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 <br> concurred as amended. |
| :--- | :--- |
| April 9, 1981 | Second reading amendment <br> not concurred. |
| April 13, 1981 | Committee requested and <br> appointed. |
|  | Conference Committee dissolved. |

introduced by

A BILL FOR AM ACT ENTITLED: mAN ACT TO ADOPT THE UNIFDRM ARBITRATION ACT AND TO CONFORH OTHER STATUTORY PROVISIONS THERETO; 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. $=$
be it enacted by the legislature of the state of montana:
MEH_SECIION: Section 1. Short title [Sections 1 through 21$]$ may be cited as the MUniform Arbitration Act".
MEH SECIIONA Section 2. Uniformity of interpretation. [Sections 1 through 21] shall be so construed as to effectuate its general purpose to make uniform the 1 aw of those states which enact it.
NEd_SECIIQNis Section 3. Application to labor agreements. The provisions of [sections 1 through 21] do not apply to any arbitration agreement between eaployers and employees and do not 7 imit any rights that they may have as provided by lawe
NEM_SECIIONe Section 4* Validity of arbitration agreement. A written agreement to submit an 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 lam or in equity for the revocation of contract.

NEH SECTIONE Section 5. Proceedings to compel or stay arbitration. (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 arbitratep 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 arbitration.
(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications
-2- INTRODUCED BILL HB $7 / 3$
under subsection (1), the application shall be made therein. Otherwise and subject to [section 20], the application may be made in any court of competent jurisdiction.
(4) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.
(5) An order for arbitration may not be refused on the ground that the cialm in issue lacks merit or good faith or because no fault or grounds for the clain sought to be arbitfated have been shown.

MEN SECIION If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. an arbitrator so appointed has all the powers of one specifically named in the agreement.

NEH SECLIONA Section 7. Majority action by
arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreenent or by [sections 1 through 21 ].

NEH_SECIION: Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:
(1) The arbitrators shall appoint a $t i m e$ and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversye
(2) The parties are entitled to be heard, oresent evidence material to the controversy, and cross-examine witnesses appearing at the hearing.
(3) The hearing shall be conducted by all the arbitrators, but a wajority may determine any question and
subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21$]$.
(4) Fees for attendance as a witness shall be the same as for a witness in the district court.

NEY_SEGIIOMe Section 11. Award. (1) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by registered or certified mall or as provided in the agreement.
(2) An award shall be made within the time fixed therefor by the agreement or, if no time is so fixed, within such time as the district court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEH SECLIOME Section 12. Change of award by asbitrators. Dn the application of a party or, if an application to the court is pending under [section 14, 15. or 16], on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subsections (1)(a) and (1)(c) of [section 16] or for the purpose of clarifying the awarde The application shall be
made within 20 days after delivery of the award to the
applicant. Written notice thereof shall be given immediately
to the opposing party, stating he must serve his objections
theretor $\ddagger f$ any, within 10 days from the notice. The award
so modified or corrected is subject to the provisions of
[sections 14, 15, and 16].
MEL SECTIONA Section 13. Fees and expenses of
arbitratione Unless otherwise provided in the agreement to
arbitrate, the arbitrators" expenses and fees, together with
other expenses, not including counsel fees, incurred in the
conduct of the arbitration, shall be paid as provided in the
award.
NEH_SEGLIOME Section 14. Confiration of award by court. Upon the application of a party, the district court shall confirm an amandess within the time limits imposed In [sections 1 through 21] grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].
NEL_SECILONE Section 15. Vacating an award. (1) upon the application of a party, the district court shall vacate an award whenever:
(a) the award was procured by corruption, fraud, or other undue means;
(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the
arbitrators or misconduct prejudicing the rights of any party;
(c) the arbitrators exceeded their powers;
(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a par.ty; or
(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objections
(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
(3) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant except that, if it is predicated upon corruption, fraudg or other undue means. it shall be made within 90 days after such grounds are known or should have been known.
(4) In vacating the award on grounds other than those stated in subsection (1)\{el, the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection. (3) An application under

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arbitrators or misconduct prejudicing the rights of any
ty;
    (d) the arbitrators refused to postpone the hearing
upon sufficient cause being shown therefor or refused to
evidence material to the controversy or otherwise
ection 81; as to prejudice substantially the rights of a
    cy: or
    not adversely determined in proceedings under Isection
5] and the party did not participate in the arbitration
without raising the oojections
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by the court in accordance with [section 6] ort if the award is vacated on grounds set forth in (c) or (d) of subsection (1), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the amard to be made is applicable to the rehearing and commences from the date of the order for rehearing.
(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

