

**ASSEMBLY, No. 1138**

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**STATE OF NEW JERSEY**

**217th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman JAMEL C. HOLLEY**

**District 20 (Union)**

**Assemblyman NICHOLAS CHIARAVALLOTI**

**District 31 (Hudson)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 10/14/2016)**

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       “Arbitration” means arbitration, mediation, conciliation, and  
32       other forms of dispute resolution as an alternative to international  
33       litigation.

34       “Center” means any center organized by a public research  
35       university, whose principal purpose is to facilitate the resolution of  
36       international business, trade, commercial, and other disputes  
37       between persons by means of arbitration, mediation, conciliation,  
38       and other means as an alternative to litigation.

39       “Person” means corporation, company, association, society, firm,  
40       partnership and joint stock company, as well as an individual, and  
41       includes any government, or agency, instrumentality, or subdivision  
42       thereof.

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

46       “Written undertaking to arbitrate” means a writing in which a  
47       person undertakes to submit a dispute to arbitration, without regard  
48       to whether that undertaking is sufficient to sustain a valid and

1 enforceable contract or is subject to defenses. A written  
2 undertaking may be part of a contract, may be a separate writing,  
3 and may be contained in correspondence, telegrams, telexes, or any  
4 other form of written communication.

5

6 4. a. This act shall apply only to the arbitration of disputes  
7 between:

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

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

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

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

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

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

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

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

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

26 d. This act shall apply to any arbitration within the scope of  
27 this act, without regard to whether the place of arbitration is within  
28 or without this State:

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

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

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

39

40 5. Conducting arbitration in this State, or making a written  
41 agreement to arbitrate which provides for arbitration within this  
42 State subject to this act, shall constitute a consent by the parties to  
43 that arbitration or undertaking to the exercise of in personam  
44 jurisdiction by the courts of this State, but only for the purposes of  
45 that arbitration.

46

47 6. a. A center shall not be considered a department, agency, or  
48 public instrumentality of this State, and shall not be subject to the

1 laws of this State applying to departments, agencies, or public  
2 instrumentalities of this State, except that a center shall be subject  
3 to all of the laws of this State pertaining to public institutions of  
4 higher education.

5 b. A center shall permit the participants to an arbitration to  
6 select any body of rules and procedures for the conduct,  
7 administration, and facilitation of that proceeding, whether those  
8 rules and procedures have been prepared by private arbitral  
9 organizations, created by the participants themselves, or by the  
10 center.

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

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

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

20 (2) be able to utilize any lawful methods that it deems  
21 appropriate to obtain evidence additional to that produced by the  
22 parties;

23 (3) issue summons or other demands for the attendance of  
24 witnesses or for the production of books, records, documents, and  
25 other evidence;

26 (4) be empowered to administer oaths, order depositions to be  
27 taken or other discovery obtained, without regard to the place where  
28 the witness or other evidence is located, and appoint one or more  
29 experts to report to it;

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

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

35 e. In exercising the powers conferred upon it by this act, an  
36 arbitral tribunal or other panel may apply for assistance from any  
37 court, tribunal, or governmental authority in any jurisdiction. Any  
38 application to a court hereunder shall be made and heard in a  
39 summary way in the manner provided for the making and hearing of  
40 motions, except as otherwise herein expressly provided.

41  
42 7. An arbitral tribunal or panel established pursuant to section  
43 6 of this act may summon in writing any person to attend before it  
44 as a witness and to bring books, papers, records, and documents.  
45 The summons shall issue in the name of the arbitral tribunal or  
46 panel and be signed by a majority of the tribunal or panel, shall be  
47 directed to the person being summoned, and shall be served in the  
48 same manner as subpoenas to testify before a court of this State. If

1 any person summoned to testify refuses or neglects to obey the  
2 summons, upon petition the Superior Court may compel the  
3 attendance of that person before the arbitral tribunal or panel, or  
4 punish that person for contempt in the same manner now provided  
5 for the attendance of witnesses or punishment in a court of this  
6 State.

7  
8 8. a. Arbitral or other awards or settlements issued pursuant to  
9 this act by a center shall be enforced by the courts of this State as  
10 permitted by law and consistent with the Federal Arbitration Act  
11 (9 U.S.C. s.1 et seq.), and the enforcement provisions of the  
12 Convention on the Recognition and Enforcement of Foreign  
13 Arbitral Awards, as implemented by the Federal Arbitration Act,  
14 except as provided in subsection b. of this section.

15 b. If the parties specifically submit to jurisdiction under this act  
16 pursuant to section 4 of this act, the center may require those parties  
17 residing in countries not signatories to the Convention on the  
18 Recognition and Enforcement of Foreign Arbitral Awards, as  
19 implemented by the Federal Arbitration Act, and not having  
20 sufficient assets otherwise within the jurisdiction of the courts of  
21 this State, to post any bonds or other security as the center shall  
22 deem appropriate to assure reasonable likelihood of enforcement of  
23 any award or other relief ultimately ordered by the center in the  
24 proceeding.

25  
26 9. This act shall take effect on the 90th day next following  
27 enactment.

## 30 STATEMENT

31  
32 This bill, the “New Jersey International Arbitration, Mediation,  
33 and Conciliation Act,” establishes a process for the facilitation and  
34 recognition of international alternative dispute resolution in the  
35 State of New Jersey.

36 The bill allows public research universities in the State to  
37 organize centers, whose principal purpose is to facilitate the  
38 resolution of international business, trade, commercial, and other  
39 disputes between persons by means of arbitration, mediation,  
40 conciliation, and other means as an alternative to the resort to  
41 litigation.

42 As defined in the bill, “arbitration” means arbitration, mediation,  
43 conciliation, and other forms of dispute resolution as an alternative  
44 to international litigation.

45 The bill applies to the arbitration of disputes between: two or  
46 more persons at least one of whom is a nonresident of the United  
47 States; or two or more persons all of whom are residents of the  
48 United States if the dispute: (1) involves property located outside

1 the United States; (2) relates to a contract which envisages  
2 enforcement or performance in whole or in part outside the United  
3 States; or (3) bears some other relation to one or more foreign  
4 countries. The bill does not apply to any dispute pertaining to real  
5 property located in this State, unless the parties expressly submit to  
6 the resolution of that dispute, or to any dispute involving family or  
7 domestic relations law. The bill provides that it may apply to  
8 arbitrations that take place outside of the State, if the parties to  
9 those arbitrations expressly agree that the laws of this State should  
10 apply.

11 The bill provides that conducting arbitration in this State, or  
12 making a written agreement to arbitrate which provides for  
13 arbitration within this State, shall constitute a consent by the parties  
14 to the exercise of in personam jurisdiction by the courts of this  
15 State, but only for the purposes of that arbitration.

16 Under the bill, a center shall not be considered a department,  
17 agency, or public instrumentality of this State, and shall not be  
18 subject to the laws of this State applying to departments, agencies,  
19 or public instrumentalities of this State, except that a center shall be  
20 subject to all of the laws of this State pertaining to public  
21 institutions of higher education.

22 The bill provides that centers must permit the participants to an  
23 arbitration to select any body of rules and procedures for the  
24 conduct, administration, and facilitation of that proceeding, whether  
25 those rules and procedures have been prepared by private arbitral  
26 organizations, created by the participants themselves, or by the  
27 center. Centers have the authority to establish rules and procedures  
28 for the conduct, administration, and facilitation of the resolution of  
29 all disputes subject to the bill.

30 The bill also provides that centers have the authority to adopt  
31 rules providing, without limitation and by way of illustration only,  
32 for the establishment of arbitral tribunals or other panels, which in  
33 turn have the authority to establish certain rules and procedures.  
34 Arbitral tribunals or other panels also have the power to summon in  
35 writing any person to attend before it as a witness and to bring  
36 books, papers, records, and documents.

37 Arbitral or other awards or settlements issued pursuant to the bill  
38 by a center are to be enforced by the courts of this State as  
39 permitted by law and consistent with the Federal Arbitration Act  
40 and the enforcement provisions of the Convention on the  
41 Recognition and Enforcement of Foreign Arbitral Awards, as  
42 implemented by the Federal Arbitration Act. If the parties  
43 specifically submit to jurisdiction under the bill, a center may  
44 require those parties residing in countries not signatories to the  
45 Convention on the Recognition and Enforcement of Foreign  
46 Arbitral Awards and not having sufficient assets otherwise within  
47 the jurisdiction of the courts of this State, to post bonds or other  
48 security.