ENGROSSED SENATE
BILL NO. 873

By: Laster of the Senate

and

Cargill of the House

An Act relating to civil procedure; 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 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; and providing an effective date.

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

SECTION 1. 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:

This act shall be known and may be cited as the "Uniform Arbitration Act".

SECTION 2. 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 3. 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 4. 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, 2005.

B. The Uniform Arbitration Act governs an agreement to arbitrate made before November 1, 2005, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

C. Beginning November 1, 2005, the Uniform Arbitration Act governs an agreement to arbitrate whenever made.

SECTION 5. 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, C and D of this section and subject to the public policy of this state as

expressed in this act, including Section 30, and in the laws of this state outside of this act, 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 6 of this act, subsection A of Section 7 of this act, Section 9 of this act, subsection A or B of Section 18 of this act, Section 27 of this act or Section 29 of this act;

2. Agree to unreasonably restrict the right under Section 10 of this act to notice of the initiation of an arbitration proceeding;

3. Agree to unreasonably restrict the right under Section 13 of this act to disclosure of any facts by a neutral arbitrator; or

4. Waive the right under Section 17 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 4 of this act, Section 8 of this act, Section 15 of this act, Section 19 of this act, subsection D or E of Section 21 of this act, Section 23, 24 or 25 of this act, subsection A or B of Section 26 of this act, or Section 30 of this act.

D. The Uniform Arbitration Act shall not apply to collective bargaining agreements and contracts which reference insurance.

SECTION 6. 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 28 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 7. 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 8. 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 28 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 9. 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 10. 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 16 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 11. 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 12. 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 13. 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 24 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 24 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 24 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 24 of this act.

SECTION 14. 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 16 of this act.

SECTION 15. 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 13 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 24 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 16. 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 12 of this act to continue the proceeding and to resolve the controversy.

SECTION 17. 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 18. 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 19. 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 20 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 23 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 24 or 25 of this act.

SECTION 20. 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.

C. Upon rendering a final decision on the merits of a case, the arbitrator shall support his or her decision by likewise rendering findings of fact and conclusions of law.

SECTION 21. 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 25 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 23, 24 or 25 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 25 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 20 of this act and Sections 23, 24 and 25 of this act.

SECTION 22. 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 23 of this act or for vacating an award under Section 24 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 23. 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 21 or 25 of this act or is vacated pursuant to Section 24 of this act.

SECTION 24. 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 6 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 16 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 10 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 20 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 21 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 20 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 25. 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 20 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 21 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 26. 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 23, 24, or 25, 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 27. 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 28. 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 6 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 29. 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 30. 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:

A. 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.

B. In applying and construing the Uniform Arbitration Act, to the extent permitted by federal law, recognition shall be given to the following considerations as applicable:

1. Agreements to arbitrate are often included in standard forms prepared by one party and in a context where there is little or no ability to negotiate or change the terms of the agreement to arbitrate;

2. In such cases, clauses providing for the location for arbitration, for the expenses of arbitration, denying the ability to consolidate arbitrations or to have arbitration for a class of persons involving substantially similar issues, and for other matters that may represent a serious disadvantage to the party or parties that did not prepare the form shall be closely reviewed for unconscionability based on unreasonable one-sidedness and understandable or unnoticeable language or lack of meaningful choice and for balance and fairness in accordance with reasonable standards of fair dealing.

SECTION 31. 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 32. 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 33. This act shall become effective November 1, 2005.

Passed the Senate the 15th day of March, 2005.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

_____
Presiding Officer of the House
of Representatives