

Introduced: 1/24/66  
Referred: Judiciary

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) A  
13 written agreement to submit an existing controversy to  
14 arbitration or a provision in a written contract to submit  
15 to arbitration a subsequent controversy between the parties  
16 is valid, enforceable and irrevocable, except upon such  
17 grounds as exist at law or in equity for the revocation of  
18 a contract.

19 (b) This chapter does not apply to

20 (1) contracts of insurance; or

21 (2) arbitration agreements and labor contracts  
22 between employers and employees or labor unions representing  
23 employees or between employers and associations of employees  
24 and as to any such agreement the parties to the agreement  
25 may provide for any method and procedure for the settlement  
26 of existing or future disputes and controversies, and such  
27 procedure shall be valid, enforceable and irrevocable save  
28 upon such grounds as exist in law or equity for the revoca-  
29 tion of any agreement.

1           Sec. 09.43.020. PROCEEDINGS TO COMPEL OR STAY ARBITRA-  
2 TION. (a) On application of a party showing an agreement  
3 described in sec. 10 of this chapter, and the opposing party's  
4 refusal to arbitrate, the court shall order the parties to  
5 proceed with arbitration, but if the opposing party denies  
6 the existence of the agreement to arbitrate, the court shall  
7 proceed summarily to the determination of the issue and if  
8 the agreement is found to exist shall order arbitration.

9           (b) On application, the court may stay an arbitration  
10 proceeding commenced or threatened on a showing that there is  
11 no agreement to arbitrate. The issue, when in substantial  
12 and bona fide dispute, shall be immediately and summarily  
13 tried and the stay ordered if no agreement is found to exist.  
14 If found for the opposing party, the court shall order the  
15 parties to proceed to arbitration.

16           (c) If an issue subject to arbitration under the  
17 alleged agreement is involved in an action or proceeding  
18 pending in a court having jurisdiction to hear applications  
19 under (a) of this section, the application shall be made in  
20 that court. Otherwise the application may be made in any  
21 court of competent jurisdiction.

22           (d) An action or proceeding involving an issue subject  
23 to arbitration shall be stayed if an order for arbitration  
24 or an application for the order has been made under this  
25 section or, if the issue is severable, the stay may be with  
26 respect to the issue only.

27           (e) An order for arbitration shall not be refused on  
28 the ground that the claim in issue lacks merit or because  
29 a fault or ground for the claim sought to be arbitrated has

1 not been shown.

2 Sec. 09.43.030. APPOINTMENT OF ARBITRATORS BY COURT.

3 If the arbitration agreement provides a method of appoint-  
4 ment of arbitrators, this method shall be followed. If no  
5 method of appointment is provided, or if the agreed method  
6 fails or for any reason cannot be followed, or when before  
7 the hearing an arbitrator appointed fails or is unable to  
8 act and his successor has not been duly appointed, the court  
9 on application of a party shall appoint one or more arbi-  
10 trators. An arbitrator so appointed has all the powers of  
11 one specifically named in the agreement.

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

15 Sec. 09.43.050. HEARING. Unless otherwise provided by  
16 the agreement:

17 (1) The arbitrators shall set a time and place  
18 for the hearing and cause notification to the parties to be  
19 served personally or by registered mail not less than five  
20 days before the hearing. Appearance at the hearing waives  
21 the notice. The arbitrators may adjourn the hearing from  
22 time to time as necessary and, on request of a party and for  
23 good cause, or upon their own motion may postpone the hearing  
24 to a time not later than the date fixed by the agreement for  
25 making the award unless the parties consent to a later date.  
26 The arbitrators may hear and determine the controversy upon  
27 the evidence produced notwithstanding the failure of a party  
28 duly notified to appear.

29 (2) The parties are entitled to be heard, to pre-

1 sent evidence material to the controversy and to cross-  
2 examine witnesses appearing at the hearing.

3 (3) The hearing shall be conducted by all the  
4 arbitrators but a majority may determine any question and  
5 render a final award. If, during the course of the hearing,  
6 an arbitrator for any reason ceases to act, the remaining  
7 arbitrator or arbitrators appointed to act as neutrals shall  
8 continue with the hearing and determination of the contro-  
9 versy.

10 Sec. 09.43.060. REPRESENTATION BY ATTORNEY. A party has  
11 the right to be represented by an attorney at any proceeding  
12 or hearing under this chapter. A waiver of the right before  
13 the proceeding or hearing is ineffective.

14 Sec. 09.43.070. WITNESSES, SUBPOENAS, DEPOSITIONS. (a)  
15 The arbitrators may apply to the court for issuance of subpoe-  
16 nas for the attendance of witnesses and for the production of  
17 books, records, documents and other evidence. All provisions  
18 of law compelling a person under subpoena to testify are  
19 applicable.

20 (b) The arbitrators have the power to administer oaths.

21 (c) On application of a party and for use as evidence,  
22 the arbitrators may permit a deposition to be taken, in the  
23 manner and upon the terms designated by the arbitrators, of  
24 a witness who cannot be subpoenaed or is unable to attend  
25 the hearing.

