

Sen. Judiciary Do Pass 4/15/81 (p. 1294)

FEB 12 1981

Place On Calendar

HOUSE FILE 386

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House File 5)

Passed House, Date 3-2-81 (p. 622) Passed Senate, Date 4-24-81 (p. 1415)

Vote: Ayes 90 Nays 3 Vote: Ayes 46 Nays 0

Approved June 18, 1981

*Repassed House 5-13-81 (p. 1284)
96-0*

*Repassed Senate 5-19-81 (p. 1733)
45-0*

A BILL FOR

1 An Act to provide for the implementation of agreements to
2 arbitrate disputes, to provide minimum standards for
3 arbitration procedures and rules for review of arbitra-
4 tion awards, and to subject violators to penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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386

1 Section 1. NEW SECTION. VALIDITY OF ARBITRATION AGREE-
2 MENT. A written agreement to submit a controversy to arbi-
3 tration or a provision in a written contract, other than a
4 contract of adhesion, a contract for sale of property or
5 services for personal, family or household purposes, a contract
6 between employers and employees, a contract to arbitrate
7 future torts arising beyond the scope of a contractual
8 relationship, or a consumer credit contract, to submit to
9 arbitration a controversy arising between the parties is
10 valid, enforceable and irrevocable, unless grounds exist at
11 law or in equity for the revocation of the contract or unless
12 the agreement is otherwise restricted or prohibited by law.

13 Sec. 2. NEW SECTION. PROCEEDINGS TO COMPEL OR STAY
14 ARBITRATION. The district court has jurisdiction to construe
15 and enforce the provisions of an executory arbitration
16 agreement.

17 Sec. 3. NEW SECTION. APPOINTMENT OF ARBITRATORS BY
18 DISTRICT COURT. Unless otherwise agreed, the district court
19 on application of a party shall appoint one or more
20 arbitrators. An arbitrator appointed by the district court
21 has the same powers as an arbitrator specifically named in
22 the agreement.

23 Sec. 4. NEW SECTION. HEARING. Unless otherwise provided
24 by the agreement:

25 1. The arbitrators shall determine a time and place for
26 the hearing and cause notification to the parties to be served
27 personally or by registered mail not less than five days
28 before the hearing. Appearance at the hearing waives the
29 notice. The arbitrators may adjourn the hearing as necessary
30 and, on request of a party and for good cause, or upon their
31 own motion may postpone the hearing to a time not later than
32 the date fixed by the agreement for making the award. The
33 arbitrators may hear and determine the controversy upon the
34 evidence produced even if a party duly notified fails to
35 appear.

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

4 3. The hearing shall be conducted by all the arbitrators.
5 If, during the course of the hearing, an arbitrator for any
6 reason ceases to act, the remaining arbitrator or arbitrators
7 may continue with the hearing and determination of the
8 controversy.

9 Sec. 5. NEW SECTION. REPRESENTATION BY ATTORNEY. Unless
10 otherwise agreed in writing, a party has the right to be
11 represented by an attorney at any proceeding or hearing under
12 this Act.

13 Sec. 6. NEW SECTION. WITNESSES, SUBPOENAS, DEPOSITIONS.

14 1. The arbitrators may issue subpoenas for the attendance
15 of witnesses and for the production of books, records,
16 documents, and other evidence, and may administer oaths.
17 Subpoenas shall be served, and upon application to the district
18 court by a party or the arbitrators, enforced in the manner
19 provided by law for the service and enforcement of subpoenas
20 in a civil action.

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

26 3. All provisions of the law compelling a person under
27 subpoena to testify are applicable.

28 4. Unless otherwise agreed, fees for attendance as a
29 witness shall be the same as for a witness in the district
30 court.

31 Sec. 7. NEW SECTION. AWARD.

32 1. The award shall be in writing and signed by the arbitra-
33 tors joining in the award. The arbitrators shall deliver
34 a copy to each party personally, by registered mail, or as
35 provided in the agreement.

1 2. A party waives the objection that an award was not
2 made within the proper time unless the party notifies the
3 arbitrators of the party's objection before the award is
4 received.

5 3. Unless otherwise agreed, an award shall be made within
6 thirty days after the arbitration hearing.

