

# 2A:23A-1 to 2A:23A-19

**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 1987                      **CHAPTER:** 54

**NJSA:** 2A:23A-1 to 2A:23A-19                      (“new Jersey Alternative Procedure for Dispute Resolution Act”)

**BILL NO:** A296

**SPONSOR(S):** Martin

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:**                      **ASSEMBLY:** Judiciary

**SENATE:** Judiciary

**AMENDED DURING PASSAGE:**                      Yes        Amendments during passage denoted by asterisks according to Governor’s recommendations

**DATE OF PASSAGE:**                      **ASSEMBLY:** September 8, 1987                      Re-enacted 1-22-87

**SENATE:** November 10, 1987                      Re-enacted 2-23-87

**DATE OF APPROVAL:** February 25, 1987

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**SPONSORS STATEMENT:**                      Yes

**COMMITTEE STATEMENT:**                      **ASSEMBLY:** Yes

**SENATE:** Yes

**FISCAL NOTE:**                      No

**VETO MESSAGE:**                      Yes

**MESSAGE ON SIGNING:**                      No

**FOLLOWING WERE PRINTED:**

**REPORTS:**                      No

**HEARINGS:**                      No

See newspaper clipping—attached:

“Arbitration seems appealing but has myriad pitfalls,” 10-5-86, New York Times case, referred to in clipping: Heffner v. Jacobson, 100 N.J. 550 (1985).

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ASSEMBLY, No. 296

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman MARTIN

AN ACT establishing "The New Jersey Alternative Procedure for Dispute Resolution Act" and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. This act shall be known and may be cited as "The New  
2 Jersey Alternative Procedure for Dispute Resolution Act."

1 2. a. Any provision in a written contract whereby the parties  
2 agree to settle by means of alternative resolution, as provided  
3 in this act, (1) any controversy that may arise from the contract  
4 or from a refusal to perform the contract or (2) any written  
5 agreement whereby the parties to an existing controversy agree  
6 to use alternative resolution as provided in this act, whether  
7 the controversy arose out of a contract or otherwise, is valid,  
8 enforceable and irrevocable, except upon such grounds as exist  
9 at law or in equity for the revocation of a contract. In order  
10 for the provisions of this act to be applicable, it shall be suf-  
11 ficient that the parties signify their intention to resolve their  
12 dispute by reference in the agreement to "The New Jersey  
13 Alternative Procedure for Dispute Resolution Act," (P. L. . . . . ,  
14 c. . . . . ; C. . . . .).

15 b. Any contract provision or agreement described in subsec-  
16 tion a. of this section shall be construed as an implied consent  
17 by the parties to the jurisdiction of the Superior Court to enforce  
18 that provision or agreement pursuant to the provisions set forth  
19 in this act and to enter judgment thereon. The contract provision  
20 or agreement shall constitute a waiver by the parties of the

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly committee amendments adopted June 16, 1986.

\*\*—Assembly amendments adopted in accordance with Governor's recommendations January 8, 1987.

21 right to trial by jury and to appeal or review except as specifically  
22 provided for in this act.

1 3. a. When parties have agreed to alternative resolution pro-  
2 ceedings under separate agreements under this act, and the claims  
3 to be resolved may involve evidence, witnesses and testimony rea-  
4 sonably necessary to resolve issues and facts arising out of a  
5 related project or series of agreements, then, these proceedings  
6 may be held in a consolidated alternative resolution proceeding.  
7 Whenever reasonably possible, the same umpire shall be desig-  
8 nated to hear and determine these claims.

9 b. Whenever the claims to be resolved in an alternative reso-  
10 lution proceeding may involve evidence, witnesses and testimony  
11 reasonably necessary to resolve issues and facts arising out of  
12 a related project or series of agreements, which are the subject  
13 of litigation in any court of this State, the court may authorize  
14 consolidation of the alternative resolution proceeding and the  
15 court proceedings to advance expeditious use of court time; pro-  
16 vided however, that consolidation shall not be permitted to unduly  
17 delay the expeditious resolution of the alternative resolution  
18 proceedings provided for by this act.

19 c. The provisions of subsections a. and b. of this section shall  
20 be liberally construed to effectuate the remedial purpose of this  
21 act to provide for the expeditious resolution of disputes arising  
22 out of a related project or series of agreements.

1 4. Any party to an agreement which provides for alternative  
2 resolution *\*\*under this act\*\** shall institute a proceeding pursuant  
3 to that agreement by:

4 (1) Giving written notice to all other parties of the party's  
5 demand for resolution, which notice shall set forth concisely  
6 the claims, and where appropriate the defenses, in dispute  
7 between the parties and the relief sought, including the  
8 amount of liquidated damages demanded, if any; and

9 (2) Initiating the procedure for selecting the umpire or,  
10 if no procedure is provided in the agreement, by initiating  
11 a summary action as provided in this act to have an umpire  
12 appointed.

