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**SUBSTITUTE HOUSE BILL 1070**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Goodman, Rodne, and Jinkins)

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

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

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

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

11 (3) An arbitration is international if:

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

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

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

19 (ii) Any place where a substantial part of the obligations of the  
20 commercial relationship is to be performed or the place with which  
21 the subject matter of the dispute is most closely connected; or

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

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

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

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

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

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

14 (1) For the purpose of this chapter:

15 (a) "Arbitration" means any arbitration whether or not  
16 administered by a permanent arbitral institution.

17 (b) "Arbitral tribunal" means a sole arbitrator or a panel of  
18 arbitrators.

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

22 (i) A transaction for the supply or exchange of goods or  
23 services;

24 (ii) A distribution agreement;

25 (iii) A commercial representation or agency;

26 (iv) An exploitation agreement or concession;

27 (v) A joint venture or other related form of industrial or  
28 business cooperation;

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

31 (vii) Construction;

32 (viii) Insurance;

33 (ix) Licensing;

34 (x) Factoring;

35 (xi) Leasing;

36 (xii) Consulting;

37 (xiii) Engineering;

38 (xiv) Financing;

39 (xv) Banking;

- 1 (xvi) The transfer of data or technology;
- 2 (xvii) Intellectual or industrial property, including trademarks,
- 3 patents, copyrights, and software programs; and
- 4 (xviii) Professional services.

5 (d) "Court" means a body or organ of the judicial system of this  
6 state.

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

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

15 (4) Where a provision of this chapter, other than in sections  
16 36(1) and 43(2)(a) of this act, refers to a claim, it also applies to  
17 a counter-claim, and where it refers to a defense, it also applies to  
18 a defense to such counter-claim.

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

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

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

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

29 NEW SECTION. **Sec. 3.** INTERNATIONAL ORIGIN AND GENERAL  
30 PRINCIPLES. (1) In the interpretation of this chapter, regard is to  
31 be had to its international origin and to the need to promote  
32 uniformity in its application and the observance of good faith.

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

36 NEW SECTION. **Sec. 4.** RECEIPT OF WRITTEN COMMUNICATIONS. (1)  
37 Unless otherwise agreed by the parties:

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

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

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

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

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

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

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

34 (3) In any case not covered by subsections (1) or (2) of this  
35 section, the functions referred to in sections 12 (3) and (4), 14(3),  
36 15, 17(3), and 45(2) of this act shall be performed in any county in  
37 the state of Washington.

1           NEW SECTION.       **Sec. 8.**       DEFINITION AND FORM OF ARBITRATION

2 AGREEMENT. (1) For the purposes of this chapter, "arbitration  
3 agreement" is an agreement by the parties to submit to arbitration  
4 all or certain disputes which have arisen or which may arise between  
5 them in respect of a defined legal relationship, whether contractual  
6 or not. An arbitration agreement may be in the form of an arbitration  
7 clause in a contract or in the form of a separate agreement.

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

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

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

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

24           (6) The reference in a contract to any document containing an  
25 arbitration clause constitutes an arbitration agreement in writing,  
26 provided that the reference is such as to make that clause part of  
27 the contract.

28           NEW SECTION.       **Sec. 9.**       ARBITRATION AGREEMENT AND SUBSTANTIVE

29 CLAIM BEFORE COURT. (1) A court before which an action is brought in  
30 a matter which is the subject of an arbitration agreement shall, if a  
31 party so requests not later than when submitting the party's first  
32 statement on the substance of the dispute, refer the parties to  
33 arbitration unless it finds that the agreement is null and void,  
34 inoperative, or incapable of being performed.

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

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

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

8        (2) Failing such determination, the number of arbitrators shall  
9 be three.

