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SENATE FILE 374  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1127)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to agreements to arbitrate and providing  
2 remedies.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 374

1 Section 1. NEW SECTION. 679A.101 DEFINITIONS.

2 As used in this chapter:

3 1. "Arbitration organization" means an association,  
4 agency, board, commission, or other entity that is neutral and  
5 initiates, sponsors, or administers an arbitration proceeding  
6 or is involved in the appointment of an arbitrator.

7 2. "Arbitrator" means an individual appointed to render an  
8 award, alone or with others, in a controversy that is subject  
9 to an agreement to arbitrate.

10 3. "Court" means district court.

11 4. "Knowledge" means actual knowledge.

12 5. "Person" means an individual, corporation, business  
13 trust, estate, trust, partnership, limited liability company,  
14 association, joint venture, government, governmental  
15 subdivision, agency, or instrumentality, public corporation,  
16 or any other legal or commercial entity.

17 6. "Record" means information that is inscribed on a  
18 tangible medium or that is stored in an electronic or other  
19 medium and is retrievable in perceivable form.

20 Sec. 2. NEW SECTION. 679A.102 NOTICE.

21 1. Except as otherwise provided in this chapter, a person  
22 gives notice by taking action that is reasonably necessary to  
23 inform the other person in ordinary course, whether or not the  
24 other person acquires knowledge of the notice.

25 2. A person has notice if the person has knowledge of the  
26 notice or has received notice.

27 3. A person receives notice when it comes to the person's  
28 attention or the notice is delivered at the person's place of  
29 residence or place of business, or at another location held  
30 out by the person as a place of delivery.

31 Sec. 3. NEW SECTION. 679A.103 APPLICABILITY.

32 1. This chapter governs an agreement to arbitrate made on  
33 or after the effective date of this Act.

34 2. This chapter governs an agreement to arbitrate made  
35 before the effective date of this Act if all the parties to

1 the agreement or to the arbitration proceeding so agree in a  
2 record.

3 Sec. 4. NEW SECTION. 679A.104 EFFECT OF AGREEMENT TO  
4 ARBITRATE -- NONWAIVABLE PROVISIONS.

5 1. Except as otherwise provided in subsections 2 and 3, a  
6 party to an agreement to arbitrate or to an arbitration  
7 proceeding may waive, or the parties may vary the effect of,  
8 the requirements of this chapter to the extent permitted by  
9 law.

10 2. Before a controversy arises that is subject to an  
11 agreement to arbitrate, a party to the agreement shall not:

12 a. Waive or agree to vary the effect of the requirements  
13 of section 679A.105, subsection 1, section 679A.106,  
14 subsection 1, section 679A.108, section 679A.117, subsection 1  
15 or 2, section 679A.126, or section 679A.128.

16 b. Agree to unreasonably restrict the right under section  
17 679A.109 to notice of initiation of an arbitration proceeding.

18 c. Agree to unreasonably restrict the right under section  
19 679A.112 to disclosure of any facts by a neutral arbitrator.

20 d. Waive the right under section 679A.116 of a party to an  
21 agreement to arbitrate to be represented by a lawyer at any  
22 proceeding or hearing under this chapter, but an employer and  
23 a labor organization may waive the right to representation by  
24 a lawyer in a labor arbitration.

25 e. Designate a venue that prohibits reasonable  
26 participation by the parties.

27 3. A party to an agreement to arbitrate or arbitration  
28 proceeding shall not waive, or the parties shall not vary the  
29 effect of, the requirements of this section or section  
30 679A.103, subsection 1, section 679A.107, section 679A.114,  
31 section 679A.118, section 679A.120, subsection 4 or 5, section  
32 679A.122, section 679A.123, section 679A.124, section  
33 679A.125, subsections 1 or 2, section 679A.129, or section  
34 679A.130.

35 Sec. 5. NEW SECTION. 679A.105 APPLICATION FOR JUDICIAL

1 RELIEF.

2 1. Except as otherwise provided in section 679A.128, an  
3 application for judicial relief under this chapter shall be  
4 commenced in a manner required by the applicable rules of  
5 civil procedure and shall be heard in the manner provided by  
6 law or rule of civil procedure for the making and hearing of  
7 motions.

8 2. Unless a civil action involving the agreement to  
9 arbitrate is pending, notice of an initial application under  
10 this chapter shall be served in the manner provided by law for  
11 the service of an original notice in a civil action.  
12 Otherwise, notice of the application shall be given in the  
13 manner provided by law or rule of civil procedure for serving  
14 motions.

15 Sec. 6. NEW SECTION. 679A.106 VALIDITY OF AGREEMENT TO  
16 ARBITRATE.

17 1. An agreement contained in a record to submit to  
18 arbitration an existing or future controversy arising between  
19 the parties to the agreement is valid, enforceable, and  
20 irrevocable unless grounds exist at law or in equity for the  
21 revocation of a contract.

22 2. The court shall decide whether an agreement to  
23 arbitrate exists or a controversy is subject to an agreement  
24 to arbitrate.

25 3. An arbitrator shall decide whether a condition  
26 precedent to arbitrability has been fulfilled and whether a  
27 contract containing a valid agreement to arbitrate is  
28 enforceable.

29 4. If a party to a judicial proceeding challenges the  
30 existence of, or claims that a controversy is not subject to,  
31 an agreement to arbitrate, the arbitration proceeding may  
32 continue pending final resolution of the issue by the court,  
33 unless the court otherwise orders.

34 Sec. 7. NEW SECTION. 679A.107 PROCEEDINGS TO COMPEL OR  
35 STAY ARBITRATION.

1 1. On application of a party showing an agreement to  
2 arbitrate described in section 679A.106, and the opposing  
3 party's refusal to arbitrate, the court shall do either of the  
4 following:

5 a. Order the parties to proceed with arbitration if the  
6 refusing party does not appear or does not oppose the  
7 application.

8 b. Proceed summarily to the determination of the issue and  
9 order the parties to arbitration if the refusing party opposes  
10 the application and a valid and enforceable agreement is found  
11 to exist.

12 2. On application of a party alleging that an arbitration  
13 proceeding has been commenced or threatened with no agreement  
14 to arbitrate, the court shall summarily decide the issue. If  
15 the court finds that there is an enforceable agreement to  
16 arbitrate, the court shall order the parties to proceed with  
17 arbitration.

18 3. If the court finds that there is no enforceable  
19 agreement, the court shall not, pursuant to subsection 1 or 2,  
20 order the parties to arbitrate.

21 4. The court shall not deny an application for an order on  
22 the ground that the claim in issue lacks merit or because any  
23 fault or grounds for the claim sought to be arbitrated have  
24 not been shown.

25 5. If an issue referable to arbitration under the alleged  
26 agreement is involved in an action or proceeding pending in  
27 court, the application shall be made to that court.  
28 Otherwise, the application shall be made to any court as  
29 provided in section 679A.127.

30 6. If a party makes an application to the court to order  
31 arbitration, the court on just terms shall stay any judicial  
32 proceeding that involves a claim alleged to be subject to the  
33 arbitration until the court renders a final decision under  
34 this section.

35 7. If the court orders arbitration, the court on just

1 terms shall stay any judicial proceeding that involves a claim  
2 subject to the arbitration. If a claim subject to the  
3 arbitration is severable, the court may limit the stay to that  
4 claim.

5 Sec. 8. NEW SECTION. 679A.108 PROVISIONAL REMEDIES.

6 1. Before an arbitrator is appointed and is authorized and  
7 able to act, the court, upon application of a party to an  
8 arbitration proceeding and for good cause shown, may enter an  
9 order for provisional remedies to protect the effectiveness of  
10 the arbitration proceeding to the same extent and under the  
11 same conditions as if the controversy were the subject of a  
12 civil action.

13 2. After an arbitrator is appointed and is authorized and  
14 able to act:

15 a. The arbitrator may issue such orders for provisional  
16 remedies, including interim awards, as the arbitrator finds  
17 necessary to protect the effectiveness of the arbitration  
18 proceeding and to promote the fair and expeditious resolution  
19 of the controversy, to the same extent and under the same  
20 conditions as if the controversy were the subject of a civil  
21 action.

22 b. A party to an arbitration proceeding may move the court  
23 for a provisional remedy only if the matter is urgent and the  
24 arbitrator is not able to act timely or the arbitrator cannot  
25 provide an adequate remedy.

