

# **Senate Bill No. 582**

(By Senators Palumbo, Carmichael, Cole, Cookman,  
M. Hall, Jenkins, Stollings, Tucker and Williams)

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[Introduced March 20, 2013;  
referred to the Committee on Interstate Cooperation; and then to  
the Committee on the Judiciary.]

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A BILL to amend and reenact §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto twenty-four new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31 and §55-10-32, all relating generally to arbitration; defining terms; defining notice under the article; defining when article applies; proscribing the effect

of agreements to arbitrate and defining nonwaivable provisions; allowing for application for judicial relief under the article; making an agreement to arbitrate valid unless a legal or equitable reason for revocation exists; providing for the terms by which arbitration may continue if challenged; providing for the process for motions to compel or stay arbitration; providing for provisional remedies to protect the effectiveness of arbitration proceedings; providing the process for initiation of arbitration; providing for the consolidation of separate arbitration proceedings; providing for the appointment of an arbitrator and default process if not agreed by the parties; requiring neutrality of arbitrators; requiring disclosure by arbitrators of matters affecting impartiality; requiring a majority of arbitrators to agree to exercise powers; providing immunity for arbitrators; requiring competency to testify and providing for attorneys' fees and costs for challenges from which arbitrators are immune; providing the general process for arbitration; allowing parties to be represented by a lawyer in arbitrations; outlining the procedure for witnesses, subpoenas,

depositions and discovery in arbitrations; providing for judicial enforcement of preaward ruling by arbitrator; providing for a record of an award and the requirements for an award; allowing the change of an award by an arbitrator upon motion under certain conditions; providing that certain remedies and the fees and costs of arbitration may be a part of an arbitration award; allowing for confirmation by a court of an award upon motion; providing the process and grounds for vacating an award by a court; providing the process and grounds for the modification or correction of an award upon motion; providing that a court shall enter a judgment upon confirmation of an award and may add reasonable attorneys' fees and costs; providing for jurisdiction over arbitration agreements by a court of this state; providing venue; providing that appeals may be taken from orders related to arbitration proceedings; requiring uniform construction of the act; providing that this act complies with the Electronic Signatures in Global and National Commerce Act; and providing the effective date of the act.

*Be it enacted by the Legislature of West Virginia:*

That §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto twenty-four new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31 and §55-10-32, all to read as follows:

**ARTICLE 10. ARBITRATION.**

**§55-10-1. Definitions.**

1 In this article:

2 (1) “Arbitration organization” means an association,  
3 agency, board, commission or other entity that is neutral and  
4 initiates, sponsors or administers an arbitration proceeding or  
5 is involved in the appointment of an arbitrator.

6 (2) “Arbitrator” means an individual appointed to render  
7 an award, alone or with others, in a controversy that is  
8 subject to an agreement to arbitrate.

9           (3) “Court” means a circuit court in this state.

10          (4) “Knowledge” means actual knowledge.

11          (5) “Person” means an individual, corporation, business  
12 trust, estate, trust, partnership, limited liability company,  
13 association, joint venture or government; governmental  
14 subdivision, agency or instrumentality; public corporation; or  
15 any other legal or commercial entity.

16          (6) “Record” means information that is inscribed on a  
17 tangible medium or that is stored in an electronic or other  
18 medium and is retrievable in perceivable form.

**§55-10-2. Notice.**

1           (a) Except as otherwise provided in this article, a person  
2 gives notice to another person by taking action that is  
3 reasonably necessary to inform the other person in ordinary  
4 course, whether or not the other person acquires knowledge  
5 of the notice.

6           (b) A person has notice if the person has knowledge of  
7 the notice or has received notice.

8       (c) A person receives notice when it comes to the  
9       person's attention or the notice is delivered at the person's  
10      place of residence or place of business, or at another location  
11      held out by the person as a place of delivery of such  
12      communications.

**§55-10-3. When article applies.**

1       (a) This article governs an agreement to arbitrate made  
2      on or after July 1, 2013.

3       (b) This article governs an agreement to arbitrate made  
4      before July 1, 2013, if all the parties to the agreement or to  
5      the arbitration proceeding so agree in a record.

**§55-10-4. Effect of agreement to arbitrate; nonwaivable  
provisions.**

1       (a) Except as otherwise provided in subsections (b) and  
2      (c), a party to an agreement to arbitrate or to an arbitration  
3      proceeding may waive or, the parties may vary the effect of,  
4      the requirements of this article to the extent permitted by law.