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

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

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

21       (3) Failing such agreement:

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

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

34       (4) Where, under an appointment procedure agreed upon by the  
35 parties:

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

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

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

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

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

16 NEW SECTION. **Sec. 13.** GROUNDS FOR CHALLENGE. (1) When a person  
17 is approached in connection with the person's possible appointment as  
18 an arbitrator, the person shall disclose any circumstances likely to  
19 give rise to justifiable doubts as to the person's impartiality or  
20 independence. An arbitrator, from the time of the arbitrator's  
21 appointment and throughout the arbitral proceedings, shall without  
22 delay disclose any such circumstances to the parties unless they have  
23 already been informed of them by the arbitrator.

24 (2) An arbitrator may be challenged only if circumstances exist  
25 that give rise to justifiable doubts as to the arbitrator's  
26 impartiality or independence, or if the arbitrator does not possess  
27 qualifications agreed to by the parties. A party may challenge an  
28 arbitrator appointed by the party, or in whose appointment the party  
29 has participated, only for reasons of which the party becomes aware  
30 after the appointment has been made.

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

34 (2) Failing such agreement, a party who intends to challenge an  
35 arbitrator shall, within fifteen days after becoming aware of the  
36 constitution of the arbitral tribunal or after becoming aware of any  
37 circumstance referred to in section 13(2) of this act, send a written  
38 statement of the reasons for the challenge to the arbitral tribunal.

1 Unless the challenged arbitrator withdraws from the arbitrator's  
2 office or the other party agrees to the challenge, the arbitral  
3 tribunal shall decide on the challenge.

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

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

21 (2) If, under this section or section 14(2) of this act, an  
22 arbitrator withdraws from the arbitrator's office or a party agrees  
23 to the termination of the mandate of an arbitrator, this does not  
24 imply acceptance of the validity of any ground referred to in this  
25 section or section 13(2) of this act.

26 NEW SECTION. **Sec. 16.** APPOINTMENT OF SUBSTITUTE ARBITRATOR.  
27 Where the mandate of an arbitrator terminates under section 14 or 15  
28 of this act or because of the arbitrator's withdrawal from office for  
29 any other reason or because of the revocation of the arbitrator's  
30 mandate by agreement of the parties or in any other case of  
31 termination of the arbitrator's mandate, a substitute arbitrator  
32 shall be appointed according to the rules that were applicable to the  
33 appointment of the arbitrator being replaced.

34 NEW SECTION. **Sec. 17.** COMPETENCE OF ARBITRAL TRIBUNAL TO RULE  
35 ON ITS OWN JURISDICTION. (1) The arbitral tribunal may rule on its  
36 own jurisdiction, including any objections with respect to the  
37 existence or validity of the arbitration agreement. For that purpose,

1 an arbitration clause which forms part of a contract shall be treated  
2 as an agreement independent of the other terms of the contract. A  
3 decision by the arbitral tribunal that the contract is null and void  
4 shall not entail *ipso jure* the invalidity of the arbitration clause.

5 (2) A plea that the arbitral tribunal does not have jurisdiction  
6 shall be raised not later than the submission of the statement of  
7 defense. A party is not precluded from raising such a plea by the  
8 fact that the party has appointed, or participated in the appointment  
9 of, an arbitrator. A plea that the arbitral tribunal is exceeding the  
10 scope of its authority shall be raised as soon as the matter alleged  
11 to be beyond the scope of its authority is raised during the arbitral  
12 proceedings. The arbitral tribunal may, in either case, admit a later  
13 plea if it considers the delay justified.

14 (3) The arbitral tribunal may rule on a plea referred to in  
15 subsection (2) of this section either as a preliminary question or in  
16 an award on the merits. If the arbitral tribunal rules as a  
17 preliminary question that it has jurisdiction, any party may request,  
18 within thirty days after having received notice of that ruling, the  
19 court specified in section 7 of this act to decide the matter, which  
20 decision shall be subject to no appeal. While such a request is  
21 pending, the arbitral tribunal may continue the arbitral proceedings  
22 and make an award.

