

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 514

STATE OF NEW JERSEY

DATED: MAY 9, 2002

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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