

LEGISLATIVE BILL 71

Approved by the Governor March 26, 1987

Introduced by Landis, 46; McFarland, 28; Ashford, 6;
Withem, 14

AN ACT relating to arbitration; to amend section 77-2407, Reissue Revised Statutes of Nebraska, 1943; to adopt the Uniform Arbitration Act; to eliminate provisions relating to arbitration; to harmonize provisions; to provide severability; and to repeal the original section, and also sections 25-2103 to 25-2120, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 22 of this act shall be known and may be cited as the Uniform Arbitration Act.

Sec. 2. A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties, other than a claim arising out of personal injury based on contract or tort, is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, if the provision (a) is entered into voluntarily and willingly and (b) is not a part of a contract of adhesion, such as a standard installment loan contract, a consumer credit application, a credit card application, or an insurance contract except as provided in section 44-811. The Uniform Arbitration Act also applies to arbitration agreements between employers and employees or between their respective representatives. Contract provisions agreed to by the parties shall control over contrary provisions of the Uniform Arbitration Act. A claim for workers' compensation shall not be subject to arbitration under the Uniform Arbitration Act. When a conflict exists, the Uniform Arbitration Act shall not apply to sections 44-811, 54-404 to 54-406, 60-2701 to 60-2709, 70-1301 to 70-1329, and 86-408 to 86-410 and the Uniform Act on Interstate Arbitration and Compromise of Death Taxes.

Sec. 3. (a) On application of a party showing

an agreement described in section 2 of this act and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order for the moving party, otherwise, the application shall be denied.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise and subject to section 19 of this act, such application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

Sec. 4. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and a successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators, except that the court shall always appoint an odd number of arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. Upon appointment an arbitrator shall disclose his or her hourly or daily rate for arbitration services.

Sec. 5. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the

agreement or by the Uniform Arbitration Act.

Sec. 6. Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than ten days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy;

(b) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing; and

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

Sec. 7. A party has the right to be represented by an attorney at any proceeding or hearing under the Uniform Arbitration Act. A waiver thereof prior to the proceeding or hearing is ineffective.

Sec. 8. (a) The arbitrators may issue or cause to be issued subpoenas for the attendance of witnesses, for the taking of depositions, and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and, upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

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

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the county court.

Sec. 9. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered or certified mail or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party but not more than thirty days after the hearing. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he or she notifies the arbitrators of his or her objection prior to the delivery of the award to him or her.

Sec. 10. On application of a party or, if an application to the court is pending under section 12, 13, or 14 of this act, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions (a)(1) and (a)(3) of section 14 of this act or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he or she must serve his or her objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of sections 12, 13, and 14 of this act.

Sec. 11. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees together with other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be paid as provided in the award.

Sec. 12. Within sixty days of the application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 13 and 14 of this act.

Sec. 13. (a) Upon application of a party, the court shall vacate an award when:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any

of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of section 6 of this act, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 3 of this act, and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud, or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in subdivision (a)(5) of this section, the court may order a rehearing before the new arbitrators chosen as provided in the agreement or, in the absence thereof, by the court in accordance with section 4 of this act, or if the award is vacated on grounds set forth in subdivisions (a)(3) and (a)(4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 4 of this act. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

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

Sec. 14. (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected

without affecting the merits of the decision upon the issues submitted; or

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

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

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

Sec. 15. Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

Sec. 16. (a) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying, or correcting the award; and

(4) A copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

Sec. 17. Except as otherwise provided, an application to the court under the Uniform Arbitration Act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

Sec. 18. (a) The term court shall mean any district court of this state. The making of an agreement described in section 2 of this act providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under the Uniform Arbitration Act and to enter judgment on an award thereunder.

(b) Nothing in the Uniform Arbitration Act shall be construed to empower the Commission of Industrial Relations to order that any party under its jurisdiction submit to, or contract to submit to,

arbitration.

Sec. 19. An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he or she has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

Sec. 20. (a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under section 3 of this act;

(2) An order granting an application to stay arbitration made under subsection (b) of section 3 of this act;

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

(4) An order modifying or correcting an award;

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

(6) A judgment or decree entered pursuant to the provisions of the Uniform Arbitration Act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Sec. 21. The Uniform Arbitration Act applies only to agreements made subsequent to the effective date of this act.

Sec. 22. The Uniform Arbitration Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 23. That section 77-2407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2407. The Director of Administrative Services shall keep a record of all claims presented to him or her for examination and adjustment and shall record the amount of such claims as shall be allowed or disallowed. The party aggrieved by the decision of the director may appeal to the district court of Lancaster County within thirty days after receiving official notice. The appeal shall be taken in the manner provided by sections 84-917 to 84-919. In case of the disallowance of any claim, or any part thereof, arising out of a contract with the Department of Roads, the claimant may, with the consent of the Director-State

Engineer for the Department of Roads, enter into a written agreement with the Director-State Engineer for the arbitration of the controversy in the manner provided in ~~sections 25-2103 to 25-2120~~ the Uniform Arbitration Act. Such written agreement may be entered into without appealing from the disallowance or after an appeal has been taken to the district court.

Sec. 24. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 25. That original section 77-2407, Reissue Revised Statutes of Nebraska, 1943, and also sections 25-2103 to 25-2120, Reissue Revised Statutes of Nebraska, 1943, are repealed.