13 b. When a party is aggrieved by the failure, neglect or refusal  
14 of another to perform under a written agreement providing for  
15 alternative resolution that party may apply to the Superior Court  
16 for an order directing that alternative resolution proceed in the  
17 manner provided for in the agreement. The court shall proceed  
18 in a summary action to determine whether there has been an

19 agreement in writing for alternative resolution or whether there  
 20 has been a failure to comply with a demand for alternative  
 21 resolution.

1 5. a. Whenever an alternative resolution is properly demanded,  
 2 the umpire designated therein shall have full jurisdiction to  
 3 provide all relief and to determine all claims and disputes arising  
 4 thereunder, including whether the particular issue or dispute is  
 5 covered by the agreement for alternative resolution, and whether  
 6 there was fraud in the inducement of the entire agreement which  
 7 provides for alternative resolution; however, the umpire shall not  
 8 have jurisdiction with regard to a claim that an alternative reso-  
 9 lution clause was procured by fraud. Whenever possible, all  
 10 requests for relief ancillary to the claims and disputes covered  
 11 by the agreement for alternative resolution shall first be ad-  
 12 dressed to the umpire for determination.

13 b. There shall be no review of any intermediate ruling or de-  
 14 termination made by the umpire during the course of alternative  
 15 resolution proceedings, except as provided in section 6 of this  
 16 act. An appeal from a final award decision by the umpire may be  
 17 obtained only as provided in section 13 of this act.

1 6. \*a.\* Whenever an umpire acts upon an application for relief  
 2 in the nature of a civil provisional remedy under any applicable  
 3 law, including the civil remedies of attachment, \***garnishment,**\*  
 4 replevin, sequestration, and other corresponding or equivalent rem-  
 5 edies, however designated and regardless of whether the remedy  
 6 is ancillary to an action or must be obtained by an independent  
 7 action, the umpire shall have full authority to act thereon. \*\***When**  
 8 acting on such applications, the umpire shall be considered as  
 9 an inferior court established pursuant to paragraph 1 of Sec-  
 10 tion I of Article VI of the Constitution of the State of New  
 11 Jersey.\*\*\* Whenever any of these remedies are applied for during  
 12 an alternative resolution proceeding, the umpire shall promptly  
 13 rule on that application. Any determination reached before a  
 14 final award shall be considered an intermediate ruling as pro-  
 15 vided for in subsection b. of section 5 of this act. Any party  
 16 may apply at any time to the Superior Court or any other court  
 17 of competent jurisdiction for an order enforcing the determina-  
 18 tion of the umpire directing relief in the nature of any of the  
 19 provisional remedies provided for in this section. \*\**Whenever en-*  
 19A *forcement of an order is sought pursuant to this subsection, review*  
 19B *of the validity of the order may be had by way of defense to en-*  
 19C *forcement.*\*\*

20     ***\*b. Where reasonably required by the circumstances, a party***  
 21     ***may apply to the Superior Court or any other court of competent***  
 22     ***jurisdiction for an order granting any of the provisional remedies***  
 23     ***or other relief set forth in this section before the umpire provided***  
 24     ***for in the agreement, or designated by the court, is authorized or***  
 25     ***able to act on the request for relief.\****

1     7. a. In exceptional circumstances, to prevent a manifest denial  
 2 of justice, or when it clearly appears that a party will suffer  
 3 irreparable harm or that damages may not be reasonably cal-  
 4 culated or, if capable of calculation, that they will not be col-  
 5 lectible, a party who is aggrieved by any intermediate ruling\*\*,  
 5A *except intermediate rulings made pursuant to section 6 of this act,\*\**  
 6 the failure to rule by an umpire may move before the Superior  
 7 Court for an expedited summary review under procedures adopted  
 8 by the Supreme Court. \*\***¶**An intermediate review shall be given  
 9 priority over all other matters pending for determination before  
 10 the court.**¶**\*\* The alternative resolution proceeding shall not be  
 11 abated, stayed or delayed by the application for an intermediate  
 12 review unless the umpire or the court, in exceptional cases or  
 13 circumstances, so rules. The ruling on a summary intermediate  
 14 review application by the court shall thereafter govern the parties  
 15 in the alternative resolution proceeding, provided, however, that  
 16 this ruling may be later modified or vacated by the umpire or  
 17 the court where specific facts are thereafter determined that  
 18 would make the continuance of the court ruling manifestly unfair,  
 19 unjust or grossly inequitable. When it appears that resort to  
 20 the court to review an intermediate ruling has been abused by  
 21 any party, the court may award reasonable counsel fees without  
 22 regard to the ultimate outcome of the alternative resolution  
 23 proceeding.

