
HOUSE BILL 2169

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By Representatives Goodman, Rodne, Morrell, and Jinkins; by request of Washington State Bar Association

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1 AN ACT Relating to international commercial arbitration; and adding
2 a new chapter to Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SCOPE OF APPLICATION. (1) This chapter
5 applies to international commercial arbitration, subject to any
6 agreement between the United States and any other country or countries.

7 (2) The provisions of this chapter, except sections 9, 10, 26, 27,
8 28, 46, and 47 of this act, apply only if the place of arbitration is
9 in the territory of this state.

10 (3) An arbitration is international if:

11 (a) The parties to an arbitration agreement have, at the time of
12 the conclusion of that agreement, their places of business in different
13 countries;

14 (b) One of the following places is situated outside the country or
15 countries in which the parties have their places of business:

16 (i) The place of arbitration if determined in, or pursuant to, the
17 arbitration agreement; or

18 (ii) Any place where a substantial part of the obligations of the

1 commercial relationship is to be performed or the place with which the
2 subject matter of the dispute is most closely connected; or

3 (c) The parties have expressly agreed that the subject matter of
4 the arbitration agreement relates to more than one country.

5 (4) For the purposes of subsection (3) of this section:

6 (a) If a party has more than one place of business, the place of
7 business is that which has the closest relationship to the arbitration
8 agreement; and

9 (b) If a party does not have a place of business, reference is to
10 be made to the party's habitual residence.

11 (5) This chapter shall not affect any other law of this state by
12 virtue of which certain disputes may not be submitted to arbitration or
13 may be submitted to arbitration only according to provisions other than
14 those of this chapter.

15 NEW SECTION. **Sec. 2.** DEFINITIONS AND RULES OF INTERPRETATION.

16 For the purpose of this chapter:

17 (1) "Arbitration" means any arbitration whether or not administered
18 by a permanent arbitral institution;

19 (2) "Arbitral tribunal" means a sole arbitrator or a panel of
20 arbitrators;

21 (3) "Commercial" means matters arising from all relationships of a
22 commercial nature, whether contractual or not, including, but not
23 limited to, any of the following transactions:

24 (a) A transaction for the supply or exchange of goods or services;

25 (b) A distribution agreement;

26 (c) A commercial representation or agency;

27 (d) An exploitation agreement or concession;

28 (e) A joint venture or other related form of industrial or business
29 cooperation;

30 (f) The carriage of goods or passengers by air, sea, rail, or road;

31 (g) Construction;

32 (h) Insurance;

33 (i) Licensing;

34 (j) Factoring;

35 (k) Leasing;

36 (l) Consulting;

37 (m) Engineering;

- 1 (n) Financing;
- 2 (o) Banking;
- 3 (p) The transfer of data or technology;
- 4 (q) Intellectual or industrial property, including trademarks,
- 5 patents, copyrights, and software programs; and
- 6 (r) Professional services;

7 (4) "Court" means a body or organ of the judicial system of this
8 state;

9 (5) Where a provision of this chapter, except section 39 of this
10 act, leaves the parties free to determine a certain issue, such freedom
11 includes the right of the parties to authorize a third party, including
12 an institution, to make that determination;

13 (6) Where a provision of this chapter refers to the fact that the
14 parties have agreed, that they may agree, or in any other way refers to
15 an agreement of the parties, such agreement includes any arbitration
16 rules referred to in that agreement;

17 (7) Where a provision of this chapter, other than in sections 36(1)
18 and 43(2)(a) of this act, refers to a claim, it also applies to a
19 counter-claim, and where it refers to a defense, it also applies to a
20 defense to such counter-claim;

21 (8) For the purpose of interpreting this chapter, recourse may be
22 had, in addition to aids of interpretation ordinarily available under
23 the law of this state, to:

24 (a) The report of the United Nations commission on international
25 trade law on the work of its eighteenth session (June 3-21, 1985);

26 (b) The analytical commentary contained in the report of the
27 secretary general to the eighteenth session of the United Nations
28 commission on international trade law; and

29 (c) The explanatory note by the UNCITRAL Secretariat on the 1985
30 Model Law on international commercial arbitration as amended in 2006.

31 NEW SECTION. **Sec. 3.** INTERNATIONAL ORIGIN AND GENERAL PRINCIPLES.

32 (1) In the interpretation of this chapter, regard is to be had to its
33 international origin and to the need to promote uniformity in its
34 application and the observance of good faith.

35 (2) Questions concerning matters governed by this chapter which are
36 not expressly settled in it are to be settled in conformity with the
37 general principles on which this chapter is based.

1 NEW SECTION. **Sec. 4.** RECEIPT OF WRITTEN COMMUNICATIONS. (1)

2 Unless otherwise agreed by the parties:

3 (a) Any written communication is deemed to have been received if it
4 is delivered to the addressee personally or if it is delivered at the
5 addressee's place of business, habitual residence, or mailing address.
6 If none of these can be found after making a reasonable inquiry, a
7 written communication is deemed to have been received if it is sent to
8 the addressee's last-known place of business, habitual residence, or
9 mailing address by registered letter or any other means which provides
10 a record of the attempt to deliver it; and

11 (b) The communication is deemed to have been received on the day it
12 is so delivered.

