

Introduced: 2/21/67
Referred: Labor and
Management & Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST

2 HOUSE BILL NO. 212

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

9 CHAPTER 43. UNIFORM ARBITRATION LAW.

10 Sec. 09.43.010. ARBITRATION AGREEMENTS VALID. A written agreement
11 to submit an existing controversy to arbitration or a provision in a
12 written contract to submit to arbitration a subsequent controversy be-
13 tween the parties is valid, enforceable and irrevocable, except upon
14 grounds which exist at law or in equity for the revocation of a contract.

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

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

28 (c) If an issue subject to arbitration under the alleged agree-
29 ment is involved in an action or proceeding pending in a court having

1 jurisdiction to hear applications under (a) of this section, the
2 application shall be made in that court. Otherwise the application
3 may be made in any court of competent jurisdiction.

4 (d) An action or proceeding involving an issue subject to
5 arbitration shall be stayed if an order for arbitration or an applica-
6 tion for the order has been made under this section or, if the issue
7 is severable, the stay may be with respect to the issue only.

8 (e) An order for arbitration shall not be refused on the ground
9 that the claim in issue lacks merit or because a fault or ground for
10 the claims sought to be arbitrated has not been shown.

11 Sec. 09.43.030. APPOINTMENT OF ARBITRATORS BY COURT. If the
12 arbitration agreement provides a method of appointment of arbitrators,
13 this method shall be followed. If no method of appointment is
14 provided, or if the agreed method fails or for any reason cannot be
15 followed, or when before the hearing an arbitrator appointed fails
16 or is unable to act and his successor has not been duly appointed,
17 the court on application of a party shall appoint one or more arbitra-
18 tors. An arbitrator so appointed has all the powers of one specifically
19 named in the agreement.

20 Sec. 09.43.040. MAJORITY ACTION BY ARBITRATORS. The powers of
21 the arbitrators may be exercised by a majority unless otherwise pro-
22 vided by the agreement or by this chapter.

23 Sec. 09.43.050. HEARING. Unless otherwise provided by the
24 agreement,

25 (1) the arbitrators shall set a time and place for the
26 hearing and cause notification to the parties to be served personally
27 or by registered mail not less than five days before the hearing;
28 appearance at the hearing waives the notice; the arbitrators may
29 adjourn the hearing from time to time as necessary and, on request

1 of a party and for good cause or upon their own motion, may post-
2 pone the hearing to a time not later than the date fixed by the
3 agreement for making the award unless the parties consent to a later
4 date; the arbitrators may hear and determine the controversy upon the
5 evidence produced notwithstanding the failure of a party duly notified
6 to appear;

7 (2) the parties are entitled to be heard, to present
8 evidence material to the controversy and to cross-examine witnesses
9 appearing at the hearing;

10 (3) the hearing shall be conducted by all the arbitrators
11 but a majority may determine any question and render a final award;
12 if, during the course of the hearing, an arbitrator for any reason
13 ceases to act, the remaining arbitrator or arbitrators appointed to
14 act as neutrals shall continue with the hearing and determination of
15 the controversy.

16 Sec. 09.43.060. REPRESENTATION BY ATTORNEY. A party has the
17 right to be represented by an attorney at a proceeding or hearing under
18 this chapter. A waiver of the right before the proceeding or hearing
19 is ineffective.

20 Sec. 09.43.070. WITNESSES, SUBPOENAS, DEPOSITIONS. (a) The
21 arbitrators may cause to be issued subpoenas for the attendance of
22 witnesses and for the production of books, records, documents and other
23 evidence, and have the power to administer oaths. Subpoenas shall be
24 served, and upon application to the court by a party or the arbitrators,
25 enforced in the manner provided by law for the service and enforcement
26 of subpoenas in a civil action.

27 (b) On application of a party and for use as evidence, the
28 arbitrators may permit a deposition to be taken, in the manner and upon
29 the terms designated by the arbitrators, of a witness who cannot be

1 subpoenaed or is unable to attend the hearing.

2 (o) All provisions of law compelling a person under subpoena to
3 testify are applicable.

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

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

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

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

29 Sec. 09.43.100. FEES AND EXPENSES OF ARBITRATION. Unless other-

1 wise provided in the agreement to arbitrate, the arbitrators' expenses
2 and fees, together with other expenses, not including counsel fees,
3 incurred in the conduct of the arbitration, shall be paid as provided
4 in the award.

5 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a
6 party, the court shall confirm an award unless within the time limits
7 imposed by secs. 120 and 130 of this chapter grounds are urged for
8 vacating or modifying or correcting the award, in which case the court
9 shall proceed as provided in secs. 120 and 130 of this chapter.

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

- 12 (1) the award was procured by fraud or other undue means;
- 13 (2) there was evident partiality by an arbitrator appointed
14 as a neutral or corruption in any of the arbitrators or misconduct
15 prejudicing the rights of a party;
- 16 (3) the arbitrators exceeded their powers;
- 17 (4) the arbitrators refused to postpone the hearing upon
18 sufficient cause being shown therefor or refused to hear evidence
19 material to the controversy or otherwise so conducted the hearing,
20 contrary to the provisions of sec. 50 of this chapter as to prejudice
21 substantially the rights of a party; or
- 22 (5) there was no arbitration agreement and the issue was
23 not adversely determined in proceedings under sec. 20 of this chapter
24 and the party did not participate in the arbitration hearing without
25 raising the objection.

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

29 (c) An application under this section shall be made within 90

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

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

15 (e) If the application to vacate is denied and no motion to
16 modify or correct the award is pending, the court shall confirm the
17 award.

18 Sec. 09.43.130. MODIFICATION OR CORRECTION OF AWARD BY COURT.

19 (a) On application made within 90 days after delivery of a copy of
20 the award to the applicant, the court shall modify or correct the
21 award if

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

25 (2) the arbitrators have awarded upon a matter not submitted
26 to them and the award may be corrected without affecting the merits of
27 the decision upon the issues submitted; or

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

1 (b) If the application is granted, the court shall modify and
2 correct the award to effect its intent and shall confirm the award as
3 modified and corrected. Otherwise, the court shall confirm the award
4 as made.

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

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

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

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

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

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

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

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

26 (5) an order vacating an award without directing a rehearing

27 or

28 (6) a judgment or decree entered under the provisions of
29 this chapter.

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

3 Sec. 09.43.170. COURT, JURISDICTION. In this chapter, the term
4 "court" means the superior court of this state. The making of an
5 agreement described in sec. 10 of this chapter providing for arbitra-
6 tion in this state confers jurisdiction on the superior court to
7 enforce the agreement under this chapter and to enter judgment on an
8 award thereunder.

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