24     b. The signature of an attorney or party to an intermediate  
 25 appeal, or in opposition thereto constitutes a certification by him:

26         (1) That he has read the pleadings and all supporting  
 27 papers relating to the intermediate appeal;

28         (2) That to the best of his knowledge, information and  
 29 belief, formed after reasonable inquiry, the appeal or oppo-  
 30 sition is well grounded in fact and is warranted by existing  
 31 law or a good faith argument for the extension, modification  
 32 or reversal of existing law; and

33         (3) That it is not interposed for any improper purpose,  
 34 such as to cause unnecessary delay or a needless increase  
 35 in the cost of litigation.

36 If such a pleading, application or other paper is **\*[signed]\***  
37 *\*filed\** in violation of this subsection, the court by summary review,  
38 upon motion by one of the parties or upon its own initiative,  
39 **\*[shall]\*** *\*may\** impose upon the **\*[person who signed it, a repre-**  
40 **sented party, or both,** an appropriate sanction, which may include  
41 an order to pay to the other party the amount of the **]\*** *\*party*  
42 *causing the summary review,\** reasonable expenses, including a  
43 reasonable attorney's fee, incurred because of the filing of the  
44 pleading, application or other paper.

1 8. In an action brought in any court upon an issue arising out  
2 of an agreement providing for alternative resolution under this  
3 act, the court, when satisfied that the issue involved is referable  
4 to alternative resolution, shall stay the action until the alterna-  
5 tive resolution proceeding has been conducted in accordance with  
6 the terms of the agreement, unless the party seeking the stay  
7 is already in default.

1 9. a. An alternative resolution proceeding shall be conducted  
2 by a single umpire unless otherwise expressly provided for in  
3 the agreement. If the agreement designates a person or persons,  
4 the person or persons named shall conduct the proceeding. If  
5 a method is provided in the agreement for appointing one or  
6 more umpires to conduct the alternative resolution proceeding,  
7 it shall be followed; but, if no method is provided, or if a method  
8 is provided and a party fails to avail himself of that method,  
9 or if for other reasons there is a lapse in the naming of an umpire  
10 or in filling a vacancy, the Superior Court shall in a summary  
11 action appoint the umpire. Any umpire so appointed shall serve  
12 with the same powers as if specifically designated.

13 b. Unless otherwise provided for in the agreement, or set by  
14 the parties at the commencement of the proceeding, the court  
15 shall set the umpire's hourly fee.

16 c. An umpire is not competent to testify in any subsequent  
17 proceeding arising out of or related to an alternative resolution  
18 proceeding in which the umpire served, except for an action  
19 brought against the umpire pursuant to subsection d. of this  
20 section.

21 d. An umpire shall be immune from any claim for damages  
22 arising out of a proceeding in which the umpire served unless  
23 the award is overturned for the reasons set forth in paragraph (1)  
24 of subsection c. of section 13 of this act and there is a finding  
25 that the umpire participated in such wrongful conduct. Upon such  
26 a finding, a separate civil action or proceeding may be instituted  
27 against an umpire.

28 e. A finding that an umpire participated in wrongful conduct  
29 proscribed in paragraph (1) of subsection c. of section 13 of  
30 this act which results in the award being overturned, shall not be  
31 admissible as evidence in any subsequent action against the um-  
32 pire, nor shall it establish any fact as a claim of res judicata.  
33 The wrongful conduct shall be proved de novo in any subsequent  
34 action or proceeding where the issue arises.

1 10. a. Each party shall be entitled to discovery by way of oral  
2 deposition, including videotape deposition, **\*\*[and]\*\*** inspection  
3 and copying of all relevant documents within the care, custody or  
4 control of a party or witness\*\*, *and interrogatories when autho-*  
5 *rized by leave of the umpire\*\**. Except as provided herein, the rules  
5A of the Supreme Court governing discovery shall be applicable.

6 b. All discovery shall be completed within **\*\*[30]\*\* \*\*60\*\*** days  
7 following receipt of the demand for alternative resolution or the  
8 entry of a final order compelling alternative resolution. The umpire  
9 shall have the authority to extend the time for completion of  
10 permitted discovery or to limit or terminate any permitted dis-  
11 covery upon application which can be heard in any suitable way  
12 including telephone conference or on submitted papers. The de-  
13 cision of the umpire shall be subject to modification upon review  
14 by the Superior Court in a summary review as provided for by  
15 rules of the New Jersey Supreme Court when the umpire is  
16 shown to have improperly exceeded his discretion.

17 c. Reasonable production of documents at any oral deposition  
18 upon notice in lieu of subpoena given to a party may be required.

19 d. A notice for inspection and copying of documents provided  
20 for in this act may require that the same shall be produced no  
21 sooner than 15 days after receipt of service. The cost of copying  
22 shall be paid by the party demanding the inspection.

1 11. a. When more than one umpire is agreed upon, all the um-  
2 pires shall sit at the hearing of the case, unless by written con-  
3 sent, all parties agree to a lesser number.