26 3. A party does not waive a right of arbitration by making  
27 an application under subsection 1 or 2.

28 Sec. 9. NEW SECTION. 679A.109 INITIATION OF ARBITRATION.

29 1. A party initiates an arbitration proceeding by giving  
30 notice in a record to the other parties to the agreement in  
31 the agreed upon manner or, in the absence of an agreement, by  
32 certified mail or restricted certified mail, or by service as  
33 authorized for the commencement of a civil action. The notice  
34 must describe the nature of the controversy and the remedy  
35 sought.

1 2. Unless a party objects, based upon lack or  
2 insufficiency of notice under section 679A.115, subsection 3,  
3 not later than the beginning of the arbitration hearing, the  
4 party waives any objection to lack or insufficiency of notice  
5 by appearing at the hearing.

6 Sec. 10. NEW SECTION. 679A.110 CONSOLIDATION OF SEPARATE  
7 ARBITRATION PROCEEDINGS.

8 1. Except as otherwise provided in subsection 3, upon  
9 application of a party, the court may order consolidation of  
10 separate arbitration proceedings as to all or some of the  
11 claims if all of the following conditions are met:

12 a. There are separate agreements to arbitrate, separate  
13 arbitration proceedings between the same parties, or one of  
14 them is a party to a separate agreement to arbitrate or a  
15 separate arbitration proceeding with a third person.

16 b. The claims subject to the agreements to arbitrate arise  
17 in substantial part from the same transaction or series of  
18 related transactions.

19 c. The existence of a common issue of law or fact creates  
20 the possibility of conflicting decisions in the separate  
21 arbitration proceedings.

22 d. Prejudice resulting from a failure to consolidate is  
23 not outweighed by the risk of undue delay or prejudice to the  
24 rights of or hardship to parties opposing consolidation.

25 2. The court may order consolidation of separate  
26 arbitration proceedings as to some claims and allow other  
27 claims to be resolved in separate arbitration proceedings.

28 3. The court shall not order consolidation of the claims  
29 of a party to an agreement to arbitrate if the agreement  
30 prohibits consolidation.

31 Sec. 11. NEW SECTION. 679A.111 APPOINTMENT OF ARBITRATOR  
32 -- SERVICE AS A NEUTRAL ARBITRATOR.

33 1. If the parties to an agreement to arbitrate agree on a  
34 method for appointing an arbitrator, this method shall be  
35 followed, unless the method fails. If the parties have not

1 agreed on a method, if the agreed method fails, or if an  
2 arbitrator appointed fails or is unable to act and a successor  
3 has not been appointed, the court, on application of a party,  
4 shall appoint the arbitrator. An arbitrator appointed by the  
5 court has the same powers as an arbitrator specifically named  
6 in the agreement to arbitrate or appointed pursuant to an  
7 agreed method.

8 2. An individual who has a known, direct, and material  
9 interest in the outcome of the arbitration proceeding or a  
10 known, existing, and substantial relationship with a party  
11 shall not serve as an arbitrator if the agreement requires the  
12 arbitrator to be neutral.

13 Sec. 12. NEW SECTION. 679A.112 DISCLOSURE BY ARBITRATOR.

14 1. Before accepting appointment, an individual who is  
15 requested to serve as an arbitrator, after making a reasonable  
16 inquiry, shall disclose to all parties and to any other  
17 arbitrators any known facts that a reasonable person would  
18 consider likely to affect the impartiality of the individual  
19 in the arbitration proceeding, including:

20 a. Any financial or personal interest in the outcome of  
21 the arbitration proceeding.

22 b. An existing or past relationship with any of the  
23 parties, any of the parties' counsel or representatives, a  
24 witness, or other arbitrators.

25 2. An arbitrator has a continuing obligation to disclose  
26 to all parties and to any other arbitrators any facts that the  
27 arbitrator learns after accepting appointment which a  
28 reasonable person would consider likely to affect the  
29 impartiality of the arbitrator.

30 3. If an arbitrator discloses a fact required by  
31 subsection 1 or 2 to be disclosed and a party makes a timely  
32 objection to the appointment or continued service of the  
33 arbitrator based upon the fact disclosed, the objection may be  
34 a ground under section 679A.123, subsection 1, paragraph "b",  
35 for vacating an award made by the arbitrator.

1 4. If the arbitrator did not disclose a fact as required  
2 by subsection 1 or 2, upon a timely objection by a party, the  
3 court under section 679A.123, subsection 1, paragraph "b", may  
4 vacate an award.

5 5. An arbitrator appointed as a neutral arbitrator who  
6 does not disclose a known, direct, and material interest in  
7 the outcome of the arbitration proceeding or a known,  
8 existing, and substantial relationship with a party is  
9 presumed to act with evident partiality under section  
10 679A.123, subsection 1, paragraph "b".

11 6. If the parties to an arbitration proceeding agree to  
12 the procedures of an arbitration organization or any other  
13 procedures for challenges to arbitrators before an award is  
14 made, substantial compliance with those procedures is a  
15 condition precedent to an application to vacate an award on  
16 that ground under section 679A.123, subsection 1, paragraph  
17 "b".

18 Sec. 13. NEW SECTION. 679A.113 ACTION BY MAJORITY.

19 If there is more than one arbitrator, the powers of an  
20 arbitrator shall be exercised by a majority of the  
21 arbitrators, but all of them shall be present and conduct the  
22 hearing as provided under section 679A.115, subsection 3.

23 Sec. 14. NEW SECTION. 679A.114 IMMUNITY OF ARBITRATOR --  
24 COMPETENCY TO TESTIFY -- ATTORNEY FEES AND COSTS.

25 1. An arbitrator or an arbitration organization acting in  
26 that capacity is immune from civil liability to the same  
27 extent as a judge of a court of this state acting in a  
28 judicial capacity.

29 2. The immunity afforded by this section supplements any  
30 immunity under any other law.

31 3. The failure of an arbitrator to make a disclosure  
32 required by section 679A.112 does not cause any loss of  
33 immunity under this section.

34 4. In a judicial, administrative, or similar proceeding,  
35 an arbitrator or representative of an arbitration organization

1 is not competent to testify, and shall not be required to  
2 produce records as to any statement, conduct, decision, or  
3 ruling occurring during the arbitration proceeding, to the  
4 same extent as a judge of a court of this state acting in a  
5 judicial capacity. This subsection does not apply to any of  
6 the following:

7 a. To the extent necessary to determine the claim of an  
8 arbitrator, arbitration organization, or representative of the  
9 arbitration organization against a party to the arbitration  
10 proceeding.

11 b. To a hearing on an application to vacate an award under  
12 section 679A.123, subsection 1, paragraph "a" or "b", if the  
13 applicant establishes prima facie that a ground for vacating  
14 the award exists.

15 5. If a person commences a civil action against an  
16 arbitrator, arbitration organization, or representative of an  
17 arbitration organization arising from the services of the  
18 arbitrator, organization, or representative or if a person  
19 seeks to compel an arbitrator or a representative of an  
20 arbitration organization to testify or produce records in  
21 violation of subsection 4, and the court decides that the  
22 arbitrator, arbitration organization, or representative of an  
23 arbitration organization is immune from civil liability or  
24 that the arbitrator or representative of the organization is  
25 not competent to testify, the court shall award to the  
26 arbitrator, organization, or representative reasonable  
27 attorney fees and other reasonable expenses of litigation.

