



General Assembly

February Session, 2006

**Raised Bill No. 597**

LCO No. 2836



Referred to Committee on

**JUDICIARY**

Introduced by:

(JUD)

**AN ACT ADOPTING THE UNCITRAL MODEL LAW ON  
INTERNATIONAL COMMERCIAL CONCILIATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective October 1, 2006*) (a) This section may be  
2 cited as the "UNCITRAL Model Law on International Commercial  
3 Conciliation".
- 4 (b) Article 1. Scope of application and definitions.
- 5 (1) This section applies to international commercial conciliation.
- 6 (2) For the purposes of this section, "conciliator" means a sole  
7 conciliator or two or more conciliators, as the case may be.
- 8 (3) For the purposes of this section, "conciliation" means a process,  
9 whether referred to by the expression conciliation, mediation or an  
10 expression of similar import, whereby parties request a third person or  
11 persons, herein referred to as the conciliator or conciliators, to assist  
12 them in their attempt to reach an amicable settlement of their dispute  
13 arising out of or relating to a contractual or other legal relationship.  
14 The conciliator does not have the authority to impose upon the parties

15 a solution to the dispute.

16 (4) A conciliation is international if:

17 (a) The parties to an agreement to conciliate have, at the time of the  
18 conclusion of that agreement, their places of business in different  
19 states; or

20 (b) The state in which the parties have their places of business is  
21 different from either:

22 (i) The state in which a substantial part of the obligations of the  
23 commercial relationship is to be performed; or

24 (ii) The state with which the subject matter of the dispute is most  
25 closely connected.

26 (5) For the purposes of this article:

27 (a) If a party has more than one place of business, the place of  
28 business is that which has the closest relationship to the agreement to  
29 conciliate;

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

32 (6) This section also applies to a commercial conciliation when the  
33 parties agree that the conciliation is international or agree to the  
34 applicability of this section.

35 (7) The parties are free to agree to exclude the applicability of this  
36 section.

37 (8) Subject to the provisions of paragraph (9) of this article, this  
38 section applies irrespective of the basis upon which the conciliation is  
39 carried out, including agreement between the parties whether reached  
40 before or after a dispute has arisen, an obligation established by law, or  
41 a direction or suggestion of a court, arbitral tribunal or competent

42 governmental entity.

43 (9) This section does not apply to cases where a judge or an  
 44 arbitrator, in the course of judicial or arbitral proceedings, attempts to  
 45 facilitate a settlement.

46 Article 2. Interpretation.

47 (1) In the interpretation of this section, regard is to be had to its  
 48 international origin and to the need to promote uniformity in its  
 49 application and the observance of good faith.

50 (2) Questions concerning matters governed by this section which are  
 51 not expressly settled in it are to be settled in conformity with the  
 52 general principles on which this section is based.

53 Article 3. Variation by agreement.

54 Except for the provisions of Article 2 and Article 6, paragraph (3),  
 55 the parties may agree to exclude or vary any of the provisions of this  
 56 section.

57 Article 4. Commencement of conciliation proceedings.

58 (1) Conciliation proceedings in respect of a dispute that has arisen  
 59 commence on the day on which the parties to that dispute agree to  
 60 engage in conciliation proceedings.

61 (2) If a party that invited another party to conciliate does not receive  
 62 an acceptance of the invitation within thirty days from the day on  
 63 which the invitation was sent, or within such other period of time as  
 64 specified in the invitation, the party may elect to treat this as a rejection  
 65 of the invitation to conciliate.

66 Article 5. Number and appointment of conciliators.

67 (1) There shall be one conciliator, unless the parties agree that there  
 68 shall be two or more conciliators.

69 (2) The parties shall endeavor to reach agreement on a conciliator or  
70 conciliators, unless a different procedure for their appointment has  
71 been agreed upon.

72 (3) Parties may seek the assistance of an institution or person in  
73 connection with the appointment of conciliators. In particular:

74 (a) A party may request such an institution or person to recommend  
75 suitable persons to act as conciliator; or

76 (b) The parties may agree that the appointment of one or more  
77 conciliators be made directly by such an institution or person.

78 (4) In recommending or appointing individuals to act as conciliator,  
79 the institution or person shall have regard to such considerations as  
80 are likely to secure the appointment of an independent and impartial  
81 conciliator and, where appropriate, shall take into account the  
82 advisability of appointing a conciliator of a nationality other than the  
83 nationalities of the parties.

84 (5) When a person is approached in connection with his or her  
85 possible appointment as conciliator, he or she shall disclose any  
86 circumstances likely to give rise to justifiable doubts as to his or her  
87 impartiality or independence. A conciliator, from the time of his or her  
88 appointment and throughout the conciliation proceedings, shall  
89 without delay disclose any such circumstances to the parties unless  
90 they have already been informed of them by him or her.

91 Article 6. Conduct of conciliation.

92 (1) The parties are free to agree, by reference to a set of rules or  
93 otherwise, on the manner in which the conciliation is to be conducted.