5       (b) Before a controversy arises that is subject to an  
6      agreement to arbitrate, a party to the agreement may not:

7       (1) Waive or agree to vary the effect of the requirements  
8 of section five-a, six-a, eight, seventeen-a, seventeen-b,  
9 twenty-six or twenty-eight of this article;

10       (2) Agree to unreasonably restrict the right under section  
11 nine of this article to notice of the initiation of an arbitration  
12 proceeding;

13       (3) Agree to unreasonably restrict the right under section  
14 twelve of this article to disclosure of any facts by a neutral  
15 arbitrator; or

16       (4) Waive the right under section sixteen of this article of  
17 a party to an agreement to arbitrate to be represented by a  
18 lawyer at any proceeding or hearing under this article, but an  
19 employer and a labor organization may waive the right to  
20 representation by a lawyer in a labor arbitration.

21       (c) A party to an agreement to arbitrate or arbitration  
22 proceeding may not waive, or the parties may not vary the  
23 effect of, the requirements of this section or sections three-a,  
24 three-c, seven, fourteen, eighteen, twenty-d, twenty-e,  
25 twenty-two, twenty-three, twenty-four, twenty-five-a,

26 twenty-five-b, twenty-nine, thirty, thirty-one or thirty-two of  
27 this article.

**§55-10-5. Application for judicial relief.**

1 (a) Except as otherwise provided in section twenty-eight  
2 of this article, an application for judicial relief under this  
3 article must be made by motion to a West Virginia circuit  
4 court as specified in section twenty-seven of this article and  
5 heard in accordance with the rules of civil procedure  
6 governing motions.

7 (b) Unless a civil action involving the agreement to  
8 arbitrate is pending, notice of an initial motion to the court  
9 under this article must be served in the manner provided by  
10 law for the service of a summons in a civil action.  
11 Otherwise, notice of the motion must be given in the manner  
12 provided by the rules of civil procedure for serving motions  
13 in pending cases.

**§55-10-6. Validity of agreement to arbitrate.**

1 (a) An agreement contained in a record to submit to  
2 arbitration any existing or subsequent controversy arising

3 between the parties to the agreement is valid, enforceable and  
4 irrevocable except upon a ground that exists at law or in  
5 equity for the revocation of a contract.

6 (b) The court shall decide whether an agreement to  
7 arbitrate exists or a controversy is subject to an agreement to  
8 arbitrate.

9 (c) An arbitrator shall decide whether a condition  
10 precedent to arbitration has been fulfilled and whether a  
11 contract containing a valid agreement to arbitrate is  
12 enforceable.

13 (d) If a party to a judicial proceeding challenges the  
14 existence of, or claims that a controversy is not subject to, an  
15 agreement to arbitrate, the arbitration proceeding may  
16 continue pending final resolution of the issue by the court,  
17 unless the court otherwise orders.

**§55-10-7. Motion to compel or stay arbitration.**

1 (a) On motion of a person showing an agreement to  
2 arbitrate and alleging another person's refusal to arbitrate  
3 pursuant to the agreement:

4       (1) If the refusing party does not appear or does not  
5       oppose the motion, the court shall order the parties to  
6       arbitrate; and

7       (2) If the refusing party opposes the motion, the court  
8       shall proceed summarily to decide the issue and order the  
9       parties to arbitrate unless it finds that there is no enforceable  
10      agreement to arbitrate.

11      (b) On motion of a person alleging that an arbitration  
12      proceeding has been initiated or threatened but that there is  
13      no agreement to arbitrate, the court shall proceed summarily  
14      to decide the issue. If the court finds that there is an  
15      enforceable agreement to arbitrate, it shall order the parties  
16      to arbitrate.

17      (c) If the court finds that there is no enforceable  
18      agreement, it may not pursuant to subsection (a) or (b) order  
19      the parties to arbitrate.

20      (d) The court may not refuse to order arbitration because  
21      the claim subject to arbitration lacks merit or grounds for the  
22      claim have not been established.

23 (e) If a proceeding involving a claim referable to  
24 arbitration under an alleged agreement to arbitrate is pending  
25 in court, a motion under this section must be made in that  
26 court. Otherwise a motion under this section may be made in  
27 any court as provided in section twenty-seven of this article.

