

HB

83

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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April 9, 2004

Honorable Ralph Seekins, Chair
Senate Judiciary Committee
State Capitol, Room 125
Juneau, AK 99801-1182

Re: CSHB 83(JUD) -- (Revised Uniform Arbitration Act)

Dear Senator Seekins:

Under AS 44.23.030, the Department of Law has a statutory duty to promote uniform law across states on matters of common concern. Uniformity is especially important for commercial law, because many businesses operate in more than one state, and need common legal principles to operate efficiently across state lines.

One such set of uniform laws has been proposed in CSHB 83(JUD), the revised Uniform Arbitration Act. The Act is endorsed by the American Arbitration Association, the National Academy of Arbitrators, and the National Arbitration Forum, and has been approved by the American Bar Association.


The primary purpose of the Act is to advance arbitration as a desirable alternative to litigation.

The bill is currently before your committee. The Department of Law would appreciate scheduling of a hearing on this matter.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:


David W. Márquez
Chief Assistant Attorney General

DWM:DEB:pvp
cc: Mike Tibbles, Legislative Director
Office of the Governor

Alaska State Legislature
House of Representatives
Minority Leader

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Representative Ethan Berkowitz
District 13

MEMORANDUM

Date: January 22, 2004
To: Senator Ralph Seekins, Chair
Senate Judiciary Committee
From: Representative Ethan Berkowitz
Re: CSHB 83(JUD)

I respectfully request that you schedule a hearing in the Senate Judiciary Committee for CSHB 83(JUD), adoption of the Revised Uniform Arbitration Act.

A copy of the bill, a sponsor statement, sectional analysis, fiscal notes and additional background material are attached.

A teleconference site in Anchorage will likely be needed. If you have any questions or need additional information, please call Lisa Weissler at 465-3163.

Thank you.

Alaska State Legislature
House of Representatives
Minority Leader

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Representative Ethan Berkowitz
District 26

SPONSOR STATEMENT

CS House Bill 83 (JUD)

“An Act adopting a version of the Revised Uniform Arbitration Act; relating to the state’s existing Uniform Arbitration Act; amending Rules 3, 18, 19, 20,21, Alaska Rules of Civil Procedure, Rule 601, Alaska Rules of Evidence, and Rule 402, Alaska Rules of Appellate Procedure; and providing for an effective date.”

This legislation updates Alaska’s current arbitration statutes through adoption of the Revised Uniform Arbitration Act (RUAA). These revisions address many questions that the original uniform act did not and encourages the use of arbitration as a viable alternative to litigation.

The objective of the RUAA is to advance arbitration as a desirable alternative to litigation, but not to make arbitration another form of litigation. To this end, the RUAA endeavors to make the arbitration process more efficient, expeditious, and economical in a manner that is fair to the parties, and that promotes finality of the decision of the dispute submitted to arbitration.

Arbitration is the original "alternative dispute resolution" mechanism made legitimate under American law. The RUAA recognizes that more issues are being submitted to arbitration and that the issues are more complex, often involving higher monetary amounts. The RUAA covers a number of important issues that were not addressed in the original act and reflects aspects of arbitration practice as it has developed over the years.

Under the original version of the bill, an arbitrator could determine whether a contract containing a valid agreement to arbitrate is enforceable. This would have meant that a contract could be invalid, but the arbitration agreement could still be valid and enforced. The House Judiciary Committee Substitute provides that when a contract is ruled invalid because it was induced by fraud, an arbitration provision contained in the contract is not enforceable.

A revision of the uniform arbitration act is necessary at this time in light of the ever-increasing use of arbitration and the developments of the law in this area. This important advance in the law of arbitration should be enacted as soon as feasible.

23-LS0047/Q
Bannister
3/2/04

SENATE CS FOR CS FOR HOUSE BILL NO. 83()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BERKOWITZ, Weyhrauch, Moses, Gara

A BILL

FOR AN ACT ENTITLED

1 "An Act adopting a version of the Revised Uniform Arbitration Act; relating to the
2 state's existing Uniform Arbitration Act; amending Rules 3, 18, 19, 20, and 21, Alaska
3 Rules of Civil Procedure, Rule 601, Alaska Rules of Evidence, and Rule 402, Alaska
4 Rules of Appellate Procedure; and providing for an effective date."

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

6 * Section 1. AS 09.43.010 is amended by adding a new subsection to read:

7 (b) Notwithstanding (a) of this section, AS 09.43.010 - 09.43.180 do not apply
8 to an agreement or a contract unless the agreement or contract is entered into before
9 the effective date of AS 09.43.300 - 09.43.595 and is not otherwise subject to
10 AS 09.43.300 - 09.43.595.

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

12 Article 3. Revised Uniform Arbitration Act.

13 Sec. 09.43.300. Application. (a) AS 09.43.300 - 09.43.595 govern an
14 agreement to arbitrate made on or after January 1, 2005.

1 (b) AS 09.43.300 - 09.43.595 govern an agreement to arbitrate made before
2 January 1, 2005, if all the parties to the agreement or to the arbitration proceeding
3 agree in a record that AS 09.43.300 - 09.43.595 govern the agreement.

4 (c) Except as provided by (d) of this section, AS 09.43.300 - 09.43.595 do not
5 apply to a labor-management contract unless they are incorporated into the contract or
6 their application is provided for by contract.

7 (d) AS 09.43.300 - 09.43.595 do not apply to a collective bargaining
8 agreement subject to AS 23.40.070 - 23.40.260, except as provided by AS 23.40.070 -
9 23.40.260.

10 **Sec. 09.43.310. Effect of agreement to arbitrate; nonwaivable provisions.**

11 (a) Except as otherwise provided in (b) and (c) of this section, a party to an agreement
12 to arbitrate or arbitration proceeding may waive, or the parties may vary the effect of,
13 the requirements of AS 09.43.300 - 09.43.595 to the extent permitted by law.

14 (b) Before a controversy arises that is subject to an agreement to arbitrate, a
15 party to the agreement may not

16 (1) waive or agree to vary the effect of the requirements of
17 AS 09.43.320, 09.43.330(a) or (b), 09.43.350, 09.43.440(a) or (b), 09.43.530, or
18 09.43.550;

19 (2) agree to unreasonably restrict the right under AS 09.43.360 to
20 notice of the initiation of an arbitration proceeding;

21 (3) agree to unreasonably restrict the right under AS 09.43.390 to
22 disclosure of any facts by a neutral arbitrator; or

23 (4) waive the right under AS 09.43.430 of a party to an agreement to
24 arbitrate to be represented by an attorney at a proceeding or hearing under
25 AS 09.43.300 - 09.43.595, but an employer and a labor organization may waive the
26 right to representation by an attorney in a labor arbitration.

27 (c) A party to an agreement to arbitrate or arbitration proceeding may not
28 waive, or the parties may not vary the effect of, the requirements of this section,
29 AS 09.43.300(a), (c), or (d), 09.43.340, 09.43.410, 09.43.450, 09.43.470(d) or (e),
30 09.43.490, 09.43.500, 09.43.510, 09.43.520, 09.43.560, or 09.43.570.

31 **Sec. 09.43.320. Application for judicial relief.** Except as otherwise provided

1 in AS 09.43.550, an application for judicial relief under AS 09.43.300 - 09.43.595
2 shall be made and heard in the manner provided by the court rules of this state.