NEH SECIIONE Section 16. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award whenever:
(a) there was an evident miscalculation of figures or an evident wistake in the description of any person, thing, or property referred to in the award;
(b) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(c) the award is imperfect in a matter of form not affecting the merits of the controversy.
(2) If the application is granted, the court shall
modify and correct the award so as to effect its intent and shall confirm the award as modified and corrected. Otherwise; the court shall confirm the award as made.
(3) An applitation to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEY SEGLIDNA Section 17. Judgment on award -- costs. (I) Upon the granting of an order confirming. modifying, or correcting on award, judgaent shall be entered in conformity therewith and be enforced as any other judgaent. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.
(2) The judgment may be docketed as if rendered in an action.

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

NEN SECLION: Section 19. Jurisdiction of district court. The making of an agreement described in [section 4]
$-10-17 / 2$
providing for arbitration in this state confers jurisdiction
on the district court to enforce the agreement under
[sections 1 through 21] and to enter judgment on an award
thereunder.
NEH SECLIQNe Section 20. venue An initial
application shall be made to the court of the county in
which the agreement provides the arbitration hearing shall
be theld or, if the hearing has been held, in the county in
which it was held. Otherwiseq the application shall be made
in the county where the adverse party resides or has a place
of business or if he has no residence or place of business
in this state, to the court of any county. All subsequent
applications shall be made to the court hearing the initial
application unless the court otherwise directs.
NEH SECTION Section 21. Appealse (1) An appeal may
be taken from:
(a) an order denying an application to compel
arbitration made under [section 5];
(b) an order granting an application to stay
arbitration made under [subsection (2) of section 5];
(c) an order confirming or denying confirmation of an
award;
(d) an order modifying or correcting an award;
(e) an order vacating an award without directing a
rehearing; or
(f) a judgment entered pursuant to the provisions of [sections 1 through 21].
(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 27-1-412, MCA, is amended to read:
-27-1-4i2. abligations which cannot be specifically enforcede The following obligations cannot be specifically enf.orced:
(1) an obligation to render personal service or to employ another therein;
(2) an agreement to marry or 1 ive with another:

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t4tc3) an agreement to perform an act which the party has not power to perform lawfully when required to do so;
t5441 an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or
fotli51 an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 23. Section 28-2-708, MCA, is amended to read:
m28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any
party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. Ihis_section does not affect the yalidity_of_an_agreement_enforceable_under_[sections_1 through_21]a"

Section 24. Section 71-3-801, MCA* is amended to read:
"71-3-801. Who may have lien - amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be clained by the owner of sald grain for the reasonable value of such services if same are performed by hime Liens on grain and other crops shall be charged for at the prevalling price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.
(2) If the prevailing price for threshing, harvesting. or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other


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provisions of ehapter-5%-7ie7e-27 [sections_1_through_21]."
    Section 25. Application not retroactive. This act
applies oniy to agreements made subsequent to the taking
effect of this act.
Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remaln in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid, applications.
Section 27. Codification instruction. Sections 1 through 21 shall be codified as an integral part of titie 27, chapter 5, and all references to Title 27, chapter 5 , include sections 1 through 21.
Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.
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## -End-

HB $7 / 3$


A BILL FOR AN ACT ENTITLED: WAN ACT TO ADOPT THE UNIFORM ARBITRATION ACT AND TO CONFORM DTHER STATUTDRY PROVISIONS THERETO; AMENDING SECTIONS 27-1-412, 28-2-708; ANO 71-3-801, MCA: AND REPEALING SECJIONS 27-5-101 THROUGH 27-5-105. 27-5-201 THROUGH 27-5-203, ANO 27-5~301 THROUGH 27-5-304. MCA. ${ }^{*}$
be if enacted by the legislature of the state of hontana:
HEH SEFILON Section l. Short title. [Sections 1 through 21] may be cited as the mifform Arbitration Act".

NEH_SECIIONe 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.

NEH SECIIONa 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.

NEL SECIIONE Section 4. Yalidity of arbitration agreement. A written agreement to submit an existing controversy to arbitration or a provision in a written
contract to submit to arbitration any controversy thereafter arlsing between the parties is validp enforceablep and irrevocable except upon such grounds as exist at law or in equity for the revocation of a contract.

