

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

IN THE SENATE

January 15, 1985	Introduced and referred to Committee on Judiciary.
February 6, 1985	Committee recommend bill do pass as amended. Report adopted.
February 7, 1985	Bill printed and placed on members' desks.
February 9, 1985	Second reading, do pass as amended.
February 11, 1985	Correctly engrossed.
February 12, 1985	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 13, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1985	Second reading, concurred in.
March 18, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

March 18, 1985	Received from House.
March 21, 1985	Second reading, pass consideration.
March 22, 1985	Second reading, amendments not concurred in. Ayes, 27; Noes, 17. On motion, Conference Committee requested and appointed.
April 11, 1985	Conference Committee dissolved. On motion, Free Conference Committee requested and appointed.
April 22, 1985	Free Conference Committee reported.
April 23, 1985	Second reading, Free Conference Committee report adopted. Third reading, Free Conference Committee report adopted. Free Conference Committee report adopted by House.
April 24, 1985	Sent to enrolling. Reported correctly enrolled.

1 *Senate* BILL NO. *110*
 2 INTRODUCED BY *Mazuch, Kaiter*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
 5 ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS
 6 THERETO; PROVIDING FOR APPLICABILITY TO LABOR AGREEMENTS;
 7 AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708, AND
 8 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH
 9 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH
 10 27-5-304, MCA."
 11

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

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

15 NEW SECTION. Section 2. Uniformity of interpretation.
 16 [Sections 1 through 21] must be construed to effectuate
 17 [their] general purpose to make uniform the law of those
 18 states that enact [them].

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

24 NEW SECTION. Section 4. Validity of arbitration
 25 agreement. A written agreement to submit an existing

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

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

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

24 (3) If an issue referable to arbitration under the
 25 alleged agreement is involved in an action or proceeding



1 pending in a court having jurisdiction to hear applications
2 under subsection (1), the application must be made in that
3 court. Otherwise, and subject to [section 20], the
4 application may be made in any court of competent
5 jurisdiction.

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

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

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

1 the agreement.

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

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

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

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

25 (3) The hearing must be conducted by all the

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

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

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

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

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

4 (4) Fees for attendance as a witness are the same as
 5 for a witness in the district court.

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

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

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

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

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

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

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

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

25 (b) there was evident partiality by an arbitrator

1 appointed as a neutral or corruption in any of the
 2 arbitrators or misconduct prejudicing the rights of any
 3 party;

4 (c) the arbitrators exceeded their powers;

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

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

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

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

23 (4) In vacating the award on grounds other than those
 24 stated in subsection (1)(e), the court may order a rehearing
 25 before new arbitrators chosen as provided in the agreement

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

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

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

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

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

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

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

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

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

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

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

25 NEW SECTION. Section 19. Jurisdiction of district

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

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

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

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

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

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

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

25 (e) an order vacating an award without directing a

1 rehearing; or

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

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

7 Section 22. Section 2-18-621, MCA, is amended to read:

8 "2-18-621. Unlawful termination. It shall be unlawful
 9 for an employer to terminate or separate an employee from
 10 his employment in an attempt to circumvent the provisions of
 11 2-18-611, 2-18-612, and 2-18-614. Should a question arise
 12 under this section, it shall be submitted to arbitration as
 13 provided in ~~Title-27, chapter-5~~ [sections 1 through 21] as
 14 if an agreement described in [section 4] is in effect,
 15 unless there is a collective bargaining agreement to the
 16 contrary applicable."

17 Section 23. Section 27-1-412, MCA, is amended to read:

18 "27-1-412. Obligations which cannot be specifically
 19 enforced. The following obligations cannot be specifically
 20 enforced:

21 (1) an obligation to render personal service or to
 22 employ another therein;

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

24 ~~{3}--an---agreement---to---submit---a---controversy---to~~
 25 ~~arbitration;~~

1 †4†(3) an agreement to perform an act which the party
2 has not power to perform lawfully when required to do so;

3 †5†(4) an agreement to procure the act or consent of
4 the spouse of the contracting party or of any other third
5 person; or

6 †6†(5) an agreement the terms of which are not
7 sufficiently certain to make the precise act which is to be
8 done clearly ascertainable."

9 Section 24. Section 28-2-708, MCA, is amended to read:

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

18 Section 25. Section 71-3-801, MCA, is amended to read:

19 "71-3-801. Who may have lien -- amount. (1) All
20 threshermen or swathers owning or operating threshing or
21 swathing machines and all owners of combine harvesters and
22 threshers shall have a lien upon the grain and other crops
23 swathed or threshed by said threshing or swathing machine or
24 cut and threshed by said combine harvester and thresher for
25 and on account of the services rendered and the labor

1 performed by them on said grain and crops and which lien may
2 be claimed by the owner of said grain for the reasonable
3 value of such services if same are performed by him. Liens
4 on grain and other crops shall be charged for at the
5 prevailing price for that particular locality in which such
6 grain or other crop is threshed, harvested, or combined,
7 provided notices are given and lien is filed within the time
8 provided by this part.

9 (2) If the prevailing price for threshing, harvesting,
10 or combining grain or other crop is disputed by the
11 thresherman or swather and the owner of the grain or other
12 crop, the matter may be submitted to arbitration under the
13 provisions of ~~chapter-57-Title-27~~ [sections 1 through 21]."

14 NEW SECTION. Section 26. Application not retroactive.
15 This act applies only to agreements made subsequent to
16 October 1, 1985.

17 NEW SECTION. Section 27. Severability. If a part of
18 this act is invalid, all valid parts that are severable from
19 the invalid part remain in effect. If a part of this act is
20 invalid in one or more of its applications, the part remains
21 in effect in all valid applications that are severable from
22 the invalid applications.

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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS
THERE TO; PROVIDING FOR APPLICABILITY TO LABOR CERTAIN
AGREEMENTS; AMENDING SECTIONS 2-18-621, 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:

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

NEW SECTION. Section 2. Uniformity of interpretation.
[Sections 1 through 21] must be construed to effectuate
[their] general purpose to make uniform the law of those
states that enact [them].

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

NEW SECTION. Section 4. Validity of arbitration
agreement -- EXCEPTIONS. (1) A written agreement to submit

~~an existing controversy to arbitration or a provision in a
written contract to submit to arbitration any controversy
arising between the parties after the contract is made is
valid, AND enforceable, and irrevocable except upon such
grounds as exist at law or in equity for the revocation of a
contract.~~

(2) EXCEPT AS PROVIDED IN SUBSECTION (3), A WRITTEN
AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING
BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND
ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN
EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION
DOES NOT APPLY TO:

(A) CLAIMS ARISING OUT OF PERSONAL INJURY, BASED ON
CONTRACT, OR TORT;

(B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE
POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS
BETWEEN INSURANCE COMPANIES;

(C) ANY AGREEMENT WHICH HAS NOT BEEN CONCLUDED UPON
THE ADVICE OF COUNSEL TO ALL PARTIES AS EVIDENCED BY
COUNSEL'S SIGNATURE THERETO;

(D) CLAIMS FOR WORKERS' COMPENSATION; AND

(E) ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND
EMPLOYEES OR THEIR RESPECTIVE REPRESENTATIVES UNLESS THE
AGREEMENT PROVIDES THAT [THIS ACT] APPLIES.

