

SENATE BILL 214

IN THE SENATE

January 23, 1979	Introduced and referred to Committee on Labor and Employment Relations.
January 31, 1979	Rereferred to Committee on Judiciary.
February 19, 1979	Committee recommend bill, as amended.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, indefinitely postponed, as amended.

1
 2 INTRODUCED BY *Senator* BILL NO. *214*
 3 *J. Brown* *Don Tuohy*
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
 6 ARBITRATION ACT AND TO CONFORM OTHER STATUTORY PROVISIONS
 7 THERETO; AMENDING SECTIONS 27-1-412 AND 28-2-708, MCA; AND
 8 REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201
 9 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Short title. [Sections 1
 12 through 21] may be cited as the "Uniform Arbitration Act".

13 NEW SECTION. Section 2. Uniformity of interpretation.
 14 [Sections 1 through 21] shall be so construed as to
 15 effectuate its general purpose to make uniform the law of
 16 those states which enact it.

17 NEW SECTION. Section 3. Application to labor
 18 agreements. [Sections 1 through 21] applies to arbitration
 19 agreements between employers and employees or between their
 20 respective representatives unless otherwise provided in the
 21 agreement.

22 NEW SECTION. Section 4. Validity of arbitration
 23 agreement. A written agreement to submit an existing
 24 controversy to arbitration or a provision in a written
 25 contract to submit to arbitration any controversy thereafter

1 arising between the parties is valid, enforceable, and
 2 irrevocable except upon such grounds as exist at law or in
 3 equity for the revocation of a contract.

4 NEW SECTION. Section 5. Proceedings to compel or stay
 5 arbitration. (1) On the application of a party showing an
 6 agreement described in [section 4] and the opposing party's
 7 refusal to arbitrate, the district court shall order the
 8 parties to proceed with arbitration; but if the opposing
 9 party denies the existence of the agreement to arbitrate,
 10 the court shall proceed summarily to the determination of
 11 the issue so raised and shall order arbitration if it finds
 12 for the moving party or deny the application if it finds for
 13 the opposing party.

14 (2) On application, the district court may stay an
 15 arbitration proceeding commenced or threatened on a showing
 16 that there is no agreement to arbitrate. Such an issue,
 17 when in substantial and bona fide dispute, shall be
 18 immediately and summarily tried and the stay ordered if the
 19 court finds for the moving party. If the court finds for the
 20 opposing party, it shall order the parties to proceed to
 21 arbitration.

22 (3) If an issue referable to arbitration under the
 23 alleged agreement is involved in an action or proceeding
 24 pending in a court having jurisdiction to hear applications
 25 under subsection (1), the application shall be made therein.

1 Otherwise and subject to [section 20], the application may
2 be made in any court of competent jurisdiction.

3 (4) An action or proceeding involving an issue subject
4 to arbitration shall be stayed if an order for arbitration
5 or an application therefor has been made under this section
6 or, if the issue is severable, the stay may be with respect
7 thereto only. When the application is made in such action or
8 proceeding, the order for arbitration shall include such
9 stay.

10 (5) An order for arbitration may not be refused on the
11 ground that the claim in issue lacks merit or good faith or
12 because no fault or grounds for the claim sought to be
13 arbitrated have been shown.

14 NEW SECTION. Section 6. Appointment of arbitrators.
15 If the arbitration agreement provides a method of
16 appointment of arbitrators, this method shall be followed.
17 If no method is provided, the agreed method fails or for any
18 reason cannot be followed, or an arbitrator appointed fails
19 or is unable to act and his successor has not been duly
20 appointed, the district court on application of a party
21 shall appoint one or more arbitrators. An arbitrator so
22 appointed has all the powers of one specifically named in
23 the agreement.

24 NEW SECTION. Section 7. Majority action by
25 arbitrators. The powers of the arbitrators may be exercised

1 by a majority unless otherwise provided by the agreement or
2 by [sections 1 through 21].

