

[First Reprint]

**SENATE, No. 602**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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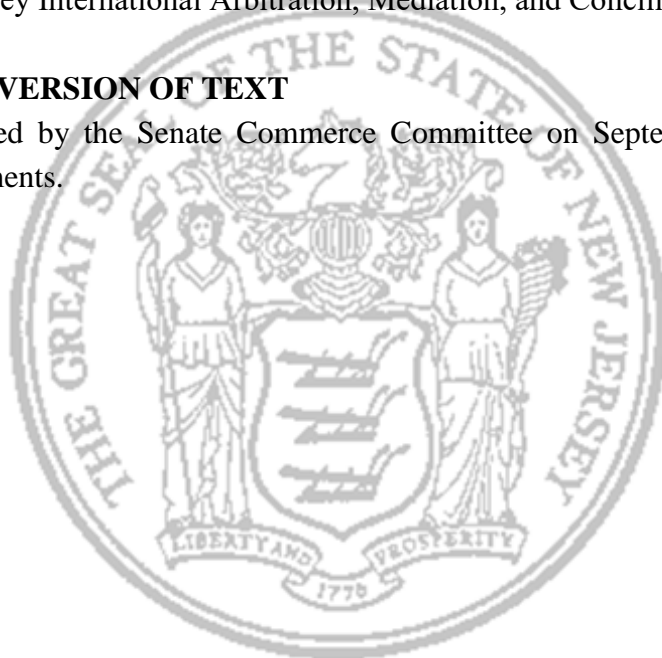
**Assemblywoman Downey**

**SYNOPSIS**

“New Jersey International Arbitration, Mediation, and Conciliation Act.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on September 8, 2016,  
with amendments.



**(Sponsorship Updated As Of: 12/20/2016)**

1 AN ACT concerning international arbitration and supplementing  
2 Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “New Jersey  
8 International Arbitration, Mediation, and Conciliation Act.”

9

10 2. The Legislature finds and declares that:

11 a. The State of New Jersey is in a unique position to benefit  
12 from the growth of international trade, and the State’s position in  
13 the region provides important opportunities for the State to  
14 participate in international business, trade, and commerce;

15 b. There will inevitably arise, from time to time, disagreements  
16 and disputes arising from international commercial transactions that  
17 are amenable to resolution through international arbitration,  
18 mediation, conciliation, and other forms of dispute resolution in lieu  
19 of international litigation;

20 c. It is the policy of this State to encourage the use of  
21 arbitration, mediation, and conciliation to reduce disputes arising  
22 out of international business, trade, commercial, and other  
23 relationships; and

24 d. It is declared that the objective of encouraging the  
25 development of New Jersey as an international center for the  
26 resolution of international business, commercial, trade, and other  
27 disputes be supported through the establishment of certain legal  
28 authorities, as set forth in this act.

29

30 3. As used in this act:

31 <sup>1</sup>【“Arbitration” means arbitration, mediation, conciliation, and  
32 other forms of dispute resolution as an alternative to international  
33 litigation.】

34 “Arbitral award” means an award signed by an arbitrator that  
35 may be the result of a settlement in arbitration, mediation,  
36 conciliation or other form of dispute resolution that involves the  
37 assistance of a neutral.<sup>1</sup>

38 “Center” means any center organized <sup>1</sup>【by a public research  
39 university】 as a non-profit entity<sup>1</sup>, whose principal purpose is to  
40 facilitate the resolution of international business, trade, commercial,  
41 and other disputes between persons by means of arbitration,  
42 mediation, conciliation, and other means as an alternative to  
43 litigation.

**EXPLANATION** – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted September 8, 2016.

1       “Person” means <sup>1</sup> [corporation, company, association, society,  
2 firm, partnership and joint stock company, as well as an individual,  
3 and includes any government, or agency, instrumentality, or  
4 subdivision thereof] an individual, corporation, business trust,  
5 estate, trust, partnership, limited liability company, association,  
6 joint venture, government, public corporation, or any other legal or  
7 commercial entity, including any government subdivision, agency,  
8 or instrumentality<sup>1</sup>.

