

1 **AMENDMENTS TO UTAH ARBITRATION**
2 **STATUTE**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: LaVar Christensen**

6 **This act modifies the Utah Uniform Arbitration Act. It repeals the provision allowing an**
7 **arbitrator to award punitive damages, provides that the court retains jurisdiction over an**
8 **arbitration proceeding, and makes technical cross-reference and date changes to conform**
9 **with the original effective date. This act takes effect on May 15, 2003.**

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **78-31a-104 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

13 **78-31a-105 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

14 **78-31a-107 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

15 **78-31a-108 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

16 **78-31a-120 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

17 **78-31a-122 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

18 **78-31a-123 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

19 **78-31a-129 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

20 **78-31a-131 (Effective 05/15/03)**, as enacted by Chapter 326, Laws of Utah 2002

21 *Be it enacted by the Legislature of the state of Utah:*

22 Section 1. Section **78-31a-104 (Effective 05/15/03)** is amended to read:

23 **78-31a-104 (Effective 05/15/03). Application.**

24 (1) This chapter applies to any agreement to arbitrate made on or after May [6] 15,
25 [~~2002~~] 2003.

26 (2) This chapter applies to any agreement to arbitrate made before May [6] 15, [~~2002~~]
27 2003, if all the parties to the agreement or to the arbitration proceeding agree on the record.



28 Section 2. Section **78-31a-105 (Effective 05/15/03)** is amended to read:

29 **78-31a-105 (Effective 05/15/03). Effect of agreement to arbitrate -- Nonwaivable**
30 **provisions.**

31 (1) Except as otherwise provided in Subsections (2) and (3), a party to an agreement to
32 arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the
33 requirements of this chapter to the extent permitted by law.

34 (2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the
35 agreement may not:

36 (a) waive or agree to vary the effect of the requirements of Subsection 78-31a-106(1),
37 78-31a-107(1), 78-31a-118(1) or (2), or Section [~~78-31a-109~~] 78-31a-119, 78-31a-127, or
38 78-31a-129;

39 (b) agree to unreasonably restrict the right under Section 78-31a-110 to notice of the
40 initiation of an arbitration proceeding;

41 (c) agree to unreasonably restrict the right under Section 78-31a-113 to disclosure of
42 any facts by a neutral arbitrator; or

43 (d) waive the right under Section 78-31a-117 of a party to an agreement to arbitrate to
44 be represented by a lawyer at any proceeding or hearing under this chapter, but an employer
45 and a labor organization may waive the right to representation by a lawyer in a labor
46 arbitration.

47 (3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the
48 parties may not vary the effect of, the requirements of this section or Sections 78-31a-108,
49 78-31a-115, 78-31a-119, 78-31a-123 through 78-31a-125, 78-31a-130, Subsection
50 78-31a-104(1), 78-31a-121(3) or (4), or 78-31a-126(1) or (2).

51 Section 3. Section **78-31a-107 (Effective 05/15/03)** is amended to read:

52 **78-31a-107 (Effective 05/15/03). Validity of agreement to arbitrate.**

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

56 (2) The court shall decide whether an agreement to arbitrate exists or a controversy is
57 subject to an agreement to arbitrate.

58 (3) [~~An arbitrator~~] The court shall decide whether a condition precedent to arbitrability

59 has been fulfilled and whether a contract containing a valid agreement to arbitrate is
60 enforceable.

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

64 Section 4. Section **78-31a-108 (Effective 05/15/03)** is amended to read:

65 **78-31a-108 (Effective 05/15/03). Motion to compel arbitration.**

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

68 (a) if the refusing party does not appear or does not oppose the motion, the court shall
69 order the parties to arbitrate; and

70 (b) if the refusing party opposes the motion, the court shall proceed summarily to
71 decide the issue and order the parties to arbitrate unless it finds that there is no enforceable
72 agreement to arbitrate.

73 (2) On motion of a person alleging that an arbitration proceeding has been initiated or
74 threatened but that there is no agreement to arbitrate, the court shall proceed summarily to
75 decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall
76 order the parties to arbitrate.

77 (3) If the court finds that there is no enforceable agreement, it may not, pursuant to
78 Subsection (1) or (2), order the parties to arbitrate.

79 (4) The court may not refuse to order arbitration because the claim subject to
80 arbitration lacks merit or grounds for the claim have not been established.

81 (5) If a proceeding involving a claim referable to arbitration under an alleged
82 agreement to arbitrate is pending in court, a motion under this section must be made in that
83 court. Otherwise a motion under this section may be made in any court as provided in Section
84 78-31a-128.

