

H. B. 3079

(By Delegates Craig, Ashley, Skaff, Pasdon,
Miley and Morgan)

[Introduced March 25, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §55-10-1, §55-10-2, §55-10-3, §55-10-4,
§55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto twenty-four new sections, designated §55-10-9,
§55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14,
§55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19,
§55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24,
§55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29,
§55-10-30, §55-10-31 and §55-10-32, all relating generally to
arbitration; defining terms; defining notice under the
article; defining when article applies; proscribing the effect
of agreements to arbitrate and defining nonwaivable
provisions; allowing for application for judicial relief under
the article; making an agreement to arbitrate valid unless a

1 legal or equitable reason for revocation exists; providing for
2 the terms by which arbitration may continue if challenged;
3 providing for the process for motions to compel or stay
4 arbitration; providing for provisional remedies to protect the
5 effectiveness of arbitration proceedings; providing the
6 process for initiation of arbitration; providing for the
7 consolidation of separate arbitration proceedings; providing
8 for the appointment of an arbitrator and default process if
9 not agreed by the parties; requiring neutrality of
10 arbitrators; requiring disclosure by arbitrators of matters
11 affecting impartiality; requiring a majority of arbitrators to
12 agree to exercise powers; providing immunity for arbitrators,
13 requiring competency to testify, and providing for attorneys'
14 fees and costs for challenges from which arbitrators' are
15 immune; providing the general process for arbitration;
16 allowing parties to be represented by a lawyer in
17 arbitrations; outlining the procedure for witnesses,
18 subpoenas, depositions and discovery in arbitrations;
19 providing for judicial enforcement of preaward ruling by
20 arbitrator; providing for a record of an award and the
21 requirements for an award; allowing the change of an award by
22 an arbitrator upon motion under certain conditions; providing
23 that certain remedies and the fees and costs of arbitration

1 may be a part of an arbitration award; allowing for
2 confirmation by a court of an award upon motion; providing the
3 process and grounds for vacating an award by a court;
4 providing the process and grounds for the modification or
5 correction of an award upon motion; providing that a court
6 shall enter a judgment upon confirmation of an award and may
7 add reasonable attorneys' fees and costs; providing for
8 jurisdiction over arbitration agreements by a court of this
9 state; providing venue; providing that appeals may be taken
10 from orders related to arbitration proceedings; requiring
11 uniform construction of the act; providing that this act
12 complies with the Electronic Signatures in Global and National
13 Commerce Act; and providing the effective date of the act.

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

15 That §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5,
16 §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted; and that said code be amended
18 by adding thereto twenty-four new sections, designated §55-10-9,
19 §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15,
20 §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21,
21 §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27,
22 §55-10-28, §55-10-29, §55-10-30, §55-10-31 and §55-10-32, all to
23 read as follows:

1 **ARTICLE 10. ARBITRATION.**

2 **§55-10-1. Definitions.**

3 In this article:

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

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

11 (3) "Court" means a circuit court in this state.

12 (4) "Knowledge" means actual knowledge.

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

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

21 **§55-10-2. Notice.**

22 (a) Except as otherwise provided in this article, a person
23 gives notice to another person by taking action that is reasonably

1 necessary to inform the other person in ordinary course, whether or
2 not the other person acquires knowledge of the notice.

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

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

9 **§55-10-3. When article applies.**

10 (a) This article governs an agreement to arbitrate made on or
11 after July 1, 2013.

12 (b) This article governs an agreement to arbitrate made before
13 July 1, 2013 if all the parties to the agreement or to the
14 arbitration proceeding so agree in a record.

15 **§55-10-4. Effect of agreement to arbitrate; nonwaivable**
16 **provisions.**

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

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

23 (1) Waive or agree to vary the effect of the requirements of

1 section five-a, six-a, eight, seventeen-a, seventeen-b, twenty-six
2 and twenty-eight of this article;

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

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

9 (4) Waive the right under section sixteen of this article of
10 a party to an agreement to arbitrate to be represented by a lawyer
11 at any proceeding or hearing under this article, but an employer
12 and a labor organization may waive the right to representation by
13 a lawyer in a labor arbitration.

