

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2713

By: Toure

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Sections 696.3 and 696.4, as amended by Section 3, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 696.4), which relate to judgments; modifying required and discretionary contents for judgments, decrees and appealable orders; providing for the recovery of attorney fees in certain circumstances; amending 12 O.S. 2001, Section 721, which relates to foreign judgments; modifying requirements for filing certain judgments for specified purpose; modifying requirements related to certain offers; amending 12 O.S. 2001, Section 990.2, which relates to post-trial motions; excluding interest from certain post-trial motions; amending 12 O.S. 2012, as amended by Section 23, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2012), which relates to defenses and objections; modifying time for presentment of answer; amending 12 O.S. 2001, Section 3232, which relates to depositions; clarifying manner in which testimony is taken; amending 30 O.S. 2001, Sections 4-201 and 4-303, which relate to guardian's bond and settlement of accounts; modifying requirement for certain finding by court; modifying requirements for filing of certain report; creating the Uniform Arbitration Act; providing short title; defining terms; providing conditions of giving and receiving notice; providing agreements that are governed by the Uniform Arbitration Act; providing for waiver of requirements; providing nonwaivable provisions; providing for application for judicial relief; providing for validity of agreements to arbitrate; providing for application and motion to compel or stay arbitration; providing for provisional remedies; providing for initiation of arbitration; providing for consolidation of separate arbitration proceedings; prohibiting consolidation if prohibited by the arbitration agreement; providing for appointment of arbitrator; providing that certain persons shall not serve as arbitrator; requiring certain disclosures by arbitrator; providing for objections; providing consequences if an arbitrator does not disclose certain information; requiring compliance with certain procedures in certain circumstances; requiring action by more than one arbitrator to be action of a majority; requiring all arbitrators to conduct the hearing; providing civil immunity for arbitrator; providing that an arbitrator is not competent to testify or required to produce records in certain proceedings; providing exceptions;

providing for the award of certain attorney fees and expenses of litigation; providing for the arbitration process; authorizing a party to an arbitration proceeding to be represented by a lawyer; providing for subpoena power, administration of oaths, and use of discovery; allowing witnesses to appear telephonically or by other means; authorizing an arbitrator to issue protective orders; providing that certain laws and fees apply to arbitration proceedings; providing for enforcement of subpoenas and discovery-related orders; providing for judicial enforcement of preaward rulings; providing requirements for awards; providing procedure for modification or correction of award; authorizing an arbitrator to award punitive damages and other exemplary relief; authorizing an arbitrator to award attorney fees and other expenses; providing for confirming orders; authorizing the court to vacate an award for certain reasons; providing procedure for vacating award; requiring the court to modify or correct an award under certain circumstances; providing for entering judgment; authorizing the court to award certain costs and expenses; providing for jurisdiction; providing venue; providing for appeals; providing for uniform application of law; providing conformity with certain act; repealing 12 O.S. 2001, Section 1101.1, as amended by Section 7, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 1101.1), which relates to offers of judgment; repealing 15 O.S. 2001, Sections 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817 and 818, which relate to the Uniform Arbitration Act; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 696.3, is amended to read as follows:

Section 696.3 A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;

2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties, including the amount of any prejudgment interest;

3. The signature and title of the court; and

4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, ~~attorney's~~ attorney fees and interest other than prejudgment interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be mailed to all parties who are not in default for failure to appear in the action as provided in Section 696.2 of this title.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 696.4, as amended by Section 3, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 696.4), is amended to read as follows:

Section 696.4 A. A judgment, decree or appealable order may provide for costs, attorney fees, ~~and interest~~ or ~~any~~ both of these items, but it need not include them. The preparation and filing of the judgment, decree, or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If attorney fees, or costs, ~~or interest~~, including the amount of such attorney fees, or costs, ~~and the rate of interest~~, have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include

information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order unless a posttrial motion pursuant to subsection A of Section 990.2 of this title has been filed within ten (10) days after the filing of the judgment, decree, or appealable order. If such a motion is filed within that time, the application for attorney fees, costs, or interest shall be filed within thirty (30) days after the date an order disposing of the posttrial motion is filed. If the party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, appealable order, or order disposing of the posttrial motion was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. ~~An~~ Except as provided in Subsection D of this section, an application for attorney fees for services performed on appeal shall be made to the appellate court either in the applicant's brief on appeal or by separate motion filed any time before issuance of mandate. If in the brief, the application shall be made in a separate portion that is specifically identified. The application shall cite authority for awarding attorney fees but shall not

include evidentiary material concerning their amount. The appellate court shall decide whether to award attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

