

# 2A:23B-1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003 **CHAPTER:** 95

**NJSA:** 2A:23B-1 (Rules governing arbitration)

**BILL NO:** S514 (Substituted for A2847)

**SPONSOR(S):** Martin and others

**DATE INTRODUCED:** January 8, 2002

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

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** January 23, 2003; Re-enacted 6-12-2003  
**SENATE:** September 30, 2002; Re-enacted 5-19-2003

**DATE OF APPROVAL:** June 23, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)  
(Amendments during passage denoted by superscript numbers)

#### S514

[SPONSORS STATEMENT](#): (Begins on page 17 of original bill) Yes

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

[FLOOR AMENDMENT STATEMENT](#): Yes

**LEGISLATIVE FISCAL ESTIMATE:** No

#### A2847

[SPONSORS STATEMENT](#): (Begins on page 17 of original bill) Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
Identical to Assembly Statement to S514

**SENATE:** No

**FLOOR AMENDMENT STATEMENTS:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

[VETO MESSAGE](#): Yes

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

Yes

"Arbitration law revamped," 6-30-2003 NJL, p. 1197

**2000 UNIFORM ARBITRATION ACT**

Title 2A.  
Chapter 23B. (New)  
Arbitration  
Agreements,  
Generally  
§§1-32 -  
C.2A:23B-1  
to 2A:23B-32  
§34 - C.2A:24-1.1  
(Retitle Chapter 24.  
Arbitration of  
Collective Bargaining  
Agreements)  
§35 - Note

P.L. 2003, CHAPTER 95, *approved June 23, 2003*  
Senate, No. 514 (*Second Reprint*)

1 AN ACT concerning arbitration procedures and <sup>2</sup>[revising parts of the  
2 statutory law] supplementing Title 2A of the New Jersey Statutes<sup>2</sup>.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. (New section) Definitions. For the purposes of this act:

8 "Arbitration organization" means an association, agency, board,  
9 commission or other entity that is neutral and initiates, sponsors or  
10 administers an arbitration proceeding or is involved in the appointment  
11 of an arbitrator.

12 "Arbitrator" means an individual appointed either as a neutral  
13 arbitrator or as a party arbitrator to render an award, alone or with  
14 others, in a controversy that is subject to an agreement to arbitrate.

15 "Court" means <sup>1</sup>[the Chancery Division of]<sup>1</sup> the Superior Court of  
16 New Jersey.

17 "Court rules" means the Rules Governing the Courts of the State of  
18 New Jersey.

19 "Knowledge" means actual knowledge.

20 "Person" means an individual, corporation, business trust, estate,  
21 trust, partnership, limited liability company, association, joint venture,  
22 government; governmental subdivision, agency, or instrumentality;  
23 public corporation; or any other legal or commercial entity.

24 "Record" means information that is inscribed on a tangible medium  
25 or that is stored in an electronic or other medium and is retrievable in  
26 perceivable form.

27

28 2. (New section) Notice.

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted September 12, 2002.

<sup>2</sup> Senate amendments adopted in accordance with Governor's recommendations March 20, 2003.

1 a. Except as otherwise provided in this act, a person gives notice  
2 to another person by taking action that is reasonably necessary to  
3 inform the other person in ordinary course, whether or not the other  
4 person acquires knowledge of the notice.

5 b. A person has notice if the person has knowledge of the notice or  
6 has received notice.

7 c. A person receives notice when it comes to the person's attention  
8 or the notice is delivered at the person's place of residence or place of  
9 business, or at another location held out by the person as a place of  
10 delivery of such a notice.

11  
12 3. (New section) When Act Applies.

13 a. This act governs all agreements to arbitrate made on or after  
14 <sup>1</sup>[September 1, 2002] January 1, 2003<sup>1</sup> <sup>2</sup>with the exception of an  
15 arbitration between an employer and a duly elected representative of  
16 employees under a collective bargaining agreement or collectively  
17 negotiated agreement<sup>2</sup>.

18 b. This act governs an agreement to arbitrate made before  
19 <sup>1</sup>[September 1, 2002] January 1, 2003<sup>1</sup> if all the parties to the  
20 agreement or to the arbitration proceeding so agree in a record <sup>2</sup>with  
21 the exception of an arbitration between an employer and a duly elected  
22 representative of employees under a collective bargaining agreement  
23 or collectively negotiated agreement<sup>2</sup>.

24 c. On or after January 1, 2005, this act governs an agreement to  
25 arbitrate whenever made <sup>2</sup>with the exception of an arbitration between  
26 an employer and a duly elected representative of employees under a  
27 collective bargaining agreement or collectively negotiated agreement<sup>2</sup>.

28 d. This act shall not apply to agreements to arbitrate made before  
29 July 4, 1923.

30  
31 4. (New section) Effect of Agreement to Arbitrate; Nonwaivable  
32 Provisions.

33 a. Except as otherwise provided in subsections b. and c. of this  
34 section, a party to an agreement to arbitrate or to an arbitration  
35 proceeding may waive or, the parties may vary the effect of, the  
36 requirements of this act to the extent permitted by law.

37 b. Before a controversy that is subject to an agreement to arbitrate  
38 arises, a party to the agreement may not:

39 (1) waive or agree to vary the effect of the requirements of  
40 sections 5a., 6a., 8, 17a., 17b., 26, or 28 of this act;

41 (2) agree to unreasonably restrict the right to notice of the  
42 initiation of an arbitration proceeding pursuant to section 9 of this act;

43 (3) agree to unreasonably restrict the right to disclosure of any  
44 facts by an arbitrator pursuant to section 12 of this act; or

45 (4) waive the right of a party to an agreement to arbitrate to be  
46 represented by a lawyer pursuant to section 16 of this act at any

1 proceeding or hearing pursuant to this act <sup>2</sup>[, but an employer and a  
2 labor organization may waive the right to representation by a lawyer  
3 in a labor arbitration]<sup>2</sup>.

4 c. A party to an agreement to arbitrate or arbitration proceeding  
5 may not waive, or the parties may not vary the effect of, the  
6 requirements of this section or sections 3a., 3c., 7, 14, 18, 20d., 20e.,  
7 22, 23, 24, 25a., 25b., 29, 30, 34 or 35. Provided however, that  
8 nothing in this act shall preclude the parties from expanding the scope  
9 of judicial review of an award by expressly providing for such  
10 expansion in a record.

11

12 5. (New section) Application for Judicial Relief.

13 a. Except as otherwise provided in section 28 of this act, an  
14 application for judicial relief pursuant to this act shall be made <sup>1</sup>[by  
15 motion to] upon commencement of a summary action with <sup>1</sup> the court  
16 and heard in the manner provided for <sup>1</sup>[the making and hearing of  
17 motions] in such matters<sup>1</sup> by the <sup>1</sup>applicable<sup>1</sup> court rules.

18 b. Unless a civil action involving the agreement to arbitrate is  
19 pending, notice of <sup>1</sup>[an initial motion to the court] commencement of  
20 a summary action<sup>1</sup> pursuant to this act shall be served in the manner  
21 provided by <sup>1</sup>[law for the service of a summons in a civil action.  
22 Otherwise, notice of the motion shall be given in the manner provided  
23 by law or court rule for serving motions in pending cases] the court  
24 rules for serving process in summary actions<sup>1</sup>.

25

26 6. (New section) Validity of Agreement to Arbitrate.

27 a. An agreement contained in a record to submit to arbitration any  
28 existing or subsequent controversy arising between the parties to the  
29 agreement is valid, enforceable, and irrevocable except upon a ground  
30 that exists at law or in equity for the revocation of a contract.

31 b. The court shall decide whether an agreement to arbitrate exists  
32 or a controversy is subject to an agreement to arbitrate.

33 c. An arbitrator shall decide whether a condition precedent to  
34 arbitrability has been fulfilled and whether a contract containing a valid  
35 agreement to arbitrate is enforceable.

36 d. If a party to a judicial proceeding challenges the existence of, or  
37 claims that a controversy is not subject to, an agreement to arbitrate,  
38 the arbitration proceeding may continue pending final resolution of the  
39 issue by the court, unless the court otherwise orders.

40

41 7. (New section) <sup>1</sup>[Motion] Application<sup>1</sup> to Compel or Stay  
42 Arbitration.

43 a. On <sup>1</sup>[motion of] filing a summary action with the court by<sup>1</sup> a  
44 person showing an agreement to arbitrate and alleging another person's  
45 refusal to arbitrate pursuant to the agreement:

1 (1) if the refusing party does not appear or does not oppose the  
2 <sup>1</sup>[motion] summary action<sup>1</sup>, the court shall order the parties to  
3 arbitrate; and

4 (2) if the refusing party opposes the <sup>1</sup>[motion] summary action<sup>1</sup>,  
5 the court shall proceed summarily to decide the issue and order the  
6 parties to arbitrate unless it finds that there is no enforceable  
7 agreement to arbitrate.

8 b. On <sup>1</sup>[motion of] filing a summary action with the court by<sup>1</sup> a  
9 person alleging that an arbitration proceeding has been initiated or  
10 threatened but that there is no agreement to arbitrate, the court shall  
11 proceed summarily to decide the issue. If the court finds that there is  
12 an enforceable agreement to arbitrate, it shall order the parties to  
13 arbitrate.

14 c. If the court finds that there is no enforceable agreement, it may  
15 not, pursuant to subsection a. or b. of this section, order the parties to  
16 arbitrate.

17 d. The court may not refuse to order arbitration because the claim  
18 subject to arbitration lacks merit or grounds for the claim have not  
19 been established.

20 e. If a proceeding involving a claim referable to arbitration  
21 pursuant to an alleged agreement to arbitrate is pending in court, <sup>1</sup>[a  
22 motion] an application<sup>1</sup> pursuant to this section shall be made in that  
23 court. Otherwise, <sup>1</sup>[a motion] an application<sup>1</sup> pursuant to this section  
24 may be made in any court as provided in section 27 of this act.

25 f. If a party <sup>1</sup>[makes a motion to the court to] commences a  
26 summary action to<sup>1</sup> order arbitration, the court on just terms shall stay  
27 any judicial proceeding that involves a claim alleged to be subject to  
28 the arbitration until the court renders a final decision pursuant to this  
29 section.

30 g. If the court orders arbitration, the court on just terms shall stay  
31 any judicial proceeding that involves a claim subject to the arbitration.  
32 If a claim subject to the arbitration is severable, the court may limit the  
33 stay to that claim.

34  
35 8. (New section) Provisional Remedies.

36 a. Before an arbitrator is appointed and is authorized and able to  
37 act, the court, <sup>1</sup>[upon motion] in such summary action upon  
38 application<sup>1</sup> of a party to an arbitration proceeding and for good cause  
39 shown, may enter an order for provisional remedies to protect the  
40 effectiveness of the arbitration proceeding to the same extent and  
41 pursuant to the same conditions as if the controversy were the subject  
42 of a civil action.

43 b. After an arbitrator is appointed and is authorized and able to act:

44 (1) the arbitrator may issue orders for provisional remedies,  
45 including interim awards, as the arbitrator finds necessary to protect  
46 the effectiveness of the arbitration proceeding and to promote the fair

1 and expeditious resolution of the controversy, to the same extent and  
2 pursuant to the same conditions as if the controversy were the subject  
3 of a civil action; and

4 (2) a party to an arbitration proceeding may move the court for a  
5 provisional remedy only if the matter is urgent and the arbitrator is not  
6 able to act timely or the arbitrator cannot provide an adequate remedy.

7 c. A party does not waive a right of arbitration by making <sup>1</sup>[a  
8 motion] an application<sup>1</sup> pursuant to subsection a. or b. of this section.

9

10 9. (New section) Initiation of Arbitration.

11 a. A person initiates an arbitration proceeding by giving notice in  
12 a record to the other parties to the agreement to arbitrate in the  
13 manner agreed between the parties or, in the absence of agreement, by  
14 certified or registered mail, return receipt requested and obtained, or  
15 by service as authorized for the commencement of a civil action. The  
16 notice shall describe the nature of the controversy and the remedy  
17 sought.

18 b. Unless a person objects for lack or insufficiency of notice  
19 pursuant to subsection c. of section 15 of this act not later than the  
20 beginning of the arbitration hearing, the person, by appearing at the  
21 hearing, waives any objection to the lack or insufficiency of notice.

22

23 10. (New section) Consolidation of Separate Arbitration  
24 Proceedings.

25 a. Except as otherwise provided in subsection c. of this section,  
26 upon <sup>1</sup>[motion] application<sup>1</sup> of a party to an agreement to arbitrate or  
27 to an arbitration proceeding, the court may order consolidation of  
28 separate arbitration proceedings as to all or some of the claims if:

29 (1) there are separate agreements to arbitrate or separate  
30 arbitration proceedings between the same persons or one of them is a  
31 party to a separate agreement to arbitrate or a separate arbitration  
32 proceeding with a third person;

33 (2) the claims subject to the agreements to arbitrate arise in  
34 substantial part from the same transaction or series of related  
35 transactions;

36 (3) the existence of a common issue of law or fact creates the  
37 possibility of conflicting decisions in the separate arbitration  
38 proceedings; and

39 (4) prejudice resulting from a failure to consolidate is not  
40 outweighed by the risk of undue delay or prejudice to the rights of or  
41 hardship to parties opposing consolidation.

42 b. The court may order consolidation of separate arbitration  
43 proceedings as to some claims and allow other claims to be resolved  
44 in separate arbitration proceedings.

45 c. The court may not order consolidation of the claims of a party  
46 to an agreement to arbitrate if the agreement prohibits consolidation.

1       11. (New section) Appointment of Arbitrator; Service as a Neutral  
2 Arbitrator.

3       a. If the parties to an agreement to arbitrate agree on a method for  
4 appointing an arbitrator, that method shall be followed, unless the  
5 method fails. If the parties have not agreed on a method, the agreed  
6 method fails, or an arbitrator appointed fails or is unable to act and a  
7 successor has not been appointed, the court, on <sup>1</sup>[motion]  
8 application<sup>1</sup> of a party to the arbitration proceeding, shall appoint the  
9 arbitrator. An arbitrator so appointed has all the powers of an  
10 arbitrator designated in the agreement to arbitrate or appointed  
11 pursuant to the agreed method.

12       b. An individual who has a known, direct, and material interest in  
13 the outcome of the arbitration proceeding or a known, existing, and  
14 substantial relationship with a party may not serve as an arbitrator  
15 required by an agreement to be neutral.

16       c. An individual who has a known, direct, and material interest in  
17 the outcome of the arbitration proceeding or a known, existing, and  
18 substantial relationship with a party may not serve as a party arbitrator  
19 if such information has not been disclosed pursuant to section 12 of  
20 this act.

21       d. An individual appointed as a party arbitrator may be predisposed  
22 toward the appointing party. From and after the commencement of an  
23 arbitration, an arbitrator shall act in good faith and exercise the  
24 arbitrator's responsibilities in a manner consistent with the authority  
25 placed in the arbitrator by the courts of this State and this act.

26

27       12. (New section) Disclosure by Arbitrator.

28       a. Before accepting appointment, an individual who is requested to  
29 serve as an arbitrator, after making a reasonable inquiry, shall disclose  
30 to all parties to the agreement to arbitrate and arbitration proceeding  
31 and to any other arbitrators any known facts that a reasonable person  
32 would consider likely to affect the impartiality of the arbitrator in the  
33 arbitration proceeding, including:

34       (1) a financial or personal interest in the outcome of the arbitration  
35 proceeding; and

36       (2) an existing or past relationship with any of the parties to the  
37 agreement to arbitrate or the arbitration proceeding, their counsel or  
38 representatives, a witness, or other arbitrators.

39       b. An arbitrator has a continuing obligation to disclose to all  
40 parties to the agreement to arbitrate and arbitration proceeding and to  
41 any other arbitrators any facts that the arbitrator learns after accepting  
42 appointment which a reasonable person would consider likely to affect  
43 the impartiality of the arbitrator.

44       c. If an arbitrator discloses a fact required by subsection a. or b. of  
45 this section to be disclosed and a party timely objects to the  
46 appointment or continued service of the arbitrator based upon the fact



1 disclosed, subject to the provisions of section 11d. of this act, the  
2 objection may be a ground pursuant to paragraph (2) of subsection a.  
3 of section 23 of this act for vacating an award made by the arbitrator.

4 d. If the arbitrator did not disclose a fact as required by subsection  
5 a. or b. of this section, upon timely objection by a party, the court  
6 pursuant to paragraph (2) of subsection a. of section 23 may vacate an  
7 award.

8 e. An individual appointed as an neutral arbitrator who does not  
9 disclose a known, direct and material interest in the outcome of the  
10 arbitration proceeding or a known, existing, and substantial  
11 relationship with a party is presumed to act with evident partiality  
12 pursuant to paragraph (2) of subsection a. of section 23 of this act.

13 f. An individual appointed as a party arbitrator who does not  
14 disclose a known, direct and material interest in the outcome of the  
15 arbitration proceeding is presumed to act with evident partiality  
16 pursuant to paragraph (2) of subsection a. of section 23 of this act.

17 g. If the parties to an arbitration proceeding agree to the  
18 procedures of an arbitration organization or any other procedures for  
19 challenges to arbitrators before an award is made, substantial  
20 compliance with those procedures is a condition precedent to a  
21 <sup>1</sup>[motion] summary action<sup>1</sup> to vacate an award on that ground  
22 pursuant to paragraph (2) of subsection a. of section 23 of this act.

23 h. Should an individual designated as an arbitrator make full  
24 disclosure as required by this section and a party fails to object within  
25 a reasonable time, the party receiving such information shall be held to  
26 have waived any right to object to the designation of the arbitrator on  
27 the grounds so revealed.

28

29 13. (New section) Action by Majority.

30 If there is more than one arbitrator, the powers of an arbitrator shall  
31 be exercised by a majority of the arbitrators, but all of them shall  
32 conduct the hearing pursuant to subsection c. of section 15 of this act.

33

34 14. (New section) Immunity of Arbitrator; Competency to Testify;  
35 Attorney's Fees and Costs.

36 a. An arbitrator or an arbitration organization acting in that  
37 capacity is immune from civil liability to the same extent as a judge of  
38 a court of this State acting in a judicial capacity.

39 b. The immunity afforded by this section supplements any immunity  
40 pursuant to other law.

41 c. The failure of an arbitrator to make a disclosure required by  
42 section 12 of this act does not cause any loss of immunity pursuant to  
43 this section.

44 d. In a judicial, administrative, or similar proceeding, an arbitrator  
45 or representative of an arbitration organization is not competent to  
46 testify, and may not be required to produce records as to any

1 statement, conduct, decision, or ruling occurring during the arbitration  
2 proceeding, to the same extent as a judge of a court of this State  
3 acting in a judicial capacity. This subsection does not apply:

4 (1) to the extent necessary to determine the claim of an arbitrator,  
5 arbitration organization, or representative of the arbitration  
6 organization against a party to the arbitration proceeding; or

7 (2) to a hearing <sup>1</sup>[on a motion] in a summary action<sup>1</sup> to vacate an  
8 award pursuant to paragraph (1) or (2) of subsection a. of section 23  
9 of this act if the movant establishes prima facie that a ground for  
10 vacating the award exists.