(3) THE PROHIBITIONS AND REQUIREMENTS OF SUBSECTION



1 (2) DO NOT APPLY TO OR AFFECT THE VALIDITY OF ARBITRATION
 2 AGREEMENTS UNDER A MEMBERSHIP CONTRACT AS DEFINED IN
 3 33-30-101(3) CONCERNING ONLY QUESTIONS OF MEDICAL NECESSITY
 4 OR WHETHER THE INJURY OR ILLNESS IS A PREEXISTING CONDITION.

5 (4) NOTICE THAT A CONTRACT IS SUBJECT TO ARBITRATION
 6 PURSUANT TO [THIS ACT] SHALL BE TYPED IN UNDERLINED CAPITAL
 7 LETTERS ON THE FIRST PAGE OF THE CONTRACT; AND UNLESS SUCH
 8 NOTICE IS DISPLAYED THEREON, THE CONTRACT MAY NOT BE SUBJECT
 9 TO ARBITRATION.

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

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

1 the opposing party, it shall order the parties to proceed to
 2 arbitration.

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

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

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

21 NEW SECTION. Section 6. Appointment of arbitrators.
 22 If the arbitration agreement provides a method of
 23 appointment of arbitrators, this method shall be followed.
 24 If no method is provided, the agreed method fails or for any
 25 reason cannot be followed, or an appointed arbitrator fails

1 or is unable to act and his successor has not been duly
2 appointed, the district court on application of a party
3 shall appoint one or more arbitrators. An arbitrator so
4 appointed has all the powers of one specifically named in
5 the agreement.

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

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

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

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5 arbitrators, but a majority may determine any question and
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7 arbitrator for any reason ceases to act, the remaining
8 arbitrator or arbitrators appointed to act as neutrals may
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11 NEW SECTION. Section 9. Representation by attorney.
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13 any proceeding or hearing under [sections 1 through 21]. A
14 waiver of this right prior to the proceeding or hearing is
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17 depositions. (1) The arbitrators may issue subpoenas for the
18 attendance of witnesses and the production of books,
19 records, documents, and other evidence and may administer
20 oaths. Subpoenas so issued must be served and, upon
21 application to the district court by a party or the
22 arbitrators, enforced in the manner provided by law for the
23 service and enforcement of subpoenas in a civil action in
24 district court.

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1 evidence, the arbitrators may permit a deposition to be
 2 taken, in the manner and upon the terms designated by the
 3 arbitrators, of a witness who cannot be subpoenaed or is
 4 unable to attend the hearing.

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3 other undue means;

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

8 (c) the arbitrators exceeded their powers;

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

15 (e) there was no arbitration agreement and the issue
16 was not adversely determined in proceedings under [section
17 5] and the party did not participate in the arbitration
18 hearing without raising the objection.

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

22 (3) An application under this section must be made
23 within 90 days after delivery of a copy of the award to the
24 applicant, except that if it is predicated upon corruption,
25 fraud, or other undue means, it must be made within 90 days

1 after such grounds are known or should have been known.

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

14 (5) If the application to vacate is denied and no
15 motion to modify or correct the award is pending, the court
16 shall confirm the award.

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

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

24 (b) the arbitrators awarded upon a matter not
25 submitted to them and the award may be corrected without

1 affecting the merits of the decision upon the issues
2 submitted; or

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

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

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

12 NEW SECTION. Section 17. Judgment on award -- costs.

13 (1) Upon the granting of an order confirming, modifying, or
14 correcting an award, judgment must be entered in conformity
15 with the order and be enforced as any other judgment. Costs
16 of the application and of the proceedings subsequent thereto
17 and disbursements may be awarded by the court.

18 (2) The judgment may be docketed as if rendered in an
19 action.

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

1 initial application for an order must be served in the
2 manner provided by law for the service of a summons in an
3 action.

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

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11 application must be made to the court of the county in which
12 the agreement provides the arbitration hearing must be held
13 or, if the hearing has been held, in the county in which it
14 was held. Otherwise, the application must be made in the
15 county where the adverse party resides or has a place of
16 business or, if he has no residence or place of business in
17 this state, to the court of any county. All subsequent
18 applications must be made to the court hearing the initial
19 application unless the court otherwise directs. NO AGREEMENT
20 CONCERNING VENUE INVOLVING A RESIDENT OF THIS STATE IS VALID
21 UNLESS THE AGREEMENT REQUIRES THAT ARBITRATION OCCUR WITHIN
22 THE STATE OF MONTANA. THIS REQUIREMENT MAY ONLY BE WAIVED
23 UPON THE ADVICE OF COUNSEL AS EVIDENCED BY COUNSEL'S
24 SIGNATURE THERETO.

25 NEW SECTION. Section 21. Appeals. (1) An appeal may

1 be taken from:

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

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

6 (c) an order confirming or denying confirmation of an
7 award;

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

9 (e) an order vacating an award without directing a
10 rehearing; or

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

13 (2) The appeal must be taken in the manner and to the
14 same extent as from orders or judgments in a civil action in
15 district court.

16 Section 22. Section 2-18-621, MCA, is amended to read:

17 "2-18-621. Unlawful termination. It shall be unlawful
18 for an employer to terminate or separate an employee from
19 his employment in an attempt to circumvent the provisions of
20 2-18-611, 2-18-612, and 2-18-614. Should a question arise
21 under this section, it shall be submitted to arbitration as
22 provided in ~~Title 27, Chapter 5~~ [sections 1 through 21] as
23 if an agreement described in [section 4] is in effect,
24 unless there is a collective bargaining agreement to the
25 contrary applicable."

1 Section 23. Section 27-1-412, MCA, is amended to read:

2 "27-1-412. Obligations which cannot be specifically
3 enforced. The following obligations cannot be specifically
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5 (1) an obligation to render personal service or to
6 employ another therein;

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

8 ~~(3) an agreement to submit a controversy to~~
9 ~~arbitration;~~

10 ~~(4)~~(3) an agreement to perform an act which the party
11 has not power to perform lawfully when required to do so;

12 ~~(5)~~(4) an agreement to procure the act or consent of
13 the spouse of the contracting party or of any other third
14 person; or

15 ~~(6)~~(5) an agreement the terms of which are not
16 sufficiently certain to make the precise act which is to be
17 done clearly ascertainable."