4 b. The umpire conducting an alternative resolution proceeding  
5 may require the attendance of any person as a witness and the  
6 production of any book or written instrument. The fees for the  
7 attendance shall be those allowed witnesses in a civil action.

8 c. Subpenas shall issue in the name of and be signed by the  
9 umpire, or if there is more than one umpire, by a majority of  
10 them, and shall be directed to the person therein named and  
11 served in the same manner as a subpoena to testify before a  
12 court of record. If a person subpoenaed to testify refuses or

13 neglects to obey a subpoena, the Superior Court, upon applica-  
14 tion, may compel his attendance before the umpire or hold the  
15 person in contempt as if the person had failed to respond to a  
16 subpoena issued by the court.

17 d. In alternative resolution proceedings held under this act,  
18 parties shall not be bound by the statutory and common law rules  
19 of evidence except as provided for conduct of contested cases  
20 under the "Administrative Procedure Act," P. L. 1968, c. 410  
21 (C. 52:14B-1 et seq.); provided, however, that all statutes and  
22 common law rules relating to privilege shall remain in effect. In  
23 any case when no rule, procedure or practice applies to the offer  
24 of evidence or procedure to be adopted, the umpire shall proceed  
25 so that the informality of the proceedings is assured.

26 e. Each party to an alternative resolution proceeding shall  
27 submit to the umpire and his adversary a statement of the party's  
28 factual and legal position with respect to the issues to be arbi-  
29 trated, at a date fixed by the umpire to permit proper preparation  
30 for all hearings. The submitted statement shall govern, control  
31 and limit the facts and legal issues to be determined in the  
32 alternative resolution proceeding. Amended or supplemental legal  
33 and factual statements may be filed as permitted by the umpire  
34 where the same will not unduly prejudice the other party to the  
35 proceeding.

36 f. In an alternative resolution proceeding when the umpire is  
37 of the opinion that evidence by impartial experts would be of  
38 assistance, the umpire may direct that expert evidence be ob-  
39 tained. The fee and expenses of expert witnesses shall be paid  
40 by the parties as directed by the umpire.

41 g. Unless otherwise provided by the agreement for alternative  
42 resolution:

43 (1) The umpire shall appoint a time and place for the  
44 hearing and cause notification to the parties by personal ser-  
45 vice or by certified mail with return receipt requested, not  
46 less than five days before the hearing. Appearance at the  
47 hearing waives the notice requirement. The umpire may ad-  
48 journ the hearing from time to time as necessary and, on  
49 request of a party and for good cause, or upon their own  
50 motion, may postpone the hearing to a time not later than  
51 the date fixed by the agreement for making the award, unless  
52 the parties consent to a later date. The umpire may deter-  
53 mine the controversy upon the evidence produced, notwith-  
54 standing the failure of a party duly notified to appear. The



55 Superior Court, on application in any pending summary pro-  
56 ceeding, may direct the umpire to proceed promptly with  
57 the hearing and determination of the controversy.

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

61 (3) The hearing shall be conducted by all the umpires,  
62 but a majority may determine any question and render a  
63 final award. If, during the course of the hearing, an umpire  
64 for any reason ceases to act, the remaining umpires ap-  
65 pointed to act may continue with the hearing and determi-  
66 nation of the controversy.

1 12. a. The award in an alternative resolution proceeding shall  
2 be in writing and acknowledged or proved in the same manner  
3 as a deed for the conveyance of real estate and delivered per-  
4 sonally or by certified mail, return receipt requested, or as pro-  
5 vided in the agreement to each party or his attorney who has  
6 appeared in the proceeding. The award shall state findings of  
7 all relevant material facts, and make all applicable determinations  
8 of law.

9 b. An award shall be made within the time fixed by the agree-  
10 ment for alternative resolution or, if not fixed, within such time  
11 as the Superior Court orders on application of a party. The  
12 parties or the Superior Court upon application and for good  
13 cause shown may extend the time for making the award either  
14 before or after the expiration of that time. A party waives the  
15 right to object that an award was not made within the time  
16 required unless **\*[he]\*** *\*the party\** notifies the umpire of **\*[his]\***  
17 *\*the party's\** objection prior to the delivery of the award **\*[to**  
17A **him]\***.

18 c. The power of the umpires may be exercised by a majority  
19 of them unless otherwise provided by the agreement for alterna-  
20 tive resolution or by this act.

21 d. On written application of a party to the umpire within 20  
22 days after delivery of the award to the applicant, the umpire  
23 may modify the award upon the grounds stated in subsection e.  
24 of section 13 of this act. Written notice of the application shall  
25 be given to other parties to the proceeding. Written objection to  
26 modification must be served on the umpire and other parties  
27 to the proceeding within 10 days of receipt of the notice. The  
28 umpire shall dispose of any application made under this section  
29 in writing, signed and acknowledged by him, within 30 days

30 after either written objection to modification has been served or  
31 the time for serving an objection has expired, whichever is earlier.  
32 The parties may in writing extend the time for the disposition  
33 either before or after its expiration.

