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THIS DOCUMENT INCLUDES BOTH THE BILL AND ALSO A TRANSMITTAL LETTER
THAT CONTAINS PASSED AMENDMENTS BUT NOT INCORPORATED INTO THE
BILL.



House of Representatives *State of Utah*

318 STATE CAPITOL • SALT LAKE CITY, UTAH 84114 • (801) 538-1029 • FAX: (801) 538-1908

March 6, 2002 (11:32pm)

Mr. President:

The House passed **S.B. 171**, UNIFORM ARBITRATION ACT, by Senator L. Hillyard, with the following amendments:

1. Page 1, Line 15: At the end of the line, insert "**This act is effective May 15, 2003.**"
2. Page 20, Line 588: After line 588, insert:
"Section 34. **Effective Date.**
This act takes effect May 15, 2003."

and returns it to the Senate for further consideration.

Respectfully,

A handwritten signature in cursive script that reads "Carole E. Peterson".

Carole E. Peterson
Chief Clerk

- 28 **78-31a-109**, Utah Code Annotated 1953
- 29 **78-31a-110**, Utah Code Annotated 1953
- 30 **78-31a-111**, Utah Code Annotated 1953
- 31 **78-31a-112**, Utah Code Annotated 1953
- 32 **78-31a-113**, Utah Code Annotated 1953
- 33 **78-31a-114**, Utah Code Annotated 1953
- 34 **78-31a-115**, Utah Code Annotated 1953
- 35 **78-31a-116**, Utah Code Annotated 1953
- 36 **78-31a-117**, Utah Code Annotated 1953
- 37 **78-31a-118**, Utah Code Annotated 1953
- 38 **78-31a-119**, Utah Code Annotated 1953
- 39 **78-31a-120**, Utah Code Annotated 1953
- 40 **78-31a-121**, Utah Code Annotated 1953
- 41 **78-31a-122**, Utah Code Annotated 1953
- 42 **78-31a-123**, Utah Code Annotated 1953
- 43 **78-31a-124**, Utah Code Annotated 1953
- 44 **78-31a-125**, Utah Code Annotated 1953
- 45 **78-31a-126**, Utah Code Annotated 1953
- 46 **78-31a-127**, Utah Code Annotated 1953
- 47 **78-31a-128**, Utah Code Annotated 1953
- 48 **78-31a-129**, Utah Code Annotated 1953
- 49 **78-31a-130**, Utah Code Annotated 1953
- 50 **78-31a-131**, Utah Code Annotated 1953

51 **REPEALS:**

- 52 **78-31a-1**, as enacted by Chapter 225, Laws of Utah 1985
- 53 **78-31a-2**, as enacted by Chapter 225, Laws of Utah 1985
- 54 **78-31a-3**, as enacted by Chapter 225, Laws of Utah 1985
- 55 **78-31a-4**, as enacted by Chapter 225, Laws of Utah 1985
- 56 **78-31a-5**, as enacted by Chapter 225, Laws of Utah 1985
- 57 **78-31a-6**, as enacted by Chapter 225, Laws of Utah 1985
- 58 **78-31a-7**, as enacted by Chapter 225, Laws of Utah 1985

- 59 **78-31a-8**, as enacted by Chapter 225, Laws of Utah 1985
- 60 **78-31a-9**, as enacted by Chapter 225, Laws of Utah 1985
- 61 **78-31a-10**, as enacted by Chapter 225, Laws of Utah 1985
- 62 **78-31a-11**, as enacted by Chapter 225, Laws of Utah 1985
- 63 **78-31a-12**, as enacted by Chapter 225, Laws of Utah 1985
- 64 **78-31a-13**, as enacted by Chapter 225, Laws of Utah 1985
- 65 **78-31a-14**, as enacted by Chapter 225, Laws of Utah 1985
- 66 **78-31a-15**, as enacted by Chapter 225, Laws of Utah 1985
- 67 **78-31a-16**, as enacted by Chapter 225, Laws of Utah 1985
- 68 **78-31a-17**, as enacted by Chapter 225, Laws of Utah 1985
- 69 **78-31a-18**, as enacted by Chapter 225, Laws of Utah 1985
- 70 **78-31a-19**, as enacted by Chapter 225, Laws of Utah 1985
- 71 **78-31a-20**, as enacted by Chapter 225, Laws of Utah 1985