28 Sec. 15. NEW SECTION. 679A.115 ARBITRATION PROCESS.

29 1. An arbitrator shall conduct an arbitration proceeding  
30 in such manner as the arbitrator considers appropriate for a  
31 fair and expeditious disposition of the proceeding. The  
32 authority conferred upon the arbitrator includes the power to  
33 hold conferences with the parties to the arbitration  
34 proceeding before the hearing and, among other matters,  
35 determine the admissibility, relevance, materiality, and

1 weight of any evidence. I  
2 2. An arbitrator may decide a request for summary disposition of a claim or particular issue under any of the  
3 disposition of a claim or particular issue under any of the  
4 following conditions:  
5 a. If all interested parties agree.  
6 b. Upon the request of one party to the arbitration  
7 proceeding, if that party gives notice to all other parties to  
8 the proceeding and the other parties have a reasonable  
9 opportunity to respond.  
10 3. If an arbitrator orders a hearing, the arbitrator shall  
11 set a time and place and give notice of the hearing not less  
12 than five days before the hearing begins. Unless a party to  
13 the arbitration proceeding makes an objection to lack or  
14 insufficiency of notice not later than the beginning of the  
15 hearing, the party's appearance at the hearing waives any  
16 objection. Upon request of a party to the arbitration  
17 proceeding and for good cause shown, or upon the arbitrator's  
18 own initiative, the arbitrator may adjourn the hearing as  
19 necessary but shall not postpone the hearing to a time later  
20 than that fixed by the agreement for making the award unless  
21 the parties to the arbitration proceeding consent to a later  
22 date. The arbitrator may hear and decide the controversy upon  
23 the evidence produced even though a party who was duly  
24 notified of the arbitration proceeding did not appear. The  
25 court, on request, may direct the arbitrator to conduct the  
26 hearing promptly and render a decision in a timely fashion.  
27 4. At a hearing under subsection 3, a party to the  
28 arbitration proceeding has a right to be heard, to present  
29 evidence material to the controversy, and to cross-examine  
30 witnesses appearing at the hearing.  
31 5. If an arbitrator ceases or is unable to act during the  
32 arbitration proceeding, a replacement arbitrator shall be  
33 appointed in accordance with section 679A.111 to continue the  
34 proceeding and to resolve the controversy.

35 Sec. 16. NEW SECTION. 679A.116 REPRESENTATION BY LAWYER. c

1 agreement to arbitrate or, if not specified therein, within  
2 the time ordered by the court. The court or the parties may  
3 agree in a record to extend the time specified or ordered.  
4 The court or the parties may do so within or after the time  
5 specified or ordered. A party waives any objection that an  
6 award was not timely made unless the party gives notice of the  
7 objection to the arbitrator before receiving notice of the  
8 award.

9 Sec. 20. NEW SECTION. 679A.120 CHANGE OF AWARD BY  
10 ARBITRATOR.

11 1. On application of a party to an arbitration proceeding,  
12 the arbitrator may modify or correct an award for any of the  
13 following reasons:

14 a. Upon a ground stated in section 679A.124, subsection 1,  
15 paragraph "a" or "c".

16 b. Because the arbitrator has not made a final and  
17 definite award upon a claim submitted by the parties to the  
18 arbitration proceeding.

19 c. To clarify the award.

20 2. An application under subsection 1 shall be made and  
21 notice given to all parties within twenty days after the  
22 applicant receives notice of the award.

23 3. A party to the arbitration proceeding must give notice  
24 of any objection to the application within ten days of the  
25 notice.

26 4. If an application to the court is pending under section  
27 679A.122, 679A.123, or 679A.124, the court may submit the  
28 claim to the arbitrator to consider whether to modify or  
29 correct the award for any of the following reasons:

30 a. Upon a ground stated in section 679A.124, subsection 1,  
31 paragraph "a" or "c".

32 b. Because the arbitrator has not made a final and  
33 definite award upon a claim submitted by the parties to the  
34 arbitration proceeding.

35 c. To clarify the award.

1 5. An award modified or corrected pursuant to this section  
2 is subject to section 679A.119, subsection 1, sections  
3 679A.122, 679A.123, and 679A.124.

4 Sec. 21. NEW SECTION. 679A.121 REMEDIES -- FEES AND  
5 EXPENSES OF ARBITRATION PROCEEDING.

6 1. An arbitrator may award punitive damages or other  
7 exemplary relief if such an award is authorized by law in a  
8 civil action involving the same claim and the evidence  
9 produced at the hearing justifies the award under the legal  
10 standards otherwise applicable to the claim.

11 2. An arbitrator may award reasonable attorney fees and  
12 other reasonable expenses of arbitration if such an award is  
13 authorized by law in a civil action involving the same claim  
14 or by agreement of the parties.

15 3. As to all remedies other than those authorized by  
16 subsections 1 and 2, an arbitrator may order such remedies as  
17 the arbitrator considers just and appropriate under the  
18 circumstances of the arbitration proceeding. The fact that  
19 such a remedy could not or would not be granted by the court  
20 is not a ground for refusing to confirm an award under section  
21 679A.122 or for vacating an award under section 679A.123.

22 4. An arbitrator's expenses and fees, together with other  
23 expenses, shall be paid as provided in the award.

24 5. If an arbitrator awards punitive damages or other  
25 exemplary relief under subsection 1, the arbitrator shall  
26 specify in the award the basis in fact justifying and the  
27 basis in law authorizing the award and state separately the  
28 amount of the punitive damages or other exemplary relief.

29 Sec. 22. NEW SECTION. 679A.122 CONFIRMATION OF AWARD BY  
30 COURT.

31 After a party to an arbitration proceeding receives notice  
32 of an award, the party may make application to the court for  
33 an order confirming the award at which time the court shall  
34 issue an order confirming the award unless the award is  
35 modified or corrected pursuant to section 679A.120 or 679A.124

1 or the award is vacated pursuant to section 679A.123.

2 Sec. 23. NEW SECTION. 679A.123 VACATING AWARD BY COURT.

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

5 a. The award was procured by corruption, fraud, or other  
6 undue means.

7 b. There was evident partiality by an arbitrator appointed  
8 as a neutral arbitrator, corruption of an arbitrator, or  
9 misconduct by an arbitrator prejudicing the rights of a party.

10 c. The arbitrator refused to postpone the hearing upon  
11 sufficient cause being shown for the postponement, refused to  
12 consider evidence material to the controversy, or conducted  
13 the hearing contrary to the provisions of section 679A.115, in  
14 a manner which substantially prejudiced the rights of a party.

15 d. The arbitrator exceeded the arbitrator's powers.

16 e. There was no arbitration agreement, unless a party  
17 participated in the arbitration proceeding and failed to raise  
18 an objection under section 679A.115, subsection 3, prior to  
19 the beginning of the arbitration hearing.

20 f. The arbitration was conducted without proper notice of  
21 the initiation of an arbitration proceeding as required in  
22 section 679A.109 so as to prejudice substantially the rights  
23 of a party to the arbitration proceeding.

24 g. The award was based upon a manifest disregard for the  
25 law.

26 h. Substantial evidence on the record as a whole does not  
27 support the award. The court shall not vacate an award on  
28 this ground unless there is a record of the proceedings. This  
29 paragraph shall not apply if the parties have agreed that a  
30 vacation shall not be made on this ground.

31 2. An application under this section shall be filed within  
32 ninety days after the applicant receives notice of the award  
33 pursuant to section 679A.119 or within ninety days after the  
34 applicant receives notice of a modified or corrected award  
35 pursuant to section 679A.120, unless the applicant alleges

1 that the award was procured by corruption, fraud, or other  
2 undue means, in which case the application shall be made  
3 within ninety days after the ground is known or by the  
4 exercise of reasonable care should have been known by the  
5 applicant.

6 3. If the court vacates an award on a ground other than  
7 that set forth in subsection 1, paragraph "e", the court may  
8 order a rehearing. If the award is vacated on a ground stated  
9 in subsection 1, paragraph "a" or "b", the rehearing shall be  
10 before a new arbitrator. If the award is vacated on a ground  
11 stated in subsection 1, paragraph "c", "d", or "f", the  
12 rehearing may be before the arbitrator who made the award or  
13 the arbitrator's successor. The arbitrator shall render the  
14 decision in the rehearing within the same time as that  
15 provided in section 679A.119, subsection 2, for an award.

16 4. If the court denies an application to vacate an award,  
17 it shall confirm the award unless an application to modify or  
18 correct the award is pending.

19 Sec. 24. NEW SECTION. 679A.124 MODIFICATION OR  
20 CORRECTION OF AWARD BY COURT.

21 1. Upon application made within ninety days after the  
22 applicant receives notice of the award pursuant to section  
23 679A.119 or made within ninety days after the applicant  
24 receives notice of a modified or corrected award pursuant to  
25 section 679A.120, the court shall modify or correct the award  
26 if any of the following apply:

27 a. There is an evident mathematical miscalculation or an  
28 evident mistake in the description of a person, thing, or  
29 property referred to in the award.

30 b. The arbitrator has made an award on a claim not  
31 submitted to the arbitrator and the award may be corrected  
32 without affecting the merits of the decision upon the claims  
33 submitted.

34 c. The award is imperfect in a matter of form, not  
35 affecting the decision on the merits of the claims submitted.

1 2. If the application made under subsection 1 is granted,  
2 the court shall modify or correct and confirm the award as  
3 modified or corrected. Unless an application to vacate is  
4 pending, the court shall confirm the award.