13 (2) The provisions of this section do not apply to communications
14 in court proceedings.

15 NEW SECTION. **Sec. 5.** WAIVER OF RIGHT TO OBJECT. A party who
16 knows that any provision of this chapter from which the parties may
17 derogate or any requirement under the arbitration agreement has not
18 been complied with and yet proceeds with the arbitration without
19 stating the party's objection to such noncompliance without undue delay
20 or, if a time limit is provided therefore, within such period of time,
21 shall be deemed to have waived the party's right to object.

22 NEW SECTION. **Sec. 6.** EXTENT OF COURT INTERVENTION. In matters
23 governed by this chapter, no court shall intervene except where so
24 provided in this chapter.

25 NEW SECTION. **Sec. 7.** COURT AUTHORITY FOR CERTAIN FUNCTIONS OF
26 ARBITRATION ASSISTANCE AND SUPERVISION. (1) The functions referred to
27 in sections 12 (3) and (4), 14(3), 15, 17(3), and 45(2) of this act
28 shall be performed by the superior court of the county in which the
29 agreement to arbitrate is to be performed or was made.

30 (2) If the arbitration agreement does not specify a county where
31 the agreement to arbitrate is to be performed and the agreement was not
32 made in any county in the state of Washington, the functions referred
33 to in sections 12 (3) and (4), 14(3), 15, 17(3), and 45(2) of this act
34 shall be performed in the county where any party to the court
35 proceeding resides or has a place of business.

1 (3) In any case not covered by subsections (1) or (2) of this
2 section, the functions referred to in sections 12 (3) and (4), 14(3),
3 15, 17(3), and 45(2) of this act shall be performed in any county in
4 the state of Washington.

5 NEW SECTION. **Sec. 8.** DEFINITION AND FORM OF ARBITRATION
6 AGREEMENT. (1) For the purposes of this chapter, "arbitration
7 agreement" is an agreement by the parties to submit to arbitration all
8 or certain disputes which have arisen or which may arise between them
9 in respect of a defined legal relationship, whether contractual or not.
10 An arbitration agreement may be in the form of an arbitration clause in
11 a contract or in the form of a separate agreement.

12 (2) The arbitration agreement shall be in writing.

13 (3) An arbitration agreement is in writing if its content is
14 recorded in any form, whether or not the arbitration agreement or
15 contract has been concluded orally, by conduct, or by other means.

16 (4) The requirement that an arbitration agreement be in writing is
17 met by an electronic communication if the information contained therein
18 is accessible so as to be useable for subsequent reference. For the
19 purposes of this section, "electronic communication" means any
20 communication that the parties make by means of data messages; and
21 "data message" means information generated, sent, received, or stored
22 by electronic, magnetic, optical, or similar means, including, but not
23 limited to, electronic data interchange (EDI), electronic mail,
24 telegram, telex, or telecopy.

25 (5) An arbitration agreement is in writing if it is contained in an
26 exchange of statements of claim and defense in which the existence of
27 an agreement is alleged by one party and not denied by the other.

28 (6) The reference in a contract to any document containing an
29 arbitration clause constitutes an arbitration agreement in writing,
30 provided that the reference is such as to make that clause part of the
31 contract.

32 NEW SECTION. **Sec. 9.** ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM
33 BEFORE COURT. (1) A court before which an action is brought in a
34 matter which is the subject of an arbitration agreement shall, if a
35 party so requests not later than when submitting the party's first

1 statement on the substance of the dispute, refer the parties to
2 arbitration unless it finds that the agreement is null and void,
3 inoperative, or incapable of being performed.

4 (2) Where an action referred to in subsection (1) of this section
5 has been brought, arbitral proceedings may nevertheless be commenced or
6 continued, and an award made, while the issue is pending before the
7 court.

8 NEW SECTION. **Sec. 10.** ARBITRATION AGREEMENT AND INTERIM MEASURES
9 BY COURT. It is not incompatible with an arbitration agreement for a
10 party to request, before or during arbitral proceedings, from a court
11 an interim measure of protection and for a court to grant such measure.

12 NEW SECTION. **Sec. 11.** NUMBER OF ARBITRATORS; IMMUNITY. (1) The
13 parties are free to determine the number of arbitrators.

14 (2) Failing such determination, the number of arbitrators shall be
15 three.

16 (3) An arbitrator has the immunity of a judicial officer from civil
17 liability when acting in the capacity of arbitrator under any statute
18 or contract. The immunity afforded by this section shall supplement,
19 and not supplant, any otherwise applicable common law or statutory
20 immunity.

21 NEW SECTION. **Sec. 12.** APPOINTMENT OF ARBITRATORS. (1) No person
22 shall be precluded by reason of the person's nationality from acting as
23 an arbitrator, unless otherwise agreed by the parties.

24 (2) The parties are free to agree on a procedure of appointing the
25 arbitrator or arbitrators, subject to the provisions of subsections (4)
26 and (5) of this section.