28 (f) If a party makes a motion to the court to order  
29 arbitration, the court on just terms shall stay any judicial  
30 proceeding that involves a claim alleged to be subject to the  
31 arbitration until the court renders a final decision under this  
32 section.

33 (g) If the court orders arbitration, the court on just terms  
34 shall stay any judicial proceeding that involves a claim  
35 subject to the arbitration. If a claim subject to the arbitration  
36 is severable, the court may limit the stay to that claim.

**§55-10-8. Provisional remedies.**

1 (a) Before an arbitrator is appointed and is authorized and  
2 able to act, the court, upon motion of a party to an arbitration  
3 proceeding and for good cause shown, may enter an order for  
4 provisional remedies to protect the effectiveness of the

5 arbitration proceeding to the same extent and under the same  
6 conditions as if the controversy were the subject of a civil  
7 action.

8 (b) After an arbitrator is appointed and is authorized and  
9 able to act:

10 (1) The arbitrator may issue such orders for provisional  
11 remedies, including interim awards, as the arbitrator finds  
12 necessary to protect the effectiveness of the arbitration  
13 proceeding and to promote the fair and expeditious resolution  
14 of the controversy, to the same extent and under the same  
15 conditions as if the controversy were the subject of a civil  
16 action; and

17 (2) A party to an arbitration proceeding may move the  
18 court for a provisional remedy only if the matter is urgent and  
19 the arbitrator is not able to act timely or the arbitrator cannot  
20 provide an adequate remedy.

21 (c) A party does not waive a right of arbitration by  
22 making a motion under subsection (a) or (b).

**§55-10-9. Initiation of arbitration.**

1       (a) A person initiates an arbitration proceeding by giving  
2 notice in a record to the other parties to the agreement to  
3 arbitrate in the agreed manner between the parties or, in the  
4 absence of agreement, by certified or registered mail, return  
5 receipt requested and obtained, or by service as authorized  
6 for the commencement of a civil action. The notice must  
7 describe the nature of the controversy and the remedy sought.

8       (b) Unless a person objects for lack or insufficiency of  
9 notice under section fifteen-c of this article not later than the  
10 beginning of the arbitration hearing, the person by appearing  
11 at the hearing waives any objection to lack of or insufficiency  
12 of notice.

**§55-10-10. Consolidation of separate arbitration proceedings.**

1       (a) Except as otherwise provided in subsection (c), upon  
2 motion of a party to an agreement to arbitrate or to an  
3 arbitration proceeding, the court may order consolidation of  
4 separate arbitration proceedings as to all or some of the  
5 claims if:

6       (1) There are separate agreements to arbitrate or separate  
7 arbitration proceedings between the same persons or one of  
8 them is a party to a separate agreement to arbitrate or a  
9 separate arbitration proceeding with a third person;

10       (2) The claims subject to the agreements to arbitrate arise  
11 in substantial part from the same transaction or series of  
12 related transactions;

13       (3) The existence of a common issue of law or fact  
14 creates the possibility of conflicting decisions in the separate  
15 arbitration proceedings; and

16       (4) Prejudice resulting from a failure to consolidate is not  
17 outweighed by the risk of undue delay or prejudice to the  
18 rights of or hardship to parties opposing consolidation.

19       (b) The court may order consolidation of separate  
20 arbitration proceedings as to some claims and allow other  
21 claims to be resolved in separate arbitration proceedings.

22       (c) The court may not order consolidation of the claims  
23 of a party to an agreement to arbitrate if the agreement  
24 prohibits consolidation.

**§55-10-11. Appointment of arbitrator; service as a neutral arbitrator.**

1       (a) If the parties to an agreement to arbitrate agree on a  
2 method for appointing an arbitrator, that method must be  
3 followed, unless the method fails. If the parties have not  
4 agreed on a method, the agreed method fails or an arbitrator  
5 appointed fails or is unable to act and a successor has not  
6 been appointed, the court, on motion of a party to the  
7 arbitration proceeding, shall appoint the arbitrator. An  
8 arbitrator so appointed has all the powers of an arbitrator  
9 designated in the agreement to arbitrate or appointed  
10 pursuant to the agreed method.

11       (b) An individual who has a known, direct and material  
12 interest in the outcome of the arbitration proceeding or a  
13 known, existing and substantial relationship with a party may  
14 not serve as an arbitrator required by an agreement to be  
15 neutral.

