

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1839 By: Corn of the Senate

3 and
4 Sullivan of the House
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7 An Act relating to the Uniform Arbitration Act;
8 amending Section 5, Chapter 364, O.S.L. 2005 (12 O.S.
9 Supp. 2007, Section 1855), which relates to waivers;
10 updating statutory references; stating exception to
11 applicability; and providing an effective date.

12 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
13 and insert

14 "An Act relating to civil procedure; amending Section
15 5, Chapter 364, O.S.L. 2005 (12 O.S. Supp. 2007,
16 Section 1855), which relates to waivers; updating
17 statutory references; stating exception to
18 applicability; amending Section 5, Chapter 405,
19 O.S.L. 2003 (12 O.S. Supp. 2007, Section 2611.7),
20 which relates to child witness testimony; modifying
21 persons who may be a court-appointed advocate in
22 certain proceedings; and providing an effective
23 date.

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

SECTION 1. AMENDATORY Section 5, Chapter 364, O.S.L.
2005 (12 O.S. Supp. 2007, Section 1855), is amended to read as
follows:

1 Section 1855. A. Except as otherwise provided in subsections
2 B, C and D of this section and subject to the public policy of this
3 state as expressed in ~~this act~~ the Uniform Arbitration Act,
4 including Section ~~30~~ 1880 of this ~~act~~ title, and in the laws of this
5 state outside of this act, a party to an agreement to arbitrate or
6 to an arbitration proceeding may waive, or the parties may vary the
7 effect of, the requirements of the Uniform Arbitration Act to the
8 extent permitted by law.

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

11 1. Waive or agree to vary the effect of the requirements of
12 subsection A of Section ~~6 of this act~~ 1856, subsection A of Section
13 ~~7 of this act~~ 1857, Section ~~9 of this act~~ 1859, subsection A or B of
14 Section ~~18 of this act~~ 1868, Section ~~27 of this act~~ 1877 or Section
15 ~~29~~ 1879 of this ~~act~~ title;

16 2. Agree to unreasonably restrict the right under Section ~~10~~
17 1860 of this ~~act~~ title to notice of the initiation of an arbitration
18 proceeding;

19 3. Agree to unreasonably restrict the right under Section ~~13~~
20 1863 of this ~~act~~ title to disclosure of any facts by a neutral
21 arbitrator; or

22 4. Waive the right under Section ~~17~~ 1867 of this ~~act~~ title of a
23 party to an agreement to arbitrate to be represented by a lawyer at
24 any proceeding or hearing under the Uniform Arbitration Act, but an

1 employer and a labor organization may waive the right to
2 representation by a lawyer in a labor arbitration.

3 C. A party to an agreement to arbitrate or to an arbitration
4 proceeding may not waive, or the parties may not vary the effect of,
5 the requirements of this section or subsection A or C of Section 4
6 ~~of this act 1854~~, Section 8 ~~of this act 1858~~, Section 15 ~~of this act~~
7 1865, Section 19 ~~of this act 1869~~, subsection D or E of Section 21
8 ~~of this act 1871~~, Section 23, 24 1873, 1874 or 25 ~~of this act 1875~~,
9 subsection A or B of Section 26 ~~of this act 1876~~, or Section 30 1880
10 of this act title.

11 D. The Uniform Arbitration Act shall not apply to collective
12 bargaining agreements and contracts which reference insurance,
13 except for those contracts between insurance companies.

14 SECTION 2. AMENDATORY Section 5, Chapter 405, O.S.L.
15 2003 (12 O.S. Supp. 2007, Section 2611.7), is amended to read as
16 follows:

17 Section 2611.7 A. In a criminal proceeding, the judge or
18 presiding officer may allow a child witness to testify by an
19 alternative method only in the following situations:

20 1. The child may testify otherwise than in an open forum in the
21 presence and full view of the finder of fact if the judge or
22 presiding officer finds by clear and convincing evidence that the
23 child would suffer serious emotional trauma that would substantially
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1 | impair the child's ability to communicate with the finder of fact if
2 | required to testify in the open forum; and

3 | 2. The child may testify other than face-to-face with the
4 | defendant if the judge or presiding officer finds by clear and
5 | convincing evidence that the child would suffer serious emotional
6 | trauma that would substantially impair the child's ability to
7 | communicate with the finder of fact if required to be confronted
8 | face-to-face by the defendant.

9 | B. In a criminal proceeding, the child may have an advocate
10 | appointed by the court to monitor the potential for emotional
11 | trauma. The advocate shall be ~~a court-appointed special advocate~~
12 | ~~(CASA)~~, a registered professional social worker, psychologist, or
13 | psychiatrist.

14 | C. In a noncriminal proceeding, the judge or presiding officer
15 | may allow a child witness to testify by an alternative method if the
16 | judge or presiding officer finds by a preponderance of the evidence
17 | that allowing the child to testify by an alternative method is
18 | necessary to serve the best interests of the child or enable the
19 | child to communicate with the finder of fact. In making the
20 | finding, the judge or presiding officer shall consider:

- 21 | 1. The nature of the proceeding;
22 | 2. The age and maturity of the child;
23 | 3. The relationship of the child to the parties in the
24 | proceeding;

1 4. The nature and degree of emotional trauma that the child may
2 suffer in testifying; and

3 5. Any other relevant factor.

4 SECTION 3. This act shall become effective November 1, 2008."

5 Passed the House of Representatives the 14th day of April, 2008.

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Presiding Officer of the House of
Representatives

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10 Passed the Senate the ____ day of _____, 2008.

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Presiding Officer of the Senate

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