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

73 Section 1. Section **78-31a-101** is enacted to read:

74 **CHAPTER 31a. UTAH UNIFORM ARBITRATION ACT**

75 **78-31a-101. Title.**

76 This chapter is known as the "Utah Uniform Arbitration Act."

77 Section 2. Section **78-31a-102** is enacted to read:

78 **78-31a-102. Definitions.**

79 As used in this chapter:

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

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

85 (3) "Court" means a court of competent jurisdiction in this state.

86 (4) "Knowledge" means actual knowledge.

87 (5) "Person" means an individual, corporation, business trust, estate, trust, partnership,
88 limited liability company, association, joint venture, government, governmental subdivision,
89 agency, or instrumentality, public corporation, or any other legal or commercial entity.

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

92 Section 3. Section **78-31a-103** is enacted to read:

93 **78-31a-103. Notice.**

94 (1) Except as otherwise provided in this chapter, a person gives notice to another person
95 by taking action that is reasonably necessary to inform the other person in ordinary course, whether
96 or not the other person acquires knowledge of the notice.

97 (2) A person has notice if the person has knowledge of the notice or has received notice.

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

101 Section 4. Section **78-31a-104** is enacted to read:

102 **78-31a-104. Application.**

103 (1) This chapter applies to any agreement to arbitrate made on or after May 6, 2002.

104 (2) This chapter applies to any agreement to arbitrate made before May 6, 2002, if all the
105 parties to the agreement or to the arbitration proceeding agree on the record.

106 Section 5. Section **78-31a-105** is enacted to read:

107 **78-31a-105. Effect of agreement to arbitrate -- Nonwaivable provisions.**

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

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

113 (a) waive or agree to vary the effect of the requirements of Subsection 78-31a-106(1),
114 78-31a-107(1), 78-31a-118(1) or (2), or Section 78-31a-109, 78-31a-127, or 78-31a-129;

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

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

119 (d) waive the right under Section 78-31a-117 of a party to an agreement to arbitrate to be
120 represented by a lawyer at any proceeding or hearing under this chapter, but an employer and a

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

122 (3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the
123 parties may not vary the effect of, the requirements of this section or Sections 78-31a-108,
124 78-31a-115, 78-31a-119, 78-31a-123 through 78-31a-125, 78-31a-130, Subsection 78-31a-104(1),
125 78-31a-121(3) or (4), or 78-31a-126(1) or (2).

126 Section 6. Section **78-31a-106** is enacted to read:

127 **78-31a-106. Application for judicial relief.**

128 (1) Except as otherwise provided in Section 78-31a-129, an application for judicial relief
129 under this chapter shall be made by motion to the court and heard in the manner provided by law
130 or rule of court for making and hearing motions.

131 (2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial
132 motion to the court under this chapter shall be served in the manner provided by law for the service
133 of a summons in a civil action. Otherwise, notice of the motion must be given in the manner
134 provided by law or rule of court for serving motions in pending cases.

135 Section 7. Section **78-31a-107** is enacted to read:

136 **78-31a-107. Validity of agreement to arbitrate.**

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

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

142 (3) An arbitrator shall decide whether a condition precedent to arbitrability has been
143 fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

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

147 Section 8. Section **78-31a-108** is enacted to read:

148 **78-31a-108. Motion to compel arbitration.**

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

151 (a) if the refusing party does not appear or does not oppose the motion, the court shall

152 order the parties to arbitrate; and

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

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

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

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

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

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

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

173 Section 9. Section **78-31a-109** is enacted to read:

174 **78-31a-109. Provisional remedies.**

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

179 (2) After an arbitrator is appointed and is authorized and able to act:

180 (a) the arbitrator may issue orders for provisional remedies, including interim awards, as
181 the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to
182 promote the fair and expeditious resolution of the controversy, to the same extent and under the

183 same conditions as if the controversy were the subject of a civil action; and

184 (b) a party to an arbitration proceeding may move the court for a provisional remedy only
185 if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide
186 an adequate remedy.

