, the court shall order the parties to  
23 proceed with arbitration, but if the opposing party denies  
24 the existence of the agreement to arbitrate, the court shall  
25 proceed summarily to the determination of the issue and if  
26 the agreement is found to exist shall order arbitration.

27 (b) On application, the court may stay an arbitration  
28 proceeding commenced or threatened on a showing that there is  
29 no agreement to arbitrate. The issue, when in substantial

1 and bona fide dispute, shall be immediately and summarily  
2 tried and the stay ordered if no agreement is found to exist.  
3 If found for the opposing party, the court shall order the  
4 parties to proceed to arbitration.

5 (c) If an issue subject to arbitration under the  
6 alleged agreement is involved in an action or proceeding  
7 pending in a court having jurisdiction to hear applications  
8 under (a) of this section, the application shall be made in  
9 that court. Otherwise the application may be made in any  
10 court of competent jurisdiction.

11 (d) An action or proceeding involving an issue subject  
12 to arbitration shall be stayed if an order for arbitration  
13 or an application for the order has been made under this  
14 section or, if the issue is severable, the stay may be with  
15 respect to the issue only.

16 (e) An order for arbitration shall not be refused on  
17 the ground that the claim in issue lacks merit or because  
18 a fault or ground for the claim sought to be arbitrated has  
19 not been shown.

20 Sec. 09.43.030. APPOINTMENT OF ARBITRATORS BY COURT.  
21 If the arbitration agreement provides a method of appoint-  
22 ment of arbitrators, this method shall be followed. If no  
23 method of appointment is provided, or if the agreed method  
24 fails or for any reason cannot be followed, or when before  
25 the hearing an arbitrator appointed fails or is unable to  
26 act and his successor has not been duly appointed, the court  
27 on application of a party shall appoint one or more arbi-  
28 trators. An arbitrator so appointed has all the powers of one  
29 specifically named in the agreement.

1           Sec. 09.43.040. MAJORITY ACTION BY ARBITRATORS. The  
2 powers of the arbitrators may be exercised by a majority  
3 unless otherwise provided by the agreement or by this chapter.

4           Sec. 09.43.050. HEARING. Unless otherwise provided by  
5 the agreement:

6           (1) The arbitrators shall set a time and place  
7 for the hearing and cause notification to the parties to be  
8 served personally or by registered mail not less than five  
9 days before the hearing. Appearance at the hearing waives  
10 the notice. The arbitrators may adjourn the hearing from  
11 time to time as necessary and, on request of a party and for  
12 good cause, or upon their own motion may postpone the hearing  
13 to a time not later than the date fixed by the agreement for  
14 making the award unless the parties consent to a later date.  
15 The arbitrators may hear and determine the controversy upon  
16 the evidence produced notwithstanding the failure of a party  
17 duly notified to appear.

18           (2) The parties are entitled to be heard, to pre-  
19 sent evidence material to the controversy and to cross-  
20 examine witnesses appearing at the hearing.

21           (3) The hearing shall be conducted by all the  
22 arbitrators but a majority may determine any question and  
23 render a final award. If, during the course of the hearing,  
24 an arbitrator for any reason ceases to act, the remaining  
25 arbitrator or arbitrators appointed to act as neutrals shall  
26 continue with the hearing and determination of the contro-  
27 versy.

28           Sec. 09.43.060. REPRESENTATION BY ATTORNEY. A party has  
29 the right to be represented by an attorney at any proceeding

1 or hearing under this chapter. A waiver of the right before  
2 the proceeding or hearing is ineffective.

3 Sec. 09.43.070. WITNESSES, SUBPOENAS, DEPOSITIONS. (a)  
4 The arbitrators may cause to be issued subpoenas for the  
5 attendance of witnesses and for the production of books,  
6 records, documents and other evidence, and have the power to  
7 administer oaths. Subpoenas so issued shall be served, and  
8 upon application to the court by a party or the arbitrators,  
9 enforced, in the manner provided by law for the service and  
10 enforcement of subpoenas in a civil action.

11 (b) On application of a party and for use as evidence,  
12 the arbitrators may permit a deposition to be taken, in the  
13 manner and upon the terms designated by the arbitrators, of  
14 a witness who cannot be subpoenaed or is unable to attend the  
15 hearing.

16 (c) All provisions of law compelling a person under  
17 subpoena to testify are applicable.

18 (d) Fees for attendance as a witness shall be the same  
19 as for a witness in the superior court.

20 Sec. 09.43.080. AWARD. (a) The award shall be in  
21 writing and signed by the arbitrators joining in the award.  
22 The arbitrators shall deliver a copy to each party personally  
23 or by registered mail, or as provided in the agreement.

24 (b) An award shall be made within the time fixed by the  
25 agreement or, if not so fixed, within the time the court  
26 orders on application of a party. The parties may extend the  
27 time in writing either before or after the expiration of the  
28 time. A party waives the objection that an award was not  
29 made within the time required unless he notifies the

1 arbitrators of his objection before the delivery of the  
2 award to him.

3 Sec. 09.43.090. MODIFICATION OF AWARD BY ARBITRATORS.

4 On application to the arbitrators by a party or, if an appli-  
5 cation to the court by a party is pending under secs. 110,  
6 120, or 130 of this chapter on submission to the arbitrators  
7 by the court under the conditions the court may order, the  
8 arbitrators may modify or correct the award upon the grounds  
9 stated in sec. 130(a)(1) and (3) of this chapter, or for the  
10 purpose of clarifying the award. An application to the  
11 arbitrators by a party shall be made within 20 days after  
12 delivery of the award to the applicant. Written notice of  
13 the application shall be given promptly to the opposing  
14 party, stating that he must serve his objections to the ap-  
15 plication within 10 days from the notice. A modified or  
16 corrected award is subject to the provisions of secs. 110,  
17 120, and 130 of this chapter.

