

SB

319

CS FOR SENATE BILL NO. 319(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE

**Offered:
Referred:**

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**
6 **ARTICLE]. A written agreement that is subject to and complies with**
7 **AS 09.43.015, or that is not subject to AS 09.43.015,** to submit a [AN EXISTING]
8 controversy existing at the time the agreement is entered into to arbitration, or a
9 provision in a written agreement that is subject to and complies with AS 09.43.015,
10 or that is not subject to AS 09.43.015, [CONTRACT] to submit to arbitration a
11 [SUBSEQUENT] controversy between the parties occurring after the agreement is
12 entered into is valid, enforceable, and irrevocable, except on [UPON] grounds that
13 exist at law or in equity for the revocation of a contract. [HOWEVER, AS 09.43.010 -
14 09.43.180 DO NOT APPLY TO A LABOR-MANAGEMENT CONTRACT UNLESS

1 INCORPORATED INTO THE CONTRACT BY REFERENCE OR THEIR
2 APPLICATION IS PROVIDED FOR BY STATUTE.]

3 * **Sec. 2.** AS 09.43 is amended by adding new sections to read:

4 **Sec. 09.43.013. Application to labor-management agreements.**

5 AS 09.43.010 - 09.43.180 do not apply to a labor-management agreement unless
6 AS 09.43.010 - 09.43.180 are incorporated into the agreement by reference or their
7 application is provided for by statute.

8 **Sec. 09.43.015. Arbitration agreement requirement.** (a) In order for an
9 agreement to provide for arbitration, the agreement must contain a notice that states
10 that a party has the option to compel arbitration and to bind the other party to the
11 arbitration decision, and that arbitration limits the rights and remedies otherwise
12 available under the law. The notice must also state that parties to an arbitration
13 agreement do not waive their rights to obtain a judicial determination of whether a
14 dispute is arbitrable. This notice must be typed in capital letters within the agreement
15 or on a separate document. If an agreement fails to contain the notice required by this
16 subsection, a party may not compel arbitration, an arbitration decision is not binding,
17 and otherwise available rights and remedies are not limited.

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

20 NOTICE: THIS CONTRACT INCLUDES AN ARBITRATION
21 CLAUSE. IF YOU SIGN THIS CONTRACT, YOU CAN BE
22 COMPELLED TO SUBMIT ANY DISPUTE UNDER THIS
23 CONTRACT TO MANDATORY BINDING ARBITRATION.
24 HOWEVER, BY SIGNING THIS CONTRACT, YOU DO NOT
25 WAIVE YOUR RIGHT TO OBTAIN A JUDICIAL
26 DETERMINATION OF WHETHER A PARTICULAR
27 DISPUTE IS ARBITRABLE. BY SIGNING THIS
28 CONTRACT WITH AN ARBITRATION CLAUSE, YOU
29 WILL BE OR MAY BE LIMITING OR WAIVING YOUR
30 RIGHTS TO

31 (1) HAVE A DISPUTE UNDER THE CONTRACT RESOLVED

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IN A COURT OF LAW, EVEN WHERE THE CONTRACT WITH THE ARBITRATION CLAUSE IS VOID OR VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD, DURESS, MISTAKE, OR OTHER GROUNDS;

(2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF LAW;

(3) EXERCISE STATUTORY REMEDIES, SUCH AS A LIEN, INJUNCTION, OR CLAIM FOR DAMAGES;

(4) HAVE THE DISPUTE DECIDED BY A DECISION MAKER WITH APPROPRIATE TRAINING TO DECIDE THE DISPUTE;

(5) USE DISCOVERY AND OTHER EVIDENCE-GATHERING PROCEDURES OTHERWISE AVAILABLE IN AN ACTION BEFORE A COURT OF LAW;

(6) OBTAIN A DECISION CONSISTENT WITH THE LAW AND THE FACTS;

(7) OBTAIN A WRITTEN STATEMENT OF THE LEGAL AND FACTUAL BASES OF THE DECISION;

(8) RECOVER PUNITIVE DAMAGES IF THE PARTIES' CONTRACT OR ARBITRATION AGREEMENT EXPRESSLY EXCLUDES A RIGHT TO RECOVER PUNITIVE DAMAGES;

(9) RECOVER ATTORNEY FEES AND COSTS.