MEH_SEGILOA Section 5. Proceedings to compel or stay arbitration. (l) 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) Dn application, the district court may stay an arbitration proceeding comenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide disputer 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 arbitration.
(3) If an issue referable to arbitration under the alleged agreement is involyed in an action or proceeding pending in a court having jurisdiction to hear applications
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under subsection (1); the application shali be made therein. Otherwise and subject to [section 20], the application may be made in any court of competent jurisdiction.
(4) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.
(5) An order for arbitration may not be refused on the ground that the clalm in issue lacks merit or good faith or because no fault or grounds for the cłaim sought to be arbitrated have been shown.

MEH SECLIONE Section 6. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method falls or for any reason cannot be followedy or an arbitrator appointed fails or is unable to act and his successor has not been duly appointed. the district courti on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

NEM_SEGIIOHa Section 7. Hajority action by

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arbitrators. The powers of the arbitrators may be exercised
by a majority unless othermise provided by the agreement or
by [sections l through 21].
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NEH_SECLIONE Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:
(1) The arbitrators shall appoint atime and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not Tess than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and; on request of a party and for good cause or upon their own motiong may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators way hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The district court on appication may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
(2) The parties are entitled to be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.
(3) The hearing shall be conducted by all the arbitrators, but a majority may determine any question and

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render a final awarde If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.
HEH SECILIONI Section 9. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21 I. A waiver thereof prior to the proceeding or hearing is ineffective.
MEH_SEGIIONe Section 10. Witnesses, subpoenas, and depositionse (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books; records, documents, and other evidence and may administer oaths. Subpoenas so issued shalf be served and. upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.
(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be takeng in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
(3) All provisions of law compelling a person under
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subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21 ].
(4) Fees for attendance as a witness shall be the same as for a witness in the district court.

MEM_SEGIIONe Section 11. Awarde (1) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by registered or certifled mall or as provided in the agreement.
(2) An award shall be made within the time fixed therefor by the agreement or, if no time is so fixed, within such time as the district court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party walves the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to hime

NEM SECILOMs Section 12. Change of award by arbitratorse on the application of a party or, if an application to the court is pending under [section 14 . 15 , or 161, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subsections (1)(a) and (1)(c) of [section 16] or for the purpose of clarifying the award. The application shall be
made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of [sections 14, 15, and 16].

NEH_SEGLION Section 13. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators" expenses and fees; together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

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

NEE SECILONE Section 15. Vacating an awarde (1) Upon the application of a party, the district court shall vacate an award whenever:
(a) the award was procured by corruption, frawd. or other undue means;
(b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the

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arbitrators or misconduct prejudicing the rights of any
party;
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            (c) the arbitrators exceeded their powers;
            (d) the arbitrators refused to postpone the hearing
    upon sufficient cause being shown therefor or refused to
hear evidence waterial to the controversy or otherwise so
conducted the hearing, contrary to the provisions of
[section 8], as to prejudice sutstantially the rights of a
party; or
(e) there was no arbitration agreement and the issue was not adversefy determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.
(2) The fact that the relief was such that it could not or would not be granted by a court of 1 aw or equity is not ground for vacating or refusing to confirm the awarde
(3) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant except that, if it is predicated upon corruption, fraud, or other undue means, it shall be made within 90 days after such grounds are known or should have been known.
(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection,
by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in (c) or (d) of subsection (1), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order for rehearing.
(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award

NEH SEELLON Section 16. Modification or correction of award by court. (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award whenever:
(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
(b) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(c) the award is imperfect in a matter of form not affecting the merits of the controversy.
(2) If the application is granted, the court shall
modify and correct the award so as to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.
(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEH_SECIION Section 17. Judgment on award -- costs (1) Upon the granting of an order confirming, modifying, or correcting an award, judgment shall be entered in conformity therewith and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.
(2) The judgment may be docketed as if rendered in an action.

