

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 1839

By: Corn of the Senate

and

Sullivan of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to civil procedure; amending Section  
11 5, Chapter 364, O.S.L. 2005 (12 O.S. Supp. 2007,  
12 Section 1855), which relates to waivers; updating  
13 statutory references; stating exception to  
14 applicability; amending Section 5, Chapter 405,  
15 O.S.L. 2003 (12 O.S. Supp. 2007, Section 2611.7),  
16 which relates to child witness testimony; modifying  
17 persons who may be a court-appointed advocate in  
18 certain proceedings; and providing an effective date.

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

20 SECTION 1. AMENDATORY Section 5, Chapter 364, O.S.L.  
21 2005 (12 O.S. Supp. 2007, Section 1855), is amended to read as  
22 follows:

23 Section 1855. A. Except as otherwise provided in subsections  
24 B, C and D of this section and subject to the public policy of this  
state as expressed in ~~this act~~ the Uniform Arbitration Act,  
including Section ~~30~~ 1880 of this ~~act~~ title, and in the laws of this

1 state outside of this act, a party to an agreement to arbitrate or  
2 to an arbitration proceeding may waive, or the parties may vary the  
3 effect of, the requirements of the Uniform Arbitration Act to the  
4 extent permitted by law.

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

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

12 2. Agree to unreasonably restrict the right under Section ~~10~~  
13 1860 of this act title to notice of the initiation of an arbitration  
14 proceeding;

15 3. Agree to unreasonably restrict the right under Section ~~13~~  
16 1863 of this act title to disclosure of any facts by a neutral  
17 arbitrator; or

18 4. Waive the right under Section ~~17~~ 1867 of this act title of a  
19 party to an agreement to arbitrate to be represented by a lawyer at  
20 any proceeding or hearing under the Uniform Arbitration Act, but an  
21 employer and a labor organization may waive the right to  
22 representation by a lawyer in a labor arbitration.

23 C. A party to an agreement to arbitrate or to an arbitration  
24 proceeding may not waive, or the parties may not vary the effect of,

1 the requirements of this section or subsection A or C of Section 4  
2 ~~of this act 1854, Section 8 of this act 1858, Section 15 of this act~~  
3 ~~1865, Section 19 of this act 1869,~~ subsection D or E of Section 21  
4 ~~of this act 1871, Section 23, 24 1873, 1874 or 25 of this act 1875,~~  
5 subsection A or B of Section 26 ~~of this act 1876,~~ or Section 30 ~~1880~~  
6 of this act title.

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

10 SECTION 2. AMENDATORY Section 5, Chapter 405, O.S.L.  
11 2003 (12 O.S. Supp. 2007, Section 2611.7), is amended to read as  
12 follows:

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

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

22 2. The child may testify other than face-to-face with the  
23 defendant if the judge or presiding officer finds by clear and  
24 convincing evidence that the child would suffer serious emotional

1 trauma that would substantially impair the child's ability to  
2 communicate with the finder of fact if required to be confronted  
3 face-to-face by the defendant.

4 B. In a criminal proceeding, the child may have an advocate  
5 appointed by the court to monitor the potential for emotional  
6 trauma. The advocate shall be ~~a court appointed special advocate~~  
7 ~~(CASA)~~, a registered professional social worker, psychologist, or  
8 psychiatrist.

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

16 1. The nature of the proceeding;

17 2. The age and maturity of the child;

18 3. The relationship of the child to the parties in the  
19 proceeding;

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

22 5. Any other relevant factor.

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

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