5 3. An application to modify or correct an award pursuant  
6 to this section may be joined with an application to vacate  
7 the award.

8 Sec. 25. NEW SECTION. 679A.125 JUDGMENT ON AWARD --  
9 ATTORNEY FEES AND LITIGATION EXPENSES.

10 1. Upon the issuance of an order confirming, vacating  
11 without directing a rehearing, modifying, or correcting an  
12 award, the court shall enter a judgment in conformity with the  
13 order enforced as any other judgment or decree.

14 2. Reasonable costs of the application and the subsequent  
15 proceedings may be awarded by the court.

16 3. On the application of a prevailing party to a contested  
17 judicial proceeding under section 679A.122, 679A.123, or  
18 679A.124, the court may add reasonable attorney fees and other  
19 reasonable expenses of litigation incurred in a judicial  
20 proceeding after the award is made to a judgment confirming,  
21 vacating without directing a rehearing, modifying, or  
22 correcting an award.

23 Sec. 26. NEW SECTION. 679A.126 JURISDICTION.

24 1. A court of this state having jurisdiction over the  
25 controversy and the parties may enforce an agreement to  
26 arbitrate.

27 2. An agreement to arbitrate providing for arbitration in  
28 this state confers exclusive jurisdiction on the court to  
29 enter judgment on an award under this chapter.

30 Sec. 27. NEW SECTION. 679A.127 VENUE.

31 An application pursuant to section 679A.105 shall be made  
32 in the court of the county in which the agreement to arbitrate  
33 specifies the arbitration hearing is to be held or, if the  
34 hearing has been held, in the court of the county in which the  
35 hearing was held. Otherwise, the application may be made in

1 the court of any county in which an adverse party resides or  
2 has a place of business or, if the adverse party has no  
3 residence or place of business in this state, in the court of  
4 any county in this state. All subsequent applications shall  
5 be made in the court which heard the initial application  
6 unless the court otherwise directs.

7 Sec. 28. NEW SECTION. 679A.128 APPEALS.

8 1. An appeal may be taken from any of the following:

9 a. An order denying an application to compel arbitration.

10 b. An order granting an application to stay arbitration.

11 c. An order confirming or denying confirmation of an  
12 award.

13 d. An order modifying or correcting an award.

14 e. An order vacating an award without directing a  
15 rehearing.

16 f. A final judgment or decree entered pursuant to the  
17 provisions of this chapter.

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

20 Sec. 29. NEW SECTION. 679A.129 UNIFORMITY OF APPLICATION  
21 AND CONSTRUCTION.

22 In applying and construing this chapter, consideration  
23 shall be given to the need to promote uniformity of the law  
24 among states that enact the uniform arbitration Act.

25 Sec. 30. NEW SECTION. 679A.130 RELATIONSHIP TO  
26 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

27 The provisions of this chapter governing the legal effect,  
28 validity, and enforceability of electronic records or  
29 electronic signatures, and of contracts performed with the use  
30 of such records or signatures, shall be construed to conform  
31 to the requirements of section 102 of the federal Electronic  
32 Signatures in Global and National Commerce Act, as codified at  
33 15 U.S.C. § 7001, 7002.

34 Sec. 31. Sections 679A.1 through 679A.19, Code 2005, are  
35 repealed.



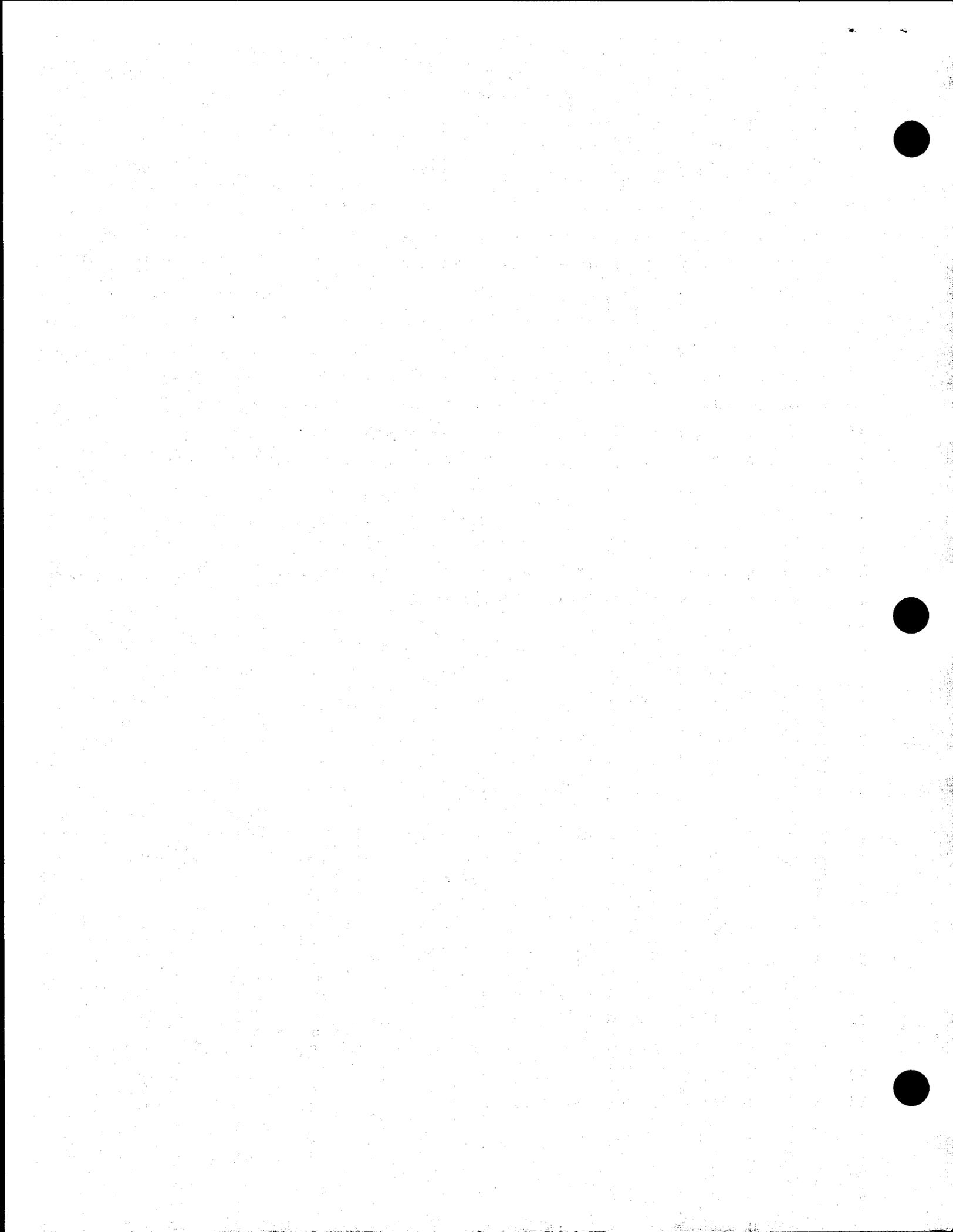
1 ground.

2 The bill further provides arbitrators with immunity from  
3 civil liability to the same extent as a judge of a court of  
4 this state acting in a judicial capacity.

5 The bill provides that an arbitrator has the express power  
6 to make summary dispositions of claims or issues under certain  
7 procedures, to hold prearbitration meetings or to use any  
8 other discovery process applicable to resolution of the  
9 dispute. The bill provides an arbitrator with the authority  
10 to grant punitive damages or other exemplary relief to the  
11 extent authorized by law in a civil action involving the same  
12 claim. The arbitrator may award attorney fees under the same  
13 standard.

14 The bill provides that most of the provisions of this Act  
15 may be varied or waived by agreement, but that certain  
16 provisions may not be varied or waived.

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Larson co-chair  
Quirnbach co-chair  
Tinsman  
Schoenjahn

SSB# 1127

Judiciary  
Succeeded By  
SF HF 324

SENATE FILE  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CO-CHAIRPERSON MILLER)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to agreements to arbitrate and providing  
2 remedies.

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

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1 Section 1. NEW SECTION. 679A.101 DEFINITIONS.

2 As used in this chapter:

3 1. "Arbitration organization" means an association,  
4 agency, board, commission, or other entity that is neutral and  
5 initiates, sponsors, or administers an arbitration proceeding  
6 or is involved in the appointment of an arbitrator.