9       “Resident of the United States” means a person who maintains  
10 sole residence within a state, possession, commonwealth, or  
11 territory of the United States or within the District of Columbia.

12       “Written undertaking to arbitrate” means a writing in which a  
13 person undertakes to submit a dispute to arbitration, without regard  
14 to whether that undertaking is sufficient to sustain a valid and  
15 enforceable contract or is subject to defenses. A written  
16 undertaking may be part of a contract, may be a separate writing,  
17 and may be contained in correspondence, telegrams, telexes, or any  
18 other form of written communication.

19  
20       4. a. This act shall apply only to the arbitration of disputes  
21 between:

22       (1) two or more persons at least one of whom is a nonresident of  
23 the United States; or

24       (2) two or more persons all of whom are residents of the United  
25 States if the dispute:

26       (a) involves property located outside the United States;

27       (b) relates to a contract which envisages enforcement or  
28 performance in whole or in part outside the United States; or

29       (c) bears some other relation to one or more foreign countries.

30       b. Notwithstanding subsection a. of this section, this act shall  
31 not apply to the arbitration of:

32       (1) any dispute pertaining to the ownership, use, development,  
33 or possession of, or a lien of record upon, real property located in  
34 this State, unless the parties expressly submit the resolution of that  
35 dispute to this act; or

36       (2) any dispute involving family or domestic relations law.

37       c. If, in any arbitration within the scope of this act, reference  
38 must be made, under applicable conflict of laws principles, to the  
39 arbitration law of this State, that reference shall be to this act.

40       d. This act shall apply to any arbitration within the scope of  
41 this act, without regard to whether the place of arbitration is within  
42 or without this State:

43       (1) if the written undertaking to arbitrate expressly provides that  
44 the laws of this State shall apply;

45       (2) in the absence of a choice of law provision applicable to the  
46 written undertaking to arbitrate, if that undertaking forms part of a  
47 contract the interpretation of which is to be governed by the laws of  
48 this State; or

1 (3) in any other case, any arbitral tribunal or other panel  
2 established pursuant to this act that decides under applicable  
3 conflict of laws principles that the arbitration shall be conducted in  
4 accordance with the laws of this State.

5  
6 5. Conducting arbitration in this State, or making a written  
7 agreement to arbitrate which provides for arbitration within this  
8 State subject to this act, shall constitute a consent by the parties to  
9 that arbitration or undertaking to the exercise of in personam  
10 jurisdiction by the courts of this State, but only for the purposes of  
11 that arbitration.

12  
13 6. a. A center shall not be considered a department, agency, or  
14 public instrumentality of this State, and shall not be subject to the  
15 laws of this State applying to departments, agencies, or public  
16 instrumentalities of this State <sup>1</sup>], except that a center shall be  
17 subject to all of the laws of this State pertaining to public  
18 institutions of higher education<sup>1</sup>.

19 b. A center shall permit the participants to an arbitration to  
20 select any body of rules and procedures for the conduct,  
21 administration, and facilitation of that proceeding, whether those  
22 rules and procedures have been prepared by private arbitral  
23 organizations, created by the participants themselves, or by the  
24 center.

25 c. A center shall have the authority to establish rules and  
26 procedures for the conduct, administration, and facilitation of the  
27 resolution of all disputes subject to this act.