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

NEH_SECTION: Section 19. Jurisdiction of district court. The making of an agreement described in [section 4]

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providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under [sections 1 through 22] and to enter judgment on an award thereunder.
MEH SECEIONe Section 20. Venue. An initial application shall be made to the court of the country in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application shall be made In the county where the adverse party resides or has a piace of business or, if he has no residence or place of business In this state, to the court of any county. All subsequent applications shall be sade to the court hearing the inftial application unless the court otherwise directs.
NEHSECIION. Section 21. Appeals. (1) An appeal may be taken from:
(a) an order denying an application to compel arbitration made under [section 5];
(b) an order granting an application to stay arbitration made under [subsection (2) of section 5];
(c) an order confirming or denying confirmation of an award;
(d) an order modifying or correcting an awardi
(e) an order vacating an award without directing a rehearing; or
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(f) a judgment entered pursuant to the provisions of [sections 1 through 21].
(2) The appeal shall be taken in the wanner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 27-1-412, $M C A$, is amended to read:
m27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:
(1) an obligation to render personal service or to employ another therein;
(2) an agreement to marry or live with another;
t3y--an---agreement---to---submtt---t---eontroversy--te arbrtrationt
+4+134 an agreement to perform an act which the party has not power to perform lawfully when required to do so;
t5+441 an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or
t $6+15$ an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 23. Section 28-2-708, MCA, is amended to read:
m28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any
party thereto is restricted from enforcing his rights under
the contract by the usual proceedings in the ordinary
tribunals or which limits the time within which he may thus
enforce his rights is void. Ihis_section_dees_notaffect_the
yalidity_of_an_agreement_enforceable_under___rections_1
through_21]."
Section 24. Section $71-3-801, \mathrm{MCA}$, is amended to read:
"71-3-801. Who may have lien - amounte (1) A1)
threshermen or swathers owning or operating threshing or
swathing machines and all owners of combine harvesters and
threshers shall have a lien upon the grain and other crops
swathed or threshed by sald threshing or swathing machine or
cut and threshed by said combine harvester and thresher for
and on account of the services rendered and the labor
performed by them on said grain and crops and which lien way
be claimed by the owner of said grain for the reasonable
value of such services if same are performed by hime Liens
on grain and other crops shall be charged for at the
prevalling price for that particular locality in which such
grain or other crop is threshed, harvested, or combined,
provided notices are given and lien is filed within the time
provided by this part.
(2) If the prevalling price for threshing, harvesting,
or combining grain or other crop is disputed by the
thresherman or swather and the owner of the grain or other
> crop, the matter may be submitted to arbitration under the provisions of ehepter-57-7itte-z7 [sections_1_through_21]." Section 25. Application not retroactive. This act applies only to agreements made subsequent to the taking effect of this act.

> Section 26. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications; the part remains in effect In all valid applications that are severable from the invalid applications.

> Section 27. Codification instruction. Sections 1 through 21 shall be codified as an integral part of title 27, chapter 5, and all references to Title 27, chapter 5, Include sections 1 through 21.

> Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, $H C A$, are repealed.

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

MEM SECTIONi Section 5. Proceedings to compel or stay arbitration. (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 comenced or threatened on a showing that there is no agreement to arbltrate. Such an issue, when in substantial and bona fide disputes 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 arbitration.
(3) If an fissue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications
under subsection (1): the application shall be made therein. Otherwise and subject to [section 20], the application my be made in any court of competent furisdiction.
(4) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or. if the issue is severable, the stay way be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.
(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

NEH-SECLIOLE Section 6. Appointment of arbitratorse If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason camot be followed, or an arbitrator appointed fails or is unable to act and bis successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbityator so appointed has all the powers of one specifically named in the agreement.

NEH SEGLIONE Section 7. Majority action by
arbitrators. The powers of the arbitrators way be exercised by a majority unless otherwise provided by the agreement or by [sections 1 through 21].

NEH SECLIOME Section 8. Hearing. Unless othermise provided by the agreement. the following apply:
(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motiong may postpone the hearing to a time not later than the date fixed by the agreement for aking the award unless the parties consent to a later date. The arbitrators ay hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptiy with the hearing and determination of the controversy-
(2) The parties are entitled to be heardy present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.
(3) The hearing shall be conducted by all the arbitrators, but a majority may determine any question and
render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

HEH_SECLIONE Section 9. Representation by attorney. A party has the right to be represented by an attorney at any proceeding or hearing under [sections 1 through 21]. A waiver thereof prior to the proceeding or hearing is Ineffective.

NEH_SECLIDNE Section 10. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books. records, documents, and other evidence and may administer oaths. Subpoenas so issued shall be served and\% upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.
(2) On the application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
(3) All provisions of law compelling a person under
subpoena to testify afe applicable to persons subpoenaed under [sections 1 through 21].
(4) Fees for attendance as a witness shall be the same as for a witness in the district court.