(c) In this section, "agreement" does not include an agreement to submit to arbitration a controversy between the parties occurring after the agreement is entered into, if the agreement

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

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

1 (3) concerns or relates to insurance policies or annuity contracts, except
2 for contracts between insurance companies.

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

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

11 * Sec. 4. AS 09.43.020(b) is amended to read:

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

19 * Sec. 5. AS 09.43.020 is amended by adding a new subsection to read:

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

23 * Sec. 6. AS 09.43.120(a) is amended to read:

24 (a) On application of a party, the court shall vacate an award if
25 (1) the award was procured by fraud or other undue means;
26 (2) there was evident partiality by an arbitrator appointed as a neutral
27 or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
28 (3) the arbitrators exceeded their powers;
29 (4) the arbitrators refused to postpone the hearing upon sufficient cause
30 being shown for postponement or refused to hear evidence material to the controversy
31 or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as

1 to prejudice substantially the rights of a party; [OR]

2 (5) there was no arbitration agreement and the issue was not adversely
3 determined in proceedings under AS 09.43.020 and the party did not participate in the
4 arbitration hearing without raising the objection; or

5 (6) the arbitration agreement is subject to but does not comply with
6 AS 09.43.015.

7 * Sec. 7. AS 09.43.190, 09.43.200, 09.43.210, and 09.43.220 are repealed.

8 * Sec. 8. COURT RULE CHANGES. The provisions of sec. 5 of this Act have the effect
9 of changing

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

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

16 * Sec. 9. APPLICABILITY. Sections 1 - 6 of this Act only apply to an arbitration
17 proceeding that is in progress or begun on or after the effective date of this Act, except that,
18 if an award has been made by the arbitrator in the proceeding and the time for a request to
19 modify or vacate the award has expired, secs. 1 - 6 of this Act do not apply to the proceeding.

20 * Sec. 10. Section 5 of this Act takes effect only if sec. 8 of this Act receives the two-
21 thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
22 Alaska.

23 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

not
considered

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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 is subject to and complies with
 2 AS 09.43.015 to submit to arbitration a controversy between the parties occurring after
 3 the agreement is entered into is valid and enforceable except on grounds that exist at
 4 law or in equity for the revocation of a contract.

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 17 or on a separate document. If an agreement fails to contain the notice required by this
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 3 IN A COURT OF LAW, EVEN WHERE THE CONTRACT
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 5 VOIDABLE DUE TO REPUDIATION, RESCISSION, FRAUD,
 6 DURESS, MISTAKE, OR OTHER GROUNDS;
- 7 (2) APPEAL THE ARBITRATOR'S DECISION TO A COURT OF
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1 individual does not exceed the jurisdictional limit set out in AS 22.15.040 at the time
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17 a speedy hearing.

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19 proceeding that is in progress or begun on or after the effective date of this Act, except that,
20 if an award has been made by the arbitrator in the proceeding and the time for a request to
21 modify or vacate the award has expired, secs. 1 - 7 of this Act do not apply to the proceeding.

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

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



ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS
SENATE DISTRICT L

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April 1, 1998

MEMORANDUM

TO: Senator Tim Kelly
Senate Rules Committee

FROM: Senator Randy Phillips *REP*

RE: Senate Bill 319, "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules of Civil Procedure; and providing for an effective date."

I request that you schedule the above referenced bill for a Floor vote as soon as possible.

Parties signing contracts such as those in real estate transactions are often unaware of the arbitration clause contained in those contracts. Furthermore, they are under the mistaken assumption that this is a necessary part of a contract. By agreeing to arbitration, a buyer or seller in a real estate transaction or other contractual agreement is waiving rights to a court hearing and to any right to an appeal. While arbitration is encouraged as a means of resolving disputes, it is important the parties to a contract are aware of the ramifications of resolving a dispute by arbitration. In addition there is no monetary limit on arbitration.

Senate Bill 319 requires that language typed in capital letters be within the arbitration agreement or separate document. It also limits claims to \$7,500 to conform with the small claims limit.