7 2. "Arbitrator" means an individual appointed to render an  
8 award, alone or with others, in a controversy that is subject  
9 to an agreement to arbitrate.

10 3. "Court" means district court.

11 4. "Knowledge" means actual knowledge.

12 5. "Person" means an individual, corporation, business  
13 trust, estate, trust, partnership, limited liability company,  
14 association, joint venture, government, governmental  
15 subdivision, agency, or instrumentality, public corporation,  
16 or any other legal or commercial entity.

17 6. "Record" means information that is inscribed on a  
18 tangible medium or that is stored in an electronic or other  
19 medium and is retrievable in perceivable form.

20 Sec. 2. NEW SECTION. 679A.102 NOTICE.

21 1. Except as otherwise provided in this chapter, a person  
22 gives notice by taking action that is reasonably necessary to  
23 inform the other person in ordinary course, whether or not the  
24 other person acquires knowledge of the notice.

25 2. A person has notice if the person has knowledge of the  
26 notice or has received notice.

27 3. A person receives notice when it comes to the person's  
28 attention or the notice is delivered at the person's place of  
29 residence or place of business, or at another location held  
30 out by the person as a place of delivery.

31 Sec. 3. NEW SECTION. 679A.103 APPLICABILITY.

32 1. This chapter governs an agreement to arbitrate made on  
33 or after the effective date of this Act.

34 2. This chapter governs an agreement to arbitrate made  
35 before the effective date of this Act if all the parties to

1 the agreement or to the arbitration proceeding so agree in a  
2 record.

3 Sec. 4. NEW SECTION. 679A.104 EFFECT OF AGREEMENT TO  
4 ARBITRATE -- NONWAIVABLE PROVISIONS.

5 1. Except as otherwise provided in subsections 2 and 3, a  
6 party to an agreement to arbitrate or to an arbitration  
7 proceeding may waive, or the parties may vary the effect of,  
8 the requirements of this chapter to the extent permitted by  
9 law.

10 2. Before a controversy arises that is subject to an  
11 agreement to arbitrate, a party to the agreement shall not:

12 a. Waive or agree to vary the effect of the requirements  
13 of section 679A.105, subsection 1, section 679A.106,  
14 subsection 1, section 679A.108, section 679A.117, subsection 1  
15 or 2, section 679A.126, or section 679A.128.

16 b. Agree to unreasonably restrict the right under section  
17 679A.109 to notice of initiation of an arbitration proceeding.

18 c. Agree to unreasonably restrict the right under section  
19 679A.112 to disclosure of any facts by a neutral arbitrator.

20 d. Waive the right under section 679A.116 of a party to an  
21 agreement to arbitrate to be represented by a lawyer at any  
22 proceeding or hearing under this chapter, but an employer and  
23 a labor organization may waive the right to representation by  
24 a lawyer in a labor arbitration.

25 3. A party to an agreement to arbitrate or arbitration  
26 proceeding shall not waive, or the parties shall not vary the  
27 effect of, the requirements of this section or section  
28 679A.103, subsection 1, section 679A.107, section 679A.114,  
29 section 679A.118, section 679A.120, subsection 4 or 5, section  
30 679A.122, section 679A.123, section 679A.124, section  
31 679A.125, subsections 1 or 2, section 679A.129, or section  
32 679A.130.

33 Sec. 5. NEW SECTION. 679A.105 APPLICATION FOR JUDICIAL  
34 RELIEF.

35 1. Except as otherwise provided in section 679A.128, an

1 application for judicial relief under this chapter shall be  
2 made by motion and shall be heard in the manner provided by  
3 law or rule of civil procedure for the making and hearing of  
4 motions.

5 2. Unless a civil action involving the agreement to  
6 arbitrate is pending, notice of an initial application under  
7 this chapter shall be served in the manner provided by law for  
8 the service of a summons in a civil action. Otherwise, notice  
9 of the application shall be given in the manner provided by  
10 law or rule of civil procedure for serving motions.

11 Sec. 6. NEW SECTION. 679A.106 VALIDITY OF AGREEMENT TO  
12 ARBITRATE.

13 1. An agreement contained in a record to submit to  
14 arbitration an existing or future controversy arising between  
15 the parties to the agreement is valid, enforceable, and  
16 irrevocable unless grounds exist at law or in equity for the  
17 revocation of a contract.

18 2. The court shall decide whether an agreement to  
19 arbitrate exists or a controversy is subject to an agreement  
20 to arbitrate.

21 3. An arbitrator shall decide whether a condition  
22 precedent to arbitrability has been fulfilled and whether a  
23 contract containing a valid agreement to arbitrate is  
24 enforceable.

25 4. If a party to a judicial proceeding challenges the  
26 existence of, or claims that a controversy is not subject to,  
27 an agreement to arbitrate, the arbitration proceeding may  
28 continue pending final resolution of the issue by the court,  
29 unless the court otherwise orders.

30 Sec. 7. NEW SECTION. 679A.107 PROCEEDINGS TO COMPEL OR  
31 STAY ARBITRATION.

32 1. On application of a party showing an agreement to  
33 arbitrate described in section 679A.106, and the opposing  
34 party's refusal to arbitrate, the court shall do either of the  
35 following:

1 a. Order the parties to proceed with arbitration if the  
2 refusing party does not appear or does not oppose the  
3 application.

4 b. Proceed summarily to the determination of the issue and  
5 order the parties to arbitration if the refusing party opposes  
6 the application and a valid and enforceable agreement is found  
7 to exist.

8 2. On application of a party alleging that an arbitration  
9 proceeding has been commenced or threatened with no agreement  
10 to arbitrate, the court shall summarily decide the issue. If  
11 the court finds that there is an enforceable agreement to  
12 arbitrate, the court shall order the parties to proceed with  
13 arbitration.

14 3. If the court finds that there is no enforceable  
15 agreement, the court shall not, pursuant to subsection 1 or 2,  
16 order the parties to arbitrate.

17 4. The court shall not deny an application for an order on  
18 the ground that the claim in issue lacks merit or because any  
19 fault or grounds for the claim sought to be arbitrated have  
20 not been shown.

21 5. If an issue referable to arbitration under the alleged  
22 agreement is involved in an action or proceeding pending in  
23 court, the application shall be made to that court.  
24 Otherwise, the application shall be made to any court as  
25 provided in section 679A.127.

26 6. If a party makes an application to the court to order  
27 arbitration, the court on just terms shall stay any judicial  
28 proceeding that involves a claim alleged to be subject to the  
29 arbitration until the court renders a final decision under  
30 this section.

31 7. If the court orders arbitration, the court on just  
32 terms shall stay any judicial proceeding that involves a claim  
33 subject to the arbitration. If a claim subject to the  
34 arbitration is severable, the court may limit the stay to that  
35 claim.

1     Sec. 8. NEW SECTION. 679A.108 PROVISIONAL REMEDIES.

2     1. Before an arbitrator is appointed and is authorized and  
3 able to act, the court, upon application of a party to an  
4 arbitration proceeding and for good cause shown, may enter an  
5 order for provisional remedies to protect the effectiveness of  
6 the arbitration proceeding to the same extent and under the  
7 same conditions as if the controversy were the subject of a  
8 civil action.

9     2. After an arbitrator is appointed and is authorized and  
10 able to act:

11     a. The arbitrator may issue such orders for provisional  
12 remedies, including interim awards, as the arbitrator finds  
13 necessary to protect the effectiveness of the arbitration  
14 proceeding and to promote the fair and expeditious resolution  
15 of the controversy, to the same extent and under the same  
16 conditions as if the controversy were the subject of a civil  
17 action.

18     b. A party to an arbitration proceeding may move the court  
19 for a provisional remedy only if the matter is urgent and the  
20 arbitrator is not able to act timely or the arbitrator cannot  
21 provide an adequate remedy.

22     3. A party does not waive a right of arbitration by making  
23 an application under subsection 1 or 2.

24     Sec. 9. NEW SECTION. 679A.109 INITIATION OF ARBITRATION.

25     1. A party initiates an arbitration proceeding by giving  
26 notice in a record to the other parties to the agreement in  
27 the agreed upon manner or, in the absence of an agreement, by  
28 certified mail or restricted certified mail, or by service as  
29 authorized for the commencement of a civil action. The notice  
30 must describe the nature of the controversy and the remedy  
31 sought.