27 (3) Failing such agreement:

28 (a) In an arbitration with three arbitrators, each party shall
29 appoint one arbitrator, and the two arbitrators thus appointed shall
30 appoint the third arbitrator; if a party fails to appoint the
31 arbitrator within thirty days of receipt of a request to do so from the
32 other party, or if the two arbitrators fail to agree on the third
33 arbitrator within thirty days of their appointment, the appointment
34 shall be made, upon request of a party, by the court specified in
35 section 7 of this act; and

1 (b) In an arbitration with a sole arbitrator, if the parties are
2 unable to agree on the arbitrator, the arbitrator shall be appointed,
3 upon request of a party, by the court specified in section 7 of this
4 act.

5 (4) Where, under an appointment procedure agreed upon by the
6 parties:

7 (a) A party fails to act as required under such procedure;

8 (b) The parties, or two arbitrators, are unable to reach an
9 agreement expected of them under such procedure; or

10 (c) A third party, including an institution, fails to perform any
11 function entrusted to it under such procedure;

12 Any party may request the court specified in section 7 of this act
13 to take the necessary measure, unless the agreement on the appointment
14 procedure provides other means for securing the appointment.

15 (5) A decision on a matter entrusted by subsection (3) or (4) of
16 this section to the court specified in section 7 of this act shall be
17 subject to no appeal. The court, in appointing an arbitrator, shall
18 have due regard to any qualifications required of the arbitrator by the
19 agreement of the parties and to such considerations as are likely to
20 secure the appointment of an independent and impartial arbitrator and,
21 in the case of a sole or third arbitrator, shall take into account as
22 well the advisability of appointing an arbitrator of a nationality
23 other than those of the parties.

24 NEW SECTION. **Sec. 13.** GROUNDS FOR CHALLENGE. (1) When a person
25 is approached in connection with the person's possible appointment as
26 an arbitrator, the person shall disclose any circumstances likely to
27 give rise to justifiable doubts as to the person's impartiality or
28 independence. An arbitrator, from the time of the arbitrator's
29 appointment and throughout the arbitral proceedings, shall without
30 delay disclose any such circumstances to the parties unless they have
31 already been informed of them by the arbitrator.

32 (2) An arbitrator may be challenged only if circumstances exist
33 that give rise to justifiable doubts as to the arbitrator's
34 impartiality or independence, or if the arbitrator does not possess
35 qualifications agreed to by the parties. A party may challenge an
36 arbitrator appointed by the party, or in whose appointment the party

1 has participated, only for reasons of which the party becomes aware
2 after the appointment has been made.

3 NEW SECTION. **Sec. 14.** CHALLENGE PROCEDURE. (1) The parties are
4 free to agree on a procedure for challenging an arbitrator, subject to
5 the provisions of subsection (3) of this section.

6 (2) Failing such agreement, a party who intends to challenge an
7 arbitrator shall, within fifteen days after becoming aware of the
8 constitution of the arbitral tribunal or after becoming aware of any
9 circumstance referred to in section 13(2) of this act, send a written
10 statement of the reasons for the challenge to the arbitral tribunal.
11 Unless the challenged arbitrator withdraws from the arbitrator's office
12 or the other party agrees to the challenge, the arbitral tribunal shall
13 decide on the challenge.

14 (3) If a challenge under any procedure agreed upon by the parties
15 or under the procedure of subsection (2) of this section is not
16 successful, the challenging party may request, within thirty days after
17 having received notice of the decision rejecting the challenge, the
18 court specified in section 7 of this act to decide on the challenge,
19 which decision shall be subject to no appeal. While such a request is
20 pending, the arbitral tribunal, including the challenged arbitrator,
21 may continue the arbitral proceedings and make an award.

22 NEW SECTION. **Sec. 15.** FAILURE OR IMPOSSIBILITY TO ACT. (1) If an
23 arbitrator becomes *de jure* or *de facto* unable to perform the
24 arbitrator's functions or for other reasons fails to act without undue
25 delay, the arbitrator's mandate terminates if the arbitrator withdraws
26 from the arbitrator's office or if the parties agree on the
27 termination. Otherwise, if a controversy remains concerning any of
28 these grounds, any party may request the court specified in section 7
29 of this act to decide on the termination of the mandate, which decision
30 shall be subject to no appeal.

31 (2) If, under this section or section 14(2) of this act, an
32 arbitrator withdraws from the arbitrator's office or a party agrees to
33 the termination of the mandate of an arbitrator, this does not imply
34 acceptance of the validity of any ground referred to in this section or
35 section 13(2) of this act.

1 NEW SECTION. **Sec. 16.** APPOINTMENT OF SUBSTITUTE ARBITRATOR.

2 Where the mandate of an arbitrator terminates under section 14 or 15 of
3 this act or because of the arbitrator's withdrawal from office for any
4 other reason or because of the revocation of the arbitrator's mandate
5 by agreement of the parties or in any other case of termination of the
6 arbitrator's mandate, a substitute arbitrator shall be appointed
7 according to the rules that were applicable to the appointment of the
8 arbitrator being replaced.

9 NEW SECTION. **Sec. 17.** COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON
10 ITS OWN JURISDICTION. (1) The arbitral tribunal may rule on its own
11 jurisdiction, including any objections with respect to the existence or
12 validity of the arbitration agreement. For that purpose, an
13 arbitration clause which forms part of a contract shall be treated as
14 an agreement independent of the other terms of the contract. A
15 decision by the arbitral tribunal that the contract is null and void
16 shall not entail *ipso jure* the invalidity of the arbitration clause.