SEH SECIIQ*ig Section 11. Award. (1) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by registered or certified mall or as provided in the agreement.
(2) An award shall be made within the time fixed therefor by the agreenent or, if no time is so fixed, within such time as the district court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEW SECIIOHe section 12. change of award by arbitrators. On the application of a party or, if an application to the court is pending under [section 14. 15, or 25], on submission to the arbitrators by the court under such conditions as the court way order, the arbitrators may modify or correct the award upon the grounds stated in subsections (1)(a) and (1)(c) of [section 16] or for the purpose of clarifying the awarde The application shall be

[^0]arbitrators or misconduct prejudicing the rights of any party:
(c) the arbitrators exceeded their powers;
(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8 ], as to prejudice substantially the rights of a party; or
(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.
(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
(3) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant except that, if it is predicated upon corfuption: fraudy or other undue means, it shall be made within 90 days after such grounds are known or should have been known.
(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection.
by the court in accordance with [section 6] or, if the award is vacated on grounds set forth in (c) or (d) of subsection (1), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with [section 6]. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order for rehearing-
(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirt the award.

NELi_SECLIOBE Section 16. Modification or correction of award by courte (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award whenever
(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
(b) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(c) the award is imperfect in a matter of form not affecting the merits of the controversy.
(2) If the application is granted, the court shall
modify and correct the award so as to effect its intent and shall confirm the award as modified and corrected. Dtherwise, the court shall confirm the award as aade.
(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEH SECIIONe Section 17. Judgment on award -- costs. (1) Upon the granting of an order confirming, wodifying, or correcting an award, judgment shall be entered in conformity therewith and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.
(2) The judgment way be docketed as if rendered in an action.

NEN SECIIOHe Section 18. Applications to court -- how made. Except as otherwise provided, an application to the couft under [sections 1 through 21] shalf be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the graking and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

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

HEN SECIIDAE Section 20. Venue. An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been teid, In the county in which it was held. Otherwise, the application shall be made In the county where the adverse party resides or has a place of business orf if he has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court othermise directs.

HEH SECIIDNa Section 21. Appeals. (1) An appeal may be taken from:
(a) an order denying an application to compel arbitration made under [section 5];
(b) an order granting an application to stay arbitration made under [subsection (2) of section 5];
(c) an order confirming or denying confirmation of an award:
(d) an order modifying or correcting an award;
(e) an order vacating an award without directing a rehearing; or
(f) a judgment entered pursuant to the provisions of [sections 1 through 21].
(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

Section 22. Section 27-1-412, McA, is amended to read:
w27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:
(1) an obligation to render personal service or to employ another therein;
(2) an agreement to mariy or 1 ive with another;


## arbitrationt

+4i13) an agreement to perform an act which the party has not power to perform lawfully when required to do so;
t5+141 an agreement to procure the act or consent of the spouse of the contracting party or of any other third person; or
+6+151 an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.*

Section 23. Section 28-2-708, MCA, is amended to read:
v28-2-708. Restraints upon legal proceedings void. Every stipulation or condition in a contract by which any
party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which $1 i \operatorname{mits}$ the time within which he may thus enforce his rights is void. Ihis section does not_affect the yalidity_of_an_agreenent_enforceable_uader_[sections_1 through_21]a"

Section 24. Section 71-3-801, MCA, is amended to read:
*71-3-801. Who may have lien -- amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine horvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by sald threshing of swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. wens on grain and other crops shall be chafged for at the prevalling price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filedwithin the time provided by this part.
(2) If the prevalling price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the ouner of the grain or other

-End-

## HOUSE BILL NO. 713

INTRODUCED BY FABREGA, GUDDOVER

## A BILL FOR AN ACI ENTITLEO: "AN ACT TG ADOPT IHE UNIfORM

 ARBITRATIDN ACT AND TO CONFORM OTHER STATUTORY PROVISIONS THERETO; MMENDING SECTIONS 27-1-412. 28-2-708, AND 71-3-801. MCA; ANO REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THRUUGH 27-5-304, MCA."be it enacted by the legislature of the state jf montana:
NEW SECTION. Section le Short title. [sections 1 through 211 may be cited as the "Uniform Arbitration Act".

