

House Bill 713

In The House

February 11, 1981	Introduced and referred to Committee on Business and Industry.
February 19, 1981	Committee recommend bill do pass.
February 20, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading do pass.
February 24, 1981	Considered correctly engrossed.
February 25, 1981	Third reading passed.

In The Senate

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 23, 1981	Committee recommend bill concurred
March 24, 1981	Motion pass consideration.
March 25, 1981	Second reading concurred.
March 26, 1981	On motion taken from Committee on Bills and Journals and referred to second reading. Motion adopted.
March 27, 1981	On motion taken from second reading and referred to Committee on Judiciary.
March 31, 1981	Committee recommend bill concurred as amended. On motion rules suspended. Bill placed on second and third reading this day. Second reading concurred as amended. Third reading concurred as amended.

In The House

April 1, 1981

Returned from Senate
concurred as amended.

April 9, 1981

Second reading amendment
not concurred.

On motion Free Conference
Committee requested and
appointed.

April 13, 1981

Conference Committee dissolved.

1 under subsection (1), the application shall be made therein.
 2 Otherwise and subject to [section 20], the application may
 3 be made in any court of competent jurisdiction.

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

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

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

25 NEW SECTION. Section 7. Majority action by

1 arbitrators. The powers of the arbitrators may be exercised
 2 by a majority unless otherwise provided by the agreement or
 3 by [sections 1 through 21].

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

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

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

24 (3) The hearing shall be conducted by all the
 25 arbitrators, but a majority may determine any question and

1 render a final award. If during the course of the hearing an
2 arbitrator for any reason ceases to act, the remaining
3 arbitrator or arbitrators appointed to act as neutrals may
4 continue with the hearing and determination of the
5 controversy.

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

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

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

25 (3) All provisions of law compelling a person under

1 subpoena to testify are applicable to persons subpoenaed
2 under [sections 1 through 21].

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

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

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

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

1 made within 20 days after delivery of the award to the
 2 applicant. Written notice thereof shall be given immediately
 3 to the opposing party, stating he must serve his objections
 4 thereto, if any, within 10 days from the notice. The award
 5 so modified or corrected is subject to the provisions of
 6 [sections 14, 15, and 16].

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

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

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

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

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

1 arbitrators or misconduct prejudicing the rights of any
 2 party;

3 (c) the arbitrators exceeded their powers;

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

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

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

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

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

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

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

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

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

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

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

25 (2) If the application is granted, the court shall

1 modify and correct the award so as to effect its intent and
 2 shall confirm the award as modified and corrected.
 3 Otherwise, the court shall confirm the award as made.

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

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

13 (2) The judgment may be docketed as if rendered in an
 14 action.

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

24 NEW SECTION. Section 19. Jurisdiction of district
 25 court. The making of an agreement described in [section 4]

1 providing for arbitration in this state confers jurisdiction
2 on the district court to enforce the agreement under
3 [sections 1 through 21] and to enter judgment on an award
4 thereunder.

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

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

- 17 (a) an order denying an application to compel
18 arbitration made under [section 5];
19 (b) an order granting an application to stay
20 arbitration made under [subsection (2) of section 5];
21 (c) an order confirming or denying confirmation of an
22 award;
23 (d) an order modifying or correcting an award;
24 (e) an order vacating an award without directing a
25 rehearing; or

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

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

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

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

10 (1) an obligation to render personal service or to
11 employ another therein;

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

13 ~~(3) an agreement to submit a controversy to~~
14 ~~arbitration;~~

15 ~~(4)~~(3) an agreement to perform an act which the party
16 has not power to perform lawfully when required to do so;

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

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

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

24 "28-2-708. Restraints upon legal proceedings void.
25 Every stipulation or condition in a contract by which any

1 party thereto is restricted from enforcing his rights under
 2 the contract by the usual proceedings in the ordinary
 3 tribunals or which limits the time within which he may thus
 4 enforce his rights is void. This section does not affect the
 5 validity of an agreement enforceable under [sections 1
 6 through 21]."