3 **Sec. 09.43.330. Validity of agreement to arbitrate.** (a) An agreement
4 contained in a record to submit to arbitration an existing or subsequent controversy
5 arising between the parties to the agreement is valid, enforceable, and irrevocable
6 except upon a ground that exists at law or in equity for the revocation of a contract,
7 and except as provided by (b) of this section.

8 (b) To the extent an agreement that contains an arbitration provision is
9 invalidated on the grounds that a party was induced into entering into the agreement
10 by fraud, the arbitration provision in the agreement is not enforceable, and the party is
11 not required to prove that the party was induced into entering into the arbitration
12 provision by fraud.

13 (c) The court shall decide whether an agreement to arbitrate exists or a
14 controversy is subject to an agreement to arbitrate.

15 (d) An arbitrator shall decide whether a condition precedent to arbitrability has
16 been fulfilled.

17 (e) If a party to a judicial proceeding challenges the existence of, or claims
18 that a controversy is not subject to, an agreement to arbitrate, the arbitration
19 proceeding may continue pending final resolution of the issue by the court, unless the
20 court otherwise orders.

21 **Sec. 09.43.340. Application to compel arbitration; stay of related**
22 **proceedings.** (a) On application of a person showing an agreement to arbitrate and
23 alleging another person's refusal to arbitrate under the agreement,

24 (1) if the refusing party does not appear or does not oppose the
25 application, the court shall order the parties to arbitrate; and

26 (2) if the refusing party opposes the application, the court shall proceed
27 summarily to decide the issue and order the parties to arbitrate unless it finds that there
28 is no enforceable agreement to arbitrate.

29 (b) On application of a person alleging that an arbitration proceeding has been
30 initiated or threatened but that there is not an agreement to arbitrate, the court shall
31 proceed summarily to decide the issue. If the court finds that there is an enforceable

1 agreement to arbitrate, the court shall order the parties to arbitrate.

2 (c) If the court finds that there is not an enforceable agreement, the court may
3 not, under (a) or (b) of this section, order the parties to arbitrate.

4 (d) The court may not refuse to order arbitration because the claim subject to
5 arbitration lacks merit or because grounds for the claim have not been established.

6 (e) If a proceeding involving a claim referable to arbitration under an alleged
7 agreement to arbitrate is pending in court, an application under this section shall be
8 made in that court. Otherwise, an application under this section may be made in any
9 court as provided in AS 09.43.540.

10 (f) If a party makes an application to the court to order arbitration, the court
11 shall, on just terms, stay a judicial proceeding that involves a claim alleged to be
12 subject to the arbitration until the court renders a final decision under this section.

13 (g) If the court orders arbitration, the court shall, on just terms, stay a judicial
14 proceeding that involves a claim subject to the arbitration. If a claim subject to the
15 arbitration is severable, the court may limit the stay to that claim.

16 **Sec. 09.43.350. Provisional remedies.** (a) Before an arbitrator is appointed
17 and is authorized and able to act, the court, upon application of a party to an
18 arbitration proceeding and for good cause shown, may enter an order for provisional
19 remedies to protect the effectiveness of the arbitration proceeding to the same extent
20 and under the same conditions as if the controversy were the subject of a civil action.

21 (b) After an arbitrator is appointed and is authorized and able to act,

22 (1) the arbitrator may issue the orders for provisional remedies,
23 including interim awards, that the arbitrator finds necessary to protect the
24 effectiveness of the arbitration proceeding and to promote the fair and expeditious
25 resolution of the controversy, to the same extent and under the same conditions as if
26 the controversy were the subject of a civil action; and

27 (2) a party to an arbitration proceeding may apply to the court for a
28 provisional remedy only if the matter is urgent and the arbitrator is not able to act
29 timely or the arbitrator cannot provide an adequate remedy.

30 (c) A party does not waive a right of arbitration by making an application
31 under (a) or (b) of this section.

1 **Sec. 09.43.360. Initiation of arbitration.** (a) A person initiates an arbitration
2 proceeding by giving notice in a record to the other parties to the agreement to
3 arbitrate in the agreed manner between the parties or, in the absence of agreement, by
4 certified or registered mail, return receipt requested and obtained, or by service as
5 authorized for the commencement of a civil action. The notice must describe the
6 nature of the controversy and the remedy sought.

7 (b) Unless a person objects for lack or insufficiency of notice under
8 AS 09.43.420(c) not later than the beginning of the arbitration hearing, the person, by
9 appearing at the hearing, waives any objection to lack or insufficiency of notice.

10 **Sec. 09.43.370. Consolidation of separate arbitration proceedings.** (a)
11 Except as otherwise provided in (c) of this section, upon application of a party to an
12 agreement to arbitrate or arbitration proceeding, the court may order consolidation of
13 separate arbitration proceedings as to all or some of the claims if

14 (1) there are separate agreements to arbitrate or separate arbitration
15 proceedings between the same persons or one of them is a party to a separate
16 agreement to arbitrate or a separate arbitration proceeding with a third person;

17 (2) the claims subject to the agreements to arbitrate arise in substantial
18 part from the same transaction or series of related transactions;

19 (3) the existence of a common issue of law or fact creates the
20 possibility of conflicting decisions in the separate arbitration proceedings; and

21 (4) prejudice resulting from a failure to consolidate is not outweighed
22 by the risk of undue delay or prejudice to the rights of or hardship to parties opposing
23 consolidation.

24 (b) The court may order consolidation of separate arbitration proceedings as to
25 some claims and allow other claims to be resolved in separate arbitration proceedings.

26 (c) The court may not order consolidation of the claims of a party to an
27 agreement to arbitrate if the agreement prohibits consolidation.

28 **Sec. 09.43.380. Appointment of arbitrator; service as a neutral arbitrator:**

29 (a) If the parties to an agreement to arbitrate agree on a method for appointing an
30 arbitrator, that method shall be followed, unless the method fails. If the parties have
31 not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is

1 unable to act and a successor has not been appointed, the court, on application of a
 2 party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed
 3 by the court has all the powers of an arbitrator designated in the agreement to arbitrate
 4 or appointed under the agreed method.

5 (b) An individual who has a known, direct, and material interest in the
 6 outcome of the arbitration proceeding or a known, existing, and substantial
 7 relationship with a party may not serve as an arbitrator required by an agreement to be
 8 neutral.

9 **Sec. 09.43.390. Disclosure by arbitrator.** (a) Before accepting appointment,
 10 an individual who is requested to serve as an arbitrator shall, after making a reasonable
 11 inquiry, disclose to all parties to the agreement to arbitrate and arbitration proceeding
 12 and to other arbitrators any known facts that a reasonable person would consider likely
 13 to affect the impartiality of the arbitrator in the arbitration proceeding, including

14 (1) a financial or personal interest in the outcome of the arbitration
 15 proceeding; and

16 (2) an existing or past relationship with a party to the agreement to
 17 arbitrate or arbitration proceeding, counsel for or representatives of the parties, a
 18 witness, or another arbitrator.

19 (b) An arbitrator has a continuing obligation to disclose to all parties to the
 20 agreement to arbitrate and arbitration proceeding and to other arbitrators any facts that
 21 the arbitrator learns after accepting appointment that a reasonable person would
 22 consider likely to affect the impartiality of the arbitrator.