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

NEW SECILON. Section 3. Application to labor agreements. The provisions of [sections 1 through 2l] do not apply to any arbitration agreement between employers and employees and do not limit any rights that they may have as provided by lawe

NEW SECIIDN= Section 4. validity of arbitration agreement. A written agreement to submit an existing controversy to arbitration or a provision in a writiten
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 SECIION. Section 5. Proceedings to compel or stay arbitration. (l) 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 aroitrate, 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 de 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 arbitration.
(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications
under subsection (l), the application shall be made therein. atherwise and subject to [section 20], the application may be made in any court of competent jurisdiction.
(4) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or praceeding, the order for arbitration shall include such star.
(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

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

NEE_SECIION: Section 7. Majority detion by
arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or Dy [sections 1 through 2l]-

NEW SECTION. Section 8. Hearing. Unless otherwise provided by the agreement, the following apply:
(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
(2) fhe parties are entitled to be neardr present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.
(3) The hearing shall be conducted by all the arbitrators, but a majority may determine any question and
render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

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

NEW SECTION: Section 10. Witnesses, subpoenas, and depositions. (1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued shall be served and upon application to the district court by a party or the arbitrator 5 , enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.
(2) On the application of a party and for use as evidence, the arioitrators may permit a deposition to be taken, in the manner and upon the terms designated oy the arbitrators, of a witness who camot be subpoenaed or is unable to attend the hearing.
(3) All provisions of law compelling a person under
subpoena to testify are applicable to persons subpoenaed under [sections 1 through 21].
(4) Fees for attendance as witness shall be the same as for a witness in the district court.

NEW SECTION. Section 11. Award. (1) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by registered or certified mait or as provided in the agreement.
(2) An award shall be made within the time fixed therefor by the agreement or. if no time is so fixed, within such time as the district court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

NEW SECIION. Section 12. Change of award by arbitrators. On the application of a party or, if an application to the court is pending under [section 14,15 , or 161, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subsections (1)(a) and (1)(c) of [section 16] or for the purpose of clarifying the award. The application shall be

[^1]arbitrators or misconduct prejudicing the rights of any party;
(c) the arbitrators exceeded their powers;
(d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of [section 8], as to prejudice substantially the rights of a party; or
(e) there was no arbitration agreement and the issue was not adversely determined in proceedings under [section 5] and the party did not participate in the arbitration hearing without raising the objection.
(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the awarde
(3) An application under this section shall be made witnin 90 days after delivery of a copy of the awara to the applicant except that, if it is predicated upon corruption. fraud, or other undue means, it shall be made within 90 days after such grounds are known or should have been known.
(4) In vacating the award on grounds other than those stated in subsection (ll(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection,

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by the court in accordance with [section 6] or, if the award
is vacated on grounds set forth in (c) or (d) of subsection
(1), the court may order a rehearing before the arbitrators
who made the award or their successors appointed in
accordance with (section 6). The time within which the
aqreement requires the award to be made is applicable to the
rehearing and commences from the date of the order for
rehearing.
(5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.
NEW_SEGIIGN. Section 16. Modification or correction of award by court. (l) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award whenever:
(a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the awardi
(D) the arbitrators have awarded upon a matter not submitted to tnem and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
(C) the award is imperfect in a matter of form not affecting the merits of the controversy.
(2) If the application is granted, the court shall
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modify and correct the award so as to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.
(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

NEW SECIION: Section 17. Judgment on award -- costs. (1) Upon the granting of an order confirmingy modifyingy or carrecting an award, judgment shall be entered in conformity therewith and be enforced as any other judgment. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.
(2) The judgment may be docketed as if rendered in an action.

NEW_SECIIONe Section 18. Applications to court -- how made. Except as otherwise provided, an application to the court under [sections 1 through 2l] shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

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

NEH SECTION. Section 20. venue. An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held. in the county in which it was held. Otherwise, the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. all subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

NEW_SECIION. Section 21. Appeals. (1) An appeal mar be taken from:
(a) an order denying an application to compel arbitration made under [section 5]i
(b) an order granting an application to stay arbitration made under [subsection (2) of section 5];
(c) an order confirming or denying confirmation of an award:
(d) an order modifying of correcting an award;
(e) an order vacating an award without directing a rehearing; or