7 Sec. 8. NEW SECTION. CHANGE OF AWARD BY ARBITRATORS.

8 On application of a party or, if an application to the district
9 court is pending under section 10, 11, or 12 of this Act,
10 on submission to the arbitrators by the district court under
11 the conditions the district court orders, the arbitrators
12 may modify or correct the award upon the grounds stated in
13 paragraphs a and c of subsection 1 of section 12 of this Act,
14 or for the purpose of clarifying the award. The application
15 shall be made within twenty days after delivery of the award
16 to the applicant. Written notice of the application shall
17 be given to the opposing party, stating that the opposing
18 party must serve any objections to the application within
19 ten days from the notice. The modified or corrected award
20 is subject to sections 10, 11, and 12 of this Act.

21 Sec. 9. NEW SECTION. FEES AND EXPENSES OF ARBITRATION.

22 Unless otherwise provided in the agreement to arbitrate, and
23 except for council fees, the arbitrators' expenses and fees
24 and any other expenses incurred in the conduct of the arbitra-
25 tion shall be paid as provided in the award.

26 Sec. 10. NEW SECTION. CONFIRMATION OF AN AWARD. Upon

27 application of a party, the district court shall confirm an
28 award, unless within the time limits imposed under sections
29 11 and 12 of this Act grounds are urged for vacating,
30 modifying, or correcting the award, in which case the district
31 court shall proceed as provided in sections 11 and 12 of this
32 Act.

33 Sec. 11. NEW SECTION. VACATING AN AWARD.

34 1. Upon application of a party, the district court shall
35 vacate an award if any of the following apply:

- 1 a. The award was procured by corruption, fraud, or other
2 illegal means.
- 3 b. There was evident partiality by an arbitrator appointed
4 as a neutral, corruption in any of the arbitrators, or miscon-
5 duct prejudicing the rights of a party.
- 6 c. The arbitrators exceeded their powers.
- 7 d. The arbitrators refused to postpone the hearing upon
8 sufficient cause being shown for the postponement, refused
9 to hear evidence material to the controversy, or conducted
10 the hearing contrary to the provisions of section 4 of this
11 Act, in a manner which prejudiced substantially the rights
12 of a party.
- 13 e. There was no arbitration agreement, the issue was not
14 adversely determined in proceedings under section 2 of this
15 Act, and the party did not participate in the arbitration
16 hearing without raising the objection.
- 17 f. Substantial evidence on the record as a whole does
18 not support the award. The court shall not vacate an award
19 on this ground if a party urging the vacation has not caused
20 the arbitration proceedings to be reported, if the parties
21 have agreed that a vacation shall not be made on this ground,
22 or if the arbitration has been conducted under the auspices
23 of the American arbitration association.
- 24 2. The fact that the relief awarded could not or would
25 not be granted by a court of law or equity is not ground for
26 vacating or refusing to confirm the award.
- 27 3. An application under this section shall be made within
28 ninety days after delivery of a copy of the award to the
29 applicant. However, if the application to vacate an award
30 is predicated upon corruption, fraud, or other illegal means,
31 it shall be made within ninety days after those grounds are
32 known or should have been known.
- 33 4. In vacating the award on grounds other than stated
34 in paragraph e of subsection 1, the district court may order
35 a rehearing before new arbitrators chosen as provided in the

1 agreement, or in the absence of a method in the agreement,
2 by the district court in accordance with section 3 of this
3 Act, or if the award is vacated on grounds set forth in
4 paragraph c or d of subsection 1 of this section, the district
5 court may order a rehearing before the arbitrators who made
6 the award or their successors appointed in accordance with
7 section 3 of this Act. The time within which the agreement
8 requires the award to be made is applicable to the rehearing
9 and commences from the date of the order.

10 Sec. 12. NEW SECTION. MODIFICATION OR CORRECTION OF
11 AWARD.

12 1. Upon application made within ninety days after delivery
13 of a copy of the award to the applicant, the district court
14 shall modify or correct the award if any of the following
15 apply:

16 a. There is an evident miscalculation of figures or an
17 evident mistake in the description of a person, thing, or
18 property referred to in the award.

19 b. The arbitrators have awarded upon a matter not submitted
20 to them and the award may be corrected without affecting the
21 merits of the decision upon the issues submitted.