7 Section 24. Section 71-3-801, MCA, is amended to read:

8 "71-3-801. Who may have lien -- amount. (1) All
 9 threshermen or swathers owning or operating threshing or
 10 swathing machines and all owners of combine harvesters and
 11 threshers shall have a lien upon the grain and other crops
 12 swathed or threshed by said threshing or swathing machine or
 13 cut and threshed by said combine harvester and thresher for
 14 and on account of the services rendered and the labor
 15 performed by them on said grain and crops and which lien may
 16 be claimed by the owner of said grain for the reasonable
 17 value of such services if same are performed by him. Liens
 18 on grain and other crops shall be charged for at the
 19 prevailing price for that particular locality in which such
 20 grain or other crop is threshed, harvested, or combined,
 21 provided notices are given and lien is filed within the time
 22 provided by this part.

23 (2) If the prevailing price for threshing, harvesting,
 24 or combining grain or other crop is disputed by the
 25 thresherman or swather and the owner of the grain or other

1 crop, the matter may be submitted to arbitration under the
 2 provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

3 Section 25. Application not retroactive. This act
 4 applies only to agreements made subsequent to the taking
 5 effect of this act.

6 Section 26. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

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

16 Section 28. Repealer. Sections 27-5-101 through
 17 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
 18 27-5-304, MCA, are repealed.

-End-

1 under subsection (1), the application shall be made therein.
 2 Otherwise and subject to [section 20], the application may
 3 be made in any court of competent jurisdiction.

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

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

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

25 NEW SECTION. Section 7. Majority action by

1 arbitrators. The powers of the arbitrators may be exercised
 2 by a majority unless otherwise provided by the agreement or
 3 by [sections 1 through 21].

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

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

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

24 (3) The hearing shall be conducted by all the
 25 arbitrators, but a majority may determine any question and

1 render a final award. If during the course of the hearing an
2 arbitrator for any reason ceases to act, the remaining
3 arbitrator or arbitrators appointed to act as neutrals may
4 continue with the hearing and determination of the
5 controversy.

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

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

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

25 (3) All provisions of law compelling a person under

1 subpoena to testify are applicable to persons subpoenaed
2 under [sections 1 through 21].

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

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

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

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

1 made within 20 days after delivery of the award to the
 2 applicant. Written notice thereof shall be given immediately
 3 to the opposing party, stating he must serve his objections
 4 thereto, if any, within 10 days from the notice. The award
 5 so modified or corrected is subject to the provisions of
 6 [sections 14, 15, and 16].

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

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

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

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

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

1 arbitrators or misconduct prejudicing the rights of any
 2 party;

3 (c) the arbitrators exceeded their powers;

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

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

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

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

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

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

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

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

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

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

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

25 (2) If the application is granted, the court shall

1 modify and correct the award so as to effect its intent and
 2 shall confirm the award as modified and corrected.
 3 Otherwise, the court shall confirm the award as made.

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

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

13 (2) The judgment may be docketed as if rendered in an
 14 action.

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

24 NEW SECTION. Section 19. Jurisdiction of district
 25 court. The making of an agreement described in [section 4]

1 providing for arbitration in this state confers jurisdiction
2 on the district court to enforce the agreement under
3 [sections 1 through 21] and to enter judgment on an award
4 thereunder.

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

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

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

19 (b) an order granting an application to stay
20 arbitration made under [subsection (2) of section 5];

21 (c) an order confirming or denying confirmation of an
22 award;

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

24 (e) an order vacating an award without directing a
25 rehearing; or

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

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

6 Section 22. Section 27-1-412, MCA, is amended to read:
7 "27-1-412. Obligations which cannot be specifically
8 enforced. The following obligations cannot be specifically
9 enforced:

10 (1) an obligation to render personal service or to
11 employ another therein;

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

13 ~~(3) an agreement to submit a controversy to~~
14 ~~arbitration;~~

15 ~~(4) (3)~~ an agreement to perform an act which the party
16 has not power to perform lawfully when required to do so;

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

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

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

24 "28-2-708. Restraints upon legal proceedings void.
25 Every stipulation or condition in a contract by which any

1 party thereto is restricted from enforcing his rights under
 2 the contract by the usual proceedings in the ordinary
 3 tribunals or which limits the time within which he may thus
 4 enforce his rights is void. This section does not affect the
 5 validity of an agreement enforceable under [sections 1
 6 through 21]."