17 (2) A plea that the arbitral tribunal does not have jurisdiction
18 shall be raised not later than the submission of the statement of
19 defense. A party is not precluded from raising such a plea by the fact
20 that the party has appointed, or participated in the appointment of, an
21 arbitrator. A plea that the arbitral tribunal is exceeding the scope
22 of its authority shall be raised as soon as the matter alleged to be
23 beyond the scope of its authority is raised during the arbitral
24 proceedings. The arbitral tribunal may, in either case, admit a later
25 plea if it considers the delay justified.

26 (3) The arbitral tribunal may rule on a plea referred to in
27 subsection (2) of this section either as a preliminary question or in
28 an award on the merits. If the arbitral tribunal rules as a
29 preliminary question that it has jurisdiction, any party may request,
30 within thirty days after having received notice of that ruling, the
31 court specified in section 7 of this act to decide the matter, which
32 decision shall be subject to no appeal. While such a request is
33 pending, the arbitral tribunal may continue the arbitral proceedings
34 and make an award.

35 NEW SECTION. **Sec. 18.** POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM

1 MEASURES. (1) Unless otherwise agreed by the parties, the arbitral
2 tribunal may, at the request of a party, grant interim measures.

3 (2) An interim measure is any temporary measure, whether in the
4 form of an award or in another form, by which, at any time prior to the
5 issuance of the award by which the dispute is finally decided, the
6 arbitral tribunal orders a party to:

7 (a) Maintain or restore the status quo pending determination of the
8 dispute;

9 (b) Take action that would prevent, or refrain from taking action
10 that is likely to cause, current or imminent harm or prejudice to the
11 arbitral process itself;

12 (c) Provide a means of preserving assets out of which a subsequent
13 award may be satisfied; or

14 (d) Preserve evidence that may be relevant and material to the
15 resolution of the dispute.

16 NEW SECTION. **Sec. 19.** CONDITIONS OF GRANTING INTERIM MEASURES.

17 (1) The party requesting an interim measure under section 18(2) (a),
18 (b), and (c) of this act shall satisfy the arbitral tribunal that:

19 (a) Harm not adequately reparable by an award of damages is likely
20 to result if the measure is not ordered, and such harm substantially
21 outweighs the harm that is likely to result to the party against whom
22 the measure is directed if the measure is granted; and

23 (b) There is a reasonable possibility that the requesting party
24 will succeed on the merits of the claim. The determination on this
25 possibility shall not affect the discretion of the arbitral tribunal in
26 making any subsequent determination.

27 (2) With regard to a request for an interim measure under section
28 18(2)(d) of this act, the requirements in subsection (1)(a) and (b) of
29 this section shall apply only to the extent the tribunal considers
30 appropriate.

31 NEW SECTION. **Sec. 20.** APPLICATION FOR PRELIMINARY ORDERS AND
32 CONDITIONS FOR GRANTING PRELIMINARY ORDERS. (1) Unless otherwise

33 agreed by the parties, a party may, without notice to any other party,
34 make a request for an interim measure together with an application for
35 a preliminary order directing a party not to frustrate the purpose of
36 the interim measure requested.

1 (2) The arbitral tribunal may grant a preliminary order provided it
2 considers that prior disclosure of the request for the interim measure
3 to the party against whom it is directed risks frustrating the purpose
4 of the measure.

5 (3) The conditions defined under section 19 of this act apply to
6 any preliminary order, provided that the harm to be assessed under
7 section 19(1)(a) of this act is the harm likely to result from the
8 order being granted or not.

9 NEW SECTION. **Sec. 21.** SPECIFIC REGIME FOR PRELIMINARY ORDERS.

10 (1) Immediately after the arbitral tribunal has made a determination in
11 respect of an application for a preliminary order, the arbitral
12 tribunal shall give notice to all parties of the request for the
13 interim measure, the application for the preliminary order, the
14 preliminary order, if any, and all other communications, including by
15 indicating the content of any oral communication, between any party and
16 the arbitral tribunal in relation thereto.

17 (2) At the same time, the arbitral tribunal shall give an
18 opportunity to any party against whom a preliminary order is directed
19 to present its case at the earliest practicable time.

20 (3) The arbitral tribunal shall decide promptly on any objection to
21 the preliminary order.

22 (4) A preliminary order shall expire after twenty days from the
23 date on which it was issued by the arbitral tribunal. However, the
24 arbitral tribunal may issue an interim measure adopting or modifying
25 the preliminary order after the party against whom the preliminary
26 order is directed has been given notice and an opportunity to present
27 its case.

28 (5) A preliminary order shall be binding on the parties but shall
29 not be subject to enforcement by a court. Such a preliminary order
30 does not constitute an award.

31 NEW SECTION. **Sec. 22.** MODIFICATION, SUSPENSION, TERMINATION. The

32 arbitral tribunal may modify, suspend, or terminate an interim measure
33 or a preliminary order it has granted upon application of any party or,
34 in exceptional circumstances and upon prior notice to the parties, on
35 the arbitral tribunal's own initiative.

