

**Senate Bill No. 37**

(By Senator Palumbo)

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[Introduced January 14, 2015s; 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-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 article; defining when article applies; proscribing effect of agreements to arbitrate and defining nonwaivable provisions; allowing for application for judicial relief under article; making agreement to arbitrate valid unless legal or equitable reason for revocation exists; providing for terms by which arbitration may continue if challenged; providing for process for motions to compel or stay arbitration; providing for provisional remedies to protect effectiveness of arbitration proceedings; providing process for initiation of arbitration; providing for consolidation of separate

1 arbitration proceedings; providing for appointment of arbitrator and default process if not  
2 agreed by the parties; requiring neutrality of arbitrators; requiring disclosure by arbitrators  
3 of matters affecting impartiality; requiring majority of arbitrators to agree to exercise powers;  
4 providing immunity for arbitrators; requiring competency to testify; providing for attorneys'  
5 fees and costs for challenges from which arbitrators are immune; providing general process  
6 for arbitration; allowing parties to be represented by a lawyer in arbitrations; outlining  
7 procedure for witnesses, subpoenas, depositions and discovery in arbitrations; providing for  
8 judicial enforcement of preaward ruling by arbitrator; providing for record of an award and  
9 requirements for an award; allowing change of an award by arbitrator upon motion under  
10 certain conditions; providing that certain remedies and fees and costs of arbitration may be  
11 a part of arbitration award; allowing for confirmation by court of an award upon motion;  
12 providing process and grounds for vacating an award by a court; providing process and  
13 grounds for modification or correction of an award upon motion; providing that court shall  
14 enter a judgment upon confirmation of an award and may add reasonable attorneys' fees and  
15 costs; providing for jurisdiction over arbitration agreements by a court of this state; providing  
16 venue; providing that appeals may be taken from orders related to arbitration proceedings;  
17 requiring uniform construction of act; providing that this act complies with the Electronic  
18 Signatures in Global and National Commerce Act; and providing effective date.

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

20 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  
21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be  
22 amended by adding thereto twenty-three new sections, designated §55-10-9, §55-10-10, §55-10-11,

1 §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19,  
2 §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27,  
3 §55-10-28, §55-10-29, §55-10-30 and §55-10-31, all to read as follows:

4 **ARTICLE 10. ARBITRATION.**

5 **§55-10-1. Definitions.**

6 In this article:

7 “Arbitration organization” means an association, agency, board, commission or other entity  
8 that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the  
9 appointment of an arbitrator.

10 “Arbitrator” means an individual appointed to render an award, alone or with others, in a  
11 controversy that is subject to an agreement to arbitrate.

12 “Court” means a circuit court in this state.

13 “Knowledge” means actual knowledge.

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

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

19 **§55-10-2. Notice.**

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

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

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

5 **§55-10-3. When article applies.**

6 (a) This article governs an agreement to arbitrate made on or after July 1, 2015.

7 (b) This article governs an agreement to arbitrate made before July 1, 2015, if all the parties  
8 to the agreement or to the arbitration proceeding so agree in a record.

9 **§55-10-4. Effect of agreement to arbitrate; nonwaivable provisions.**

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

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

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

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

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

21 (4) Waive the right under section sixteen of this article of a party to an agreement to arbitrate  
22 to be represented by a lawyer at any proceeding or hearing under this article, but an employer and

1 a labor organization may waive the right to representation by a lawyer in a labor arbitration.

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

6 **§55-10-5. Application for judicial relief.**

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

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

15 **§55-10-6. Validity of agreement to arbitrate.**

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

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

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

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

4 **§55-10-7. Motion to compel or stay arbitration.**

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

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

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

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

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

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

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

1 article.

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

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

8 **§55-10-8. Provisional remedies.**

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

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

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

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

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

1 **§55-10-9. Initiation of arbitration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **§55-10-12. Disclosure by arbitrator.**

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

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

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

1 (b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to  
2 arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns  
3 after accepting appointment which a reasonable person would consider likely to affect the  
4 impartiality of the arbitrator.