7 Section 24. Section 71-3-801, MCA, is amended to read:

8 "71-3-801. Who may have lien -- amount. (1) All
 9 threshermen or swathers owning or operating threshing or
 10 swathing machines and all owners of combine harvesters and
 11 threshers shall have a lien upon the grain and other crops
 12 swathed or threshed by said threshing or swathing machine or
 13 cut and threshed by said combine harvester and thresher for
 14 and on account of the services rendered and the labor
 15 performed by them on said grain and crops and which lien may
 16 be claimed by the owner of said grain for the reasonable
 17 value of such services if same are performed by him. Liens
 18 on grain and other crops shall be charged for at the
 19 prevailing price for that particular locality in which such
 20 grain or other crop is threshed, harvested, or combined,
 21 provided notices are given and lien is filed within the time
 22 provided by this part.

23 (2) If the prevailing price for threshing, harvesting,
 24 or combining grain or other crop is disputed by the
 25 thresherman or swather and the owner of the grain or other

1 crop, the matter may be submitted to arbitration under the
 2 provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

3 Section 25. Application not retroactive. This act
 4 applies only to agreements made subsequent to the taking
 5 effect of this act.

6 Section 26. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

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

16 Section 28. Repealer. Sections 27-5-101 through
 17 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
 18 27-5-304, MCA, are repealed.

-End-

HB 713

1 HOUSE BILL NO. 713
2 INTRODUCED BY F. George Sander

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
5 ARBITRATION ACT AND TO CONFORM OTHER STATUTORY PROVISIONS
6 THERETO; AMENDING SECTIONS 27-1-412, 28-2-708, AND 71-3-801,
7 MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105,
8 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304,
9 MCA."

10
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. The provisions of [sections 1 through 21] do not
20 apply to any arbitration agreement between employers and
21 employees and do not limit any rights that they may have as
22 provided by law.

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

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

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

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

23 (3) If an issue referable to arbitration under the
24 alleged agreement is involved in an action or proceeding
25 pending in a court having jurisdiction to hear applications

1 under subsection (1), the application shall be made therein.
 2 Otherwise and subject to [section 20], the application may
 3 be made in any court of competent jurisdiction.

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

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

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

25 NEW SECTION. Section 7. Majority action by

1 arbitrators. The powers of the arbitrators may be exercised
 2 by a majority unless otherwise provided by the agreement or
 3 by [sections 1 through 21].

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

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

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

24 (3) The hearing shall be conducted by all the
 25 arbitrators, but a majority may determine any question and

1 render a final award. If during the course of the hearing an
2 arbitrator for any reason ceases to act, the remaining
3 arbitrator or arbitrators appointed to act as neutrals may
4 continue with the hearing and determination of the
5 controversy.

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

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

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

25 (3) All provisions of law compelling a person under

1 subpoena to testify are applicable to persons subpoenaed
2 under [sections 1 through 21].

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

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

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

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

1 made within 20 days after delivery of the award to the
 2 applicant. Written notice thereof shall be given immediately
 3 to the opposing party, stating he must serve his objections
 4 thereto, if any, within 10 days from the notice. The award
 5 so modified or corrected is subject to the provisions of
 6 [sections 14, 15, and 16].

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

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

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

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

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

1 arbitrators or misconduct prejudicing the rights of any
 2 party;

3 (c) the arbitrators exceeded their powers;

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

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

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

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

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

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

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

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

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

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

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

25 (2) If the application is granted, the court shall

1 modify and correct the award so as to effect its intent and
 2 shall confirm the award as modified and corrected.
 3 Otherwise, the court shall confirm the award as made.

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

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

13 (2) The judgment may be docketed as if rendered in an
 14 action.

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

24 NEW SECTION. Section 19. Jurisdiction of district
 25 court. The making of an agreement described in [section 4]

1 providing for arbitration in this state confers jurisdiction
2 on the district court to enforce the agreement under
3 [sections 1 through 21] and to enter judgment on an award
4 thereunder.

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

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

- 17 (a) an order denying an application to compel
18 arbitration made under [section 5];
19 (b) an order granting an application to stay
20 arbitration made under [subsection (2) of section 5];
21 (c) an order confirming or denying confirmation of an
22 award;
23 (d) an order modifying or correcting an award;
24 (e) an order vacating an award without directing a
25 rehearing; or

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

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

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

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

10 (1) an obligation to render personal service or to
11 employ another therein;

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

13 ~~(3) an agreement to submit a controversy to~~
14 ~~arbitration;~~

15 ~~(4)~~(3) an agreement to perform an act which the party
16 has not power to perform lawfully when required to do so;

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

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

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

24 "28-2-708. Restraints upon legal proceedings void.
25 Every stipulation or condition in a contract by which any

1 party thereto is restricted from enforcing his rights under
 2 the contract by the usual proceedings in the ordinary
 3 tribunals or which limits the time within which he may thus
 4 enforce his rights is void. This section does not affect the
 5 validity of an agreement enforceable under [sections 1
 6 through 21]."

