

1 **Senate Bill No. 251**

2 (By Senators Palumbo, Cann and Cookman)

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4 [Introduced January 8, 2014; referred to the Committee on
5 Interstate Cooperation; and then to the
6 Committee on the Judiciary.]
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11 A BILL to amend and reenact §55-10-1, §55-10-2, §55-10-3, §55-10-4,
12 §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West
13 Virginia, 1931, as amended; and to amend said code by adding
14 thereto twenty-three new sections, designated §55-10-9,
15 §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14,
16 §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19,
17 §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24,
18 §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29,
19 §55-10-30 and §55-10-31, all relating generally to
20 arbitration; defining terms; defining notice under the
21 article; defining when article applies; proscribing the effect
22 of agreements to arbitrate and defining nonwaivable
23 provisions; allowing for application for judicial relief under

1 the article; making an agreement to arbitrate valid unless a
2 legal or equitable reason for revocation exists; providing for
3 the terms by which arbitration may continue if challenged;
4 providing for the process for motions to compel or stay
5 arbitration; providing for provisional remedies to protect the
6 effectiveness of arbitration proceedings; providing the
7 process for initiation of arbitration; providing for the
8 consolidation of separate arbitration proceedings; providing
9 for the appointment of an arbitrator and default process if
10 not agreed by the parties; requiring neutrality of
11 arbitrators; requiring disclosure by arbitrators of matters
12 affecting impartiality; requiring a majority of arbitrators to
13 agree to exercise powers; providing immunity for arbitrators;
14 requiring competency to testify and providing for attorneys'
15 fees and costs for challenges from which arbitrators are
16 immune; providing the general process for arbitration;
17 allowing parties to be represented by a lawyer in
18 arbitrations; outlining the procedure for witnesses,
19 subpoenas, depositions and discovery in arbitrations;
20 providing for judicial enforcement of preaward ruling by
21 arbitrator; providing for a record of an award and the
22 requirements for an award; allowing the change of an award by
23 an arbitrator upon motion under certain conditions; providing

1 that certain remedies and the fees and costs of arbitration
2 may be a part of an arbitration award; allowing for
3 confirmation by a court of an award upon motion; providing the
4 process and grounds for vacating an award by a court;
5 providing the process and grounds for the modification or
6 correction of an award upon motion; providing that a court
7 shall enter a judgment upon confirmation of an award and may
8 add reasonable attorneys' fees and costs; providing for
9 jurisdiction over arbitration agreements by a court of this
10 state; providing venue; providing that appeals may be taken
11 from orders related to arbitration proceedings; requiring
12 uniform construction of the act; providing that this act
13 complies with the Electronic Signatures in Global and National
14 Commerce Act; and providing the effective date of the act.

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

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

1 follows:

2 **ARTICLE 10. ARBITRATION.**

3 **§55-10-1. Definitions.**

4 In this article:

5 (1) "Arbitration organization" means an association, agency,
6 board, commission or other entity that is neutral and initiates,
7 sponsors or administers an arbitration proceeding or is involved in
8 the appointment of an arbitrator.

9 (2) "Arbitrator" means an individual appointed to render an
10 award, alone or with others, in a controversy that is subject to an
11 agreement to arbitrate.

12 (3) "Court" means a circuit court in this state.

13 (4) "Knowledge" means actual knowledge.

14 (5) "Person" means an individual, corporation, business trust,
15 estate, trust, partnership, limited liability company, association,
16 joint venture or government; governmental subdivision, agency or
17 instrumentality; public corporation; or any other legal or
18 commercial entity.

19 (6) "Record" means information that is inscribed on a tangible
20 medium or that is stored in an electronic or other medium and is
21 retrievable in perceivable form.

22 **§55-10-2. Notice.**

23 (a) Except as otherwise provided in this article, a person

1 gives notice to another person by taking action that is reasonably
2 necessary to inform the other person in ordinary course, whether or
3 not the other person acquires knowledge of the notice.