18 Sec. 09.43.100. FEES AND EXPENSES OF ARBITRATION. Un-

19 less otherwise provided in the agreement to arbitrate, the  
20 arbitrators' expenses and fees, together with other expenses,  
21 not including counsel fees, incurred in the conduct of the  
22 arbitration, shall be paid as provided in the award.

23 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon appli-

24 cation of a party, the court shall confirm an award unless  
25 within the time limits imposed by secs. 120 and 130 of this  
26 chapter grounds are urged for vacating or modifying or cor-  
27 recting the award, in which case the court shall proceed as  
28 provided in secs. 120 and 130 of this chapter.

29 Sec. 09.43.120. VACATING AN AWARD. (a) On application

1 of a party, the court shall vacate an award if

2 (1) the award was procured by fraud or other un-  
3 due means;

4 (2) there was evident partiality by an arbitrator  
5 appointed as a neutral or corruption in any of the arbitrators  
6 or misconduct prejudicing the rights of any party;

7 (3) the arbitrators exceeded their powers;

8 (4) the arbitrators refused to postpone the hear-  
9 ing upon sufficient cause being shown therefor or refused to  
10 hear evidence material to the controversy or otherwise so  
11 conducted the hearing, contrary to the provisions of sec. 50  
12 of this chapter as to prejudice substantially the rights of  
13 a party; or

14 (5) there was no arbitration agreement and the  
15 issue was not adversely determined in proceedings under sec.  
16 20 of this chapter and the party did not participate in the  
17 arbitration hearing without raising the objection.

18 (b) The fact that the relief is such that it could not  
19 or would not be granted by a court of law or equity is not  
20 ground for vacating or refusing to confirm the award.

21 (c) An application under this section shall be made  
22 within 90 days after delivery of a copy of the award to the  
23 applicant. However, if the application is predicated upon  
24 corruption, fraud or other undue means by either the op-  
25 posing party or an arbitrator, it shall be made within 90  
26 days after the grounds are known or should have been known.

27 (d) In vacating the award on grounds other than those  
28 stated in (a)(5) of this section the court may order a re-  
29 hearing before new arbitrators chosen as provided in the

1 agreement, or in the absence of a provision in the agreement,  
2 by the court in accordance with sec. 30 of this chapter, or,  
3 if the award is vacated on grounds set out in (a)(3) or (4)  
4 of this section, the court may order a rehearing before the  
5 arbitrators who made the award or their successors appointed  
6 in accordance with sec. 30 of this chapter. The time within  
7 which the agreement requires the award to be made is ap-  
8 plicable to the rehearing and commences from the date of the  
9 order.

10 (e) If the application to vacate is denied and no  
11 motion to modify or correct the award is pending, the court  
12 shall confirm the award.

13 Sec. 09.43.130. MODIFICATION OR CORRECTION OF AWARD BY  
14 COURT. (a) On application made within 90 days after de-  
15 livery of a copy of the award to the applicant, the court  
16 shall modify or correct the award if

17 (1) there was an evident miscalculation of figures  
18 or an evident mistake in the description of any person, thing  
19 or property referred to in the award;

20 (2) the arbitrators have awarded upon a matter not  
21 submitted to them and the award may be corrected without  
22 affecting the merits of the decision upon the issues sub-  
23 mitted; or

24 (3) the award is imperfect in a matter of form  
25 not affecting the merits of the controversy.

26 (b) If the application is granted, the court shall  
27 modify and correct the award so as to effect its intent and  
28 shall confirm the award as so modified and corrected. Other-  
29 wise, the court shall confirm the award as made.

1 (c) An application to modify or correct an award may be  
2 joined in the alternative with an application to vacate the  
3 award.

4 Sec. 09.43.140. JUDGMENT OR DECREE ON AWARD. Upon the  
5 granting of an order confirming, modifying or correcting an  
6 award, a judgment or decree shall be entered in conformity  
7 with the award and be enforced as any other judgment or  
8 decree. Costs of the application and of the proceedings  
9 subsequent to the application, and disbursements may be  
10 awarded by the court.

11 Sec. 09.43.150. APPLICATIONS TO COURT. An application  
12 to the court under this chapter shall be by motion and shall  
13 be heard in the manner and upon the notice provided by law or  
14 rule of court for the making and hearing of motions. Unless  
15 the parties have agreed otherwise, notice of an initial  
16 application for an order shall be served in the manner pro-  
17 vided by law for the service of a summons in an action.

18 Sec. 09.43.160. APPEALS. (a) An appeal may be taken  
19 from

20 (1) an order denying an application to compel  
21 arbitration made under sec. 20 of this chapter;

22 (2) an order granting an application to stay  
23 arbitration made under sec. 30(b) of this chapter;

24 (3) an order confirming or denying confirmation  
25 of an award;

26 (4) an order modifying or correcting an award;

27 (5) an order vacating an award without directing  
28 a rehearing; or

29 (6) a judgment or decree entered under the

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provisions of this chapter.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Sec. 09.43.170. COURT, JURISDICTION. As used in this chapter, the term "court" means the superior court of this state. The making of an agreement described in sec. 10 of this chapter providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under this chapter and to enter judgment on an award thereunder.

Sec. 09.43.180. SHORT TITLE. This chapter may be cited as the Uniform Arbitration Act.