7 Section 24. Section 71-3-801, MCA, is amended to read:

8 "71-3-801. Who may have lien -- amount. (1) All
 9 threshermen or swathers owning or operating threshing or
 10 swathing machines and all owners of combine harvesters and
 11 threshers shall have a lien upon the grain and other crops
 12 swathed or threshed by said threshing or swathing machine or
 13 cut and threshed by said combine harvester and thresher for
 14 and on account of the services rendered and the labor
 15 performed by them on said grain and crops and which lien may
 16 be claimed by the owner of said grain for the reasonable
 17 value of such services if same are performed by him. Liens
 18 on grain and other crops shall be charged for at the
 19 prevailing price for that particular locality in which such
 20 grain or other crop is threshed, harvested, or combined,
 21 provided notices are given and lien is filed within the time
 22 provided by this part.

23 (2) If the prevailing price for threshing, harvesting,
 24 or combining grain or other crop is disputed by the
 25 thresherman or swather and the owner of the grain or other

1 crop, the matter may be submitted to arbitration under the
 2 provisions of ~~chapter 5, title 27~~ [sections 1 through 21]."

3 Section 25. Application not retroactive. This act
 4 applies only to agreements made subsequent to the taking
 5 effect of this act.

6 Section 26. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

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

16 Section 28. Repealer. Sections 27-5-101 through
 17 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
 18 27-5-304, MCA, are repealed.

-End-

1 HOUSE BILL NO. 713

2 INTRODUCED BY FABREGA, GOODOVER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
5 ARBITRATION ACT AND TO CONFORM OTHER STATUTORY PROVISIONS
6 THERETO; AMENDING SECTIONS 27-1-412, 28-2-708, AND 71-3-801,
7 MCA; AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105,
8 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304,
9 MCA."

10
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. The provisions of [sections 1 through 21] do not
20 apply to any arbitration agreement between employers and
21 employees and do not limit any rights that they may have as
22 provided by law.23 NEW SECTION. Section 4. Validity of arbitration
24 agreement. A written agreement to submit an existing
25 controversy to arbitration or a provision in a written

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

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

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

23 (3) If an issue referable to arbitration under the
24 alleged agreement is involved in an action or proceeding
25 pending in a court having jurisdiction to hear applications

1 under subsection (1), the application shall be made therein.
 2 Otherwise and subject to [section 20], the application may
 3 be made in any court of competent jurisdiction.

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

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

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

25 NEW SECTION. Section 7. Majority action by

1 arbitrators. The powers of the arbitrators may be exercised
 2 by a majority unless otherwise provided by the agreement or
 3 by [sections 1 through 21].

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

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

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

24 (3) The hearing shall be conducted by all the
 25 arbitrators, but a majority may determine any question and

1 render a final award. If during the course of the hearing an
2 arbitrator for any reason ceases to act, the remaining
3 arbitrator or arbitrators appointed to act as neutrals may
4 continue with the hearing and determination of the
5 controversy.

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

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

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

25 (3) All provisions of law compelling a person under

1 subpoena to testify are applicable to persons subpoenaed
2 under [sections 1 through 21].

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

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

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

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

1 made within 20 days after delivery of the award to the
 2 applicant. Written notice thereof shall be given immediately
 3 to the opposing party, stating he must serve his objections
 4 thereto, if any, within 10 days from the notice. The award
 5 so modified or corrected is subject to the provisions of
 6 [sections 14, 15, and 16].

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

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

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

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

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

1 arbitrators or misconduct prejudicing the rights of any
 2 party;

3 (c) the arbitrators exceeded their powers;

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

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

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

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

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

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

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

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

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

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

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

25 (2) If the application is granted, the court shall

1 modify and correct the award so as to effect its intent and
 2 shall confirm the award as modified and corrected.
 3 Otherwise, the court shall confirm the award as made.

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

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

13 (2) The judgment may be docketed as if rendered in an
 14 action.

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

24 NEW SECTION. Section 19. Jurisdiction of district
 25 court. The making of an agreement described in [section 4]

1 providing for arbitration in this state confers jurisdiction
2 on the district court to enforce the agreement under
3 [sections 1 through 21] and to enter judgment on an award
4 thereunder.