187 (3) A party does not waive a right of arbitration by making a motion under Subsection (1)
188 or (2).

189 Section 10. Section **78-31a-110** is enacted to read:

190 **78-31a-110. Initiation of arbitration.**

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

196 (2) Unless a person objects for lack or insufficiency of notice under Subsection
197 78-31a-116(3) not later than the beginning of the arbitration hearing, the person, by appearing at
198 the hearing, waives any objection to lack of or insufficiency of notice.

199 Section 11. Section **78-31a-111** is enacted to read:

200 **78-31a-111. Consolidation of separate arbitration proceedings.**

201 (1) Except as otherwise provided in Subsection (3), upon motion of a party to an
202 agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate
203 arbitration proceedings as to all or some of the claims if:

204 (a) there are separate agreements to arbitrate or separate arbitration proceedings between
205 the same persons or one of them is a party to a separate agreement to arbitrate or a separate
206 arbitration proceeding with a third person;

207 (b) the claims subject to the agreements to arbitrate arise in substantial part from the same
208 transaction or series of related transactions;

209 (c) the existence of a common issue of law or fact creates the possibility of conflicting
210 decisions in the separate arbitration proceedings; and

211 (d) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue
212 delay or prejudice to the rights of or hardship to parties opposing consolidation.

213 (2) The court may order consolidation of separate arbitration proceedings as to some

214 claims and allow other claims to be resolved in separate arbitration proceedings.

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

217 Section 12. Section **78-31a-112** is enacted to read:

218 **78-31a-112. Appointment of arbitrator -- Service as a neutral arbitrator.**

219 (1) If the parties to an agreement to arbitrate agree on a method for appointing an
220 arbitrator, that method must be followed, unless the method fails. If the parties have not agreed
221 on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a
222 successor has not been appointed, the court, on motion of a party to the arbitration proceeding,
223 shall appoint the arbitrator. An arbitrator appointed by the court has all the powers of an arbitrator
224 designated in the agreement to arbitrate or appointed pursuant to the agreed method.

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

228 Section 13. Section **78-31a-113** is enacted to read:

229 **78-31a-113. Disclosure by arbitrator.**

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

234 (a) a financial or personal interest in the outcome of the arbitration proceeding; and

235 (b) an existing or past relationship with any of the parties to the agreement to arbitrate or
236 the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

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

241 (3) If an arbitrator discloses a fact required by Subsection (1) or (2) to be disclosed and a
242 party timely objects to the appointment or continued service of the arbitrator based upon the fact
243 disclosed, the objection may be a ground under Subsection 78-31a-124(1)(b) for vacating an award
244 made by the arbitrator.

245 (4) If the arbitrator did not disclose a fact as required by Subsection (1) or (2), upon timely
246 objection by a party, the court under Subsection 78-31a-124(1)(b) may vacate an award.

247 (5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct,
248 and material interest in the outcome of the arbitration proceeding or a known, existing, and
249 substantial relationship with a party is presumed to act with evident partiality under Subsection
250 78-31a-124(1)(b).

251 (6) If the parties to an arbitration proceeding agree to the procedures of an arbitration
252 organization or any other procedures for challenges to arbitrators before an award is made,
253 substantial compliance with those procedures is a condition precedent to a motion to vacate an
254 award on that ground under Subsection 78-31a-124(1)(b).

255 Section 14. Section **78-31a-114** is enacted to read:

256 **78-31a-114. Action by majority.**

257 If there is more than one arbitrator, the powers of an arbitrator must be exercised by a
258 majority of the arbitrators, but all of them shall conduct the hearing under Subsection
259 78-31a-116(3).

260 Section 15. Section **78-31a-115** is enacted to read:

261 **78-31a-115. Immunity of arbitrator -- Competency to testify -- Attorney's fees and**
262 **costs.**

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

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

266 (3) The failure of an arbitrator to make a disclosure required by Section 78-31a-113 does
267 not cause any loss of immunity under this section.