3 NEW SECTION. Section 8. Hearing. Unless otherwise
4 provided by the agreement, the following apply:

5 (1) The arbitrators shall appoint a time and place for
6 the hearing and cause notification to the parties to be
7 served personally or by registered or certified mail not
8 less than 5 days before the hearing. Appearance at the
9 hearing waives such notice. The arbitrators may adjourn the
10 hearing from time to time as necessary and, on request of a
11 party and for good cause or upon their own motion, may
12 postpone the hearing to a time not later than the date fixed
13 by the agreement for making the award unless the parties
14 consent to a later date. The arbitrators may hear and
15 determine the controversy upon the evidence produced
16 notwithstanding the failure of a party duly notified to
17 appear. The district court on application may direct the
18 arbitrators to proceed promptly with the hearing and
19 determination of the controversy.

20 (2) The parties are entitled to be heard, present
21 evidence material to the controversy, and cross-examine
22 witnesses appearing at the hearing.

23 (3) The hearing shall be conducted by all the
24 arbitrators, but a majority may determine any question and
25 render a final award. If during the course of the hearing an

1 arbitrator for any reason ceases to act, the remaining
2 arbitrator or arbitrators appointed to act as neutrals may
3 continue with the hearing and determination of the
4 controversy.

5 NEW SECTION. Section 9. Representation by attorney.
6 A party has the right to be represented by an attorney at
7 any proceeding or hearing under [sections 1 through 21]. A
8 waiver thereof prior to the proceeding or hearing is
9 ineffective.

10 NEW SECTION. Section 10. Witnesses, subpoenas, and
11 depositions. (1) The arbitrators may issue subpoenas for the
12 attendance of witnesses and the production of books,
13 records, documents, and other evidence and may administer
14 oaths. Subpoenas so issued shall be served and, upon
15 application to the district court by a party or the
16 arbitrators, enforced in the manner provided by law for the
17 service and enforcement of subpoenas in a civil action in
18 district court.

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

24 (3) All provisions of law compelling a person under
25 subpoena to testify are applicable to persons subpoenaed

1 under [sections 1 through 21].

2 (4) Fees for attendance as a witness shall be the same
3 as for a witness in the district court.

4 NEW SECTION. Section 11. Award. (1) The award shall
5 be in writing and signed by the arbitrators joining in the
6 award. The arbitrators shall deliver a copy to each party
7 personally, by registered or certified mail, or as provided
8 in the agreement.

9 (2) An award shall be made within the time fixed
10 therefor by the agreement or, if no time is so fixed, within
11 such time as the district court orders on application of a
12 party. The parties may extend the time in writing either
13 before or after the expiration thereof. A party waives the
14 objection that an award was not made within the time
15 required unless he notifies the arbitrators of his objection
16 prior to the delivery of the award to him.

17 NEW SECTION. Section 12. Change of award by
18 arbitrators. On the application of a party or, if an
19 application to the court is pending under [section 14, 15,
20 or 16], on submission to the arbitrators by the court under
21 such conditions as the court may order, the arbitrators may
22 modify or correct the award upon the grounds stated in
23 [subsections (1)(a) and (1)(c) of section 16] or for the
24 purpose of clarifying the award. The application shall be
25 made within 20 days after delivery of the award to the

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1 applicant. Written notice thereof shall be given immediately
 2 to the opposing party, stating he must serve his objections
 3 thereto, if any, within 10 days from the notice. The award
 4 so modified or corrected is subject to the provisions of
 5 [sections 14, 15, and 16].

6 NEW SECTION. Section 13. Fees and expenses of
 7 arbitration. Unless otherwise provided in the agreement to
 8 arbitrate, the arbitrators' expenses and fees, together with
 9 other expenses, not including counsel fees, incurred in the
 10 conduct of the arbitration, shall be paid as provided in the
 11 award.

12 NEW SECTION. Section 14. Confirmation of award by
 13 court. Upon the application of a party, the district court
 14 shall confirm an award unless within the time limits imposed
 15 in [sections 1 through 21] grounds are urged for vacating,
 16 modifying, or correcting the award, in which case the court
 17 shall proceed as provided in [sections 15 and 16].