11 e. If a person commences a civil action against an arbitrator,  
12 arbitration organization or representative of an arbitration organization  
13 arising from the services of the arbitrator, organization or  
14 representative or if a person seeks to compel an arbitrator or a  
15 representative of an arbitration organization to testify or produce  
16 records in violation of subsection d. of this section, and the court  
17 decides that the arbitrator, arbitration organization or representative  
18 of an arbitration organization is immune from civil liability or that the  
19 arbitrator or representative of the organization is not competent to  
20 testify, the court shall award to the arbitrator, organization or  
21 representative reasonable attorney's fees and other reasonable  
22 expenses of litigation.

23

24 15. (New section) Arbitration Process.

25 a. An arbitrator may conduct an arbitration in such manner as the  
26 arbitrator considers appropriate for a fair and expeditious disposition  
27 of the proceeding. The authority conferred upon the arbitrator  
28 includes the power to hold conferences with the parties to the  
29 arbitration proceeding before the hearing and, among other matters,  
30 determine the admissibility, relevance, materiality, and weight of any  
31 evidence.

32 b. An arbitrator may decide a request for summary disposition of  
33 a claim or particular issue:

34 (1) if all interested parties agree; or

35 (2) upon request of one party to the arbitration proceeding if that  
36 party gives notice to all other parties to the proceeding, and the other  
37 parties have a reasonable opportunity to respond.

38 c. If an arbitrator orders a hearing, the arbitrator shall set a time  
39 and place and give notice of the hearing not less than five days before  
40 the hearing begins. Unless a party to the arbitration proceeding makes  
41 an objection due to lack or insufficiency of notice not later than the  
42 beginning of the hearing, the party's appearance at the hearing waives  
43 the objection. Upon request of a party to the arbitration proceeding  
44 and for good cause shown, or upon the arbitrator's own initiative, the  
45 arbitrator may adjourn the hearing from time to time as necessary but  
46 may not postpone the hearing to a time later than that fixed by the

1 agreement to arbitrate for making the award unless the parties to the  
2 arbitration proceeding consent to a later date. The arbitrator may hear  
3 and decide the controversy upon the evidence produced although a  
4 party who was duly notified of the arbitration proceeding did not  
5 appear. The court, on request, may direct the arbitrator to conduct  
6 the hearing promptly and render a timely decision.

7 d. At a hearing pursuant to subsection c. of this section, a party to  
8 the arbitration proceeding has a right to be heard, to present evidence  
9 material to the controversy, and to cross-examine witnesses appearing  
10 at the hearing.

11 e. If an arbitrator ceases or is unable to act during the arbitration  
12 proceeding, a replacement arbitrator shall be appointed in accordance  
13 with section 11 of this act to continue the proceeding and to resolve  
14 the controversy.

15  
16 16. (New section) Representation by Lawyer.

17 A party to an arbitration proceeding may be represented by a  
18 lawyer.

19  
20 17. (New section) Witnesses; Subpoenas; Depositions; Discovery.

21 a. An arbitrator may issue a subpoena for the attendance of a  
22 witness and for the production of records and other evidence at any  
23 hearing and may administer oaths. A subpoena shall be served in the  
24 manner for service of subpoenas in a civil action, and upon <sup>1</sup>[motion  
25 to] filing a summary action with<sup>1</sup> the court by a party to the  
26 arbitration proceeding or the arbitrator, enforced in the manner for  
27 enforcement of subpoenas in <sup>1</sup>[a]ny<sup>1</sup> civil action.

28 b. In order to make the proceedings fair, expeditious, and cost  
29 effective, upon request of a party to or a witness in an arbitration  
30 proceeding, an arbitrator may permit a deposition of any witness to be  
31 taken for use as evidence at the hearing, including a witness who  
32 cannot be subpoenaed for or is unable to attend a hearing. The  
33 arbitrator shall determine the conditions pursuant to which the  
34 deposition is taken.

35 c. An arbitrator may permit such discovery as the arbitrator decides  
36 is appropriate in the circumstances, taking into account the needs of  
37 the parties to the arbitration proceeding and other affected persons and  
38 the desirability of making the proceeding fair, expeditious, and cost  
39 effective.

40 d. If an arbitrator permits discovery pursuant to subsection c. of  
41 this section, the arbitrator may order a party to the arbitration  
42 proceeding to comply with the arbitrator's discovery-related orders,  
43 issue subpoenas for the attendance of a witness and for the production  
44 of records and other evidence at a discovery proceeding, and take  
45 action against a noncomplying party to the extent a court could if the  
46 controversy were the subject of a civil action in this State.

1 e. An arbitrator may issue a protective order to prevent the  
2 disclosure of privileged information, confidential information, trade  
3 secrets, and other information protected from disclosure to the extent  
4 a court could if the controversy were the subject of a civil action in  
5 this State.

6 f. All laws compelling a person under subpoena to testify and all  
7 fees for attending a judicial proceeding, a deposition or a discovery  
8 proceeding as a witness apply to an arbitration proceeding as if the  
9 controversy were the subject of a civil action in this State.

10 g. The court may enforce a subpoena or discovery-related order for  
11 the attendance of a witness within this State and for the production of  
12 records and other evidence issued by an arbitrator in connection with  
13 an arbitration proceeding in another State upon conditions determined  
14 by the court so as to make the arbitration proceeding fair, expeditious,  
15 and cost effective. A subpoena or discovery-related order issued by  
16 an arbitrator in another State shall be served in the manner provided  
17 by law for service of subpoenas in a civil action in this State and, upon  
18 <sup>1</sup>[motion to] filing a summary action with<sup>1</sup> the court by a party to the  
19 arbitration proceeding or the arbitrator, enforced in the manner  
20 provided by law for enforcement of subpoenas in <sup>1</sup>[a] any<sup>1</sup> civil action  
21 in this State.

22  
23 18. (New section) Judicial Enforcement of Preaward Ruling by  
24 Arbitrator.

25 If an arbitrator makes a preaward ruling in favor of a party to the  
26 arbitration proceeding, the party may request the arbitrator to  
27 incorporate the ruling into an award pursuant to section 19 of this act.  
28 A prevailing party may <sup>1</sup>[make a motion to] file a summary action  
29 with<sup>1</sup> the court for an expedited order to confirm the award pursuant  
30 to section 22 of this act, in which case the court shall summarily  
31 decide the <sup>1</sup>[ motion] application<sup>1</sup>. The court shall issue an order to  
32 confirm the award unless the court vacates, modifies, or corrects the  
33 award pursuant to section 23 or 24 of this act.

34  
35 19. (New section) Award.

36 a. An arbitrator shall make a record of an award. The record shall  
37 be signed or otherwise authenticated by any arbitrator who concurs  
38 with the award. The arbitrator or the arbitration organization shall  
39 give notice of the award, including a copy of the award, to each party  
40 to the arbitration proceeding.

41 b. An award shall be made within the time specified by the  
42 agreement to arbitrate or, if not specified therein, within the time  
43 ordered by the court. The court may extend or the parties to the  
44 arbitration proceeding may agree in a record to extend the time. The  
45 court or the parties may do so within or after the time specified or  
46 ordered. A party waives any objection that an award was not timely

1 made unless the party gives notice of the objection to the arbitrator  
2 before receiving notice of the award.

3  
4 20. (New section) Change of Award by Arbitrator.

5 a. On <sup>1</sup>[motion] application<sup>1</sup> to an arbitrator by a party to an  
6 arbitration proceeding, the arbitrator may modify or correct an award:

7 (1) upon a ground stated in paragraph (1) or (3) of subsection a.  
8 of section 24 of this act;

9 (2) if the arbitrator has not made a final and definite award upon  
10 a claim submitted by the parties to the arbitration proceeding; or

11 (3) to clarify the award.

12 b. <sup>1</sup>[A motion] An application<sup>1</sup> pursuant to subsection a. of this  
13 section shall be made and notice given to all parties within 20 days  
14 after the <sup>1</sup>[movant] aggrieved party<sup>1</sup> receives notice of the award.

15 c. A party to the arbitration proceeding shall give notice of any  
16 objection to the <sup>1</sup>[motion] application<sup>1</sup> within 10 days after receipt of  
17 the notice.

18 d. If a <sup>1</sup>[motion to] summary action with<sup>1</sup> the court is pending  
19 pursuant to sections 22, 23, or 24 of this act, the court may submit the  
20 claim to the arbitrator to consider whether to modify or correct the  
21 award:

22 (1) upon a ground stated in paragraph (1) or (3) of subsection a.  
23 of section 24 of this act.

24 (2) if the arbitrator has not made a final and definite award upon  
25 a claim submitted by the parties to the arbitration proceeding; or

26 (3) to clarify the award.

27 e. An award modified or corrected pursuant to this section is  
28 subject to sections 19a., 22, 23, and 24 of this act.

29  
30 21. (New section) Remedies; Fees and Expenses of Arbitration  
31 Proceeding.

32 a. An arbitrator may award punitive damages or other exemplary  
33 relief if such an award is authorized by law in a civil action involving  
34 the same claim and the evidence produced at the hearing justifies the  
35 award in accordance with the legal standards otherwise applicable to  
36 the claim.

37 b. An arbitrator may award reasonable attorney's fees and other  
38 reasonable expenses of arbitration if such an award is authorized by  
39 law in a civil action involving the same claim or by the agreement of  
40 the parties to the arbitration proceeding.

41 c. As to all remedies other than those authorized by subsections a.  
42 and b. of this section, an arbitrator may order such remedies as the  
43 arbitrator considers just and appropriate under the circumstances of  
44 the arbitration proceeding. The fact that such a remedy could not or  
45 would not be granted by the court is not a ground for refusing to  
46 confirm an award pursuant to section 22 of this act or for vacating an

1 award pursuant to section 23 of this act.

2 d. An arbitrator's expenses and fees, together with other expenses,  
3 shall be paid as provided in the award.

4 e. If an arbitrator awards punitive damages or other exemplary  
5 relief pursuant to subsection a. of this section, the arbitrator shall  
6 specify in the award the basis in fact justifying and the basis in law  
7 authorizing the award and state separately the amount of the punitive  
8 damages or other exemplary relief.

9

10 22. (New section) Confirmation of Award.

11 After a party to an arbitration proceeding receives notice of an  
12 award, the party may <sup>1</sup>[make a motion to] file a summary action with<sup>1</sup>  
13 the court for an order confirming the award, at which time the court  
14 shall issue a confirming order unless the award is modified or  
15 corrected pursuant to section 20 or 24 of this act or is vacated  
16 pursuant to section 23 of this act.

17

18 23. (New section) Vacating Award.

19 a. Upon <sup>1</sup>[motion to] the filing of a summary action with<sup>1</sup> the  
20 court by a party to an arbitration proceeding, the court shall vacate an  
21 award made in the arbitration proceeding if:

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

24 (2) the court finds evident partiality by an arbitrator; corruption by  
25 an arbitrator; or misconduct by an arbitrator prejudicing the rights of  
26 a party to the arbitration proceeding;

27 (3) an arbitrator refused to postpone the hearing upon showing of  
28 sufficient cause for postponement, refused to consider evidence  
29 material to the controversy, or otherwise conducted the hearing  
30 contrary to section 15 of this act, so as to substantially prejudice the  
31 rights of a party to the arbitration proceeding;

32 (4) an arbitrator exceeded the arbitrator's powers;

33 (5) there was no agreement to arbitrate, unless the person  
34 participated in the arbitration proceeding without raising the objection  
35 pursuant to subsection c. of section 15 of this act not later than the  
36 beginning of the arbitration hearing; or

37 (6) the arbitration was conducted without proper notice of the  
38 initiation of an arbitration as required in section 9 of this act so as to  
39 substantially prejudice the rights of a party to the arbitration  
40 proceeding.

41 b. A <sup>1</sup>[motion] summary action<sup>1</sup> pursuant to this section shall be  
42 filed within <sup>1</sup>[90] 120<sup>1</sup> days after the <sup>1</sup>[movant] aggrieved party<sup>1</sup>  
43 receives notice of the award pursuant to section 19 of this act or  
44 within <sup>1</sup>[90] 120<sup>1</sup> days after the <sup>1</sup>[movant] aggrieved party<sup>1</sup> receives  
45 notice of a modified or corrected award pursuant to section 20 of this  
46 act, unless the <sup>1</sup>[movant] aggrieved party<sup>1</sup> alleges that the award was

1 procured by corruption, fraud, or other undue means, in which case  
2 the <sup>1</sup>[motion] summary action<sup>1</sup> shall be <sup>1</sup>[made] commenced<sup>1</sup> within  
3 <sup>1</sup>[90] 120<sup>1</sup> days after the ground is known or by the exercise of  
4 reasonable care would have been known by the <sup>1</sup>[movant] aggrieved  
5 party<sup>1</sup>.

6  
7 c. If the court vacates an award on a ground other than that set  
8 forth in paragraph (5) of subsection a. of this section, it may order a  
9 rehearing. If the award is vacated on a ground stated in paragraph (1)  
10 or (2) of subsection a. of this section, the rehearing shall be before a  
11 new arbitrator. If the award is vacated on a ground stated in  
12 paragraph (3), (4), or (6) of subsection a. of this section, the rehearing  
13 may be before the arbitrator who made the award or the arbitrator's  
14 successor. The arbitrator shall render the decision in the rehearing  
15 within the same time as that provided in subsection b. of section 19 of  
16 this act for an award.

17 d. If the court denies <sup>1</sup>[a motion] an application<sup>1</sup> to vacate an  
18 award, it shall confirm the award unless <sup>1</sup>[a motion] an application<sup>1</sup>  
19 to modify or correct the award is pending.

20  
21 24. (New section) Modification or Correction of Award.

22 a. Upon <sup>1</sup>[motion made] filing a summary action <sup>1</sup>within  
23 <sup>1</sup>[90] 120<sup>1</sup> days after the <sup>1</sup>[movant] party <sup>1</sup>receives notice of the  
24 award pursuant to section 19 of this act or within <sup>1</sup>[90] 120<sup>1</sup> days  
25 after the <sup>1</sup>[movant] party<sup>1</sup> receives notice of a modified or corrected  
26 award pursuant to section 20 of this act, the court shall modify or  
27 correct the award if:

28 (1) there was an evident mathematical miscalculation or an evident  
29 mistake in the description of a person, thing, or property referred to  
30 in the award;

31 (2) the arbitrator made an award on a claim not submitted to the  
32 arbitrator and the award may be corrected without affecting the merits  
33 of the decision upon the claims submitted; or

34 (3) the award is imperfect in a matter of form not affecting the  
35 merits of the decision on the claims submitted.

36 b. If <sup>1</sup>[a motion] an application<sup>1</sup> made pursuant to subsection a.  
37 of this section is granted, the court shall modify or correct and confirm  
38 the award as modified or corrected. Otherwise, unless <sup>1</sup>[a motion] an  
39 application<sup>1</sup> to vacate is pending, the court shall confirm the award.

40 c. <sup>1</sup>[A motion] An application<sup>1</sup> to modify or correct an award  
41 pursuant to this section may be joined with <sup>1</sup>[a motion] an  
42 application<sup>1</sup> to vacate the award.

43  
44 25. (New section) Judgment on Award; Attorney's Fees and  
45 Litigation Expenses.

46 a. Upon granting an order confirming, vacating without directing

1 a rehearing, modifying, or correcting an award, the court shall enter  
2 a judgment in conformity with the arbitrator's award. The judgment  
3 may be recorded, docketed, and enforced as any other judgment in a  
4 civil action.

5 b. A court may allow reasonable costs of the <sup>1</sup>[motion] summary  
6 action<sup>1</sup> and subsequent judicial proceedings.

7 c. On application of a prevailing party to a contested judicial  
8 proceeding pursuant to section 22, 23, or 24 of this act, the court may  
9 add reasonable attorney's fees and other reasonable expenses of  
10 litigation incurred in a judicial proceeding after the award is made to  
11 a judgment confirming, vacating without directing a rehearing, or  
12 substantially modifying or correcting an award.

13

14 26. (New section) Jurisdiction.

15 a. A court of this State having jurisdiction over the controversy  
16 and the parties may enforce an agreement to arbitrate.

17 b. An agreement to arbitrate providing for arbitration in this State  
18 confers exclusive jurisdiction on the court to enter judgment on an  
19 award pursuant to this act.

20 c. Wherever reference is made to any procedural matter stated in  
21 this act, the <sup>1</sup>[court shall apply court] New Jersey Supreme Court  
22 rules governing summary actions, or such other<sup>1</sup> rules as may be  
23 adopted by the Supreme Court of New Jersey <sup>1</sup>shall apply<sup>1</sup>.

24

25 27. (New section) Venue.

26 A <sup>1</sup>[motion] summary action<sup>1</sup> pursuant to section 5 of this act shall  
27 be <sup>1</sup>[made] commenced<sup>1</sup> in the court of the county that would have  
28 venue if the matter were subject to Superior Court rules in civil  
29 actions, or to a court in which the agreement to arbitrate specifies the  
30 arbitration hearing is to be held or, if the hearing has been held, in the  
31 court of the county in which it was held. <sup>1</sup>[Otherwise, the motion may  
32 be made in the court of any county in which an adverse party resides  
33 or has a place of business or, if no adverse party has a residence or  
34 place of business in this State, in the court of any county in this State.  
35 All subsequent motions shall be made in the court hearing the initial  
36 motion unless the court otherwise directs.]<sup>1</sup>

37

38 28. (New section) Appeals.

39 a. An appeal may be taken from:

40 (1) an order denying a <sup>1</sup>[motion] summary action <sup>1</sup>to compel  
41 arbitration;

42 (2) an order granting a <sup>1</sup>[motion] summary action<sup>1</sup> to stay  
43 arbitration;

44 (3) an order confirming or denying confirmation of an award;

45 (4) an order modifying or correcting an award;

46 (5) an order vacating an award without directing a rehearing; or



1 (6) a final judgment entered pursuant to this act.

2 b. An appeal pursuant to this section shall be taken as from an  
3 order or a judgment in a civil action.

4  
5 29. (New section) Uniformity of Application and Construction.

6 In applying and construing this uniform act, consideration shall be  
7 given to the need to promote uniformity of the law with respect to its  
8 subject matter among States that enact it.

9  
10 30. (New section) Relationship to Electronic Signatures in Global  
11 and National Commerce Act.

12 The provisions of this act governing the legal effect, validity, and  
13 enforceability of electronic records or electronic signatures, and of  
14 contracts performed with the use of such records or signatures  
15 conform to the requirements of the "Electronic Signatures in Global  
16 and National Commerce Act," 15 U.S.C.s.7002.

17  
18 31. (New section) Prior Action or Proceeding.