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

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

- 17 (a) an order denying an application to compel
- 18 arbitration made under [section 5];
- 19 (b) an order granting an application to stay
- 20 arbitration made under [subsection (2) of section 5];
- 21 (c) an order confirming or denying confirmation of an
- 22 award;
- 23 (d) an order modifying or correcting an award;
- 24 (e) an order vacating an award without directing a
- 25 rehearing; or

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

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

6 Section 22. Section 27-1-412, MCA, is amended to read:
7 "27-1-412. Obligations which cannot be specifically
8 enforced. The following obligations cannot be specifically
9 enforced:

- 10 (1) an obligation to render personal service or to
- 11 employ another therein;
- 12 (2) an agreement to marry or live with another;
- 13 ~~(3) an agreement to submit a controversy to~~
- 14 ~~arbitration;~~
- 15 ~~(4)~~ (3) an agreement to perform an act which the party
- 16 has not power to perform lawfully when required to do so;
- 17 ~~(5)~~ (4) an agreement to procure the act or consent of
- 18 the spouse of the contracting party or of any other third
- 19 person; or
- 20 ~~(6)~~ (5) an agreement the terms of which are not
- 21 sufficiently certain to make the precise act which is to be
- 22 done clearly ascertainable."

23 Section 23. Section 28-2-708, MCA, is amended to read:
24 "28-2-708. Restraints upon legal proceedings void.
25 Every stipulation or condition in a contract by which any

1 party thereto is restricted from enforcing his rights under
 2 the contract by the usual proceedings in the ordinary
 3 tribunals or which limits the time within which he may thus
 4 enforce his rights is void. This section does not affect the
 5 validity of an agreement enforceable under [sections 1
 6 through 21]."

7 Section 24. Section 71-3-801, MCA, is amended to read:

8 "71-3-801. Who may have lien -- amount. (1) All
 9 threshermen or swathers owning or operating threshing or
 10 swathing machines and all owners of combine harvesters and
 11 threshers shall have a lien upon the grain and other crops
 12 swathed or threshed by said threshing or swathing machine or
 13 cut and threshed by said combine harvester and thresher for
 14 and on account of the services rendered and the labor
 15 performed by them on said grain and crops and which lien may
 16 be claimed by the owner of said grain for the reasonable
 17 value of such services if same are performed by him. Liens
 18 on grain and other crops shall be charged for at the
 19 prevailing price for that particular locality in which such
 20 grain or other crop is threshed, harvested, or combined,
 21 provided notices are given and lien is filed within the time
 22 provided by this part.

23 (2) If the prevailing price for threshing, harvesting,
 24 or combining grain or other crop is disputed by the
 25 thresherman or swather and the owner of the grain or other

1 crop, the matter may be submitted to arbitration under the
 2 provisions of ~~chapter 5, Title 27~~ [sections 1 through 21]."

3 Section 25. Application not retroactive. This act
 4 applies only to agreements made subsequent to the taking
 5 effect of this act.

6 Section 26. Severability. If a part of this act is
 7 invalid, all valid parts that are severable from the invalid
 8 part remain in effect. If a part of this act is invalid in
 9 one or more of its applications, the part remains in effect
 10 in all valid applications that are severable from the
 11 invalid applications.

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

16 Section 28. Repealer. Sections 27-5-101 through
 17 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
 18 27-5-304, MCA, are repealed.

-End-

HOUSE BILL NO. 713

INTRODUCED BY FABREGA, GOODOVER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~ADAPT~~ THE UNIFORM
 ARBITRATION ACT AND TO CONFORM OTHER STATUTORY PROVISIONS
 THEREOF, AMENDING SECTIONS 27-1-412, 28-2-708, AND 71-3-801,
 MCA, AND REPEALING SECTIONS 27-5-101 THROUGH 27-5-105,
 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304,
 MCA, ALLOW BINDING ARBITRATION AGREEMENTS RELATING TO
 CERTAIN MATTERS ON CONSTRUCTION AND LEASING AGREEMENTS;
AMENDING SECTIONS 27-1-412 AND 28-2-708, MCA."

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

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

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

NEW SECTION Section 3 - Application - to labor agreements - The provisions of [sections 1 through 21] do not apply to any arbitration agreement between employers and employees and do not limit any rights that they may have as provided by law.

