

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 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.