19 This act does not affect an action or proceeding commenced or  
20 right accrued before this act takes effect. Subject to section 3 of this  
21 act, an arbitration agreement made before the effective date of this act  
22 is governed by N.J.S.2A:24-1 et seq. and P.L.1987, c.54 (C.2A:23A-  
23 1 et seq.).

24  
25 32. (New section) Statutes <sup>1</sup>and Procedures<sup>1</sup> Not Affected.

26 This act shall not apply to the substance and procedure of "The  
27 New Jersey Alternative Procedure for Dispute Resolution Act, "  
28 P.L.1987, c.54 (C.2A:23A-1 et seq.), nor shall this act apply to  
29 arbitrations governed by P.L.1987, c.329 (C.2A:23A-20 et seq.),  
30 P.L.1983, c.358 (C.39:6A-24 et seq.) or section 24 of P.L.1998, c.21  
31 (C.39:6A-5.1) <sup>1</sup>;and, unless otherwise agreed by the parties, any other  
32 non-binding court annexed arbitration procedures authorized under  
33 court rules or where under existing statutes the application of  
34 N.J.S.2A:24-1 through 2A:24-11 is expressly excluded<sup>1</sup>.

35  
36 33. Section 11 of P.L.1987, c.54 (C.2A:23A-11) is amended to  
37 read as follows:

38 11. a. When more than one umpire is agreed upon, all the umpires  
39 shall sit at the hearing of the case, unless by written consent, all parties  
40 agree to a lesser number.

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

45 c. Subpoenas shall issue in the name of and be signed by the  
46 umpire, or if there is more than one umpire, by a majority of them, and  
47 shall be directed to the person therein named and served in the same

1 manner as a <sup>1</sup>[subpena] subpoena<sup>1</sup> to testify before a court of record.  
2 If a person subpoenaed to testify refuses or neglects to obey a  
3 <sup>1</sup>[subpena] subpoena<sup>1</sup>, the Superior Court, upon application, may  
4 compel his attendance before the umpire or hold the person in  
5 contempt as if the person had failed to respond to a <sup>1</sup>[subpena]  
6 subpoena<sup>1</sup> issued by the court.

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

16 e. Each party to an alternative resolution proceeding shall submit  
17 to the umpire and his adversary a statement of the party's factual and  
18 legal position with respect to the issues to be [arbitrated] resolved, at  
19 a date fixed by the umpire to permit proper preparation for all  
20 hearings. The submitted statement shall govern, control and limit the  
21 facts and legal issues to be determined in the alternative resolution  
22 proceeding. Amended or supplemental legal and factual statements  
23 may be filed as permitted by the umpire where the same will not  
24 unduly prejudice the other party to the proceeding.

25 f. In an alternative resolution proceeding when the umpire is of the  
26 opinion that evidence by impartial experts would be of assistance, the  
27 umpire may direct that expert evidence be obtained. The fees and  
28 expenses of expert witnesses shall be paid by the parties as directed by  
29 the umpire.

30 g. Unless otherwise provided by the agreement for alternative  
31 resolution:

32 (1) The umpire shall appoint a time and place for the hearing and  
33 cause notification to the parties by personal service or by certified  
34 mail, with return receipt requested, not less than five days before the  
35 hearing. Appearance at the hearing waives the notice requirement.  
36 The umpire may adjourn the hearing from time to time as necessary  
37 and, on request of a party and for good cause, or upon their own  
38 motion, may postpone the hearing to a time not later than the date  
39 fixed by the agreement for making the award, unless the parties  
40 consent to a later date. The umpire may determine the controversy  
41 upon the evidence produced, notwithstanding the failure of a party  
42 duly notified to appear. The Superior Court, on application in any  
43 pending summary proceeding, may direct the umpire to proceed  
44 promptly with the hearing and determination of the controversy.

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

1 (3) The hearing shall be conducted by all the umpires, but a  
2 majority may determine any question and render a final award. If,  
3 during the course of the hearing, an umpire for any reason ceases to  
4 act, the remaining umpires appointed to act may continue with the  
5 hearing and determination of the controversy.

6 (cf: P.L.1987, c.54, s.11)

7

8 <sup>2</sup>[34. Repealer.

9 N.J.S.2A:24-1 through N.J.S.2A:24-11 are repealed.]<sup>2</sup>

10

11 <sup>2</sup>34. (New section) N.J.S.2A:24-1 through N.J.S.2A:24-11 shall  
12 only apply to an arbitration or dispute arising from a collective  
13 bargaining agreement or a collectively negotiated agreement.<sup>2</sup>

14

15 35. Effective Date.

16 This act shall take effect on <sup>1</sup>[September 1, 2002] January 1,  
17 2003<sup>1</sup>.

18

19

20

21

22 Revises and augments rules governing arbitration procedure in  
23 arbitration agreements.

**SENATE, No. 514**

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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Morris and Passaic)**

**SYNOPSIS**

Revises and augments rules governing arbitration procedure in arbitration agreements.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning arbitration procedures and revising parts of the  
2 statutory law.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. (New section) Definitions. For the purposes of this act:

8 "Arbitration organization" means an association, agency, board,  
9 commission or other entity that is neutral and initiates, sponsors or  
10 administers an arbitration proceeding or is involved in the appointment  
11 of an arbitrator.

12 "Arbitrator" means an individual appointed either as a neutral  
13 arbitrator or as a party arbitrator to render an award, alone or with  
14 others, in a controversy that is subject to an agreement to arbitrate.

15 "Court" means the Chancery Division of the Superior Court of New  
16 Jersey.

17 "Court rules" means the Rules Governing the Courts of the State of  
18 New Jersey.

19 "Knowledge" means actual knowledge.

20 "Person" means an individual, corporation, business trust, estate,  
21 trust, partnership, limited liability company, association, joint venture,  
22 government; governmental subdivision, agency, or instrumentality;  
23 public corporation; or any other legal or commercial entity.

24 "Record" means information that is inscribed on a tangible medium  
25 or that is stored in an electronic or other medium and is retrievable in  
26 perceivable form.

27

28 2. (New section) Notice.

29 a. Except as otherwise provided in this act, a person gives notice  
30 to another person by taking action that is reasonably necessary to  
31 inform the other person in ordinary course, whether or not the other  
32 person acquires knowledge of the notice.

33 b. A person has notice if the person has knowledge of the notice or  
34 has received notice.

35 c. A person receives notice when it comes to the person's attention  
36 or the notice is delivered at the person's place of residence or place of  
37 business, or at another location held out by the person as a place of  
38 delivery of such a notice.

39

40 3. (New section) When Act Applies.

41 a. This act governs all agreements to arbitrate made on or after  
42 September 1, 2002.

43 b. This act governs an agreement to arbitrate made before

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

**Matter underlined thus is new matter.**

1 September 1, 2002 if all the parties to the agreement or to the  
2 arbitration proceeding so agree in a record.

3 c. On or after January 1, 2005, this act governs an agreement to  
4 arbitrate whenever made.

5 d. This act shall not apply to agreements to arbitrate made before  
6 July 4, 1923.

7

8 4. (New section) Effect of Agreement to Arbitrate; Nonwaivable  
9 Provisions.

10 a. Except as otherwise provided in subsections b. and c. of this  
11 section, a party to an agreement to arbitrate or to an arbitration  
12 proceeding may waive or, the parties may vary the effect of, the  
13 requirements of this act to the extent permitted by law.

14 b. Before a controversy that is subject to an agreement to arbitrate  
15 arises, a party to the agreement may not:

16 (1) waive or agree to vary the effect of the requirements of  
17 sections 5a., 6a., 8, 17a., 17b., 26, or 28 of this act;

18 (2) agree to unreasonably restrict the right to notice of the  
19 initiation of an arbitration proceeding pursuant to section 9 of this act;

20 (3) agree to unreasonably restrict the right to disclosure of any  
21 facts by an arbitrator pursuant to section 12 of this act; or

22 (4) waive the right of a party to an agreement to arbitrate to be  
23 represented by a lawyer pursuant to section 16 of this act at any  
24 proceeding or hearing pursuant to this act, but an employer and a labor  
25 organization may waive the right to representation by a lawyer in a  
26 labor arbitration.

27 c. A party to an agreement to arbitrate or arbitration proceeding  
28 may not waive, or the parties may not vary the effect of, the  
29 requirements of this section or sections 3a., 3c., 7, 14, 18, 20d., 20e.,  
30 22, 23, 24, 25a., 25b., 29, 30, 34 or 35. Provided however, that  
31 nothing in this act shall preclude the parties from expanding the scope  
32 of judicial review of an award by expressly providing for such  
33 expansion in a record.

34

35 5. (New section) Application for Judicial Relief.

36 a. Except as otherwise provided in section 28 of this act, an  
37 application for judicial relief pursuant to this act shall be made by  
38 motion to the court and heard in the manner provided for the making  
39 and hearing of motions by the court rules.

40 b. Unless a civil action involving the agreement to arbitrate is  
41 pending, notice of an initial motion to the court pursuant to this act  
42 shall be served in the manner provided by law for the service of a  
43 summons in a civil action. Otherwise, notice of the motion shall be  
44 given in the manner provided by law or court rule for serving motions  
45 in pending cases.

1       6. (New section) Validity of Agreement to Arbitrate.

2       a. An agreement contained in a record to submit to arbitration any  
3 existing or subsequent controversy arising between the parties to the  
4 agreement is valid, enforceable, and irrevocable except upon a ground  
5 that exists at law or in equity for the revocation of a contract.

6       b. The court shall decide whether an agreement to arbitrate exists  
7 or a controversy is subject to an agreement to arbitrate.

8       c. An arbitrator shall decide whether a condition precedent to  
9 arbitrability has been fulfilled and whether a contract containing a valid  
10 agreement to arbitrate is enforceable.

11       d. If a party to a judicial proceeding challenges the existence of, or  
12 claims that a controversy is not subject to, an agreement to arbitrate,  
13 the arbitration proceeding may continue pending final resolution of the  
14 issue by the court, unless the court otherwise orders.

15

16       7. (New section) Motion to Compel or Stay Arbitration.

17       a. On motion of a person showing an agreement to arbitrate and  
18 alleging another person's refusal to arbitrate pursuant to the  
19 agreement:

20       (1) if the refusing party does not appear or does not oppose the  
21 motion, the court shall order the parties to arbitrate; and

22       (2) if the refusing party opposes the motion, the court shall  
23 proceed summarily to decide the issue and order the parties to  
24 arbitrate unless it finds that there is no enforceable agreement to  
25 arbitrate.

26       b. On motion of a person alleging that an arbitration proceeding  
27 has been initiated or threatened but that there is no agreement to  
28 arbitrate, the court shall proceed summarily to decide the issue. If the  
29 court finds that there is an enforceable agreement to arbitrate, it shall  
30 order the parties to arbitrate.

31       c. If the court finds that there is no enforceable agreement, it may  
32 not, pursuant to subsection a. or b. of this section, order the parties to  
33 arbitrate.

34       d. The court may not refuse to order arbitration because the claim  
35 subject to arbitration lacks merit or grounds for the claim have not  
36 been established.

37       e. If a proceeding involving a claim referable to arbitration  
38 pursuant to an alleged agreement to arbitrate is pending in court, a  
39 motion pursuant to this section shall be made in that court. Otherwise,  
40 a motion pursuant to this section may be made in any court as  
41 provided in section 27 of this act.

42       f. If a party makes a motion to the court to order arbitration, the  
43 court on just terms shall stay any judicial proceeding that involves a  
44 claim alleged to be subject to the arbitration until the court renders a  
45 final decision pursuant to this section.

46       g. If the court orders arbitration, the court on just terms shall stay

1 any judicial proceeding that involves a claim subject to the arbitration.  
2 If a claim subject to the arbitration is severable, the court may limit the  
3 stay to that claim.

4  
5 8. (New section) Provisional Remedies.

6 a. Before an arbitrator is appointed and is authorized and able to  
7 act, the court, upon motion of a party to an arbitration proceeding and  
8 for good cause shown, may enter an order for provisional remedies to  
9 protect the effectiveness of the arbitration proceeding to the same  
10 extent and pursuant to the same conditions as if the controversy were  
11 the subject of a civil action.

12 b. After an arbitrator is appointed and is authorized and able to act:  
13 (1) the arbitrator may issue orders for provisional remedies,  
14 including interim awards, as the arbitrator finds necessary to protect  
15 the effectiveness of the arbitration proceeding and to promote the fair  
16 and expeditious resolution of the controversy, to the same extent and  
17 pursuant to the same conditions as if the controversy were the subject  
18 of a civil action; and

19 (2) a party to an arbitration proceeding may move the court for a  
20 provisional remedy only if the matter is urgent and the arbitrator is not  
21 able to act timely or the arbitrator cannot provide an adequate remedy.

22 c. A party does not waive a right of arbitration by making a motion  
23 pursuant to subsection a. or b of this section.

24  
25 9. (New section) Initiation of Arbitration.

26 a. A person initiates an arbitration proceeding by giving notice in  
27 a record to the other parties to the agreement to arbitrate in the  
28 manner agreed between the parties or, in the absence of agreement, by  
29 certified or registered mail, return receipt requested and obtained, or  
30 by service as authorized for the commencement of a civil action. The  
31 notice shall describe the nature of the controversy and the remedy  
32 sought.

33 b. Unless a person objects for lack or insufficiency of notice  
34 pursuant to subsection c. of section 15 of this act not later than the  
35 beginning of the arbitration hearing, the person, by appearing at the  
36 hearing, waives any objection to the lack or insufficiency of notice.

37  
38 10. (New section) Consolidation of Separate Arbitration  
39 Proceedings.

40 a. Except as otherwise provided in subsection c. of this section,  
41 upon motion of a party to an agreement to arbitrate or to an  
42 arbitration proceeding, the court may order consolidation of separate  
43 arbitration proceedings as to all or some of the claims if:

44 (1) there are separate agreements to arbitrate or separate  
45 arbitration proceedings between the same persons or one of them is a  
46 party to a separate agreement to arbitrate or a separate arbitration



1 proceeding with a third person;

2 (2) the claims subject to the agreements to arbitrate arise in  
3 substantial part from the same transaction or series of related  
4 transactions;

5 (3) the existence of a common issue of law or fact creates the  
6 possibility of conflicting decisions in the separate arbitration  
7 proceedings; and

8 (4) prejudice resulting from a failure to consolidate is not  
9 outweighed by the risk of undue delay or prejudice to the rights of or  
10 hardship to parties opposing consolidation.

11 b. The court may order consolidation of separate arbitration  
12 proceedings as to some claims and allow other claims to be resolved  
13 in separate arbitration proceedings.

14 c. The court may not order consolidation of the claims of a party  
15 to an agreement to arbitrate if the agreement prohibits consolidation.

16

17 11. (New section) Appointment of Arbitrator; Service as a Neutral  
18 Arbitrator.

19 a. If the parties to an agreement to arbitrate agree on a method for  
20 appointing an arbitrator, that method shall be followed, unless the  
21 method fails. If the parties have not agreed on a method, the agreed  
22 method fails, or an arbitrator appointed fails or is unable to act and a  
23 successor has not been appointed, the court, on motion of a party to  
24 the arbitration proceeding, shall appoint the arbitrator. An arbitrator  
25 so appointed has all the powers of an arbitrator designated in the  
26 agreement to arbitrate or appointed pursuant to the agreed method.

27 b. An individual who has a known, direct, and material interest in  
28 the outcome of the arbitration proceeding or a known, existing, and  
29 substantial relationship with a party may not serve as an arbitrator  
30 required by an agreement to be neutral.

31 c. An individual who has a known, direct, and material interest in  
32 the outcome of the arbitration proceeding or a known, existing, and  
33 substantial relationship with a party may not serve as a party arbitrator  
34 if such information has not been disclosed pursuant to section 12 of  
35 this act.

36 d. An individual appointed as a party arbitrator may be predisposed  
37 toward the appointing party. From and after the commencement of an  
38 arbitration, an arbitrator shall act in good faith and exercise the  
39 arbitrator's responsibilities in a manner consistent with the authority  
40 placed in the arbitrator by the courts of this State and this act.

41

42 12. (New section) Disclosure by Arbitrator.

43 a. Before accepting appointment, an individual who is requested to  
44 serve as an arbitrator, after making a reasonable inquiry, shall disclose  
45 to all parties to the agreement to arbitrate and arbitration proceeding  
46 and to any other arbitrators any known facts that a reasonable person

1 would consider likely to affect the impartiality of the arbitrator in the  
2 arbitration proceeding, including:

3 (1) a financial or personal interest in the outcome of the arbitration  
4 proceeding; and

5 (2) an existing or past relationship with any of the parties to the  
6 agreement to arbitrate or the arbitration proceeding, their counsel or  
7 representatives, a witness, or other arbitrators.

8 b. An arbitrator has a continuing obligation to disclose to all  
9 parties to the agreement to arbitrate and arbitration proceeding and to  
10 any other arbitrators any facts that the arbitrator learns after accepting  
11 appointment which a reasonable person would consider likely to affect  
12 the impartiality of the arbitrator.

13 c. If an arbitrator discloses a fact required by subsection a. or b. of  
14 this section to be disclosed and a party timely objects to the  
15 appointment or continued service of the arbitrator based upon the fact  
16 disclosed, subject to the provisions of section 11d. of this act, the  
17 objection may be a ground pursuant to paragraph (2) of subsection a.  
18 of section 23 of this act for vacating an award made by the arbitrator.

19 d. If the arbitrator did not disclose a fact as required by subsection  
20 a. or b. of this section, upon timely objection by a party, the court  
21 pursuant to paragraph (2) of subsection a. of section 23 may vacate an  
22 award.

23 e. An individual appointed as a neutral arbitrator who does not  
24 disclose a known, direct and material interest in the outcome of the  
25 arbitration proceeding or a known, existing, and substantial  
26 relationship with a party is presumed to act with evident partiality  
27 pursuant to paragraph (2) of subsection a. of section 23 of this act.

28 f. An individual appointed as a party arbitrator who does not  
29 disclose a known, direct and material interest in the outcome of the  
30 arbitration proceeding is presumed to act with evident partiality  
31 pursuant to paragraph (2) of subsection a. of section 23 of this act.

32 g. If the parties to an arbitration proceeding agree to the  
33 procedures of an arbitration organization or any other procedures for  
34 challenges to arbitrators before an award is made, substantial  
35 compliance with those procedures is a condition precedent to a motion  
36 to vacate an award on that ground pursuant to paragraph (2) of  
37 subsection a. of section 23 of this act.

38 h. Should an individual designated as an arbitrator make full  
39 disclosure as required by this section and a party fails to object within  
40 a reasonable time, the party receiving such information shall be held to  
41 have waived any right to object to the designation of the arbitrator on  
42 the grounds so revealed.

43

44 13. (New section) Action by Majority.

45 If there is more than one arbitrator, the powers of an arbitrator shall  
46 be exercised by a majority of the arbitrators, but all of them shall

1 conduct the hearing pursuant to subsection c. of section 15 of this act.