**§55-10-12. Disclosure by arbitrator.**

1       (a) Before accepting appointment, an individual who is  
2 requested to serve as an arbitrator, after making a reasonable  
3 inquiry, shall disclose to all parties to the agreement to  
4 arbitrate and arbitration proceeding and to any other  
5 arbitrators any known facts that a reasonable person would  
6 consider likely to affect the impartiality of the arbitrator in  
7 the arbitration proceeding, including:

8       (1) A financial or personal interest in the outcome of the  
9 arbitration proceeding; and

10       (2) An existing or past relationship with any of the parties  
11 to the agreement to arbitrate or the arbitration proceeding,  
12 their counsel or representatives, a witness, or another  
13 arbitrator.

14       (b) An arbitrator has a continuing obligation to disclose  
15 to all parties to the agreement to arbitrate and arbitration  
16 proceeding and to any other arbitrators any facts that the  
17 arbitrator learns after accepting appointment which a  
18 reasonable person would consider likely to affect the  
19 impartiality of the arbitrator.

20 (c) If an arbitrator discloses a fact required by subsection  
21 (a) or (b) to be disclosed and a party timely objects to the  
22 appointment or continued service of the arbitrator based upon  
23 the fact disclosed, the objection may be a ground under  
24 section twenty-three-a (2) of this article for vacating an  
25 award made by the arbitrator.

26 (d) If the arbitrator did not disclose a fact as required by  
27 subsection (a) or (b), upon timely objection by a party, the  
28 court under section twenty-three-a (2) of this article may  
29 vacate an award.

30 (e) An arbitrator appointed as a neutral arbitrator who  
31 does not disclose a known, direct and material interest in the  
32 outcome of the arbitration proceeding or a known, existing  
33 and substantial relationship with a party is presumed to act  
34 with evident partiality under section twenty-three-a (2) of this  
35 article.

36 (f) If the parties to an arbitration proceeding agree to the  
37 procedures of an arbitration organization or any other  
38 procedures for challenges to arbitrators before an award is

39 made, substantial compliance with those procedures is a  
40 condition precedent to a motion to vacate an award on that  
41 ground under section twenty-three-a (2) of this article.

**§55-10-13. Action by majority.**

1 If there is more than one arbitrator, the powers of an  
2 arbitrator must be exercised by a majority of the arbitrators,  
3 but all of them shall conduct the hearing under section  
4 fifteen-c of this article.

**§55-10-14. Immunity of arbitrator; competency to testify;  
attorney's fees and costs.**

1 (a) An arbitrator or an arbitration organization acting in  
2 that capacity is immune from civil liability to the same extent  
3 as a judge of a court of this state acting in a judicial capacity.

4 (b) The immunity afforded by this section supplements  
5 any immunity under other law.

6 (c) The failure of an arbitrator to make a disclosure  
7 required by section twelve of this article does not cause any  
8 loss of immunity under this section.

9       (d) In a judicial, administrative or similar proceeding, an  
10 arbitrator or representative of an arbitration organization is  
11 not competent to testify, and may not be required to produce  
12 records as to any statement, conduct, decision or ruling  
13 occurring during the arbitration proceeding, to the same  
14 extent as a judge of a court of this state acting in a judicial  
15 capacity. This subsection does not apply:

16       (1) To the extent necessary to determine the claim of an  
17 arbitrator, arbitration organization or representative of the  
18 arbitration organization against a party to the arbitration  
19 proceeding; or

20       (2) To a hearing on a motion to vacate an award under  
21 section twenty-three-a (1) or (2) of this section if the movent  
22 establishes prima facie that a ground for vacating the award  
23 exists.

24       (e) If a person commences a civil action against an  
25 arbitrator, arbitration organization or representative of an  
26 arbitration organization arising from the services of the  
27 arbitrator, organization or representative or if a person seeks

28 to compel an arbitrator or a representative of an arbitration  
29 organization to testify or produce records in violation of  
30 subsection (d), and the court decides that the arbitrator,  
31 arbitration organization or representative of an arbitration  
32 organization is immune from civil liability or that the  
33 arbitrator or representative of the organization is not  
34 competent to testify, the court shall award to the arbitrator,  
35 organization or representative reasonable attorney's fees and  
36 other reasonable expenses of litigation.