18 NEW SECTION. Section 15. Vacating an award. (1) Upon
 19 the application of a party, the district court shall vacate
 20 an award whenever:

21 (a) the award was procured by corruption, fraud, or
 22 other undue means;

23 (b) there was evident partiality by an arbitrator
 24 appointed as a neutral or corruption in any of the
 25 arbitrators or misconduct prejudicing the rights of any

1 party;

2 (c) the arbitrators exceeded their powers;

3 (d) the arbitrators refused to postpone the hearing
 4 upon sufficient cause being shown therefor or refused to
 5 hear evidence material to the controversy or otherwise so
 6 conducted the hearing, contrary to the provisions of
 7 [section 8], as to prejudice substantially the rights of a
 8 party; or

9 (e) there was no arbitration agreement and the issue
 10 was not adversely determined in proceedings under [section
 11 5] and the party did not participate in the arbitration
 12 hearing without raising the objection.

13 (2) The fact that the relief was such that it could
 14 not or would not be granted by a court of law or equity is
 15 not ground for vacating or refusing to confirm the award.

16 (3) An application under this section shall be made
 17 within 90 days after delivery of a copy of the award to the
 18 applicant except that, if it is predicated upon corruption,
 19 fraud, or other undue means, it shall be made within 90 days
 20 after such grounds are known or should have been known.

21 (4) In vacating the award on grounds other than those
 22 stated in subsection (1)(e), the court may order a rehearing
 23 before new arbitrators chosen as provided in the agreement
 24 or, if the agreement does not provide a method of selection,
 25 by the court in accordance with [section 6] or, if the award

1 is vacated on grounds set forth in subsection (1)(c) or
2 (1)(d), the court may order a rehearing before the
3 arbitrators who made the award or their successors appointed
4 in accordance with [section 6]. The time within which the
5 agreement requires the award to be made is applicable to the
6 rehearing and commences from the date of the order.

7 (5) If the application to vacate is denied and no
8 motion to modify or correct the award is pending, the court
9 shall confirm the award.

10 NEW SECTION. Section 16. Modification or correction
11 of award by court. (1) Upon application made within 90 days
12 after delivery of a copy of the award to the applicant, the
13 district court shall modify or correct the award whenever:

14 (a) there was an evident miscalculation of figures or
15 an evident mistake in the description of any person, thing,
16 or property referred to in the award;

17 (b) the arbitrators have awarded upon a matter not
18 submitted to them and the award may be corrected without
19 affecting the merits of the decision upon the issues
20 submitted; or

21 (c) the award is imperfect in a matter of form not
22 affecting the merits of the controversy.

23 (2) If the application is granted, the court shall
24 modify and correct the award so as to effect its intent and
25 shall confirm the award as modified and corrected.

1 Otherwise, the court shall confirm the award as made.

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

5 NEW SECTION. Section 17. Judgment on award -- costs.
6 (1) Upon the granting of an order confirming, modifying, or
7 correcting an award, judgment shall be entered in conformity
8 therewith and be enforced as any other judgment. Costs of
9 the application and of the proceedings subsequent thereto
10 and disbursements may be awarded by the court.

11 (2) The judgment may be docketed as if rendered in an
12 action.

13 NEW SECTION. Section 18. Applications to court -- how
14 made. Except as otherwise provided, an application to the
15 court under [sections 1 through 21] shall be by motion and
16 shall be heard in the manner and upon the notice provided by
17 law or rule of court for the making and hearing of motions.
18 Unless the parties have agreed otherwise, notice of an
19 initial application for an order shall be served in the
20 manner provided by law for the service of a summons in an
21 action.

22 NEW SECTION. Section 19. Jurisdiction of district
23 court. The making of an agreement described in [section 4]
24 providing for arbitration in this state confers jurisdiction
25 on the district court to enforce the agreement under

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1 [sections 1 through 21] and to enter judgment on an award
2 thereunder.

3 NEW SECTION. Section 20. Venue. An initial
4 application shall be made to the court of the county in
5 which the agreement provides the arbitration hearing shall
6 be held or, if the hearing has been held, in the county in
7 which it was held. Otherwise, the application shall be made
8 in the county where the adverse party resides or has a place
9 of business or, if he has no residence or place of business
10 in this state, to the court of any county. All subsequent
11 applications shall be made to the court hearing the initial
12 application unless the court otherwise directs.