2

3 14. (New section) Immunity of Arbitrator; Competency to Testify;  
4 Attorney's Fees and Costs.

5 a. An arbitrator or an arbitration organization acting in that  
6 capacity is immune from civil liability to the same extent as a judge of  
7 a court of this State acting in a judicial capacity.

8 b. The immunity afforded by this section supplements any immunity  
9 pursuant to other law.

10 c. The failure of an arbitrator to make a disclosure required by  
11 section 12 of this act does not cause any loss of immunity pursuant to  
12 this section.

13 d. In a judicial, administrative, or similar proceeding, an arbitrator  
14 or representative of an arbitration organization is not competent to  
15 testify, and may not be required to produce records as to any  
16 statement, conduct, decision, or ruling occurring during the arbitration  
17 proceeding, to the same extent as a judge of a court of this State  
18 acting in a judicial capacity. This subsection does not apply:

19 (1) to the extent necessary to determine the claim of an arbitrator,  
20 arbitration organization, or representative of the arbitration  
21 organization against a party to the arbitration proceeding; or

22 (2) to a hearing on a motion to vacate an award pursuant to  
23 paragraph (1) or (2) of subsection a. of section 23 of this act if the  
24 movant establishes prima facie that a ground for vacating the award  
25 exists.

26 e. If a person commences a civil action against an arbitrator,  
27 arbitration organization or representative of an arbitration organization  
28 arising from the services of the arbitrator, organization or  
29 representative or if a person seeks to compel an arbitrator or a  
30 representative of an arbitration organization to testify or produce  
31 records in violation of subsection d. of this section, and the court  
32 decides that the arbitrator, arbitration organization or representative  
33 of an arbitration organization is immune from civil liability or that the  
34 arbitrator or representative of the organization is not competent to  
35 testify, the court shall award to the arbitrator, organization or  
36 representative reasonable attorney's fees and other reasonable  
37 expenses of litigation.

38

39 15. (New section) Arbitration Process.

40 a. An arbitrator may conduct an arbitration in such manner as the  
41 arbitrator considers appropriate for a fair and expeditious disposition  
42 of the proceeding. The authority conferred upon the arbitrator  
43 includes the power to hold conferences with the parties to the  
44 arbitration proceeding before the hearing and, among other matters,  
45 determine the admissibility, relevance, materiality, and weight of any  
46 evidence.

1 b. An arbitrator may decide a request for summary disposition of  
2 a claim or particular issue:

3 (1) if all interested parties agree; or

4 (2) upon request of one party to the arbitration proceeding if that  
5 party gives notice to all other parties to the proceeding, and the other  
6 parties have a reasonable opportunity to respond.

7 c. If an arbitrator orders a hearing, the arbitrator shall set a time  
8 and place and give notice of the hearing not less than five days before  
9 the hearing begins. Unless a party to the arbitration proceeding makes  
10 an objection due to lack or insufficiency of notice not later than the  
11 beginning of the hearing, the party's appearance at the hearing waives  
12 the objection. Upon request of a party to the arbitration proceeding  
13 and for good cause shown, or upon the arbitrator's own initiative, the  
14 arbitrator may adjourn the hearing from time to time as necessary but  
15 may not postpone the hearing to a time later than that fixed by the  
16 agreement to arbitrate for making the award unless the parties to the  
17 arbitration proceeding consent to a later date. The arbitrator may hear  
18 and decide the controversy upon the evidence produced although a  
19 party who was duly notified of the arbitration proceeding did not  
20 appear. The court, on request, may direct the arbitrator to conduct  
21 the hearing promptly and render a timely decision.

22 d. At a hearing pursuant to subsection c. of this section, a party to  
23 the arbitration proceeding has a right to be heard, to present evidence  
24 material to the controversy, and to cross-examine witnesses appearing  
25 at the hearing.

26 e. If an arbitrator ceases or is unable to act during the arbitration  
27 proceeding, a replacement arbitrator shall be appointed in accordance  
28 with section 11 of this act to continue the proceeding and to resolve  
29 the controversy.

30  
31 16. (New section) Representation by Lawyer.

32 A party to an arbitration proceeding may be represented by a  
33 lawyer.

34  
35 17. (New section) Witnesses; Subpoenas; Depositions; Discovery.

36 a. An arbitrator may issue a subpoena for the attendance of a  
37 witness and for the production of records and other evidence at any  
38 hearing and may administer oaths. A subpoena shall be served in the  
39 manner for service of subpoenas in a civil action, and upon motion to  
40 the court by a party to the arbitration proceeding or the arbitrator,  
41 enforced in the manner for enforcement of subpoenas in a civil action.

42 b. In order to make the proceedings fair, expeditious, and cost  
43 effective, upon request of a party to or a witness in an arbitration  
44 proceeding, an arbitrator may permit a deposition of any witness to be  
45 taken for use as evidence at the hearing, including a witness who  
46 cannot be subpoenaed for or is unable to attend a hearing. The

1 arbitrator shall determine the conditions pursuant to which the  
2 deposition is taken.

3 c. An arbitrator may permit such discovery as the arbitrator decides  
4 is appropriate in the circumstances, taking into account the needs of  
5 the parties to the arbitration proceeding and other affected persons and  
6 the desirability of making the proceeding fair, expeditious, and cost  
7 effective.

8 d. If an arbitrator permits discovery pursuant to subsection c. of  
9 this section, the arbitrator may order a party to the arbitration  
10 proceeding to comply with the arbitrator's discovery-related orders,  
11 issue subpoenas for the attendance of a witness and for the production  
12 of records and other evidence at a discovery proceeding, and take  
13 action against a noncomplying party to the extent a court could if the  
14 controversy were the subject of a civil action in this State.

15 e. An arbitrator may issue a protective order to prevent the  
16 disclosure of privileged information, confidential information, trade  
17 secrets, and other information protected from disclosure to the extent  
18 a court could if the controversy were the subject of a civil action in  
19 this State.

20 f. All laws compelling a person under subpoena to testify and all  
21 fees for attending a judicial proceeding, a deposition or a discovery  
22 proceeding as a witness apply to an arbitration proceeding as if the  
23 controversy were the subject of a civil action in this State.

24 g. The court may enforce a subpoena or discovery-related order for  
25 the attendance of a witness within this State and for the production of  
26 records and other evidence issued by an arbitrator in connection with  
27 an arbitration proceeding in another State upon conditions determined  
28 by the court so as to make the arbitration proceeding fair, expeditious,  
29 and cost effective. A subpoena or discovery-related order issued by  
30 an arbitrator in another State shall be served in the manner provided  
31 by law for service of subpoenas in a civil action in this State and, upon  
32 motion to the court by a party to the arbitration proceeding or the  
33 arbitrator, enforced in the manner provided by law for enforcement of  
34 subpoenas in a civil action in this State.

35

36 18. (New section) Judicial Enforcement of Preaward Ruling by  
37 Arbitrator.

38 If an arbitrator makes a preaward ruling in favor of a party to the  
39 arbitration proceeding, the party may request the arbitrator to  
40 incorporate the ruling into an award pursuant to section 19 of this act.  
41 A prevailing party may make a motion to the court for an expedited  
42 order to confirm the award pursuant to section 22 of this act, in which  
43 case the court shall summarily decide the motion. The court shall  
44 issue an order to confirm the award unless the court vacates, modifies,  
45 or corrects the award pursuant to section 23 or 24 of this act.

1 19. (New section) Award.

2 a. An arbitrator shall make a record of an award. The record shall  
3 be signed or otherwise authenticated by any arbitrator who concurs  
4 with the award. The arbitrator or the arbitration organization shall  
5 give notice of the award, including a copy of the award, to each party  
6 to the arbitration proceeding.

7 b. An award shall be made within the time specified by the  
8 agreement to arbitrate or, if not specified therein, within the time  
9 ordered by the court. The court may extend or the parties to the  
10 arbitration proceeding may agree in a record to extend the time. The  
11 court or the parties may do so within or after the time specified or  
12 ordered. A party waives any objection that an award was not timely  
13 made unless the party gives notice of the objection to the arbitrator  
14 before receiving notice of the award.

15

16 20. (New section) Change of Award by Arbitrator.

17 a. On motion to an arbitrator by a party to an arbitration  
18 proceeding, the arbitrator may modify or correct an award:

19 (1) upon a ground stated in paragraph (1) or (3) of subsection a.  
20 of section 24 of this act;

21 (2) if the arbitrator has not made a final and definite award upon  
22 a claim submitted by the parties to the arbitration proceeding; or

23 (3) to clarify the award.

24 b. A motion pursuant to subsection a. of this section shall be made  
25 and notice given to all parties within 20 days after the movant receives  
26 notice of the award.

27 c. A party to the arbitration proceeding shall give notice of any  
28 objection to the motion within 10 days after receipt of the notice.

29 d. If a motion to the court is pending pursuant to sections 22, 23,  
30 or 24 of this act, the court may submit the claim to the arbitrator to  
31 consider whether to modify or correct the award:

32 (1) upon a ground stated in paragraph (1) or (3) of subsection a.  
33 of section 24 of this act.

34 (2) if the arbitrator has not made a final and definite award upon  
35 a claim submitted by the parties to the arbitration proceeding; or

36 (3) to clarify the award.

37 e. An award modified or corrected pursuant to this section is  
38 subject to sections 19a., 22, 23, and 24 of this act.

39

40 21. (New section) Remedies; Fees and Expenses of Arbitration  
41 Proceeding.

42 a. An arbitrator may award punitive damages or other exemplary  
43 relief if such an award is authorized by law in a civil action involving  
44 the same claim and the evidence produced at the hearing justifies the  
45 award in accordance with the legal standards otherwise applicable to  
46 the claim.

1       b. An arbitrator may award reasonable attorney's fees and other  
2 reasonable expenses of arbitration if such an award is authorized by  
3 law in a civil action involving the same claim or by the agreement of  
4 the parties to the arbitration proceeding.

5       c. As to all remedies other than those authorized by subsections a.  
6 and b. of this section, an arbitrator may order such remedies as the  
7 arbitrator considers just and appropriate under the circumstances of  
8 the arbitration proceeding. The fact that such a remedy could not or  
9 would not be granted by the court is not a ground for refusing to  
10 confirm an award pursuant to section 22 of this act or for vacating an  
11 award pursuant to section 23 of this act.

12       d. An arbitrator's expenses and fees, together with other expenses,  
13 shall be paid as provided in the award.

14       e. If an arbitrator awards punitive damages or other exemplary  
15 relief pursuant to subsection a. of this section, the arbitrator shall  
16 specify in the award the basis in fact justifying and the basis in law  
17 authorizing the award and state separately the amount of the punitive  
18 damages or other exemplary relief.

19  
20       22. (New section) Confirmation of Award.

21       After a party to an arbitration proceeding receives notice of an  
22 award, the party may make a motion to the court for an order  
23 confirming the award, at which time the court shall issue a confirming  
24 order unless the award is modified or corrected pursuant to section 20  
25 or 24 of this act or is vacated pursuant to section 23 of this act.

26  
27       23. (New section) Vacating Award.

28       a. Upon motion to the court by a party to an arbitration  
29 proceeding, the court shall vacate an award made in the arbitration  
30 proceeding if:

31       (1) the award was procured by corruption, fraud, or other undue  
32 means;

33       (2) the court finds evident partiality by an arbitrator; corruption by  
34 an arbitrator; or misconduct by an arbitrator prejudicing the rights of  
35 a party to the arbitration proceeding;

36       (3) an arbitrator refused to postpone the hearing upon showing of  
37 sufficient cause for postponement, refused to consider evidence  
38 material to the controversy, or otherwise conducted the hearing  
39 contrary to section 15 of this act, so as to substantially prejudice the  
40 rights of a party to the arbitration proceeding;

41       (4) an arbitrator exceeded the arbitrator's powers;

42       (5) there was no agreement to arbitrate, unless the person  
43 participated in the arbitration proceeding without raising the objection  
44 pursuant to subsection c. of section 15 of this act not later than the  
45 beginning of the arbitration hearing; or

46       (6) the arbitration was conducted without proper notice of the

1 initiation of an arbitration as required in section 9 of this act so as to  
2 substantially prejudice the rights of a party to the arbitration  
3 proceeding.

4 b. A motion pursuant to this section shall be filed within 90 days  
5 after the movant receives notice of the award pursuant to section 19  
6 of this act or within 90 days after the movant receives notice of a  
7 modified or corrected award pursuant to section 20 of this act, unless  
8 the movant alleges that the award was procured by corruption, fraud,  
9 or other undue means, in which case the motion shall be made within  
10 90 days after the ground is known or by the exercise of reasonable  
11 care would have been known by the movant.

12 c. If the court vacates an award on a ground other than that set  
13 forth in paragraph (5) of subsection a. of this section, it may order a  
14 rehearing. If the award is vacated on a ground stated in paragraph (1)  
15 or (2) of subsection a. of this section, the rehearing shall be before a  
16 new arbitrator. If the award is vacated on a ground stated in  
17 paragraph (3), (4), or (6) of subsection a. of this section, the rehearing  
18 may be before the arbitrator who made the award or the arbitrator's  
19 successor. The arbitrator shall render the decision in the rehearing  
20 within the same time as that provided in subsection b. of section 19 of  
21 this act for an award.

22 d. If the court denies a motion to vacate an award, it shall confirm  
23 the award unless a motion to modify or correct the award is pending.  
24

25 24. (New section) Modification or Correction of Award.

26 a. Upon motion made within 90 days after the movant receives  
27 notice of the award pursuant to section 19 of this act or within 90 days  
28 after the movant receives notice of a modified or corrected award  
29 pursuant to section 20 of this act, the court shall modify or correct the  
30 award if:

31 (1) there was an evident mathematical miscalculation or an evident  
32 mistake in the description of a person, thing, or property referred to  
33 in the award;

34 (2) the arbitrator made an award on a claim not submitted to the  
35 arbitrator and the award may be corrected without affecting the merits  
36 of the decision upon the claims submitted; or

37 (3) the award is imperfect in a matter of form not affecting the  
38 merits of the decision on the claims submitted.

39 b. If a motion made pursuant to subsection a. of this section is  
40 granted, the court shall modify or correct and confirm the award as  
41 modified or corrected. Otherwise, unless a motion to vacate is  
42 pending, the court shall confirm the award.

43 c. A motion to modify or correct an award pursuant to this section  
44 may be joined with a motion to vacate the award.  
45

46 25. (New section) Judgment on Award; Attorney's Fees and



1 Litigation Expenses.

2 a. Upon granting an order confirming, vacating without directing  
3 a rehearing, modifying, or correcting an award, the court shall enter  
4 a judgment in conformity with the arbitrator's award. The judgment  
5 may be recorded, docketed, and enforced as any other judgment in a  
6 civil action.

7 b. A court may allow reasonable costs of the motion and  
8 subsequent judicial proceedings.

9 c. On application of a prevailing party to a contested judicial  
10 proceeding pursuant to section 22, 23, or 24 of this act, the court may  
11 add reasonable attorney's fees and other reasonable expenses of  
12 litigation incurred in a judicial proceeding after the award is made to  
13 a judgment confirming, vacating without directing a rehearing, or  
14 substantially modifying or correcting an award.

15

16 26. (New section) Jurisdiction.

17 a. A court of this State having jurisdiction over the controversy  
18 and the parties may enforce an agreement to arbitrate.

19 b. An agreement to arbitrate providing for arbitration in this State  
20 confers exclusive jurisdiction on the court to enter judgment on an  
21 award pursuant to this act.

22 c. Wherever reference is made to any procedural matter stated in  
23 this act, the court shall apply court rules as may be adopted by the  
24 Supreme Court of New Jersey.

25

26 27. (New section) Venue.

27 A motion pursuant to section 5 of this act shall be made in the court  
28 of the county that would have venue if the matter were subject to  
29 Superior Court rules in civil actions, or to a court in which the  
30 agreement to arbitrate specifies the arbitration hearing is to be held or,  
31 if the hearing has been held, in the court of the county in which it was  
32 held. Otherwise, the motion may be made in the court of any county  
33 in which an adverse party resides or has a place of business or, if no  
34 adverse party has a residence or place of business in this State, in the  
35 court of any county in this State. All subsequent motions shall be  
36 made in the court hearing the initial motion unless the court otherwise  
37 directs.

38

39 28. (New section) Appeals.

40 a. An appeal may be taken from:

41 (1) an order denying a motion to compel arbitration;

42 (2) an order granting a motion to stay arbitration;

43 (3) an order confirming or denying confirmation of an award;

44 (4) an order modifying or correcting an award;

45 (5) an order vacating an award without directing a rehearing; or

46 (6) a final judgment entered pursuant to this act.

1       b. An appeal pursuant to this section shall be taken as from an  
2 order or a judgment in a civil action.

3  
4       29. (New section) Uniformity of Application and Construction.

5       In applying and construing this uniform act, consideration shall be  
6 given to the need to promote uniformity of the law with respect to its  
7 subject matter among States that enact it.

8  
9       30. (New section) Relationship to Electronic Signatures in Global  
10 and National Commerce Act.

11       The provisions of this act governing the legal effect, validity, and  
12 enforceability of electronic records or electronic signatures, and of  
13 contracts performed with the use of such records or signatures  
14 conform to the requirements of the "Electronic Signatures in Global  
15 and National Commerce Act," 15 U.S.C.s.7002.

16  
17       31. (New section) Prior Action or Proceeding.

18       This act does not affect an action or proceeding commenced or  
19 right accrued before this act takes effect. Subject to section 3 of this  
20 act, an arbitration agreement made before the effective date of this act  
21 is governed by N.J.S.2A:24-1 et seq. and P.L.1987, c.54 (C.2A:23A-  
22 1 et seq.).

23  
24       32. (New section) Statutes Not Affected.

25       This act shall not apply to the substance and procedure of "The  
26 New Jersey Alternative Procedure for Dispute Resolution Act, "  
27 P.L.1987, c.54 (C.2A:23A-1 et seq.), nor shall this act apply to  
28 arbitrations governed by P.L.1987, c.329 ( C.2A:23A-20 et seq.),  
29 P.L.1983, c.358 (C.39:6A-24 et seq.) or section 24 of P.L.1998, c.21  
30 (C.39:6A-5.1).

31  
32       33. Section 11 of P.L.1987, c.54 (C.2A:23A-11) is amended to  
33 read as follows:

34       11. a. When more than one umpire is agreed upon, all the umpires  
35 shall sit at the hearing of the case, unless by written consent, all parties  
36 agree to a lesser number.

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

41       c. Subpoenas shall issue in the name of and be signed by the  
42 umpire, or if there is more than one umpire, by a majority of them, and  
43 shall be directed to the person therein named and served in the same  
44 manner as a subpoena to testify before a court of record. If a person  
45 subpoenaed to testify refuses or neglects to obey a subpoena, the  
46 Superior Court, upon application, may compel his attendance before

1 the umpire or hold the person in contempt as if the person had failed  
2 to respond to a subpoena issued by the court.