23 (c) If an arbitrator discloses a fact required by (a) or (b) of this section to be
 24 disclosed and a party timely objects to the appointment or continued service of the
 25 arbitrator based on the fact disclosed, the objection may be a ground under
 26 AS 09.43.500(a)(2) for vacating an award made by the arbitrator.

27 (d) If the arbitrator did not disclose a fact as required by (a) or (b) of this
 28 section, upon timely objection by a party, the court may, under AS 09.43.500(a)(2),
 29 vacate an award.

30 (e) An arbitrator appointed as a neutral arbitrator who does not disclose a
 31 known, direct, and material interest in the outcome of the arbitration proceeding or a

1 known, existing, and substantial relationship with a party is rebuttably presumed to act
2 with evident partiality under AS 09.43.500(a)(2).

3 (f) If the parties to an arbitration proceeding agree to the procedures of an
4 arbitration organization or other procedures for challenges to arbitrators before an
5 award is made, substantial compliance with those procedures is a condition precedent
6 to an application to vacate an award on that ground under AS 09.43.500(a)(2).

7 **Sec. 09.43.400. Action by majority.** If there is more than one arbitrator, the
8 powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of
9 them shall conduct the hearing under AS 09.43.420(c).

10 **Sec. 09.43.410. Immunity of arbitrator; competency to testify; attorney**
11 **fees and costs.** (a) An arbitrator or an arbitration organization acting in that capacity
12 is immune from civil liability to the same extent as a judge of a court of this state
13 acting in a judicial capacity.

14 (b) The immunity afforded by this section supplements any immunity under
15 other law.

16 (c) The failure of an arbitrator to make a disclosure required by AS 09.43.390
17 does not cause a loss of immunity under this section.

18 (d) In a judicial, administrative, or similar proceeding, an arbitrator or
19 representative of an arbitration organization is not competent to testify and may not be
20 required to produce records as to a statement, conduct, a decision, or a ruling
21 occurring during the arbitration proceeding to the same extent as a judge of a court of
22 this state acting in a judicial capacity. This subsection does not apply to

23 (1) the extent necessary to determine the claim of an arbitrator,
24 arbitration organization, or representative of the arbitration organization against a
25 party to the arbitration proceeding; or

26 (2) a hearing on an application to vacate an award under
27 AS 09.43.500(a)(1) or (2) if the applicant establishes prima facie that a ground for
28 vacating the award exists.

29 (e) If a person commences a civil action against an arbitrator, arbitration
30 organization, or representative of an arbitration organization arising from the services
31 of the arbitrator, organization, or representative, or if a person seeks to compel an

1 arbitrator or a representative of an arbitration organization to testify or produce
2 records in violation of (d) of this section, and the court decides that the arbitrator,
3 arbitration organization, or representative of an arbitration organization is immune
4 from civil liability or that the arbitrator or representative of the organization is not
5 competent to testify, the court shall award to the arbitrator, organization, or
6 representative attorney fees and expenses of litigation as determined under the court
7 rules of this state.

8 **Sec. 09.43.420. Arbitration process.** (a) An arbitrator may conduct an
9 arbitration in the manner the arbitrator considers appropriate for a fair and expeditious
10 disposition of the proceeding. The authority conferred upon the arbitrator includes the
11 power to hold conferences with the parties to the arbitration proceeding before the
12 hearing and, among other matters, determine the admissibility, relevance, materiality,
13 and weight of any evidence.

14 (b) An arbitrator may decide a request for summary disposition of a claim or
15 particular issue

16 (1) if all interested parties agree; or

17 (2) on request of one party to the arbitration proceeding if that party
18 gives notice to all other parties to the proceeding and the other parties have a
19 reasonable opportunity to respond.

20 (c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and
21 give notice of the hearing not less than five days before the hearing begins. Unless a
22 party to the arbitration proceeding makes an objection to lack or insufficiency of
23 notice not later than the beginning of the hearing, the party's appearance at the hearing
24 waives the objection. On request of a party to the arbitration proceeding and for good
25 cause shown, or on the arbitrator's own initiative, the arbitrator may adjourn the
26 hearing from time to time as necessary but may not postpone the hearing to a time
27 later than that fixed by the agreement to arbitrate for making the award unless the
28 parties to the arbitration proceeding consent to a later date. The arbitrator may hear
29 and decide the controversy on the evidence produced although a party who was
30 notified of the arbitration proceeding did not appear. The court, on request, may direct
31 the arbitrator to conduct the hearing promptly and render a timely decision.

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(d) At a hearing under (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed under AS 09.43.380 to continue the proceeding and to resolve the controversy.

Sec. 09.43.430. Representation by attorney. A party to an arbitration proceeding may be represented by an attorney.

Sec. 09.43.440. Witnesses; subpoenas; depositions; discovery. (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at a hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, on application to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost-effective, on request of a party to or witness in an arbitration proceeding, an arbitrator may permit a deposition of a witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit the discovery the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(d) If an arbitrator permits discovery under (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information

1 protected from disclosure to the extent a court could if the controversy were the
2 subject of a civil action in this state.

3 (f) All laws compelling a person under subpoena to testify and all fees for
4 attending a judicial proceeding, deposition, or discovery proceeding as a witness apply
5 to an arbitration proceeding as if the controversy were the subject of a civil action in
6 this state.

7 (g) The court may enforce a subpoena or discovery-related order for the
8 attendance of a witness within this state and for the production of records and other
9 evidence issued by an arbitrator in connection with an arbitration proceeding in
10 another state upon conditions determined by the court so as to make the arbitration
11 proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order
12 issued by an arbitrator in another state shall be served in the manner provided by law
13 for service of subpoenas in a civil action in this state and, on application to the court
14 by a party to the arbitration proceeding or the arbitrator, enforced in the manner
15 provided by law for enforcement of subpoenas in a civil action in this state.

16 **Sec. 09.43.450. Judicial enforcement of preaward ruling by arbitrator.** If
17 an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding,
18 the party may request the arbitrator to incorporate the ruling into an award under
19 AS 09.43.460. A prevailing party may apply to the court for an expedited order to
20 confirm the award under AS 09.43.490, in which case the court shall summarily
21 decide the application. The court shall issue an order to confirm the award unless the
22 court vacates, modifies, or corrects the award under AS 09.43.500 or 09.43.510.

23 **Sec. 09.43.460. Award.** (a) An arbitrator shall make a record of an award.
24 The record must be signed or otherwise authenticated by an arbitrator who concurs
25 with the award. The arbitrator or the arbitration organization shall give notice of the
26 award, including a copy of the award, to each party to the arbitration proceeding.

27 (b) An award shall be made within the time specified by the agreement to
28 arbitrate or, if not specified in the agreement, within the time ordered by the court.
29 The court may extend or the parties to the arbitration proceeding may agree in a record
30 to extend the time. The court or the parties may extend the time within or after the
31 time specified or ordered. A party waives an objection that an award was not timely

1 made unless the party gives notice of the objection to the arbitrator before receiving
2 notice of the award.

3 **Sec. 09.43.470. Change of award by arbitrator.** (a) On motion to an
4 arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct
5 an award

6 (1) on a ground stated in AS 09.43.510(a)(1) or (3);

7 (2) because the arbitrator has not made a final and definite award on a
8 claim submitted by the parties to the arbitration proceeding; or

9 (3) to clarify the award.

10 (b) A motion under (a) of this section shall be made and notice shall be given
11 to all parties within 20 days after the movant receives notice of the award.