34 e. The umpire shall make the award on all issues submitted  
35 for alternative resolution in accordance with applicable principles  
36 of substantive law.

37 f. The court shall confirm an award upon application of a party  
38 made within one year after its delivery to him, unless the award  
39 is vacated or modified upon a ground specified in section 13 of  
40 this act.

1 13. a. A party to an alternative resolution proceeding shall  
2 commence a summary application in the Superior Court for its  
3 vacation, modification or correction within 45 days after the  
4 award is delivered to the applicant, or within 30 days after receipt  
5 of an award modified pursuant to subsection d. of section 12  
6 of this act, unless the parties shall extend the time in writing.  
7 The award of the umpire shall become final unless the action is  
8 commenced as required by this subsection.

9 b. In considering an application for vacation, modification or  
10 correction, a decision of the umpire on the facts shall be final  
11 if there is **\*\*[any]\*\*** substantial evidence to support that decision,  
12 provided, however, that when the application to the court is to  
13 vacate the award pursuant to paragraph (1), (2), (3), or (4)  
14 of subsection c., the court shall make an independent determina-  
15 tion of any facts relevant thereto de novo, upon such record  
16 as may exist or as it may determine in a summary expedited  
17 proceeding as provided for by rules adopted by the Supreme  
18 Court for the purpose of acting on such applications.

19 c. The award shall be vacated on the application of a party  
20 who either participated in the alternative resolution proceeding  
21 or was served with a notice of intention to have alternative  
22 resolution if the court finds that the rights of that party were  
23 prejudiced by:

24 (1) Corruption, fraud or misconduct in procuring the  
25 award;

26 (2) Partiality of an umpire appointed as a neutral;

27 (3) In making the award, the umpire's exceeding their  
28 power or so imperfectly executing that power that a final  
29 and definite award was not made;

30 (4) Failure to follow the procedures set forth in this act,  
31 unless the party applying to vacate the award continued

32 with the proceeding with notice of the defect and without  
33 objection; or

34 (5) The umpire's committing prejudicial error by errone-  
35 ously applying law to the issues and facts presented for  
36 alternative resolution.

37 d. The award shall be vacated on the application of a party  
38 who neither participated in the proceeding nor was served with  
39 a notice of intention to have alternative resolution if the court  
40 finds that:

41 (1) The rights of that party were prejudiced by one of  
42 the grounds specified in subsection c. of this section; or

43 (2) A valid agreement to have alternative resolution was  
44 not made; or

45 (3) The agreement to have alternative resolution had not  
46 been complied with; or

47 (4) The claim was barred by any provision of this act.

48 e. The court shall modify the award if:

49 (1) There was a miscalculation of figures or a mistake in  
50 the description of any person, thing or property referred  
51 to in the award;

52 (2) The umpire has made an award based on a matter not  
53 submitted to them and the award may be corrected without  
54 affecting the merits of the decision upon the issues submitted;

55 (3) The award is imperfect in a matter of form, not affect-  
56 ing the merits of the controversy; or

57 (4) The rights of the party applying for the modification  
58 were prejudiced by the umpire erroneously applying law  
59 to the issues and facts presented for alternative resolution.

60 f. Whenever it appears to the court to which application is  
61 made, pursuant to this section, either to vacate or modify the  
62 award because the umpire committed prejudicial error in apply-  
63 ing applicable law to the issues and facts presented for alternative  
64 resolution, the court shall, after vacating or modifying the errone-  
65 ous determination of the umpire, appropriately set forth the  
66 applicable law and arrive at an appropriate determination under  
67 the applicable facts determined by the umpire. The court shall  
68 then confirm the award as modified.

1 14. Upon vacating an award pursuant to section 13, except for  
2 the reasons stated in paragraph (5) of subsection c. of section 13,  
3 the court may order a rehearing and determination of all or any  
4 of the issues, either before the same umpire having due regard  
5 for whether the award was vacated by reason of the actions

6 of the umpire which were violative of paragraphs (1), (2), (3),  
7 or (4) subsection c. of section 13 or before a new umpire ap-  
8 pointed in accordance with the alternative resolution agreement  
9 of this act. Time, in any provision limiting the time for a re-  
10 hearing or an award, shall be measured from the date of the  
11 order or rehearing, whichever is appropriate, or from a time  
12 as may be specified by the court. Upon denial of a motion to  
13 vacate or modify, the court to which the application for that  
14 relief is directed shall confirm the award.