D. If the right of a party to recover attorney fees depends upon a determination that the party has prevailed in an action, and if the prevailing party in the action cannot be determined from the decision of the appellate court, an application for attorney fees for services performed on appeal shall be made to the trial court in the manner and within the time provided in subsection B of this section.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 721, is amended to read as follows:

Section 721. A copy of any foreign judgment authenticated in accordance with the applicable Act of Congress or of the statutes of this state may be filed in the office of the court clerk of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until ~~a certified copy of the judgment so filed is also filed in the office of the county clerk in the county where the real estate is located~~ the judgment creditor complies with the requirements of subsection B of Section 706 of this title.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1101.1A of Title 12, unless there is created a duplication in numbering, reads as follows:

A. SERVICE OF OFFER; TIME FOR ACCEPTANCE. The party against whom a claim for the recovery of money is asserted may serve a written offer to confess judgment on the claim. In the event such an offer is made, the claimant may at any time thereafter serve a written offer to accept judgment on the claim. An offer to confess or accept judgment shall state that it is made pursuant to this section, name the offeror and offeree, identify the claim to which it relates, specify its amount, and include a certificate of service setting forth the name of the person served and the date, place, and method of service. The offer shall be deemed to include any recoverable prejudgment interest, attorney fees, and costs attributable to the claim to which it relates. The offer must be served more than twenty (20) days prior to trial, except that an offer served by mail must be served more than twenty-three (23) days prior to trial. Unless the offeree serves a written acceptance of the offer within twenty (20) days from the date the offer is served, the offer will be deemed rejected by the offeree. A pending offer is deemed void upon the decision of the court on the merits of the claim to which the offer relates, and shall have no consequences under this section.

B. PARTIES. More than a single party may be named as offerors or offerees only with respect to jointly owned claims or claims of joint liability. Nothing herein prevents multiple parties from making an identical offer, or prevents a party from making identical offers to multiple parties. This section shall not apply if a party's settlement of the claim to which the offer relates requires trial court approval.

C. SUBSEQUENT OFFERS. The making of an offer under this section does not preclude the offeror from making a subsequent offer; however, upon the making of a subsequent offer, all prior offers by that party shall be deemed void and shall have no further effect or consequences under this section.

D. JUDGMENT ON ACCEPTED OFFER. If an offer pursuant to subsection A of this section is timely accepted, copies of the offer and acceptance shall be filed promptly with an affidavit showing that acceptance was timely, and judgment shall be entered on the claim to which the offer relates. The judgment shall be in the amount of the accepted offer, and the judgment creditor shall not be entitled to any further recovery against the judgment debtor of prejudgment interest, attorney fees, or costs with respect to the claim to which the offer relates. A judgment granted under this subsection shall, if otherwise proper, be deemed final under Section 994 of Title 12 of the Oklahoma Statutes regardless of whether the trial court makes an express determination that there is no just reason for delay or expressly directs the filing of a final judgment.

E. EFFECT OF RESULT LESS FAVORABLE TO OFFEREE THAN REJECTED OFFER. If a claimant's offer is rejected, and the judgment obtained on the claim is not less than the amount of the offer, the claimant shall be entitled to recover reasonable attorney fees and costs, and in enforcing claimant's rights under this subsection, from the date the offer was served. If a claimant rejects an offer, and the judgment obtained on such claim is less than the amount of the offer, the offeror shall be entitled to recover reasonable attorney fees and costs incurred in defending the claim, and in enforcing the offeror's rights under this subsection, from the date the offer was served. A claimant who voluntarily dismisses a claim after rejecting an offer shall not be liable for attorney fees and costs, unless the claimant files a subsequent action asserting the same claim and the judgment obtained on the claim is less than the amount of the rejected offer in the prior action. In the event adverse parties have each rejected offers made by the other which both qualify for an award of attorney fees and costs, the party who made the first offer shall be entitled to attorney fees and costs only

until the date the second offer was served, after which the party making the second offer shall be entitled to attorney fees and costs. The recovery of attorney fees under this subsection shall not depend upon whether other authority supports recovery of attorney fees.

