

ASSEMBLY, No. 351

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman SEAN T. KEAN

District 30 (Monmouth and Ocean)

SYNOPSIS

Prohibits person appointed as arbitrator who subsequently serves as mediator from resuming the role of arbitrator unless the parties agree.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning arbitration and mediation and amending
2 P.L.2003, c.95.

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

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7 1. Section 11 of P.L.2003, c.95 (C.2A:23B-11) is amended to
8 read as follows:

9 11. Appointment of Arbitrator; Service as a Neutral Arbitrator.

10 a. If the parties to an agreement to arbitrate agree on a method
11 for appointing an arbitrator, that method shall be followed, unless
12 the method fails. If the parties have not agreed on a method, the
13 agreed method fails, or an arbitrator appointed fails or is unable to
14 act and a successor has not been appointed, the court, on application
15 of a party to the arbitration proceeding, shall appoint the arbitrator.
16 An arbitrator so appointed has all the powers of an arbitrator
17 designated in the agreement to arbitrate or appointed pursuant to the
18 agreed method.

19 b. An individual who has a known, direct, and material interest
20 in the outcome of the arbitration proceeding or a known, existing,
21 and substantial relationship with a party may not serve as an
22 arbitrator required by an agreement to be neutral.

23 c. An individual who has a known, direct, and material interest
24 in the outcome of the arbitration proceeding or a known, existing,
25 and substantial relationship with a party may not serve as a party
26 arbitrator if such information has not been disclosed pursuant to
27 section 12 of this act.

28 d. An individual appointed as a party arbitrator may be
29 predisposed toward the appointing party. From and after the
30 commencement of an arbitration, an arbitrator shall act in good
31 faith and exercise the arbitrator's responsibilities in a manner
32 consistent with the authority placed in the arbitrator by the courts of
33 this State and this act.

34 e. An individual appointed as arbitrator in a matter may assume
35 the role of mediator in that matter, however, an arbitrator who
36 assumes the role of mediator may not, thereafter, serve as arbitrator
37 in that matter unless an agreement by the parties to the arbitration
38 proceeding permits the arbitrator to resume the role of arbitrator.

39 (cf: P.L.2003, c.95, s.11)

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41 2. Section 23 of P.L.2003, c.95 (C.2A:23B-23) is amended to
42 read as follows:

43 23. Vacating Award.

44 a. Upon the filing of a summary action with the court by a
45 party to an arbitration proceeding, the court shall vacate an award

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.

1 made in the arbitration proceeding if:

2 (1) the award was procured by corruption, fraud, or other undue
3 means;

4 (2) the court finds evident partiality by an arbitrator; corruption
5 by an arbitrator; or misconduct by an arbitrator prejudicing the
6 rights of a party to the arbitration proceeding;

7 (3) an arbitrator refused to postpone the hearing upon showing
8 of sufficient cause for postponement, refused to consider evidence
9 material to the controversy, or otherwise conducted the hearing
10 contrary to section 15 of this act, so as to substantially prejudice the
11 rights of a party to the arbitration proceeding;

12 (4) an arbitrator exceeded the arbitrator's powers;

13 (5) there was no agreement to arbitrate, unless the person
14 participated in the arbitration proceeding without raising the
15 objection pursuant to subsection c. of section 15 of this act not later
16 than the beginning of the arbitration hearing; **[or]**

17 (6) the arbitration was conducted without proper notice of the
18 initiation of an arbitration as required in section 9 of this act so as
19 to substantially prejudice the rights of a party to the arbitration
20 proceeding; or

21 (7) the award was entered by a person who, following
22 appointment as an arbitrator, subsequently assumed the role of
23 mediator and then subsequently resumed the role of arbitrator and
24 the award was entered after the person resumed the role of
25 arbitrator.

26 b. A summary action pursuant to this section shall be filed
27 within 120 days after the aggrieved party receives notice of the
28 award pursuant to section 19 of this act or within 120 days after the
29 aggrieved party receives notice of a modified or corrected award
30 pursuant to section 20 of this act, unless the aggrieved party alleges
31 that the award was procured by corruption, fraud, or other undue
32 means, in which case the summary action shall be commenced
33 within 120 days after the ground is known or by the exercise of
34 reasonable care would have been known by the aggrieved party.

35 c. If the court vacates an award on a ground other than that set
36 forth in paragraph (5) of subsection a. of this section, it may order a
37 rehearing. If the award is vacated on a ground stated in paragraph
38 (1) **[or]**, (2) or (7) of subsection a. of this section, the rehearing
39 shall be before a new arbitrator. If the award is vacated on a ground
40 stated in paragraph (3), (4), or (6) of subsection a. of this section,
41 the rehearing may be before the arbitrator who made the award or
42 the arbitrator's successor. The arbitrator shall render the decision in
43 the rehearing within the same time as that provided in subsection b.
44 of section 19 of this act for an award.

45 d. If the court denies an application to vacate an award, it shall
46 confirm the award unless an application to modify or correct the
47 award is pending.

48 (cf: P.L.2003, c.95, s.23)

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill clarifies that an arbitrator appointed under P.L.2003,
7 c.95 (C.2A:23B-1 et seq.) who then assumes the role of mediator
8 may not then resume the role of arbitrator unless the parties agree.

9 The current statute is silent as to whether an arbitrator who is
10 appointed pursuant to the arbitration law may assume the role of
11 mediator and then subsequently resume the role of arbitrator. The
12 Appellate Division of the Superior Court specified in Minkowitz v.
13 Israeli, 433 N.J. Super. 111 (App. Div. 2013) that parties could
14 voluntarily enter into an agreement which permits a person who is
15 appointed as arbitrator to assume a role of mediator, and then
16 subsequently assume the role of arbitrator, but in the absence of
17 such an agreement, an arbitrator appointed under the act may not
18 assume the role of mediator and, thereafter, resume the role of
19 arbitrator. The court noted that a mediator, whose role is to guide
20 parties toward a mediated resolution, may become privy to party
21 confidences and therefore cannot subsequently retain the
22 appearance of a neutral factfinder, which is necessary to conduct a
23 binding arbitration proceeding.

24 The Appellate Division further specified that an award entered
25 by an arbitrator who has resumed the role of arbitrator after
26 assuming the role of mediator must be vacated unless the parties
27 enter into an agreement permitting the arbitrator to resume the role
28 of arbitrator after serving as mediator. The court further specified
29 that any awards entered by the arbitrator prior to serving as
30 mediator should not be vacated. The bill codifies this provision of
31 the court's decision as well.