**§55-10-15. Arbitration process.**

1 (a) An arbitrator may conduct an arbitration in such  
2 manner as the arbitrator considers appropriate for a fair and  
3 expeditious disposition of the proceeding. The authority  
4 conferred upon the arbitrator includes the power to hold  
5 conferences with the parties to the arbitration proceeding  
6 before the hearing and, among other matters, determine the  
7 admissibility, relevance, materiality and weight of any  
8 evidence.

9       (b) An arbitrator may decide a request for summary  
10 disposition of a claim or particular issue:

11       (1) If all interested parties agree; or

12       (2) Upon request of one party to the arbitration  
13 proceeding if that party gives notice to all other parties to the  
14 proceeding, and the other parties have a reasonable  
15 opportunity to respond.

16       (c) If an arbitrator orders a hearing, the arbitrator shall set  
17 a time and place and give notice of the hearing not less than  
18 five days before the hearing begins. Unless a party to the  
19 arbitration proceeding makes an objection to lack or  
20 insufficiency of notice not later than the beginning of the  
21 hearing, the party's appearance at the hearing waives the  
22 objection. Upon request of a party to the arbitration  
23 proceeding and for good cause shown, or upon the  
24 arbitrator's own initiative, the arbitrator may adjourn the  
25 hearing from time to time as necessary but may not postpone  
26 the hearing to a time later than that fixed by the agreement to  
27 arbitrate for making the award unless the parties to the

28 arbitration proceeding consent to a later date. The arbitrator  
29 may hear and decide the controversy upon the evidence  
30 produced although a party who was duly notified of the  
31 arbitration proceeding did not appear. The court, on request,  
32 may direct the arbitrator to conduct the hearing promptly and  
33 render a timely decision.

34 (d) At a hearing under subsection (c), a party to the  
35 arbitration proceeding has a right to be heard, to present  
36 evidence material to the controversy, and to cross examine  
37 witnesses appearing at the hearing.

38 (e) If an arbitrator ceases or is unable to act during the  
39 arbitration proceeding, a replacement arbitrator must be  
40 appointed in accordance with section eleven of this article to  
41 continue the proceeding and to resolve the controversy.

**§55-10-16. Representation by lawyer.**

1 A party to an arbitration proceeding may be represented  
2 by a lawyer licensed to practice law in the State of West  
3 Virginia.

**§55-10-17. Witnesses; subpoenas; depositions; discovery.**

1       (a) An arbitrator may issue a subpoena for the attendance  
2 of a witness and for the production of records and other  
3 evidence at any hearing and may administer oaths. A  
4 subpoena must be served in the manner for service of  
5 subpoenas in a civil action and, upon motion to the court by  
6 a party to the arbitration proceeding or the arbitrator,  
7 enforced in the manner for enforcement of subpoenas in a  
8 civil action.

9       (b) In order to make the proceedings fair, expeditious and  
10 cost effective, upon request of a party to or a witness in an  
11 arbitration proceeding, an arbitrator may permit a deposition  
12 of any witness to be taken for use as evidence at the hearing,  
13 including a witness who cannot be subpoenaed for or is  
14 unable to attend a hearing. The arbitrator shall determine the  
15 conditions under which the deposition is taken.

16       (c) An arbitrator may permit such discovery as the  
17 arbitrator decides is appropriate in the circumstances, taking

18 into account the needs of the parties to the arbitration  
19 proceeding and other affected persons and the desirability of  
20 making the proceeding fair, expeditious, and cost effective.

21 (d) If an arbitrator permits discovery under subsection  
22 (c), the arbitrator may order a party to the arbitration  
23 proceeding to comply with the arbitrator's discovery-related  
24 orders, issue subpoenas for the attendance of a witness and  
25 for the production of records and other evidence at a  
26 discovery proceeding and take action against a noncomplying  
27 party to the extent a court could if the controversy were the  
28 subject of a civil action in this state.

29 (e) An arbitrator may issue a protective order to prevent  
30 the disclosure of privileged information, confidential  
31 information, trade secrets and other information protected  
32 from disclosure to the extent a court could if the controversy  
33 were the subject of a civil action in this state.

34 (f) All laws compelling a person under subpoena to  
35 testify and all fees for attending a judicial proceeding, a

36 deposition, or a discovery proceeding as a witness apply to  
37 an arbitration proceeding as if the controversy were the  
38 subject of a civil action in this state.