18 Section 24. Section 28-2-708, MCA, is amended to read:

19 "28-2-708. Restraints upon legal proceedings void.
20 Every stipulation or condition in a contract by which any
21 party thereto is restricted from enforcing his rights under
22 the contract by the usual proceedings in the ordinary
23 tribunals or which limits the time within which he may thus
24 enforce his rights is void. This section does not affect the
25 validity of an agreement enforceable under [sections 1

1 through 21]."

2 Section 25. Section 71-3-801, MCA, is amended to read:

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

18 (2) If the prevailing price for threshing, harvesting,
19 or combining grain or other crop is disputed by the
20 thresherman or swather and the owner of the grain or other
21 crop, the matter may be submitted to arbitration under the
22 provisions of ~~chapter-57-Title-27~~ sections 1 through 21]."

23 NEW SECTION. Section 26. Application not retroactive.
24 This act applies only to agreements made subsequent to
25 October 1, 1985.

1 NEW SECTION. Section 27. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

7 NEW SECTION. Section 28. Repealer. Sections 27-5-101
8 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301
9 through 27-5-304, MCA, are repealed.

-End-

1 SENATE BILL NO. 110

2 INTRODUCED BY MAZUREK, HALLIGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
5 ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS
6 THERETO; PROVIDING FOR APPLICABILITY TO LABOR CERTAIN
7 AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708,
8 AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH
9 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH
10 27-5-304, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13 NEW SECTION. Section 1. Short title. [Sections 1
14 through 21] may be cited as the "Uniform Arbitration Act".15 NEW SECTION. Section 2. Uniformity of interpretation.
16 [Sections 1 through 21] must be construed to effectuate
17 [their] general purpose to make uniform the law of those
18 states that enact [them].19 NEW SECTION. Section 3. Application to labor
20 agreements. [Sections 1 through 21] apply to arbitration
21 agreements between employers and employees or between their
22 respective representatives unless otherwise provided in the
23 agreement.24 NEW SECTION. Section 4. Validity of arbitration
25 agreement -- EXCEPTIONS. (1) A written agreement to submit

1 an existing controversy to arbitration ~~or a provision in a~~
2 ~~written contract to submit to arbitration any controversy~~
3 ~~arising between the parties after the contract is made~~ is
4 valid, AND enforceable, ~~and irrevocable~~ except upon such
5 grounds as exist at law or in equity for the revocation of a
6 contract.

7 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A WRITTEN
8 AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING
9 BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND
10 ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN
11 EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION
12 DOES NOT APPLY TO:13 (A) CLAIMS ARISING OUT OF PERSONAL INJURY, BASED ON
14 CONTRACT, OR TORT;15 (B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE
16 POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS
17 BETWEEN INSURANCE COMPANIES;18 (C) ANY AGREEMENT WHICH HAS NOT BEEN CONCLUDED UPON
19 THE ADVICE OF COUNSEL TO ALL PARTIES AS EVIDENCED BY
20 COUNSEL'S SIGNATURE THERETO;21 (D) CLAIMS FOR WORKERS' COMPENSATION; AND22 (E) ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND
23 EMPLOYEES OR THEIR RESPECTIVE REPRESENTATIVES UNLESS THE
24 AGREEMENT PROVIDES THAT [THIS ACT] APPLIES.25 (3) THE PROHIBITIONS AND REQUIREMENTS OF SUBSECTION

1 (2) DO NOT APPLY TO OR AFFECT THE VALIDITY OF ARBITRATION
 2 AGREEMENTS UNDER A MEMBERSHIP CONTRACT AS DEFINED IN
 3 33-30-101(3) CONCERNING ONLY QUESTIONS OF MEDICAL NECESSITY,
 4 EXPERIMENTAL TREATMENT, OR WHETHER THE INJURY OR ILLNESS IS
 5 A PREEXISTING CONDITION.

6 (4) NOTICE THAT A CONTRACT IS SUBJECT TO ARBITRATION
 7 PURSUANT TO [THIS ACT] SHALL BE TYPED IN UNDERLINED CAPITAL
 8 LETTERS ON THE FIRST PAGE OF THE CONTRACT; AND UNLESS SUCH
 9 NOTICE IS DISPLAYED THEREON, THE CONTRACT MAY NOT BE SUBJECT
 10 TO ARBITRATION.

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

21 (2) On application, the district court may stay an
 22 arbitration proceeding commenced or threatened on a showing
 23 that there is no agreement to arbitrate. Such an issue,
 24 when in substantial and bona fide dispute, shall be
 25 immediately and summarily tried and the stay ordered if the

1 court finds for the applying party. If the court finds for
 2 the opposing party, it shall order the parties to proceed to
 3 arbitration.

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

11 (4) An action or proceeding involving an issue subject
 12 to arbitration must be stayed if an order or application for
 13 arbitration has been made under this section. If an issue is
 14 severable, the stay may be with respect to the severable
 15 issue only. When the application is made in such action or
 16 proceeding, the order for arbitration shall include such
 17 stay.

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

22 NEW SECTION. Section 6. Appointment of arbitrators.
 23 If the arbitration agreement provides a method of
 24 appointment of arbitrators, this method shall be followed.
 25 If no method is provided, the agreed method fails or for any

1 reason cannot be followed, or an appointed arbitrator fails
 2 or is unable to act and his successor has not been duly
 3 appointed, the district court on application of a party
 4 shall appoint one or more arbitrators. An arbitrator so
 5 appointed has all the powers of one specifically named in
 6 the agreement.

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

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

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

1 with the hearing and determination of the controversy.

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

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

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

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

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

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

9 (4) Fees for attendance as a witness are the same as
10 for a witness in the district court.

11 NEW SECTION. Section 11. Award. (1) The award must
12 in writing and signed by the arbitrators joining in the
13 award. The arbitrators shall deliver a copy to each party
14 personally by certified mail or as provided in the
15 agreement.

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

24 NEW SECTION. Section 12. Change of award by
25 arbitrators. On the application of a party or, if an

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

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

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

25 NEW SECTION. Section 15. Vacating an award. (1) Upon

1 the application of a party, the district court shall vacate
2 an award if:

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

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

9 (c) the arbitrators exceeded their powers;

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11 upon sufficient cause being shown therefor or refused to
12 hear evidence material to the controversy or otherwise so
13 conducted the hearing, contrary to the provisions of
14 [section 8], as to prejudice substantially the rights of a
15 party; or

16 (e) there was no arbitration agreement and the issue
17 was not adversely determined in proceedings under [section
18 5] and the party did not participate in the arbitration
19 hearing without raising the objection.

20 (2) The fact that the relief was such that it could
21 not or would not be granted by a court of law or equity is
22 not grounds for vacating or refusing to confirm the award.