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

24 2. If the application is granted, the district court shall
25 modify and correct the award to effect its intent and shall
26 confirm the award as modified and corrected.

27 Sec. 13. NEW SECTION. JUDGMENT OR DECREE ON AWARD. Upon
28 the granting of an order confirming, modifying, or correcting
29 an award, a judgment or decree shall be entered in conformity
30 with the order enforced as any other judgment or decree.

31 Sec. 14. NEW SECTION. ACT NOT RETROACTIVE. This Act
32 applies only to arbitration agreements made on or after the
33 effective date of this Act. Sections 679.1 through 679.18
34 do not apply to agreements to arbitrate entered into after
35 the effective date of this Act.

S-3538

1 Amend House File 386, as passed by the House, as
2 follows:

3 1. Page 1, by striking lines 1 through 12 and
4 inserting in lieu thereof the following:

5 "Section 1. NEW SECTION. VALIDITY OF ARBITRATION
6 AGREEMENT.

7 1. A written agreement to submit to arbitration
8 an existing controversy is valid, enforceable, and
9 irrevocable unless grounds exist at law or in equity
10 for the revocation of the written agreement.

11 2. A provision in a written contract to submit
12 to arbitration a future controversy arising between
13 the parties is valid, enforceable, and irrevocable
14 unless grounds exist at law or in equity for the
15 revocation of the contract. This subsection shall
16 not apply to any of the following:

17 a. A contract of adhesion.

18 b. A contract between employers and employees.

19 c. Any claim sounding in tort whether or not
20 involving a breach of contract."

21 2. Page 1, by striking lines 13 through 16 and
22 inserting in lieu thereof the following:

23 "Sec. 2. NEW SECTION. PROCEEDINGS TO COMPEL OR
24 STAY ARBITRATION.

25 1. On application of a party showing an agreement
26 described in section 1 of this Act and the opposing
27 party's refusal to arbitrate, the district court shall
28 order the parties to proceed with arbitration.

29 However, if the opposing party denies the existence
30 of a valid and enforceable agreement to arbitrate,
31 the district court shall proceed to the determination
32 of the issue and shall order arbitration if a valid
33 and enforceable agreement is found to exist. If no
34 such agreement exists, the court shall deny the
35 application.

36 2. On application, the district court may stay
37 an arbitration proceeding commenced or threatened
38 on a showing that there is no valid and enforceable
39 agreement to arbitrate. The issue, when in substantial
40 and bona fide dispute, shall be tried and the stay
41 ordered if a valid and enforceable agreement to
42 arbitrate does not exist. If an agreement is found
43 to exist, the court shall order the parties to proceed
44 to arbitration.

45 3. If an issue referable to arbitration under
46 the alleged agreement is involved in an action or
47 proceeding pending in a district court, the
48 application shall be made to that court. Otherwise,
49 the application may be made in a district court as
50 provided in section 15 of this Act.

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1 4. An action or proceeding involving an issue
2 subject to arbitration shall be stayed if an order
3 for arbitration or an application for an order to
4 arbitrate has been made under this section or, if
5 the issue is severable, the stay may be made with
6 respect to the part of the issue which is subject
7 to arbitration only. When the application is made
8 in such an action or proceeding, the order for
9 arbitration shall include the stay.

10 5. An order for arbitration shall not be refused
11 on the ground that the claim in issue lacks merit
12 or because any fault or grounds for the claim sought
13 to be arbitrated have not been shown."

14 3. Page 1, by striking lines 17 through 22 and
15 inserting in lieu thereof the following:

16 "Sec. 3. NEW SECTION. APPOINTMENT OF ARBITRATORS
17 BY DISTRICT COURT. If the arbitration agreement
18 provides a method of appointment of arbitrators, this
19 method shall be followed. In the absence of a method
20 of appointing, or if the agreed method fails or for
21 any reason cannot be followed, or when an arbitrator
22 appointed fails or is unable to act and a successor
23 has not been appointed, the district court on
24 application of a party shall appoint one or more
25 arbitrators. An arbitrator appointed by the district
26 court has the same powers as an arbitrator specifically
27 named in the agreement.

28 Sec. 4. NEW SECTION. MAJORITY ACTION BY
29 ARBITRATORS. The powers of the arbitrators may be
30 exercised by a majority unless otherwise provided
31 by the agreement or by this Act."