NEW SECTION Section 4 - Validity of arbitration

agreements - A written agreement to submit on existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable except upon such grounds as exist at law or in equity for the revocation of a contract.

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

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

(3) If an issue referable to arbitration under the

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

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

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

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

1 the agreement.

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

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

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

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

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

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

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

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

1 unable to attend the hearings.

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

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

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

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

20 NEW SECTION Section 12 Change of award. (1) By
 21 arbitrators. On the application of a party or, if an
 22 application to the court is pending under [section 14, 15,
 23 or 16], on submission to the arbitrators by the court, under
 24 such conditions as the court may order, the arbitrators may
 25 modify or correct the award upon the grounds stated in

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

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

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

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

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

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

5 (c) the arbitrators exceeded their powers;

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

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

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

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

24 (4) In vacating the award on grounds other than those
 25 stated in subsection (1)(e), the court may order a rehearing.

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

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 courts. 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 [subsection (2) of section 5];
- 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 courts.

8 Section 1. 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) ~~(1)~~ (A) AN AGREEMENT TO SUBMIT A CONTROVERSY TO
 18 ARBITRATION;

19 ~~(1)~~ EXCEPT THAT A WRITTEN AGREEMENT TO SUBMIT TO
 20 ARBITRATION ANY EXISTING OR FUTURE CONTROVERSY ARISING OUT
 21 OF A WRITTEN CONTRACT FOR CONSTRUCTION OR WRITTEN COMMERCIAL
 22 LEASING AGREEMENTS WHEREIN THE LEASE RENTAL EXCEEDS \$10,000
 23 IN ANY ONE YEAR IS AND SHALL BE VALID AND ENFORCEABLE AND
 24 IRREVOCABLE, SAVE UPON SUCH GROUNDS AS EXIST AT LAW OR IN
 25 EQUITY FOR THE REVOCATION OF ANY CONTRACT, PROVIDED THAT

1 ~~{11} SHALL HAVE NO APPLICATION TO PERSONAL INJURY OR TORT~~
2 ~~MATTERS, EMPLOYER-EMPLOYEE DISPUTES, NOR TO ANY INSURED OR~~
3 ~~BENEFICIARY UNDER ANY INSURANCE POLICY OR ANNUITY CONTRACT.~~

4 ~~{11} ANY AGREEMENT TO ARBITRATE UNDER THIS PARAGRAPH~~
5 ~~SHALL BE ARBITRATED IN MONTANA AND IN THE MANNER SET FORTH~~
6 ~~IN TITLE 27, CHAPTER 5, MCA.~~

7 (B) HOWEVER, A WRITTEN AGREEMENT TO SUBMIT TO
8 ARBITRATION ANY EXISTING OR FUTURE CONTROVERSY ARISING OUT
9 OF A WRITTEN CONTRACT FOR CONSTRUCTION OR WRITTEN COMMERCIAL
10 LEASING AGREEMENT WHEREIN THE LEASE RENTAL EXCEEDS \$10,000
11 IN ANY 1 YEAR IS VALID, ENFORCEABLE, AND IRREVOCABLE, SAVE
12 UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY FOR THE
13 REVOCATION OF ANY CONTRACT, BUT SUBSECTION (3)(B) DOES NOT
14 APPLY TO PERSONAL INJURY OR TORT MATTERS, EMPLOYER-EMPLOYEE
15 DISPUTES, OR ANY INSURED OR BENEFICIARY UNDER ANY INSURANCE
16 POLICY OR ANNUITY CONTRACT.

17 (C) ARBITRATION OF ANY CONTROVERSY UNDER THIS
18 SUBSECTION SHALL BE CONDUCTED IN MONTANA AND ARBITRATION
19 SHALL BE ENFORCEABLE ONLY IN THE COURTS OF MONTANA AND IN
20 THE MANNER SET FORTH IN TITLE 27, CHAPTER 5, MCA.

21 {4}{3}{4} an agreement to perform an act which the
22 party has not power to perform lawfully when required to do
23 so;

24 {5}{4}{5} an agreement to procure the act or consent
25 of the spouse of the contracting party or of any other third

1 person; or

2 {6}{5}{6} an agreement the terms of which are not
3 sufficiently certain to make the precise act which is to be
4 done clearly ascertainable."

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

6 "28-2-708. Restraints upon legal proceedings void.
7 Every stipulation or condition in a contract by which any
8 party thereto is restricted from enforcing his rights under
9 the contract by the usual proceedings in the ordinary
10 tribunals or which limits the time within which he may thus
11 enforce his rights is void. This section does not affect the
12 validity of an agreement enforceable under [sections 1
13 through 21 SECTION 22 1]."