4 (b) A person has notice if the person has knowledge of the
5 notice or has received notice.

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

10 **§55-10-3. When article applies.**

11 (a) This article governs an agreement to arbitrate made on or
12 after July 1, 2014.

13 (b) This article governs an agreement to arbitrate made before
14 July 1, 2014, if all the parties to the agreement or to the
15 arbitration proceeding so agree in a record.

16 **§55-10-4. Effect of agreement to arbitrate; nonwaivable**
17 **provisions.**

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

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

1 (1) Waive or agree to vary the effect of the requirements of
2 sections five, six, eight, seventeen, twenty-six or twenty-eight of
3 this article;

4 (2) Agree to unreasonably restrict the right under section
5 nine of this article to notice of the initiation of an arbitration
6 proceeding;

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

10 (4) Waive the right under section sixteen of this article of
11 a party to an agreement to arbitrate to be represented by a lawyer
12 at any proceeding or hearing under this article, but an employer
13 and a labor organization may waive the right to representation by
14 a lawyer in a labor arbitration.

15 (c) A party to an agreement to arbitrate or arbitration
16 proceeding may not waive, or the parties may not vary the effect
17 of, the requirements of this section or sections three, seven,
18 fourteen, eighteen, twenty, twenty-two, twenty-three, twenty-four,
19 twenty-five, twenty-nine, thirty or thirty-one of this article.

20 **§55-10-5. Application for judicial relief.**

21 (a) Except as otherwise provided in section twenty-eight of
22 this article, an application for judicial relief under this article
23 must be made by motion to a West Virginia circuit court as

1 specified in section twenty-seven of this article and heard in
2 accordance with the rules of civil procedure governing motions.

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

9 **§55-10-6. Validity of agreement to arbitrate.**

10 (a) An agreement contained in a record to submit to
11 arbitration any existing or subsequent controversy arising between
12 the parties to the agreement is valid, enforceable and irrevocable
13 except upon a ground that exists at law or in equity for the
14 revocation of a contract.

15 (b) The court shall decide whether an agreement to arbitrate
16 exists or a controversy is subject to an agreement to arbitrate.

17 (c) An arbitrator shall decide whether a condition precedent
18 to arbitration has been fulfilled and whether a contract containing
19 a valid agreement to arbitrate is enforceable.

20 (d) If a party to a judicial proceeding challenges the
21 existence of, or claims that a controversy is not subject to, an
22 agreement to arbitrate, the arbitration proceeding may continue
23 pending final resolution of the issue by the court, unless the

1 court otherwise orders.

2 **§55-10-7. Motion to compel or stay arbitration.**

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

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

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

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

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

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

23 (e) If a proceeding involving a claim referable to arbitration

1 under an alleged agreement to arbitrate is pending in court, a
2 motion under this section must be made in that court. Otherwise a
3 motion under this section may be made in any court as provided in
4 section twenty-seven of this article.

5 (f) If a party makes a motion to the court to order
6 arbitration, the court on just terms shall stay any judicial
7 proceeding that involves a claim alleged to be subject to the
8 arbitration until the court renders a final decision under this
9 section.

10 (g) If the court orders arbitration, the court on just terms
11 shall stay any judicial proceeding that involves a claim subject to
12 the arbitration. If a claim subject to the arbitration is
13 severable, the court may limit the stay to that claim.

14 **§55-10-8. Provisional remedies.**

15 (a) Before an arbitrator is appointed and is authorized and
16 able to act, the court, upon motion of a party to an arbitration
17 proceeding and for good cause shown, may enter an order for
18 provisional remedies to protect the effectiveness of the
19 arbitration proceeding to the same extent and under the same
20 conditions as if the controversy were the subject of a civil
21 action.