28 d. A center shall have the authority to adopt rules providing,  
29 without limitation and by way of illustration only, for the  
30 establishment of arbitral tribunals or other panels, which shall  
31 provide that arbitral tribunals or other panels may:

32 (1) determine the relevance and materiality of the evidence  
33 without the need to follow formal rules of evidence;

34 (2) be able to utilize any lawful methods that it deems  
35 appropriate to obtain evidence additional to that produced by the  
36 parties;

37 (3) issue <sup>1</sup>][summons] subpoenas<sup>1</sup> or other <sup>1</sup>][demands]  
38 requests<sup>1</sup> for the attendance of witnesses or for the production of  
39 books, records, documents, and other evidence;

40 (4) be empowered to administer oaths, order depositions to be  
41 taken or other discovery obtained <sup>1</sup>or produced<sup>1</sup>, without regard to  
42 the place where the witness or other evidence is located, and  
43 appoint one or more experts to report to it;

44 (5) fix any fees for the attendance of witnesses it deems  
45 appropriate; and

1 (6) make awards of interest, reasonable attorney's fees and costs  
2 of arbitration as agreed to in writing by the parties, or in the  
3 absence of an agreement, as it deems appropriate.

4 e. In <sup>1</sup>~~exercising~~ assuring the exercise of<sup>1</sup> the powers  
5 conferred <sup>1</sup>~~upon it~~<sup>1</sup> by this act, <sup>1</sup>~~an arbitral tribunal or other~~  
6 ~~panel~~ the participants to an arbitration<sup>1</sup> may apply for assistance  
7 from any court <sup>1</sup>~~, tribunal, or governmental authority in any~~ of  
8 competent<sup>1</sup> jurisdiction. Any application to a court hereunder shall  
9 be made and heard in a summary way in the manner provided for  
10 the making and hearing of motions, except as otherwise herein  
11 expressly provided.

12  
13 7. An arbitral tribunal or panel established pursuant to section  
14 6 of this act may <sup>1</sup>~~summon~~ subpoena<sup>1</sup> in writing any person to  
15 attend before it as a witness and to bring books, papers, records, and  
16 documents. The <sup>1</sup>~~summons~~ subpoena<sup>1</sup> shall issue in the name of  
17 the arbitral tribunal or panel and be signed by a majority of the  
18 tribunal or panel, shall be directed to the person being summoned,  
19 and shall be served in the same manner as subpoenas to testify  
20 before a court of this State. If any person <sup>1</sup>~~summoned~~  
21 subpoenaed<sup>1</sup> to testify refuses or neglects to obey the <sup>1</sup>~~summons~~  
22 subpoena<sup>1</sup>, upon petition <sup>1</sup>~~the Superior Court~~ a court of  
23 competent jurisdiction<sup>1</sup> may compel the attendance of that person  
24 before the arbitral tribunal or panel, or punish that person for  
25 contempt in the same manner now provided for the attendance of  
26 witnesses or punishment in a court of this State. <sup>1</sup>~~The arbitral panel~~  
27 may also consider and take action within the arbitration, as deemed  
28 appropriate by the arbitral tribunal, in response to non-attendance  
29 by any subpoenaed person.<sup>1</sup>

30  
31 8. a. Arbitral <sup>1</sup>~~or other~~<sup>1</sup> awards <sup>1</sup>~~or settlements~~<sup>1</sup> issued  
32 pursuant to this act by a center shall be enforced by <sup>1</sup>~~the courts of~~  
33 ~~this State~~ any court of competent jurisdiction<sup>1</sup> as permitted by law  
34 and consistent with the Federal Arbitration Act (9 U.S.C. s.1 et  
35 seq.), and the enforcement provisions of the Convention on the  
36 Recognition and Enforcement of Foreign Arbitral Awards, as  
37 implemented by the Federal Arbitration Act, except as provided in  
38 subsection b. of this section.

39 b. If the parties specifically submit to jurisdiction under this act  
40 pursuant to section 4 of this act, the center may require those parties  
41 residing in countries not signatories to the Convention on the  
42 Recognition and Enforcement of Foreign Arbitral Awards, as  
43 implemented by the Federal Arbitration Act, and not having  
44 sufficient assets otherwise within the jurisdiction of the courts of  
45 this State, to post any bonds or other security as the center shall  
46 deem appropriate to assure reasonable likelihood of enforcement of

1 any award or other relief ultimately ordered by the center in the  
2 proceeding.

3

4 9. This act shall take effect on the 90th day next following  
5 enactment.