[^2]party thereto is restricted from enforcing his rights under
the contract by the usual proceedings in the ordinary
tribunals or which limits the time within which he may thus
enforce tis rights is void. Ihis section_does_not affect the
validity of an agreement enforceable under [sections 1
through 211e"
Section 24. Section 71-3-801, MCA, is amended to read:
*71-3-801. Who may have lien -- amounte (1) All
threshermen or swathers owning or operating threshing or
swathing machines and all owners of combine harvesters and
threshers shall have a lien upon the grain and other crops
swathed or threshed by said threshing or swathing machine or
cut and threshed by said combine harvester and thresher for
and on account of the services rendered and the labor
performed by them on said grain and crops and which jien may
be claimed by the owner of said grain for the reasonable
value of such services if same are performed by him. Liens
on grain and other crops shall be charged for at the
prevailing price for that particular lacality in which such
grain or other crop is threshed. harvested, or combined,
provided notices are given and lien is filed within the time
provided by this part.
(2) If the prevailing price for threshing, harvesting,
or combining grain or other crop is disputed by the
thresherman or swather and the owner of the grain or other
crop, the matter may be submitted to arbitration under the provisions of emapter-5v-fitte-27 [sections 1 through_21]."

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

Section 26. Severability. If a part of this act is invalidi all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalidin one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

Section 28. Repealer. Sections 27-5-101 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301 through 27-5-304, MCA, are repealed.
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## HOUSE BILL NO. 713

INTRODUCEO BY FABREGA * GOOOOVER
a bill for an act entitled: man act to agepq--fhe--bafferm



 MEA: ALLOW BINDING ARBITRAIION AGREEMENTS RELAIING_IG CERIAIN MATIERS ON CONSTRUCTION AND LEASING AGREEMENTS: AMENDING SECTIONS 27-1-412 AND 28-2-7082_MCA ${ }^{\prime \prime}$
be it enacted by the legislature of the state of maniana:



NEH-SEEFFENz-Section-Zz--Hniformity-of-interpretationv
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agreementr---A--mpitten--bgreement--to-strbitt--on--existing controversy--to--arbitration--op--b-provision--in-s-written contract-to-submit-te-arbitration-any-controversy-thereafter arising-between-the-parties--is--votidy--enforeeabter--ond itrevocebte--exeept-upon-sueh-graunds-as-exist-at-Haw-or-in equtty-for-the-revoention-of-a-eantractz

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t4t－An－action－or－proeeeding－invotving－an－issue－subject to－－arbitpation－－smatt－be－stayed－if－an－order－for－arbitration or－an－apptiention－therefor－has－been－mede－under－this－－seetion ory－－if－the－issue－is－severnbter－the－stoy－woy－be－with－respect thereto－onty－when－the－apptieation－is－mode－in－sweh－action－or proceedingy－the－order－for－－arbitrotion－－shatt－－inetude－－stach stay＝

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Section 1. Section 27-1-412, MCA, is amended to read:
-27-1-412. Obligations which cannot be specifically
enforced. The following obligations cannot be specifically
enforced:
(1) an obligation to render personal service or to
employ another therein;
(2) an agreement to marry or live with another;
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(B) HGHEVER: A.-HRITIEN_AGREEMENT_IG_SUBMIT_TG ARSI TRAIION ANY EXISIING OR_EUIURE CONTROVERSY ARISING OUV QE-A_MRIIIEN_CONIRACI FOR CONSTRUCTION DR_WRITIEN COMMERCIAI LEASING AGREEMENI WHEREIN IHE_LEASERENTAL_EXCEEDS SIO:OOO IN_ANY_1 YEAR_IS_YALIO._ENFORCEABLE:AND_IRREVOCABLE. _SAVE UPON SUCH GROUNDS_AS_EXISI AI LAN QR_IN EQUIIY FQR IHE REVOCATION DF ANY CONTRACT:_BUI_SUBSECIION_13LIBL_OQES_NOT APPLY TOPERSONAL INJURY OR TORI MATTERS: EMPLOYER-EMPLOYEE DISPUTES. QR ANY INSURED OR BENEFICIARY UNOER ANY INSURANCE POLICY OR ANNUITY CONIRACI.

ICL_ARBITRAIION OF ANY CONTROVERSY_UNDER_IHIS SUBSECIION SHALL BE CONDUCIED IN MONTANA AND ARBITRAIIUN SHALL__RE_ENFORCEABLE_ONLY_IN_THE_COURTS OE MONTANA ANO IN THE MANNER SET FORTH IN TITLE 27, CHAPTER 5.MCA.
$t 4+t 3 \pm 14$ ) an aqreement to perform an act which the party has not power to perform lawfully when required to do 50;
f5tftilisl an agreement to procure the act or consent of the spouse of the contracting party or of any other third
person: or
fottstibl an agreement the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 2. Section 28-2-70B, MCA, is amended to read:
"28-2-708. Restraints upon legal proceedings vaid. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. This section does not affect the Yalidity _of an_agreement enforceable_under [sections-t