F. COMPARISON OF OFFER TO JUDGMENT. For purposes of comparing the amount of a judgment with the amount of an offer under subsection E of this section, the offer shall be compared to the amount of the judgment on the claim after any remittitur or additur, and adding any recoverable prejudgment interest, attorney fees, and costs attributable to the claim to which the offer relates until the date the offer was served.

G. SERVICE. An offer or acceptance under this section shall be served by hand delivery, facsimile transmission, or mail. Subsection D of Section 2006 of Title 12 of the Oklahoma Statutes, relating to computation of time after service of a document by mail, shall apply in computing the twenty (20) day period for accepting an offer under this section.

H. OTHER CLAIMS. This section applies to a claim asserted in a civil action for the recovery of money, regardless of whether other claims for either monetary or nonmonetary relief are also asserted. When an offer under this section is rejected and claims are adjudicated which are not the subject of the offer, a special verdict form shall be used by which the jury identifies the amount awarded on the claim which is the subject of the offer.

I. OTHER PROVISIONS FOR ATTORNEY FEES OR COSTS. Where an award of attorney fees and costs is proper under subsection E of this section with respect to a claim for which other authority provides for recovery of attorney fees or costs, such other authority shall govern entitlement to such attorney fees or costs incurred with respect to the claim until the date the rejected offer was made, and

this section shall govern the award of attorney fees and costs thereafter.

J. APPELLATE ATTORNEY FEES. Where a party is entitled to recover trial-related attorney fees and costs under this section with respect to a claim, that party is also entitled to recover reasonable attorney fees and costs incurred on appeal with respect to the claim if the party prevails on appeal as to the claim.

K. EVIDENCE OF REJECTED OFFER. Evidence of an offer which is rejected under this section shall not be admissible in any action or proceeding for any purpose except after judgment to determine rights conferred by this section.

L. EXECUTION; AUTOMATIC STAY. Where a claimant rejects an offer under this section, the portion of the judgment on the claim to which the offer relates shall be automatically stayed and the ten-day stay of execution provided by subsection A of Section 990.3 of Title 12 of the Oklahoma Statutes shall not commence until the filing of the final order determining entitlement to and amount of any attorney fees and costs which may be recoverable under subsection E of this section with respect to the offer.

M. CERTAIN ACTIONS EXCLUDED. In a civil action for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, this section shall not apply unless the plaintiff demands in a pleading or in trial proceedings more than One Hundred Thousand Dollars (\$100,000.00), or the defendant makes an offer of judgment more than One Hundred Thousand Dollars (\$100,000.00). Any offer of judgment under this section may precede the demand.

N. SCOPE. This section shall apply to all civil actions filed from the date upon which it becomes effective.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 990.2, is amended to read as follows:

Section 990.2 A. Post-Trial Motions Filed Within Ten (10) Days. When a post-trial motion for a new trial, for judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion only involving costs, ~~attorney's~~ or attorney fees ~~or interest~~, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk. The unsuccessful party may then appeal from the order disposing of the motion within thirty (30) days after the date such order was filed. If the decision on the motion was against the moving party, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal, within thirty (30) days after the filing of the order disposing of the motion. Successive appeals from the original judgment, decree or final order and the order disposing of the motion shall not be allowed.

B. Post-Trial Motions Filed After Ten (10) Days. The time to appeal from a judgment, decree or final order is not extended or affected by the filing of a motion to correct, open, modify, vacate or reconsider the judgment, decree or final order that is filed more than ten (10) days after the judgment, decree or final order is filed with the clerk of the trial court, and an appeal that is commenced before such a motion is filed is not premature. If the motion is filed after a petition in error is filed, the moving party shall advise the Supreme Court the motion was filed. If a petition in error is filed after such a motion is filed, the appellant shall advise the Supreme Court in the petition in error that the motion is pending. When the trial court disposes of the motion where a petition in error has been filed, the successful party shall advise the Supreme Court of the action taken on the motion.