32     2. Unless a party objects, based upon lack or  
33 insufficiency of notice under section 679A.115, subsection 3,  
34 not later than the beginning of the arbitration hearing, the  
35 party waives any objection to lack or insufficiency of notice

1 by appearing at the hearing.

2 Sec. 10. NEW SECTION. 679A.110 CONSOLIDATION OF SEPARATE  
3 ARBITRATION PROCEEDINGS.

4 1. Except as otherwise provided in subsection 3, upon  
5 application of a party, the court may order consolidation of  
6 separate arbitration proceedings as to all or some of the  
7 claims if all of the following conditions are met:

8 a. There are separate agreements to arbitrate, separate  
9 arbitration proceedings between the same parties, or one of  
10 them is a party to a separate agreement to arbitrate or a  
11 separate arbitration proceeding with a third person.

12 b. The claims subject to the agreements to arbitrate arise  
13 in substantial part from the same transaction or series of  
14 related transactions.

15 c. The existence of a common issue of law or fact creates  
16 the possibility of conflicting decisions in the separate  
17 arbitration proceedings.

18 d. Prejudice resulting from a failure to consolidate is  
19 not outweighed by the risk of undue delay or prejudice to the  
20 rights of or hardship to parties opposing consolidation.

21 2. The court may order consolidation of separate  
22 arbitration proceedings as to some claims and allow other  
23 claims to be resolved in separate arbitration proceedings.

24 3. The court shall not order consolidation of the claims  
25 of a party to an agreement to arbitrate if the agreement  
26 prohibits consolidation.

27 Sec. 11. NEW SECTION. 679A.111 APPOINTMENT OF ARBITRATOR  
28 -- SERVICE AS A NEUTRAL ARBITRATOR.

29 1. If the parties to an agreement to arbitrate agree on a  
30 method for appointing an arbitrator, this method shall be  
31 followed, unless the method fails. If the parties have not  
32 agreed on a method, if the agreed method fails, or if an  
33 arbitrator appointed fails or is unable to act and a successor  
34 has not been appointed, the court, on application of a party,  
35 shall appoint the arbitrator. An arbitrator appointed by the

1 court has the same powers as an arbitrator specifically named  
2 in the agreement to arbitrate or appointed pursuant to an  
3 agreed method.

4 2. An individual who has a known, direct, and material  
5 interest in the outcome of the arbitration proceeding or a  
6 known, existing, and substantial relationship with a party  
7 shall not serve as an arbitrator if the agreement requires the  
8 arbitrator to be neutral.

9 Sec. 12. NEW SECTION. 679A.112 DISCLOSURE BY ARBITRATOR.

10 1. Before accepting appointment, an individual who is  
11 requested to serve as an arbitrator, after making a reasonable  
12 inquiry, shall disclose to all parties and to any other  
13 arbitrators any known facts that a reasonable person would  
14 consider likely to affect the impartiality of the individual  
15 in the arbitration proceeding, including:

16 a. Any financial or personal interest in the outcome of  
17 the arbitration proceeding.

18 b. An existing or past relationship with any of the  
19 parties, any of the parties' counsel or representatives, a  
20 witness, or other arbitrators.

21 2. An arbitrator has a continuing obligation to disclose  
22 to all parties and to any other arbitrators any facts that the  
23 arbitrator learns after accepting appointment which a  
24 reasonable person would consider likely to affect the  
25 impartiality of the arbitrator.

26 3. If an arbitrator discloses a fact required by  
27 subsection 1 or 2 to be disclosed and a party makes a timely  
28 objection to the appointment or continued service of the  
29 arbitrator based upon the fact disclosed, the objection may be  
30 a ground under section 679A.123, subsection 1, paragraph "b",  
31 for vacating an award made by the arbitrator.

32 4. If the arbitrator did not disclose a fact as required  
33 by subsection 1 or 2, upon a timely objection by a party, the  
34 court under section 679A.123, subsection 1, paragraph "b", may  
35 vacate an award.

1 5. An arbitrator appointed as a neutral arbitrator who  
2 does not disclose a known, direct, and material interest in  
3 the outcome of the arbitration proceeding or a known,  
4 existing, and substantial relationship with a party is  
5 presumed to act with evident partiality under section  
6 679A.123, subsection 1, paragraph "b".

7 6. If the parties to an arbitration proceeding agree to  
8 the procedures of an arbitration organization or any other  
9 procedures for challenges to arbitrators before an award is  
10 made, substantial compliance with those procedures is a  
11 condition precedent to an application to vacate an award on  
12 that ground under section 679A.123, subsection 1, paragraph  
13 "b".

14 Sec. 13. NEW SECTION. 679A.113 ACTION BY MAJORITY.

15 If there is more than one arbitrator, the powers of an  
16 arbitrator shall be exercised by a majority of the  
17 arbitrators, but all of them shall be present and conduct the  
18 hearing as provided under section 679A.115, subsection 3.

19 Sec. 14. NEW SECTION. 679A.114 IMMUNITY OF ARBITRATOR --  
20 COMPETENCY TO TESTIFY -- ATTORNEY FEES AND COSTS.

21 1. An arbitrator or an arbitration organization acting in  
22 that capacity is immune from civil liability to the same  
23 extent as a judge of a court of this state acting in a  
24 judicial capacity.

25 2. The immunity afforded by this section supplements any  
26 immunity under any other law.

27 3. The failure of an arbitrator to make a disclosure  
28 required by section 679A.112 does not cause any loss of  
29 immunity under this section.

30 4. In a judicial, administrative, or similar proceeding,  
31 an arbitrator or representative of an arbitration organization  
32 is not competent to testify, and shall not be required to  
33 produce records as to any statement, conduct, decision, or  
34 ruling occurring during the arbitration proceeding, to the  
35 same extent as a judge of a court of this state acting in a

1 judicial capacity. This subsection does not apply to any of  
2 the following:

3 a. To the extent necessary to determine the claim of an  
4 arbitrator, arbitration organization, or representative of the  
5 arbitration organization against a party to the arbitration  
6 proceeding.

7 b. To a hearing on an application to vacate an award under  
8 section 679A.123, subsection 1, paragraph "a" or "b", if the  
9 applicant establishes prima facie that a ground for vacating  
10 the award exists.

11 5. If a person commences a civil action against an  
12 arbitrator, arbitration organization, or representative of an  
13 arbitration organization arising from the services of the  
14 arbitrator, organization, or representative or if a person  
15 seeks to compel an arbitrator or a representative of an  
16 arbitration organization to testify or produce records in  
17 violation of subsection 4, and the court decides that the  
18 arbitrator, arbitration organization, or representative of an  
19 arbitration organization is immune from civil liability or  
20 that the arbitrator or representative of the organization is  
21 not competent to testify, the court shall award to the  
22 arbitrator, organization, or representative reasonable  
23 attorney fees and other reasonable expenses of litigation.

24 Sec. 15. NEW SECTION. 679A.115 ARBITRATION PROCESS.

25 1. An arbitrator shall conduct an arbitration proceeding  
26 in such manner as the arbitrator considers appropriate for a  
27 fair and expeditious disposition of the proceeding. The  
28 authority conferred upon the arbitrator includes the power to  
29 hold conferences with the parties to the arbitration  
30 proceeding before the hearing and, among other matters,  
31 determine the admissibility, relevance, materiality, and  
32 weight of any evidence.

33 2. An arbitrator may decide a request for summary  
34 disposition of a claim or particular issue under any of the  
35 following conditions:

1 a. If all interested parties agree.

2 b. Upon the request of one party to the arbitration  
3 proceeding, if that party gives notice to all other parties to  
4 the proceeding and the other parties have a reasonable  
5 opportunity to respond.

6 3. If an arbitrator orders a hearing, the arbitrator shall  
7 set a time and place and give notice of the hearing not less  
8 than five days before the hearing begins. Unless a party to  
9 the arbitration proceeding makes an objection to lack or  
10 insufficiency of notice not later than the beginning of the  
11 hearing, the party's appearance at the hearing waives any  
12 objection. Upon request of a party to the arbitration  
13 proceeding and for good cause shown, or upon the arbitrator's  
14 own initiative, the arbitrator may adjourn the hearing as  
15 necessary but shall not postpone the hearing to a time later  
16 than that fixed by the agreement for making the award unless  
17 the parties to the arbitration proceeding consent to a later  
18 date. The arbitrator may hear and decide the controversy upon  
19 the evidence produced even though a party who was duly  
20 notified of the arbitration proceeding did not appear. The  
21 court, on request, may direct the arbitrator to conduct the  
22 hearing promptly and render a decision in a timely fashion.