23 NEW SECTION. **Sec. 18.** POWER OF ARBITRAL TRIBUNAL TO ORDER  
24 INTERIM MEASURES. (1) Unless otherwise agreed by the parties, the  
25 arbitral tribunal may, at the request of a party, grant interim  
26 measures.

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

31 (a) Maintain or restore the status quo pending determination of  
32 the dispute;

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

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

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

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

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

4        (a) Harm not adequately reparable by an award of damages is  
5    likely to result if the measure is not ordered, and such harm  
6    substantially outweighs the harm that is likely to result to the  
7    party against whom the measure is directed if the measure is granted;  
8    and

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

13        (2) With regard to a request for an interim measure under section  
14   18(2)(d) of this act, the requirements in subsection (1)(a) and (b)  
15   of this section shall apply only to the extent the tribunal considers  
16   appropriate.

17        NEW SECTION.    **Sec. 20.**    APPLICATION FOR PRELIMINARY ORDERS AND  
18   CONDITIONS FOR GRANTING PRELIMINARY ORDERS. (1) Unless otherwise  
19   agreed by the parties, a party may, without notice to any other  
20   party, make a request for an interim measure together with an  
21   application for a preliminary order directing a party not to  
22   frustrate the purpose of the interim measure requested.

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

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

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

32    (1) Immediately after the arbitral tribunal has made a determination  
33   in respect of an application for a preliminary order, the arbitral  
34   tribunal shall give notice to all parties of the request for the  
35   interim measure, the application for the preliminary order, the  
36   preliminary order, if any, and all other communications, including by  
37   indicating the content of any oral communication, between any party  
38   and the arbitral tribunal in relation thereto.

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

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

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

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

15 NEW SECTION. **Sec. 22.** MODIFICATION, SUSPENSION, TERMINATION.  
16 The arbitral tribunal may modify, suspend, or terminate an interim  
17 measure or a preliminary order it has granted upon application of any  
18 party or, in exceptional circumstances and upon prior notice to the  
19 parties, on the arbitral tribunal's own initiative.

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

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

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

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

1        NEW SECTION.    **Sec. 25.**    COSTS AND DAMAGES. The party requesting  
2 an interim measure or applying for a preliminary order shall be  
3 liable for any costs and damages caused by the measure or the order  
4 to any party if the arbitral tribunal later determines that, in the  
5 circumstances, the measure or the order should not have been granted.  
6 The arbitral tribunal may award such costs and damages at any point  
7 during the proceedings.

8        NEW SECTION.    **Sec. 26.**    RECOGNITION AND ENFORCEMENT. (1) An  
9 interim measure issued by an arbitral tribunal shall be recognized as  
10 binding and, unless otherwise provided by the arbitral tribunal,  
11 enforced upon application to the superior court, irrespective of the  
12 country in which it was issued, subject to the provisions of section  
13 27 of this act.

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

17        (3) The court of the state where recognition or enforcement is  
18 sought may, if it considers it proper, order the requesting party to  
19 provide appropriate security if the arbitral tribunal has not already  
20 made a determination with respect to security or where such a  
21 decision is necessary to protect the rights of third parties.

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

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

27        (i) Such refusal is warranted on the grounds set forth in section  
28 47(1)(a) (i), (ii), (iii), or (iv) of this act;

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

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

36        (b) If the court finds that:

37        (i) The interim measure is incompatible with the powers conferred  
38 upon the court unless the court decides to reformulate the interim

1 measure to the extent necessary to adapt it to its own powers and  
2 procedures for the purposes of enforcing that interim measure and  
3 without modifying its substance; or

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

7 (2) Any determination made by the court on any ground in  
8 subsection (1) of this section shall be effective only for the  
9 purposes of the application to recognize and enforce the interim  
10 measure. The court where recognition or enforcement is sought shall  
11 not, in making that determination, undertake a review of the  
12 substance of the interim measure.