32 4. Page 2, by striking lines 9 through 12 and
33 inserting in lieu thereof the following:

34 "Sec. ____ . NEW SECTION. REPRESENTATION BY
35 ATTORNEY. A party has the right to be represented
36 by an attorney at any proceeding or hearing under
37 this Act. A waiver of this right before the proceeding
38 or hearing is ineffective."

39 5. Page 5, by inserting after line 30 the
40 following: "Costs of the application and the
41 subsequent proceedings and disbursements may be awarded
42 by the district court.

43 Sec. 14. NEW SECTION. APPLICATIONS TO DISTRICT
44 COURT. Except as otherwise provided, an application
45 to the district court under this Act shall be by
46 motion and shall be heard in the manner and upon the
47 notice provided by law or rule of civil procedure,
48 for the making and hearing of motions. Unless the
49 parties have agreed otherwise, notice of an initial
50 application for an order shall be served in the manner

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PAGE 3

1 provided by the Iowa rules of civil procedure for
2 the service of original notice in an action.
3 Sec. 15. NEW SECTION. VENUE. An initial
4 application shall be made to the district court of
5 the county in which the agreement provides the
6 arbitration hearing shall be held or, if the hearing
7 has been held, in the county in which it was held.
8 Otherwise the application shall be made in the district
9 court of the county where the adverse party resides
10 or has a place of business or, if the adverse party
11 has no residence or place of business in this state,
12 to the district court of any county. All subsequent
13 applications shall be made to the district court
14 hearing the initial application unless the district
15 court otherwise directs.

16 Sec. 16. NEW SECTION. APPEALS.

17 1. An appeal may be taken from:

18 a. An order denying an application to compel
19 arbitration made under section 2 of this Act.

20 b. An order granting an application to stay
21 arbitration made under section 2, subsection 2 of
22 this Act.

23 c. An order confirming or denying confirmation
24 of an award.

25 d. An order modifying or correcting an award.

26 e. An order vacating an award without directing
27 a rehearing.

28 f. A judgment or decree entered pursuant to the
29 provisions of this Act.

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

33 6. By numbering and renumbering sections to conform
34 to this amendment.

S-3538 FILED
APRIL 22, 1981

BY GARY BAUGHER

Adopted 4/24/81 (p. 14/2)

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 386

S-3772

1 Amend the Senate amendment, H-3851, to House File
2 386, as passed by the House, as follows:

3 1. Page 1, line 19, by striking the word "Any",
4 and by inserting in lieu thereof the words "Unless
5 otherwise provided in a separate writing executed
6 by all parties to the contract, any".

S-3772 FILED
MAY 14, 1981

RECEIVED FROM THE HOUSE

Senate amendment 5/14/81 (p. 17/22)

SENATE AMENDMENT TO
HOUSE FILE 386

H-3851

1 Amend House File 386, as passed by the House, as
2 follows:

3 1. Page 1, by striking lines 1 through 12 and
4 inserting in lieu thereof the following:

5 "Section 1. NEW SECTION. VALIDITY OF ARBITRATION
6 AGREEMENT.

7 1. A written agreement to submit to arbitration
8 an existing controversy is valid, enforceable, and
9 irrevocable unless grounds exist at law or in equity
10 for the revocation of the written agreement.

11 2. A provision in a written contract to submit
12 to arbitration a future controversy arising between
13 the parties is valid, enforceable, and irrevocable
14 unless grounds exist at law or in equity for the
15 revocation of the contract. This subsection shall
16 not apply to any of the following:

17 a. A contract of adhesion.

18 b. A contract between employers and employees.

19 c. Any claim sounding in tort whether or not
20 involving a breach of contract."

21 2. Page 1, by striking lines 13 through 16 and
22 inserting in lieu thereof the following:

23 "Sec. 2. NEW SECTION. PROCEEDINGS TO COMPEL OR
24 STAY ARBITRATION.

25 1. On application of a party showing an agreement
26 described in section 1 of this Act and the opposing
27 party's refusal to arbitrate, the district court shall
28 order the parties to proceed with arbitration.

29 However, if the opposing party denies the existence
30 of a valid and enforceable agreement to arbitrate,
31 the district court shall proceed to the determination
32 of the issue and shall order arbitration if a valid
33 and enforceable agreement is found to exist. If no
34 such agreement exists, the court shall deny the
35 application.