14 (c) A party to an agreement to arbitrate or arbitration
15 proceeding may not waive, or the parties may not vary the effect
16 of, the requirements of this section or sections three-a, three-c
17 seven, fourteen, eighteen, twenty-d or twenty-e, twenty-two,
18 twenty-three, twenty-four, twenty-five-a or twenty-five-b, twenty-
19 nine, thirty, thirty-one or thirty-two of this article.

20 **§55-10-5. Application for judicial relief.**

21 (a) Except as otherwise provided in section twenty-eight of
22 this article, an application for judicial relief under this article
23 must be made by motion to a West Virginia circuit court as

1 specified in section twenty-seven of this article and heard in
2 accordance with the rules of civil procedure governing motions.

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

9 **§55-10-6. Validity of agreement to arbitrate.**

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

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

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

20 (d) If a party to a judicial proceeding challenges the
21 existence of, or claims that a controversy is not subject to, an
22 agreement to arbitrate, the arbitration proceeding may continue
23 pending final resolution of the issue by the court, unless the

1 court otherwise orders.

2 **§55-10-7. Motion to compel or stay arbitration.**

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

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

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

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

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

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

23 (e) If a proceeding involving a claim referable to arbitration

1 under an alleged agreement to arbitrate is pending in court, a
2 motion under this section must be made in that court. Otherwise a
3 motion under this section may be made in any court as provided in
4 section twenty-seven of this article.

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

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

14 **§55-10-8. Provisional remedies.**

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

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

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

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

11 (c) A party does not waive a right of arbitration by making a
12 motion under subsection (a) or (b).

13 **§55-10-9. Initiation of arbitration.**

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

21 (b) Unless a person objects for lack or insufficiency of
22 notice under section fifteen(c) of this article not later than the
23 beginning of the arbitration hearing, the person by appearing at

1 the hearing waives any objection to lack of or insufficiency of
2 notice.

3 **§55-10-10. Consolidation of separate arbitration proceedings.**

4 (a) Except as otherwise provided in subsection (c), upon
5 motion of a party to an agreement to arbitrate or to an arbitration
6 proceeding, the court may order consolidation of separate
7 arbitration proceedings as to all or some of the claims if:

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

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

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

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

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

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

4 **§55-10-11. Appointment of arbitrator; service as a neutral**
5 **arbitrator.**

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

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

19 **§55-10-12. Disclosure by arbitrator.**

20 (a) Before accepting appointment, an individual who is
21 requested to serve as an arbitrator, after making a reasonable
22 inquiry, shall disclose to all parties to the agreement to
23 arbitrate and arbitration proceeding and to any other arbitrators

1 any known facts that a reasonable person would consider likely to
2 affect the impartiality of the arbitrator in the arbitration
3 proceeding, including:

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

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

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

15 (c) If an arbitrator discloses a fact required by subsection
16 (a) or (b) to be disclosed and a party timely objects to the
17 appointment or continued service of the arbitrator based upon the
18 fact disclosed, the objection may be a ground under section twenty-
19 three-a (2) of this article for vacating an award made by the
20 arbitrator.

21 (d) If the arbitrator did not disclose a fact as required by
22 subsection (a) or (b), upon timely objection by a party, the court
23 under section twenty-three-a (2) of this article may vacate an

1 award.

2 (e) An arbitrator appointed as a neutral arbitrator who does
3 not disclose a known, direct, and material interest in the outcome
4 of the arbitration proceeding or a known, existing, and substantial
5 relationship with a party is presumed to act with evident
6 partiality under section twenty-three(a) (2) of this article.

