FINAL BILL REPORT
SHB 1054

C 433 L 05
Synopsis as Enacted

Brief Description: Enacting the revised Uniform Arbitration Act.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz, Priest and Morrell).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

Arbitration
Arbitration is one form of non-judicial dispute resolution. Arbitration is done pursuant to an agreement made by two or more parties that they will submit a dispute to a third party for resolution. Arbitration has been described by its advocates as an economical and streamlined method of resolving disputes, particularly those that involve technical or highly specialized issues. Generally, procedural complexity is less in an arbitration than in a court proceeding.

Arbitration in Washington is exclusively statutory. That is, under the common law of the state, arbitration agreements are not enforceable.

Washington's Arbitration Statute
Generally, to be enforceable an arbitration agreement must comply with the arbitration statute. An exception is made in the arbitration statute itself for labor disputes, which may be resolved by whatever method the parties choose subject, of course, to applicable labor laws.

Washington's statute on arbitration was adopted by the Legislature in 1943 and has not been substantively amended since. The state's Arbitration Act authorizes the use of arbitration as an alternative to judicial resolution of disputes. Arbitrations conducted in accordance with the statute are enforceable in court.

An arbitration agreement may be entered into before any dispute has arisen or may be entered into after a legal action has already been begun in court. Courts may be asked to review arbitration agreements and procedures for compliance with the statute, but court review of arbitration decisions is limited to correction of an award or vacation of an award on specified grounds. Courts may not review the merits of an award.

Arbitration under the statute is an alternative to the use of the courts for resolving a dispute. There is no general right of appeal in the statute, and the parties to an arbitration agreement may not provide for a trial following an arbitration. In rejecting an arbitration agreement clause that allowed for a trial de novo following arbitration, the Washington State Supreme Court has characterized the purpose of Washington's arbitration statute as follows:

> Encouraging parties voluntarily to submit their disputes to arbitration is an increasingly important objective in our ever more litigious society. This objective would be frustrated if a trial court were permitted to conduct a trial de novo when it reviews an arbitration award. Arbitration is attractive because it is a more expeditious and final alternative to litigation. (*Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885 (2001), citing earlier decisions.)

In other words, arbitration in Washington is "binding." (*Note:* This kind of binding arbitration done pursuant to an agreement is not to be confused with the "mandatory" arbitration that a separate Washington law imposes on parties in some cases. Mandatory arbitration applies only where the sole relief being sought is a relatively small money judgment. Mandatory arbitration, unlike binding arbitration, is followed by a right to a trial de novo precisely because entering mandatory arbitration is involuntary.)

The arbitration statute sets out various rights of the parties, as well as procedures for initiating and conducting arbitration that are generally less formal and complex than procedures that apply in a lawsuit.

The Uniform Arbitration Act

In the years since the enactment of Washington's law, arbitration has become widely accepted and is regularly used in this state and others. In 1955, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted a proposed uniform state law on arbitration. That 1955 Uniform Act was based in large part on state statutes such as the one Washington had adopted in 1943. The 1955 Uniform Act, or modified versions of it, were eventually adopted in all 49 of the other states. Washington's law, as noted above, has remained virtually unchanged since 1943. In 2000, the NCCUSL proposed a revision to the Uniform Arbitration Act. A few states have already adopted the 2000 revision, and several others are in the process of considering it.

Summary:

The 2000 Revised Uniform Arbitration Act (RUAA) is adopted to replace the state's 1943 arbitration statute.

Many changes are made to the previous law, including the addition of provisions to cover issues not addressed in the 1943 arbitration statute. Many of the RUAA's provisions deal with procedural matters. Among the new issues covered by the RUAA are:

- Consolidation of Proceedings. Courts are given explicit authority to consolidate some or all of the claims in multiple arbitration proceedings.
- Arbitrator Disclosure of Facts Potentially Affecting Impartiality. Arbitrators are generally required to disclose known facts that a reasonable person would consider likely to affect the arbitrator's impartiality. Special rules apply to disclosures by neutral arbitrators.

- Arbitrator Immunity From Civil Actions. Generally, arbitrators are given the same immunity as judges.
- Arbitrator Testimony in Other Proceedings. Generally, arbitrators may not testify and cannot be required to produce records regarding an arbitration proceeding.
- Nonwaivability of Specific Sections of the Arbitration Statute. The RUAA is generally a default statute that allows parties to customize arbitration agreements. However, certain provisions of the RUAA may not be waived or varied. Provisions that may never be waived include: application of the RUAA to arbitration agreements; compelling or staying proceedings; immunity of arbitrators; judicial enforcement of pre-award rulings; judicial authority to confirm, vacate, modify, clarify, or correct an award; and judicial entry of judgment and awarding of costs. In addition, stricter nonwaiver rules apply to the parties before any controversy has arisen. For example, before a controversy, nonwaivability applies to: procedural requirements for motions and notices; availability of provisional remedies; arbitrator impartiality disclosures; the right to counsel (except in labor disputes); subpoena and deposition authority; court jurisdiction; and the right of appeal.
- Electronic Technology in the Arbitration Process. Electronic means are expressly authorized for notice requirements in the RUAA. "Records" are defined to include electronic records, and the RUAA is expressly declared to conform to the federal Electronic Signatures in Global and National Commerce Act.

In addition to including these new provisions, the RUAA also makes changes with respect to issues previously addressed in the Washington arbitration statute. The authority of arbitrators to issue provisional remedies during the pendency of an arbitration is expanded and generalized. Arbitrators may protect the effectiveness of an arbitration through provisional remedies, including interim awards, to the same extent as those remedies would be available in a judicial proceeding. In the same manner, the authority of arbitrators to award costs, fees, or exceptional damages is explicitly tied to the ability of a court to do the same in a judicial proceeding on the same kind of issue.

The RUAA applies to all agreements entered into and after the effective date of the Act, January 1, 2006. On or after July 1, 2006, the RUAA also applies to arbitration agreements entered into before the effective date of the Act. In addition, parties to an agreement entered into before the RUAA's effective date may choose to make the Act apply.

The RUAA does not apply to cases subject to mandatory arbitration and does not apply to labor disputes.

Votes on Final Passage:

House	95	0	
Senate	49	0	(Senate amended)
House	95	0	(House concurred)

Effective: January 1, 2006