36 2. On application, the district court may stay
37 an arbitration proceeding commenced or threatened
38 on a showing that there is no valid and enforceable
39 agreement to arbitrate. The issue, when in substantial
40 and bona fide dispute, shall be tried and the stay
41 ordered if a valid and enforceable agreement to
42 arbitrate does not exist. If an agreement is found
43 to exist, the court shall order the parties to proceed
44 to arbitration.

45 3. If an issue referable to arbitration under
46 the alleged agreement is involved in an action or
47 proceeding pending in a district court, the
48 application shall be made to that court. Otherwise,
49 the application may be made in a district court as
50 provided in section 15 of this Act.

1 4. An action or proceeding involving an issue
2 subject to arbitration shall be stayed if an order
3 for arbitration or an application for an order to
4 arbitrate has been made under this section or, if
5 the issue is severable, the stay may be made with
6 respect to the part of the issue which is subject
7 to arbitration only. When the application is made
8 in such an action or proceeding, the order for
9 arbitration shall include the stay.

10 5. An order for arbitration shall not be refused
11 on the ground that the claim in issue lacks merit
12 or because any fault or grounds for the claim sought
13 to be arbitrated have not been shown."

14 3. Page 1, by striking lines 17 through 22 and
15 inserting in lieu thereof the following:

16 "Sec. 3. NEW SECTION. APPOINTMENT OF ARBITRATORS
17 BY DISTRICT COURT. If the arbitration agreement
18 provides a method of appointment of arbitrators, this
19 method shall be followed. In the absence of a method
20 of appointing, or if the agreed method fails or for
21 any reason cannot be followed, or when an arbitrator
22 appointed fails or is unable to act and a successor
23 has not been appointed, the district court on
24 application of a party shall appoint one or more
25 arbitrators. An arbitrator appointed by the district
26 court has the same powers as an arbitrator specifically
27 named in the agreement.

28 Sec. 4. NEW SECTION. MAJORITY ACTION BY
29 ARBITRATORS. The powers of the arbitrators may be
30 exercised by a majority unless otherwise provided
31 by the agreement or by this Act."

32 4. Page 2, by striking lines 9 through 12 and
33 inserting in lieu thereof the following:

34 "Sec. ____ . NEW SECTION. REPRESENTATION BY
35 ATTORNEY. A party has the right to be represented
36 by an attorney at any proceeding or hearing under
37 this Act. A waiver of this right before the proceeding
38 or hearing is ineffective."

39 5. Page 5, by inserting after line 30 the
40 following: "Costs of the application and the
41 subsequent proceedings and disbursements may be awarded
42 by the district court.

43 Sec. 14. NEW SECTION. APPLICATIONS TO DISTRICT
44 COURT. Except as otherwise provided, an application
45 to the district court under this Act shall be by
46 motion and shall be heard in the manner and upon the
47 notice provided by law or rule of civil procedure,
48 for the making and hearing of motions. Unless the
49 parties have agreed otherwise, notice of an initial
50 application for an order shall be served in the manner,

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Page 3

1 provided by the Iowa rules of civil procedure for
2 the service of original notice in an action.
3 Sec. 15. NEW SECTION. VENUE. An initial
4 application shall be made to the district court of
5 the county in which the agreement provides the
6 arbitration hearing shall be held or, if the hearing
7 has been held, in the county in which it was held.
8 Otherwise the application shall be made in the district
9 court of the county where the adverse party resides
10 or has a place of business or, if the adverse party
11 has no residence or place of business in this state,
12 to the district court of any county. All subsequent
13 applications shall be made to the district court
14 hearing the initial application unless the district
15 court otherwise directs.

16 Sec. 16. NEW SECTION. APPEALS.

17 1. An appeal may be taken from:

18 a. An order denying an application to compel
19 arbitration made under section 2 of this Act.

20 b. An order granting an application to stay
21 arbitration made under section 2, subsection 2 of
22 this Act.

23 c. An order confirming or denying confirmation
24 of an award.

25 d. An order modifying or correcting an award.

26 e. An order vacating an award without directing
27 a rehearing.

28 f. A judgment or decree entered pursuant to the
29 provisions of this Act.