22 (b) After an arbitrator is appointed and is authorized and
23 able to act:

1 (1) The arbitrator may issue such orders for provisional
2 remedies, including interim awards, as the arbitrator finds
3 necessary to protect the effectiveness of the arbitration
4 proceeding and to promote the fair and expeditious resolution of
5 the controversy, to the same extent and under the same conditions
6 as if the controversy were the subject of a civil action; and

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

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

13 **§55-10-9. Initiation of arbitration.**

14 (a) A person initiates an arbitration proceeding by giving
15 notice in a record to the other parties to the agreement to
16 arbitrate in the agreed manner between the parties or, in the
17 absence of agreement, by certified or registered mail, return
18 receipt requested and obtained, or by service as authorized for the
19 commencement of a civil action. The notice must describe the
20 nature of the controversy and the remedy sought.

21 (b) Unless a person objects for lack or insufficiency of
22 notice under section fifteen of this article not later than the
23 beginning of the arbitration hearing, the person by appearing at

1 the hearing waives any objection to lack of or insufficiency of
2 notice.

3 **§55-10-10. Consolidation of separate arbitration proceedings.**

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

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

13 (2) The claims subject to the agreements to arbitrate arise in
14 substantial part from the same transaction or series of related
15 transactions;

16 (3) The existence of a common issue of law or fact creates the
17 possibility of conflicting decisions in the separate arbitration
18 proceedings; and

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

22 (b) The court may order consolidation of separate arbitration
23 proceedings as to some claims and allow other claims to be resolved

1 in separate arbitration proceedings.

2 (c) The court may not order consolidation of the claims of a
3 party to an agreement to arbitrate if the agreement prohibits
4 consolidation.

5 **§55-10-11. Appointment of arbitrator; service as a neutral**
6 **arbitrator.**

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

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

20 **§55-10-12. Disclosure by arbitrator.**

21 (a) Before accepting appointment, an individual who is
22 requested to serve as an arbitrator, after making a reasonable
23 inquiry, shall disclose to all parties to the agreement to

1 arbitrate and arbitration proceeding and to any other arbitrators
2 any known facts that a reasonable person would consider likely to
3 affect the impartiality of the arbitrator in the arbitration
4 proceeding, including:

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

7 (2) An existing or past relationship with any of the parties
8 to the agreement to arbitrate or the arbitration proceeding, their
9 counsel or representatives, a witness or another arbitrator.

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

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

22 (d) If the arbitrator did not disclose a fact as required by
23 subsection (a) or (b) of this section, upon timely objection by a

1 party, the court under section twenty-three of this article may
2 vacate an award.

3 (e) An arbitrator appointed as a neutral arbitrator who does
4 not disclose a known, direct and material interest in the outcome
5 of the arbitration proceeding or a known, existing and substantial
6 relationship with a party is presumed to act with evident
7 partiality under section twenty-three of this article.

8 (f) If the parties to an arbitration proceeding agree to the
9 procedures of an arbitration organization or any other procedures
10 for challenges to arbitrators before an award is made, substantial
11 compliance with those procedures is a condition precedent to a
12 motion to vacate an award on that ground under section twenty-three
13 of this article.

14 **§55-10-13. Action by majority.**

15 If there is more than one arbitrator, the powers of an
16 arbitrator must be exercised by a majority of the arbitrators, but
17 all of them shall conduct the hearing under section fifteen of this
18 article.

19 **§55-10-14. Immunity of arbitrator; competency to testify;**
20 **attorney's fees and costs.**

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

1 (b) The immunity afforded by this section supplements any
2 immunity under other law.

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

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

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

17 (2) To a hearing on a motion to vacate an award under section
18 twenty-three of this article if the moving party establishes prima
19 facie that a ground for vacating the award exists.

20 (e) If a person commences a civil action against an
21 arbitrator, arbitration organization or representative of an
22 arbitration organization arising from the services of the
23 arbitrator, organization or representative or if a person seeks to

1 compel an arbitrator or a representative of an arbitration
2 organization to testify or produce records in violation of
3 subsection (d) of this section, and the court decides that the
4 arbitrator, arbitration organization or representative of an
5 arbitration organization is immune from civil liability or that the
6 arbitrator or representative of the organization is not competent
7 to testify, the court shall award to the arbitrator, organization
8 or representative reasonable attorney's fees and other reasonable
9 expenses of litigation.