1 NEW SECTION. **Sec. 23.** PROVISION OF SECURITY. (1) The arbitral
2 tribunal may require the party requesting an interim measure to provide
3 appropriate security in connection with the measure.

4 (2) The arbitral tribunal shall require the party applying for a
5 preliminary order to provide security in connection with the order
6 unless the arbitral tribunal considers it inappropriate to do so.

7 NEW SECTION. **Sec. 24.** DISCLOSURE. (1) The arbitral tribunal may
8 require any party promptly to disclose any material change in the
9 circumstances on the basis of which the measure was requested or
10 granted.

11 (2) The party applying for a preliminary order shall disclose to
12 the arbitral tribunal all circumstances that are likely to be relevant
13 to the arbitral tribunal's determination whether to grant or maintain
14 the order, and such obligation shall continue until the party against
15 whom the order has been requested has had an opportunity to present its
16 case. Thereafter, subsection (1) of this section shall apply.

17 NEW SECTION. **Sec. 25.** COSTS AND DAMAGES. The party requesting an
18 interim measure or applying for a preliminary order shall be liable for
19 any costs and damages caused by the measure or the order to any party
20 if the arbitral tribunal later determines that, in the circumstances,
21 the measure or the order should not have been granted. The arbitral
22 tribunal may award such costs and damages at any point during the
23 proceedings.

24 NEW SECTION. **Sec. 26.** RECOGNITION AND ENFORCEMENT. (1) An
25 interim measure issued by an arbitral tribunal shall be recognized as
26 binding and, unless otherwise provided by the arbitral tribunal,
27 enforced upon application to the superior court, irrespective of the
28 country in which it was issued, subject to the provisions of section 27
29 of this act.

30 (2) The party who is seeking or has obtained recognition or
31 enforcement of an interim measure shall promptly inform the court of
32 any termination, suspension, or modification of that interim measure.

33 (3) The court of the state where recognition or enforcement is
34 sought may, if it considers it proper, order the requesting party to

1 provide appropriate security if the arbitral tribunal has not already
2 made a determination with respect to security or where such a decision
3 is necessary to protect the rights of third parties.

4 NEW SECTION. **Sec. 27.** GROUNDS FOR REFUSING RECOGNITION AND
5 ENFORCEMENT. (1) Recognition or enforcement of an interim award may be
6 refused only:

7 (a) At the request of the party against whom it is invoked if the
8 court is satisfied that:

9 (i) Such refusal is warranted on the grounds set forth in section
10 47(1)(a) (i), (ii), (iii), or (iv) of this act;

11 (ii) The arbitral tribunal's decision with respect to the provision
12 of security in connection with the interim measure issued by the
13 arbitral tribunal has not been complied with; or

14 (iii) The interim measure has been terminated or suspended by the
15 arbitral tribunal or, where so empowered, by the court of the state in
16 which the arbitration takes place or under the law of which that
17 interim measure was granted; or

18 (b) If the court finds that:

19 (i) The interim measure is incompatible with the powers conferred
20 upon the court unless the court decides to reformulate the interim
21 measure to the extent necessary to adapt it to its own powers and
22 procedures for the purposes of enforcing that interim measure and
23 without modifying its substance; or

24 (ii) Any of the grounds set forth in section 47(1)(b) (i) or (ii)
25 of this act apply to the recognition and enforcement of the interim
26 measure.

27 (2) Any determination made by the court on any ground in subsection
28 (1) of this section shall be effective only for the purposes of the
29 application to recognize and enforce the interim measure. The court
30 where recognition or enforcement is sought shall not, in making that
31 determination, undertake a review of the substance of the interim
32 measure.

33 NEW SECTION. **Sec. 28.** COURT ORDERED INTERIM MEASURES. A court
34 shall have the same power of issuing an interim measure in relation to
35 arbitration proceedings, irrespective of whether their place is in the
36 territory of this state, as it has in relation to proceedings in

1 courts. The court shall exercise such power in accordance with its own
2 procedures in consideration of the specific features of international
3 arbitration.

4 NEW SECTION. **Sec. 29.** EQUAL TREATMENT OF PARTIES. The parties
5 shall be treated with equality, and each party shall be given a full
6 opportunity of presenting its case.

7 NEW SECTION. **Sec. 30.** DETERMINATION OF RULES AND PROCEDURE. (1)
8 Subject to the provisions of this chapter, the parties are free to
9 agree on the procedure to be followed by the arbitral tribunal in
10 conducting the proceedings.

11 (2) Failing such agreement, the arbitral tribunal may, subject to
12 the provisions of this chapter, conduct the arbitration in such manner
13 as it considers appropriate. The power conferred upon the arbitral
14 tribunal includes the power to determine the admissibility, relevance,
15 materiality, and weight of any evidence.

16 NEW SECTION. **Sec. 31.** PLACE OF ARBITRATION. (1) The parties are
17 free to agree on the place of arbitration. Failing such agreement, the
18 place of arbitration shall be determined by the arbitral tribunal
19 having regard to the circumstances of the case, including the
20 convenience of the parties.