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

33 6. By numbering and renumbering sections to conform
34 to this amendment.

H-3851 FILED APRIL 28, 1981 RECEIVED FROM THE SENATE

*House amended (4046) & concurred
5/13/81 (p. 1884)*

HOUSE FILE 386

H-4046

1 Amend the Senate amendment, H-3851, to House File
2 386, as passed by the House, as follows:

3 1. Page 1, line 19, by striking the word "Any",
4 and by inserting in lieu thereof the words "Unless
5 otherwise provided in a separate writing executed by
6 all parties to the contract, any".

H-4046 FILED
MAY 7, 1981

Adopted 5/13/81 (p. 1884)

BY CONLON of Muscatine
SHIMANEK of Jones

RAPP of Black Hawk
POFFENBERGER of Dallas

HOUSE FILE 386

AN ACT

TO PROVIDE FOR THE IMPLEMENTATION OF AGREEMENTS TO ARBITRATE DISPUTES, TO PROVIDE MINIMUM STANDARDS FOR ARBITRATION PROCEDURES AND RULES FOR REVIEW OF ARBITRATION AWARDS, AND TO SUBJECT VIOLATORS TO PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. VALIDITY OF ARBITRATION AGREEMENT.

1. A written agreement to submit to arbitration an existing controversy is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the written agreement.

2. A provision in a written contract to submit to arbitration a future controversy arising between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. This subsection shall not apply to any of the following:

- a. A contract of adhesion.
- b. A contract between employers and employees.
- c. Unless otherwise provided in a separate writing executed by all parties to the contract, any claim sounding in tort whether or not involving a breach of contract.

Sec. 2. NEW SECTION. PROCEEDINGS TO COMPEL OR STAY ARBITRATION.

1. On application of a party showing an agreement described in section 1 of this Act and the opposing party's refusal to arbitrate, the district court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of a valid and enforceable agreement to arbitrate, the district court shall proceed to the determination of the issue and shall order arbitration if a valid and enforceable agreement is found to exist. If no such agreement exists, the court shall deny the application.

2. On application, the district court may stay an

arbitration proceeding commenced or threatened on a showing that there is no valid and enforceable agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be tried and the stay ordered if a valid and enforceable agreement to arbitrate does not exist. If an agreement is found to exist, the court shall order the parties to proceed to arbitration.

3. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a district court, the application shall be made to that court. Otherwise, the application may be made in a district court as provided in section 16 of this Act.

4. An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for an order to arbitrate has been made under this section or, if the issue is severable, the stay may be made with respect to the part of the issue which is subject to arbitration only. When the application is made in such an action or proceeding, the order for arbitration shall include the stay.

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

Sec. 3. NEW SECTION. APPOINTMENT OF ARBITRATORS BY DISTRICT COURT. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence of a method of appointing, 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 a successor has not been appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator appointed by the district court has the same powers as an arbitrator specifically named in the agreement.

Sec. 4. NEW SECTION. MAJORITY ACTION BY ARBITRATORS. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this Act.

Sec. 5. NEW SECTION. HEARING. Unless otherwise provided by the agreement:

1. The arbitrators shall determine a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing 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. The arbitrators may hear and determine the controversy upon the evidence produced even if a party duly notified fails to appear.

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

3. The hearing shall be conducted by all the arbitrators. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy.

Sec. 6. NEW SECTION. REPRESENTATION BY ATTORNEY. A party has the right to be represented by an attorney at any proceeding or hearing under this Act. A waiver of this right before the proceeding or hearing is ineffective.

Sec. 7. NEW SECTION. WITNESSES, SUBPOENAS, DEPOSITIONS.

1. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas shall be served, and upon application to the district 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. 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. All provisions of the law compelling a person under subpoena to testify are applicable.

4. Unless otherwise agreed, fees for attendance as a witness shall be the same as for a witness in the district court.

Sec. 8. NEW SECTION. AWARD.

1. 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, by registered mail, or as provided in the agreement.

2. A party waives the objection that an award was not made within the proper time unless the party notifies the arbitrators of the party's objection before the award is received.