1 15. When a party dies after making a written agreement to  
2 submit a controversy to alternative resolution, the proceedings  
3 may be initiated or continued upon the application of, or upon  
4 notice to, the party's executor or administrator or, when it relates  
5 to real property, the party's distributee or devisee who has  
6 succeeded to the party's interest in the real property. When a  
7 custodian of the property or a guardian of the person of a party  
8 to an agreement is appointed, the proceedings may be continued  
9 upon the application of, or notice to, the custodian or guardian.  
10 Upon the death or incompetency of a party, the court may extend  
11 the time within which an application to confirm, vacate or modify  
12 the award or to stay alternative resolution must be made. Where  
13 a party has died since an award was delivered, the proceedings  
14 thereupon are the same as when a party dies after a verdict.

1 16. If, at the time a demand for alternative resolution was  
2 made or served, the claims sought to be resolved would have  
3 been barred by a limitation of time had it been asserted in a  
4 court of this State, a party may assert the limitation as a bar  
5 to the alternative resolution to a court to which application has  
6 been made to compel alternative resolution under this act. A  
7 party may also assert such bar before the umpire who shall  
8 promptly rule upon that issue in a separate determination.

1 17. Unless otherwise provided in the agreement for alternative  
2 resolution, the expenses and fees of the umpire with other ex-  
3 penses including, but not limited to, costs for the place where  
4 the hearings are held, deposition or hearing transcripts, expert  
5 fees, and copying of documents, incurred in the conduct of the  
6 proceeding, shall be paid as provided in the award. When the  
7 agreement for alternative resolution expressly provides, the um-  
8 pire may provide for payment of attorney's fees.

1 18. a. Whenever a court shall vacate, modify or correct an  
2 award as provided for in this act and thereupon enter an award  
3 based on that determination, the court, upon application, shall

4 in a summary proceeding as provided for herein determine all  
5 costs and expenses permitted by section 17 of this act. The court  
6 may thereupon include the costs and expenses in the final judg-  
7 ment entered confirming the award.

8 b. Upon the granting of an order confirming, modifying or  
9 correcting an award, a judgment or decree shall be entered by  
10 the court in conformity therewith and be enforced as any other  
11 judgment or decree. There shall be no further appeal or review  
12 of the judgment or decree.

1 19. Whenever a party to an agreement for alternative reso-  
2 lution has the right to apply to the Superior Court under this  
3 act, those proceedings shall be heard in the Chancery Division  
4 in accordance with rules adopted by the New Jersey Supreme  
5 Court. These proceedings shall be summary in nature and expe-  
6 dited \*\*~~so that they will have priority over all matters pending for~~  
7 ~~disposition]~~\*\*. This act shall be liberally construed to effectuate its  
8 remedial purpose of allowing parties by agreement to have reso-  
9 lution of factual and legal issues in accordance with informal  
10 proceedings and limited judicial review in an expedited manner.

1 20. This act shall take effect immediately.

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#### COURTS

Designated the "New Jersey Alternative Procedure for Dispute  
Resolution Act."

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5 to real property, the party's distributee or devisee who has  
6 succeeded to the party's interest in the real property. When a  
7 custodian of the property or a guardian of the person of a party  
8 to an agreement is appointed, the proceedings may be continued  
9 upon the application of, or notice to, the custodian or guardian.  
10 Upon the death or incompetency of a party, the court may extend  
11 the time within which an application to confirm, vacate or modify  
12 the award or to stay alternative resolution must be made. Where  
13 a party has died since an award was delivered, the proceedings  
14 thereupon are the same as when a party dies after a verdict.

1 16. If, at the time a demand for alternative resolution was  
2 made or served, the claims sought to be resolved would have  
3 been barred by a limitation of time had it been asserted in a  
4 court of this State, a party may assert the limitation as a bar  
5 to the alternative resolution to a court to which application has  
6 been made to compel alternative resolution under this act. A  
7 party may also assert such bar before the umpire who shall  
8 promptly rule upon that issue in a separate determination.

1 17. Unless otherwise provided in the agreement for alternative  
2 resolution, the expenses and fees of the umpire with other ex-  
3 penses including, but not limited to, costs for the place where  
4 the hearings are held, deposition or hearing transcripts, expert  
5 fees, and copying of documents, incurred in the conduct of the  
6 proceeding, shall be paid as provided in the award. When the  
7 agreement for alternative resolution expressly provides, the um-  
8 pire may provide for payment of attorney's fees.

1 18. a. Whenever a court shall vacate, modify or correct an  
2 award as provided for in this act and thereupon enter an award  
3 based on that determination, the court, upon application, shall  
4 in a summary proceeding as provided for herein determine all  
5 costs and expenses permitted by section 17 of this act. The court  
6 may thereupon include the costs and expenses in the final judg-  
7 ment entered confirming the award.

8 b. Upon the granting of an order confirming, modifying or  
9 correcting an award, a judgment or decree shall be entered by  
10 the court in conformity therewith and be enforced as any other  
11 judgment or decree. There shall be no further appeal or review  
12 of the judgment or decree.