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

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

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

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

20 **§55-10-13. Action by majority.**

21 If there is more than one arbitrator, the powers of an arbitrator must be exercised by a  
22 majority of the arbitrators, but all of them shall conduct the hearing under section fifteen of this

1 article.

2 **§55-10-14. Immunity of arbitrator; competency to testify; attorney's fees and costs.**

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

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

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

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

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

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

16 (e) If a person commences a civil action against an arbitrator, arbitration organization or  
17 representative of an arbitration organization arising from the services of the arbitrator, organization  
18 or representative or if a person seeks to compel an arbitrator or a representative of an arbitration  
19 organization to testify or produce records in violation of subsection (d) of this section, and the court  
20 decides that the arbitrator, arbitration organization or representative of an arbitration organization  
21 is immune from civil liability or that the arbitrator or representative of the organization is not  
22 competent to testify, the court shall award to the arbitrator, organization or representative reasonable

1 attorney's fees and other reasonable expenses of litigation.

2 **§55-10-15. Arbitration process.**

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

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

9 (1) If all interested parties agree; or

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

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

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

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

7 **§55-10-16. Representation by lawyer.**

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

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

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

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

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

1 affected persons and the desirability of making the proceeding fair, expeditious and cost effective.

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

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

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

13 (g) The court may enforce a subpoena or discovery-related order for the attendance of a  
14 witness within this state and for the production of records and other evidence issued by an arbitrator  
15 in connection with an arbitration proceeding in another state upon conditions determined by the court  
16 so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or  
17 discovery-related order issued by an arbitrator in another state must be served in the manner provided  
18 by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party  
19 to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for  
20 enforcement of subpoenas in a civil action in this state.

21 **§55-10-18. Judicial enforcement of preaward ruling by arbitrator.**

22 If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the

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

6 **§55-10-19. Award.**

7 (a) An arbitrator shall make a record of an award. The record must be signed or otherwise  
8 authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration  
9 organization shall give notice of the award, including a copy of the award, to each party to the  
10 arbitration proceeding.

11 (b) An award must be made within the time specified by the agreement to arbitrate or, if not  
12 specified therein, within the time ordered by the court. The court may extend, or the parties to the  
13 arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so  
14 within or after the time specified or ordered. A party waives any objection that an award was not  
15 timely made unless the party gives notice of the objection to the arbitrator before receiving notice  
16 of the award.

17 **§55-10-20. Change of award by arbitrator.**

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

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

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

1 (3) To clarify the award.

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

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

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

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

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

12 (3) To clarify the award.

13 (e) An award modified or corrected pursuant to this section is subject to sections nineteen,  
14 twenty-two, twenty-three and 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 exemplary relief if such an award is  
17 authorized by law in a civil action involving the same claim and the evidence produced at the hearing  
18 justifies the award under the legal standards otherwise applicable to the claim.

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

22 (c) As to all remedies other than those authorized by subsections (a) and (b) of this section,

1 an arbitrator may order such remedies as the arbitrator considers just and appropriate under the  
2 circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be  
3 granted by the court is not a ground for refusing to confirm an award under section twenty-two of  
4 this article or for vacating an award under section twenty-three of this article.

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

7 (e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a)  
8 of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law  
9 authorizing the award and state separately the amount of the punitive damages or other exemplary  
10 relief.

11 **§55-10-22. Confirmation of award.**

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

16 **§55-10-23. Vacating award.**

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

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

20 (2) There was:

