

ENROLLED SENATE
BILL NO. 1839

By: Corn of the Senate

and

Sullivan of the House

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

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:

Section 1855. 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~~ the Uniform Arbitration Act, including Section ~~30~~ 1880 of this ~~act~~ title, 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~~ 1856, subsection A of Section ~~7 of this act~~ 1857, Section ~~9 of this act~~ 1859, subsection A or B of Section ~~18 of this act~~ 1868, Section ~~27 of this act~~ 1877 or Section ~~29~~ 1879 of this ~~act~~ title;

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

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

4. Waive the right under Section ~~17~~ 1867 of this ~~act~~ title 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~~ 1854, Section ~~8 of this act~~ 1858, Section ~~15 of this act~~ 1865, Section ~~19 of this act~~ 1869, subsection D or E of Section ~~21 of this act~~ 1871, Section ~~23, 24~~ 1873, 1874 or ~~25 of this act~~ 1875, subsection A or B of Section ~~26 of this act~~ 1876, or Section ~~30~~ 1880 of this ~~act~~ title.

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

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

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

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

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

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

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

1. The nature of the proceeding;
2. The age and maturity of the child;
3. The relationship of the child to the parties in the proceeding;
4. The nature and degree of emotional trauma that the child may suffer in testifying; and
5. Any other relevant factor.

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

Passed the Senate the 28th day of April, 2008.

Presiding Officer of the Senate

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

Presiding Officer of the House
of Representatives