

UNIFORM ARBITRATION ACT

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act enacts the Utah Uniform Arbitration Act. The act addresses the effect of an agreement to arbitrate and the ability to waive provisions. The act also provides for the application of judicial relief and the validity of an agreement to arbitrate, a motion to compel or state arbitration, and provisional remedies. The act addresses the limitations of arbitration and the consolidation of separate arbitration proceedings. It provides for the appointment of arbitrators and addresses arbitrators' duties and responsibilities. The act provides for an arbitration process and addresses judicial enforcement of preaward rulings by arbitrators, award, and change of award by arbitrator. In addition, the act provides for confirmation of award, validating award, and judgment on award. It provides for remedies, fees, and expenditures of arbitrators and addresses jurisdiction, venue, and appeals. The act conforms to the Electronic Signatures in Global and National Commerce Act. This act is effective May 15, 2003.

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

AMENDS:

78-31b-5, as last amended by Chapter 288, Laws of Utah 2000

ENACTS:

78-31a-101, Utah Code Annotated 1953

78-31a-102, Utah Code Annotated 1953

78-31a-103, Utah Code Annotated 1953

78-31a-104, Utah Code Annotated 1953

78-31a-105, Utah Code Annotated 1953

78-31a-106, Utah Code Annotated 1953

78-31a-107, Utah Code Annotated 1953

78-31a-108, Utah Code Annotated 1953

78-31a-109, Utah Code Annotated 1953

- 78-31a-110**, Utah Code Annotated 1953
- 78-31a-111**, Utah Code Annotated 1953
- 78-31a-112**, Utah Code Annotated 1953
- 78-31a-113**, Utah Code Annotated 1953
- 78-31a-114**, Utah Code Annotated 1953
- 78-31a-115**, Utah Code Annotated 1953
- 78-31a-116**, Utah Code Annotated 1953
- 78-31a-117**, Utah Code Annotated 1953
- 78-31a-118**, Utah Code Annotated 1953
- 78-31a-119**, Utah Code Annotated 1953
- 78-31a-120**, Utah Code Annotated 1953
- 78-31a-121**, Utah Code Annotated 1953
- 78-31a-122**, Utah Code Annotated 1953
- 78-31a-123**, Utah Code Annotated 1953
- 78-31a-124**, Utah Code Annotated 1953
- 78-31a-125**, Utah Code Annotated 1953
- 78-31a-126**, Utah Code Annotated 1953
- 78-31a-127**, Utah Code Annotated 1953
- 78-31a-128**, Utah Code Annotated 1953
- 78-31a-129**, Utah Code Annotated 1953
- 78-31a-130**, Utah Code Annotated 1953
- 78-31a-131**, Utah Code Annotated 1953

REPEALS:

- 78-31a-1**, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-2**, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-3**, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-4**, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-5**, as enacted by Chapter 225, Laws of Utah 1985

- 78-31a-6, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-7, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-8, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-9, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-10, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-11, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-12, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-13, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-14, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-15, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-16, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-17, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-18, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-19, as enacted by Chapter 225, Laws of Utah 1985
- 78-31a-20, as enacted by Chapter 225, Laws of Utah 1985

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

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

CHAPTER 31a. UTAH UNIFORM ARBITRATION ACT

78-31a-101. Title.

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

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

78-31a-102. Definitions.

As used in this chapter:

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

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

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

(4) "Knowledge" means actual knowledge.

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

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

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

78-31a-103. Notice.

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

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

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

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

78-31a-104. Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to an agreement to arbitrate.

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

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

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

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

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

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

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

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

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

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

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

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the

court renders a final decision under this section.

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

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

78-31a-109. Provisional remedies.

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

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

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

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

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

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

78-31a-110. Initiation of arbitration.

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

(2) Unless a person objects for lack or insufficiency of notice under Subsection

78-31a-116(3) not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78-31a-113. Disclosure by arbitrator.

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

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

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

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

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

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

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

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made,

substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under Subsection 78-31a-124(1)(b).

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

78-31a-114. Action by majority.

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

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

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

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

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

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

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

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

(b) to a hearing on a motion to vacate an award under Subsection 78-31a-124(1)(a) or (b) if the movant establishes prima facie evidence that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of Subsection (4), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune

from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

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

78-31a-116. Arbitration process.

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

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

(a) if all interested parties agree; or

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

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

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

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

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

78-31a-117. Representation.

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

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

78-31a-118. Witnesses -- Subpoenas -- Depositions -- Discovery.

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

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

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

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

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure

to the extent a court could if the controversy were the subject of a civil action in this state.

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

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

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

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

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

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

78-31a-120. Award.

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

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified in the agreement, within the time ordered by the court. The court may extend or the parties

to the arbitration proceeding may agree on the record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

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

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

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

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

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

(c) to clarify the award.

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

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

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

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

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

(c) to clarify the award.

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

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

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

(1) An arbitrator may award punitive damages or other exemplary relief if the award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing

justifies the award under the legal standards otherwise applicable to the claim.

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

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

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

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

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

78-31a-123. Confirmation of award.

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

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

78-31a-124. Vacating an award.

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

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

(b) there was:

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

(ii) corruption by an arbitrator; or

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

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

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

(e) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising an objection under Subsection 78-31a-116(3) not later than the beginning of the arbitration hearing; or

(f) the arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 78-31a-110 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to Section 78-31a-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section 78-31a-121, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in Subsection (1)(e), it may order a rehearing. If the award is vacated on a ground stated in Subsection (1)(a) or (b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in Subsection (1)(c), (d), or (f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in Subsection 78-31a-120(2) for an award.

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

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

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

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to Section 78-31a-120 or within 90 days after the movant receives notice of a modified or corrected award pursuant to Section 78-31a-121, the court shall modify or correct the award if:

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

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

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

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

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

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

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

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

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

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

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

78-31a-127. Jurisdiction.

(1) A court of this state having jurisdiction over the controversy and the parties may enforce

an agreement to arbitrate.

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

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

78-31a-128. Venue.

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

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

78-31a-129. Appeals.

(1) An appeal may be taken from:

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

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

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

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

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and

National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) to create timetables to ensure that the ADR procedure is instituted and completed without

undue delay or expense;

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

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

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

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

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

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

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

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

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

(o) to permit waiver of all or part of fees assessed for referral of a case to the ADR program on a showing of impecuniosity or other compelling reason;

(p) to authorize imposition of sanctions for failure of counsel or parties to participate in good faith in the ADR procedure assigned;

(q) to assess the fees to cover the cost of compensation for the services of the ADR provider and reimbursement for the provider's allowable, out-of-pocket expenses and disbursements; and

(r) to allow vacation of an award by a court as provided in Section [~~78-31a-14~~] 78-31a-124.

(4) The Judicial Council may, from time to time, limit the application of its ADR rules to particular judicial districts.

Section 33. Repealer.

This act repeals:

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

Section 78-31a-2, Definitions.

Section 78-31a-3, Arbitration agreement.

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

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

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

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

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

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

Section 78-31a-10, Arbitration award.

Section 78-31a-11, Costs.

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

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

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

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

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

Section 78-31a-17, Motions.

Section 78-31a-18, Location for arbitration.

Section 78-31a-19, Appeals.

Section 78-31a-20, Scope of chapter.

Section 34. Effective date.

This act takes effect on May 15, 2003.