268 (4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of
269 an arbitration organization is not competent to testify, and may not be required to produce records
270 as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the
271 same extent as a judge of a court of this state acting in a judicial capacity. This Subsection (4)
272 does not apply:

273 (a) to the extent necessary to determine the claim of an arbitrator, arbitration organization,
274 or representative of the arbitration organization against a party to the arbitration proceeding; or

275 (b) to a hearing on a motion to vacate an award under Subsection 78-31a-124(1)(a) or (b)

276 if the movant establishes prima facie evidence that a ground for vacating the award exists.

277 (5) If a person commences a civil action against an arbitrator, arbitration organization, or
278 representative of an arbitration organization arising from the services of the arbitrator,
279 organization, or representative or if a person seeks to compel an arbitrator or a representative of
280 an arbitration organization to testify or produce records in violation of Subsection (4), and the
281 court decides that the arbitrator, arbitration organization, or representative of an arbitration
282 organization is immune from civil liability or that the arbitrator or representative of the
283 organization is not competent to testify, the court shall award to the arbitrator, organization, or
284 representative reasonable attorney's fees and other reasonable expenses of litigation.

285 Section 16. Section **78-31a-116** is enacted to read:

286 **78-31a-116. Arbitration process.**

287 (1) An arbitrator may conduct an arbitration in a manner the arbitrator considers
288 appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon
289 the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding
290 before the hearing and, among other matters, determine the admissibility, relevance, materiality,
291 and weight of any evidence.

292 (2) An arbitrator may decide a request for summary disposition of a claim or particular
293 issue:

294 (a) if all interested parties agree; or

295 (b) upon request of one party to the arbitration proceeding if that party gives notice to all
296 other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

297 (3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice
298 of the hearing not less than five days before the hearing begins. Unless a party to the arbitration
299 proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the
300 hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the
301 arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the
302 arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing
303 to a time later than that fixed by the agreement to arbitrate for making the award unless the parties
304 to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the
305 controversy upon the evidence produced although a party who was duly notified of the arbitration
306 proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing

307 promptly and render a timely decision.

308 (4) At a hearing under Subsection (3), a party to the arbitration proceeding has a right to
309 be heard, to present evidence material to the controversy, and to cross-examine witnesses
310 appearing at the hearing.

311 (5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a
312 replacement arbitrator must be appointed in accordance with Section 78-31a-112 to continue the
313 proceeding and to resolve the controversy.

314 Section 17. Section **78-31a-117** is enacted to read:

315 **78-31a-117. Representation.**

316 A party to an arbitration proceeding may be represented by an attorney.

317 Section 18. Section **78-31a-118** is enacted to read:

318 **78-31A-118. Witnesses -- Subpoenas -- Depositions -- Discovery.**

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

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

329 (3) An arbitrator may permit any discovery the arbitrator decides is appropriate in the
330 circumstances, taking into account the needs of the parties to the arbitration proceeding and other
331 affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

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

337 (5) An arbitrator may issue a protective order to prevent the disclosure of privileged

338 information, confidential information, trade secrets, and other information protected from
339 disclosure to the extent a court could if the controversy were the subject of a civil action in this
340 state.

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

344 (7) The court may enforce a subpoena or discovery-related order for the attendance of a
345 witness within this state and for the production of records and other evidence issued by an
346 arbitrator in connection with an arbitration proceeding in another state upon conditions determined
347 by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A
348 subpoena or discovery-related order issued by an arbitrator in another state must be served in the
349 manner provided by law for service of subpoenas in a civil action in this state and, upon motion
350 to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner
351 provided by law for enforcement of subpoenas in a civil action in this state.

352 Section 19. Section **78-31a-119** is enacted to read:

353 **78-31a-119. Judicial enforcement of preaward ruling by arbitrator.**

354 If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding,
355 the party may request the arbitrator to incorporate the ruling into an award under Section
356 78-31a-120. A prevailing party may make a motion to the court for an expedited order to confirm
357 the award under Section 78-31a-123, in which case the court shall summarily decide the motion.
358 The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects
359 the award under Section 78-31a-124 or 78-31a-125.