39 (g) The court may enforce a subpoena or  
40 discovery-related order for the attendance of a witness within  
41 this state and for the production of records and other  
42 evidence issued by an arbitrator in connection with an  
43 arbitration proceeding in another state upon conditions  
44 determined by the court so as to make the arbitration  
45 proceeding fair, expeditious, and cost effective. A subpoena  
46 or discovery-related order issued by an arbitrator in another  
47 state must be served in the manner provided by law for  
48 service of subpoenas in a civil action in this state and, upon  
49 motion to the court by a party to the arbitration proceeding or  
50 the arbitrator, enforced in the manner provided by law for  
51 enforcement of subpoenas in a civil action in this state.

**§55-10-18. Judicial enforcement of preaward ruling by arbitrator.**

1 If an arbitrator makes a preaward ruling in favor of a  
2 party to the arbitration proceeding, the party may request the

3 arbitrator to incorporate the ruling into an award under  
4 section nineteen of this article. A prevailing party may make  
5 a motion to the court for an expedited order to confirm the  
6 award under section twenty-two of this article, in which case  
7 the court shall summarily decide the motion. The court shall  
8 issue an order to confirm the award unless the court vacates,  
9 modifies or corrects the award under section twenty-three or  
10 twenty-four of this article.

**§55-10-19. Award.**

1 (a) An arbitrator shall make a record of an award. The  
2 record must be signed or otherwise authenticated by any  
3 arbitrator who concurs with the award. The arbitrator or the  
4 arbitration organization shall give notice of the award,  
5 including a copy of the award, to each party to the arbitration  
6 proceeding.

7 (b) An award must be made within the time specified by  
8 the agreement to arbitrate or, if not specified therein, within  
9 the time ordered by the court. The court may extend, or the  
10 parties to the arbitration proceeding may agree in a record to

11 extend the time. The court or the parties may do so within or  
12 after the time specified or ordered. A party waives any  
13 objection that an award was not timely made unless the party  
14 gives notice of the objection to the arbitrator before receiving  
15 notice of the award.

**§55-10-20. Change of award by arbitrator.**

1 (a) On motion to an arbitrator by a party to an arbitration  
2 proceeding, the arbitrator may modify or correct an award:

3 (1) Upon a ground stated in section twenty-four-a (1) or  
4 (3) of this section;

5 (2) Because the arbitrator has not made a final and  
6 definite award upon a claim submitted by the parties to the  
7 arbitration proceeding; or

8 (3) To clarify the award.

9 (b) A motion under subsection (a) must be made and  
10 notice given to all parties within twenty days after the  
11 movant receives notice of the award.

12 (c) A party to the arbitration proceeding must give notice  
13 of any objection to the motion within ten days after receipt of  
14 the notice.

15 (d) If a motion to the court is pending under section  
16 twenty-two, twenty-three or twenty-four of this article, the  
17 court may submit the claim to the arbitrator to consider  
18 whether to modify or correct the award:

19 (1) Upon a ground stated in section twenty-four-a (1) or  
20 (3) of this article;

21 (2) Because the arbitrator has not made a final and  
22 definite award upon a claim submitted by the parties to the  
23 arbitration proceeding; or

24 (3) To clarify the award.

25 (e) An award modified or corrected pursuant to this  
26 section is subject to sections nineteen-a, twenty-two, twenty-  
27 three and twenty-four of this article.

**§55-10-21. Remedies; fees and expenses of arbitration proceeding.**

1 (a) An arbitrator may award punitive damages or other  
2 exemplary relief if such an award is authorized by law in a  
3 civil action involving the same claim and the evidence  
4 produced at the hearing justifies the award under the legal  
5 standards otherwise applicable to the claim.

6       (b) An arbitrator may award reasonable attorney's fees  
7   and other reasonable expenses of arbitration if such an award  
8   is authorized by law in a civil action involving the same  
9   claim or by the agreement of the parties to the arbitration  
10   proceeding.

11       (c) As to all remedies other than those authorized by  
12   subsections (a) and (b), an arbitrator may order such  
13   remedies as the arbitrator considers just and appropriate  
14   under the circumstances of the arbitration proceeding. The  
15   fact that such a remedy could not or would not be granted by  
16   the court is not a ground for refusing to confirm an award  
17   under section twenty-two of this article or for vacating an  
18   award under section twenty-three of this article.

19       (d) An arbitrator's expenses and fees, together with other  
20   expenses, must be paid as provided in the award.

