

**SENATE, No. 514**

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

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

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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.