360 Section 20. Section **78-31a-120** is enacted to read:

361 **78-31a-120. Award.**

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

366 (2) An award must be made within the time specified by the agreement to arbitrate or, if
367 not specified in the agreement, within the time ordered by the court. The court may extend or the
368 parties to the arbitration proceeding may agree on the record to extend the time. The court or the

369 parties may do so within or after the time specified or ordered. A party waives any objection that
370 an award was not timely made unless the party gives notice of the objection to the arbitrator before
371 receiving notice of the award.

372 Section 21. Section **78-31a-121** is enacted to read:

373 **78-31a-121. Change of award by arbitrator.**

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

376 (a) on any grounds stated in Subsection 78-31a-125(1)(a) or (c);

377 (b) if the arbitrator has not made a final and definite award upon a claim submitted by the
378 parties to the arbitration proceeding; or

379 (c) to clarify the award.

380 (2) A motion under Subsection (1) must be made and notice given to all parties within 20
381 days after the movant receives notice of the award.

382 (3) A party to the arbitration proceeding must give notice of any objection to the motion
383 within ten days after receipt of the notice.

384 (4) If a motion to the court is pending under Section 78-31a-123, 78-31a-124, or
385 78-31a-125, the court may submit the claim to the arbitrator to consider whether to modify or
386 correct the award:

387 (a) on any grounds stated in Subsection 78-31a-125(1)(a) or (c);

388 (b) if the arbitrator has not made a final and definite award upon a claim submitted by the
389 parties to the arbitration proceeding; or

390 (c) to clarify the award.

391 (5) An award modified or corrected pursuant to this section is subject to Subsection
392 78-3a-120(1), Sections 78-31a-123, 78-31a-124, and 71-31a-125.

393 Section 22. Section **78-31a-122** is enacted to read:

394 **78-31a-122. Remedies -- Fees and expenses of arbitration proceeding.**

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

398 (2) An arbitrator may award reasonable attorney's fees and other reasonable expenses of
399 arbitration if the award is authorized by law in a civil action involving the same claim or by the

400 agreement of the parties to the arbitration proceeding.

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

406 (4) An arbitrator's expenses and fees, together with other expenses, must be paid as
407 provided in the award.

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

412 Section 23. Section **78-31a-123** is enacted to read:

413 **78-31a-123. Confirmation of award.**

414 After a party to an arbitration proceeding receives notice of an award, the party may make
415 a motion to the court for an order confirming the award at which time the court shall issue a
416 confirming order unless the award is modified or corrected pursuant to Section 78-31a-121 or
417 78-31a-125 or is vacated pursuant to Section 78-31a-124.

418 Section 24. Section **78-31a-124** is enacted to read:

419 **78-31a-124. Vacating an award.**

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

422 (a) the award was procured by corruption, fraud, or other undue means;

423 (b) there was:

424 (i) evident partiality by an arbitrator appointed as a neutral arbitrator;

425 (ii) corruption by an arbitrator; or

426 (iii) misconduct by an arbitrator prejudicing the rights of a party to the arbitration
427 proceeding;

428 (c) an arbitrator refused to postpone the hearing upon showing of sufficient cause for
429 postponement, refused to consider evidence material to the controversy, or otherwise conducted
430 the hearing contrary to Section 78-31a-116, so as to substantially prejudice the rights of a party to

431 the arbitration proceeding:

432 (d) an arbitrator exceeded the arbitrator's authority;

433 (e) there was no agreement to arbitrate, unless the person participated in the arbitration

434 proceeding without raising an objection under Subsection 78-31a-116(3) not later than the

435 beginning of the arbitration hearing; or

436 (f) the arbitration was conducted without proper notice of the initiation of an arbitration

437 as required in Section 78-31a-110 so as to substantially prejudice the rights of a party to the

438 arbitration proceeding.

439 (2) A motion under this section must be filed within 90 days after the movant receives

440 notice of the award pursuant to Section 78-31a-120 or within 90 days after the movant receives

441 notice of a modified or corrected award pursuant to Section 78-31a-121, unless the movant alleges

442 that the award was procured by corruption, fraud, or other undue means, in which case the motion

443 must be made within 90 days after the ground is known or by the exercise of reasonable care would

444 have been known by the movant.