23 (3) An application under this section must be made
24 within 90 days after delivery of a copy of the award to the
25 applicant, except that if it is predicated upon corruption,

1 fraud, or other undue means, it must be made within 90 days
2 after such grounds are known or should have been known.

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4 stated in subsection (1)(e), the court may order a rehearing
5 before new arbitrators chosen as provided in the agreement
6 or, if the agreement does not provide a method of selection,
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8 is vacated on grounds set forth in subsection (1)(c) or
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10 arbitrators who made the award or their successors appointed
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12 agreement requires the award to be made is applicable to the
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14 rehearing.

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16 motion to modify or correct the award is pending, the court
17 shall confirm the award.

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5 affecting the merits of the controversy.

6 (2) If the application is granted, the court shall
7 modify and correct the award to effect its intent and shall
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 10 and on account of the services rendered and the labor
 11 performed by them on said grain and crops and which lien may
 12 be claimed by the owner of said grain for the reasonable
 13 value of such services if same are performed by him. Liens
 14 on grain and other crops shall be charged for at the
 15 prevailing price for that particular locality in which such
 16 grain or other crop is threshed, harvested, or combined,
 17 provided notices are given and lien is filed within the time
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 20 or combining grain or other crop is disputed by the
 21 thresherman or swather and the owner of the grain or other
 22 crop, the matter may be submitted to arbitration under the
 23 provisions of ~~chapter-57-Title-27~~ [sections 1 through 21]."

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 25 This act applies only to agreements made subsequent to

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-End-

STANDING COMMITTEE REPORT

March 13 19 85

page 1 of 2

March 13 19 85

page 2 of 2 (SB 110)

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 110

Third reading copy (Blue color)

ADOPT UNIFORM ARBITRATION ACT

Respectfully report as follows: That Senate Bill No. 110

be amended as follows:

- 1. Page 1, line 20.
Following: "agreements."
Strike remainder of section 3 in its entirety.
Insert: "Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of [section 1 through 21] if the agreement so specifies, except [section 15(1), (3), (4), and (5) and section 16] apply in every case."

- 2. Page 2, line 7.
Following: "(2)"
Strike: "EXCEPT" through "(3)."

- 3. Page 2, line 13.
Following: "INJURY,"
Insert: "whether"

XXXXXXXX

(continued)

Chairman

- 4. Page 2, line 14.
Following: "CONTRACT"
Strike: ", "

- 5. Page 2, line 17.
Following: "COMPANIES;"
Strike: subsection (C) in its entirety.
Insert: "and"

Renumber subsequent subsections

- 6. Page 2, line 21.
Following: "COMPENSATION"
Strike: "; AND" through "APPLIES" on line 24.

- 7. Page 2, following line 24.
Strike: subsection (3) in its entirety.

Renumber subsequent subsections.

AND AS AMENDED,
BE CONCURRED IN

Tom Hannah
REP. TOM HANNAH Chairman

1 SENATE BILL NO. 110

2 INTRODUCED BY MAZUREK, HALLIGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM
5 ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS
6 THERETO; PROVIDING FOR APPLICABILITY TO LABOR CERTAIN
7 AGREEMENTS; AMENDING SECTIONS 2-18-621, 27-1-412, 28-2-708,
8 AND 71-3-801, MCA; AND REPEALING SECTIONS 27-5-101 THROUGH
9 27-5-105, 27-5-201 THROUGH 27-5-203, AND 27-5-301 THROUGH
10 27-5-304, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13 NEW SECTION. Section 1. Short title. [Sections 1
14 through 21] may be cited as the "Uniform Arbitration Act".15 NEW SECTION. Section 2. Uniformity of interpretation.
16 [Sections 1 through 21] must be construed to effectuate
17 [their] general purpose to make uniform the law of those
18 states that enact [them].19 NEW SECTION. Section 3. Application to labor
20 agreements. ~~{Sections 1 through 21} apply to arbitration~~
21 ~~agreements between employers and employees or between their~~
22 ~~respective representatives unless otherwise provided in the~~
23 ~~agreement.~~ ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND
24 EMPLOYEES OR BETWEEN THEIR RESPECTIVE REPRESENTATIVES ARE
25 VALID AND ENFORCEABLE AND MAY BE SUBJECT TO ALL OR PORTIONS1 OF [SECTIONS 1 THROUGH 21] IF THE AGREEMENT SO SPECIFIES,
2 EXCEPT [SECTION 15(1), (3), (4), AND (5) AND SECTION 16]
3 APPLY IN EVERY CASE.4 NEW SECTION. Section 4. Validity of arbitration
5 agreement -- EXCEPTIONS. (1) A written agreement to submit
6 an existing controversy to arbitration ~~or a provision in a~~
7 ~~written contract to submit to arbitration any controversy~~
8 ~~arising between the parties after the contract is made~~ is
9 valid, AND enforceable, and irrevocable except upon such
10 grounds as exist at law or in equity for the revocation of a
11 contract.12 (2) ~~EXCEPT AS PROVIDED IN SUBSECTION (3), A A WRITTEN~~
13 AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING
14 BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND
15 ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN
16 EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION
17 DOES NOT APPLY TO:18 (A) CLAIMS ARISING OUT OF PERSONAL INJURY, WHETHER
19 BASED ON CONTRACT, OR TORT;20 (B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE
21 POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS
22 BETWEEN INSURANCE COMPANIES; AND23 (C) ~~ANY AGREEMENT WHICH HAS NOT BEEN CONCLUDED UPON~~
24 ~~THE ADVICE OF COUNSEL TO ALL PARTIES AS EVIDENCED BY~~
25 ~~COUNSEL'S SIGNATURE THEREON;~~

1 ~~(D)~~(C) CLAIMS FOR WORKERS' COMPENSATION, AND
 2 ~~(E)~~ ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND
 3 EMPLOYEES OR THEIR RESPECTIVE REPRESENTATIVES UNLESS THE
 4 AGREEMENT PROVIDES THAT THIS ACT APPLIES.

5 ~~(3)~~ THE PROHIBITIONS AND REQUIREMENTS OF SUBSECTION
 6 ~~(2)~~ DO NOT APPLY TO OR AFFECT THE VALIDITY OF ARBITRATION
 7 AGREEMENTS UNDER A MEMBERSHIP CONTRACT AS DEFINED IN
 8 33-30-101(3) CONCERNING ONLY QUESTIONS OF MEDICAL NECESSITY,
 9 EXPERIMENTAL TREATMENT, OR WHETHER THE INJURY OR ILLNESS IS
 10 A PREEXISTING CONDITION.