13 NEW SECTION. **Sec. 28.** COURT ORDERED INTERIM MEASURES. A court  
14 shall have the same power of issuing an interim measure in relation  
15 to arbitration proceedings, irrespective of whether their place is in  
16 the territory of this state, as it has in relation to proceedings in  
17 courts. The court shall exercise such power in accordance with its  
18 own procedures in consideration of the specific features of  
19 international arbitration.

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

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

27 (2) Failing such agreement, the arbitral tribunal may, subject to  
28 the provisions of this chapter, conduct the arbitration in such  
29 manner as it considers appropriate. The power conferred upon the  
30 arbitral tribunal includes the power to determine the admissibility,  
31 relevance, materiality, and weight of any evidence.

32 NEW SECTION. **Sec. 31.** PLACE OF ARBITRATION. (1) The parties are  
33 free to agree on the place of arbitration. Failing such agreement,  
34 the place of arbitration shall be determined by the arbitral tribunal  
35 having regard to the circumstances of the case, including the  
36 convenience of the parties.

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

6 NEW SECTION. **Sec. 32.** COMMENCEMENT OF ARBITRAL PROCEEDINGS.  
7 Unless otherwise agreed by the parties, the arbitral proceedings in  
8 respect of a particular dispute commence on the date on which a  
9 request for that dispute to be referred to arbitration is received by  
10 the respondent.

11 NEW SECTION. **Sec. 33.** LANGUAGE. (1) The parties are free to  
12 agree on the language or languages to be used in the arbitral  
13 proceedings. Failing such agreement, the arbitral tribunal shall  
14 determine the language or languages to be used in the proceedings.  
15 This agreement or determination, unless otherwise specified therein,  
16 shall apply to any written statement by a party, any hearing, and any  
17 award, decision, or other communication by the arbitral tribunal.

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

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

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

35 NEW SECTION. **Sec. 35.** HEARINGS AND WRITTEN PROCEEDINGS. (1)  
36 Subject to any contrary agreement by the parties, the arbitral

1 tribunal shall decide whether to hold oral hearings for the  
2 presentation of evidence or for oral argument, or whether the  
3 proceedings shall be conducted on the basis of documents and other  
4 materials. However, unless the parties have agreed that no hearings  
5 shall be held, the arbitral tribunal shall hold such hearings at an  
6 appropriate stage of the proceedings, if so requested by a party.

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

10 (3) All statements, documents, or other information supplied to  
11 the arbitral tribunal by one party shall be communicated to the other  
12 party. Any expert report or evidentiary document on which the  
13 arbitral tribunal may rely in making its decision shall be  
14 communicated to the parties.

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

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

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

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

27 NEW SECTION. **Sec. 37.** EXPERT APPOINTED BY ARBITRAL TRIBUNAL.

28 (1) Unless otherwise agreed by the parties, the arbitral tribunal:

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

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

34 (2) Unless otherwise agreed by the parties, if a party so  
35 requests or if the arbitral tribunal considers it necessary, the  
36 expert shall, after delivery of the expert's written or oral report,  
37 participate in a hearing where the parties have the opportunity to

1 put questions to the expert and to present expert witnesses in order  
2 to testify on the points at issue.

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

8 (2) When the parties to two or more arbitration agreements have  
9 agreed in their respective arbitration agreements or otherwise, the  
10 superior court may, on application by one party with the consent of  
11 all other parties to those arbitration agreements, do one or more of  
12 the following:

13 (a) Order the arbitration proceedings arising out of those  
14 arbitration agreements to be consolidated on terms the court  
15 considers just and necessary;

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

19 (c) Where the parties cannot agree on any other matter necessary  
20 to conduct the consolidated arbitration, make any other order it  
21 considers necessary.

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

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

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

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

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

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

2    In arbitral proceedings with more than one arbitrator, any decision  
3    of the arbitral tribunal shall be made, unless otherwise agreed by  
4    the parties, by a majority of all its members. However, questions of  
5    procedure may be decided by a presiding arbitrator, if so authorized  
6    by the parties or all members of the arbitral tribunal.