445 (3) If the court vacates an award on a ground other than that set forth in Subsection (1)(e),

446 it may order a rehearing. If the award is vacated on a ground stated in Subsection (1)(a) or (b), the

447 rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection

448 (1)(c), (d), or (f), the rehearing may be before the arbitrator who made the award or the arbitrator's

449 successor. The arbitrator must render the decision in the rehearing within the same time as that

450 provided in Subsection 78-31a-120(2) for an award.

451 (4) If the court denies a motion to vacate an award, it shall confirm the award unless a

452 motion to modify or correct the award is pending.

453 Section 25. Section **78-31a-125** is enacted to read:

454 **78-31a-125. Modification or correction of award.**

455 (1) Upon motion made within 90 days after the movant receives notice of the award

456 pursuant to Section 78-31a-120 or within 90 days after the movant receives notice of a modified

457 or corrected award pursuant to Section 78-31a-121, the court shall modify or correct the award if:

458 (a) there was an evident mathematical miscalculation or an evident mistake in the

459 description of a person, thing, or property referred to in the award;

460 (b) the arbitrator has made an award on a claim not submitted to the arbitrator and the

461 award may be corrected without affecting the merits of the decision upon the claims submitted;

462 or

463 (c) the award is imperfect in a matter of form not affecting the merits of the decision on
464 the claims submitted.

465 (2) If a motion made under Subsection (1) is granted, the court shall modify or correct and
466 confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the
467 court shall confirm the award.

468 (3) A motion to modify or correct an award pursuant to this section may be joined with
469 a motion to vacate the award.

470 Section 26. Section **78-31a-126** is enacted to read:

471 **78-31a-126. Judgment on award -- Attorney's fees and litigation expenses.**

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

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

476 (3) On application of a prevailing party to a contested judicial proceeding under Section
477 78-31a-123, 78-31a-124, or 78-31a-125, the court may add reasonable attorney's fees and other
478 reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a
479 judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

480 Section 27. Section **78-31a-127** is enacted to read:

481 **78-31a-127. Jurisdiction.**

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

484 (2) An agreement to arbitrate providing for arbitration in this state confers exclusive
485 jurisdiction on the court to enter judgment on an award under this chapter.

486 Section 28. Section **78-31a-128** is enacted to read:

487 **78-31a-128. Venue.**

488 A motion pursuant to Section 78-31a-106 must be made in the court of the county in which
489 the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been
490 held, in the court of the county in which it was held. Otherwise, the motion may be made in the
491 court of any county in which an adverse party resides or has a place of business or, if no adverse
492 party has a residence or place of business in this state, in the court of any county in this state. All

493 subsequent motions must be made in the court hearing the initial motion unless the court otherwise
494 directs.

495 Section 29. Section **78-31a-129** is enacted to read:

496 **78-31a-129. Appeals.**

497 (1) An appeal may be taken from:

498 (a) an order denying a motion to compel arbitration;

499 (b) an order granting a motion to stay arbitration;

500 (c) an order confirming or denying confirmation of an award;

501 (d) an order modifying or correcting an award;

502 (e) an order vacating an award without directing a rehearing; or

503 (f) a final judgment entered pursuant to this chapter.

504 (2) An appeal under this section must be taken as from an order or a judgment in a civil
505 action.

506 Section 30. Section **78-31a-130** is enacted to read:

507 **78-31a-130. Electronic Signatures in Global and National Commerce Act.**

508 The provisions of this chapter governing the legal effect, validity, or enforceability of
509 electronic records or signatures, and of contracts formed or performed with the use of such records
510 or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global
511 and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464, and supersede, modify, and limit
512 the Electronic Signatures in Global and National Commerce Act.

513 Section 31. Section **78-31a-131** is enacted to read:

514 **78-31a-131. Affect of chapter on prior agreements or proceedings.**

515 This act does not affect an action or proceeding commenced or right accrued before this
516 chapter takes effect. Subject to Section 78-31a-104 of this chapter, an arbitration agreement made
517 before May 6, 2002 shall be governed by the arbitration act in force on the date the agreement was
518 signed.