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

28 Sec. 09.43.080. AWARD. (a) The award shall be in  
29 writing and signed by the arbitrators joining in the award.

1 The arbitrators shall deliver a copy to each party personally  
2 or by registered mail, or as provided in the agreement.

3 (b) An award shall be made within the time fixed by the  
4 agreement or, if not so fixed, within the time the court  
5 orders on application of a party. The parties may extend the  
6 time in writing either before or after the expiration of the  
7 time. A party waives the objection that an award was not  
8 made within the time required unless he notifies the  
9 arbitrators of his objection before the delivery of the  
10 award to him.

11 Sec. 09.43.090. MODIFICATION OF AWARD BY ARBITRATORS.  
12 On application to the arbitrators by a party or, if an appli-  
13 cation to the court by a party is pending under secs. 110,  
14 120, or 130 of this chapter on submission to the arbitrators  
15 by the court under the conditions the court may order, the  
16 arbitrators may modify or correct the award upon the grounds  
17 stated in sec. 130(a)(1) and (3) of this chapter, or for the  
18 purpose of clarifying the award. An application to the  
19 arbitrators by a party shall be made within 20 days after  
20 delivery of the award to the applicant. Written notice of  
21 the application shall be given promptly to the opposing  
22 party, stating that he must serve his objections to the ap-  
23 plication within 10 days from the notice. A modified or  
24 corrected award is subject to the provisions of secs. 110,  
25 120, and 130 of this chapter.

26 Sec. 09.43.100. FEES AND EXPENSES OF ARBITRATION. Un-  
27 less otherwise provided in the agreement to arbitrate, the  
28 arbitrators' expenses and fees, together with other expenses  
29 not including counsel fees, incurred in the conduct of the

1 arbitration, shall be paid as provided in the award.

2 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon applica-  
3 tion of a party, the court shall confirm an award unless  
4 within the time limits imposed by secs. 120 and 130 of this  
5 chapter grounds are urged for vacating or modifying or cor-  
6 recting the award, in which case the court shall proceed as  
7 provided in secs. 120 and 130 of this chapter.

8 Sec. 09.43.120. VACATING AN AWARD. (a) On application  
9 of a party, the court shall vacate an award if

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

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

15 (3) the arbitrators exceeded their powers;

16 (4) the arbitrators refused to postpone the hear-  
17 ing upon sufficient cause being shown therefor or refused to  
18 hear evidence material to the controversy or otherwise so  
19 conducted the hearing, contrary to the provisions of sec. 50  
20 of this chapter as to prejudice substantially the rights of  
21 a party; or

22 (5) there was no arbitration agreement and the  
23 issue was not adversely determined in proceedings under sec.  
24 20 of this chapter and the party did not participate in the  
25 arbitration hearing without raising the objection.

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

29 (c) An application under this section shall be made

1 within 90 days after delivery of a copy of the award to the  
2 applicant. However, if the application is predicated upon  
3 corruption, fraud or other undue means by either the op-  
4 posing party or an arbitrator, it shall be made within 90  
5 days after the grounds are known or should have been known.

6 (d) In vacating the award on grounds other than those  
7 stated in (a)(5) of this section the court may order a re-  
8 hearing before new arbitrators chosen as provided in the  
9 agreement, or in the absence of a provision in the agreement,  
10 by the court in accordance with sec. 30 of this chapter, or,  
11 if the award is vacated on grounds set out in (a)(3) or (4)  
12 of this section, the court may order a rehearing before the  
13 arbitrators who made the award or their successors appointed  
14 in accordance with sec. 30 of this chapter. The time within  
15 which the agreement requires the award to be made is ap-  
16 plicable to the rehearing and commences from the date of the  
17 order.

18 (e) If the application to vacate is denied and no  
19 motion to modify or correct the award is pending, the court  
20 shall confirm the award.

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

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

28 (2) the arbitrators have awarded upon a matter not  
29 submitted to them and the award may be corrected without

1 affecting the merits of the decision upon the issues sub-  
2 mitted; or

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

5 (b) If the application is granted, the court shall  
6 modify and correct the award so as to effect its intent and  
7 shall confirm the award as so modified and corrected. Other  
8 wise, the court shall confirm the award as made.

9 (c) An application to modify or correct an award may be  
10 joined in the alternative with an application to vacate the  
11 award.

12 Sec. 09.43.140. JUDGMENT OR DECREE ON AWARD. Upon the  
13 granting of an order confirming, modifying or correcting an  
14 award, a judgment or decree shall be entered in conformity  
15 with the award and be enforced as any other judgment or  
16 decree. Costs of the application and of the proceedings  
17 subsequent to the application, and disbursements may be  
18 awarded by the court.

19 Sec. 09.43.150. APPLICATIONS TO COURT. An application  
20 to the court under this chapter shall be by motion and shall  
21 be heard in the manner and upon the notice provided by law or  
22 rule of court for the making and hearing of motions. Unless  
23 the parties have agreed otherwise, notice of an initial  
24 application for an order shall be served in the manner pro-  
25 vided by law for the service of a summons in an action.

26 Sec. 09.43.160. APPEALS. (a) An appeal may be taken  
27 from

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

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

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

(4) an order modifying or correcting an award;

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

(6) a judgment or decree entered under the 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.