

Senate Bill No. 251

(By Senators Palumbo, Cann and Cookman)

[Introduced January 8, 2014; referred to the Committee on Interstate Cooperation; and then to the Committee on the Judiciary.]

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-three 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 and §55-10-31, 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-three 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 and §55-10-31, 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 on
2 or after July 1, 2014.

3 (b) This article governs an agreement to arbitrate made
4 before July 1, 2014, 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) of this section, a party to an agreement to arbitrate or to
3 an arbitration proceeding may waive or the parties may vary
4 the effect of the requirements of this article to the extent
5 permitted by law.

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

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

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

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

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

22 (c) A party to an agreement to arbitrate or arbitration
23 proceeding may not waive, or the parties may not vary the
24 effect of, the requirements of this section or sections three,

25 seven, fourteen, eighteen, twenty, twenty-two, twenty-three,
26 twenty-four, twenty-five, twenty-nine, thirty or thirty-one of
27 this article.

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

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

6 (b) Unless a civil action involving the agreement to
7 arbitrate is pending, notice of an initial motion to the court
8 under this article must be served in the manner provided by law
9 for the service of a summons in a civil action. Otherwise,
10 notice of the motion must be given in the manner provided by
11 the rules of civil procedure for serving motions in pending
12 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) of
19 this section, order 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
34 terms shall stay any judicial proceeding that involves a
35 claim subject to the arbitration. If a claim subject to the
36 arbitration is severable, the court may limit the stay to that
37 claim.

§55-10-8. Provisional remedies.

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

4 enter an order for provisional remedies to protect the
5 effectiveness of the arbitration proceeding to the same
6 extent and under the same conditions as if the controversy
7 were the subject of a civil action.

8 (b) After an arbitrator is appointed and is authorized
9 and 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
14 resolution of the controversy, to the same extent and under
15 the same conditions as if the controversy were the subject
16 of a civil 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
19 and the arbitrator is not able to act timely or the arbitrator
20 cannot 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 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) of this
2 section, upon motion of a party to an agreement to arbitrate
3 or to an arbitration proceeding, the court may order
4 consolidation of separate arbitration proceedings as to all or
5 some of the 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 agreed
4 on a method, the agreed method fails or an arbitrator appointed
5 fails or is unable to act and a successor has not been appointed,
6 the court, on motion of a party to the arbitration proceeding,
7 shall appoint the arbitrator. An arbitrator so appointed has all
8 the powers of an arbitrator designated in the agreement to
9 arbitrate or appointed pursuant to the agreed method.

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

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

19 (c) If an arbitrator discloses a fact required by subsection (a)
20 or (b) of this section to be disclosed and a party timely objects
21 to the appointment or continued service of the arbitrator based

22 upon the fact disclosed, the objection may be a ground under
23 section twenty-three of this article for vacating an award made
24 by the arbitrator.

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

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

35 (f) If the parties to an arbitration proceeding agree to the
36 procedures of an arbitration organization or any other
37 procedures for challenges to arbitrators before an award is
38 made, substantial compliance with those procedures is a
39 condition precedent to a motion to vacate an award on that
40 ground under section twenty-three 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 fifteen
4 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 of this article if the moving party
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) of this section, and the court decides that the
31 arbitrator, arbitration organization or representative of an

32 arbitration organization is immune from civil liability or that
33 the 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 proceeding
23 and for good cause shown, or upon the arbitrator's own
24 initiative, the arbitrator may adjourn the hearing from time to
25 time as necessary but may not postpone the hearing to a time
26 later than that fixed by the agreement to arbitrate for making the
27 award unless the parties to the arbitration proceeding consent to
28 a later date. The arbitrator may hear and decide the controversy
29 upon the evidence produced although a party who was duly
30 notified of the arbitration proceeding did not appear. The court,
31 on request, may direct the arbitrator to conduct the hearing
32 promptly and render a timely decision.

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

37 (e) If an arbitrator ceases or is unable to act during the
38 arbitration proceeding, a replacement arbitrator must be
39 appointed in accordance with section eleven of this article to
40 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 (c)
22 of this section, the arbitrator may order a party to the
23 arbitration proceeding to comply with the arbitrator's
24 discovery-related orders, issue subpoenas for the attendance
25 of a witness and for the production of records and other

26 evidence at a discovery proceeding and take action against a
27 noncomplying party to the extent a court could if the
28 controversy were the 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
12 or 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 of this
4 article;

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) of this section must be
10 made and notice given to all parties within twenty days after
11 the moving party 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 of this
20 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, twenty-two,
27 twenty-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) of this section, an arbitrator may order
13 such 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 issue

4 a confirming order unless the award is modified or corrected
5 pursuant to section twenty or twenty-four of this article or is
6 vacated pursuant to section twenty-three of this 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 article,

16 so as to prejudice substantially the rights of a party to the
17 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
24 the initiation of an arbitration as required in section nine so as
25 to prejudice substantially the rights of a party to the arbitration
26 proceeding.

27 (b) A motion under this section must be filed within ninety
28 days after the moving party receives notice of the award
29 pursuant to section nineteen of this article or within ninety
30 days after the moving party receives notice of a modified or
31 corrected award pursuant to section twenty of this article,
32 unless the moving party alleges that the award was procured
33 by 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 moving party.

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

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

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

1 (a) Upon motion made within ninety days after the
2 moving party receives notice of the award pursuant to

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

7 (1) There was an evident mathematical miscalculation
8 or an evident mistake in the description of a person, thing
9 or 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) of this
17 section is granted, the court shall modify or correct and
18 confirm the award as modified or corrected. Otherwise,
19 unless a motion to vacate is pending, the court shall
20 confirm the 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
11 an order or a judgment in a civil action.

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

1 In applying and construing this uniform act,
2 consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter
4 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, shall conform to the requirements of section 102
5 of the Electronic Signatures in Global and National
6 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000).

§55-10-31. Savings clause.

1 This article does not affect an action or proceeding
2 commenced 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.)