23 4. At a hearing under subsection 3, a party to the  
24 arbitration proceeding has a right to be heard, to present  
25 evidence material to the controversy, and to cross-examine  
26 witnesses appearing at the hearing.

27 5. If an arbitrator ceases or is unable to act during the  
28 arbitration proceeding, a replacement arbitrator shall be  
29 appointed in accordance with section 679A.111 to continue the  
30 proceeding and to resolve the controversy.

31 Sec. 16. NEW SECTION. 679A.116 REPRESENTATION BY LAWYER.

32 A party has the right to be represented by an attorney at  
33 any proceeding or hearing under this chapter.

34 Sec. 17. NEW SECTION. 679A.117 WITNESSES -- SUBPOENAS --  
35 DEPOSITIONS -- DISCOVERY.

1     1. An arbitrator may issue subpoenas for the attendance of  
2 witnesses and for the production of records and other evidence  
3 at any hearing and may administer oaths. Subpoenas shall be  
4 served and, upon application to the court by a party or the  
5 arbitrators, enforced in the manner provided by law for the  
6 service and enforcement of subpoenas in a civil action.

7     2. Upon request of a party to or a witness in an  
8 arbitration proceeding, an arbitrator may permit a deposition  
9 to be taken for use as evidence at a hearing, including a  
10 deposition of a witness who cannot be subpoenaed or is unable  
11 to attend a hearing. The arbitrator shall determine the  
12 conditions under which the deposition is to be taken.

13     3. An arbitrator may permit such discovery as the  
14 arbitrator decides is appropriate in the circumstances, taking  
15 into account the needs of the parties and other affected  
16 persons to the arbitration proceeding and the desirability of  
17 making the proceeding fair, expeditious, and cost-effective.

18     4. If an arbitrator permits discovery under subsection 3,  
19 the arbitrator may order a party to the arbitration proceeding  
20 to comply with the arbitrator's discovery orders, issue  
21 subpoenas for the attendance of witnesses and for the  
22 production of records and other evidence at a discovery  
23 proceeding, and take action against a noncomplying party to  
24 the extent possible as if the controversy were the subject of  
25 a civil action in this state.

26     5. An arbitrator may issue a protective order to prevent  
27 the disclosure of privileged or confidential information,  
28 trade secrets, and other information protected from disclosure  
29 to the extent possible as if the controversy were the subject  
30 of a civil action in this state.

31     6. All laws compelling a person under subpoena to testify  
32 and all fees for attending a judicial proceeding, a  
33 deposition, or a discovery proceeding as a witness apply to an  
34 arbitration proceeding as if the controversy were the subject  
35 of a civil action in this state.

1 7. The court may enforce a subpoena or discovery order for  
2 the attendance of a witness within this state and for the  
3 production of records and other evidence issued by an  
4 arbitrator in connection with an arbitration proceeding in  
5 another state as determined by the court in order to make the  
6 arbitration proceeding fair, expeditious, and cost-effective.  
7 A subpoena or discovery order issued by an arbitrator in  
8 another state shall be served in the manner provided by law  
9 for service of subpoenas in a civil action in this state and,  
10 upon application to the court, enforced in the manner provided  
11 by law for enforcement of subpoenas in a civil action in this  
12 state.

13 Sec. 18. NEW SECTION. 679A.118 JUDICIAL ENFORCEMENT OF  
14 PREAWARD RULING BY ARBITRATOR.

15 If an arbitrator makes a preaward ruling in favor of a  
16 party to the arbitration proceeding, the party may request the  
17 arbitrator to incorporate the ruling into an award under  
18 section 679A.119. A prevailing party may make application to  
19 the court for an expedited order to confirm the award under  
20 section 679A.122, in which case the court shall summarily  
21 decide the application. The court shall confirm an award  
22 unless the court vacates, modifies, or corrects the award  
23 under section 679A.123 or 679A.124.

24 Sec. 19. NEW SECTION. 679A.119 AWARD.

25 1. An arbitrator shall make a record of an award. The  
26 record must be signed or otherwise authenticated by an  
27 arbitrator who concurs with the award. The arbitrator or the  
28 arbitration organization shall give notice of the award,  
29 including a copy of the record of the award, to each party to  
30 the arbitration proceeding.

31 2. An award shall be made within the time specified by the  
32 agreement to arbitrate or, if not specified therein, within  
33 the time ordered by the court. The court or the parties may  
34 agree in a record to extend the time specified or ordered.  
35 The court or the parties may do so within or after the time

1 specified or ordered. A party waives any objection that an  
2 award was not timely made unless the party gives notice of the  
3 objection to the arbitrator before receiving notice of the  
4 award.

5 Sec. 20. NEW SECTION. 679A.120 CHANGE OF AWARD BY  
6 ARBITRATOR.

7 1. On application of a party to an arbitration proceeding,  
8 the arbitrator may modify or correct an award for any of the  
9 following reasons:

10 a. Upon a ground stated in section 679A.124, subsection 1,  
11 paragraph "a" or "c".

12 b. Because the arbitrator has not made a final and  
13 definite award upon a claim submitted by the parties to the  
14 arbitration proceeding.

15 c. To clarify the award.

16 2. An application under subsection 1 shall be made and  
17 notice given to all parties within twenty days after the  
18 applicant receives notice of the award.

19 3. A party to the arbitration proceeding must give notice  
20 of any objection to the application within ten days of the  
21 notice.

22 4. If an application to the court is pending under section  
23 679A.122, 679A.123, or ~~679A.124~~, the court may submit the  
24 claim to the arbitrator to consider whether to modify or  
25 correct the award for any of the following reasons:

26 a. Upon a ground stated in section 679A.124, subsection 1,  
27 paragraph "a" or "c".

28 b. Because the arbitrator has not made a final and  
29 definite award upon a claim submitted by the parties to the  
30 arbitration proceeding.

31 c. To clarify the award.

32 5. An award modified or corrected pursuant to this section  
33 is subject to section 679A.119, subsection 1, sections  
34 679A.122, 679A.123, and 679A.124.

35 Sec. 21. NEW SECTION. 679A.121 REMEDIES -- FEES AND

1 EXPENSES OF ARBITRATION PROCEEDING.

2 1. An arbitrator may award punitive damages or other  
3 exemplary relief if such an award is authorized by law in a  
4 civil action involving the same claim and the evidence  
5 produced at the hearing justifies the award under the legal  
6 standards otherwise applicable to the claim.

7 2. An arbitrator may award reasonable attorney fees and  
8 other reasonable expenses of arbitration if such an award is  
9 authorized by law in a civil action involving the same claim  
10 or by agreement of the parties.

11 3. As to all remedies other than those authorized by  
12 subsections 1 and 2, an arbitrator may order such remedies as  
13 the arbitrator considers just and appropriate under the  
14 circumstances of the arbitration proceeding. The fact that  
15 such a remedy could not or would not be granted by the court  
16 is not a ground for refusing to confirm an award under section  
17 679A.122 or for vacating an award under section 679A.123.

18 4. An arbitrator's expenses and fees, together with other  
19 expenses, shall be paid as provided in the award.

20 5. If an arbitrator awards punitive damages or other  
21 exemplary relief under subsection 1, the arbitrator shall  
22 specify in the award the basis in fact justifying and the  
23 basis in law authorizing the award and state separately the  
24 amount of the punitive damages or other exemplary relief.

25 Sec. 22. NEW SECTION. 679A.122 CONFIRMATION OF AWARD BY  
26 COURT.

27 After a party to an arbitration proceeding receives notice  
28 of an award, the party may make application to the court for  
29 an order confirming the award at which time the court shall  
30 issue an order confirming the award unless the award is  
31 modified or corrected pursuant to section 679A.120 or 679A.124  
32 or the award is vacated pursuant to section 679A.123.

33 Sec. 23. NEW SECTION. 679A.123 VACATING AWARD BY COURT.

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

1 a. The award was procured by corruption, fraud, or other  
2 undue means.

3 b. There was evident partiality by an arbitrator appointed  
4 as a neutral arbitrator, corruption of an arbitrator, or  
5 misconduct by an arbitrator prejudicing the rights of a party.