12 (c) A party to the arbitration proceeding shall give notice of an objection to the
13 motion within 10 days after receipt of the notice.

14 (d) If an application to the court is pending under AS 09.43.490, 09.43.500, or
15 09.43.510, the court may submit the claim to the arbitrator to consider whether to
16 modify or correct the award

17 (1) on a ground stated in AS 09.43.510(a)(1) or (3);

18 (2) because the arbitrator has not made a final and definite award on a
19 claim submitted by the parties to the arbitration proceeding; or

20 (3) to clarify the award.

21 (e) An award modified or corrected under this section is subject to
22 AS 09.43.460(a) and 09.43.490 - 09.43.510.

23 **Sec. 09.43.480. Remedies; fees and expenses of arbitration proceeding.** (a)
24 An arbitrator may award punitive damages or other exemplary relief if the award is
25 authorized by law in a civil action involving the same claim and the evidence
26 produced at the hearing justifies the award under the legal standards otherwise
27 applicable to the claim.

28 (b) An arbitrator may award reasonable attorney fees and other reasonable
29 expenses of arbitration if the award is authorized by law in a civil action involving the
30 same claim or by the agreement of the parties to the arbitration proceeding.

31 (c) As to all remedies other than those authorized by (a) and (b) of this section,

1 an arbitrator may order the remedies the arbitrator considers just and appropriate under
2 the circumstances of the arbitration proceeding. The fact that the remedy could not or
3 would not be granted by the court is not a ground for refusing to confirm an award
4 under AS 09.43.490 or for vacating an award under AS 09.43.500.

5 (d) An arbitrator's expenses and fees, together with other expenses, shall be
6 paid as provided in the award.

7 (e) If an arbitrator awards punitive damages or other exemplary relief under
8 (a) of this section, the arbitrator shall specify in the award the basis in fact justifying
9 and the basis in law authorizing the award and shall state the amount of the punitive
10 damages or other exemplary relief separately.

11 **Sec. 09.43.490. Confirmation of award.** After a party to an arbitration
12 proceeding receives notice of an award, the party may apply to the court for an order
13 confirming the award, at which time the court shall issue a confirming order unless the
14 award is modified or corrected under AS 09.43.470 or 09.43.510 or is vacated under
15 AS 09.43.500.

16 **Sec. 09.43.500. Vacating award.** (a) On application to the court by a party to
17 an arbitration proceeding, the court shall vacate an award made in the arbitration
18 proceeding if

19 (1) the award was procured by corruption, fraud, or other undue
20 means;

21 (2) there was

22 (A) evident partiality by an arbitrator appointed as a neutral
23 arbitrator;

24 (B) corruption by an arbitrator; or

25 (C) misconduct by an arbitrator prejudicing the rights of a party
26 to the arbitration proceeding;

27 (3) an arbitrator refused to postpone the hearing on showing of
28 sufficient cause for postponement, refused to consider evidence material to the
29 controversy, or otherwise conducted the hearing contrary to AS 09.43.420, so as to
30 prejudice substantially the rights of a party to the arbitration proceeding;

31 (4) an arbitrator exceeded the arbitrator's powers;

1 (5) there was not an agreement to arbitrate, unless the person
2 participated in the arbitration proceeding without raising the objection under
3 AS 09.43.420(c) not later than the beginning of the arbitration hearing; or

4 (6) the arbitration was conducted without proper notice of the initiation
5 of an arbitration as required under AS 09.43.360 so as to prejudice substantially the
6 rights of a party to the arbitration proceeding.

7 (b) An application under this section shall be filed within 90 days after the
8 applicant receives notice of the award under AS 09.43.460 or within 90 days after the
9 applicant receives notice of a modified or corrected award under AS 09.43.470, unless
10 the applicant alleges that the award was procured by corruption, fraud, or other undue
11 means, in which case the application shall be made within 90 days after the ground is
12 known or, by the exercise of reasonable care, would have been known by the
13 applicant.

14 (c) If the court vacates an award on a ground other than that stated in (a)(5) of
15 this section, it may order a rehearing. If the award is vacated on a ground stated in
16 (a)(1) or (2) of this section, the rehearing shall be before a new arbitrator. If the award
17 is vacated on a ground stated in (a)(3), (4), or (6) of this section, the rehearing may be
18 before the arbitrator who made the award or the arbitrator's successor. The arbitrator
19 shall render the decision in the rehearing within the same time as that provided in
20 AS 09.43.460(b) for an award.

21 (d) If the court denies an application to vacate an award, it shall confirm the
22 award unless an application to modify or correct the award is pending.

23 **Sec. 09.43.510. Modification or correction of award.** (a) On application
24 made within 90 days after the applicant receives notice of the award under
25 AS 09.43.460 or within 90 days after the applicant receives notice of a modified or
26 corrected award under AS 09.43.470, the court shall modify or correct the award if

27 (1) there was an evident mathematical miscalculation or an evident
28 mistake in the description of a person, thing, or property referred to in the award;

29 (2) the arbitrator has made an award on a claim not submitted to the
30 arbitrator and the award may be corrected without affecting the merits of the decision
31 on the claims submitted; or

1 (3) the award is imperfect in a matter of form not affecting the merits
2 of the decision on the claims submitted.

3 (b) If an application made under (a) of this section is granted, the court shall
4 modify or correct and confirm the award as modified or corrected. Otherwise, unless
5 an application to vacate is pending, the court shall confirm the award.

6 (c) An application to modify or correct an award under this section may be
7 joined with an application to vacate the award.

8 **Sec. 09.43.520. Judgment on award.** On granting an order confirming,
9 vacating without directing a rehearing, modifying, or correcting an award, the court
10 shall enter a judgment in conformity with the order. The judgment may be recorded,
11 docketed, and enforced as any other judgment in a civil action.

12 **Sec. 09.43.530. Jurisdiction.** (a) A court of this state having jurisdiction over
13 the controversy and the parties may enforce an agreement to arbitrate.

14 (b) An agreement to arbitrate providing for arbitration in this state confers
15 exclusive jurisdiction on the court to enter judgment on an award under AS 09.43.300
16 - 09.43.595.

17 **Sec. 09.43.540. Venue.** An application to the court under AS 09.43.320 shall
18 be made in the court of the judicial district in which the agreement to arbitrate
19 specifies the arbitration hearing is to be held or, if the hearing has been held, in the
20 court of the judicial district in which it was held. Otherwise, the application may be
21 made in the court of a judicial district in which an adverse party resides or has a place
22 of business or, if no adverse party has a residence or place of business in this state, in
23 the court of any judicial district in this state. All subsequent applications shall be
24 made in the court hearing the initial application unless the court otherwise directs.

25 **Sec. 09.43.550. Appeals.** (a) An appeal may be taken from

- 26 (1) an order denying an application to compel arbitration;
27 (2) an order granting an application to stay arbitration;
28 (3) an order confirming or denying confirmation of an award;
29 (4) an order modifying or correcting an award;
30 (5) an order vacating an award without directing a rehearing; or
31 (6) a final judgment entered under AS 09.43.300 - 09.43.595.

1 (b) An appeal under this section shall be taken as from an order or a judgment
2 in a civil action.

3 **Sec. 09.43.560. Uniformity of application and construction.** In applying
4 and construing AS 09.43.300 - 09.43.595, consideration shall be given to the need to
5 promote uniformity of the law with respect to its subject matter among states that
6 enact the Revised Uniform Arbitration Act.