11 ~~(4)~~(3) NOTICE THAT A CONTRACT IS SUBJECT TO
 12 ARBITRATION PURSUANT TO [THIS ACT] SHALL BE TYPED IN
 13 UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE OF THE
 14 CONTRACT; AND UNLESS SUCH NOTICE IS DISPLAYED THEREON, THE
 15 CONTRACT MAY NOT BE SUBJECT TO ARBITRATION.

16 NEW SECTION. Section 5. Proceedings to compel or stay
 17 arbitration. (1) On the application of a party showing an
 18 agreement described in [section 4] and the opposing party's
 19 refusal to arbitrate, the district court shall order the
 20 parties to proceed with arbitration; but if the opposing
 21 party denies the existence of the agreement to arbitrate,
 22 the court shall proceed summarily to the determination of
 23 that issue raised and shall order arbitration if it finds
 24 for the applying party or deny the application if it finds
 25 for the opposing party.

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

9 (3) If an issue referable to arbitration under the
 10 alleged agreement is involved in an action or proceeding
 11 pending in a court having jurisdiction to hear applications
 12 under subsection (1), the application must be made in that
 13 court. Otherwise, and subject to [section 20], the
 14 application may be made in any court of competent
 15 jurisdiction.

16 (4) An action or proceeding involving an issue subject
 17 to arbitration must be stayed if an order or application for
 18 arbitration has been made under this section. If an issue is
 19 severable, the stay may be with respect to the severable
 20 issue only. When the application is made in such action or
 21 proceeding, the order for arbitration shall include such
 22 stay.

23 (5) An order for arbitration may not be refused on the
 24 ground that the claim in issue lacks merit or good faith or
 25 because no fault or grounds for the claim sought to be

1 arbitrated have been shown.

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

12 NEW SECTION. Section 7. Majority action by
13 arbitrators. The powers of the arbitrators may be exercised
14 by a majority unless otherwise provided by the agreement or
15 by [sections 1 through 21].

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

18 (1) The arbitrators shall appoint a time and place for
19 the hearing and cause notification to the parties to be
20 served personally or by certified mail not less than 5 days
21 before the hearing. Appearance at the hearing waives such
22 notice. The arbitrators may adjourn the hearing from time to
23 time as necessary and, on request of a party and for good
24 cause or upon their own motion, may postpone the hearing to
25 a time not later than the date fixed by the agreement for

1 making the award unless the parties consent to a later date.
2 The arbitrators may hear and determine the controversy upon
3 the evidence produced, notwithstanding the failure of a
4 party duly notified to appear. The district court on
5 application may direct the arbitrators to proceed promptly
6 with the hearing and determination of the controversy.

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

10 (3) The hearing must be conducted by all the
11 arbitrators, but a majority may determine any question and
12 render a final award. If during the course of the hearing an
13 arbitrator for any reason ceases to act, the remaining
14 arbitrator or arbitrators appointed to act as neutrals may
15 continue with the hearing and determination of the
16 controversy.

17 NEW SECTION. Section 9. Representation by attorney.
18 A party has the right to be represented by an attorney at
19 any proceeding or hearing under [sections 1 through 21]. A
20 waiver of this right prior to the proceeding or hearing is
21 ineffective.

22 NEW SECTION. Section 10. Witnesses, subpoenas, and
23 depositions. (1) The arbitrators may issue subpoenas for the
24 attendance of witnesses and the production of books,
25 records, documents, and other evidence and may administer

1 oaths. Subpoenas so issued must be served and, upon
 2 application to the district court by a party or the
 3 arbitrators, enforced in the manner provided by law for the
 4 service and enforcement of subpoenas in a civil action in
 5 district court.

6 (2) On the application of a party and for use as
 7 evidence, the arbitrators may permit a deposition to be
 8 taken, in the manner and upon the terms designated by the
 9 arbitrators, of a witness who cannot be subpoenaed or is
 10 unable to attend the hearing.

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

14 (4) Fees for attendance as a witness are the same as
 15 for a witness in the district court.

16 NEW SECTION. Section 11. Award. (1) The award must be
 17 in writing and signed by the arbitrators joining in the
 18 award. The arbitrators shall deliver a copy to each party
 19 personally by certified mail or as provided in the
 20 agreement.

21 (2) An award must be made within the time fixed by the
 22 agreement or, if no time is fixed, within such time as the
 23 district court orders on application of a party. The parties
 24 may extend the time, in writing, either before or after the
 25 expiration thereof. A party waives the objection that an

1 award was not made within the time required unless he
 2 notifies the arbitrators of his objection prior to the
 3 delivery of the award to him.

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

18 NEW SECTION. Section 13. Fees and expenses of
 19 arbitration. Unless otherwise provided in the agreement to
 20 arbitrate, the arbitrators' expenses and fees, together with
 21 other expenses, not including counsel fees, incurred in the
 22 conduct of the arbitration, must be paid as provided in the
 23 award.

24 NEW SECTION. Section 14. Confirmation of award by
 25 court. Upon the application of a party, the district court

1 shall confirm an award unless within the time limits imposed
 2 in [sections 1 through 21] grounds are urged for vacating,
 3 modifying, or correcting the award, in which case the court
 4 shall proceed as provided in [sections 15 and 16].

5 NEW SECTION. Section 15. Vacating an award. (1) Upon
 6 the application of a party, the district court shall vacate
 7 an award if:

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

10 (b) there was evident partiality by an arbitrator
 11 appointed as a neutral or corruption in any of the
 12 arbitrators or misconduct prejudicing the rights of any
 13 party;

14 (c) the arbitrators exceeded their powers;

15 (d) the arbitrators refused to postpone the hearing
 16 upon sufficient cause being shown therefor or refused to
 17 hear evidence material to the controversy or otherwise so
 18 conducted the hearing, contrary to the provisions of
 19 [section 8], as to prejudice substantially the rights of a
 20 party; or

21 (e) there was no arbitration agreement and the issue
 22 was not adversely determined in proceedings under [section
 23 5] and the party did not participate in the arbitration
 24 hearing without raising the objection.

25 (2) The fact that the relief was such that it could

1 not or would not be granted by a court of law or equity is
 2 not grounds for vacating or refusing to confirm the award.

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

8 (4) In vacating the award on grounds other than those
 9 stated in subsection (1)(e), the court may order a rehearing
 10 before new arbitrators chosen as provided in the agreement
 11 or, if the agreement does not provide a method of selection,
 12 by the court in accordance with [section 6] or, if the award
 13 is vacated on grounds set forth in subsection (1)(c) or
 14 (1)(d), the court may order a rehearing before the
 15 arbitrators who made the award or their successors appointed
 16 in accordance with [section 6]. The time within which the
 17 agreement requires the award to be made is applicable to the
 18 rehearing and commences on the date of the order for
 19 rehearing.

20 (5) If the application to vacate is denied and no
 21 motion to modify or correct the award is pending, the court
 22 shall confirm the award.