21 (2) Notwithstanding the provisions of subsection (1) of this
22 section, the arbitral tribunal may, unless otherwise agreed by the
23 parties, meet at any place it considers appropriate for consultation
24 among its members, for hearing witnesses, experts, or the parties, or
25 for inspection of goods, other property, or documents.

26 NEW SECTION. **Sec. 32.** COMMENCEMENT OF ARBITRAL PROCEEDINGS.
27 Unless otherwise agreed by the parties, the arbitral proceedings in
28 respect of a particular dispute commence on the date on which a request
29 for that dispute to be referred to arbitration is received by the
30 respondent.

31 NEW SECTION. **Sec. 33.** LANGUAGE. (1) The parties are free to
32 agree on the language or languages to be used in the arbitral
33 proceedings. Failing such agreement, the arbitral tribunal shall

1 determine the language or languages to be used in the proceedings.
2 This agreement or determination, unless otherwise specified therein,
3 shall apply to any written statement by a party, any hearing, and any
4 award, decision, or other communication by the arbitral tribunal.

5 (2) The arbitral tribunal may order that any documentary evidence
6 shall be accompanied by a translation into the language or languages
7 agreed upon by the parties or determined by the arbitral tribunal.

8 NEW SECTION. **Sec. 34.** STATEMENT OF CLAIM AND DEFENSE. (1) Within
9 the period of time agreed by the parties or determined by the arbitral
10 tribunal, the claimant shall state the facts supporting its claim, the
11 point at issue, and the relief or remedy sought, and the respondent
12 shall state its defense in respect of these particulars, unless the
13 parties have otherwise agreed as to the required elements of such
14 statements. The parties may submit with their statements all documents
15 they consider to be relevant or may add a reference to the documents or
16 other evidence they will submit.

17 (2) Unless otherwise agreed by the parties, either party may amend
18 or supplement its claims or defenses during the course of the arbitral
19 proceedings, unless the arbitral tribunal considers it inappropriate to
20 allow such amendment having regard to the delay in making it.

21 NEW SECTION. **Sec. 35.** HEARINGS AND WRITTEN PROCEEDINGS. (1)
22 Subject to any contrary agreement by the parties, the arbitral tribunal
23 shall decide whether to hold oral hearings for the presentation of
24 evidence or for oral argument, or whether the proceedings shall be
25 conducted on the basis of documents and other materials. However,
26 unless the parties have agreed that no hearings shall be held, the
27 arbitral tribunal shall hold such hearings at an appropriate stage of
28 the proceedings, if so requested by a party.

29 (2) The parties shall be given sufficient advance notice of any
30 hearing and of any meeting of the arbitral tribunal for the purposes of
31 inspection of goods, other property, or documents.

32 (3) All statements, documents, or other information supplied to the
33 arbitral tribunal by one party shall be communicated to the other
34 party. Any expert report or evidentiary document on which the arbitral
35 tribunal may rely in making its decision shall be communicated to the
36 parties.

1 NEW SECTION. **Sec. 36.** DEFAULT OF A PARTY. Unless otherwise
2 agreed by the parties, if, without showing sufficient cause:

3 (1) The claimant fails to communicate its statement of claim in
4 accordance with section 34(1) of this act, the arbitral tribunal shall
5 terminate the proceedings;

6 (2) The respondent fails to communicate its statements of defense
7 in accordance with section 34(1) of this act, the arbitral tribunal
8 shall continue the proceedings without treating such failure in itself
9 as an admission of the claimant's allegations; and

10 (3) Any party fails to appear at a hearing or to produce
11 documentary evidence, the arbitral tribunal may continue the
12 proceedings and make the award on the evidence before it.

13 NEW SECTION. **Sec. 37.** EXPERT APPOINTED BY ARBITRAL TRIBUNAL. (1)
14 Unless otherwise agreed by the parties, the arbitral tribunal:

15 (a) May appoint one or more experts to report to it on specific
16 issues to be determined by the arbitral tribunal; and

17 (b) May require a party to give the expert any relevant information
18 or to produce, or to provide access to, any relevant documents, goods,
19 or other property for the expert's inspection.

20 (2) Unless otherwise agreed by the parties, if a party so requests
21 or if the arbitral tribunal considers it necessary, the expert shall,
22 after delivery of the expert's written or oral report, participate in
23 a hearing where the parties have the opportunity to put questions to
24 the expert and to present expert witnesses in order to testify on the
25 points at issue.

26 NEW SECTION. **Sec. 38.** COURT ASSISTANCE IN TAKING EVIDENCE;
27 CONSOLIDATION. (1) The arbitral tribunal or a party with the approval
28 of the arbitral tribunal may request from the superior court assistance
29 in taking evidence. The court may execute the request within its
30 competence and according to its rules on taking evidence.

31 (2) When the parties to two or more arbitration agreements have
32 agreed in their respective arbitration agreements or otherwise, the
33 superior court may, on application by one party with the consent of all
34 other parties to those arbitration agreements, do one or more of the
35 following:

1 (a) Order the arbitration proceedings arising out of those
2 arbitration agreements to be consolidated on terms the court considers
3 just and necessary;

4 (b) Where all parties cannot agree on an arbitral tribunal for the
5 consolidated arbitration, appoint an arbitral tribunal in accordance
6 with section 12(4) of this act; and

7 (c) Where the parties cannot agree on any other matter necessary to
8 conduct the consolidated arbitration, make any other order it considers
9 necessary.