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

22 (B) Corruption by an arbitrator; or

- 1 (C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- 2 (3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for  
3 postponement, refused to consider evidence material to the controversy or otherwise conducted the  
4 hearing contrary to section fifteen of this article, so as to prejudice substantially the rights of a party  
5 to the arbitration proceeding;
- 6 (4) An arbitrator exceeded the arbitrator's powers;
- 7 (5) There was no agreement to arbitrate, unless the person participated in the arbitration  
8 proceeding without raising the objection under section fifteen of this article not later than the  
9 beginning of the arbitration hearing; or
- 10 (6) The arbitration was conducted without proper notice of the initiation of an arbitration as  
11 required in section nine so as to prejudice substantially the rights of a party to the arbitration  
12 proceeding.
- 13 (b) A motion under this section must be filed within ninety days after the moving party  
14 receives notice of the award pursuant to section nineteen of this article or within ninety days after  
15 the moving party receives notice of a modified or corrected award pursuant to section twenty of this  
16 article, unless the moving party alleges that the award was procured by corruption, fraud or other  
17 undue means, in which case the motion must be made within ninety days after the ground is known  
18 or by the exercise of reasonable care would have been known by the moving party.
- 19 (c) If the court vacates an award on a ground other than that set forth in subdivision (5),  
20 subsection (a) of this section, it may order a rehearing. If the award is vacated on a ground stated  
21 in subdivision (1) or (2), subsection (a) of this section, the rehearing must be before a new arbitrator.  
22 If the award is vacated on a ground stated in subdivision (3), (4) or (6), subsection (a) of this section,

1 the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The  
2 arbitrator must render the decision in the rehearing within the same time as that provided in section  
3 nineteen of this article for an award.

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

6 **§55-10-24. Modification or correction of award.**

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

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

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

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

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

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

22 **§55-10-25. Judgment on award; attorney's fees and litigation expenses.**

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

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

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

9 **§55-10-26. Jurisdiction.**

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

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

14 **§55-10-27. Venue.**

15 A motion pursuant to section five of this article must be made in the circuit court of the  
16 county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the  
17 hearing has been held, in the circuit court of the county in which it was held. Otherwise, the motion  
18 may be made in the court of any county in which an adverse party resides or has a place of business  
19 or, if no adverse party has a residence or place of business in this state, in the circuit court of  
20 Kanawha County, West Virginia. All subsequent motions must be made in the court hearing the  
21 initial motion, unless the court otherwise directs.

22 **§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 award;

5 (4) An order modifying or correcting an award;

6 (5) An order vacating an award without directing a rehearing; or

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

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

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

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

13 **§55-10-30. Electronic Signatures in Global and National Commerce Act.**

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

18 **§55-10-31. Savings clause.**

19 This article does not affect an action or proceeding commenced or right accrued before this  
20 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. The bill allows for application for judicial relief from agreements to arbitrate. The bill makes an agreement to arbitrate valid unless a legal or equitable reason for revocation exists. The bill provides for the terms by which arbitration may continue if challenged. The bill provides the process for motions to compel or stay arbitration. The bill provides for provisional remedies to protect the effectiveness of arbitration proceedings. The bill provides the process for initiation of arbitration. The bill provides for the consolidation of separate arbitration proceedings. The bill provides for the appointment of an arbitrator and default process if not agreed by the parties. The bill requires neutrality of arbitrators. The bill requires disclosure by arbitrators of matters affecting impartiality. The bill requires a majority of arbitrators to agree to exercise powers. The bill provides immunity for arbitrators, requires competency to testify, and provides for attorneys' fees and costs for challenges from which arbitrators' are immune. The bill provides the general process for arbitration. The bill allows parties to be represented by a lawyer in arbitrations. The bill outlines the procedure for witnesses, subpoenas, depositions and discovery in arbitrations. The bill provides for judicial enforcement of preaward ruling by arbitrator. The bill provides for a record of an award and the requirements for an award. The bill allows the change of an award by an arbitrator upon motion under certain conditions. The bill provides that certain remedies and the fees and costs of arbitration may be a part of an arbitration award. The bill allows for confirmation by a court of an award upon motion. The bill provides the process and grounds for vacating an award by a court. The bill provides the process and grounds for the modification or correction of an award upon motion. The bill provides that a court shall enter a judgment upon confirmation of an award and may add reasonable attorneys' fees and costs. The bill provides for jurisdiction over arbitration agreements by a court of this state. The bill provides venue. The bill provides that appeals may be taken from orders related to arbitration proceedings. The bill requires uniform construction of the act. The bill 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.