7 **Sec. 09.43.570. Relationship to Electronic Signatures in Global and**
8 **National Commerce Act.** The provisions of AS 09.43.300 - 09.43.595 governing the
9 legal effect, validity, and enforceability of electronic records or electronic signatures,
10 and of contracts performed with the use of the records or signatures shall conform to
11 the requirements of 15 U.S.C. 7002 (Electronic Signatures in Global and National
12 Commerce Act).

13 **Sec. 09.43.580. Notice.** (a) Except as otherwise provided in AS 09.43.300 -
14 09.43.595, a person gives notice to another person by taking action that is reasonably
15 necessary to inform the other person in the ordinary course of affairs, whether or not
16 the other person acquires knowledge of the notice.

17 (b) A person has notice if the person has knowledge of the notice or has
18 received notice.

19 (c) A person receives notice when the notice comes to the person's attention or
20 the notice is delivered at the person's place of residence or place of business, or at
21 another location held out by the person as a place of delivery of the communications.

22 **Sec. 09.43.590. Definitions.** In AS 09.43.300 - 09.43.595,

23 (1) "arbitration organization" means an association, agency, board,
24 commission, or other entity that is neutral and initiates, sponsors, or administers an
25 arbitration proceeding or is involved in the appointment of an arbitrator;

26 (2) "arbitrator" means an individual who is appointed to render an
27 award, alone or with others, in a controversy that is subject to an agreement to
28 arbitrate;

29 (3) "court" means a court of competent jurisdiction in this state;

30 (4) "knowledge" means actual knowledge;

31 (5) "person" means an individual, corporation, business trust, estate,

1 trust, partnership, limited liability company, association, joint venture, government;
2 governmental subdivision, agency, or instrumentality; public corporation; or another
3 legal or commercial entity;

4 (6) "record" means information that is inscribed on a tangible medium
5 or that is stored in an electronic or other medium and may be retrieved in perceivable
6 form.

7 **Sec. 09.43.595. Short title.** AS 09.43.300 - 09.43.595 may be cited as the
8 Revised Uniform Arbitration Act.

9 * **Sec. 3.** AS 09.55.535(k) is amended to read:

10 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
11 or AS 09.43.300 - 09.43.595 (Revised Uniform Arbitration Act) [THE UNIFORM
12 ARBITRATION ACT, AS 09.43.010 - 09.43.180,] apply as provided in
13 AS 09.43.010 and 09.43.300 to arbitrations under this section if they do not conflict
14 with the provisions of this section; arbitrations under this section shall be conducted in
15 accordance with procedures established by any rules of court that [WHICH] may be
16 adopted and according to provisions of AS 09.55.540 - 09.55.548, 09.55.554 -
17 09.55.560 [AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

18 * **Sec. 4.** AS 22.15.030(a) is amended to read:

19 (a) The district court has jurisdiction of civil cases, including foreign
20 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170
21 or 09.43.530 to the extent permitted by AS 09.43.010 and 09.43.300, as follows:

22 (1) for the recovery of money or damages when the amount claimed
23 exclusive of costs, interest, and attorney fees does not exceed \$50,000 for each
24 defendant;

25 (2) for the recovery of specific personal property, when the value of
26 the property claimed and the damages for the detention do not exceed \$50,000;

27 (3) for the recovery of a penalty or forfeiture, whether given by statute
28 or arising out of contract, not exceeding \$50,000;

29 (4) to give judgment without action upon the confession of the
30 defendant for any of the cases specified in this section, except for a penalty or
31 forfeiture imposed by statute;

1 (5) for establishing the fact of death or cause and manner of death of
2 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

3 (6) for the recovery of the possession of premises in the manner
4 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to
5 the property does not exceed \$50,000;

6 (7) for the foreclosure of a lien when the amount in controversy does
7 not exceed \$50,000;

8 (8) for the recovery of money or damages in motor vehicle tort cases
9 when the amount claimed exclusive of costs, interest, and attorney fees does not
10 exceed \$50,000 for each defendant;

11 (9) over civil actions for taking utility service and for damages to or
12 interference with a utility line filed under AS 42.20.030;

13 (10) over cases involving protective orders for domestic violence
14 under AS 18.66.100 - 18.66.180.

15 * Sec. 5. AS 23.40.200(b) is amended to read:

16 (b) The class in (a)(1) of this section is composed of police and fire protection
17 employees, jail, prison, and other correctional institution employees, and hospital
18 employees. Employees in this class may not engage in strikes. Upon a showing by a
19 public employer or the labor relations agency that employees in this class are engaging
20 or about to engage in a strike, an injunction, restraining order, or other order that
21 [WHICH] may be appropriate shall be granted by the superior court in the judicial
22 district in which the strike is occurring or is about to occur. If an impasse or deadlock
23 is reached in collective bargaining between the public employer and employees in this
24 class, and mediation has been utilized without resolving the deadlock, the parties shall
25 submit to arbitration to be carried out under AS 09.43.030 or 09.43.480 to the extent
26 permitted by AS 09.43.010 and 09.43.300.

27 * Sec. 6. AS 23.40.200(c) is amended to read:

28 (c) The class in (a)(2) of this section is composed of public utility, snow
29 removal, sanitation, and educational institution employees other than employees of a
30 school district, a regional educational attendance area, or a state boarding school.
31 Employees in this class may engage in a strike after mediation, subject to the voting

1 requirement of (d) of this section, for a limited time. The limit is determined by the
2 interests of the health, safety, or welfare of the public. The public employer or the
3 labor relations agency may apply to the superior court in the judicial district in which
4 the strike is occurring for an order enjoining the strike. A strike may not be enjoined
5 unless it can be shown that it has begun to threaten the health, safety, or welfare of the
6 public. A court, in deciding whether or not to enjoin the strike, shall consider the total
7 equities in the particular class. "Total equities" includes not only the effect
8 [IMPACT] of a strike on the public but also the extent to which employee
9 organizations and public employers have met their statutory obligations. If an impasse
10 or deadlock still exists after the issuance of an injunction, the parties shall submit to
11 arbitration to be carried out under AS 09.43.030 or 09.43.480 to the extent permitted
12 by AS 09.43.010 and 09.43.300.

13 * Sec. 7. AS 23.40.200(f) is amended to read:

14 (f) The parties to a collective bargaining agreement may provide in the
15 agreement a contract for arbitration to be conducted solely according to AS 09.43.010
16 - 09.43.180 (Uniform Arbitration Act) or AS 09.43.300 - 09.43.595 (Revised
17 Uniform Arbitration Act) to the extent permitted by AS 09.43.010 and 09.43.300
18 if either [THE] Act is incorporated into the agreement or contract by reference.

19 * Sec. 8. The uncoded law of the State of Alaska is amended by adding a new section to
20 read:

21 INDIRECT COURT RULE AMENDMENTS. (a) AS 09.43.370, enacted by sec. 2 of
22 this Act, has the effect of changing Rules 18, 19, 20, and 21, Alaska Rules of Civil Procedure,
23 by establishing additional specific situations where the court may order proceedings
24 consolidated as to all or some claims, and a situation where the court is prohibited from
25 ordering consolidation.

26 (b) AS 09.43.410(d) and (e), enacted by sec. 2 of this Act, have the effect of changing
27 Rule 601, Alaska Rules of Evidence, by providing that an arbitrator and a representative of an
28 arbitration organization are not competent to testify in certain judicial proceedings related to
29 arbitration.

30 (c) AS 09.43.540, enacted by sec. 2 of this Act, has the effect of changing Rule 3,
31 Alaska Rules of Civil Procedure, by establishing different venue rules for applications to the

1 court in arbitration proceedings.

2 (d) AS 09.43.550(a)(1) - (5), enacted by sec. 2 of this Act, have the effect of changing
3 Rule 402, Alaska Rules of Appellate Procedure, by providing that an appeal may be taken
4 from superior court interlocutory orders identified in AS 09.43.550(a).

5 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **WAIVER OF EFFECTIVE DATE PROHIBITED.** A person may not waive the
8 effective date of a provision of this Act, and a waiver of the effective date of a provision of
9 this Act is void.

10 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **SAVING CLAUSE.** This Act does not affect an action or proceeding commenced or
13 right accrued before January 1, 2005.

14 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **CONDITIONAL EFFECT.** AS 09.43.370, 09.43.410(d), 09.43.410(e), 09.43.540, and
17 09.43.550(a)(1) - (5), enacted by sec. 2 of this Act, take effect only if sec. 8 of this Act
18 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
19 of the State of Alaska.

20 * **Sec. 12.** This Act takes effect January 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB83CS-ACS-TC-2-27-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Revised Uniform Arbitration Act BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Berkowitz
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of CSHB 83 (JUD).

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/27/04 12:45 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/27/2004
 Agency Alaska Court System

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 10, 2003

SUBJECT: Sectional summary of HB 83 relating to the Revised Uniform Arbitration Act (Work Order No. 23-LS0047\H)

TO: Representative Ethan Berkowitz
Attn: Lisa

FROM: *TB*
Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends the existing Uniform Arbitration Act to indicate to which agreements and contracts it applies.

Section 2. Adds an article containing the Revised Uniform Arbitration Act (RUAA).

Sec. 09.43.300 states that the RUAA governs arbitration agreements made on or after January 1, 2004. States that the RUAA governs arbitration agreements made before January 1, 2004 if all parties agree. States that, with one exception, the RUAA does not apply to certain labor-management contracts unless incorporated into the contract or its application is provided for by contract. States that the RUAA does not apply to certain collective bargaining agreements.

Sec. 09.43.310 provides for waiver or varying the effect of the RUAA. Lists certain agreements and waivers a party to an arbitration agreement may not make before the controversy arises. Prohibits the waiver or variation of the effect of certain RUAA provisions.

Sec. 09.43.320 directs that an application for judicial relief under the RUAA, except as provided in sec. 09.43.550, will be handled as provided by the state's court rules.

Sec. 09.43.330 provides that arbitration agreements contained in a record are valid, enforceable, and irrevocable, except on a ground that exists at law or in equity for the revocation of a contract. Directs the court to decide certain issues relating to arbitration agreements. Directs an arbitrator to decide certain issues relating to arbitration

Representative Ethan Berkowitz

March 10, 2003

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agreements. Allows an arbitration proceeding to continue while a court resolves certain challenges.

Sec. 09.43.340 directs how a court is to proceed on application of a person alleging another person's refusal to arbitrate. Directs how a court is to proceed with an application of a person alleging that an arbitration has been initiated or threatened but there isn't an agreement to arbitrate. Prohibits a court from ordering arbitration if there isn't an enforceable agreement. Prohibits a court from refusing to order arbitration because of the merits of the claim or because grounds for the claim have not been established. Directs which court to use under certain circumstance. When a party applies to a court to order arbitration, directs the court to stay a judicial proceeding that involves a claim alleged to be subject to the arbitration. Directs that if a court orders arbitration, the court shall stay a judicial proceeding that involves a claim subject to the arbitration.

Sec. 09.43.350 allows a court to order a provisional remedy to protect an arbitration proceeding before an arbitrator is appointed and can act. Allows an arbitrator to order a provisional remedy to protect the arbitration proceeding and to promote a fair and expeditious resolution. Sets limits on when a party to an arbitration proceeding may apply for a court-ordered provisional remedy. Provides that a party's application for a provisional remedy does not waive a right of arbitration.

Sec. 09.43.360 establishes how a person initiates an arbitration proceeding. Provides that a person waives a lack or insufficiency of the notice required to initiate an arbitration unless the person objects not later than the beginning of the arbitration hearing.

Sec. 09.43.370 allows a court to consolidate separate arbitration proceedings under certain listed conditions. Allows the court to consolidate some claims and allow other claims to be resolved separately. Prohibits a court from consolidating claims if the arbitration agreement prohibits consolidation.

Sec. 09.43.380 describes what method is to be used to appoint an arbitrator and under what circumstance a court is to appoint the arbitrator. Gives a court-appointed arbitrator the same powers as an arbitrator designated in the arbitration agreement or appointed by the parties. Prohibits an individual with a certain interest in the outcome or a certain relationship with a party from serving as an arbitrator if the agreement requires neutrality.

Sec. 09.43.390 requires that before accepting appointment a person disclose facts that might affect the person's impartiality as an arbitrator. Makes disclosure a continuing obligation of an arbitrator. Provides that a timely objection to the arbitrator after disclosure of these facts may be grounds for vacating an award. Allows a court to vacate an award for failure to disclose as required by (a) - (b). Establishes a rebuttable presumption that a person appointed as a neutral arbitrator acts with partiality if the person does not disclose a known, direct, and material interest in the outcome or a known, existing, and substantial relationship with a party. Requires substantial

Representative Ethan Berkowitz

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compliance with certain agreed procedures for challenges to arbitrators in order to vacate an award on that ground under sec. 09.43.500(a)(2).

Sec. 09.43.400 requires that the powers of an arbitrator be exercised by a majority of all of the arbitrators. Requires all of the arbitrators to conduct the hearing.

Sec. 09.43.410 provides an arbitrator and an arbitration organization the same immunity from civil liability as a judge. States that this immunity supplements any other immunity provided by law. States that an arbitrator does not lose this immunity by failing to make required disclosures. States that an arbitrator or representative of an arbitration organization is generally not competent to testify or required to produce arbitration records relating to an arbitration proceeding in a judicial, administrative, or similar proceeding to the same extent as a judge. Makes certain exceptions to this rule. Awards attorney fees and costs in a civil action to an arbitrator, arbitration organization, or representative of an arbitration organization when the court determines that the arbitrator, arbitration organization, or representative is protected by this immunity.

Sec. 09.43.420 allows an arbitrator to conduct the arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition. Allows the arbitrator to hold conferences and deal with evidence, and to handle summary dispositions of the claims and issues under certain conditions. Establishes certain procedures for the arbitration. Gives the parties certain rights at the hearing. Provides for replacing an arbitrator when an arbitrator ceases acting or is unable to act.

Sec. 09.43.430 allows a party to an arbitration proceeding to be represented by an attorney.

Sec. 09.43.440 makes various provisions for subpoenas, witnesses, the production of records and other evidence, depositions, discovery, fees, and protective orders.

Sec. 09.43.450 makes certain provisions for incorporating preaward rulings into an award and for judicial enforcement of the award.

