

House Bill 778

In The House

February 16, 1981

Introduced and referred
to Committee on Labor
and Industry.

February 17, 1981

Rereferred to Committee
on Business and Industry.

April 23, 1981

Died in Committee.

1 House BILL NO. 778
 2 INTRODUCED BY Hayden Edwards
 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; PROVIDING FOR APPLICABILITY TO LABOR AGREEMENTS;
 7 AMENDING SECTIONS 27-1-412, 28-2-708, AND 71-3-801, MCA; AND
 8 REPEALING SECTIONS 27-5-101 THROUGH 27-5-105, 27-5-201
 9 THROUGH 27-5-203, AND 27-5-301 THROUGH 27-5-304, MCA."

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

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

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

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

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 that issue 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 appointed arbitrator 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 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 that he must serve his
 4 objections thereto, if any, within 10 days from the notice.
 5 The award so modified or corrected is subject to the
 6 provisions of [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 if:

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 grounds 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 on 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 if:

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 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-