23 NEW SECTION. Section 16. Modification or correction
 24 of award by court. (1) Upon application made within 90 days
 25 after delivery of a copy of the award to the applicant, the

1 district court shall modify or correct the award if:

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

5 (b) the arbitrators awarded upon a matter not
6 submitted to them and the award may be corrected without
7 affecting the merits of the decision upon the issues
8 submitted; or

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

11 (2) If the application is granted, the court shall
12 modify and correct the award to effect its intent and shall
13 confirm the award as modified and corrected. Otherwise, the
14 court shall confirm the award as made.

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

18 NEW SECTION. Section 17. Judgment on award -- costs.

19 (1) Upon the granting of an order confirming, modifying, or
20 correcting an award, judgment must be entered in conformity
21 with the order and be enforced as any other judgment. Costs
22 of the application and of the proceedings subsequent thereto
23 and disbursements may be awarded by the court.

24 (2) The judgment may be docketed as if rendered in an
25 action.

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

10 NEW SECTION. Section 19. Jurisdiction of district
11 court. The making of an agreement described in [section 4]
12 providing for arbitration in this state confers jurisdiction
13 on the district court to enforce the agreement under
14 [sections 1 through 21] and to enter judgment on an award
15 under the agreement.

16 NEW SECTION. Section 20. Venue. An initial
17 application must be made to the court of the county in which
18 the agreement provides the arbitration hearing must be held
19 or, if the hearing has been held, in the county in which it
20 was held. Otherwise, the application must be made in the
21 county where the adverse party resides or has a place of
22 business or, if he has no residence or place of business in
23 this state, to the court of any county. All subsequent
24 applications must be made to the court hearing the initial
25 application unless the court otherwise directs. NO AGREEMENT

1 CONCERNING VENUE INVOLVING A RESIDENT OF THIS STATE IS VALID
 2 UNLESS THE AGREEMENT REQUIRES THAT ARBITRATION OCCUR WITHIN
 3 THE STATE OF MONTANA. THIS REQUIREMENT MAY ONLY BE WAIVED
 4 UPON THE ADVICE OF COUNSEL AS EVIDENCED BY COUNSEL'S
 5 SIGNATURE THERETO.

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

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

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

12 (c) an order confirming or denying confirmation of an
 13 award;

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

15 (e) an order vacating an award without directing a
 16 rehearing; or

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

19 (2) The appeal must be taken in the manner and to the
 20 same extent as from orders or judgments in a civil action in
 21 district court.

22 Section 22. Section 2-18-621, MCA, is amended to read:

23 "2-18-621. Unlawful termination. It shall be unlawful
 24 for an employer to terminate or separate an employee from
 25 his employment in an attempt to circumvent the provisions of

1 2-18-611, 2-18-612, and 2-18-614. Should a question arise
 2 under this section, it shall be submitted to arbitration as
 3 provided in ~~Title 27, chapter 5~~ [sections 1 through 21] as
 4 if an agreement described in [section 4] is in effect,
 5 unless there is a collective bargaining agreement to the
 6 contrary applicable."

7 Section 23. Section 27-1-412, MCA, is amended to read:

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

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

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

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

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

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

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

24 Section 24. Section 28-2-708, MCA, is amended to read:

25 "28-2-708. Restraints upon legal proceedings void.

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

8 Section 25. Section 71-3-801, MCA, is amended to read:

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

24 (2) If the prevailing price for threshing, harvesting,
 25 or combining grain or other crop is disputed by the

1 thresherman or swather and the owner of the grain or other
 2 crop, the matter may be submitted to arbitration under the
 3 provisions of ~~chapter-57-Title-27~~ [sections 1 through 21]."

4 NEW SECTION. Section 26. Application not retroactive.
 5 This act applies only to agreements made subsequent to
 6 October 1, 1985.

7 NEW SECTION. Section 27. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 28. Repealer. Sections 27-5-101
 14 through 27-5-105, 27-5-201 through 27-5-203, and 27-5-301
 15 through 27-5-304, MCA, are repealed.

-End-

CONFERENCE COMMITTEE REPORT

Report No. 1

APR 22, 1985

MR. SPEAKER

We, your FREE Conference Committee on

SENATE BILL NO. 110, reference copy,

met and considered SENATE BILL NO. 110, in its entirety, on APR 22.

We recommend as follows:

1. Page 2, line 22.
Following: "COMPANIES;"
Strike: "AND"

2. Page 2, line 23.
Following: line 22
Insert: "(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is \$35,000 or less; and"

Renumber: subsequent subsection

PC3SB110

And that this Conference Committee report be adopted.

FOR THE SENATE

AS
[Signature]
MAZUREK

[Signature]
TOWE

[Signature]
CRIPPEN

ADOPT REJECT

FOR THE HOUSE

[Signature]
ADDE

[Signature]
COBB

[Signature]
RAPP-SVRCEK

[Signature]

SENATE BILL NO. 110

INTRODUCED BY MAZUREK, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ARBITRATION ACT AND CONFORMING OTHER STATUTORY PROVISIONS THERETO; PROVIDING FOR APPLICABILITY TO LABOR CERTAIN AGREEMENTS; AMENDING SECTIONS 2-18-621, 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:

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

NEW SECTION. Section 2. Uniformity of interpretation. [Sections 1 through 21] must be construed to effectuate [their] general purpose to make uniform the law of those states that enact [them].

NEW SECTION. Section 3. Application to labor agreements. ~~{Sections--1--through--21} apply to arbitration agreements between employers and employees or between their respective--representatives unless otherwise provided in the agreement.~~ ARBITRATION AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES OR BETWEEN THEIR RESPECTIVE REPRESENTATIVES ARE VALID AND ENFORCEABLE AND MAY BE SUBJECT TO ALL OR PORTIONS

OF [SECTIONS 1 THROUGH 21] IF THE AGREEMENT SO SPECIFIES, EXCEPT [SECTION 15(1), (3), (4), AND (5) AND SECTION 16] APPLY IN EVERY CASE.