C. If the appellant did not prepare the judgment, decree, or final order, and Section 696.2 of this title required a copy of the judgment, decree, or final order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or final order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or final order, all times referred to in this section shall run from the earliest date on which the court records show that a file-stamped copy of the judgment, decree, or final order was mailed to the appealing party, rather than from the date of filing.

D. Costs, ~~Attorney's~~ Attorney Fees and ~~Interest~~. The filing of a motion for costs, ~~attorney's~~ attorney fees or ~~interest~~ shall not extend or affect the time to appeal.

SECTION 6. AMENDATORY 12 O.S. 2001, Section 2012, as amended by Section 23, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2012), is amended to read as follows:

Section 2012.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;

BY PLEADING OR MOTION

A. WHEN PRESENTED. ~~A~~ 1. Unless a different time is prescribed by law, a defendant shall serve an answer:

- a. within twenty (20) days after the service of the summons and petition upon the defendant, ~~except as otherwise provided by Oklahoma law. Within~~
- b. within twenty (20) days, ~~or thirty-five (35) days, when applicable,~~ after the service of the summons and petition upon the defendant, or within the last day for answering if applicable; provided, a defendant may file a reservation of time which shall extend the time to respond twenty (20) days from the last date for answering. The filing of such a reservation of time

waives defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of this section.

2. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within twenty (20) days after the service upon the party.

3. The plaintiff shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs.

4. The party requesting a summons to be issued or filing a counter-claim or cross-claim may elect to have the answer served within thirty-five (35) days in lieu of the twenty (20) days set forth in this section.

5. The service of a motion permitted under this section or a motion for summary judgment alters these periods of time as follows, ~~unless a different time is fixed by order of the court:~~ if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within twenty (20) days after notice of the court's action, unless a different time is fixed by order of the court.

B. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process;
5. Insufficiency of service of process;
6. Failure to state a claim upon which relief can be granted;

7. Failure to join a party under Section 2019 of this title;
8. Another action pending between the same parties for the same claim;
9. Lack of capacity of a party to be sued; and
10. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 6 of this subsection to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to the motion by the rules for summary judgment. A motion to dismiss for failure to state a claim upon which relief can be granted shall separately state each omission or defect in the petition, and a motion that does not specify such defects or omissions shall be denied without a hearing and the defendant shall answer within twenty (20) days after notice of the court's action.

C. PRELIMINARY HEARINGS. The defenses specifically enumerated in paragraphs 1 through 10 of subsection B of this section, whether made in a pleading or by motion, and the motion to strike mentioned in subsection D of this section shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. If the court determines that venue is proper, the action shall not be dismissed for improper venue as a result of the jury's verdict or

the subsequent ruling of the court on a demurrer to the evidence or a motion for a directed verdict.

D. MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this act, upon motion made by a party within twenty (20) days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to the motion by the rules for summary judgment.

E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this section may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this section but omits therefrom any defense or objection then available to the party which this section permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph 2 of subsection F of this section on the grounds there stated. The court in its discretion may permit a party to amend a motion by stating additional defenses or objections if an amendment is sought at least five (5) days before the hearing on the motion.

F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, or lack of capacity of a party to be sued is waived:

- a. if omitted from a motion that raises any of the defenses or objections which this section permits to be raised by motion, or
- b. if it is not made by motion and it is not included in a responsive pleading or an amendment thereof permitted by subsection A of Section 2015 of this title to be made as a matter of course. A motion to strike an insufficient defense is waived if not raised as in subsection D of this section.

2. A defense of failure to join a party indispensable under Section 2019 of this title may be made in any pleading permitted or ordered under subsection A of Section 2007 of this title or at the trial on the merits. A defense of another action pending between the same parties for the same claim or a defense of lack of capacity of a party to sue may be made in any pleading permitted or ordered pursuant to the provisions of subsection A of Section 2007 of this title or at the pretrial conference.

3. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

4. A waiver of the defense in paragraph 6 of subsection B of this section does not preclude a later contention that a party is not entitled to any relief as a matter of law, either by motion for summary judgment, or by demurrer or motion at or after trial.