1 19. Whenever a party to an agreement for alternative reso-  
2 lution has the right to apply to the Superior Court under this  
3 act, those proceedings shall be heard in the Chancery Division  
4 in accordance with rules adopted by the New Jersey Supreme

5 Court. These proceedings shall be summary in nature and expe-  
 6 dited so that they will have priority over all matters pending for  
 7 disposition. This act shall be liberally construed to effectuate its  
 8 remedial purpose of allowing parties by agreement to have reso-  
 9 lution of factual and legal issues in accordance with informal  
 10 proceedings and limited judicial review in an expedited manner.  
 1 20. This act shall take effect immediately.

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*Sponsors'* STATEMENT

In recent years, concerns about the high cost of litigation and the ever increasing case load problem, have spurred interest in the development of alternatives to the traditional civil action and arbitration proceedings as means of settling civil disputes. The purpose of this bill, "The New Jersey Alternative Procedure for Dispute Resolution", is to establish an efficient and expeditious procedure for the resolution of civil disputes.

Under this proposal, parties to a contract would be permitted to include in the contract a clause indicating that any dispute arising concerning the contract would be resolved by means of an alternative resolution proceeding. Contractual disputes could be resolved by alternative resolution proceedings even if the original contract did not so provide, if the parties mutually agree to alternative dispute resolution as the means of settling the dispute.

In an alternative dispute resolution proceeding, an umpire or umpires are designated by the parties or the Superior Court to hear the dispute. The umpire is given full and complete authority to determine all claims and disputes arising under the agreement. The umpire is also authorized to order injunctive relief and provisional remedies such as attachment and replevin.

During the course of the proceeding the parties are required to define their legal and factual positions. Technical rules of evidence are dispensed with, but there is an opportunity to have independent expert testimony at the request of the umpire. Provision is also made to join multiple resolution proceedings or a resolution proceeding with a court action in a single coordinated or consolidated proceeding.

The umpire's award determination must be made in accordance with applicable principles of substantive law and must be accompanied by written findings of fact and conclusions of law.

The only appeal of an umpire's award contemplated by the bill is an expedited summary review to the Chancery Division of the

Superior Court. A final award determination is subject to modification or vacation for the reasons now essentially available in traditional arbitration and when the rights of the party applying for the review were prejudiced by error in applying applicable law. On review, the facts found by the umpire shall be final if there is any substantial evidence in the record to support those facts.

It is hoped that through the enactment of this legislation those parties who want a formal method of resolving disputes with predictable rules, procedures and results but without having to resort to traditional litigation can be accommodated.

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ASSEMBLY JUDICIARY COMMITTEE  
STATEMENT TO  
**ASSEMBLY, No. 296**  
**STATE OF NEW JERSEY**

DATED: JUNE 16, 1986

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 296.

In recent years, concerns about the high cost of litigation and the ever increasing case load problem, have spurred interest in the development of alternatives to the traditional civil action and arbitration proceedings as means of settling civil disputes. The purpose of this bill, "The New Jersey Alternative Procedure for Dispute Resolution," is to establish an efficient and expeditious procedure for the resolution of civil disputes.

Under this proposal as amended, parties to a contract would be permitted to include in the contract a clause indicating that any dispute arising concerning the contract would be resolved by means of an alternative resolution proceeding. Contractual disputes could be resolved by alternative resolution proceedings even if the original contract did not so provide, if the parties mutually agree to alternative dispute resolution as the means of settling the dispute.

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By amendment, the committee clarified that, where reasonably required, a party may apply to the court for certain specified provisional remedies or ancillary relief during the intermediate stages of the resolution procedure.

This bill was pre-filed for introduction in the 1986 session pending technical review. As reported and amended the bill includes the changes required by technical review which has been performed.

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SENATE JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY, No. 296  

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STATE OF NEW JERSEY

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DATED: OCTOBER 27, 1986

The Senate Judiciary Committee reports favorably Assembly Bill No. 296.

In recent years, concerns about the high cost of litigation and the ever increasing case load problem, have spurred interest in the development of alternatives to the traditional civil action and arbitration proceedings as means of settling civil disputes. The purpose of this bill titled "The New Jersey Alternative Procedure for Dispute Resolution," is to establish an efficient and expeditious procedure for the resolution of civil disputes.

Under this bill, parties to a contract would be permitted to include in the contract a clause indicating that any dispute arising concerning the contract would be resolved by means of an alternative resolution proceeding. Contractual disputes could be resolved by alternative resolution proceedings even if the original contract did not so provide, if the parties mutually agree to alternative dispute resolution as the means of settling the dispute.

In an alternative dispute resolution proceeding, an umpire or umpires are designated by the parties or the Superior Court to hear the dispute. The umpire is given full and complete authority to determine all claims and disputes arising under the agreement. The umpire is also authorized to order injunctive relief and provisional remedies such as attachment and replevin.

