

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 644

S. P. 263

In Senate, February 8, 1967

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Hildreth of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Adopting the Uniform Arbitration Act.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 14, c. 706, additional. Title 14 of the Revised Statutes is amended by adding a new chapter 706, to read as follows:

'CHAPTER 706

UNIFORM ARBITRATION ACT

§ 5927. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, unless otherwise provided in the agreement.

§ 5928. Proceedings to compel or stay arbitration

1. Application. On application of a party showing an agreement described in section 5927 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

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

3. Arbitration where action pending. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection 1, the application shall be made therein. Otherwise and subject to section 5944, the application may be made in the Superior Court.

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

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

§ 5929. Appointment of arbitrators by court

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

§ 5930. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

§ 5931. Hearing

Unless otherwise provided by the agreement:

1. Notice of hearing. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

2. Evidence. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

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

§ 5932. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 5933. Witnesses, subpoenas, depositions

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

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

3. Compelling attendance. All provisions of law compelling a person under subpoena to testify are applicable.

4. Fees. Fees for attendance as a witness shall be the same as for a witness in the Superior Court.

§ 5934. Award

1. Delivery. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

2. Times for making. An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

§ 5935. Change of award by arbitrators

On application of a party or, if an application to the court is pending under sections 5937 to 5939, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 5939, subsection 1, paragraphs A and C or for the purpose of clarifying the award. The application shall be made

within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to sections 5937 to 5939.

§ 5936. Fees and expenses of arbitration

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

§ 5937. Confirmation of an award

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 5938 and 5939.

§ 5938. Vacating an award

1. Vacating award. Upon application of a party, the court shall vacate an award where:

- A. The award was procured by corruption, fraud or other undue means;
- B. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- C. The arbitrators exceeded their powers;
- D. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 5931, as to prejudice substantially the rights of a party; or
- E. There was no arbitration agreement and the issue was not adversely determined in proceedings under section 5928 and the party did not participate in the arbitration hearing without raising the objection;

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

2. Application. An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

3. Rehearing. In vacating the award on grounds other than stated in paragraph E of subsection 1 the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 5929, or, if the award is vacated on grounds set forth in paragraphs C and D of subsection 1 the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance

with section 5929. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

4. Confirmation of award. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§ 5939. Modification or correction of award

1. Application. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

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

B. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

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

2. Modification or correction of award. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

3. Joinder of application. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 5940. Judgment or decree on award

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

§ 5941. Judgment roll, docketing

1. Entry of judgment. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

A. The agreement and each written extension of the time within which to make the award;

B. The award;

C. A copy of the order confirming, modifying or correcting the award; and

D. A copy of the judgment or decree.

2. Docketed as if in action. The judgment or decree may be docketed as if rendered in an action.

§ 5942. Applications to court

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

§ 5943. Court, jurisdiction

The term "court" means the Superior Court of this State. The making of an agreement described in section 5927 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder.

§ 5944. Venue

An initial application shall be made to the Superior Court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has not residence or place of business in this State, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

§ 5945. Appeals

1. Grounds for appeal. An appeal may be taken from:

- A. An order denying an application to compel arbitration made under section 5928;
- B. An order granting an application to stay arbitration made under section 5928, subsection 2;
- C. An order confirming or denying confirmation of an award;
- D. An order modifying or correcting an award;
- E. An order vacating an award without directing a rehearing; or
- F. A judgment or decree entered pursuant to the provisions of this chapter.

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

§ 5946. Act not retroactive

This chapter applies only to agreements made subsequent to the taking effect of this chapter.

§ 5947. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 5948. Short title

This chapter may be cited as the "Uniform Arbitration Act."