21       (e) If an arbitrator awards punitive damages or other  
22   exemplary relief under subsection (a), the arbitrator shall  
23   specify in the award the basis in fact justifying and the basis

24 in law authorizing the award and state separately the amount  
25 of the punitive damages or other exemplary relief.

**§55-10-22. Confirmation of award.**

1 After a party to an arbitration proceeding receives notice  
2 of an award, the party may make a motion to the court for an  
3 order confirming the award at which time the court shall  
4 issue a confirming order unless the award is modified or  
5 corrected pursuant to section twenty or twenty-four of this  
6 article or is vacated pursuant to section twenty-three of this  
7 article.

**§55-10-23. Vacating award.**

1 (a) Upon motion to the court by a party to an arbitration  
2 proceeding, the court shall vacate an award made in the  
3 arbitration proceeding if:

4 (1) The award was procured by corruption, fraud or other  
5 undue means;

6 (2) There was:

7 (A) Evident partiality by an arbitrator appointed as a  
8 neutral arbitrator;

9 (B) Corruption by an arbitrator; or

10 (C) Misconduct by an arbitrator prejudicing the rights of  
11 a party to the arbitration proceeding;

12 (3) An arbitrator refused to postpone the hearing upon  
13 showing of sufficient cause for postponement, refused to  
14 consider evidence material to the controversy or otherwise  
15 conducted the hearing contrary to section fifteen of this  
16 article, so as to prejudice substantially the rights of a party to  
17 the arbitration proceeding;

18 (4) An arbitrator exceeded the arbitrator's powers;

19 (5) There was no agreement to arbitrate, unless the person  
20 participated in the arbitration proceeding without raising the  
21 objection under section fifteen-c of this article not later than  
22 the beginning of the arbitration hearing; or

23 (6) The arbitration was conducted without proper notice  
24 of the initiation of an arbitration as required in section nine  
25 so as to prejudice substantially the rights of a party to the  
26 arbitration proceeding.

27       (b) A motion under this section must be filed within  
28   ninety days after the movent receives notice of the award  
29   pursuant to section nineteen of this article or within ninety  
30   days after the movent receives notice of a modified or  
31   corrected award pursuant to section twenty of this article,  
32   unless the movent alleges that the award was procured by  
33   corruption, fraud or other undue means, in which case the  
34   motion must be made within ninety days after the ground is  
35   known or by the exercise of reasonable care would have been  
36   known by the movent.

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

46 (d) If the court denies a motion to vacate an award, it  
47 shall confirm the award unless a motion to modify or correct  
48 the award is pending.

**§55-10-24. Modification or correction of award.**

1 (a) Upon motion made within ninety days after the  
2 movant receives notice of the award pursuant to section  
3 nineteen of this article or within ninety days after the movant  
4 receives notice of a modified or corrected award pursuant to  
5 section 20 of this article, the court shall modify or correct the  
6 award if:

7 (1) There was an evident mathematical miscalculation or  
8 an evident mistake in the description of a person, thing or  
9 property referred to in the award;

10 (2) The arbitrator has made an award on a claim not  
11 submitted to the arbitrator and the award may be corrected  
12 without affecting the merits of the decision upon the claims  
13 submitted; or

14 (3) The award is imperfect in a matter of form not  
15 affecting the merits of the decision on the claims submitted.

16 (b) If a motion made under subsection (a) is granted, the  
17 court shall modify or correct and confirm the award as  
18 modified or corrected. Otherwise, unless a motion to vacate  
19 is pending, the court shall confirm the award.

20 (c) A motion to modify or correct an award pursuant to  
21 this section may be joined with a motion to vacate the award.

**§55-10-25. Judgment on award; attorney's fees and litigation  
expenses.**

1 (a) Upon granting an order confirming, vacating without  
2 directing a rehearing, modifying or correcting an award, the  
3 court shall enter a judgment in conformity therewith. The  
4 judgment may be recorded, docketed and enforced as any  
5 other judgment in a civil action.

6 (b) A court may allow reasonable costs of the motion and  
7 subsequent judicial proceedings.

8 (c) On application of a prevailing party to a contested  
9 judicial proceeding under section twenty-two, twenty-three  
10 or twenty-four of this article, the court may add reasonable  
11 attorney's fees and other reasonable expenses of litigation

12 incurred in a judicial proceeding after the award is made to  
13 a judgment confirming, vacating without directing a  
14 rehearing, modifying or correcting an award.