7 (f) If the parties to an arbitration proceeding agree to the
8 procedures of an arbitration organization or any other procedures
9 for challenges to arbitrators before an award is made, substantial
10 compliance with those procedures is a condition precedent to a
11 motion to vacate an award on that ground under section twenty-
12 three-a (2) of this article.

13 **§55-10-13. Action by majority.**

14 If there is more than one arbitrator, the powers of an
15 arbitrator must be exercised by a majority of the arbitrators, but
16 all of them shall conduct the hearing under section fifteen(c) of
17 this article.

18 **§55-10-14. Immunity of arbitrator; competency to testify;**
19 **attorney's fees and costs.**

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

23 (b) The immunity afforded by this section supplements any

1 immunity under other law.

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

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

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

16 (2) To a hearing on a motion to vacate an award under section
17 twenty-three-a(1) or (2) of this section if the movent establishes
18 prima facie that a ground for vacating the award exists.

19 (e) If a person commences a civil action against an
20 arbitrator, arbitration organization, or representative of an
21 arbitration organization arising from the services of the
22 arbitrator, organization, or representative or if a person seeks to
23 compel an arbitrator or a representative of an arbitration

1 organization to testify or produce records in violation of
2 subsection (d), and the court decides that the arbitrator,
3 arbitration organization, or representative of an arbitration
4 organization is immune from civil liability or that the arbitrator
5 or representative of the organization is not competent to testify,
6 the court shall award to the arbitrator, organization, or
7 representative reasonable attorney's fees and other reasonable
8 expenses of litigation.

9 **§55-10-15. Arbitration process.**

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

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

19 (1) If all interested parties agree; or

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

23 (c) If an arbitrator orders a hearing, the arbitrator shall

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

16 (d) At a hearing under subsection (c), a party to the
17 arbitration proceeding has a right to be heard, to present evidence
18 material to the controversy, and to cross-examine witnesses
19 appearing at the hearing.

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

1 **§55-10-16. Representation by lawyer.**

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

4 **§55-10-17. Witnesses; subpoenas; depositions; discovery.**

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

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

19 (c) An arbitrator may permit such discovery as the arbitrator
20 decides is appropriate in the circumstances, taking into account
21 the needs of the parties to the arbitration proceeding and other
22 affected persons and the desirability of making the proceeding
23 fair, expeditious, and cost effective.

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

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

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

18 (g) The court may enforce a subpoena or discovery-related
19 order for the attendance of a witness within this state and for the
20 production of records and other evidence issued by an arbitrator in
21 connection with an arbitration proceeding in another state upon
22 conditions determined by the court so as to make the arbitration
23 proceeding fair, expeditious, and cost effective. A subpoena or

1 discovery-related order issued by an arbitrator in another state
2 must be served in the manner provided by law for service of
3 subpoenas in a civil action in this state and, upon motion to the
4 court by a party to the arbitration proceeding or the arbitrator,
5 enforced in the manner provided by law for enforcement of subpoenas
6 in a civil action in this state.

7 **§55-10-18. Judicial enforcement of preaward ruling by arbitrator.**

8 If an arbitrator makes a preaward ruling in favor of a party
9 to the arbitration proceeding, the party may request the arbitrator
10 to incorporate the ruling into an award under section nineteen of
11 this article. A prevailing party may make a motion to the court
12 for an expedited order to confirm the award under section twenty-
13 two of this article, in which case the court shall summarily
14 decide the motion. The court shall issue an order to confirm the
15 award unless the court vacates, modifies, or corrects the award
16 under section twenty-three or twenty-four of this article.

17 **§55-10-19. Award.**

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

23 (b) An award must be made within the time specified by the

1 agreement to arbitrate or, if not specified therein, within the
2 time ordered by the court. The court may extend, or the parties to
3 the arbitration proceeding may agree in a record to extend the
4 time. The court or the parties may do so within or after the time
5 specified or ordered. A party waives any objection that an award
6 was not timely made unless the party gives notice of the objection
7 to the arbitrator before receiving notice of the award.