6 c. The arbitrator refused to postpone the hearing upon  
7 sufficient cause being shown for the postponement, refused to  
8 consider evidence material to the controversy, or conducted  
9 the hearing contrary to the provisions of section 679A.115, in  
10 a manner which substantially prejudiced the rights of a party.

11 d. The arbitrator exceeded the arbitrator's powers.

12 e. There was no arbitration agreement, unless a party  
13 participated in the arbitration proceeding and failed to raise  
14 an objection under section 679A.115, subsection 3, prior to  
15 the beginning of the arbitration hearing.

16 f. The arbitration was conducted without proper notice of  
17 the initiation of an arbitration proceeding as required in  
18 section 679A.109 so as to prejudice substantially the rights  
19 of a party to the arbitration proceeding.

20 2. An application under this section shall be filed within  
21 ninety days after the applicant receives notice of the award  
22 pursuant to section 679A.119 or within ninety days after the  
23 applicant receives notice of a modified or corrected award  
24 pursuant to section 679A.120, unless the applicant alleges  
25 that the award was procured by corruption, fraud, or other  
26 undue means, in which case the application shall be made  
27 within ninety days after the ground is known or by the  
28 exercise of reasonable care should have been known by the  
29 applicant.

30 3. If the court vacates an award on a ground other than  
31 that set forth in subsection 1, paragraph "e", the court may  
32 order a rehearing. If the award is vacated on a ground stated  
33 in subsection 1, paragraph "a" or "b", the rehearing shall be  
34 before a new arbitrator. If the award is vacated on a ground  
35 stated in subsection 1, paragraph "c", "d", or "f", the

1 rehearing may be before the arbitrator who made the award or  
2 the arbitrator's successor. The arbitrator shall render the  
3 decision in the rehearing within the same time as that  
4 provided in section 679A.119, subsection 2, for an award.

5 4. If the court denies an application to vacate an award,  
6 it shall confirm the award unless an application to modify or  
7 correct the award is pending.

8 Sec. 24. NEW SECTION. 679A.124 MODIFICATION OR  
9 CORRECTION OF AWARD BY COURT.

10 1. Upon application made within ninety days after the  
11 applicant receives notice of the award pursuant to section  
12 679A.119 or made within ninety days after the applicant  
13 receives notice of a modified or corrected award pursuant to  
14 section 679A.120, the court shall modify or correct the award  
15 if any of the following apply:

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

19 b. The arbitrator has made an award on a claim not  
20 submitted to the arbitrator and the award may be corrected  
21 without affecting the merits of the decision upon the claims  
22 submitted.

23 c. The award is imperfect in a matter of form, not  
24 affecting the decision on the merits of the claims submitted.

25 2. If the application made under subsection 1 is granted,  
26 the court shall modify or correct and confirm the award as  
27 modified or corrected. Unless a motion to vacate is pending,  
28 the court shall confirm the award.

29 3. An application to modify or correct an award pursuant  
30 to this section may be joined with an application to vacate  
31 the award.

32 Sec. 25. NEW SECTION. 679A.125 JUDGMENT ON AWARD --  
33 ATTORNEY FEES AND LITIGATION EXPENSES.

34 1. Upon the issuance of an order confirming, vacating  
35 without directing a rehearing, modifying, or correcting an

1 award, the court shall enter a judgment in conformity with the  
2 order enforced as any other judgment or decree.

3 2. Reasonable costs of the application and the subsequent  
4 proceedings may be awarded by the court.

5 3. On the application of a prevailing party to a contested  
6 judicial proceeding under section 679A.122, 679A.123, or  
7 679A.124, the court may add reasonable attorney fees and other  
8 reasonable expenses of litigation incurred in a judicial  
9 proceeding after the award is made to a judgment confirming,  
10 vacating without directing a rehearing, modifying, or  
11 correcting an award.

12 Sec. 26. NEW SECTION. 679A.126 JURISDICTION.

13 1. A court of this state having jurisdiction over the  
14 controversy and the parties may enforce an agreement to  
15 arbitrate.

16 2. An agreement to arbitrate providing for arbitration in  
17 this state confers exclusive jurisdiction on the court to  
18 enter judgment on an award under this chapter.

19 Sec. 27. NEW SECTION. 679A.127 VENUE.

20 An application pursuant to section 679A.105 shall be made  
21 in the court of the county in which the agreement to arbitrate  
22 specifies the arbitration hearing is to be held or, if the  
23 hearing has been held, in the court of the county in which the  
24 hearing was held. Otherwise, the application may be made in  
25 the court of the county in which an adverse party resides or  
26 has a place of business or, if the adverse party has no  
27 residence or place of business in this state, in the court of  
28 any county in this state. All subsequent applications shall  
29 be made in the court which heard the initial application  
30 unless the court otherwise directs.

31 Sec. 28. NEW SECTION. 679A.128 APPEALS.

32 1. An appeal may be taken from any of the following:

33 a. An order denying an application to compel arbitration.

34 b. An order granting an application to stay arbitration.

35 c. An order confirming or denying confirmation of an

1 award.

2 d. An order modifying or correcting an award.

3 e. An order vacating an award without directing a  
4 rehearing.

5 f. A final judgment or decree entered pursuant to the  
6 provisions of this chapter.

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

9 Sec. 29. NEW SECTION. 679A.129 UNIFORMITY OF APPLICATION  
10 AND CONSTRUCTION.

11 In applying and construing this chapter, consideration  
12 shall be given to the need to promote uniformity of the law  
13 among states that enact the uniform arbitration Act.

14 Sec. 30. NEW SECTION. 679A.130 RELATIONSHIP TO  
15 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

16 The provisions of this chapter governing the legal effect,  
17 validity, and enforceability of electronic records or  
18 electronic signatures, and of contracts performed with the use  
19 of such records or signatures, shall be construed to conform  
20 to the requirements of section 102 of the federal Electronic  
21 Signatures in Global and National Commerce Act, as codified at  
22 15 U.S.C. § 7001, 7002.

23 Sec. 31. Sections 679A.1 through 679A.19, Code 2005, are  
24 repealed.

25 Sec. 32. SAVINGS CLAUSE. Except as provided in section  
26 679A.103 as enacted in this Act, this Act does not affect an  
27 action or proceeding commenced or right accrued before this  
28 Act takes effect. Except as provided in section 679A.103 as  
29 enacted in this Act, an arbitration agreement made before the  
30 effective date of this Act is governed by chapter 679A, Code  
31 2005.

32 Sec. 33. SHORT TITLE. The chapter enacted in this Act  
33 shall be known and may be cited as the "Iowa Uniform  
34 Arbitration Act".

35

EXPLANATION

1 This bill relates to agreements to arbitrate in Iowa, by  
2 enacting the Iowa Uniform Arbitration Act.

3 The bill describes the effect and validity of agreements to  
4 arbitrate and how judicial relief in an arbitration proceeding  
5 may be obtained.

6 The bill specifically permits the district court, or an  
7 arbitrator, when selected, to order provisional remedies  
8 during the course of an arbitration.

9 The bill provides for consolidation of separate arbitration  
10 proceedings for multiple parties, multiple agreements, and  
11 complex litigation.

12 The bill establishes the grounds upon which an award may be  
13 vacated, which may include an arbitrator's lack of neutrality.  
14 The bill provides that a lack of neutrality may include a  
15 financial or personal interest in the outcome of the  
16 arbitration proceeding or an existing or past relationship  
17 with a party. The bill provides that a lack of disclosure may  
18 also be a ground for vacating an award, and provides for a  
19 presumption of partiality when nondisclosure occurs. Upon  
20 disclosure, a party has the opportunity to object to the  
21 appointment of an arbitrator intended to be neutral.

22 The bill further provides arbitrators with immunity from  
23 civil liability to the same extent as a judge of a court of  
24 this state acting in a judicial capacity.

25 The bill provides that an arbitrator has the express power  
26 to make summary dispositions of claims or issues under certain  
27 procedures, to hold prearbitration meetings or to use any  
28 other discovery process applicable to resolution of the  
29 dispute. The bill provides an arbitrator with the authority  
30 to grant punitive damages or other exemplary relief to the  
31 extent authorized by law in a civil action involving the same  
32 claim. The arbitrator may award attorney fees under the same  
33 standard.

34 The bill provides that most of the provisions of this Act  
35 may be varied or waived by agreement, but that certain

1 provisions may not be varied or waived.

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