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

8    proceedings, the parties settle the dispute, the arbitral tribunal  
9    shall terminate the proceedings and, if requested by the parties and  
10   not objected to by the arbitral tribunal, record the settlement in  
11   the form of an arbitral award on agreed terms.

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

16        NEW SECTION.    **Sec. 42.**    FORM AND CONTENTS OF AWARD. (1) The award

17   shall be made in writing and shall be signed by the arbitrator or  
18   arbitrators. In arbitral proceedings with more than one arbitrator,  
19   the signatures of the majority of all members of the arbitral  
20   tribunal shall suffice, provided that the reason for any omitted  
21   signature is stated.

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

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

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

31        NEW SECTION.    **Sec. 43.**    TERMINATION OF PROCEEDINGS. (1) The

32   arbitral proceedings are terminated by the final award or by an order  
33   of the arbitral tribunal in accordance with subsection (2) of this  
34   section.

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

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

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

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

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

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

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

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

22 (c) If the arbitral tribunal considers the request to be  
23 justified, it shall make the correction or give the interpretation  
24 within thirty days of receipt of the request. The interpretation  
25 shall form part of the award.

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

29 (3) Unless otherwise agreed by the parties, a party, with notice  
30 to the other party, may request, within thirty days of receipt of the  
31 award, the arbitral tribunal to make an additional award as to claims  
32 presented in the arbitral proceedings but omitted from the award. If  
33 the arbitral tribunal considers the request to be justified, it shall  
34 make the additional award within sixty days.

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

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

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

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

8        (a) The party making the application furnishes proof that:

9        (i) A party to the arbitration agreement referred to in section 8  
10 of this act was under some incapacity, or the said agreement is not  
11 valid under the law to which the parties have subjected it or,  
12 failing any indication thereon, under the law of this state;

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

16        (iii) The award deals with a dispute not contemplated by or not  
17 falling within the terms of the submission to arbitration, or  
18 contains decisions on matters beyond the scope of the submission to  
19 arbitration, provided that, if the decisions on matters submitted to  
20 arbitration can be separated from those not so submitted, only that  
21 part of the award which contains decisions on matters not submitted  
22 to arbitration may be set aside; or

23        (iv) The composition of the arbitral tribunal or the arbitral  
24 procedure was not in accordance with the agreement of the parties,  
25 unless such agreement was in conflict with a provision of this  
26 chapter from which the parties cannot derogate, or, failing such  
27 agreement, was not in accordance with this chapter; or

28        (b) The court finds that:

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

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

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

38        (4) The court, when asked to set aside an award, may, where  
39 appropriate and so requested by a party, suspend the setting aside  
40 proceedings for a period of time determined by it in order to give

1 the arbitral tribunal an opportunity to resume the arbitral  
2 proceedings or to take such other action as in the arbitral  
3 tribunal's opinion will eliminate the grounds for setting aside.

4 NEW SECTION. **Sec. 46.** RECOGNITION AND ENFORCEMENT. (1) An  
5 arbitral award, irrespective of the country in which it was made,  
6 shall be recognized as binding and, upon application in writing to  
7 the superior court, shall be enforced subject to the provisions of  
8 this section and of section 47 of this act.

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

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

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

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

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

28 (iii) The award deals with a dispute not contemplated by or not  
29 falling within the terms of the submission to arbitration, or  
30 contains decisions on matters beyond the scope of the submission to  
31 arbitration, provided that, if the decisions on matters submitted to  
32 arbitration can be separated from those not so submitted, that part  
33 of the award which contains decisions on matters submitted to  
34 arbitration may be recognized and enforced;

35 (iv) The composition of the arbitral tribunal or the arbitral  
36 procedure was not in accordance with the agreement of the parties,  
37 or, failing such agreement, was not in accordance with the law of the  
38 country where the arbitration took place; or

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

4 (b) The court finds that:

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

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

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

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

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