8 **§55-10-20. Change of award by arbitrator.**

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

11 (1) Upon a ground stated in section twenty-four-a (1) or (3)
12 of this section;

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

16 (3) To clarify the award.

17 (b) A motion under subsection (a) must be made and notice
18 given to all parties within twenty days after the movent receives
19 notice of the award.

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

23 (d) If a motion to the court is pending under section twenty-

1 two, twenty-three or twenty-four of this article, the court may
2 submit the claim to the arbitrator to consider whether to modify or
3 correct the award:

4 (1) Upon a ground stated in section twenty-four-a (1) or (3)
5 of this article;

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

9 (3) To clarify the award.

10 (e) An award modified or corrected pursuant to this section is
11 subject to sections nineteen-a, twenty-two, twenty-three and
12 twenty-four of this article.

13 **§55-10-21. Remedies; fees and expenses of arbitration proceeding.**

14 (a) An arbitrator may award punitive damages or other
15 exemplary relief if such an award is authorized by law in a civil
16 action involving the same claim and the evidence produced at the
17 hearing justifies the award under the legal standards otherwise
18 applicable to the claim.

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

23 (c) As to all remedies other than those authorized by

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

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

10 (e) If an arbitrator awards punitive damages or other
11 exemplary relief under subsection (a), the arbitrator shall specify
12 in the award the basis in fact justifying and the basis in law
13 authorizing the award and state separately the amount of the
14 punitive damages or other exemplary relief.

15 **§55-10-22. Confirmation of award.**

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

22 **§55-10-23. Vacating award.**

23 (a) Upon motion to the court by a party to an arbitration

1 proceeding, the court shall vacate an award made in the arbitration
2 proceeding if:

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

5 (2) There was:

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

8 (B) Corruption by an arbitrator; or

9 (C) Misconduct by an arbitrator prejudicing the rights of a
10 party to the arbitration proceeding;

11 (3) An arbitrator refused to postpone the hearing upon showing
12 of sufficient cause for postponement, refused to consider evidence
13 material to the controversy, or otherwise conducted the hearing
14 contrary to section fifteen of this article, so as to prejudice
15 substantially the rights of a party to the arbitration proceeding;

16 (4) An arbitrator exceeded the arbitrator's powers;

17 (5) There was no agreement to arbitrate, unless the person
18 participated in the arbitration proceeding without raising the
19 objection under section fifteen-c of this article not later than
20 the beginning of the arbitration hearing; or

21 (6) The arbitration was conducted without proper notice of the
22 initiation of an arbitration as required in section nine so as to
23 prejudice substantially the rights of a party to the arbitration

1 proceeding.

2 (b) A motion under this section must be filed within ninety
3 days after the movent receives notice of the award pursuant to
4 section nineteen of this article or within ninety days after the
5 movent receives notice of a modified or corrected award pursuant to
6 section twenty of this article, unless the movent alleges that the
7 award was procured by corruption, fraud, or other undue means, in
8 which case the motion must be made within ninety days after the
9 ground is known or by the exercise of reasonable care would have
10 been known by the movent.

11 (c) If the court vacates an award on a ground other than that
12 set forth in subsection (a) (5), it may order a rehearing. If the
13 award is vacated on a ground stated in subsection (a) (1) or (2),
14 the rehearing must be before a new arbitrator. If the award is
15 vacated on a ground stated in subsection (a) (3), (4) or (6), the
16 rehearing may be before the arbitrator who made the award or the
17 arbitrator's successor. The arbitrator must render the decision in
18 the rehearing within the same time as that provided in section
19 nineteen-b of this article for an award.

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

23 **§55-10-24. Modification or correction of award.**

1 (a) Upon motion made within ninety days after the movent
2 receives notice of the award pursuant to section nineteen of this
3 article or within ninety days after the movent receives notice of
4 a modified or corrected award pursuant to section twenty of this
5 article, the court shall modify or correct the award if:

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

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

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

14 (b) If a motion made under subsection (a) is granted, the
15 court shall modify or correct and confirm the award as modified or
16 corrected. Otherwise, unless a motion to vacate is pending, the
17 court shall confirm the award.