519 Section 32. Section **78-31b-5** is amended to read:

520 **78-31b-5. Judicial Council rules for ADR procedures.**

521 (1) To promote the use of ADR procedures, the Judicial Council may by rule establish
522 experimental and permanent ADR programs administered by the Administrative Office of the
523 Courts under the supervision of the director of Dispute Resolution Programs.

524 (2) The rules of the Judicial Council shall be based upon the purposes and provisions of
525 this act. Any procedural and evidentiary rules as the Supreme Court may adopt shall not impinge
526 on the constitutional rights of any parties.

527 (3) The rules of the Judicial Council shall include provisions:

528 (a) to orient parties and their counsel to the ADR program, ADR procedures, and the rules
529 of the Judicial Council;

530 (b) to identify types of civil actions that qualify for ADR procedures;

531 (c) to refer to ADR procedures all or particular issues within a civil action;

532 (d) to protect persons not parties to the civil action whose rights may be affected in the
533 resolution of the dispute;

534 (e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to
535 participate in an optional ADR procedure;

536 (f) to exempt any case from the ADR program in which the objectives of ADR would not
537 be realized;

538 (g) to create timetables to ensure that the ADR procedure is instituted and completed
539 without undue delay or expense;

540 (h) to establish the qualifications of ADR providers for each form of ADR procedure
541 including that:

542 (i) an ADR provider may, but need not be, a certified ADR provider pursuant to Title 58,
543 Chapter 39a, Alternative Dispute Resolution Providers Certification Act; and

544 (ii) formal education in any particular field may not, by itself, be either a prerequisite or
545 sufficient qualification to serve as an ADR provider under the program authorized by this act;

546 (i) to govern the conduct of each type of ADR procedure, including the site at which the
547 procedure is conducted;

548 (j) to establish the means for the selection of an ADR provider for each form of ADR
549 procedure;

550 (k) to determine the powers, duties, and responsibilities of the ADR provider for each form
551 of ADR procedure;

552 (l) to establish a code of ethics applicable to ADR providers with means for its
553 enforcement;

554 (m) to protect and preserve the privacy and confidentiality of ADR procedures;

555 (n) to protect and preserve the privacy rights of the persons attending the ADR procedures;

556 (o) to permit waiver of all or part of fees assessed for referral of a case to the ADR

557 program on a showing of impecuniosity or other compelling reason;

558 (p) to authorize imposition of sanctions for failure of counsel or parties to participate in

559 good faith in the ADR procedure assigned;

560 (q) to assess the fees to cover the cost of compensation for the services of the ADR

561 provider and reimbursement for the provider's allowable, out-of-pocket expenses and

562 disbursements; and

563 (r) to allow vacation of an award by a court as provided in Section [~~78-31a-14~~]

564 78-31a-124.

565 (4) The Judicial Council may, from time to time, limit the application of its ADR rules to

566 particular judicial districts.

567 Section 33. **Repealer.**

568 This act repeals:

569 Section **78-31a-1, Short title.**

570 Section **78-31a-2, Definitions.**

571 Section **78-31a-3, Arbitration agreement.**

572 Section **78-31a-4, Court order to arbitrate.**

573 Section **78-31a-5, Appointment of arbitrators.**

574 Section **78-31a-6, Conference prior to arbitration hearing.**

575 Section **78-31a-7, Arbitration hearing -- Procedure.**

576 Section **78-31a-8, Arbitration hearing -- Powers of arbitrators.**

577 Section **78-31a-9, Arbitration hearing -- Joinder of parties.**

578 Section **78-31a-10, Arbitration award.**

579 Section **78-31a-11, Costs.**

580 Section **78-31a-12, Confirmation of award.**

581 Section **78-31a-13, Modification of award by arbitrators.**

582 Section **78-31a-14, Vacation of the award by court.**

583 Section **78-31a-15, Modification of award by court.**

584 Section **78-31a-16, Award as judgment.**

585 Section **78-31a-17, Motions.**

- 586 Section **78-31a-18, Location for arbitration.**
- 587 Section **78-31a-19, Appeals.**
- 588 Section **78-31a-20, Scope of chapter.**

Legislative Review Note
as of 2-4-02 10:52 AM

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

Office of Legislative Research and General Counsel