3. Unless otherwise agreed, an award shall be made within thirty days after the arbitration hearing.

Sec. 9. NEW SECTION. CHANGE OF AWARD BY ARBITRATORS. On application of a party or, if an application to the district court is pending under section 11, 12, or 13 of this Act, on submission to the arbitrators by the district court under the conditions the district court orders, the arbitrators may modify or correct the award upon the grounds stated in paragraphs a and c of subsection 1 of section 13 of this Act, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice of the application shall be given to the opposing party, stating that the opposing party must serve any objections to the application within ten days from the notice. The modified or corrected award is subject to sections 11, 12, and 13 of this Act.

Sec. 10. NEW SECTION. FEES AND EXPENSES OF ARBITRATION. Unless otherwise provided in the agreement to arbitrate, and except for council fees, the arbitrators' expenses and fees and any other expenses incurred in the conduct of the arbitration shall be paid as provided in the award.

Sec. 11. NEW SECTION. CONFIRMATION OF AN AWARD. Upon application of a party, the district court shall confirm an

award, unless within the time limits imposed under sections 12 and 13 of this Act grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 12 and 13 of this Act.

Sec. 12. NEW SECTION. VACATING AN AWARD.

1. Upon application of a party, the district court shall vacate an award if any of the following apply:

- a. The award was procured by corruption, fraud, or other illegal means.
- b. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of a party.
- c. The arbitrators exceeded their powers.
- d. The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or conducted the hearing contrary to the provisions of section 5 of this Act, in a manner which prejudiced substantially the rights of a party.
- e. There was no arbitration agreement, the issue was not adversely determined in proceedings under section 2 of this Act, and the party did not participate in the arbitration hearing without raising the objection.
- f. Substantial evidence on the record as a whole does not support the award. The court shall not vacate an award on this ground if a party urging the vacation has not caused the arbitration proceedings to be reported, if the parties have agreed that a vacation shall not be made on this ground, or if the arbitration has been conducted under the auspices of the American arbitration association.

2. The fact that the relief awarded 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.

3. An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant. However, if the application to vacate an award

is predicated upon corruption, fraud, or other illegal means, it shall be made within ninety days after those grounds are known or should have been known.

4. In vacating the award on grounds other than stated in paragraph e of subsection 1, the district court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a method in the agreement, by the district court in accordance with section 3 of this Act, or if the award is vacated on grounds set forth in paragraph c or d of subsection 1 of this section, the district court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 3 of this Act. 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.

Sec. 13. NEW SECTION. MODIFICATION OR CORRECTION OF AWARD.

1. Upon application made within ninety days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if any of the following apply:

- a. There is an evident miscalculation of figures or an evident mistake in the description of a 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.
- c. The award is imperfect in a matter of form, not affecting the merits of the controversy.

2. If the application is granted, the district court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected.

Sec. 14. NEW SECTION. JUDGMENT OR DECREE ON AWARD. Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered in conformity with the order enforced as any other judgment or decree. Costs of the application and the subsequent proceedings and disbursements may be awarded by the district court.

Sec. 15. NEW SECTION. APPLICATIONS TO DISTRICT COURT. Except as otherwise provided, an application to the district court under this Act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of civil procedure, 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 the Iowa rules of civil procedure for the service of original notice in an action.

Sec. 16. NEW SECTION. VENUE. An initial application shall be made to the district 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 district court of the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this state, to the district court of any county. All subsequent applications shall be made to the district court hearing the initial application unless the district court otherwise directs.

- Sec. 17. NEW SECTION. APPEALS.
1. An appeal may be taken from:
 - a. An order denying an application to compel arbitration made under section 2 of this Act.
 - b. An order granting an application to stay arbitration made under section 2, subsection 2 of this Act.
 - 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.
 - f. A judgment or decree entered pursuant to the provisions of this Act.
 2. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Sec. 18. NEW SECTION. ACT NOT RETROACTIVE. This Act applies only to arbitration agreements made on or after the

effective date of this Act. Sections 679.1 through 679.18 do not apply to agreements to arbitrate entered into after the effective date of this Act.

Sec. 19. Sections 1 through 18 of this Act and section 679.19 shall be codified as a chapter of the Code.

Sec. 20. Sections 679.1 through 679.18, Code 1981, are repealed effective January 1, 1983.

DELWYN STROMER
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 386, Sixty-ninth General Assembly.

PAT H. HARPER
Chief Clerk of the House

Approved June 18, 1981

ROBERT D. RAY
Governor