Sec. 09.43.460 requires an arbitrator to make a record of the arbitrator's award and requires the arbitrator or arbitration organization to give notice of the award to each party. Establishes when an award must be made and provides for extension of the time. Requires a party to give notice before receiving the award of an objection that an award was not timely in order to avoid waiving objection to the non-timeliness of the award.

Sec. 09.43.470 authorizes an arbitrator to modify or correct an award as provided in the section. Establishes certain procedural requirements regarding motions for modification or correction and objections to the motion. If certain applications are pending, allows a court to submit the claim to the arbitrator to consider modification or correction for certain reasons. States that a modified or corrected award is subject to action under certain other sections.

Sec. 09.43.480 authorizes an arbitrator to award punitive damages or other exemplary relief under certain conditions. Authorizes an arbitrator to award reasonable attorney fees and arbitration expenses under certain circumstances. Authorizes an arbitrator to order other remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. States that an arbitrator's expenses and fees, together with other expenses, are to be paid as provided in the award. Requires the arbitrator who awards punitive damages or other exemplary relief to state in the award the facts and law on which these damages are based and state the amount of these damages separately.

Sec. 09.43.490 allows a party to apply for a court order confirming an award and directs the court to confirm the award unless the award is modified, corrected, or vacated under certain provisions.

Sec. 09.43.500 directs a court to vacate an award under certain described conditions. Establishes when an application to the court must be filed. Allows a court to order a rehearing if it vacates an award on certain grounds and establishes certain requirements for the rehearing. Directs a court that denies an application to vacate an award to confirm the award unless an application to modify or correct the award is pending.

Sec. 09.43.510 directs a court to modify or correct an award under certain conditions. Allows an application to modify or correct an award to be combined with an application to vacate the award.

Sec. 09.43.520 directs the court to enter judgment in conformity with its order on the arbitration award.

Sec. 09.43.530 allows a court to enforce an agreement to arbitrate if the court has jurisdiction over the controversy and the parties. States that an arbitration agreement providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under these provisions.

Sec. 09.43.540 establishes where in the state an application to the court is to be made.

Sec. 09.43.550 lists which orders and judgments can be appealed. Provides for the appeal to be taken as if from an order or judgment in a civil action.

Sec. 09.43.560 requires that the need to promote uniformity be considered when applying and construing these provisions.

Sec. 09.43.570 requires that those RUAA provisions that relate to the legal effect, validity, and enforceability of electronic records or signatures, and of contracts performed with the use of the records or signatures, conform to the federal Electronic Signatures in Global and national Commerce Act.

Representative Ethan Berkowitz
March 10, 2003
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Sec. 09.43.580 explains what notice means in the RUAA.

Sec. 09.43.590 defines certain terms for the RUAA.

Sec. 09.43.595 provides for the new provisions to be called the Revised Uniform Arbitration Act.

Section 3. Conforming amendments.

Section 4. Conforming amendments.

Section 5. Conforming amendments.

Section 6. Conforming amendments.

Section 7. Conforming amendments.

Section 8. Describes the indirect court rule amendments made by the new provisions.

Section 9. Prohibits a person from waiving the effective date of a provision of this Act.

Section 10. Prevents this Act from affecting an action or proceeding begun or a right accrued before its effective date.

Section 11. States that the provisions that change court rules do not take effect unless sec. 8 receives the increased majority vote.

Section 12. Makes the Act effective January 1, 2004.

If I may be of further assistance, please advise.

TLB:lmb
03-070.lmb

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February 2, 2004

Hon. Ralph Seekins
Chair – Judiciary Committee
Alaska State Senate
State Capitol, Room 125
Juneau, Alaska 99801-1182

VIA 1st class mail and Facsimile: 907-465-5241

RE: HB 83 – Revised Uniform Arbitration Act

Dear Senator Seekins:

I am one of the Alaska commissioners of the National Conference of Commissioners on Uniform State Laws (NCCUSL). The other Alaska commissioners are Alaska Supreme Court Justice Alexander O. Bryner; Asst. Alaska Attorney General Deborah Behr; attorney L.S. Kurtz, Jr. of Anchorage; attorney Arthur H. Peterson of Juneau; and attorney Tamara B. Cook, Director of the Alaska Legislative Affairs Agency.

It is my understanding that HB 83 has been referred to the Senate Judiciary Committee for review. HB 83 embodies in essence the Revised Uniform Arbitration Act of the NCCUSL. My purpose in writing is to respectfully request that the Senate Judiciary Committee schedule HB 83 for hearing. It is important to the people of the State of Alaska to have Alaska's statutory law regarding arbitration brought up-to-date in light of the issues and case law that has developed on the past 49 years since the original Uniform Arbitration Act was promulgated by the NCCUSL.

I would like to provide the Senate Judiciary Committee with the following information concerning the background of the Revised Uniform Arbitration Act and the principal purposes it is intended to serve.

Background – The Uniform Arbitration Act (adopted in Alaska – 1968)

The NCCUSL promulgated the original Uniform Arbitration Act in 1955. It subsequently was adopted as law in 49 jurisdictions, including Alaska, and together with the Federal Arbitration Act has provided the fundamental substance of the law governing agreements to arbitrate in the United States.

The 1955 Uniform Arbitration Act accomplished two fundamental things. First, it reversed the common law rule that denied enforcement of a contract provision requiring arbitration of

disputes before there an actual dispute arose. Historically at common law the parties were able to agree to arbitrate only after an actual dispute arose. The common law prohibited agreements to arbitrate made in anticipation of possible disputes. Second, the 1955 Uniform Arbitration Act provided some basic procedures for the conduct of an arbitration. The Uniform Act has not mandated the arbitration of any dispute. Its function has been to let persons determine whether or not they want to use arbitration by agreement.

Arbitration is the original alternative dispute resolution (ADR) mechanism made legitimate under American law. It is an alternative to a judicial proceeding to resolve a dispute. Arbitration has traditionally been a means of resolving disputes when issues are specialized and technical. These kinds of disputes require specialist resolution and there is no desire for damage awards like those awarded by a court of law. A typical example is an arbitration that allocates costs of defects in a building project between architects, contractors and property owners. Arbitrators are chosen by the parties with construction expertise to determine responsibility for defects. The arbitration is conducted quickly. It is free of the constraints of court-room procedure, and may be tailored to adducing evidence for the specific kind of dispute. The parties all have a strong desire to avoid litigation and are normally satisfied with the results of arbitration. Construction disputes have been regularly resolved by arbitration for a long period of time.

However, provisions calling for arbitration occur in all kinds of contracts as the burgeoning caseload has slowed the civil justice process in the courts and as the costs of lawsuits have risen dramatically. As the arbitration process has been more utilized for resolving disputes that have traditionally been resolved by litigation, it has become clear that the limited procedural provisions of the Uniform Arbitration Act are no longer adequate. For that reason, the NCCUSL has now promulgated a next generation state arbitration act, the Revised Uniform Arbitration Act of 2000 (RUAA).

The Revised Uniform Arbitration Act of 2000 (RUAA)

The RUAA continues to authorize agreements to arbitrate disputes before they arise. However, the procedural side of arbitration is greatly augmented to meet modern needs. It deals with procedural issues not addressed in the 1955 Act. The effect should be more efficient and fair arbitrations as an alternative to litigation than is the case under the 1955 Act. The 1955 Act was a great advance in American law. The objective of the 2000 Act is to make the contribution of the 1955 Act even greater.