10 **§55-10-15. Arbitration process.**

11 (a) An arbitrator may conduct an arbitration in such manner as
12 the arbitrator considers appropriate for a fair and expeditious
13 disposition of the proceeding. The authority conferred upon the
14 arbitrator includes the power to hold conferences with the parties
15 to the arbitration proceeding before the hearing and, among other
16 matters, determine the admissibility, relevance, materiality and
17 weight of any evidence.

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

20 (1) If all interested parties agree; or

21 (2) Upon request of one party to the arbitration proceeding if
22 that party gives notice to all other parties to the proceeding, and
23 the other parties have a reasonable opportunity to respond.

1 (c) If an arbitrator orders a hearing, the arbitrator shall
2 set a time and place and give notice of the hearing not less than
3 five days before the hearing begins. Unless a party to the
4 arbitration proceeding makes an objection to lack or insufficiency
5 of notice not later than the beginning of the hearing, the party's
6 appearance at the hearing waives the objection. Upon request of a
7 party to the arbitration proceeding and for good cause shown, or
8 upon the arbitrator's own initiative, the arbitrator may adjourn
9 the hearing from time to time as necessary but may not postpone the
10 hearing to a time later than that fixed by the agreement to
11 arbitrate for making the award unless the parties to the
12 arbitration proceeding consent to a later date. The arbitrator may
13 hear and decide the controversy upon the evidence produced although
14 a party who was duly notified of the arbitration proceeding did not
15 appear. The court, on request, may direct the arbitrator to
16 conduct the hearing promptly and render a timely decision.

17 (d) At a hearing under subsection (c) of this section, a party
18 to the arbitration proceeding has a right to be heard, to present
19 evidence material to the controversy and to cross examine witnesses
20 appearing at the hearing.

21 (e) If an arbitrator ceases or is unable to act during the
22 arbitration proceeding, a replacement arbitrator must be appointed
23 in accordance with section eleven of this article to continue the

1 proceeding and to resolve the controversy.

2 **§55-10-16. Representation by lawyer.**

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

5 **§55-10-17. Witnesses; subpoenas; depositions; discovery.**

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

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

20 (c) An arbitrator may permit such discovery as the arbitrator
21 decides is appropriate in the circumstances, taking into account
22 the needs of the parties to the arbitration proceeding and other
23 affected persons and the desirability of making the proceeding

1 fair, expeditious and cost effective.

2 (d) If an arbitrator permits discovery under subsection (c) of
3 this section, the arbitrator may order a party to the arbitration
4 proceeding to comply with the arbitrator's discovery-related
5 orders, issue subpoenas for the attendance of a witness and for the
6 production of records and other evidence at a discovery proceeding
7 and take action against a noncomplying party to the extent a court
8 could if the controversy were the subject of a civil action in this
9 state.

10 (e) An arbitrator may issue a protective order to prevent the
11 disclosure of privileged information, confidential information,
12 trade secrets and other information protected from disclosure to
13 the extent a court could if the controversy were the subject of a
14 civil action in this state.

15 (f) All laws compelling a person under subpoena to testify and
16 all fees for attending a judicial proceeding, a deposition, or a
17 discovery proceeding as a witness apply to an arbitration
18 proceeding as if the controversy were the subject of a civil action
19 in this state.

20 (g) The court may enforce a subpoena or discovery-related
21 order for the attendance of a witness within this state and for the
22 production of records and other evidence issued by an arbitrator in
23 connection with an arbitration proceeding in another state upon

1 conditions determined by the court so as to make the arbitration
2 proceeding fair, expeditious, and cost effective. A subpoena or
3 discovery-related order issued by an arbitrator in another state
4 must be served in the manner provided by law for service of
5 subpoenas in a civil action in this state and, upon motion to the
6 court by a party to the arbitration proceeding or the arbitrator,
7 enforced in the manner provided by law for enforcement of subpoenas
8 in a civil action in this state.