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mit-3-60tu--Who-may-hove--tien------amountv---tit--Att threshermen--or--swathers--owning-or-opersting-threshing-or swathing-machines-and-ott-owners-of-combthe--harvesters--ond threshers--shatt--have-a-tien-upon-the-grain-an-other-ereps swathed-or-threshed-by-said-threshing-or-swathing-machine-or cut-and-threshed-by-statd-combine-morvester-and-thresher--for and--on--aecount--of--the--services--rendered-and-the-tabor performed-by-them-on-said-grain-and-erops-and-whieh-tien-may be-ctaimed-by-the-owner-of-3atd-gratn--for--the--reasonabte value--of--such-services-if-same-are-performed-by-himw-tiens on-grain-and--other--erops--shatt--be--charged--for--at--the

[^3]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 SECTIONS27－1－412 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：＂arbitæaもiө日テ＂
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＂2l＂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．

Proposed amendments to House Bill 713, third reading copy, as follows:
'at 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: "axbittatient"
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 $l$ 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."


[^0]:    made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating he must serve his objections thereto, If any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of [sections 14, 15, and 16].

    HEH_SECIIOHE Section 13. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators" expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

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

    NEY SECIIOAR Section 15. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award whenever:
    (a) the award was procured by corruption, fraud, or other undue means:
    (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the

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

    NEWSSESILON. Section 13. fees and expenses of arbitration. Unless otherwise provided inthe agreement to arbitrate, the arbitrators" expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

    NEW SECIIONe Section 14 . Confirmation of award by court. Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in [sections 1 tnrough 2l] grounds are urged for vacating. modifying, or correcting the award, in which case the court shall proceed as provided in [sections 15 and 16].

    NEH_SECIIUN: Section 15. Vacating an award. (l) Upon the application of a party, the district court shall vacate an award whenever:
    (a) the award was procured by corruption, fraud, or other undue means;
    (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the

[^2]:    (f) a judgment entered pursuant to the provisions of [sections 1 through 21].
    (2) The appeal shall be taken in the manner and to the same extent as from orders or juagments in a civil action in district court.

    Section 22. Section 27-1-412. MCA, is amended to read:
    M27-1-412. Obligations which cannot be specifically enforced. The following obligations cannot be specifically enforced:
    (1) an obligation to render personal service or to employ another therein;
    (2) an agreement to marry or live with another;
    t3t--an--- agreement---to---swomit---o---controversy--to orbitrationt
    t4t13) an agreement to perform an act which the party has not power to perform lawfully when required to do so;
    f5tifl an agreement to procure the act or consent of the spouse of the contracting party or of any other chird person: or
    totisi an agreement the terms of which are not
    sufficiently certain to make the precise act which is to be done clearly ascertainable."

    Section 23. Section 28-2-708, MCA, is afmended to read:
    "2B-2-708. Restraints upon legal proceedings void. Every stiputation or condition in contract by which any (
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    tモサ－－Y4－the－prevorting－prieefor－threshing＊－harvestingy or－－combining－grain－－or－－other－－erop－is－disputed－by－－the thresherman－or－swsther－and－the－owner－of－the－grain－－or－other eropr－the－mat ter－nay－be－stbmitted－to－arbitration－under－the
    

    Section－25w－－App＋ication－not－－retroctiven－－－Inis－－bet applies－onty－to－agreements－mode－－subsequent－－to－－the－－toking effect－of－tinis－bet．

    Section－Z6：－－severabitity－－－iff－a－－part－of－this－act－its invotidv－att－vatid－parts－thet－are－severabte－from－the－invotid part－rembin－in－effectr－－ff－a－part－of－this－aet－is－invatid－－in one－－or－more－of－its－opptieetionsy－the－part－remains－in－effect in－ett－－vafid－－apptieations－－that－－are－－severabte－－frem－－the tnvatid－apptieations．

    Seetion－z7w－－Eadification－－－instruetionw－－－－Sections－－t through－Zस－shott－be－cedified－as－artintegrat－－pert－of－ititie 27v－－emopeer－－5v－－and－ot7－references－to－Fitte－z7v－emapter－5\％ inetude－seetrons－t－through－ztu

    Section－28．－－Repeaterv－－－－Sections－－－z7－5－t日t－－－through
     z7－5－304，－MEA－are－repeated．
    －15－
    －End－
    HB 713