13 NEW SECTION. Section 21. Appeals. (1) An appeal may
14 be taken from:

15 (a) an order denying an application to compel
16 arbitration made under [section 5];

17 (b) an order granting an application to stay
18 arbitration made under [section 5(2)];

19 (c) an order confirming or denying confirmation of an
20 award;

21 (d) an order modifying or correcting an award;

22 (e) an order vacating an award without directing a
23 rehearing; or

24 (f) a judgment entered pursuant to the provisions of
25 [sections 1 through 21].

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

4 Section 22. Section 27-1-412, MCA, is amended to read:

5 "27-1-412. Obligations which cannot be specifically
6 enforced. The following obligations cannot be specifically
7 enforced:

8 (1) an obligation to render personal service or to
9 employ another therein;

10 (2) an agreement to marry or live with another;

11 ~~(3) an agreement to submit a controversy to~~
12 ~~arbitration;~~

13 ~~(4)~~(3) an agreement to perform an act which the party
14 has not power to perform lawfully when required to do so;

15 ~~(5)~~(4) an agreement to procure the act or consent of
16 the spouse of the contracting party or of any other third
17 person; or

18 ~~(6)~~(5) an agreement the terms of which are not
19 sufficiently certain to make the precise act which is to be
20 done clearly ascertainable."

21 Section 23. Section 28-2-708, MCA, is amended to read:

22 "28-2-708. Restraints upon legal proceedings void.
23 Every stipulation or condition in a contract by which any
24 party thereto is restricted from enforcing his rights under
25 the contract by the usual proceedings in the ordinary

1 tribunals or which limits the time within which he may thus
2 enforce his rights is void. This section does not affect the
3 validity of an agreement enforceable under [sections 1
4 through 21]."

5 Section 24. Application not retroactive. This act
6 applies only to agreements made subsequent to the taking
7 effect of this act.

8 Section 25. Severability. If a part of this act is
9 invalid, all valid parts that are severable from the invalid
10 part remain in effect. If a part of this act is invalid in
11 one or more of its applications, the part remains in effect
12 in all valid applications that are severable from the
13 invalid applications.

14 Section 26. Codification. Sections 1 through 21 shall
15 be codified as an integral part of Title 27, chapter 5, and
16 all references to Title 27, chapter 5, include sections 1
17 through 21.

18 Section 27. Repealer. Sections 27-5-101 through
19 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
20 27-5-304, MCA, are repealed.

-End-

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1 SENATE BILL NO. 214

2 INTRODUCED BY RAMIREZ, ROSKIE, KEMMIS, SCULLY, LORY,

3 S. BROWN, TOWE, TURNAGE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
6 ARBITRATION ACT AND TO CONFORM OTHER STATUTORY PROVISIONS
7 THERETO; AMENDING SECTIONS 27-1-412 AND 28-2-708, MCA; AND
8 REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201
9 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 NEW SECTION. Section 1. Short title. [Sections 1
13 through 21] may be cited as the "Uniform Arbitration Act".14 NEW SECTION. Section 2. Uniformity of interpretation.
15 [Sections 1 through 21] shall be so construed as to
16 effectuate its general purpose to make uniform the law of
17 those states which enact it.18 NEW SECTION. Section 3. Application to labor
19 agreements. [Sections 1 through 21] applies to arbitration
20 agreements between employers and employees or between their
21 respective representatives ~~unless otherwise provided in the~~
22 ~~agreement EXCEPT THAT AGREEMENTS CONCERNING SALARIES AND~~
23 ~~BENEFITS ARE NOT SUBJECT TO ARBITRATION.~~24 NEW SECTION. Section 4. Validity of arbitration
25 agreement. A written agreement to submit an existing

1 controversy to arbitration or a provision in a written
2 contract to submit to arbitration any controversy thereafter
3 arising between the parties is valid, enforceable, and
4 irrevocable except upon such grounds as exist at law or in
5 equity for the revocation of a contract IF THE AGREEMENT IS
6 BETWEEN CORPORATIONS OR IS SUBJECT TO ARBITRATION UNDER
7 [SECTION 3].