9 **§55-10-18. Judicial enforcement of preaward ruling by arbitrator.**

10 If an arbitrator makes a preaward ruling in favor of a party
11 to the arbitration proceeding, the party may request the arbitrator
12 to incorporate the ruling into an award under section nineteen of
13 this article. A prevailing party may make a motion to the court
14 for an expedited order to confirm the award under section
15 twenty-two of this article, in which case the court shall summarily
16 decide the motion. The court shall issue an order to confirm the
17 award unless the court vacates, modifies or corrects the award
18 under section twenty-three or twenty-four of this article.

19 **§55-10-19. Award.**

20 (a) An arbitrator shall make a record of an award. The record
21 must be signed or otherwise authenticated by any arbitrator who
22 concurs with the award. The arbitrator or the arbitration
23 organization shall give notice of the award, including a copy of

1 the award, to each party to the arbitration proceeding.

2 (b) An award must be made within the time specified by the
3 agreement to arbitrate or, if not specified therein, within the
4 time ordered by the court. The court may extend, or the parties to
5 the arbitration proceeding may agree in a record to extend, the
6 time. The court or the parties may do so within or after the time
7 specified or ordered. A party waives any objection that an award
8 was not timely made unless the party gives notice of the objection
9 to the arbitrator before receiving notice of the award.

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

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

13 (1) Upon a ground stated in section twenty-four of this
14 article;

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

18 (3) To clarify the award.

19 (b) A motion under subsection (a) of this section must be made
20 and notice given to all parties within twenty days after the moving
21 party receives notice of the award.

22 (c) A party to the arbitration proceeding must give notice of
23 any objection to the motion within ten days after receipt of the

1 notice.

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

6 (1) Upon a ground stated in section twenty-four of this
7 article;

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

11 (3) To clarify the award.

12 (e) An award modified or corrected pursuant to this section is
13 subject to sections nineteen, twenty-two, twenty-three and
14 twenty-four of this article.

15 **§55-10-21. Remedies; fees and expenses of arbitration proceeding.**

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

21 (b) An arbitrator may award reasonable attorney's fees and
22 other reasonable expenses of arbitration if such an award is
23 authorized by law in a civil action involving the same claim or by

1 the agreement of the parties to the arbitration proceeding.

2 (c) As to all remedies other than those authorized by
3 subsections (a) and (b) of this section, an arbitrator may order
4 such remedies as the arbitrator considers just and appropriate
5 under the circumstances of the arbitration proceeding. The fact
6 that such a remedy could not or would not be granted by the court
7 is not a ground for refusing to confirm an award under section
8 twenty-two of this article or for vacating an award under section
9 twenty-three of this article.

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

12 (e) If an arbitrator awards punitive damages or other
13 exemplary relief under subsection (a), the arbitrator shall specify
14 in the award the basis in fact justifying and the basis in law
15 authorizing the award and state separately the amount of the
16 punitive damages or other exemplary relief.

17 **§55-10-22. Confirmation of award.**

18 After a party to an arbitration proceeding receives notice of
19 an award, the party may make a motion to the court for an order
20 confirming the award at which time the court shall issue a
21 confirming order unless the award is modified or corrected pursuant
22 to section twenty or twenty-four of this article or is vacated
23 pursuant to section twenty-three of this article.

1 **§55-10-23. Vacating award.**

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

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

7 (2) There was:

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

10 (B) Corruption by an arbitrator; or

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

13 (3) An arbitrator refused to postpone the hearing upon showing
14 of sufficient cause for postponement, refused to consider evidence
15 material to the controversy or otherwise conducted the hearing
16 contrary to section fifteen of this article, so as to prejudice
17 substantially the rights of a party to 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 of this article not later than the
22 beginning of the arbitration hearing; or

23 (6) The arbitration was conducted without proper notice of the

1 initiation of an arbitration as required in section nine so as to
2 prejudice substantially the rights of a party to the arbitration
3 proceeding.