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

12 e. Each party to an alternative resolution proceeding shall submit  
13 to the umpire and his adversary a statement of the party's factual and  
14 legal position with respect to the issues to be [arbitrated] resolved, at  
15 a date fixed by the umpire to permit proper preparation for all  
16 hearings. The submitted statement shall govern, control and limit the  
17 facts and legal issues to be determined in the alternative resolution  
18 proceeding. Amended or supplemental legal and factual statements  
19 may be filed as permitted by the umpire where the same will not  
20 unduly prejudice the other party to the proceeding.

21 f. In an alternative resolution proceeding when the umpire is of the  
22 opinion that evidence by impartial experts would be of assistance, the  
23 umpire may direct that expert evidence be obtained. The fees and  
24 expenses of expert witnesses shall be paid by the parties as directed by  
25 the umpire.

26 g. Unless otherwise provided by the agreement for alternative  
27 resolution:

28 (1) The umpire shall appoint a time and place for the hearing and  
29 cause notification to the parties by personal service or by certified  
30 mail, with return receipt requested, not less than five days before the  
31 hearing. Appearance at the hearing waives the notice requirement.  
32 The umpire may adjourn the hearing from time to time as necessary  
33 and, on request of a party and for good cause, or upon their own  
34 motion, may postpone the hearing to a time not later than the date  
35 fixed by the agreement for making the award, unless the parties  
36 consent to a later date. The umpire may determine the controversy  
37 upon the evidence produced, notwithstanding the failure of a party  
38 duly notified to appear. The Superior Court, on application in any  
39 pending summary proceeding, may direct the umpire to proceed  
40 promptly with the hearing and determination of the controversy.

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

44 (3) The hearing shall be conducted by all the umpires, but a  
45 majority may determine any question and render a final award. If,  
46 during the course of the hearing, an umpire for any reason ceases to

1 act, the remaining umpires appointed to act may continue with the  
2 hearing and determination of the controversy.

3 (cf: P.L.1987, c.54, s.11)

4

5 34. Repealer.

6 N.J.S.2A:24-1 through N.J.S.2A:24-11 are repealed.

7

8 35. Effective Date.

9 This act shall take effect on September 1, 2002.

10

11

12

### STATEMENT

13

14 This bill is a modified version of the Uniform Arbitration Act of 2000  
15 ("Uniform Act") as proposed by the National Conference of  
16 Commissioners on Uniform State Laws ("NCCUSL"). The NCCUSL  
17 adopted the Uniform Act and the accompanying Official Comments on  
18 August 3, 2000. The primary purpose of the bill is to advance  
19 arbitration as a desirable alternative to litigation and to clarify  
20 arbitration procedures in light of the developments of the law in this  
21 area.

22 The Uniform Act is a default act, meaning that many of its  
23 provisions may be varied or waived by contract. Provisions that may  
24 not be varied or waived include the rule that an agreement to submit  
25 a dispute to arbitration is valid; the rules that govern disclosure of  
26 facts by a neutral arbitrator; and the standards for vacating an award  
27 but permitting the parties by agreement to review an arbitration award  
28 under certain circumstances.

29 The Uniform Act, section 8 of this bill, specifically allows a court  
30 to order provisional remedies before an arbitrator is selected. An  
31 arbitrator, when selected, also has an express power to order  
32 provisional remedies. The Uniform Act, section 10 of this bill, allows  
33 consolidation of separate arbitration proceedings unless the agreement  
34 prohibits consolidation. The Uniform Act, section 12 of this bill, also  
35 requires disclosure of any interest by the arbitrator that may give rise  
36 to a question of neutrality, specifically a financial or personal interest  
37 in the outcome of the arbitration proceeding or an existing or past  
38 relationship with a party. The lack of disclosure may be a ground for  
39 vacating an award, and there is a presumption of partiality when non-  
40 disclosure occurs. Upon disclosure, a party has the opportunity to  
41 object to the appointment of an arbitrator intended to be neutral.  
42 However, parties who fail to timely object to the required and  
43 provided disclosures of arbitrators waive the right to object to the  
44 designation of the arbitrator on the grounds revealed.

45 The Uniform Act, section 14 of this bill, provides arbitrators with  
46 immunity from civil liability to the same extent as a judge acting in a

1 judicial capacity. An arbitrator, pursuant to the Uniform Act, section  
2 15 of this bill, may conduct the arbitration in such manner as the  
3 arbitrator considers appropriate to the fair and expeditious disposition  
4 of the proceeding. An arbitrator also has the express power to make  
5 summary dispositions of claims or issues under appropriate  
6 procedures, to hold pre-arbitration proceeding meetings or to use any  
7 other discovery process applicable to resolution of the dispute.

8 The Uniform Act, section 21 of this bill, also expressly permits an  
9 arbitrator to award punitive damages or other exemplary relief if such  
10 an award is authorized by law in a civil action involving the same  
11 claim. Attorney's fees may be awarded pursuant to the same standard  
12 and also where an award is unsuccessfully challenged upon  
13 confirmation.

14 A copy of the Uniform Act with Official Comments as adopted by  
15 the NCCUSL may be viewed on the organization's official Internet  
16 website at <http://www.law.upenn.edu/bll/ulc/ulc.htm#uaa>.

17 Except where noted in this Statement, the sponsor of the bill  
18 endorses the content of the Uniform Act's Official Comments.

19 The bill modifies the Uniform Act in several ways to conform to  
20 New Jersey law and practice in the area of arbitration. First, section  
21 34 of the bill repeals the current New Jersey arbitration law,  
22 N.J.S.2A:24-1 through N.J.S.2A:24-10. Second, section 32 of the bill  
23 makes it explicit that it does not modify "The New Jersey Alternative  
24 Procedure for Dispute Resolution Act," P.L.1987, c.54 (C.2A:23A-1  
25 et seq.), although one technical error is corrected in section 33 of the  
26 bill. Third, following the ruling of Tretina Printing, Inc. v. Fitzpatrick  
27 & Associates, Inc., 135 N.J. 349 (1994), section 4 modifies the  
28 Uniform Act to make it clear that parties may expand the scope of  
29 judicial review by providing for such expansion in a record.

30 Fourth, section 11 modifies the Uniform Act to reflect the holding  
31 in Barcon Associates v. Tri-County Asphalt Corp., 86 N.J. 179 (1981)  
32 recently confirmed in Arista Marketing Associates, Inc. v. Peer Group,  
33 Inc., 316 N.J. Super 517 (App. Div. 1998), cert. denied, 158 N.J. 72  
34 (1999) to require the same level of interest disclosure from party  
35 arbitrators as from neutral arbitrators. The bill also prohibits an  
36 individual from serving as a party arbitrator if the individual's interest  
37 in the outcome of the arbitration is not properly disclosed. Moreover,  
38 the bill requires a court to vacate an arbitration award for the evident  
39 partiality of both neutral and party arbitrators.

40 Fifth, section 26 includes language mandating that procedural  
41 matters be governed by the Rules of the Courts of the State of New  
42 Jersey. This provision is included in order to meet the requirements  
43 of Article VI, Section 2, paragraph 3 of the New Jersey Constitution  
44 which mandates that the New Jersey Supreme Court promulgate the  
45 rules governing the practice and procedure of the courts.

46 The bill's effective date is September 1, 2002. The bill repeals the

**S514 MARTIN**

19

1 arbitration statutes set out in N.J.S.A.2A:24-1 through N.J.S.A.2A:24-  
2 11 as of that date, and provides that all agreements to arbitrate made  
3 on or after that date would be governed by the provisions of the bill.  
4 The bill also provides that on and after January 1, 2005, all existing  
5 arbitration agreements in the State would be governed by the bill. The  
6 bill would not apply to arbitration agreements made before July 4,  
7 1923.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 514

# STATE OF NEW JERSEY

DATED: MAY 9, 2002

The Senate Judiciary Committee reports favorably Senate Bill No. 514.

This bill is a modified version of the Uniform Arbitration Act of 2000 ("Uniform Act") as proposed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). The NCCUSL adopted the Uniform Act and the accompanying Official Comments on August 3, 2000. The primary purpose of the bill is to advance arbitration as a desirable alternative to litigation and to clarify arbitration procedures in light of the developments of the law in this area.

The Uniform Act is a default act, meaning that many of its provisions may be varied or waived by contract. Provisions that may not be varied or waived include the rule that an agreement to submit a dispute to arbitration is valid; the rules that govern disclosure of facts by a neutral arbitrator; and the standards for vacating an award but permitting the parties by agreement to review an arbitration award under certain circumstances.

Section 8 of this bill specifically allows a court to order provisional remedies before an arbitrator is selected. An arbitrator, when selected, also has an express power to order provisional remedies. Section 10 of this bill allows consolidation of separate arbitration proceedings unless the agreement prohibits consolidation. Section 12 of this bill also requires disclosure of any interest by the arbitrator that may give rise to a question of neutrality, specifically a financial or personal interest in the outcome of the arbitration proceeding or an existing or past relationship with a party. The lack of disclosure may be a ground for vacating an award, and there is a presumption of partiality when non-disclosure occurs. Upon disclosure, a party has the opportunity to object to the appointment of an arbitrator intended to be neutral. However, parties who fail to timely object to the required and provided disclosures of arbitrators waive the right to object to the designation of the arbitrator on the grounds revealed.

Section 14 of this bill provides arbitrators with immunity from civil liability to the same extent as a judge acting in a judicial capacity. An arbitrator, pursuant to section 15 of this bill, may conduct the arbitration in such manner as the arbitrator considers appropriate to the fair and expeditious disposition of the proceeding. An arbitrator

also has the express power to make summary dispositions of claims or issues under appropriate procedures, to hold pre-arbitration proceeding meetings or to use any other discovery process applicable to resolution of the dispute.

Section 21 of this bill expressly permits an arbitrator to award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim. Attorney's fees may be awarded pursuant to the same standard and also where an award is unsuccessfully challenged upon confirmation.

A copy of the Uniform Act with Official Comments as adopted by the NCCUSL may be viewed on the organization's official Internet website at <http://www.law.upenn.edu/bll/ulc/ulc.htm#uaa>.

Except where noted herein, the sponsor endorses the content of the Uniform Act's Official Comments.

The bill modifies the Uniform Act in several ways to conform to New Jersey law and practice in the area of arbitration.

Section 34 of the bill repeals the current New Jersey arbitration law, N.J.S.2A:24-1 through N.J.S.2A:24-11.

Section 32 of the bill makes it explicit that it does not modify "The New Jersey Alternative Procedure for Dispute Resolution Act," P.L.1987, c.54 (C.2A:23A-1 et seq.), although one technical error is corrected in section 33 of the bill which amends N.J.S.A. 2A:23A-11. It also provides that the bill does not apply to arbitrations governed by P.L. 1987, c. 329 (C.2A:23A-20 et seq.) (civil action for personal injury, with certain exceptions, submitted to arbitration by the assignment judge, if the amount in controversy is \$20,000.00 or less, exclusive of costs); P.L. 1983, c.358 (C.39:6A-24 et seq.) (cause of action for the recovery of noneconomic loss or uncompensated economic loss (other than for damages to property) arising out of the operation, ownership, maintenance or use of an automobile, submitted to arbitration by the assignment judge, if amount in controversy is \$15,000.00 or less, exclusive of interest and costs); or section 24 of P.L. 1998, c.21 (C.39:6A-5.1) (dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage arising out of the operation, ownership, maintenance or use of an automobile).

Section 4 modifies the Uniform Act to make it clear that parties may expand the scope of judicial review by providing for such expansion in a record, following the ruling of Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc., 135 N.J. 349 (1994).

Section 11 modifies the Uniform Act to reflect the holding in Barcon Associates v. Tri-County Asphalt Corp., 86 N.J. 179 (1981) recently confirmed in Arista Marketing Associates, Inc. v. Peer Group, Inc., 316 N.J. Super 517 (App. Div. 1998), cert. denied, 158 N.J. 72 (1999) to require the same level of interest disclosure from party arbitrators as from neutral arbitrators. The bill also prohibits an individual from serving as a party arbitrator if the individual's interest in the outcome of the arbitration is not properly disclosed. Moreover,



the bill requires a court to vacate an arbitration award for the evident partiality of both neutral and party arbitrators.

Section 26 includes language mandating that procedural matters be governed by the Rules of the Courts of the State of New Jersey. This provision is included in order to meet the requirements of Article VI, Sec. 2, para. 3 of the New Jersey Constitution which mandates that the New Jersey Supreme Court promulgate the rules governing the practice and procedure of the courts.

The bill's effective date is September 1, 2002. The bill repeals the arbitration statutes set out in N.J.S.A.2A:24-1 through N.J.S.A.2A:24-11 as of that date, and provides that all agreements to arbitrate made on or after that date would be governed by the provisions of the bill. The bill also provides that on and after January 1, 2005, all existing arbitration agreements in the State would be governed by the bill and the bill would not apply to arbitration agreements made before July 4, 1923. (See section 3 of the bill.)

This bill was prefiled for introduction in the 2002 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 514**

# STATE OF NEW JERSEY

DATED: DECEMBER 9, 2002

The Assembly Judiciary Committee reports favorably Senate Bill No. 514 (1R).

This bill is a modified version of the Uniform Arbitration Act of 2000 ("Uniform Act") as proposed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). The NCCUSL adopted the Uniform Act and the accompanying Official Comments on August 3, 2000. The primary purpose of the bill is to advance arbitration as a desirable alternative to litigation and to clarify arbitration procedures in light of the developments of the law in this area.

The Uniform Act is a default act, meaning that many of its provisions may be varied or waived by contract. Provisions that may not be varied or waived include the rule that an agreement to submit a dispute to arbitration is valid; the rules that govern disclosure of facts by a neutral arbitrator; and the standards for vacating an award but permitting the parties by agreement to review an arbitration award under certain circumstances.

Section 8 of this bill specifically allows a court to order provisional remedies before an arbitrator is selected. An arbitrator, when selected, also has an express power to order provisional remedies. Section 10 of this bill allows consolidation of separate arbitration proceedings unless the agreement prohibits consolidation. Section 12 of this bill also requires disclosure of any interest by the arbitrator that may give rise to a question of neutrality, specifically a financial or personal interest in the outcome of the arbitration proceeding or an existing or past relationship with a party. The lack of disclosure may be a ground for vacating an award, and there is a presumption of partiality when non-disclosure occurs. Upon disclosure, a party has the opportunity to object to the appointment of an arbitrator intended to be neutral. However, parties who fail to timely object to the required and provided disclosures of arbitrators waive the right to object to the designation of the arbitrator on the grounds revealed.

Section 14 of this bill provides arbitrators with immunity from civil liability to the same extent as a judge acting in a judicial capacity. An arbitrator, pursuant to section 15 of this bill, may conduct the

arbitration in such manner as the arbitrator considers appropriate to the fair and expeditious disposition of the proceeding. An arbitrator also has the express power to make summary dispositions of claims or issues under appropriate procedures, to hold pre-arbitration proceeding meetings or to use any other discovery process applicable to resolution of the dispute.

Section 21 of this bill expressly permits an arbitrator to award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim. Attorney's fees may be awarded pursuant to the same standard and also where an award is unsuccessfully challenged upon confirmation.

A copy of the Uniform Act with Official Comments as adopted by the NCCUSL may be viewed on the organization's official Internet website at <http://www.law.upenn.edu/bll/ulc/ulc.htm#uaa>.

Except where noted herein, the sponsor endorses the content of the Uniform Act's Official Comments.

The bill modifies the Uniform Act in several ways to conform to New Jersey law and practice in the area of arbitration.

Section 34 of the bill repeals the current New Jersey arbitration law, N.J.S.2A:24-1 through N.J.S.2A:24-11.

Section 32 of the bill makes it explicit that it does not modify "The New Jersey Alternative Procedure for Dispute Resolution Act," P.L.1987, c.54 (C.2A:23A-1 et seq.), although one technical error is corrected in section 33 of the bill which amends N.J.S.A.2A:23A-11. It also provides that the bill does not apply to arbitrations governed by P.L.1987, c.329 (C.2A:23A-20 et seq.) (civil action for personal injury, with certain exceptions, submitted to arbitration by the assignment judge, if the amount in controversy is \$20,000.00 or less, exclusive of costs); P.L.1983, c.358 (C.39:6A-24 et seq.) (cause of action for the recovery of noneconomic loss or uncompensated economic loss (other than for damages to property) arising out of the operation, ownership, maintenance or use of an automobile, submitted to arbitration by the assignment judge, if amount in controversy is \$15,000.00 or less, exclusive of interest and costs); or section 24 of P.L.1998, c.21 (C.39:6A-5.1) (dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage arising out of the operation, ownership, maintenance or use of an automobile).

The committee wishes to clarify that the exemptions under section 32 of this bill for PIP arbitration proceedings does not preclude the arbitrators' use of medical review organizations as authorized by the provisions of Automobile Insurance Cost Reduction Act (AICRA) N.J.S.A. 39:6A-1.1 et seq. for PIP arbitration proceedings.

Section 4 modifies the Uniform Act to make it clear that parties may expand the scope of judicial review by providing for such expansion in a record, following the ruling of Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc., 135 N.J. 349 (1994).

Section 11 modifies the Uniform Act to reflect the holding in Barcon Associates v. Tri-County Asphalt Corp., 86 N.J. 179 (1981) recently confirmed in Arista Marketing Associates, Inc. v. Peer Group, Inc., 316 N.J. Super 517 (App. Div. 1998), cert. denied, 158 N.J. 72 (1999) to require the same level of interest disclosure from party arbitrators as from neutral arbitrators. The bill also prohibits an individual from serving as a party arbitrator if the individual's interest in the outcome of the arbitration is not properly disclosed. Moreover, the bill requires a court to vacate an arbitration award for the evident partiality of both neutral and party arbitrators.

Section 26 includes language mandating that procedural matters be governed by the Rules of the Courts of the State of New Jersey. This provision is included in order to meet the requirements of Article VI, Sec. 2, para. 3 of the New Jersey Constitution which mandates that the New Jersey Supreme Court promulgate the rules governing the practice and procedure of the courts.

Section 32 of the bill lists statutes not affected by the bill. This section also provides that unless otherwise agreed by the parties, any other non-binding court annexed arbitration procedures authorized under court rules or situations where under existing statutes the application of N.J.S.2A:24-1 through 2A:24-11 is expressly excluded.

Section 33 of the bill amends section 11 of P.L.1987, c.54 (C.2A:23A-11). The bill makes spelling corrections in that section of existing law. The bill also makes changes in subsection e. of the existing law to change the reference to "issues to be arbitrated" to "issues to be resolved."

The bill's effective date is January 1, 2003. The bill repeals the arbitration statutes set out in N.J.S.A.2A:24-1 through N.J.S.A.2A:24-11 as of that date, and provides that all agreements to arbitrate made on or after that date would be governed by the provisions of the bill. The bill also provides that on and after January 1, 2005, all existing arbitration agreements in the State would be governed by the bill and the bill would not apply to arbitration agreements made before July 4, 1923. (See section 3 of the bill.)