The 2000 Uniform Act has been drafted, also, against the significant and preemptive presence of the Federal Arbitration Act. The federal act applies to arbitration provisions in private contracts. The Federal Arbitration Act encourages arbitration as an alternative to

litigation. Therefore, any state law that limits the availability of arbitration risks failure as a matter of federal preemption. Although there is not complete agreement about the relationship between federal and state law on certain specific issues, the 2000 Uniform Act is drafted to avoid preemption by federal law.

It is not possible to cover all the provisions in this important revision in this letter. However, the primary purposes underlying the revisions that the RUAA seeks to implement may be fairly summarized as 1) providing more certainty in arbitration proceedings, 2) dealing with potential problems of federal preemption, and 3) addressing important issues that have arose under the original UAA as reflected in the case law throughout the country. The RUAA not only revises certain provisions of the original act, but also includes a number of new provisions.

The RUAA expressly provides that it is a default act. Most of its provisions may be varied or waived by contract. There are certain provisions that may not be waived or varied. These include the basic rule that an agreement to submit a dispute to arbitration is valid; the rules that govern disclosure of facts by a neutral arbitrator; the rules guaranteeing enforcement or appeal of the act, an arbitration agreement or an arbitration decision in a court; or, the standards for vacating an award. Declaring the RUAA a default act is important because it gives the parties an option to choose between federal or state law to govern their arbitration. Without this, the federal arbitration act is applicable by default. IN addition, restrictions on waiving or varying certain statutory requirements are important to protect parties to these agreements.

The RUAA specifically allows a court to order provisional remedies during the course of an arbitration before an arbitrator is selected. The 1955 Uniform Act has no such provision. Thus the RUAA improves upon the original act by preventing a party from delaying the selection of an arbitrator in order to delay proceedings and dissipate the effect of an arbitration award. The RUAA also gives an arbitrator, when selected, the express power to order provisional remedies, a power not expressly given in the 1955 Uniform Act. An arbitrator has the same powers as a court has in a judicial proceeding.

The RUAA allows consolidation of separate arbitration proceedings, a matter that was never contemplated in the 1955 Uniform Act. The existence of multiple parties, multiple agreements and complex litigation has made the issue of consolidation of arbitration actions very important. Courts have varied over consolidation. The RUAA expressly allows and governs consolidation.

The 1955 Uniform Act allows an award to be vacated because of an arbitrator's partiality - lack of neutrality. It does not specifically require disclosure of any interest that may give rise to a question of neutrality. The RUAA specifically addresses disclosure of known facts

that give rise to questions of neutrality. Such facts include a financial or personal interest in the outcome of the arbitration proceeding or an existing or past relationship with a party. The lack of disclosure itself may be a ground for vacating an award, and there is a presumption of partiality when non-disclosure occurs. Upon disclosure, a party has the opportunity to object to the appointment of an arbitrator intended to be neutral. If there is no objection, that may affect the ability to raise partiality as a ground for vacating an award. These provisions provide substantial express protection to parties to an arbitration proceeding that simply are not a part of the 1955 Uniform Act.

A crucial issue in arbitrations is the express immunity of arbitrators from civil liability. It is not an issue addressed in the 1955 Uniform Act, but is important to impartial and fair proceedings. An arbitrator who expects or fears a lawsuit simply because of a decision, cannot be counted upon to act fairly or competently. The RUAA provides arbitrators with immunity from civil liability "to the same extent as a judge of a court of this State acting in a judicial capacity."

An arbitrator under the RUAA may conduct the arbitration in such manner as the arbitrator considers appropriate to the fair and expeditious disposition of the proceeding. This express authority does not appear in the 1955 Uniform Act. The 1955 Uniform Act provides for subpoena of witnesses, and for depositions. Under the RUAA, an arbitrator also has the express power to make summary dispositions of claims or issues under appropriate procedures, to hold pre-arbitration proceeding meetings or to use any other discovery process (any process that adduces relevant evidence for the proceeding) applicable to resolution of the dispute. These provisions put arbitrators on the same level as judges in a judicial proceeding with respect to discovery of evidence.

The RUAA expressly permits an arbitrator to give punitive damages or other exemplary relief, "if such an award is authorized by law in a civil action involving the same claim." Attorney's fees may be awarded under the same standard. The 1955 Uniform Act does not expressly address either issue, but the case law has established the power to award punitive damages in most jurisdictions. The Federal Arbitration Act decisions also provide for punitive damages and some states have amended the 1955 Uniform Act to include attorney's fees. These new provisions put arbitrators on the same footing as judges in a court of law, and reflect the expansion of arbitration into disputes traditionally resolved in courts of law.

These are some highlights of the revision to the RUAA. The number of disputes in arbitration grows yearly. The RUAA responds to this growth with better and more complete arbitration procedures. It aligns state law with federal law, which decreases the potential for litigation on preemption grounds. Once enacted into law in Alaska, the RUAA will with

Hon. Ralph Seekins
February 2, 2004
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help provide Alaskans with even better alternatives for resolving disputes promptly, efficiently, and economically.

Thank you for taking the time to consider this request, and please let me know if you have any questions.

Sincerely,



W. Grant Callow

cc: Hon. Scott Organ (via facsimile - 907-465-3265)
Hon. Gene Therriault (via facsimile - 907-465-3884)
Hon. Johnny Ellis (via facsimile - 907-465-2529)
Hon. Hollis French (via facsimile - 907-465-6595)
Asst. Alaska Attorney General Deborah Behr (via email)
Tamara B. Cook, Director, Alaska Legislative Affairs Agency (via email)
L.S. Kurtz, Jr., Attorney at Law (via email)
Arthur H Peterson, Attorney at Law (via email)

WGC/rc

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March 10, 2003

MAR 10 2003

Representative Ethan Berkowitz
House of Representatives
State Capitol
Mail Stop 3100
Juneau, AK 99801-1182

Re: HB 83, relating to the Revised Uniform Arbitration Act

Dear Representative Berkowitz:

I have reviewed HB 83, relating to adoption of the Revised Uniform Arbitration Act, and I see no legal issues that would impact implementation of the bill. The bill follows the recommendations of the authors of "Is the Revised Uniform Arbitration Act a Good Fit for Alaska," 19 Alaska Law Review 339.

Please don't hesitate to contact me if you have any questions about specific provisions of the bill.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL



By: Keith B. Levy
Assistant Attorney General

KBL:sro

cc: David Marquez



[Home](#)

> **A Few Facts About The...**

UNIFORM ARBITRATION ACT (2000)

PURPOSE:

This act revises the Uniform Arbitration Act of 1956, adopted in 49 jurisdictions. The primary purpose of the act is to advance arbitration as a desirable alternative to litigation. A revision is necessary at this time in light of the ever-increasing use of arbitration and the developments of the law in this area.

ORIGIN:

Completed by the Uniform Law Commissioners in 2000.

APPROVED BY:

American Bar Association

ENDORSED BY:

American Arbitration Association
National Academy of Arbitrators
National Arbitration Forum

STATE ADOPTIONS:

Hawaii	North Carolina
Nevada	North Dakota
New Jersey	Oregon
New Mexico	Utah

2004 INTRODUCTIONS:

Alaska
Arizona
Colorado
Massachusetts
Vermont
West Virginia

For any further information regarding the Uniform Arbitration Act, please contact John McCabe, Katie Robinson, or Mike Kerr at 312-915-0195.

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