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

20 **§55-10-25. Judgment on award; attorney's fees and litigation**
21 **expenses.**

22 (a) Upon granting an order confirming, vacating without
23 directing a rehearing, modifying, or correcting an award, the court

1 shall enter a judgment in conformity therewith. The judgment may
2 be recorded, docketed, and enforced as any other judgment in a
3 civil action.

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

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

13 **§55-10-26. Jurisdiction.**

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

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

19 **§55-10-27. Venue.**

20 A motion pursuant to section five of this article must be made
21 in the circuit court of the county in which the agreement to
22 arbitrate specifies the arbitration hearing is to be held or, if
23 the hearing has been held, in the circuit court of the county in

1 which it was held. Otherwise, the motion may be made in the court
2 of any county in which an adverse party resides or has a place of
3 business or, if no adverse party has a residence or place of
4 business in this state, in the circuit court of Kanawha County,
5 West Virginia. All subsequent motions must be made in the court
6 hearing the initial motion, unless the court otherwise directs.

7 **§55-10-28. Appeals.**

8 (a) An appeal may be taken from:

9 (1) An order denying a motion to compel arbitration;

10 (2) An order granting a motion to stay arbitration;

11 (3) An order confirming or denying confirmation of an award;

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

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

14 or

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

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

18 **§55-10-29. Uniformity of application and construction.**

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

22 **§55-10-30. Electronic signatures in global and national commerce**
23 **act.**

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

7 **§55-10-31. Effective date.**

8 This article takes effect on July 1, 2013.

9 **§55-10-32. Savings clause.**

10 This article does not affect an action or proceeding commenced
11 or right accrued before this article takes effect.

NOTE: The purpose of this bill is to revise the article relating to arbitration and implement the terms of the Uniform Arbitration Act. The bill defines terms, including notice and the applicability of the article, proscribes the effectiveness of agreements to arbitrate and identifies nonwaivable provisions; allows for application for judicial relief from agreements to arbitrate; makes an agreement to arbitrate valid unless a legal or equitable reason for revocation exists; provides for the terms by which arbitration may continue if challenged; provides the process for motions to compel or stay arbitration; provides for provisional remedies to protect the effectiveness of arbitration proceedings; provides the process for initiation of arbitration; provides for the consolidation of separate arbitration proceedings; provides for the appointment of an arbitrator and default process if not agreed by the parties; requires neutrality of arbitrators; requires disclosure by arbitrators of matters affecting impartiality; requires a majority of arbitrators to agree to exercise powers; provides immunity for arbitrators, requires competency to testify, and provides for attorneys' fees and costs for challenges from which arbitrators' are immune; provides the general process for arbitration; allows parties to be represented by a lawyer in

arbitrations; outlines the procedure for witnesses, subpoenas, depositions and discovery in arbitrations; provides for judicial enforcement of preaward ruling by arbitrator; provides for a record of an award and the requirements for an award; allows the change of an award by an arbitrator upon motion under certain conditions; provides that certain remedies and the fees and costs of arbitration may be a part of an arbitration award; allows for confirmation by a court of an award upon motion; provides the process and grounds for vacating an award by a court; provides the process and grounds for the modification or correction of an award upon motion; provides that a court shall enter a judgment upon confirmation of an award and may add reasonable attorneys' fees and costs; provides for jurisdiction over arbitration agreements by a court of this state; provides venue; provides that appeals may be taken from orders related to arbitration proceedings; requires uniform construction of the act; provides that this act complies with the Electronic Signatures in Global and National Commerce Act; and provides the effective date of the act.

Sections §55-10-1 through §55-10-8 have been substantially rewritten; therefore, it has been completely underscored.

Sections §55-10-9 through §55-10-32 are new; therefore, it has been completely underscored.