8 NEW SECTION. Section 5. Proceedings to compel or stay
9 arbitration. (1) On the application of a party showing an
10 agreement described in [section 4] and the opposing party's
11 refusal to arbitrate, the district court shall order the
12 parties to proceed with arbitration; but if the opposing
13 party denies the existence of the agreement to arbitrate,
14 the court shall proceed summarily to the determination of
15 the issue so raised and shall order arbitration if it finds
16 for the moving party or deny the application if it finds for
17 the opposing party.

18 (2) On application, the district court may stay an
19 arbitration proceeding commenced or threatened on a showing
20 that there is no agreement to arbitrate. Such an issue,
21 when in substantial and bona fide dispute, shall be
22 immediately and summarily tried and the stay ordered if the
23 court finds for the moving party. If the court finds for the
24 opposing party, it shall order the parties to proceed to
25 arbitration.

1 (3) If an issue referable to arbitration under the
2 alleged agreement is involved in an action or proceeding
3 pending in a court having jurisdiction to hear applications
4 under subsection (1), the application shall be made therein.
5 Otherwise and subject to [section 20], the application may
6 be made in any court of competent jurisdiction.

7 (4) An action or proceeding involving an issue subject
8 to arbitration shall be stayed if an order for arbitration
9 or an application therefor has been made under this section
10 or, if the issue is severable, the stay may be with respect
11 thereto only. When the application is made in such action or
12 proceeding, the order for arbitration shall include such
13 stay.

14 (5) An order for arbitration may not be refused on the
15 ground that the claim in issue lacks merit or good faith or
16 because no fault or grounds for the claim sought to be
17 arbitrated have been shown.

18 NEW SECTION. Section 6. Appointment of arbitrators.
19 If the arbitration agreement provides a method of
20 appointment of arbitrators, this method shall be followed.
21 If no method is provided, the agreed method fails or for any
22 reason cannot be followed, or an arbitrator appointed fails
23 or is unable to act and his successor has not been duly
24 appointed, the district court on application of a party
25 shall appoint one or more arbitrators. An arbitrator so

1 appointed has all the powers of one specifically named in
2 the agreement.

3 NEW SECTION. Section 7. Majority action by
4 arbitrators. The powers of the arbitrators may be exercised
5 by a majority unless otherwise provided by the agreement or
6 by [sections 1 through 21].

7 NEW SECTION. Section 8. Hearing. Unless otherwise
8 provided by the agreement, the following apply:

9 (1) The arbitrators shall appoint a time and place for
10 the hearing and cause notification to the parties to be
11 served personally or by registered or certified mail not
12 less than 5 days before the hearing. Appearance at the
13 hearing waives such notice. The arbitrators may adjourn the
14 hearing from time to time as necessary and, on request of a
15 party and for good cause or upon their own motion, may
16 postpone the hearing to a time not later than the date fixed
17 by the agreement for making the award unless the parties
18 consent to a later date. The arbitrators may hear and
19 determine the controversy upon the evidence produced
20 notwithstanding the failure of a party duly notified to
21 appear. The district court on application may direct the
22 arbitrators to proceed promptly with the hearing and
23 determination of the controversy.

24 (2) The parties are entitled to be heard, present
25 evidence material to the controversy, and cross-examine

1 witnesses appearing at the hearing.

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

9 NEW SECTION. Section 9. Representation by attorney.
10 A party has the right to be represented by an attorney at
11 any proceeding or hearing under [sections 1 through 21]. A
12 waiver thereof prior to the proceeding or hearing is
13 ineffective.

14 NEW SECTION. Section 10. Witnesses, subpoenas, and
15 depositions. (1) The arbitrators may issue subpoenas for the
16 attendance of witnesses and the production of books,
17 records, documents, and other evidence and may administer
18 oaths. Subpoenas so issued shall be served and, upon
19 application to the district court by a party or the
20 arbitrators, enforced in the manner provided by law for the
21 service and enforcement of subpoenas in a civil action in
22 district court.

23 (2) On the application of a party and for use as
24 evidence, the arbitrators may permit a deposition to be
25 taken, in the manner and upon the terms designated by the

1 arbitrators, of a witness who cannot be subpoenaed or is
2 unable to attend the hearing.