This bill is identical to Assembly Bill No. 2847 (1R).

STATEMENT TO  
**SENATE, No. 514**

with Senate Floor Amendments  
(Proposed By Senator MARTIN)

ADOPTED: SEPTEMBER 12, 2002

This bill is a modified version of the Uniform Arbitration Act of 2000 ("Uniform Act") as proposed by the National Conference of Commissioners on Uniform State Laws. The primary purpose of the bill is to advance arbitration as a desirable alternative to litigation and to clarify arbitration procedures in light of the developments of the law in this area.

The floor amendments make a number of language changes to the bill. References to "motion" are changed to refer more appropriately within the context to "summary action" or "application." The term "movant" is changed to "aggrieved party."

Section 32 of the bill lists statutes not affected by the bill. These floor amendments add to this list any other non-binding court annexed arbitration procedures authorized under court rules or situations where under existing statutes the application of N.J.S.2A:24-1 through 2A:24-11 is expressly excluded.

Section 33 of the bill amends section 11 of P.L.1987, c.54 (C.2A:23A-11). These floor amendments make spelling corrections in that section of existing law and in subsection e. change the reference to "issues to be arbitrated" to "issues to be resolved."

As introduced, the bill's effective date was September 1, 2002. These floor amendments change that date to January 1, 2003.

# ASSEMBLY, No. 2847

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED OCTOBER 3, 2002

**Sponsored by:**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblyman MATT AHEARN**

**District 38 (Bergen)**

**SYNOPSIS**

Revises and augments rules governing arbitration procedure in arbitration agreements.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 12/13/2002)

1 AN ACT concerning arbitration procedures and revising parts of the  
2 statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. (New section) Definitions. For the purposes of this act:

8 "Arbitration organization" means an association, agency, board,  
9 commission or other entity that is neutral and initiates, sponsors or  
10 administers an arbitration proceeding or is involved in the appointment  
11 of an arbitrator.

12 "Arbitrator" means an individual appointed either as a neutral  
13 arbitrator or as a party arbitrator to render an award, alone or with  
14 others, in a controversy that is subject to an agreement to arbitrate.

15 "Court" means the Superior Court of New Jersey.

16 "Court rules" means the Rules Governing the Courts of the State of  
17 New Jersey.

18 "Knowledge" means actual knowledge.

19 "Person" means an individual, corporation, business trust, estate,  
20 trust, partnership, limited liability company, association, joint venture,  
21 government; governmental subdivision, agency, or instrumentality;  
22 public corporation; or any other legal or commercial entity.

23 "Record" means information that is inscribed on a tangible medium  
24 or that is stored in an electronic or other medium and is retrievable in  
25 perceivable form.

26

27 2. (New section) Notice.

28 a. Except as otherwise provided in this act, a person gives notice  
29 to another person by taking action that is reasonably necessary to  
30 inform the other person in ordinary course, whether or not the other  
31 person acquires knowledge of the notice.

32 b. A person has notice if the person has knowledge of the notice or  
33 has received notice.

34 c. A person receives notice when it comes to the person's attention  
35 or the notice is delivered at the person's place of residence or place of  
36 business, or at another location held out by the person as a place of  
37 delivery of such a notice.

38

39 3. (New section) When Act Applies.

40 a. This act governs all agreements to arbitrate made on or after  
41 January 1, 2003.

42 b. This act governs an agreement to arbitrate made before  
43 January 1, 2003 if all the parties to the agreement or to the arbitration  
44 proceeding so agree in a record.

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

**Matter underlined thus is new matter.**

1 c. On or after January 1, 2005, this act governs an agreement to  
2 arbitrate whenever made.

3 d. This act shall not apply to agreements to arbitrate made before  
4 July 4, 1923.

5

6 4. (New section) Effect of Agreement to Arbitrate; Nonwaivable  
7 Provisions.

8 a. Except as otherwise provided in subsections b. and c. of this  
9 section, a party to an agreement to arbitrate or to an arbitration  
10 proceeding may waive or, the parties may vary the effect of, the  
11 requirements of this act to the extent permitted by law.

12 b. Before a controversy that is subject to an agreement to arbitrate  
13 arises, a party to the agreement may not:

14 (1) waive or agree to vary the effect of the requirements of  
15 sections 5a., 6a., 8, 17a., 17b., 26, or 28 of this act;

16 (2) agree to unreasonably restrict the right to notice of the  
17 initiation of an arbitration proceeding pursuant to section 9 of this act;

18 (3) agree to unreasonably restrict the right to disclosure of any  
19 facts by an arbitrator pursuant to section 12 of this act; or

20 (4) waive the right of a party to an agreement to arbitrate to be  
21 represented by a lawyer pursuant to section 16 of this act at any  
22 proceeding or hearing pursuant to this act, but an employer and a labor  
23 organization may waive the right to representation by a lawyer in a  
24 labor arbitration.

25 c. A party to an agreement to arbitrate or arbitration proceeding  
26 may not waive, or the parties may not vary the effect of, the  
27 requirements of this section or sections 3a., 3c., 7, 14, 18, 20d., 20e.,  
28 22, 23, 24, 25a., 25b., 29, 30, 34 or 35. Provided however, that  
29 nothing in this act shall preclude the parties from expanding the scope  
30 of judicial review of an award by expressly providing for such  
31 expansion in a record.

32

33 5. (New section) Application for Judicial Relief.

34 a. Except as otherwise provided in section 28 of this act, an  
35 application for judicial relief pursuant to this act shall be made upon  
36 commencement of a summary action with the court and heard in the  
37 manner provided for in such matters by the applicable court rules.

38 b. Unless a civil action involving the agreement to arbitrate is  
39 pending, notice of commencement of a summary action pursuant to  
40 this act shall be served in the manner provided by the court rules for  
41 serving process in summary actions.

42

43 6. (New section) Validity of Agreement to Arbitrate.

44 a. An agreement contained in a record to submit to arbitration any  
45 existing or subsequent controversy arising between the parties to the  
46 agreement is valid, enforceable, and irrevocable except upon a ground



1 that exists at law or in equity for the revocation of a contract.

2 b. The court shall decide whether an agreement to arbitrate exists  
3 or a controversy is subject to an agreement to arbitrate.

4 c. An arbitrator shall decide whether a condition precedent to  
5 arbitrability has been fulfilled and whether a contract containing a valid  
6 agreement to arbitrate is enforceable.

7 d. If a party to a judicial proceeding challenges the existence of, or  
8 claims that a controversy is not subject to, an agreement to arbitrate,  
9 the arbitration proceeding may continue pending final resolution of the  
10 issue by the court, unless the court otherwise orders.

11

12 7. (New section) Application to Compel or Stay Arbitration.

13 a. On filing a summary action with the court by  
14 a person showing an agreement to arbitrate and alleging another  
15 person's refusal to arbitrate pursuant to the agreement:

16 (1) if the refusing party does not appear or does not oppose the  
17 summary action, the court shall order the parties to arbitrate; and

18 (2) if the refusing party opposes the summary action, the court  
19 shall proceed summarily to decide the issue and order the parties to  
20 arbitrate unless it finds that there is no enforceable agreement to  
21 arbitrate.

22 b. On filing a summary action with the court by a person alleging  
23 that an arbitration proceeding has been initiated or threatened but that  
24 there is no agreement to arbitrate, the court shall proceed summarily  
25 to decide the issue. If the court finds that there is an enforceable  
26 agreement to arbitrate, it shall order the parties to arbitrate.

27 c. If the court finds that there is no enforceable agreement, it may  
28 not, pursuant to subsection a. or b. of this section, order the parties to  
29 arbitrate.

30 d. The court may not refuse to order arbitration because the claim  
31 subject to arbitration lacks merit or grounds for the claim have not  
32 been established.

33 e. If a proceeding involving a claim referable to arbitration  
34 pursuant to an alleged agreement to arbitrate is pending in court, an  
35 application pursuant to this section shall be made in that court.  
36 Otherwise, an application pursuant to this section may be made in any  
37 court as provided in section 27 of this act.

38 f. If a party commences a summary action to order arbitration, the  
39 court on just terms shall stay any judicial proceeding that involves a  
40 claim alleged to be subject to the arbitration until the court renders a  
41 final decision pursuant to this section.

42 g. If the court orders arbitration, the court on just terms shall stay  
43 any judicial proceeding that involves a claim subject to the arbitration.  
44 If a claim subject to the arbitration is severable, the court may limit the  
45 stay to that claim.

1 8. (New section) Provisional Remedies.

2 a. Before an arbitrator is appointed and is authorized and able to  
3 act, the court, in such summary action upon application of a party to  
4 an arbitration proceeding and for good cause shown, may enter an  
5 order for provisional remedies to protect the effectiveness of the  
6 arbitration proceeding to the same extent and pursuant to the same  
7 conditions as if the controversy were the subject of a civil action.

8 b. After an arbitrator is appointed and is authorized and able to act:

9 (1) the arbitrator may issue orders for provisional remedies,  
10 including interim awards, as the arbitrator finds necessary to protect  
11 the effectiveness of the arbitration proceeding and to promote the fair  
12 and expeditious resolution of the controversy, to the same extent and  
13 pursuant to the same conditions as if the controversy were the subject  
14 of a civil action; and

15 (2) a party to an arbitration proceeding may move the court for a  
16 provisional remedy only if the matter is urgent and the arbitrator is not  
17 able to act timely or the arbitrator cannot provide an adequate remedy.

18 c. A party does not waive a right of arbitration by making an  
19 application pursuant to subsection a. or b of this section.

20

21 9. (New section) Initiation of Arbitration.

22 a. A person initiates an arbitration proceeding by giving notice in  
23 a record to the other parties to the agreement to arbitrate in the  
24 manner agreed between the parties or, in the absence of agreement, by  
25 certified or registered mail, return receipt requested and obtained, or  
26 by service as authorized for the commencement of a civil action. The  
27 notice shall describe the nature of the controversy and the remedy  
28 sought.

29 b. Unless a person objects for lack or insufficiency of notice  
30 pursuant to subsection c. of section 15 of this act not later than the  
31 beginning of the arbitration hearing, the person, by appearing at the  
32 hearing, waives any objection to the lack or insufficiency of notice.

33

34 10. (New section) Consolidation of Separate Arbitration  
35 Proceedings.

36 a. Except as otherwise provided in subsection c. of this section,  
37 upon application of a party to an agreement to arbitrate or to an  
38 arbitration proceeding, the court may order consolidation of separate  
39 arbitration proceedings as to all or some of the claims if:

40 (1) there are separate agreements to arbitrate or separate  
41 arbitration proceedings between the same persons or one of them is a  
42 party to a separate agreement to arbitrate or a separate arbitration  
43 proceeding with a third person;

44 (2) the claims subject to the agreements to arbitrate arise in  
45 substantial part from the same transaction or series of related  
46 transactions;

1 (3) the existence of a common issue of law or fact creates the  
2 possibility of conflicting decisions in the separate arbitration  
3 proceedings; and

4 (4) prejudice resulting from a failure to consolidate is not  
5 outweighed by the risk of undue delay or prejudice to the rights of or  
6 hardship to parties opposing consolidation.

7 b. The court may order consolidation of separate arbitration  
8 proceedings as to some claims and allow other claims to be resolved  
9 in separate arbitration proceedings.

10 c. The court may not order consolidation of the claims of a party  
11 to an agreement to arbitrate if the agreement prohibits consolidation.

12  
13 11. (New section) Appointment of Arbitrator; Service as a Neutral  
14 Arbitrator.

15 a. If the parties to an agreement to arbitrate agree on a method for  
16 appointing an arbitrator, that method shall be followed, unless the  
17 method fails. If the parties have not agreed on a method, the agreed  
18 method fails, or an arbitrator appointed fails or is unable to act and a  
19 successor has not been appointed, the court, on application of a party  
20 to the arbitration proceeding, shall appoint the arbitrator. An  
21 arbitrator so appointed has all the powers of an arbitrator designated  
22 in the agreement to arbitrate or appointed pursuant to the agreed  
23 method.

24 b. An individual who has a known, direct, and material interest in  
25 the outcome of the arbitration proceeding or a known, existing, and  
26 substantial relationship with a party may not serve as an arbitrator  
27 required by an agreement to be neutral.

28 c. An individual who has a known, direct, and material interest in  
29 the outcome of the arbitration proceeding or a known, existing, and  
30 substantial relationship with a party may not serve as a party arbitrator  
31 if such information has not been disclosed pursuant to section 12 of  
32 this act.

33 d. An individual appointed as a party arbitrator may be predisposed  
34 toward the appointing party. From and after the commencement of an  
35 arbitration, an arbitrator shall act in good faith and exercise the  
36 arbitrator's responsibilities in a manner consistent with the authority  
37 placed in the arbitrator by the courts of this State and this act.

38  
39 12. (New section) Disclosure by Arbitrator.

40 a. Before accepting appointment, an individual who is requested to  
41 serve as an arbitrator, after making a reasonable inquiry, shall disclose  
42 to all parties to the agreement to arbitrate and arbitration proceeding  
43 and to any other arbitrators any known facts that a reasonable person  
44 would consider likely to affect the impartiality of the arbitrator in the  
45 arbitration proceeding, including:

1 (1) a financial or personal interest in the outcome of the arbitration  
2 proceeding; and

3 (2) an existing or past relationship with any of the parties to the  
4 agreement to arbitrate or the arbitration proceeding, their counsel or  
5 representatives, a witness, or other arbitrators.

6 b. An arbitrator has a continuing obligation to disclose to all  
7 parties to the agreement to arbitrate and arbitration proceeding and to  
8 any other arbitrators any facts that the arbitrator learns after accepting  
9 appointment which a reasonable person would consider likely to affect  
10 the impartiality of the arbitrator.

11 c. If an arbitrator discloses a fact required by subsection a. or b. of  
12 this section to be disclosed and a party timely objects to the  
13 appointment or continued service of the arbitrator based upon the fact  
14 disclosed, subject to the provisions of section 11d. of this act, the  
15 objection may be a ground pursuant to paragraph (2) of subsection a.  
16 of section 23 of this act for vacating an award made by the arbitrator.

17 d. If the arbitrator did not disclose a fact as required by subsection  
18 a. or b. of this section, upon timely objection by a party, the court  
19 pursuant to paragraph (2) of subsection a. of section 23 may vacate an  
20 award.

21 e. An individual appointed as a neutral arbitrator who does not  
22 disclose a known, direct and material interest in the outcome of the  
23 arbitration proceeding or a known, existing, and substantial  
24 relationship with a party is presumed to act with evident partiality  
25 pursuant to paragraph (2) of subsection a. of section 23 of this act.

26 f. An individual appointed as a party arbitrator who does not  
27 disclose a known, direct and material interest in the outcome of the  
28 arbitration proceeding is presumed to act with evident partiality  
29 pursuant to paragraph (2) of subsection a. of section 23 of this act.

30 g. If the parties to an arbitration proceeding agree to the  
31 procedures of an arbitration organization or any other procedures for  
32 challenges to arbitrators before an award is made, substantial  
33 compliance with those procedures is a condition precedent to a  
34 summary action to vacate an award on that ground pursuant to  
35 paragraph (2) of subsection a. of section 23 of this act.

36 h. Should an individual designated as an arbitrator make full  
37 disclosure as required by this section and a party fails to object within  
38 a reasonable time, the party receiving such information shall be held to  
39 have waived any right to object to the designation of the arbitrator on  
40 the grounds so revealed.

41

42 13. (New section) Action by Majority.

43 If there is more than one arbitrator, the powers of an arbitrator shall  
44 be exercised by a majority of the arbitrators, but all of them shall  
45 conduct the hearing pursuant to subsection c. of section 15 of this act.

1 14. (New section) Immunity of Arbitrator; Competency to Testify;  
2 Attorney's Fees and Costs.

3 a. An arbitrator or an arbitration organization acting in that  
4 capacity is immune from civil liability to the same extent as a judge of  
5 a court of this State acting in a judicial capacity.

6 b. The immunity afforded by this section supplements any immunity  
7 pursuant to other law.

8 c. The failure of an arbitrator to make a disclosure required by  
9 section 12 of this act does not cause any loss of immunity pursuant to  
10 this section.

11 d. In a judicial, administrative, or similar proceeding, an arbitrator  
12 or representative of an arbitration organization is not competent to  
13 testify, and may not be required to produce records as to any  
14 statement, conduct, decision, or ruling occurring during the arbitration  
15 proceeding, to the same extent as a judge of a court of this State  
16 acting in a judicial capacity. This subsection does not apply:

17 (1) to the extent necessary to determine the claim of an arbitrator,  
18 arbitration organization, or representative of the arbitration  
19 organization against a party to the arbitration proceeding; or

20 (2) to a hearing in a summary action to vacate an award pursuant  
21 to paragraph (1) or (2) of subsection a. of section 23 of this act if the  
22 movant establishes prima facie that a ground for vacating the award  
23 exists.

24 e. If a person commences a civil action against an arbitrator,  
25 arbitration organization or representative of an arbitration organization  
26 arising from the services of the arbitrator, organization or  
27 representative or if a person seeks to compel an arbitrator or a  
28 representative of an arbitration organization to testify or produce  
29 records in violation of subsection d. of this section, and the court  
30 decides that the arbitrator, arbitration organization or representative  
31 of an arbitration organization is immune from civil liability or that the  
32 arbitrator or representative of the organization is not competent to  
33 testify, the court shall award to the arbitrator, organization or  
34 representative reasonable attorney's fees and other reasonable  
35 expenses of litigation.

36

37 15. (New section) Arbitration Process.

38 a. An arbitrator may conduct an arbitration in such manner as the  
39 arbitrator considers appropriate for a fair and expeditious disposition  
40 of the proceeding. The authority conferred upon the arbitrator  
41 includes the power to hold conferences with the parties to the  
42 arbitration proceeding before the hearing and, among other matters,  
43 determine the admissibility, relevance, materiality, and weight of any  
44 evidence.

45 b. An arbitrator may decide a request for summary disposition of  
46 a claim or particular issue:

1 (1) if all interested parties agree; or  
2 (2) upon request of one party to the arbitration proceeding if that  
3 party gives notice to all other parties to the proceeding, and the other  
4 parties have a reasonable opportunity to respond.

5 c. If an arbitrator orders a hearing, the arbitrator shall set a time  
6 and place and give notice of the hearing not less than five days before  
7 the hearing begins. Unless a party to the arbitration proceeding makes  
8 an objection due to lack or insufficiency of notice not later than the  
9 beginning of the hearing, the party's appearance at the hearing waives  
10 the objection. Upon request of a party to the arbitration proceeding  
11 and for good cause shown, or upon the arbitrator's own initiative, the  
12 arbitrator may adjourn the hearing from time to time as necessary but  
13 may not postpone the hearing to a time later than that fixed by the  
14 agreement to arbitrate for making the award unless the parties to the  
15 arbitration proceeding consent to a later date. The arbitrator may hear  
16 and decide the controversy upon the evidence produced although a  
17 party who was duly notified of the arbitration proceeding did not  
18 appear. The court, on request, may direct the arbitrator to conduct  
19 the hearing promptly and render a timely decision.