NEW SECTION. Section 4. Validity of arbitration agreement -- EXCEPTIONS. (1) A written agreement to submit an existing controversy to arbitration ~~or a provision in a written contract to submit to arbitration any controversy arising between the parties after the contract is made~~ is valid, AND enforceable ~~and irrevocable~~ except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) ~~EXCEPT AS PROVIDED IN SUBSECTION (3),~~ A A WRITTEN AGREEMENT TO SUBMIT TO ARBITRATION ANY CONTROVERSY ARISING BETWEEN THE PARTIES AFTER THE CONTRACT IS MADE IS VALID AND ENFORCEABLE EXCEPT UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY FOR THE REVOCATION OF A CONTRACT. THIS SUBSECTION DOES NOT APPLY TO:

(A) CLAIMS ARISING OUT OF PERSONAL INJURY, WHETHER BASED ON CONTRACT, OR TORT;

(B) ANY AGREEMENT CONCERNING OR RELATING TO INSURANCE POLICIES OR ANNUITY CONTRACTS EXCEPT FOR THOSE CONTRACTS BETWEEN INSURANCE COMPANIES; AND

(C) ANY CONTRACT BY AN INDIVIDUAL FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY, SERVICES, OR MONEY OR CREDIT WHERE THE TOTAL CONSIDERATION TO BE PAID OR FURNISHED BY THE



1 INDIVIDUAL IS \$35,000 OR LESS; AND

2 ~~{C}--ANY--AGREEMENT--WHICH--HAS--NOT--BEEN--CONCLUDED--UPON~~
3 ~~THE--ADVICE--OF--COUNSEL--TO--ALL--PARTIES--AS--EVIDENCED--BY~~
4 ~~COUNSEL'S--SIGNATURE--THEREON;~~

5 ~~{B}{C}{D} CLAIMS FOR WORKERS' COMPENSATION; AND~~

6 ~~{B}--ARBITRATION--AGREEMENTS--BETWEEN--EMPLOYERS--AND~~
7 ~~EMPLOYEES--OR--THEIR--RESPECTIVE--REPRESENTATIVES--UNLESS--THE~~
8 ~~AGREEMENT--PROVIDES--THAT--THIS--ACT--APPLIES.~~

9 ~~{3}--THE--PROHIBITIONS--AND--REQUIREMENTS--OF--SUBSECTION~~
10 ~~{2}--DO--NOT--APPLY--TO--OR--AFFECT--THE--VALIDITY--OF--ARBITRATION~~
11 ~~AGREEMENTS--UNDER--A--MEMBERSHIP--CONTRACT--AS--DEFINED--IN~~
12 ~~33-30-101(3)--CONCERNING--ONLY--QUESTIONS--OF--MEDICAL--NECESSITY,~~
13 ~~EXPERIMENTAL--TREATMENT,--OR--WHETHER--THE--INJURY--OR--ILLNESS--IS~~
14 ~~A--PREEXISTING--CONDITION;~~

15 {4}{3} NOTICE THAT A CONTRACT IS SUBJECT TO
16 ARBITRATION PURSUANT TO [THIS ACT] SHALL BE TYPED IN
17 UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE OF THE
18 CONTRACT; AND UNLESS SUCH NOTICE IS DISPLAYED THEREON, THE
19 CONTRACT MAY NOT BE SUBJECT TO ARBITRATION.

20 NEW SECTION. Section 5. Proceedings to compel or stay
21 arbitration. (1) On the application of a party showing an
22 agreement described in [section 4] and the opposing party's
23 refusal to arbitrate, the district court shall order the
24 parties to proceed with arbitration; but if the opposing
25 party denies the existence of the agreement to arbitrate,

1 the court shall proceed summarily to the determination of
2 that issue raised and shall order arbitration if it finds
3 for the applying party or deny the application if it finds
4 for the opposing party.

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

13 (3) If an issue referable to arbitration under the
14 alleged agreement is involved in an action or proceeding
15 pending in a court having jurisdiction to hear applications
16 under subsection (1), the application must be made in that
17 court. Otherwise, and subject to [section 20], the
18 application may be made in any court of competent
19 jurisdiction.

20 (4) An action or proceeding involving an issue subject
21 to arbitration must be stayed if an order or application for
22 arbitration has been made under this section. If an issue is
23 severable, the stay may be with respect to the severable
24 issue only. When the application is made in such action or
25 proceeding, the order for arbitration shall include such

1 stay.

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

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

16 NEW SECTION. Section 7. Majority action by
17 arbitrators. The powers of the arbitrators may be exercised
18 by a majority unless otherwise provided by the agreement or
19 by [sections 1 through 21].

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

22 (1) The arbitrators shall appoint a time and place for
23 the hearing and cause notification to the parties to be
24 served personally or by certified mail not less than 5 days
25 before the hearing. Appearance at the hearing waives such

1 notice. The arbitrators may adjourn the hearing from time to
2 time as necessary and, on request of a party and for good
3 cause or upon their own motion, may postpone the hearing to
4 a time not later than the date fixed by the agreement for
5 making the award unless the parties consent to a later date.
6 The arbitrators may hear and determine the controversy upon
7 the evidence produced, notwithstanding the failure of a
8 party duly notified to appear. The district court on
9 application may direct the arbitrators to proceed promptly
10 with the hearing and determination of the controversy.

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

14 (3) The hearing must be conducted by all the
15 arbitrators, but a majority may determine any question and
16 render a final award. If during the course of the hearing an
17 arbitrator for any reason ceases to act, the remaining
18 arbitrator or arbitrators appointed to act as neutrals may
19 continue with the hearing and determination of the
20 controversy.

21 NEW SECTION. Section 9. Representation by attorney.
22 A party has the right to be represented by an attorney at
23 any proceeding or hearing under [sections 1 through 21]. A
24 waiver of this right prior to the proceeding or hearing is
25 ineffective.

1 NEW SECTION. Section 10. Witnesses, subpoenas, and
 2 depositions. (1) The arbitrators may issue subpoenas for the
 3 attendance of witnesses and the production of books,
 4 records, documents, and other evidence and may administer
 5 oaths. Subpoenas so issued must be served and, upon
 6 application to the district court by a party or the
 7 arbitrators, enforced in the manner provided by law for the
 8 service and enforcement of subpoenas in a civil action in
 9 district court.

10 (2) On the application of a party and for use as
 11 evidence, the arbitrators may permit a deposition to be
 12 taken, in the manner and upon the terms designated by the
 13 arbitrators, of a witness who cannot be subpoenaed or is
 14 unable to attend the hearing.

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

18 (4) Fees for attendance as a witness are the same as
 19 for a witness in the district court.

20 NEW SECTION. Section 11. Award. (1) The award must be
 21 in writing and signed by the arbitrators joining in the
 22 award. The arbitrators shall deliver a copy to each party
 23 personally by certified mail or as provided in the
 24 agreement.

25 (2) An award must be made within the time fixed by the

1 agreement or, if no time is fixed, within such time as the
 2 district court orders on application of a party. The parties
 3 may extend the time, in writing, either before or after the
 4 expiration thereof. A party waives the objection that an
 5 award was not made within the time required unless he
 6 notifies the arbitrators of his objection prior to the
 7 delivery of the award to him.

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

22 NEW SECTION. Section 13. Fees and expenses of
 23 arbitration. Unless otherwise provided in the agreement to
 24 arbitrate, the arbitrators' expenses and fees, together with
 25 other expenses, not including counsel fees, incurred in the

1 conduct of the arbitration, must be paid as provided in the
2 award.