4 (b) A motion under this section must be filed within ninety
5 days after the moving party receives notice of the award pursuant
6 to section nineteen of this article or within ninety days after the
7 moving party receives notice of a modified or corrected award
8 pursuant to section twenty of this article, unless the moving party
9 alleges that the award was procured by corruption, fraud or other
10 undue means, in which case the motion must be made within ninety
11 days after the ground is known or by the exercise of reasonable
12 care would have been known by the moving party.

13 (c) If the court vacates an award on a ground other than that
14 set forth in subdivision (5), subsection (a) of this section, it
15 may order a rehearing. If the award is vacated on a ground stated
16 in subdivision (1) or (2), subsection (a) of this section, the
17 rehearing must be before a new arbitrator. If the award is vacated
18 on a ground stated in subdivision (3), (4) or (6), subsection (a)
19 of this section, the rehearing may be before the arbitrator who
20 made the award or the arbitrator's successor. The arbitrator must
21 render the decision in the rehearing within the same time as that
22 provided in section nineteen of this article for an award.

23 (d) If the court denies a motion to vacate an award, it shall

1 confirm the award unless a motion to modify or correct the award is
2 pending.

3 **§55-10-24. Modification or correction of award.**

4 (a) Upon motion made within ninety days after the moving party
5 receives notice of the award pursuant to section nineteen of this
6 article or within ninety days after the moving party receives
7 notice of a modified or corrected award pursuant to section twenty
8 of this article, the court shall modify or correct the award if:

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

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

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

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

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

23 **§55-10-25. Judgment on award; attorney's fees and litigation**

1 **expenses.**

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

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

9 (c) On application of a prevailing party to a contested
10 judicial proceeding under section twenty-two, twenty-three or
11 twenty-four of this article, the court may add reasonable
12 attorney's fees and other reasonable expenses of litigation
13 incurred in a judicial proceeding after the award is made to a
14 judgment confirming, vacating without directing a rehearing,
15 modifying or correcting an award.

16 **§55-10-26. Jurisdiction.**

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

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

22 **§55-10-27. Venue.**

23 A motion pursuant to section five of this article must be made

1 in the circuit court of the county in which the agreement to
2 arbitrate specifies the arbitration hearing is to be held or, if
3 the hearing has been held, in the circuit court of the county in
4 which it was held. Otherwise, the motion may be made in the court
5 of any county in which an adverse party resides or has a place of
6 business or, if no adverse party has a residence or place of
7 business in this state, in the circuit court of Kanawha County,
8 West Virginia. All subsequent motions must be made in the court
9 hearing the initial motion, unless the court otherwise directs.

10 **§55-10-28. Appeals.**

11 (a) An appeal may be taken from:

- 12 (1) An order denying a motion to compel arbitration;
13 (2) An order granting a motion to stay arbitration;
14 (3) An order confirming or denying confirmation of an award;
15 (4) An order modifying or correcting an award;
16 (5) An order vacating an award without directing a rehearing;

17 or

18 (6) A final judgment entered pursuant to this article.

19 (b) An appeal under this section must be taken as from an
20 order or a judgment in a civil action.

21 **§55-10-29. Uniformity of application and construction.**

22 In applying and construing this uniform act, consideration
23 must be given to the need to promote uniformity of the law with

1 respect to its subject matter among states that enact it.

2 **§55-10-30. Electronic Signatures in Global and National Commerce**
3 **Act.**

4 The provisions of this article governing the legal effect,
5 validity or enforceability of electronic records or signatures, and
6 of contracts performed with the use of such records or signatures,
7 shall conform to the requirements of section 102 of the Electronic
8 Signatures in Global and National Commerce Act, Pub. L. No.
9 106-229, 114 Stat. 464 (2000).

10 **§55-10-31. Savings clause.**

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

(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; and provides that this act complies with the Electronic Signatures in Global and National Commerce 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 §55-10-31 are new; therefore, strike-throughs and underscores have been omitted.)