20 d. At a hearing pursuant to subsection c. of this section, a party to  
21 the arbitration proceeding has a right to be heard, to present evidence  
22 material to the controversy, and to cross-examine witnesses appearing  
23 at the hearing.

24 e. If an arbitrator ceases or is unable to act during the arbitration  
25 proceeding, a replacement arbitrator shall be appointed in accordance  
26 with section 11 of this act to continue the proceeding and to resolve  
27 the controversy.

28

29 16. (New section) Representation by Lawyer.

30 A party to an arbitration proceeding may be represented by a  
31 lawyer.

32

33 17. (New section) Witnesses; Subpoenas; Depositions; Discovery.

34 a. An arbitrator may issue a subpoena for the attendance of a  
35 witness and for the production of records and other evidence at any  
36 hearing and may administer oaths. A subpoena shall be served in the  
37 manner for service of subpoenas in a civil action, and upon filing a  
38 summary action with the court by a party to the arbitration proceeding  
39 or the arbitrator, enforced in the manner for enforcement of subpoenas  
40 in any civil action.

41 b. In order to make the proceedings fair, expeditious, and cost  
42 effective, upon request of a party to or a witness in an arbitration  
43 proceeding, an arbitrator may permit a deposition of any witness to be  
44 taken for use as evidence at the hearing, including a witness who  
45 cannot be subpoenaed for or is unable to attend a hearing. The  
46 arbitrator shall determine the conditions pursuant to which the

1 deposition is taken.

2 c. An arbitrator may permit such discovery as the arbitrator decides  
3 is appropriate in the circumstances, taking into account the needs of  
4 the parties to the arbitration proceeding and other affected persons and  
5 the desirability of making the proceeding fair, expeditious, and cost  
6 effective.

7 d. If an arbitrator permits discovery pursuant to subsection c. of  
8 this section, the arbitrator may order a party to the arbitration  
9 proceeding to comply with the arbitrator's discovery-related orders,  
10 issue subpoenas for the attendance of a witness and for the production  
11 of records and other evidence at a discovery proceeding, and take  
12 action against a noncomplying party to the extent a court could if the  
13 controversy were the subject of a civil action in this State.

14 e. An arbitrator may issue a protective order to prevent the  
15 disclosure of privileged information, confidential information, trade  
16 secrets, and other information protected from disclosure to the extent  
17 a court could if the controversy were the subject of a civil action in  
18 this State.

19 f. All laws compelling a person under subpoena to testify and all  
20 fees for attending a judicial proceeding, a deposition or a discovery  
21 proceeding as a witness apply to an arbitration proceeding as if the  
22 controversy were the subject of a civil action in this State.

23 g. The court may enforce a subpoena or discovery-related order for  
24 the attendance of a witness within this State and for the production of  
25 records and other evidence issued by an arbitrator in connection with  
26 an arbitration proceeding in another State upon conditions determined  
27 by the court so as to make the arbitration proceeding fair, expeditious,  
28 and cost effective. A subpoena or discovery-related order issued by  
29 an arbitrator in another State shall be served in the manner provided  
30 by law for service of subpoenas in a civil action in this State and, upon  
31 filing a summary action with the court by a party to the arbitration  
32 proceeding or the arbitrator, enforced in the manner provided by law  
33 for enforcement of subpoenas in any civil action in this State.

34

35 18. (New section) Judicial Enforcement of Preaward Ruling by  
36 Arbitrator.

37 If an arbitrator makes a preaward ruling in favor of a party to the  
38 arbitration proceeding, the party may request the arbitrator to  
39 incorporate the ruling into an award pursuant to section 19 of this act.  
40 A prevailing party may file a summary action with the court for an  
41 expedited order to confirm the award pursuant to section 22 of this  
42 act, in which case the court shall summarily decide the application.  
43 The court shall issue an order to confirm the award unless the court  
44 vacates, modifies, or corrects the award pursuant to section 23 or 24  
45 of this act.

1 19. (New section) Award.

2 a. An arbitrator shall make a record of an award. The record shall  
3 be signed or otherwise authenticated by any arbitrator who concurs  
4 with the award. The arbitrator or the arbitration organization shall  
5 give notice of the award, including a copy of the award, to each party  
6 to the arbitration proceeding.

7 b. An award shall be made within the time specified by the  
8 agreement to arbitrate or, if not specified therein, within the time  
9 ordered by the court. The court may extend or the parties to the  
10 arbitration proceeding may agree in a record to extend the time. The  
11 court or the parties may do so within or after the time specified or  
12 ordered. A party waives any objection that an award was not timely  
13 made unless the party gives notice of the objection to the arbitrator  
14 before receiving notice of the award.

15

16 20. (New section) Change of Award by Arbitrator.

17 a. On application to an arbitrator by a party to an arbitration  
18 proceeding, the arbitrator may modify or correct an award:

19 (1) upon a ground stated in paragraph (1) or (3) of subsection a.  
20 of section 24 of this act;

21 (2) if the arbitrator has not made a final and definite award upon  
22 a claim submitted by the parties to the arbitration proceeding; or

23 (3) to clarify the award.

24 b. An application pursuant to subsection a. of this section shall be  
25 made and notice given to all parties within 20 days after the aggrieved  
26 party receives notice of the award.

27 c. A party to the arbitration proceeding shall give notice of any  
28 objection to the application within 10 days after receipt of the notice.

29 d. If a summary action with the court is pending pursuant to  
30 sections 22, 23, or 24 of this act, the court may submit the claim to the  
31 arbitrator to consider whether to modify or correct the award:

32 (1) upon a ground stated in paragraph (1) or (3) of subsection a.  
33 of section 24 of this act.

34 (2) if the arbitrator has not made a final and definite award upon  
35 a claim submitted by the parties to the arbitration proceeding; or

36 (3) to clarify the award.

37 e. An award modified or corrected pursuant to this section is  
38 subject to sections 19a., 22, 23, and 24 of this act.

39

40 21. (New section) Remedies; Fees and Expenses of Arbitration  
41 Proceeding.

42 a. An arbitrator may award punitive damages or other exemplary  
43 relief if such an award is authorized by law in a civil action involving  
44 the same claim and the evidence produced at the hearing justifies the  
45 award in accordance with the legal standards otherwise applicable to  
46 the claim.



1       b. An arbitrator may award reasonable attorney's fees and other  
2 reasonable expenses of arbitration if such an award is authorized by  
3 law in a civil action involving the same claim or by the agreement of  
4 the parties to the arbitration proceeding.

5       c. As to all remedies other than those authorized by subsections a.  
6 and b. of this section, an arbitrator may order such remedies as the  
7 arbitrator considers just and appropriate under the circumstances of  
8 the arbitration proceeding. The fact that such a remedy could not or  
9 would not be granted by the court is not a ground for refusing to  
10 confirm an award pursuant to section 22 of this act or for vacating an  
11 award pursuant to section 23 of this act.

12       d. An arbitrator's expenses and fees, together with other expenses,  
13 shall be paid as provided in the award.

14       e. If an arbitrator awards punitive damages or other exemplary  
15 relief pursuant to subsection a. of this section, the arbitrator shall  
16 specify in the award the basis in fact justifying and the basis in law  
17 authorizing the award and state separately the amount of the punitive  
18 damages or other exemplary relief.

19  
20       22. (New section) Confirmation of Award.

21       After a party to an arbitration proceeding receives notice of an  
22 award, the party may file a summary action with the court for an order  
23 confirming the award, at which time the court shall issue a confirming  
24 order unless the award is modified or corrected pursuant to section 20  
25 or 24 of this act or is vacated pursuant to section 23 of this act.

26  
27       23. (New section) Vacating Award.

28       a. Upon the filing of a summary action with the court by a party to  
29 an arbitration proceeding, the court shall vacate an award made in the  
30 arbitration proceeding if:

31       (1) the award was procured by corruption, fraud, or other undue  
32 means;

33       (2) the court finds evident partiality by an arbitrator; corruption by  
34 an arbitrator; or misconduct by an arbitrator prejudicing the rights of  
35 a party to the arbitration proceeding;

36       (3) an arbitrator refused to postpone the hearing upon showing of  
37 sufficient cause for postponement, refused to consider evidence  
38 material to the controversy, or otherwise conducted the hearing  
39 contrary to section 15 of this act, so as to substantially prejudice the  
40 rights of a party to the arbitration proceeding;

41       (4) an arbitrator exceeded the arbitrator's powers;

42       (5) there was no agreement to arbitrate, unless the person  
43 participated in the arbitration proceeding without raising the objection  
44 pursuant to subsection c. of section 15 of this act not later than the  
45 beginning of the arbitration hearing; or

1 (6) the arbitration was conducted without proper notice of the  
2 initiation of an arbitration as required in section 9 of this act so as to  
3 substantially prejudice the rights of a party to the arbitration  
4 proceeding.

5 b. A summary action pursuant to this section shall be filed within  
6 120 days after the aggrieved party receives notice of the award  
7 pursuant to section 19 of this act or within 120 days after the  
8 aggrieved party receives notice of a modified or corrected award  
9 pursuant to section 20 of this act, unless the aggrieved party alleges  
10 that the award was procured by corruption, fraud, or other undue  
11 means, in which case the summary action shall be commenced within  
12 120 days after the ground is known or by the exercise of reasonable  
13 care would have been known by the aggrieved party.

14 c. If the court vacates an award on a ground other than that set  
15 forth in paragraph (5) of subsection a. of this section, it may order a  
16 rehearing. If the award is vacated on a ground stated in paragraph (1)  
17 or (2) of subsection a. of this section, the rehearing shall be before a  
18 new arbitrator. If the award is vacated on a ground stated in  
19 paragraph (3), (4), or (6) of subsection a. of this section, the rehearing  
20 may be before the arbitrator who made the award or the arbitrator's  
21 successor. The arbitrator shall render the decision in the rehearing  
22 within the same time as that provided in subsection b. of section 19 of  
23 this act for an award.

24 d. If the court denies an application to vacate an award, it shall  
25 confirm the award unless an application to modify or correct the award  
26 is pending.

27  
28 24. (New section) Modification or Correction of Award.

29 a. Upon filing a summary action made within 120 days after the  
30 party receives notice of the award pursuant to section 19 of this act or  
31 within 120 days after the party receives notice of a modified or  
32 corrected award pursuant to section 20 of this act, the court shall  
33 modify or correct the award if:

34 (1) there was an evident mathematical miscalculation or an evident  
35 mistake in the description of a person, thing, or property referred to  
36 in the award;

37 (2) the arbitrator made an award on a claim not submitted to the  
38 arbitrator and the award may be corrected without affecting the merits  
39 of the decision upon the claims submitted; or

40 (3) the award is imperfect in a matter of form not affecting the  
41 merits of the decision on the claims submitted.

42 b. If an application made pursuant to subsection a. of this section  
43 is granted, the court shall modify or correct and confirm the award as  
44 modified or corrected. Otherwise, unless an application to vacate is  
45 pending, the court shall confirm the award.

1 c. An application to modify or correct an award pursuant to this  
2 section may be joined with an application to vacate the award.

3  
4 25. (New section) Judgment on Award; Attorney's Fees and  
5 Litigation Expenses.

6 a. Upon granting an order confirming, vacating without directing  
7 a rehearing, modifying, or correcting an award, the court shall enter  
8 a judgment in conformity with the arbitrator's award. The judgment  
9 may be recorded, docketed, and enforced as any other judgment in a  
10 civil action.

11 b. A court may allow reasonable costs of the summary action and  
12 subsequent judicial proceedings.

13 c. On application of a prevailing party to a contested judicial  
14 proceeding pursuant to section 22, 23, or 24 of this act, the court may  
15 add reasonable attorney's fees and other reasonable expenses of  
16 litigation incurred in a judicial proceeding after the award is made to  
17 a judgment confirming, vacating without directing a rehearing, or  
18 substantially modifying or correcting an award.

19  
20 26. (New section) Jurisdiction.

21 a. A court of this State having jurisdiction over the controversy  
22 and the parties may enforce an agreement to arbitrate.

23 b. An agreement to arbitrate providing for arbitration in this State  
24 confers exclusive jurisdiction on the court to enter judgment on an  
25 award pursuant to this act.

26 c. Wherever reference is made to any procedural matter stated in  
27 this act, the New Jersey Supreme Court rules governing summary  
28 actions, or such other rules as may be adopted by the Supreme Court  
29 of New Jersey shall apply.

30  
31 27. (New section) Venue.

32 A summary action pursuant to section 5 of this act shall be  
33 commenced in the court of the county that would have venue if the  
34 matter were subject to Superior Court rules in civil actions, or to a  
35 court in which the agreement to arbitrate specifies the arbitration  
36 hearing is to be held or, if the hearing has been held, in the court of the  
37 county in which it was held.

38  
39 28. (New section) Appeals.

40 a. An appeal may be taken from:

41 (1) an order denying a summary action to compel arbitration;

42 (2) an order granting a summary action to stay arbitration;

43 (3) an order confirming or denying confirmation of an award;

44 (4) an order modifying or correcting an award;

45 (5) an order vacating an award without directing a rehearing; or

46 (6) a final judgment entered pursuant to this act.

1       b. An appeal pursuant to this section shall be taken as from an  
2 order or a judgment in a civil action.

3  
4       29. (New section) Uniformity of Application and Construction.

5       In applying and construing this uniform act, consideration shall be  
6 given to the need to promote uniformity of the law with respect to its  
7 subject matter among States that enact it.

8  
9       30. (New section) Relationship to Electronic Signatures in Global  
10 and National Commerce Act.

11       The provisions of this act governing the legal effect, validity, and  
12 enforceability of electronic records or electronic signatures, and of  
13 contracts performed with the use of such records or signatures  
14 conform to the requirements of the "Electronic Signatures in Global  
15 and National Commerce Act," 15 U.S.C.s.7002.

16  
17       31. (New section) Prior Action or Proceeding.

18       This act does not affect an action or proceeding commenced or  
19 right accrued before this act takes effect. Subject to section 3 of this  
20 act, an arbitration agreement made before the effective date of this act  
21 is governed by N.J.S.2A:24-1 et seq. and P.L.1987, c.54 (C.2A:23A-  
22 1 et seq.).

23  
24       32. (New section) Statutes and Procedures Not Affected.

25       This act shall not apply to the substance and procedure of "The  
26 New Jersey Alternative Procedure for Dispute Resolution Act, "  
27 P.L.1987, c.54 (C.2A:23A-1 et seq.), nor shall this act apply to  
28 arbitrations governed by P.L.1987, c.329 ( C.2A:23A-20 et seq.),  
29 P.L.1983, c.358 (C.39:6A-24 et seq.) or section 24 of P.L.1998, c.21  
30 (C.39:6A-5.1); and, unless otherwise agreed by the parties, any other  
31 non-binding court annexed arbitration procedures authorized under  
32 court rules or where under existing statutes the application of  
33 N.J.S.2A:24-1 through 2A:24-11 is expressly excluded.

34  
35       33. Section 11 of P.L.1987, c.54 (C.2A:23A-11) is amended to  
36 read as follows:

37       11. a. When more than one umpire is agreed upon, all the umpires  
38 shall sit at the hearing of the case, unless by written consent, all parties  
39 agree to a lesser number.

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

44       c. Subpoenas shall issue in the name of and be signed by the  
45 umpire, or if there is more than one umpire, by a majority of them, and  
46 shall be directed to the person therein named and served in the same

1 manner as a [subpena] subpoena to testify before a court of record.  
2 If a person subpoenaed to testify refuses or neglects to obey a  
3 [subpena] subpoena, the Superior Court, upon application, may  
4 compel his attendance before the umpire or hold the person in  
5 contempt as if the person had failed to respond to a  
6 [subpena] subpoena issued by the court.

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

16 e. Each party to an alternative resolution proceeding shall submit  
17 to the umpire and his adversary a statement of the party's factual and  
18 legal position with respect to the issues to be [arbitrated] resolved, at  
19 a date fixed by the umpire to permit proper preparation for all  
20 hearings. The submitted statement shall govern, control and limit the  
21 facts and legal issues to be determined in the alternative resolution  
22 proceeding. Amended or supplemental legal and factual statements  
23 may be filed as permitted by the umpire where the same will not  
24 unduly prejudice the other party to the proceeding.

25 f. In an alternative resolution proceeding when the umpire is of the  
26 opinion that evidence by impartial experts would be of assistance, the  
27 umpire may direct that expert evidence be obtained. The fees and  
28 expenses of expert witnesses shall be paid by the parties as directed by  
29 the umpire.

30 g. Unless otherwise provided by the agreement for alternative  
31 resolution:

32 (1) The umpire shall appoint a time and place for the hearing and  
33 cause notification to the parties by personal service or by certified  
34 mail, with return receipt requested, not less than five days before the  
35 hearing. Appearance at the hearing waives the notice requirement.  
36 The umpire may adjourn the hearing from time to time as necessary  
37 and, on request of a party and for good cause, or upon their own  
38 motion, may postpone the hearing to a time not later than the date  
39 fixed by the agreement for making the award, unless the parties  
40 consent to a later date. The umpire may determine the controversy  
41 upon the evidence produced, notwithstanding the failure of a party  
42 duly notified to appear. The Superior Court, on application in any  
43 pending summary proceeding, may direct the umpire to proceed  
44 promptly with the hearing and determination of the controversy.

45 (2) The parties are entitled to be heard, to present evidence  
46 material to the controversy and to cross-examine witnesses appearing

1 at the hearing.

2 (3) The hearing shall be conducted by all the umpires, but a  
3 majority may determine any question and render a final award. If,  
4 during the course of the hearing, an umpire for any reason ceases to  
5 act, the remaining umpires appointed to act may continue with the  
6 hearing and determination of the controversy.

7 (cf: P.L.1987, c.54, s.11)

8

9 34. Repealer.

10 N.J.S.2A:24-1 through N.J.S.2A:24-11 are repealed.

11

12 35. Effective Date.

13 This act shall take effect on January 1, 2003.

14

15

16

#### STATEMENT

17

18 This bill is a modified version of the Uniform Arbitration Act of  
19 2000 ("Uniform Act") as proposed by the National Conference of  
20 Commissioners on Uniform State Laws ("NCCUSL"). The NCCUSL  
21 adopted the Uniform Act and the accompanying Official Comments on  
22 August 3, 2000. The primary purpose of the bill is to advance  
23 arbitration as a desirable alternative to litigation and to clarify  
24 arbitration procedures in light of the developments of the law in this  
25 area.

26 The Uniform Act is a default act, meaning that many of its  
27 provisions may be varied or waived by contract. Provisions that may  
28 not be varied or waived include the rule that an agreement to submit  
29 a dispute to arbitration is valid; the rules that govern disclosure of  
30 facts by a neutral arbitrator; and the standards for vacating an award  
31 but permitting the parties by agreement to review an arbitration award  
32 under certain circumstances.