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

88 (7) If the court orders arbitration, the court on just terms shall stay any judicial
89 proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration

90 is severable, the court may limit the stay to that claim.

91 (8) The court shall retain jurisdiction through the arbitration proceedings.

92 Section 5. Section **78-31a-120 (Effective 05/15/03)** is amended to read:

93 **78-31a-120 (Effective 05/15/03). Award.**

94 (1) An arbitrator shall make a record of an award. The record must be signed or
95 otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the
96 arbitration organization shall give notice of the award, including a copy of the award, to the
97 court and each party to the arbitration proceeding.

98 (2) An award must be made within the time specified by the agreement to arbitrate or,
99 if not specified in the agreement, within the time ordered by the court. The court may extend
100 or the parties to the arbitration proceeding may agree on the record to extend the time. The
101 court or the parties may do so within or after the time specified or ordered. A party waives any
102 objection that an award was not timely made unless the party gives notice of the objection to
103 the arbitrator before receiving notice of the award.

104 Section 6. Section **78-31a-122 (Effective 05/15/03)** is amended to read:

105 **78-31a-122 (Effective 05/15/03). Remedies -- Fees and expenses of arbitration**
106 **proceeding.**

107 (1) An arbitrator may award punitive damages or other exemplary relief if [~~the award~~
108 ~~is]~~ punitive damages are authorized by the agreement of the parties to the arbitration
109 proceeding, and if an award is authorized by law in a civil action involving the same claim and
110 the evidence produced at the hearing justifies the award under the legal standards otherwise
111 applicable to the claim.

112 (2) An arbitrator may award reasonable attorney's fees and other reasonable expenses
113 of arbitration if the award is authorized by law in a civil action involving the same claim [~~or~~
114 ~~and~~] and by the agreement of the parties to the arbitration proceeding.

115 (3) As to all remedies other than those authorized by Subsections (1) and (2), an
116 arbitrator may order any remedies as the arbitrator considers just and appropriate under the
117 circumstances of the arbitration proceeding. The fact that a remedy could not or would not be
118 granted by the court is not a ground for refusing to confirm an award under Section 78-31a-123
119 or for vacating an award under Section 78-31a-124.

120 (4) An arbitrator's expenses and fees, together with other expenses, must be paid as

121 provided in the [award] agreement to arbitrate.

122 (5) If an arbitrator awards punitive damages or other exemplary relief under Subsection
123 (1), the arbitrator shall specify in the award the basis in fact justifying, and the basis in law
124 authorizing, the award and state separately the amount of the punitive damages or other
125 exemplary relief.

126 Section 7. Section **78-31a-123 (Effective 05/15/03)** is amended to read:

127 **78-31a-123 (Effective 05/15/03). Confirmation of award.**

128 (1) After [~~a party to~~] an arbitration proceeding [~~receives notice of an award, the party~~
129 ~~may make~~] has been completed, a motion shall be made to the court for an order confirming
130 the award at which time the court shall issue a confirming order unless the award is modified
131 or corrected pursuant to Section 78-31a-121 or 78-31a-125 or is vacated pursuant to Section
132 78-31a-124.

133 (2) If the award includes punitive damages, the court shall specifically confirm the
134 award of punitive damages.

135 Section 8. Section **78-31a-129 (Effective 05/15/03)** is amended to read:

136 **78-31a-129 (Effective 05/15/03). Appeals.**

137 (1) An appeal may be taken from:

- 138 (a) an order denying a motion to compel arbitration;
139 (b) an order granting a motion to stay arbitration;
140 (c) an order confirming or denying confirmation of an award;
141 (d) an order modifying or correcting an award;
142 (e) an order vacating an award without directing a rehearing; or
143 (f) a final judgment entered pursuant to this chapter.

144 (2) An appeal under this section [~~must~~] shall be taken as if from an order or a judgment
145 in a civil action.

146 (3) Notwithstanding any agreement between the parties regarding binding or
147 nonbinding arbitration, any award confirmed by the court may be appealed.

148 Section 9. Section **78-31a-131 (Effective 05/15/03)** is amended to read:

149 **78-31a-131 (Effective 05/15/03). Effect of chapter on prior agreements or**
150 **proceedings.**

151 This act does not affect an action or proceeding commenced or right accrued before this

152 chapter takes effect. Subject to Section 78-31a-104 of this chapter, an arbitration agreement
153 made before May [6] 15, [2002] 2003 shall be governed by the arbitration act in force on the
154 date the agreement was signed.

155 Section 10. **Effective date.**

156 This act takes effect on May 15, 2003.

Legislative Review Note

as of 2-21-03 6:25 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel