

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
24 may be a part of an arbitration award; allowing for

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

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

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

23 **ARTICLE 10. ARBITRATION.**

24 **§55-10-1. Definitions.**

1 In this article:

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

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

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

10 (4) "Knowledge" means actual knowledge.

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

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

19 **§55-10-2. Notice.**

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

24 (b) A person has notice if the person has knowledge of the

1 notice or has received notice.

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

6 **§55-10-3. When article applies.**

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

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

12 **§55-10-4. Effect of agreement to arbitrate; nonwaivable**
13 **provisions.**

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

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

20 (1) Waive or agree to vary the effect of the requirements of
21 section five-a, six-a, eight, seventeen-a, seventeen-b, twenty-six
22 or twenty-eight of this article;

23 (2) Agree to unreasonably restrict the right under section
24 nine of this article to notice of the initiation of an arbitration

1 proceeding;

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

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

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

16 **§55-10-5. Application for judicial relief.**

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

22 (b) Unless a civil action involving the agreement to arbitrate
23 is pending, notice of an initial motion to the court under this
24 article must be served in the manner provided by law for the

1 service of a summons in a civil action. Otherwise, notice of the
2 motion must be given in the manner provided by the rules of civil
3 procedure for serving motions in pending cases.

4 **§55-10-6. Validity of agreement to arbitrate.**

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

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

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

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

20 **§55-10-7. Motion to compel or stay arbitration.**

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

24 (1) If the refusing party does not appear or does not oppose

1 the motion, the court shall order the parties to arbitrate; and

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

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

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

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

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

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

1 arbitration until the court renders a final decision under this
2 section.

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

7 **§55-10-8. Provisional remedies.**

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

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

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

23 (2) A party to an arbitration proceeding may move the court
24 for a provisional remedy only if the matter is urgent and the

1 arbitrator is not able to act timely or the arbitrator cannot
2 provide an adequate remedy.

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

5 **§55-10-9. Initiation of arbitration.**

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

13 (b) Unless a person objects for lack or insufficiency of
14 notice under section fifteen-c of this article not later than the
15 beginning of the arbitration hearing, the person by appearing at
16 the hearing waives any objection to lack of or insufficiency of
17 notice.

18 **§55-10-10. Consolidation of separate arbitration proceedings.**

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

23 (1) There are separate agreements to arbitrate or separate
24 arbitration proceedings between the same persons or one of them is

1 a party to a separate agreement to arbitrate or a separate
2 arbitration proceeding with a third person;

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

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

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

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

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

18 **§55-10-11. Appointment of arbitrator; service as a neutral**
19 **arbitrator.**

20 (a) If the parties to an agreement to arbitrate agree on a
21 method for appointing an arbitrator, that method must be followed,
22 unless the method fails. If the parties have not agreed on a
23 method, the agreed method fails or an arbitrator appointed fails or
24 is unable to act and a successor has not been appointed, the court,

1 on motion of a party to the arbitration proceeding, shall appoint
2 the arbitrator. An arbitrator so appointed has all the powers of
3 an arbitrator designated in the agreement to arbitrate or appointed
4 pursuant to the agreed method.

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

9 **§55-10-12. Disclosure by arbitrator.**

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

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

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

22 (b) An arbitrator has a continuing obligation to disclose to
23 all parties to the agreement to arbitrate and arbitration
24 proceeding and to any other arbitrators any facts that the

1 arbitrator learns after accepting appointment which a reasonable
2 person would consider likely to affect the impartiality of the
3 arbitrator.

4 (c) If an arbitrator discloses a fact required by subsection
5 (a) or (b) to be disclosed and a party timely objects to the
6 appointment or continued service of the arbitrator based upon the
7 fact disclosed, the objection may be a ground under section twenty-
8 three-a (2) of this article for vacating an award made by the
9 arbitrator.

10 (d) If the arbitrator did not disclose a fact as required by
11 subsection (a) or (b), upon timely objection by a party, the court
12 under section twenty-three-a (2) of this article may vacate an
13 award.

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

19 (f) If the parties to an arbitration proceeding agree to the
20 procedures of an arbitration organization or any other procedures
21 for challenges to arbitrators before an award is made, substantial
22 compliance with those procedures is a condition precedent to a
23 motion to vacate an award on that ground under section twenty-
24 three-a (2) of this article.

1 **§55-10-13. Action by majority.**

2 If there is more than one arbitrator, the powers of an
3 arbitrator must be exercised by a majority of the arbitrators, but
4 all of them shall conduct the hearing under section fifteen-c of
5 this article.

6 **§55-10-14. Immunity of arbitrator; competency to testify;
7 attorney's fees and costs.**

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

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

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

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

23 (1) To the extent necessary to determine the claim of an
24 arbitrator, arbitration organization or representative of the

1 arbitration organization against a party to the arbitration
2 proceeding; or

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

6 (e) If a person commences a civil action against an
7 arbitrator, arbitration organization or representative of an
8 arbitration organization arising from the services of the
9 arbitrator, organization or representative or if a person seeks to
10 compel an arbitrator or a representative of an arbitration
11 organization to testify or produce records in violation of
12 subsection (d), and the court decides that the arbitrator,
13 arbitration organization or representative of an arbitration
14 organization is immune from civil liability or that the arbitrator
15 or representative of the organization is not competent to testify,
16 the court shall award to the arbitrator, organization or
17 representative reasonable attorney's fees and other reasonable
18 expenses of litigation.

19 **§55-10-15. Arbitration process.**

20 (a) An arbitrator may conduct an arbitration in such manner as
21 the arbitrator considers appropriate for a fair and expeditious
22 disposition of the proceeding. The authority conferred upon the
23 arbitrator includes the power to hold conferences with the parties
24 to the arbitration proceeding before the hearing and, among other

1 matters, determine the admissibility, relevance, materiality and
2 weight of any evidence.

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

5 (1) If all interested parties agree; or

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

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

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

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

9 **§55-10-16. Representation by lawyer.**

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

12 **§55-10-17. Witnesses; subpoenas; depositions; discovery.**

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

20 (b) In order to make the proceedings fair, expeditious and
21 cost effective, upon request of a party to or a witness in an
22 arbitration proceeding, an arbitrator may permit a deposition of
23 any witness to be taken for use as evidence at the hearing,
24 including a witness who cannot be subpoenaed for or is unable to

1 attend a hearing. The arbitrator shall determine the conditions
2 under which the deposition is taken.

3 (c) An arbitrator may permit such discovery as the arbitrator
4 decides is appropriate in the circumstances, taking into account
5 the needs of the parties to the arbitration proceeding and other
6 affected persons and the desirability of making the proceeding
7 fair, expeditious, and cost effective.

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

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

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

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

13 **§55-10-18. Judicial enforcement of preaward ruling by arbitrator.**

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

23 **§55-10-19. Award.**

24 (a) An arbitrator shall make a record of an award. The record

1 must be signed or otherwise authenticated by any arbitrator who
2 concurs with the award. The arbitrator or the arbitration
3 organization shall give notice of the award, including a copy of
4 the award, to each party to the arbitration proceeding.

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

13 **§55-10-20. Change of award by arbitrator.**

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

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

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

21 (3) To clarify the award.

22 (b) A motion under subsection (a) must be made and notice
23 given to all parties within twenty days after the movant receives
24 notice of the award.

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

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

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

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

13 (3) To clarify the award.

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

17 **§55-10-21. Remedies; fees and expenses of arbitration proceeding.**

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

23 (b) An arbitrator may award reasonable attorney's fees and
24 other reasonable expenses of arbitration if such an award is

1 authorized by law in a civil action involving the same claim or by
2 the agreement of the parties to the arbitration proceeding.

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

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

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

18 **§55-10-22. Confirmation of award.**

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

1 **§55-10-23. Vacating award.**

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

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

7 (2) There was:

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

10 (B) Corruption by an arbitrator; or

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

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

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

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

23 (6) The arbitration was conducted without proper notice of the
24 initiation of an arbitration as required in section nine so as to

1 prejudice substantially the rights of a party to the arbitration
2 proceeding.

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

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

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

24 **§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 20 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
24 shall enter a judgment in conformity therewith. The judgment may

1 be recorded, docketed and enforced as any other judgment in a civil
2 action.

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

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

12 **§55-10-26. Jurisdiction.**

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

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

18 **§55-10-27. Venue.**

19 A motion pursuant to section five of this article must be made
20 in the circuit court of the county in which the agreement to
21 arbitrate specifies the arbitration hearing is to be held or, if
22 the hearing has been held, in the circuit court of the county in
23 which it was held. Otherwise, the motion may be made in the court
24 of any county in which an adverse party resides or has a place of

1 business or, if no adverse party has a residence or place of
2 business in this state, in the circuit court of Kanawha County,
3 West Virginia. All subsequent motions must be made in the court
4 hearing the initial motion, unless the court otherwise directs.

5 **§55-10-28. Appeals.**

6 (a) An appeal may be taken from:

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

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

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

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

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

12 or

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

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

16 **§55-10-29. Uniformity of application and construction.**

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

20 **§55-10-30. Electronic signatures in global and national commerce**
21 **act.**

22 The provisions of this article governing the legal effect,
23 validity, or enforceability of electronic records or signatures,
24 and of contracts performed with the use of such records or

1 signatures conform to the requirements of section 102 of the
2 Electronic Signatures in Global and National Commerce Act, Pub. L.
3 No. 106-229, 114 Stat. 464 (2000).

4 **§55-10-31. Effective date.**

5 This article takes effect on July 1, 2013.

6 **§55-10-32. Savings clause.**

7 This article does not affect an action or proceeding commenced
8 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, strike-throughs and underscores have been omitted.

Sections §55-10-9 through §55-10-32 are new; therefore, strike-throughs and underscores have been omitted.)