94 (2) Failing agreement on the manner in which the conciliation is to  
95 be conducted, the conciliator may conduct the conciliation proceedings  
96 in such a manner as the conciliator considers appropriate, taking into  
97 account the circumstances of the case, any wishes that the parties may

7067

Raised Bill No.

597

98 express and the need for a speedy settlement of the dispute.

99 (3) In any case, in conducting the proceedings, the conciliator shall  
100 seek to maintain fair treatment of the parties and, in so doing, shall  
101 take into account the circumstances of the case.

102 (4) The conciliator may, at any stage of the conciliation proceedings,  
103 make proposals for a settlement of the dispute.

104 Article 7. Communication between conciliator and parties.

105 The conciliator may meet or communicate with the parties together  
106 or with each of them separately.

107 Article 8. Disclosure of information.

108 When the conciliator receives information concerning the dispute  
109 from a party, the conciliator may disclose the substance of that  
110 information to any other party to the conciliation, except that when a  
111 party gives any information to the conciliator, subject to a specific  
112 condition that it be kept confidential, that information shall not be  
113 disclosed to any other party to the conciliation.

114 Article 9. Confidentiality.

115 Unless otherwise agreed by the parties, all information relating to  
116 the conciliation proceedings shall be kept confidential, except where  
117 disclosure is required under the law or for the purposes of  
118 implementation or enforcement of a settlement agreement.

119 Article 10. Admissibility of evidence in other proceedings.

120 (1) A party to the conciliation proceedings, the conciliator and any  
121 third person, including those involved in the administration of the  
122 conciliation proceedings, shall not in arbitral, judicial or similar  
123 proceedings rely on, introduce as evidence or give testimony or  
124 evidence regarding any of the following:

125 (a) An invitation by a party to engage in conciliation proceedings or  
 126 the fact that a party was willing to participate in conciliation  
 127 proceedings;

128 (b) Views expressed or suggestions made by a party in the  
 129 conciliation in respect of a possible settlement of the dispute;

130 (c) Statements or admissions made by a party in the course of the  
 131 conciliation proceedings;

132 (d) Proposals made by the conciliator;

133 (e) The fact that a party had indicated its willingness to accept a  
 134 proposal for settlement made by the conciliator;

135 (f) A document prepared solely for purposes of the conciliation  
 136 proceedings.

137 (2) Paragraph (1) of this article applies irrespective of the form of the  
 138 information or evidence referred to therein.

139 (3) The disclosure of the information referred to in paragraph (1) of  
 140 this article shall not be ordered by an arbitral tribunal, court or other  
 141 competent governmental authority and, if such information is offered  
 142 as evidence in contravention of paragraph (1) of this article, that  
 143 evidence shall be treated as inadmissible, except that such information  
 144 may be disclosed or admitted in evidence to the extent required under  
 145 the law or for the purposes of implementation or enforcement of a  
 146 settlement agreement.

147 (4) The provisions of paragraphs (1), (2) and (3) of this article apply  
 148 whether or not the arbitral, judicial or similar proceedings relate to the  
 149 dispute that is or was the subject matter of the conciliation  
 150 proceedings.

151 (5) Subject to the limitations of paragraph (1) of this article, evidence  
 152 that is otherwise admissible in arbitral or judicial or similar

7067

Raised Bill No. 597

153 proceedings does not become inadmissible as a consequence of having  
154 been used in a conciliation.

155 Article 11. Termination of conciliation proceedings.

156 The conciliation proceedings are terminated:

157 (a) By the conclusion of a settlement agreement by the parties, on  
158 the date of the agreement;

159 (b) By a declaration of the conciliator, after consultation with the  
160 parties, to the effect that further efforts at conciliation are no longer  
161 justified, on the date of the declaration;

162 (c) By a declaration of the parties addressed to the conciliator to the  
163 effect that the conciliation proceedings are terminated, on the date of  
164 the declaration; or

165 (d) By a declaration of a party to the other party or parties and the  
166 conciliator, if appointed, to the effect that the conciliation proceedings  
167 are terminated, on the date of the declaration.

168 Article 12. Conciliator acting as arbitrator.

169 Unless otherwise agreed by the parties, the conciliator shall not act  
170 as an arbitrator in respect of a dispute that was or is the subject of the  
171 conciliation proceedings or in respect of another dispute that has  
172 arisen from the same contract or legal relationship or any related  
173 contract or legal relationship.

174 Article 13. Resort to arbitral or judicial proceedings.

175 Where the parties have agreed to conciliate and have expressly  
176 undertaken not to initiate during a specified period of time or until a  
177 specified event has occurred arbitral or judicial proceedings with  
178 respect to an existing or future dispute, such an undertaking shall be  
179 given effect by the arbitral tribunal or the court until the terms of the  
180 undertaking have been complied with, except to the extent necessary

181 for a party, in its opinion, to preserve its rights. Initiation of such  
 182 proceedings is not of itself to be regarded as a waiver of the agreement  
 183 to conciliate or as a termination of the conciliation proceedings.

This act shall take effect as follows and shall amend the following sections:		
---	--	--

Section 1	October 1, 2006	New section
-----------	-----------------	-------------

**Statement of Purpose:**

To adopt the UNCITRAL Model Law on International Commercial Conciliation.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*