

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 181

H. P. 610 House of Representatives, January 31, 1929.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Robie of Westbrook.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

AN ACT to Make Valid and Enforceable Written Provisions
or Agreements for the Arbitration of Disputes.

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

Section 1. *Validity of arbitration agreements.* A provision
2 in any written contract to settle by arbitration a controversy
3 thereafter arising out of such contract, or out of the refusal
4 to perform the whole or any part thereof, or an agreement
5 in writing between two or more persons to submit to arbi-
6 tration any controversy existing between them at the time
7 of the agreement to submit, shall be valid, irrevocable and
8 enforceable, save upon such grounds as exist at law or in
9 equity for the revocation of any contract; provided, how-

10 ever, that the provisions of this act shall not apply to col-
11 lective contracts between employers and employees, or be-
12 tween employers and associations of employees, in respect
13 to terms or conditions of employment.

Sect. 2. *Stay of proceedings brought in violation of arbi-
2 tration agreement.* If any suit or proceeding be brought
3 upon any issue referable to arbitration under an agreement
4 in writing for such arbitration, the court in which such suit
5 is pending, upon being satisfied that the issue involved in
6 such suit or proceeding is referable to arbitration under such
7 an agreement, shall on application of one of the parties stay
8 the trial of the action until such arbitration has been had
9 in accordance with the terms of the agreement, providing
10 the applicant for the stay is not in default in proceeding
11 with such arbitration.

Sect. 3. *Remedy in case of default; jurisdiction; petition
2 and notice; hearing and proceedings.* The party aggrieved
3 by the alleged failure, neglect or refusal of another to per-
4 form under a written agreement for arbitration may peti-
5 tion any court of record having jurisdiction of the parties
6 or of the property for an order directing that such arbitra-
7 tion proceed in the manner provided for in such agreement.
8 Five days' notice in writing of such application shall be
9 served upon the party in default. Service thereof shall be
10 made in the manner provided by law for the service of a
11 summons. The court shall hear the parties, and upon being
12 satisfied that the making of the agreement for arbitration

13 or the failure to comply therewith is not in issue, the court
14 shall make an order directing the parties to proceed to arbi-
15 tration in accordance with the terms of the agreement. If
16 the making of the arbitration agreement or the failure,
17 neglect, or refusal to perform the same be in issue, the
18 court shall proceed summarily to the trial thereof. If no
19 jury trial be demanded the court shall hear and determine
20 such issue. Where such an issue is raised, either party
21 may, on or before the return day of the notice of applica-
22 tion, demand a jury trial of such issue, and upon such
23 demand the court shall make an order referring the issue
24 or issues to a jury called and impanelled in the manner pro-
25 vided for the trial of equity actions. If the jury find that
26 no agreement in writing for arbitration was made or that
27 there is no default in proceeding thereunder, the proceeding
28 shall be dismissed. If the jury find that an agreement for
29 arbitration was made in writing and that there is a default
30 in proceeding thereunder, the court shall make an order
31 summarily directing the parties to proceed with the arbi-
32 tration in accordance with the terms thereof.

Sect. 4. *Appointment of arbitrators.* If, in the agree-
2 ment, provision be made for a method of naming or ap-
3 pointing an arbitrator or arbitrators or an umpire such
4 method shall be followed; but if no method be provided
5 therein, or if a method be provided and any party thereto
6 shall fail to avail himself of such method, or if for any
7 other reason there shall be a lapse in the naming of an

8 arbitrator or arbitrators or an umpire, or in filling a va-
9 cancy, then upon the application of either party to the con-
10 troversy the court aforesaid or the court in and for the
11 (district *or* county) in which the arbitration is to be held
12 shall designate and appoint an arbitrator or arbitrators or
13 umpire, as the case may require, who shall act under the
14 said agreement with the same force and effect as if he or
15 they had been specifically named therein; and, unless other-
16 wise provided in the agreement, the arbitration shall be by
17 a single arbitrator.

Sect. 5. *Application heard as motions.* Any application
2 to the court hereunder shall be made and heard in the man-
3 ner provided by law for the making and hearing of motions,
4 except as otherwise herein expressly provided.

Sect. 6. *Witnesses; summoning; compelling attendance.*
2 When more than one arbitrator is agreed to, all the arbi-
3 trators shall sit at the hearing of the case unless, by con-
4 sent in writing, all parties shall agree to proceed with the
5 hearing with a less number. The arbitrators selected either
6 as prescribed in this act or otherwise, or a majority of them,
7 may summon in writing any person to attend before them
8 or any of them as a witness and in a proper case to bring
9 with him or them any book, record, document, or paper
10 which may be deemed material as evidence in the case. The
11 fees for such attendance shall be the same as the fees of
12 witnesses in courts of general jurisdiction. The summons
13 shall issue in the name of the arbitrator or arbitrators, or

14 a majority of them, and shall be signed by the arbitrator
15 or arbitrators, or a majority of them, and shall be directed
16 to the said person and shall be served in the same manner
17 as subpoenas to appear and testify before the court; if any
18 person or persons so summoned to testify shall refuse or
19 neglect to obey said summons, upon petition the court in
20 and for the (district *or* county) in which such arbitrators,
21 or a majority of them, are sitting may compel the attend-
22 ance of such person or persons **before said arbitrator or**
23 arbitrators, or punish said person or persons for contempt
24 in the same manner now provided for securing the attend-
25 ance of witnesses or their punishment for neglect or refusal
26 to attend in the courts of this state.