10 NEW SECTION. **Sec. 39.** RULES APPLICABLE TO SUBSTANCE OF DISPUTE.

11 (1) The arbitral tribunal shall decide the dispute in accordance with
12 such rules of law as are chosen by the parties as applicable to the
13 substance of the dispute. Any designation of the law or legal system
14 of a given state shall be construed, unless otherwise expressed, as
15 directly referring to the substantive law of that state and not to its
16 conflict of laws rules.

17 (2) Failing any designation by the parties, the arbitral tribunal
18 shall apply the law determined by the conflict of laws rules which it
19 considers applicable.

20 (3) The arbitral tribunal shall decide *ex aequo et bono* or as
21 *amiable compositeur* only if the parties have expressly authorized it to
22 do so.

23 (4) In all cases, the arbitral tribunal shall decide in accordance
24 with the terms of the contract and shall take into account the usages
25 of the trade applicable to the transaction.

26 NEW SECTION. **Sec. 40.** DECISION MAKING BY PANEL OF ARBITRATORS.

27 In arbitral proceedings with more than one arbitrator, any decision of
28 the arbitral tribunal shall be made, unless otherwise agreed by the
29 parties, by a majority of all its members. However, questions of
30 procedure may be decided by a presiding arbitrator, if so authorized by
31 the parties or all members of the arbitral tribunal.

32 NEW SECTION. **Sec. 41.** SETTLEMENT. (1) If, during arbitral

33 proceedings, the parties settle the dispute, the arbitral tribunal
34 shall terminate the proceedings and, if requested by the parties and

1 not objected to by the arbitral tribunal, record the settlement in the
2 form of an arbitral award on agreed terms.

3 (2) An award on agreed terms shall be made in accordance with the
4 provisions of section 42 of this act and shall state that it is an
5 award. Such an award has the same status and effect as any other award
6 on the merits of the case.

7 NEW SECTION. **Sec. 42.** FORM AND CONTENTS OF AWARD. (1) The award
8 shall be made in writing and shall be signed by the arbitrator or
9 arbitrators. In arbitral proceedings with more than one arbitrator,
10 the signatures of the majority of all members of the arbitral tribunal
11 shall suffice, provided that the reason for any omitted signature is
12 stated.

13 (2) The award shall state the reasons upon which it is based,
14 unless the parties have agreed that no reasons are to be given or the
15 award is an award on agreed terms under section 41 of this act.

16 (3) The award shall state its date and the place of arbitration as
17 determined in accordance with section 31(1) of this act. The award
18 shall be deemed to have been made at that place.

19 (4) After the award is made, a copy signed by the arbitrators in
20 accordance with subsection (1) of this section shall be delivered to
21 each party.

22 NEW SECTION. **Sec. 43.** TERMINATION OF PROCEEDINGS. (1) The
23 arbitral proceedings are terminated by the final award or by an order
24 of the arbitral tribunal in accordance with subsection (2) of this
25 section.

26 (2) The arbitral tribunal shall issue an order for the termination
27 of the arbitral proceedings when:

28 (a) The claimant withdraws its claim, unless the respondent objects
29 thereto and the arbitral tribunal recognizes a legitimate interest on
30 the respondent's part in obtaining a final settlement of the dispute;

31 (b) The parties agree on the termination of the proceedings; or

32 (c) The arbitral tribunal finds that the continuation of the
33 proceedings has for any other reason become unnecessary or impossible.

34 (3) The mandate of the arbitral tribunal terminates with the
35 termination of the arbitral proceedings, subject to the provisions of
36 sections 44 and 45(4) of this act.

1 NEW SECTION. **Sec. 44.** CORRECTION AND INTERPRETATION OF AWARD;
2 ADDITIONAL AWARD. (1) Within thirty days of receipt of the award,
3 unless another period of time has been agreed upon by the parties:

4 (a) A party, with notice to the other party, may request the
5 arbitral tribunal to correct in the award any errors in computation,
6 any clerical or typographical errors, or any errors of similar nature;

7 (b) If so agreed by the parties, a party, with notice to the other
8 party, may request the arbitral tribunal to give an interpretation of
9 a specific point or part of the award; and

10 (c) If the arbitral tribunal considers the request to be justified,
11 it shall make the correction or give the interpretation within thirty
12 days of receipt of the request. The interpretation shall form part of
13 the award.

14 (2) The arbitral tribunal may correct any error of the type
15 referred to in subsection (1)(a) of this section on its own initiative
16 within thirty days of the date of the award.

17 (3) Unless otherwise agreed by the parties, a party, with notice to
18 the other party, may request, within thirty days of receipt of the
19 award, the arbitral tribunal to make an additional award as to claims
20 presented in the arbitral proceedings but omitted from the award. If
21 the arbitral tribunal considers the request to be justified, it shall
22 make the additional award within sixty days.