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

9 NEW SECTION. Section 15. Vacating an award. (1) Upon
10 the application of a party, the district court shall vacate
11 an award if:

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

14 (b) there was evident partiality by an arbitrator
15 appointed as a neutral or corruption in any of the
16 arbitrators or misconduct prejudicing the rights of any
17 party;

18 (c) the arbitrators exceeded their powers;

19 (d) the arbitrators refused to postpone the hearing
20 upon sufficient cause being shown therefor or refused to
21 hear evidence material to the controversy or otherwise so
22 conducted the hearing, contrary to the provisions of
23 [section 8], as to prejudice substantially the rights of a
24 party; or

25 (e) there was no arbitration agreement and the issue

1 was not adversely determined in proceedings under [section
2 5] and the party did not participate in the arbitration
3 hearing without raising the objection.

4 (2) The fact that the relief was such that it could
5 not or would not be granted by a court of law or equity is
6 not grounds for vacating or refusing to confirm the award.

7 (3) An application under this section must be made
8 within 90 days after delivery of a copy of the award to the
9 applicant, except that if it is predicated upon corruption,
10 fraud, or other undue means, it must be made within 90 days
11 after such grounds are known or should have been known.

12 (4) In vacating the award on grounds other than those
13 stated in subsection (1)(e), the court may order a rehearing
14 before new arbitrators chosen as provided in the agreement
15 or, if the agreement does not provide a method of selection,
16 by the court in accordance with [section 6] or, if the award
17 is vacated on grounds set forth in subsection (1)(c) or
18 (1)(d), the court may order a rehearing before the
19 arbitrators who made the award or their successors appointed
20 in accordance with [section 6]. The time within which the
21 agreement requires the award to be made is applicable to the
22 rehearing and commences on the date of the order for
23 rehearing.

24 (5) If the application to vacate is denied and no
25 motion to modify or correct the award is pending, the court

1 shall confirm the award.

2 NEW SECTION. Section 16. Modification or correction
3 of award by court. (1) Upon application made within 90 days
4 after delivery of a copy of the award to the applicant, the
5 district court shall modify or correct the award if:

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

9 (b) the arbitrators awarded upon a matter not
10 submitted to them and the award may be corrected without
11 affecting the merits of the decision upon the issues
12 submitted; or

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

15 (2) If the application is granted, the court shall
16 modify and correct the award to effect its intent and shall
17 confirm the award as modified and corrected. Otherwise, the
18 court shall confirm the award as made.

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

22 NEW SECTION. Section 17. Judgment on award -- costs.
23 (1) Upon the granting of an order confirming, modifying, or
24 correcting an award, judgment must be entered in conformity
25 with the order and be enforced as any other judgment. Costs

1 of the application and of the proceedings subsequent thereto
2 and disbursements may be awarded by the court.

3 (2) The judgment may be docketed as if rendered in an
4 action.

5 NEW SECTION. Section 18. Applications to court -- how
6 made. Except as otherwise provided, an application to the
7 court under [sections 1 through 21] must be by motion and
8 must be heard in the manner and upon the notice provided by
9 law or rule of court for the making and hearing of motions.
10 Unless the parties have agreed otherwise, notice of an
11 initial application for an order must be served in the
12 manner provided by law for the service of a summons in an
13 action.

14 NEW SECTION. Section 19. Jurisdiction of district
15 court. The making of an agreement described in [section 4]
16 providing for arbitration in this state confers jurisdiction
17 on the district court to enforce the agreement under
18 [sections 1 through 21] and to enter judgment on an award
19 under the agreement.

20 NEW SECTION. Section 20. Venue. An initial
21 application must be made to the court of the county in which
22 the agreement provides the arbitration hearing must be held
23 or, if the hearing has been held, in the county in which it
24 was held. Otherwise, the application must be made in the
25 county where the adverse party resides or has a place of

1 business or, if he has no residence or place of business in
 2 this state, to the court of any county. All subsequent
 3 applications must be made to the court hearing the initial
 4 application unless the court otherwise directs. NO AGREEMENT
 5 CONCERNING VENUE INVOLVING A RESIDENT OF THIS STATE IS VALID
 6 UNLESS THE AGREEMENT REQUIRES THAT ARBITRATION OCCUR WITHIN
 7 THE STATE OF MONTANA. THIS REQUIREMENT MAY ONLY BE WAIVED
 8 UPON THE ADVICE OF COUNSEL AS EVIDENCED BY COUNSEL'S
 9 SIGNATURE THERETO.

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

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

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

16 (c) an order confirming or denying confirmation of an
 17 award;

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

19 (e) an order vacating an award without directing a
 20 rehearing; or

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

23 (2) The appeal must be taken in the manner and to the
 24 same extent as from orders or judgments in a civil action in
 25 district court.

1 Section 22. Section 2-18-621, MCA, is amended to read:
 2 "2-18-621. Unlawful termination. It shall be unlawful
 3 for an employer to terminate or separate an employee from
 4 his employment in an attempt to circumvent the provisions of
 5 2-18-611, 2-18-612, and 2-18-614. Should a question arise
 6 under this section, it shall be submitted to arbitration as
 7 provided in ~~Title 27, chapter 5~~ [sections 1 through 21] as
 8 if an agreement described in [section 4] is in effect,
 9 unless there is a collective bargaining agreement to the
 10 contrary applicable."

11 Section 23. Section 27-1-412, MCA, is amended to read:

12 "27-1-412. Obligations which cannot be specifically
 13 enforced. The following obligations cannot be specifically
 14 enforced:

15 (1) an obligation to render personal service or to
 16 employ another therein;

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

18 ~~{3}--an--agreement---to---submit---a---controversy---to~~
 19 ~~arbitration;~~

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

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

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

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

3 Section 24. Section 28-2-708, MCA, is amended to read:

4 "28-2-708. Restraints upon legal proceedings void.

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

12 Section 25. Section 71-3-801, MCA, is amended to read:

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

1 provided notices are given and lien is filed within the time
2 provided by this part.

3 (2) If the prevailing price for threshing, harvesting,
4 or combining grain or other crop is disputed by the
5 thresherman or swather and the owner of the grain or other
6 crop, the matter may be submitted to arbitration under the
7 provisions of ~~chapter 57, Title 27~~ [sections 1 through 21]."

8 NEW SECTION. Section 26. Application not retroactive.
9 This act applies only to agreements made subsequent to
10 October 1, 1985.

11 NEW SECTION. Section 27. Severability. If a part of
12 this act is invalid, all valid parts that are severable from
13 the invalid part remain in effect. If a part of this act is
14 invalid in one or more of its applications, the part remains
15 in effect in all valid applications that are severable from
16 the invalid applications.

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

-End-