33 Section 8 of this bill specifically allows a court to order provisional  
34 remedies before an arbitrator is selected. An arbitrator, when selected,  
35 also has an express power to order provisional remedies. Section 10  
36 of this bill allows consolidation of separate arbitration proceedings  
37 unless the agreement prohibits consolidation. Section 12 of this bill  
38 also requires disclosure of any interest by the arbitrator that may give  
39 rise to a question of neutrality, specifically a financial or personal  
40 interest in the outcome of the arbitration proceeding or an existing or  
41 past relationship with a party. The lack of disclosure may be a ground  
42 for vacating an award, and there is a presumption of partiality when  
43 non-disclosure occurs. Upon disclosure, a party has the opportunity  
44 to object to the appointment of an arbitrator intended to be neutral.  
45 However, parties who fail to timely object to the required and  
46 provided disclosures of arbitrators waive the right to object to the

1 designation of the arbitrator on the grounds revealed.

2 Section 14 of this bill provides arbitrators with immunity from civil  
3 liability to the same extent as a judge acting in a judicial capacity. An  
4 arbitrator, pursuant to section 15 of this bill, may conduct the  
5 arbitration in such manner as the arbitrator considers appropriate to  
6 the fair and expeditious disposition of the proceeding. An arbitrator  
7 also has the express power to make summary dispositions of claims or  
8 issues under appropriate procedures, to hold pre-arbitration  
9 proceeding meetings or to use any other discovery process applicable  
10 to resolution of the dispute.

11 Section 21 of this bill expressly permits an arbitrator to award  
12 punitive damages or other exemplary relief if such an award is  
13 authorized by law in a civil action involving the same claim. Attorney's  
14 fees may be awarded pursuant to the same standard and also where an  
15 award is unsuccessfully challenged upon confirmation.

16 A copy of the Uniform Act with Official Comments as adopted by  
17 the NCCUSL may be viewed on the organization's official Internet  
18 website at <http://www.law.upenn.edu/bll/ulc/ulc.htm#uaa>.

19 Except where noted herein, the sponsor endorses the content of the  
20 Uniform Act's Official Comments.

21 The bill modifies the Uniform Act in several ways to conform to  
22 New Jersey law and practice in the area of arbitration.

23 Section 34 of the bill repeals the current New Jersey arbitration  
24 law, N.J.S.2A:24-1 through N.J.S.2A:24-11.

25 Section 32 of the bill makes it explicit that it does not modify "The  
26 New Jersey Alternative Procedure for Dispute Resolution Act,"  
27 P.L.1987, c.54 (C.2A:23A-1 et seq.), although one technical error is  
28 corrected in section 33 of the bill which amends N.J.S.A.2A:23A-11.  
29 It also provides that the bill does not apply to arbitrations governed by  
30 P.L.1987, c.329 (C.2A:23A-20 et seq.) (civil action for personal  
31 injury, with certain exceptions, submitted to arbitration by the  
32 assignment judge, if the amount in controversy is \$20,000.00 or less,  
33 exclusive of costs); P.L.1983, c.358 (C.39:6A-24 et seq.) (cause of  
34 action for the recovery of noneconomic loss or uncompensated  
35 economic loss (other than for damages to property) arising out of the  
36 operation, ownership, maintenance or use of an automobile,  
37 submitted to arbitration by the assignment judge, if amount in  
38 controversy is \$15,000.00 or less, exclusive of interest and costs); or  
39 section 24 of P.L.1998, c.21 (C.39:6A-5.1) (dispute regarding the  
40 recovery of medical expense benefits or other benefits provided under  
41 personal injury protection coverage arising out of the operation,  
42 ownership, maintenance or use of an automobile).

43 Section 4 modifies the Uniform Act to make it clear that parties  
44 may expand the scope of judicial review by providing for such  
45 expansion in a record, following the ruling of Tretina Printing, Inc. v.  
46 Fitzpatrick & Associates, Inc., 135 N.J. 349 (1994).

1 Section 11 modifies the Uniform Act to reflect the holding in  
2 Barcon Associates v. Tri-County Asphalt Corp., 86 N.J. 179 (1981)  
3 recently confirmed in Arista Marketing Associates, Inc. v. Peer Group,  
4 Inc., 316 N.J. Super 517 (App. Div. 1998), cert. denied, 158 N.J. 72  
5 (1999) to require the same level of interest disclosure from party  
6 arbitrators as from neutral arbitrators. The bill also prohibits an  
7 individual from serving as a party arbitrator if the individual's interest  
8 in the outcome of the arbitration is not properly disclosed. Moreover,  
9 the bill requires a court to vacate an arbitration award for the evident  
10 partiality of both neutral and party arbitrators.

11 Section 26 includes language mandating that procedural matters be  
12 governed by the Rules of the Courts of the State of New Jersey. This  
13 provision is included in order to meet the requirements of Article VI,  
14 Sec. 2, para. 3 of the New Jersey Constitution which mandates that the  
15 New Jersey Supreme Court promulgate the rules governing the  
16 practice and procedure of the courts.

17 Section 32 of the bill lists statutes not affected by the bill. This  
18 section also provides that unless otherwise agreed by the parties, any  
19 other non-binding court annexed arbitration procedures authorized  
20 under court rules or situations where under existing statutes the  
21 application of N.J.S.2A:24-1 through 2A:24-11 is expressly excluded.

22 Section 33 of the bill amends section 11 of P.L.1987, c.54  
23 (C.2A:23A-11). The bill makes spelling corrections in that section of  
24 existing law. The bill also makes changes in subsection e. of the  
25 existing law to change the reference to "issues to be arbitrated" to  
26 "issues to be resolved."

27 The bill's effective date is January 1, 2003. The bill repeals the  
28 arbitration statutes set out in N.J.S.A.2A:24-1 through N.J.S.A.2A:24-  
29 11 as of that date, and provides that all agreements to arbitrate made  
30 on or after that date would be governed by the provisions of the bill.  
31 The bill also provides that on and after January 1, 2005, all existing  
32 arbitration agreements in the State would be governed by the bill and  
33 the bill would not apply to arbitration agreements made before July 4,  
34 1923. (See section 3 of the bill.)



# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2847**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 9, 2002

The Assembly Judiciary Committee reports favorably with committee amendments Assembly Bill No. 2847.

This bill is a modified version of the Uniform Arbitration Act of 2000 ("Uniform Act") as proposed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). The NCCUSL adopted the Uniform Act and the accompanying Official Comments on August 3, 2000. The primary purpose of the bill is to advance arbitration as a desirable alternative to litigation and to clarify arbitration procedures in light of the developments of the law in this area.

The Uniform Act is a default act, meaning that many of its provisions may be varied or waived by contract. Provisions that may not be varied or waived include the rule that an agreement to submit a dispute to arbitration is valid; the rules that govern disclosure of facts by a neutral arbitrator; and the standards for vacating an award but permitting the parties by agreement to review an arbitration award under certain circumstances.

Section 8 of this bill specifically allows a court to order provisional remedies before an arbitrator is selected. An arbitrator, when selected, also has an express power to order provisional remedies. Section 10 of this bill allows consolidation of separate arbitration proceedings unless the agreement prohibits consolidation. Section 12 of this bill also requires disclosure of any interest by the arbitrator that may give rise to a question of neutrality, specifically a financial or personal interest in the outcome of the arbitration proceeding or an existing or past relationship with a party. The lack of disclosure may be a ground for vacating an award, and there is a presumption of partiality when non-disclosure occurs. Upon disclosure, a party has the opportunity to object to the appointment of an arbitrator intended to be neutral. However, parties who fail to timely object to the required and provided disclosures of arbitrators waive the right to object to the designation of the arbitrator on the grounds revealed.

Section 14 of this bill provides arbitrators with immunity from civil liability to the same extent as a judge acting in a judicial capacity. An arbitrator, pursuant to section 15 of this bill, may conduct the

arbitration in such manner as the arbitrator considers appropriate to the fair and expeditious disposition of the proceeding. An arbitrator also has the express power to make summary dispositions of claims or issues under appropriate procedures, to hold pre-arbitration proceeding meetings or to use any other discovery process applicable to resolution of the dispute.

Section 21 of this bill expressly permits an arbitrator to award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim. Attorney's fees may be awarded pursuant to the same standard and also where an award is unsuccessfully challenged upon confirmation.

A copy of the Uniform Act with Official Comments as adopted by the NCCUSL may be viewed on the organization's official Internet website at <http://www.law.upenn.edu/bll/ulc/ulc.htm#uaa>.

Except where noted herein, the sponsor endorses the content of the Uniform Act's Official Comments.

The bill modifies the Uniform Act in several ways to conform to New Jersey law and practice in the area of arbitration.

Section 34 of the bill repeals the current New Jersey arbitration law, N.J.S.2A:24-1 through N.J.S.2A:24-11.

Section 32 of the bill makes it explicit that it does not modify "The New Jersey Alternative Procedure for Dispute Resolution Act," P.L.1987, c.54 (C.2A:23A-1 et seq.), although one technical error is corrected in section 33 of the bill which amends N.J.S.A.2A:23A-11. It also provides that the bill does not apply to arbitrations governed by P.L.1987, c.329 (C.2A:23A-20 et seq.) (civil action for personal injury, with certain exceptions, submitted to arbitration by the assignment judge, if the amount in controversy is \$20,000.00 or less, exclusive of costs); P.L.1983, c.358 (C.39:6A-24 et seq.) (cause of action for the recovery of noneconomic loss or uncompensated economic loss (other than for damages to property) arising out of the operation, ownership, maintenance or use of an automobile, submitted to arbitration by the assignment judge, if amount in controversy is \$15,000.00 or less, exclusive of interest and costs); or section 24 of P.L.1998, c.21 (C.39:6A-5.1) (dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage arising out of the operation, ownership, maintenance or use of an automobile).

The committee wishes to clarify that the exemptions under section 32 of this bill for PIP arbitration proceedings does not preclude the arbitrators' use of medical review organizations as authorized by the provisions of Automobile Insurance Cost Reduction Act (AICRA) N.J.S.A. 39:6A-1.1 et. seq. for PIP arbitration proceedings.

Section 4 modifies the Uniform Act to make it clear that parties may expand the scope of judicial review by providing for such expansion in a record, following the ruling of Tretina Printing, Inc. v. Fitzpatrick & Associates, Inc., 135 N.J. 349 (1994).

Section 11 modifies the Uniform Act to reflect the holding in

Barcon Associates v. Tri-County Asphalt Corp., 86 N.J. 179 (1981) recently confirmed in Arista Marketing Associates, Inc. v. Peer Group, Inc., 316 N.J. Super 517 (App. Div. 1998), cert. denied, 158 N.J. 72 (1999) to require the same level of interest disclosure from party arbitrators as from neutral arbitrators. The bill also prohibits an individual from serving as a party arbitrator if the individual's interest in the outcome of the arbitration is not properly disclosed. Moreover, the bill requires a court to vacate an arbitration award for the evident partiality of both neutral and party arbitrators.

Section 26 includes language mandating that procedural matters be governed by the Rules of the Courts of the State of New Jersey. This provision is included in order to meet the requirements of Article VI, Sec. 2, para. 3 of the New Jersey Constitution which mandates that the New Jersey Supreme Court promulgate the rules governing the practice and procedure of the courts.

Section 32 of the bill lists statutes not affected by the bill. This section also provides that unless otherwise agreed by the parties, any other non-binding court annexed arbitration procedures authorized under court rules or situations where under existing statutes the application of N.J.S.2A:24-1 through 2A:24-11 is expressly excluded.

Section 33 of the bill amends section 11 of P.L.1987, c.54 (C.2A:23A-11). The bill makes spelling corrections in that section of existing law. The bill also makes changes in subsection e. of the existing law to change the reference to "issues to be arbitrated" to "issues to be resolved."

The bill's effective date is January 1, 2003. The bill repeals the arbitration statutes set out in N.J.S.A.2A:24-1 through N.J.S.A.2A:24-11 as of that date, and provides that all agreements to arbitrate made on or after that date would be governed by the provisions of the bill. The bill also provides that on and after January 1, 2005, all existing arbitration agreements in the State would be governed by the bill and the bill would not apply to arbitration agreements made before July 4, 1923. (See section 3 of the bill.)

The committee amended section 24 of the bill to remove the term "made" from that section of the bill which was inadvertently placed in this section. These amendments make this bill identical to Senate No. 514 (1R).

**(First Reprint)**  
**SENATE BILL NO. 514**

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 514 (First Reprint) with my recommendations for reconsideration.

**A. Summary of Bill**

This bill is a modified version of the Uniform Arbitration Act of 2000 as proposed by the National Conference of Commissioners on Uniform State laws which was approved by the American Bar Association. The bill is intended to provide an updated and comprehensive vehicle for the conduct of arbitrations in light of the developments of the law in this area and to advance arbitration as a desirable alternative to litigation.

The bill provides various mechanisms that are designed to expedite arbitration procedure. For example, under this bill, a party will be permitted to apply for summary judicial relief in order to compel arbitration instead of being required to pursue a jury trial on this specific issue. The bill also codifies the bases for overturning an award, consistent with the injunctions of our Supreme Court. Additionally, the bill allows arbitrators to resolve claims by summary disposition. The bill raises the standard of arbitrators' conduct and authority to the level of a judge acting in a judicial capacity. Arbitrators are required to disclose a possible conflict of interest. The failure to disclose conflicts of interest by an arbitrator may be a ground for vacating an award. Arbitrators are also granted immunity from civil liability to the same extent as a judge. Moreover, arbitrators are authorized to award punitive damages, other exemplary relief, and attorney's fee under certain situations. The court could award attorney's fees to a prevailing party that confirms, vacates, modifies or corrects an award in court. The bill also includes language mandating that procedural matters be governed consistent with the procedural rules governing conduct in court. Arbitrators are explicitly allowed to hold pre-arbitration proceeding meetings and to use any discovery process deemed practical to resolve a dispute. Under the bill, parties are left free to agree upon varying or modifying arbitration agreement provisions except for three key provisions: (1) the rule that an agreement to submit a dispute to arbitration is valid; (2) the rules that govern disclosure of facts to parties not involved in arbitration by a neutral arbitrator; and (3) the standards for vacating an award, although parties can agree to expand the scope of judicial review under certain circumstances.

This bill repeals the current New Jersey arbitration law, N.J.S.2A:24-1 through N.J.S. 2A:24-11. However, it does not modify "The New Jersey Alternative Procedure for Dispute Resolution Act," P.L.1987, c.54 (C.2A:23A-1 et seq.).

**B. Recommended Action**

I commend the sponsors of this bill and the Legislature for working to provide a valuable measure for the conduct of arbitration by clarifying arbitration procedure and conduct of arbitrators. This bill will promote arbitration as an effective, expedient, and fair resolution of disputes in a non-judicial forum and significantly reduce the burdens on the judicial system by clarifying undefined aspects of arbitration law and raising the standard of conduct in arbitration.

Although numerous benefits of the bill are recognized, this bill could lead to the introduction of new issues, specifically with regard to the labor relations

process between employers and employees, that are not warranted. Therefore, the bill should be amended to address such issues accordingly.

Certain aspects of the current bill, including but not limited to discovery, punitive damages, and attorney's fees, may have the unintended effect of being applied in the labor relations arbitration process. I have also been assured by the bill's sponsors and by interested parties that the bill was not intended to modify existing practice and procedure with respect to labor arbitrations. Arbitration of disputes arising from collective bargaining agreements has quite different functions from arbitration under an ordinary agreement to arbitrate commercial disputes. See *United Steelworkers of America v. Warrior and Gulf Navigation*, 363 U.S. 574, 578 (1960). Since a series of cases known as the "Steelworkers trilogy," the Supreme Court of the United States has consistently shown that the federal policy in labor practice is to "promote industrial stabilization through the collective bargaining agreement." *Id.* The main component of achieving industrial peace is the "inclusion of a provision for arbitration of grievances in the collective bargaining agreement." *Id.* As the Supreme Court has indicated, arbitration in a labor setting is distinctive because it is neither the settlement of cases or controversies in a more informal tribunal nor a substitute for litigation. *Id.* Labor arbitration is, rather, considered the "substitute for industrial strife," and "part and parcel of the collective bargaining process itself." *Id.*

Although the Steelworkers Trilogy originated in the private sector, the same principles have been applied in the public sector. New Jersey has embraced and applied the Steelworkers Trilogy principles of favoring arbitration in public sector labor relations. In the public labor sector, arbitration is also favored and is commonly utilized to settle labor-management disputes. *State v. IFPTE, Local 195*, 169 N.J. 505, 530 (2001);

see also *South Plainfield Bd. of Educ. v. South Plainfield Educ. Assoc.*, 320 N.J. Super. 281, 292 (App. Div. 1999). The policy favoring arbitration in the public sector is also supported by the fact that public employees do not have the right to strike, as do private sector employees. Therefore, negotiation and arbitration constitute the primary method of resolving disputes with management. See *Neptune City Bd. of Educ. V. Neptune City Educ. Assoc.*, 153 N.J. Super. 406, 409 (App. Div. 1977).

This system of industrial justice has meaningfully evolved to reach the current status of maintaining labor stability through collective negotiations. Considering the significance and distinctive nature of arbitration in promoting labor stability, placing a new body of law, however deemed beneficial, in lieu of the traditionally acknowledged manner of labor practice, is more than likely to disturb the environment that has been mutually accepted as the labor relations process for decades.

Accordingly, it is recommended that the bill should be implemented with the sole exception of exempting arbitration between employers and employees under collective bargaining agreements. In addition, the current New Jersey arbitration law should remain in full force as it applies to the arbitration of disputes arising from the collective bargaining agreement between an employer and the duly elected representative of its employees. The suggested changes will allow dispute resolution in a commercial setting to take full advantage of the bill while the practice of labor arbitration that has been traditionally adopted in the labor relations process continues to operate.

As a result of the above considerations, I recommend that the bill be

conditionally vetoed to ensure that the legislation avoids the potential disturbance of the practice of labor arbitration, at the same time, providing the advantage of the bill to arbitration of disputes in a commercial setting.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 514 and recommend that it should be amended as follows:

Page 2, Title, Lines 1-2: Delete "revising parts of the statutory law" and insert "supplementing title 2A of the New Jersey Statutes."

Page 3, Section 3, Line 1: Following "2003" insert "with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement"

Page 3, Section 3, Line 4: Following "record" insert "with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement"

Page 3, Section 3, Line 6: Following "made" insert "with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement"

Page 3, Section 4, Lines 26-28: Delete ", but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration"

Page 17, Section 34, Lines 37-38: Delete in its entirety. Insert a new section 34 as follows:

34.(new section). N.J.S.2A:24-1 through N.J.S.2A:24-11 shall only apply to an arbitration or dispute arising from a collective bargaining agreement or a collectively negotiated agreement.

Respectfully,

/s/ James E. McGreevey

Governor

[seal]

Attest:

/s/ Paul P. Josephson

Chief Counsel to the Governor