

LEGISLATIVE BILL 151

Approved by the Governor June 10, 1997

Introduced by Landis, 46; Jensen, 20; Matzke, 47

AN ACT relating to arbitration; to amend sections 25-2601, 25-2603, 25-2606, 25-2613, 25-2618, 25-2805, and 25-2807, Reissue Revised Statutes of Nebraska; to reenact provisions of the Uniform Arbitration Act which were found unconstitutional; to change provisions relating to arbitrator disqualification, agreements, and Small Claims Court jurisdiction; to harmonize provisions; to provide severability; to repeal the original sections; to outright repeal section 25-2602, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 25-2601, Reissue Revised Statutes of Nebraska, is amended to read:

25-2601. Sections 25-2601 to 25-2622 and sections 2, 5, 7, and 8 of this act shall be known and may be cited as the Uniform Arbitration Act.

Sec. 2. (a) A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(b) A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly.

(c) The Uniform Arbitration Act applies to arbitration agreements between employers and employees or between their respective representatives.

(d) Contract provisions agreed to by the parties to a contract control over contrary provisions of the act other than subsections (e) and (f) of this section.

(e) Subsections (a) and (b) of this section do not apply to a claim for workers' compensation.

(f) Subsection (b) of this section does not apply to:

(1) A claim arising out of personal injury based on tort;

(2) A claim under the Nebraska Fair Employment Practice Act;

(3) Any agreement between parties covered by sections 60-1401.01 to 60-1440; and

(4) Except as provided in section 44-811, any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract.

(g) When a conflict exists, the Uniform Arbitration Act shall not apply to sections 44-811, 44-4824, 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. Section 25-2603, Reissue Revised Statutes of Nebraska, is amended to read:

25-2603. (a) On application of a party showing an agreement described in section 25-2602 ~~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~~ subsection (a) of this section, the application shall be made therein. Otherwise and subject to section 25-2619, 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. Section 25-2606, Reissue Revised Statutes of Nebraska, is amended to read:

25-2606. 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.

Arbitration proceedings shall take place in the county designated in section 25-403.01 unless the parties otherwise agree at a time subsequent to the arising of the controversy.

Sec. 5. Any person proposed for nomination by all parties or all party arbitrators to serve as a neutral arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration agreement made before the commencement of the proceedings, on any of the grounds specified in section 24-739 for disqualification of a judge or on the ground that such person is an employee or independent contractor of an industry, trade, or professional association of which only one party is a member if the grounds were known or should have been known by the movant.

Sec. 6. Section 25-2613, Reissue Revised Statutes of Nebraska, is amended to read:

25-2613. (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 25-2606, 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 25-2603, and the party did not participate in the arbitration hearing without raising the objection; or

(6) An arbitrator was subject to disqualification pursuant to section 5 of this act and failed, upon receipt of timely demand, to disqualify himself or herself as required by such section.

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 25-2604, 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 25-2604. 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. 7. The following statement shall appear in capitalized, underlined type adjoining the signature block of any standardized agreement in which binding arbitration is the sole remedy for dispute resolution: THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

Sec. 8. (a) Whenever the amount of a controversy subject to the terms of an otherwise valid arbitration agreement is within the jurisdiction of the Small Claims Court under section 25-2802, a party may submit the controversy to the Small Claims Court for ultimate resolution under sections 25-2801 to 25-2807.

(b) A controversy submitted to the Small Claims Court under this section shall not be transferred to the regular docket of the county court under section 25-2805.

(c) In all appeals involving cases submitted under subsection (a) of this section, the judgment shall be affirmed unless:

(i) The judgment was procured by corruption, fraud, or other undue means;

(ii) There was evident partiality or corruption by the judge or misconduct prejudicing the rights of any party;

(iii) The judge exceeded his or her powers;

(iv) The judge refused to postpone the trial 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 25-2606, as to prejudice substantially the rights of a party;

(v) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 25-2603, and the party did not participate in the Small Claims Court hearing without raising the objection; or

(vi) The judge was subject to disqualification and failed, upon receipt of timely demand, to disqualify himself or herself as required by law.

Sec. 9. Section 25-2618, Reissue Revised Statutes of Nebraska, is amended to read:

25-2618. (a) The term court shall mean any district court of this state. The making of an agreement described in section 25-2602 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. 10. Section 25-2805, Reissue Revised Statutes of Nebraska, is amended to read:

25-2805. All matters in the Small Claims Court shall be tried to the court without a jury. Any Except as provided in section 8 of this act, any defendant in an action or such defendant's attorney may transfer the case to the regular docket of the county court by giving notice to the court at least two days prior to the time set for the hearing. Upon such notice the case shall be transferred to the regular docket of the county court. At the same time as such notice is given to transfer the case, any defendant or such defendant's attorney may demand trial by jury, and the Small Claims Court shall forward the demand to the county court. The party causing the transfer of a case from the Small Claims Court to the regular docket shall pay as a fee the difference between the fee for filing a claim in Small Claims Court and the fee for filing a claim on the regular docket.

In any action transferred to the regular docket there shall be no further pleadings, demurrers, motions challenging pleadings, or discovery unless ordered by the court upon a showing that any such procedure is necessary to the prompt and just determination of the action.

Sec. 11. Section 25-2807, Reissue Revised Statutes of Nebraska, is amended to read:

25-2807. Any Unless the controversy is subject to the Uniform Arbitration Act, any party may appeal to the district court as provided in sections 25-2728 to 25-2738. Parties may be represented by attorneys on appeal.

Sec. 12. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 13. Original sections 25-2601, 25-2603, 25-2606, 25-2613, 25-2618, 25-2805, and 25-2807, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 14. The following section is outright repealed: Section 25-2602, Reissue Revised Statutes of Nebraska.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.