3 (3) All provisions of law compelling a person under
4 subpoena to testify are applicable to persons subpoenaed
5 under [sections 1 through 21].

6 (4) Fees for attendance as a witness shall be the same
7 as for a witness in the district court.

8 NEW SECTION. Section 11. Award. (1) The award shall
9 be in writing and signed by the arbitrators joining in the
10 award. The arbitrators shall deliver a copy to each party
11 personally, by registered or certified mail, or as provided
12 in the agreement.

13 (2) An award shall be made within the time fixed
14 therefor by the agreement or, if no time is so fixed, within
15 such time as the district court orders on application of a
16 party. The parties may extend the time in writing either
17 before or after the expiration thereof. A party waives the
18 objection that an award was not made within the time
19 required unless he notifies the arbitrators of his objection
20 prior to the delivery of the award to him.

21 NEW SECTION. Section 12. Change of award by
22 arbitrators. On the application of a party or, if an
23 application to the court is pending under [section 14, 15,
24 or 16], on submission to the arbitrators by the court under
25 such conditions as the court may order, the arbitrators may

1 modify or correct the award upon the grounds stated in
 2 [subsections (1)(a) and (1)(c) of section 16] or for the
 3 purpose of clarifying the award. The application shall be
 4 made within 20 days after delivery of the award to the
 5 applicant. Written notice thereof shall be given immediately
 6 to the opposing party, stating he must serve his objections
 7 thereto, if any, within 10 days from the notice. The award
 8 so modified or corrected is subject to the provisions of
 9 [sections 14, 15, and 16].

10 **NEW SECTION.** Section 13. Fees and expenses of
 11 arbitration. Unless otherwise provided in the agreement to
 12 arbitrate, the arbitrators' expenses and fees, together with
 13 other expenses, not including counsel fees, incurred in the
 14 conduct of the arbitration, shall be paid as provided in the
 15 award.

16 **NEW SECTION.** Section 14. Confirmation of award by
 17 court. Upon the application of a party, the district court
 18 shall confirm an award unless within the time limits imposed
 19 in [sections 1 through 21] grounds are urged for vacating,
 20 modifying, or correcting the award, in which case the court
 21 shall proceed as provided in [sections 15 and 16].

22 **NEW SECTION.** Section 15. Vacating an award. (1) Upon
 23 the application of a party, the district court shall vacate
 24 an award whenever:

25 (a) the award was procured by corruption, fraud, or

1 other undue means;

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

6 (c) the arbitrators exceeded their powers;

7 (d) the arbitrators refused to postpone the hearing
 8 upon sufficient cause being shown therefor or refused to
 9 hear evidence material to the controversy or otherwise so
 10 conducted the hearing, contrary to the provisions of
 11 [section 8], as to prejudice substantially the rights of a
 12 party; or

13 (e) there was no arbitration agreement and the issue
 14 was not adversely determined in proceedings under [section
 15 5] and the party did not participate in the arbitration
 16 hearing without raising the objection.

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

20 (3) An application under this section shall be made
 21 within 90 days after delivery of a copy of the award to the
 22 applicant except that, if it is predicated upon corruption,
 23 fraud, or other undue means, it shall be made within 90 days
 24 after such grounds are known or should have been known.

25 (4) In vacating the award on grounds other than those

1 stated in subsection (1)(e), the court may order a rehearing
 2 before new arbitrators chosen as provided in the agreement
 3 or, if the agreement does not provide a method of selection,
 4 by the court in accordance with [section 6] or, if the award
 5 is vacated on grounds set forth in subsection (1)(c) or
 6 (1)(d), the court may order a rehearing before the
 7 arbitrators who made the award or their successors appointed
 8 in accordance with [section 6]. The time within which the
 9 agreement requires the award to be made is applicable to the
 10 rehearing and commences from the date of the order.

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

14 **NEW SECTION.** Section 16. Modification or correction
 15 of award by court. (1) Upon application made within 90 days
 16 after delivery of a copy of the award to the applicant, the
 17 district court shall modify or correct the award whenever:

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

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

25 (c) the award is imperfect in a matter of form not

1 affecting the merits of the controversy.