14 Section 24. Section 71-3-801, MCA, is amended to read:

15 "71-3-801. Who may have lien ----- amount ----- {1} All
16 threshermen or swathers owning or operating threshing or
17 swathing machines and all owners of combine harvesters and
18 threshers shall have a lien upon the grain and other crops
19 swathed or threshed by said threshing or swathing machine or
20 cut and threshed by said combine harvester and thresher for
21 and on account of the services rendered and the labor
22 performed by them on said grain and crops and which lien may
23 be claimed by the owner of said grain for the reasonable
24 value of such services if same are performed by him. Liens
25 on grain and other crops shall be charged for at the

1 prevailing price for that particular locality in which such
2 grain or other crop is threshed, harvested, or combined,
3 provided notices are given and lien is filed within the time
4 provided by this part.

5 {2} If the prevailing price for threshing, harvesting,
6 or combining grain or other crop is disputed by the
7 thresherman or sower and the owner of the grain or other
8 crop, the matter may be submitted to arbitration under the
9 provisions of chapter 5, Title 27 [sections 1 through 21]."

10 Section 25. Application not retroactive. This act
11 applies only to agreements made subsequent to the taking
12 effect of this act.

13 Section 26. Severability. If a part of this act is
14 invalid, all valid parts that are severable from the invalid
15 part remain in effect. If a part of this act is invalid in
16 one or more of its applications, the part remains in effect
17 in all valid applications that are severable from the
18 invalid applications.

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

23 Section 28. Repealer. Sections 27-5-101 through
24 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through
25 27-5-304, MCA, are repealed.

March 31, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 713 be amended as follows:

1. Title, lines 4 through 9.

Following: "TO" on line 4.

Strike: the remainder of the title

Insert: "ALLOW BINDING ARBITRATION AGREEMENTS RELATING TO CERTAIN
MATTERS ON CONSTRUCTION AND LEASING WRITTEN AGREEMENTS; AMENDING
SECTIONS 27-1-412 AND 28-2-708, MCA."

2. Page 1, line 12 through line 5 on page 12.

Strike: sections 1 through 21 in their entirety.

Renumber: subsequent sections

3. Page 12, line 14.

Following: "~~arbitration~~"

Insert: "(3)(i) an agreement to submit a controversy to arbitration;

(ii) except that a written agreement to submit to arbitration any
existing or future controversy arising out of a written contract for
construction or written commercial leasing agreements wherein the

lease rental exceeds \$10,000 in any one year is and shall be valid
and enforceable and irrevocable, save upon such grounds as exist at
law or in equity for the revocation of any contract, provided that
(ii) shall have no application to personal injury or tort matters,
employer-employee disputes, nor to any insured or beneficiary under
any insurance policy or annuity contract.

(iii) any agreement to arbitrate under this paragraph shall be
arbitrated in Montana and shall be enforceable only in the courts of
Montana and in the manner set forth in Title 27, Chapter 5, MCA."

Renumber: subsequent sections

4. Page 13, line 5, through line 6.

Following: "under {" on line 5

Strike: line 5 through "21" on line 6

Insert: "section 22"

5. Page 13, line 7 through line 18 on page 14.

Strike: sections 24 through 28 in their entirety.

March 31, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 713, third reading copy, as follows:

That the following amendments of the Senate Standing Committee on Judiciary of March 31, 1981, be amended to read as follows:

3. Page 12, line 14.

Following: "~~arbitration,~~"

Insert: "(3)(a) and agreement to submit a controversy to arbitration;

(b) However, a written agreement to submit to arbitration any existing or future controversy arising out of a written contract for construction or written commercial leasing agreement wherein the lease rental exceeds \$10,000 in any 1 year is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, but subsection (3)(b) does not apply to personal injury or tort matters, employer-employee disputes, or any insured or beneficiary under any insurance policy or annuity contract.

(c) Arbitration of any controversy under this subsection shall be conducted in Montana and arbitration shall be enforceable only in the courts of Montana and in the manner set forth in Title 27, chapter 5, MCA."

Renumber: subsequent subsections.

4. Page 13, line 5 through line 6.

Following: "under [" on line 5

Strike: line 5 through "21" on line 6

Insert: "section 1"