

THE HOUSE OF REPRESENTATIVES
Monday, March 31, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 1839

COMMITTEE SUBSTITUTE FOR ENGROSSED 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:

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

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

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

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

7 2. Agree to unreasonably restrict the right under Section ~~40~~ 1860 of this ~~act~~ title to
8 notice of the initiation of an arbitration proceeding;

9 3. Agree to unreasonably restrict the right under Section ~~43~~ 1863 of this ~~act~~ title to
10 disclosure of any facts by a neutral arbitrator; or

11 4. Waive the right under Section ~~47~~ 1867 of this ~~act~~ title of a party to an agreement
12 to arbitrate to be represented by a lawyer at any proceeding or hearing under the
13 Uniform Arbitration Act, but an employer and a labor organization may waive the right
14 to representation by a lawyer in a labor arbitration.

15 C. A party to an agreement to arbitrate or to an arbitration proceeding may not
16 waive, or the parties may not vary the effect of, the requirements of this section or
17 subsection A or C of Section ~~4 of this act 1854~~, Section ~~8 of this act 1858~~, Section ~~15 of~~
18 ~~this act 1865~~, Section ~~19 of this act 1869~~, subsection D or E of Section ~~21 of this act 1871~~,
19 Section ~~23, 24~~ 1873, 1874 or ~~25 of this act 1875~~, subsection A or B of Section ~~26 of this act~~
20 1876, or Section ~~30~~ 1880 of this ~~act~~ title.

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

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

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

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

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

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

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
15 dated 03-27-08 - DO PASS, As Amended.