23 (4) The arbitral tribunal may extend, if necessary, the period of
24 time within which it shall make a correction, interpretation, or an
25 additional award under subsection (1) or (3) of this section.

26 (5) The provisions of section 42 of this act shall apply to a
27 correction or interpretation of the award or to an additional award.

28 NEW SECTION. **Sec. 45.** APPLICATION FOR SETTING ASIDE AS EXCLUSIVE
29 RECOURSE AGAINST ARBITRAL AWARD. (1) Recourse to the superior court
30 against an arbitral award may be made only by an application for
31 setting aside in accordance with subsections (2) and (3) of this
32 section.

33 (2) An arbitral award may be set aside by the superior court only
34 if:

35 (a) the party making the application furnishes proof that:

36 (i) A party to the arbitration agreement referred to in section 8

1 of this act was under some incapacity, or the said agreement is not
2 valid under the law to which the parties have subjected it or, failing
3 any indication thereon, under the law of this state;

4 (ii) The party making the application was not given proper notice
5 of the appointment of an arbitrator or of the arbitral proceedings or
6 was otherwise unable to present its case;

7 (iii) The award deals with a dispute not contemplated by or not
8 falling within the terms of the submission to arbitration, or contains
9 decisions on matters beyond the scope of the submission to arbitration,
10 provided that, if the decisions on matters submitted to arbitration can
11 be separated from those not so submitted, only that part of the award
12 which contains decisions on matters not submitted to arbitration may be
13 set aside; or

14 (iv) The composition of the arbitral tribunal or the arbitral
15 procedure was not in accordance with the agreement of the parties,
16 unless such agreement was in conflict with a provision of this chapter
17 from which the parties cannot derogate, or, failing such agreement, was
18 not in accordance with this chapter; or

19 (b) The court finds that:

20 (i) The subject matter of the dispute is not capable of settlement
21 by arbitration under the law of this state; or

22 (ii) The award is in conflict with the public policy of this state.

23 (3) An application for setting aside may not be made after three
24 months have elapsed from the date on which the party making that
25 application had received the award or, if a request had been made under
26 section 44 of this act, from the date on which that request had been
27 disposed of by the arbitral tribunal.

28 (4) The court, when asked to set aside an award, may, where
29 appropriate and so requested by a party, suspend the setting aside
30 proceedings for a period of time determined by it in order to give the
31 arbitral tribunal an opportunity to resume the arbitral proceedings or
32 to take such other action as in the arbitral tribunal's opinion will
33 eliminate the grounds for setting aside.

34 NEW SECTION. **Sec. 46.** RECOGNITION AND ENFORCEMENT. (1) An
35 arbitral award, irrespective of the country in which it was made, shall
36 be recognized as binding and, upon application in writing to the

1 superior court, shall be enforced subject to the provisions of this
2 section and of section 47 of this act.

3 (2) The party relying on an award or applying for its enforcement
4 shall supply the original award or a copy thereof. If the award is not
5 made in English, the court may request the party to supply a
6 translation thereof into English.

7 NEW SECTION. **Sec. 47.** GROUNDS FOR REFUSING RECOGNITION OR
8 ENFORCEMENT. (1) Recognition or enforcement of an arbitral award,
9 irrespective of the country in which it was made, may be refused only:

10 (a) At the request of the party against whom it is invoked, if that
11 party furnishes to the competent court where recognition or enforcement
12 is sought proof that:

13 (i) A party to the arbitration agreement referred to in section 8
14 of this act was under some incapacity, or the said agreement is not
15 valid under the law to which the parties have subjected it or, failing
16 any indication thereon, under the law of the country where the award
17 was made;

18 (ii) The party against whom the award is invoked was not given
19 proper notice of the appointment of an arbitrator or of the arbitral
20 proceedings or was otherwise unable to present its case;

21 (iii) The award deals with a dispute not contemplated by or not
22 falling within the terms of the submission to arbitration, or contains
23 decisions on matters beyond the scope of the submission to arbitration,
24 provided that, if the decisions on matters submitted to arbitration can
25 be separated from those not so submitted, that part of the award which
26 contains decisions on matters submitted to arbitration may be
27 recognized and enforced;

28 (iv) The composition of the arbitral tribunal or the arbitral
29 procedure was not in accordance with the agreement of the parties, or,
30 failing such agreement, was not in accordance with the law of the
31 country where the arbitration took place; or

32 (v) The award has not yet become binding on the parties or has been
33 set aside or suspended by a court of the country in which, or under the
34 law of which, that award was made; or

35 (b) The court finds that:

36 (i) The subject matter of the dispute is not capable of settlement
37 by arbitration under the law of this state; or

1 (ii) The recognition or enforcement of the award would be contrary
2 to the public policy of this state.

3 (2) If an application for setting aside or suspension of an award
4 has been made to a court referred to in subsection (1)(a)(v) of this
5 section, the court where recognition or enforcement is sought may, if
6 it considers it proper, adjourn its decision and may also, on the
7 application of the party claiming recognition or enforcement of the
8 award, order the other party to provide appropriate security.

9 NEW SECTION. **Sec. 48.** Sections 1 through 47 of this act
10 constitute a new chapter in Title 7 RCW.

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