G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an

amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

SECTION 7. AMENDATORY 12 O.S. 2001, Section 3232, is amended to read as follows:

Section 3232. A. USE OF DEPOSITIONS. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Oklahoma Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Oklahoma Evidence Code;

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used for any purpose;

3. The deposition of a witness, whether or not a party may be used for any purpose if the court finds:

- a. That the witness is dead, or
- b. That the witness does not reside in the county where the action or proceeding is pending or is sent for trial by a change of venue or the witness is absent therefrom, unless it appears that the absence of the witness was procured by the party offering the deposition, or

- c. That the witness is unable to attend or testify because of age, illness, infirmity or imprisonment, or
- d. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or
- e. That the witness is an expert witness, who for purposes of this section is a person educated in a special art or profession or a person possessing special or peculiar knowledge acquired from practical experience, or
- f. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance ~~of~~ of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

Nothing in this paragraph shall be construed to limit the authority of the appropriate office to issue a subpoena to compel an expert witness to appear in the same manner as any other witness;

4. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Section 1081, 1082, 1083 or 2025 of this title does not affect the right to use depositions previously taken. When an action has been brought in this state or in any court of the United States or of any other state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

A deposition previously taken may also be used as permitted by the Oklahoma Evidence Code.

B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of subsection B of Section 3228 of this title and paragraph 3 of subsection E D of this section, objection may be made, at the trial or hearing, to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

C. FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this section may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

1. AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

2. AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. AS TO TAKING OF DEPOSITION.

a. Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring in the manner of the oral examination in the taking of the deposition, in the form of the questions or answers, in the oath

or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

- c. Objections to the form of written questions submitted under Section 3231 of this title are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions or within five (5) days after service of the last questions authorized.

4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities:

- a. in the manner in which the testimony is transcribed or recorded, or
- b. in the manner in which the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 3230 and 3231 of this title

are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

SECTION 8. AMENDATORY 30 O.S. 2001, Section 4-201, is amended to read as follows:

Section 4-201. A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the court may require the person or organization to be appointed to provide a bond to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

B. 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the court that:

- ~~a.~~ the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00) ~~and~~
- ~~b.~~ ~~the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child, or grandchild of the ward,~~

the court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

3. The provisions of this section shall not apply to cases subject to the Uniform Veterans Guardianship Act.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of

the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the court.

SECTION 9. AMENDATORY 30 O.S. 2001, Section 4-303, is amended to read as follows:

Section 4-303. A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the court for settlement and allowance as part of the guardianship report as required by Section 4-306 of this title.

B. 1. In addition, a guardian or limited guardian of the property shall:

- a. present accounts whenever the court requires that such report or accounts be presented, and
- b. with the annual report of accounts, report any changes of property listed on the inventory required by Section 4-301 of this title. The report shall state the compensation requested by the guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Forty Thousand Dollars (\$40,000.00) if a bond has been posted, or are worth less than Ten

Thousand Dollars (\$10,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. 1. Unless waived at the discretion of the court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 4-305 of this title.

2. ~~Unless waived at the discretion of the court, or not required by Section 21.5 of Title 10 of the Oklahoma Statutes, a~~ A guardian of the person of a minor ward shall not be required to file such annual reports of the guardianship of the person of the ward ~~as required unless ordered by the court in such form as the court may require.~~

3. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 4-306 of this title.

E. The court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

G. An accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified and shall be rendered in the same manner as required by Title 58 of the Oklahoma Statutes with respect to an information of an estate of a decedent. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

H. In addition to other specified information any order of the court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1851 of Title 12, unless there is created a duplication in numbering, reads as follows:

Sections 10 through 40 of this act shall be known and may be cited as the "Uniform Arbitration Act".

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1852 of Title 12, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Arbitration Act:

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 any 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; and

6. "Record" means any 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 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1853 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the Uniform Arbitration Act, 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.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person will be deemed to have received 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 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1854 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. The Uniform Arbitration Act governs an agreement to arbitrate made on or after November 1, 2004.

B. The Uniform Arbitration Act governs an agreement to arbitrate made before November 1, 2004, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

C. Beginning November 1, 2004, the Uniform Arbitration Act governs an agreement to arbitrate whenever made.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1855 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsections B and C of this section, 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 the Uniform Arbitration Act to the extent permitted by law.

B. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

1. Waive or agree to vary the effect of the requirements of subsection A of Section 15 of this act, subsection A of Section 16 of this act, Section 18 of this act, subsection A or B of Section 27 of this act, Section 36 of this act or Section 38 of this act;

2. Agree to unreasonably restrict the right under Section 19 of this act to notice of the initiation of an arbitration proceeding;

3. Agree to unreasonably restrict the right under Section 22 of this act to disclosure of any facts by a neutral arbitrator; or

4. Waive the right under Section 26 of this act of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under the Uniform Arbitration Act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

C. A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection A or C of Section 13 of this act, Section 17 of this act, Section 24 of this act, Section

28 of this act, subsection D or E of Section 30 of this act, Section 32, 33 or 34 of this act, subsection A or B of Section 35 of this act, or Section 39 of this act.

D. The Uniform Arbitration Act shall apply to collective bargaining agreements and contracts which reference insurance.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1856 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in Section 37 of this act, an application for judicial relief under the Uniform Arbitration Act must be made by application and motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial application and motion to the court under the Uniform Arbitration Act must be served in the manner provided by law for the service of a summons in the filing of 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 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1857 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. 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.

B. If necessary, a court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

C. 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.

D. 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 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1858 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. On application and motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

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

2. 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. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

B. 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. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

C. If the court finds that there is no enforceable agreement, it may not pursuant to subsection A or B of this section order the parties to arbitrate.

D. The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

E. 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 37 of this act.

F. 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.

G. 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 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1859 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Before an arbitrator is appointed and is authorized and able to act, the court, upon application and 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.

B. After an arbitrator is appointed and is authorized and able to act:

1. The arbitrator may issue such further or revised 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

2. 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.

C. A party does not waive a right of arbitration by making an application and motion under subsection A or B of this section.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1860 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A person initiates an arbitration proceeding by giving notice in a record to all 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:

1. The general nature of the controversy; and
2. The remedy and alleged damages sought.

B. Unless a person objects for lack or insufficiency of notice under subsection C of Section 25 of this act 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 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1861 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection C of this section, upon application and 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:

1. 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;

2. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

3. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. 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.

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

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

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1862 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. 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 so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

B. 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 shall not serve as an arbitrator required by an agreement to be neutral.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1863 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. 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 but not limited to:

1. A financial or personal interest in the outcome of the arbitration proceeding; and

2. 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.

B. 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.

C. If an arbitrator discloses a fact required by subsection A or B of this section 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 paragraph 2 of subsection A of Section 33 of this act for vacating an award made by the arbitrator.

D. if the arbitrator did not disclose a fact as required by subsection A or B of this section, upon timely objection by a party,

the court under paragraph 2 of subsection A of Section 33 of this act may vacate an award.

E. 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 paragraph 2 of subsection A of Section 33 of this act.

F. 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 an application and motion to vacate an award on that ground under paragraph 2 of subsection A of Section 33 of this act.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1864 of Title 12, unless there is created a duplication in numbering, reads as follows:

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 C of Section 25 of this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1865 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. 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.

B. The immunity afforded by this section supplements any immunity under other law.

C. The failure of an arbitrator to make a disclosure required by Section 22 of this act shall not cause any loss of immunity under this action.

D. 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 shall not apply:

1. 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

2. To a hearing on an application and motion to vacate an award under paragraph 1 or 2 of subsection A of Section 33 of this act if the movant establishes prima facie that a ground for vacating the award exists.

E. 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 D of this section, 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 fees and other reasonable expenses of litigation.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1866 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. An arbitrator may conduct an arbitration in such manner as 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, as well as ask questions of any witnesses during the proceedings.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. If all interested parties agree; or

2. 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.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) 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.

D. At a hearing under subsection C of this section, 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.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 21 of this act to continue the proceeding and to resolve the controversy.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1867 of Title 12, unless there is created a duplication in numbering, reads as follows:

A party to an arbitration proceeding may be represented by a lawyer.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1868 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. 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 application and 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. A witness may be allowed to appear telephonically or by any other available means that allows contemporaneous cross-examination.

B. 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.

C. An arbitrator may permit such discovery as 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.

D. If an arbitrator permits discovery under subsection C of this section, 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.