Sect. 7. *Depositions.* Upon petition, approved by the ar-
2 bitrators or by a majority of them, any court of record in
3 and for the (district *or* county) in which such arbitrators,
4 or a majority of them, are sitting may direct the taking of
5 depositions to be used as evidence before the arbitrators,
6 in the same manner **and for the same reasons as provide**
7 by law for the taking of depositions in suits or proceedings
8 pending in the courts of record in this state.

Sect. 8. *Award.* The award must be in writing and must
2 be signed by the arbitrators or by a majority of them.

Sect. 9. *Motion to confirm award; jurisdiction; notice.*
2 At any time within one year after the award is made any
3 party to the arbitration may apply to the court in and for
4 the (district *or* county) within which such award was made.

5 for an order confirming the award, and thereupon the court
6 must grant such an order unless the award is vacated, mod-
7 ified, or corrected as prescribed in the next two sections.
8 Notice in writing of the application shall be served upon
9 the adverse party or his attorney five days before the hear-
10 ing thereof.

Sect. 10. *Motion to vacate award; grounds; rehearing.* In
2 either of the following cases the court in and for the (dis-
3 trict *or* county) wherein the award was made must make
4 an order vacating the award upon the application of any
5 party to the arbitration.

(a) Where the award was procured by corruption, fraud
2 or undue means.

(b) Where there was evident partiality or corruption on
2 the part of the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in
2 refusing to postpone the hearing, upon sufficient cause
3 shown, or in refusing to hear evidence pertinent and mate-
4 rial to the controversy; or of any other misbehavior by
5 which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so
2 imperfectly executed them that a mutual, final and definite
3 award upon the subject matter submitted was not made.

Where an award is vacated and the time within which
2 the agreement required the award to be made has not ex-
3 pired the court may, in its discretion, direct a rehearing by
4 the arbitrators.

Sect. 11. *Motion to modify or correct award; grounds.* In
2 either of the following cases the court in and for the (dis-
3 trict or county) wherein the award was made must make
4 an order modifying or correcting the award upon the appli-
5 cation of any party to the arbitration.

(a) Where there was an evident material miscalculation
2 of figures or an evident material mistake in the description
3 of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter
2 not submitted to them unless it is a matter not affecting the
3 merits of the decision upon the matters submitted.

(c) Where the award is imperfect in matter of form not
2 affecting the merits of the controversy.

The order must modify and correct the award, so as to
2 effect the intent thereof and promote justice between the
3 parties.

Sect. 12. *Judgment upon award.* Upon the granting of
2 an order confirming, modifying or correcting an award,
3 judgment may be entered in conformity therewith in the
4 court wherein the order was granted.

Sect. 13. *Notice of motions; when made; service; stay of*
2 *proceedings.* Notice of a motion to vacate, modify, or cor-
3 rect an award must be served upon the adverse party or his
4 attorney within three months after the award is filed or de-
5 livered, as prescribed by law for service of notice of a
6 motion in an action. For the purposes of the motion any
7 judge who might make an order to stay the proceedings in

8 an action brought in the same court may make an order, to
9 be served with the notice of motion, staying the proceedings
10 of the adverse party to enforce the award.

Sect. 14. *Record; filing; judgment; effect and enforce-*
2 *ment.* Any party to a proceeding for an order confirming,
3 modifying or correcting an award shall, at the time such
4 order is filed with the clerk for the entry of judgment there-
5 on, also file the following papers with the clerk:

(a) The agreement, the selection or appointment, if any,
2 of an additional arbitrator or umpire, and each written ex-
3 tension of the time, if any, within which to make the award.

(b) **The award.**

(c) Each notice, affidavit, or other paper used upon an
2 application to confirm, modify, or correct the award, and
3 a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in
2 an action.

The judgment so entered shall have the same force and
2 effect, in all respects, as, and be subject to all the provisions
3 of law relating to, a judgment in an action; and it may be
4 enforced as if it had been rendered in an action in the court
5 in which it is entered.

Sect. 15. *Appeals.* An appeal may be taken from an or-
2 der confirmng, modifying, correcting or vacating an award,
3 or from a judgment entered upon an award, as from an
4 order or judgment in an action.

Sect. 16. *Constitutionality.* If any provision of this act

2 or the application thereof to any person or circumstances
3 is held invalid, the validity of the remainder of the act and
4 of the application of such provisions to other persons and
5 circumstances shall not be affected thereby.

Sect. 17. *Title of act.* This act may be referred to as “The
2 Maine Arbitration Act.”

Sect. 18. *Inconsistent acts repealed; time of taking effect;
2 application.* All acts and parts of acts inconsistent with this
3 act are hereby repealed, and this act shall take effect upon
4 its enactment, but shall not apply to contracts made prior
5 to the taking effect of this act.