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

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

9 **NEW SECTION.** Section 17. Judgment on award -- costs.

10 (1) Upon the granting of an order confirming, modifying, or
 11 correcting an award, judgment shall be entered in conformity
 12 therewith and be enforced as any other judgment. Costs of
 13 the application and of the proceedings subsequent thereto
 14 and disbursements may be awarded by the court.

15 (2) The judgment may be docketed as if rendered in an
 16 action.

17 **NEW SECTION.** Section 18. Applications to court -- how
 18 made. Except as otherwise provided, an application to the
 19 court under [sections 1 through 21] shall be by motion and
 20 shall be heard in the manner and upon the notice provided by
 21 law or rule of court for the making and hearing of motions.
 22 Unless the parties have agreed otherwise, notice of an
 23 initial application for an order shall be served in the
 24 manner provided by law for the service of a summons in an
 25 action.

1 **NEW SECTION.** Section 19. Jurisdiction of district
2 court. The making of an agreement described in [section 4]
3 providing for arbitration in this state confers jurisdiction
4 on the district court to enforce the agreement under
5 [sections 1 through 21] and to enter judgment on an award
6 thereunder.

7 **NEW SECTION.** Section 20. Venue. An initial
8 application shall be made to the court of the county in
9 which the agreement provides the arbitration hearing shall
10 be held or, if the hearing has been held, in the county in
11 which it was held. Otherwise, the application shall be made
12 in the county where the adverse party resides or has a place
13 of business or, if he has no residence or place of business
14 in this state, to the court of any county. All subsequent
15 applications shall be made to the court hearing the initial
16 application unless the court otherwise directs.

17 **NEW SECTION.** Section 21. Appeals. (1) An appeal may
18 be taken from:

19 (a) an order denying an application to compel
20 arbitration made under [section 5];

21 (b) an order granting an application to stay
22 arbitration made under [section 5(2)];

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

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

1 (e) an order vacating an award without directing a
2 rehearing; or

3 (f) a judgment entered pursuant to the provisions of
4 [sections 1 through 21].

5 (2) The appeal shall be taken in the manner and to the
6 same extent as from orders or judgments in a civil action in
7 district court.

8 Section 22. Section 27-1-412, MCA, is amended to read:

9 "27-1-412. Obligations which cannot be specifically
10 enforced. The following obligations cannot be specifically
11 enforced:

12 (1) an obligation to render personal service or to
13 employ another therein;

14 (2) an agreement to marry or live with another;

15 ~~(3) an agreement to submit a controversy to~~
16 ~~arbitration;~~

17 (3) AN AGREEMENT TO SUBMIT A CONTROVERSY TO
18 ARBITRATION EXCEPT AS PROVIDED IN [SECTIONS 1 THROUGH 21];

19 ~~(4)(3)(4)~~ an agreement to perform an act which the
20 party has not power to perform lawfully when required to do
21 so;

22 ~~(5)(4)(5)~~ an agreement to procure the act or consent
23 of the spouse of the contracting party or of any other third
24 person; or

25 ~~(6)(5)(6)~~ an agreement the terms of which are not

1 sufficiently certain to make the precise act which is to be
2 done clearly ascertainable."

3 Section 23. Section 28-2-708, MCA, is amended to read:
4 "28-2-708. Restraints upon legal proceedings void.
5 Every stipulation or condition in a contract by which any
6 party thereto is restricted from enforcing his rights under
7 the contract by the usual proceedings in the ordinary
8 tribunals or which limits the time within which he may thus
9 enforce his rights is void. This section does not affect the
10 validity of an agreement enforceable under [sections 1
11 through 21]."

12 Section 24. Application not retroactive. This act
13 applies only to agreements made subsequent to the taking
14 effect of this act.

15 Section 25. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

21 Section 26. Codification. Sections 1 through 21 shall
22 be codified as an integral part of Title 27, chapter 5, and
23 all references to Title 27, chapter 5, include sections 1
24 through 21.

25 Section 27. Repealer. Sections 27-5-101 through

1 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
2 27-5-304, MCA, are repealed.

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