E. 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.

F. 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.

G. 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 a 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 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1869 of Title 12, unless there is created a duplication in numbering, reads as follows:

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 29 of this act. A prevailing party may make an application and motion to the court for an expedited order to confirm the award under Section 32 of this act, 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 33 or 34 of this act.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1870 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. An arbitrator shall make a record of an award. The award may, or may not, contain the evidence and conclusion upon which the award was based unless the parties agreement specifies the type of award to be issued. The record shall 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.

B. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a 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 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1871 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. Upon a ground stated in paragraph 1 or 3 of subsection A of Section 34 of this act;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

B. A motion under subsection A of this section must be made and notice given to all parties within twenty (20) days after the movant receives notice of the award.

C. A party to the arbitration proceeding must give notice of any objection to the motion within ten (10) days after receipt of the notice.

D. If a motion to the court is pending under Section 32, 33 or 34 of this act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

1. Upon a ground stated in paragraph 1 or 3 of subsection A of Section 34 of this act;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

E. An award modified or corrected pursuant to this section is subject to the provisions of subsection A of Section 29 of this act and Sections 32, 33 and 34 of this act.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1872 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. An arbitrator may award punitive damages or other exemplary relief if such an 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.

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

C. As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 32 of this act or for vacating an award under Section 33 of this act.

D. An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

E. If an arbitrator awards punitive damages or other exemplary relief under subsection A of this section, 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 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1873 of Title 12, unless there is created a duplication in numbering, reads as follows:

After a party to an arbitration proceeding receives notice of an award, the party may make an application and 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 30 or 34 of this act or is vacated pursuant to Section 33 of this act.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1874 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Upon an application and motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

1. The award was procured by corruption, fraud, or other undue means;

2. There was:

a. evident partiality by an arbitrator appointed as a neutral arbitrator,

b. corruption by an arbitrator, or

c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

3. 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 15 of this act, so as to prejudice substantially the rights of a party to the arbitration proceeding;

4. An arbitrator exceeded the arbitrator's powers;

5. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection C of Section 25 of this act not later than the beginning of the arbitration hearing; or

6. The arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 19 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding.

B. An application and motion under this section must be filed within ninety (90) days after the movant receives notice of the award pursuant to Section 29 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award

pursuant to Section 30 of this act, 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 ninety (90) days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the court vacates an award on a ground other than that set forth in paragraph 5 of subsection A of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph 1 or 2 of subsection A of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph 3, 4 or 6 of subsection A of this subsection, 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 B of Section 29 of this act for an award.

D. 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 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1875 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Upon application and motion made within ninety (90) days after movant receives notice of the award pursuant to Section 29 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 30 of this act, the court shall modify or correct the award if:

1. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

2. 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

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

B. If a motion made under subsection A of this section 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.

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

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1876 of Title 12, unless there is created a duplication in numbering, reads as follows:

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

B. A court may allow reasonable costs of the motion and subsequent judicial proceedings.

C. On application of a prevailing party to a contested judicial proceeding under Section 32, 33, or 34, the court may add reasonable attorney 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 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1877 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

B. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Uniform Arbitration Act.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1878 of Title 12, unless there is created a duplication in numbering, reads as follows:

An application and motion pursuant to Section 15 of this act 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 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1879 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. An appeal may be taken from:

1. An order denying a motion to compel arbitration;
2. An order granting a motion to stay arbitration;
3. An order confirming or denying confirmation of an award;
4. An order modifying or correcting an award;
5. An order vacating an award without directing a rehearing; or
6. A final judgment entered pursuant to the Uniform Arbitration

Act.

B. An appeal under this section shall be taken as from an order or a judgment in a civil action.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1880 of Title 12, unless there is created a duplication in numbering, reads as follows:

In applying and construing the Uniform Arbitration Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1881 of Title 12, unless there is created a duplication in numbering, reads as follows:

The provisions of the Uniform Arbitration Act governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures shall conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act.

SECTION 41. REPEALER 12 O.S. 2001, Section 1101.1, as amended by Section 7, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 1101.1), is hereby repealed.

SECTION 42. REPEALER 15 O.S. 2001, Sections 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817 and 818, are hereby repealed.

SECTION 43. Sections 1 through 12 and 14 through 42 of this act shall become effective November 1, 2004.

SECTION 44. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

49-2-8341 SD 02/04/04