**§55-10-26. Jurisdiction.**

1 (a) A court of this state having jurisdiction over the  
2 controversy and the parties may enforce an agreement to  
3 arbitrate.

4 (b) An agreement to arbitrate providing for arbitration in  
5 this state confers exclusive jurisdiction on the court to enter  
6 judgment on an award under this article.

**§55-10-27. Venue.**

1 A motion pursuant to section five of this article must be  
2 made in the circuit court of the county in which the  
3 agreement to arbitrate specifies the arbitration hearing is to  
4 be held or, if the hearing has been held, in the circuit court of  
5 the county in which it was held. Otherwise, the motion may  
6 be made in the court of any county in which an adverse party  
7 resides or has a place of business or, if no adverse party has  
8 a residence or place of business in this state, in the circuit

9 court of Kanawha County, West Virginia. All subsequent  
10 motions must be made in the court hearing the initial motion,  
11 unless the court otherwise directs.

**§55-10-28. Appeals.**

- 1 (a) An appeal may be taken from:
- 2 (1) An order denying a motion to compel arbitration;
- 3 (2) An order granting a motion to stay arbitration;
- 4 (3) An order confirming or denying confirmation of an  
5 award;
- 6 (4) An order modifying or correcting an award;
- 7 (5) An order vacating an award without directing a  
8 rehearing; or
- 9 (6) A final judgment entered pursuant to this article.
- 10 (b) An appeal under this section must be taken as from an  
11 order or a judgment in a civil action.

**§55-10-29. Uniformity of application and construction.**

- 1 In applying and construing this uniform act, consideration  
2 must be given to the need to promote uniformity of the law  
3 with respect to its subject matter among states that enact it.

**§55-10-30. Electronic signatures in global and national commerce act.**

1       The provisions of this article governing the legal effect,  
2   validity, or enforceability of electronic records or signatures,  
3   and of contracts performed with the use of such records or  
4   signatures conform to the requirements of section 102 of the  
5   Electronic Signatures in Global and National Commerce Act,  
6   Pub. L. No. 106-229, 114 Stat. 464 (2000).

**§55-10-31. Effective date.**

1       This article takes effect on July 1, 2013.

**§55-10-32. Savings clause.**

1       This article does not affect an action or proceeding  
2   commenced or right accrued before this article takes effect.

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(NOTE: The purpose of this bill is to revise the article relating to arbitration and implement the terms of the Uniform Arbitration Act. The bill defines terms, including notice and the applicability of the article, proscribes the effectiveness of agreements to arbitrate and identifies nonwaivable provisions; allows for application for judicial relief from agreements to arbitrate; makes an agreement to arbitrate valid unless a legal or equitable reason for revocation exists; provides for the terms by which arbitration may continue if challenged; provides the process for motions to compel or stay arbitration; provides for provisional remedies to protect the effectiveness of arbitration proceedings; provides the process for initiation of arbitration;

provides for the consolidation of separate arbitration proceedings; provides for the appointment of an arbitrator and default process if not agreed by the parties; requires neutrality of arbitrators; requires disclosure by arbitrators of matters affecting impartiality; requires a majority of arbitrators to agree to exercise powers; provides immunity for arbitrators, requires competency to testify, and provides for attorneys' fees and costs for challenges from which arbitrators' are immune; provides the general process for arbitration; allows parties to be represented by a lawyer in arbitrations; outlines the procedure for witnesses, subpoenas, depositions and discovery in arbitrations; provides for judicial enforcement of preaward ruling by arbitrator; provides for a record of an award and the requirements for an award; allows the change of an award by an arbitrator upon motion under certain conditions; provides that certain remedies and the fees and costs of arbitration may be a part of an arbitration award; allows for confirmation by a court of an award upon motion; provides the process and grounds for vacating an award by a court; provides the process and grounds for the modification or correction of an award upon motion; provides that a court shall enter a judgment upon confirmation of an award and may add reasonable attorneys' fees and costs; provides for jurisdiction over arbitration agreements by a court of this state; provides venue; provides that appeals may be taken from orders related to arbitration proceedings; requires uniform construction of the act; provides that this act complies with the Electronic Signatures in Global and National Commerce Act; and provides the effective date of the act.

Sections §55-10-1 through §55-10-8 have been substantially rewritten; therefore, strike-throughs and underscores have been omitted.

Sections §55-10-9 through §55-10-32 are new; therefore, strike-throughs and underscores have been omitted.)