During the course of the proceeding the parties are required to define their legal and factual positions. Technical rules of evidence are dispensed with, but there is an opportunity to have independent expert testimony at the request of the umpire. Provision is also made to join multiple resolution proceedings or a resolution proceeding with a court action in a single coordinated or consolidated proceeding.

The umpire's award determination must be made in accordance with applicable principles of substantive law and must be accompanied by written findings of fact and conclusions of law.

The only appeal of an umpire's award contemplated by the bills is an expedited summary review to the Chancery Division of Superior Court. A final award determination is subject to modification or vacation for the reasons now essentially available in traditional arbitration and when the rights of the party applying for the review were prejudiced by error in applying applicable law. On review, the facts found by the umpire shall be final if there is any substantial evidence in the record to support those facts.

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

January 7, 1987

ASSEMBLY BILL NO. 296 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 296 (OCR) with my objections, for reconsideration.

This bill would create a new procedure for dispute resolution which would be an alternative to the present civil justice system and arbitration system of settling civil disputes. It is intended to provide a speedier and less expensive process for resolution of disputes than traditional civil litigation and would provide parties with rights that are not currently available under New Jersey's Arbitration Act. Similar legislation is being considered by other states and on the Federal level.

Assembly Bill No. 296 (OCR) is a welcome and creative approach to the problems engendered by our current methods of resolving our disputes. New Jersey can be proud to be in the forefront of developing solutions affording individuals a quick and less expensive means for resolving the conflicts which unfortunately abound in today's society. Despite my wholehearted support for the concept embodied in this bill, there are aspects of the bill which must be altered before we step into the vanguard with this important piece of legislation.

I believe that the provisions of the bill which authorize umpires, chosen by the parties or by a judge of the Superior Court, to be inferior courts for the purpose of issuing provisional remedies such as attachment, replevin and sequestration, must be deleted. I think it would be unwise to authorize a delegation of judicial authority to private individuals who need have no legal background and who are to be selected by the parties to the dispute or by a judge of the Superior Court. Such a policy is legally debatable as well as unsound from a policy perspective. These individuals are not accountable to the public and would be wielding considerable power, such as freezing economic assets during dispute resolution. I believe it to be better policy to not allow umpires to issue self-executing provisional remedies but rather to require enforcement and review of such orders to be reserved to our judiciary.

In addition, while the process emphasizes speediness of resolution, there appears to be no good reason for denying the parties access to interrogatories

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EXECUTIVE DEPARTMENT

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so long as tight time constraints are observed. The bill currently allows for depositions. Interrogatories should also be permitted upon leave of the umpire, subject to tight time controls, as a less expensive alternative to discovery by deposition. In this vein, I believe the 30 day period for discovery under the bill is not practical. So long as the umpire retains the right to control the timelines of discovery, speediness can be insured. If an outside timeline on discovery set by statute is regarded as necessary by the Legislature, then I believe that 60 days is more reasonable.

Also, the standard of review of an umpire's factual determinations by an appellate court is unclear. The bill refers to "any substantial evidence." The use of "any" and "substantial" are inconsistent. In order to make the standard of review consistent with the standard applicable to administrative agency decisions as is the bill's intent, the bill should be changed to require "substantial evidence" as the test of review. Finally, I am also proposing several technical amendments to the bill which clarify that the procedures outlined in the bill apply to contracts which incorporate the bill and that while reviews of umpire rulings by the Superior Court are to be expedited, they are not to have priority over all other matters pending for disposition before the court.

Therefore, I herewith return Assembly Bill No. 296 (OCR) and recommend that it be amended as follows:

Page 2, Section 4, Line 2: After "resolution" Insert "under this act"

Pages 3, Section 6, Lines 7-11: After "." Delete "When acting on such applications, the umpire shall be considered as an inferior court established pursuant to paragraph 1 of Section 1 of Article VI of the Constitution of the State of New Jersey."

Page 3, Section 6, Line 19: After "." Insert "Whenever enforcement of an order is sought pursuant to this section, review of the validity of the order may be had by way of defense to enforcement."

Page 4, Section 7, Line 5: After "ruling" Insert ", except intermediate rulings made pursuant to section 6 of this act,

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Page 4, Section 7, Lines 8-10: After "." Delete "An intermediate ruling shall be given priority over all other matters pending for determination before the court."

Page 6, Section 10, Line 2: After "," Delete "and"

Page 6, Section 10, Line 4: After "witness" Insert ", and interrogatories when authorized by leave of the umpire"

Page 6, Section 10, Line 6: Delete "30" Insert "60"

Page 9, Section 13, Line 11: Delete "any"

Page 12, Section 19, Lines 6-7: After "dited" Delete "so that they will have priority over all matters pending for disposition"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel