

Theodore R. Kulongoski
Governor



July 21, 2003

The Honorable Karen Minnis
Speaker of the House
Oregon House of Representatives
900 Court Street NE – Room 269
Salem OR 97301

Dear Speaker Minnis:

I have signed Enrolled House Bill 2279. However, I am writing to express my concern that a section of House Bill 2279 may be subject to misinterpretation.

In large part, House Bill 2279 enacts the Revised Uniform Arbitration Act in Oregon. This is important legislation with an important objective—to encourage the use of efficient and voluntary alternative dispute resolution (ADR) procedures in Oregon. Effective ADR procedures are important because they provide contracting parties with certainty and finality in the area of dispute resolution.

I am concerned that Section 7(8) of the Act is unclear in a way that may undercut the core ADR goals of certainty and finality. Section 7 as a whole relates to petitions to compel arbitration. This section allows a party to file a motion in court to compel another party to arbitrate a dispute if there is an enforceable agreement to arbitrate. This is consistent with the Uniform Act. However, Subsection 8 of Section 7 is not part of the Uniform Act. I interpret Section 7(8) to provide that a judge is to rule on any petition to a court authorized by the Act, including a petition to compel arbitration, unless the petition raises an issue for which there is a constitutional right to jury trial. If a petition to a court raises an issue for which there is a constitutional right to jury trial, and if a party demands a jury trial, then that issue—and only that issue—is to be tried to a jury. For instance, if the formation of the contract is an issue on a motion to compel arbitration, and if a constitutional right to jury trial exists as to that issue, then under this provision a party can require that such issue be tried to a jury.

I am concerned that this language in Section 7(8) could be misinterpreted more broadly. The American Arbitration Association and other parties involved with ADR in Oregon share my concern. A party that wishes to avoid an enforceable agreement to arbitrate might argue that Subsection 8 affords that party a constitutional right to jury trial on the merits of the dispute notwithstanding the otherwise enforceable and applicable agreement to arbitrate to a final

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outcome. I believe that such an interpretation would be contrary to the intent of the drafters, would be inconsistent with the purposes of the Uniform Act and would call into question the enforceability of countless contractual arbitration clauses. I believe that the correct interpretation of this subsection—in fact, the only interpretation that is consistent with the remainder of the Act—is that trial by jury is permissible only if two conditions exist: (1) the issue must be one that is raised in a petition to compel arbitration or in some other petition to a court that is specifically authorized by the Act, and (2) the issue must be one for which there is a constitutionally guaranteed right to jury trial. Section 7(8) should not be interpreted to allow a party to avoid a contractually valid arbitration agreement by demanding a jury trial on the merits of the dispute itself.

I encourage the sponsors of this legislation to consider clarifying legislation to resolve this potential ambiguity. I have signed House Bill 2279 despite the issue discussed above because I recognize the importance of this legislation and because I believe that courts are likely to interpret the Act in a way that is consistent with its purpose.

Sincerely,

Theodore R. Kulongoski
Governor