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4

As Engrossed: H3/1/11 H3/7/11

A Bill

HOUSE BILL 1438

5 By: Representatives Williams, Steel
6 By: Senator R. Thompson
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE ARKANSAS ARBITRATION ACT; AND
10 FOR OTHER PURPOSES.
11

Subtitle

14 TO ESTABLISH THE ARKANSAS ARBITRATION
15 ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 16, Chapter 108, Subchapter 2 is
21 amended to read as follows:

22 16-108-201. ~~Agreement to arbitrate~~—Application Definitions.

23 ~~(a) A written agreement to submit any existing controversy to~~
24 ~~arbitration arising between the parties bound by the terms of the writing is~~
25 ~~valid, enforceable, and irrevocable, save upon such grounds as exist for the~~
26 ~~revocation of any contract.~~

27 ~~(b)(1) A written provision to submit to arbitration any controversy~~
28 ~~thereafter arising between the parties bound by the terms of the writing is~~
29 ~~valid, enforceable, and irrevocable, save upon such grounds as exist for the~~
30 ~~revocation of any contract.~~

31 ~~(2) This subsection shall have no application to personal injury~~
32 ~~or tort matters, employer-employee disputes, nor to any insured or~~
33 ~~beneficiary under any insurance policy or annuity contract.~~

34 As used in this subchapter:

35 (1) "Arbitration organization" means an association, agency, board,
36 commission, or other entity that is neutral and initiates, sponsors, or



1 administers an arbitration proceeding or is involved in the appointment of an
2 arbitrator;

3 (2) "Arbitrator" means an individual appointed to render an award,
4 alone or with others, in a controversy that is subject to an agreement to
5 arbitrate;

6 (3) "Court" means a court of competent jurisdiction in this state;

7 (4) "Knowledge" means actual knowledge;

8 (5) "Person" means:

9 (A) An individual;

10 (B) A corporation;

11 (C) A business trust;

12 (D) An estate;

13 (E) A trust;

14 (F) A partnership;

15 (G) A limited liability company;

16 (H) An association;

17 (I) A joint venture;

18 (J) A government;

19 (K) A governmental subdivision, agency, or instrumentality;

20 (L) A public corporation; or

21 (M) Any other legal or commercial entity; and

22 (6) "Record" means information that is inscribed on a tangible medium
23 or that is stored in an electronic or other medium and is retrievable in
24 perceivable form.

25

26 ~~16-108-202. Proceedings to compel or stay arbitration Notice.~~

27 ~~(a) On application of a party showing an agreement described in § 16-~~
28 ~~108-201 and the opposing party's refusal to arbitrate, the court shall order~~
29 ~~the parties to proceed with arbitration, but if the opposing party denies the~~
30 ~~existence of the agreement to arbitrate, the court shall proceed summarily to~~
31 ~~the determination of the issue so raised and shall order arbitration if found~~
32 ~~for the moving party; otherwise, the application shall be denied.~~

33 ~~(b) On application, the court may stay an arbitration proceeding~~
34 ~~commenced or threatened on a showing that there is no agreement to arbitrate.~~
35 ~~Such an issue, when in substantial and bona fide dispute, shall be forthwith~~
36 ~~and summarily tried and the stay ordered if found for the moving party. If~~

1 ~~found for the opposing party, the court shall order the parties to proceed to~~
2 ~~arbitration.~~

3 ~~(c) If an issue referable to arbitration under the alleged agreement~~
4 ~~is involved in an action or proceeding pending in a court having jurisdiction~~
5 ~~to hear applications under subdivision (a) of this section, the application~~
6 ~~shall be made therein. Otherwise, and subject to § 16-108-218, the~~
7 ~~application may be made in any court of competent jurisdiction.~~

8 ~~(d) Any action or proceeding involving an issue subject to arbitration~~
9 ~~shall be stayed if an order for arbitration or an application therefor has~~
10 ~~been made under this section, or, if the issue is severable, the stay may be~~
11 ~~with respect thereto only. When the application is made in the action or~~
12 ~~proceeding, the order for arbitration shall include the stay.~~

13 ~~(e) An order for arbitration shall not be refused on the ground that~~
14 ~~the claim in issue lacks merit or bona fides or because any fault or grounds~~
15 ~~for the claim sought to be arbitrated have not been shown.~~

16 (a) Except as otherwise provided in this subchapter, a person gives
17 notice to another person by taking action that is reasonably necessary to
18 inform the other person in ordinary course, whether or not the other person
19 acquires knowledge of the notice.

20 (b)(1) A person has notice if the person has knowledge of the notice
21 or has received notice.

22 (2) A person receives notice when it comes to the person's
23 attention or the notice is delivered at the person's place of residence or
24 place of business, or at another location held out by the person as a place
25 of delivery of such communications.

26

27 ~~16-108-203. Appointment of arbitrators by court~~ When subchapter
28 applies.

29 ~~If the arbitration agreement provides a method of appointment of~~
30 ~~arbitrators, this method shall be followed. In the absence thereof, or if the~~
31 ~~agreed method fails or for any reason cannot be followed, or when an~~
32 ~~arbitrator appointed fails or is unable to act and his successor has not been~~
33 ~~duly appointed, the court on application of a party shall appoint one (1) or~~
34 ~~more arbitrators. An arbitrator so appointed has all the powers of one~~
35 ~~specifically named in the agreement.~~

36 (a) This subchapter governs an agreement to arbitrate made on or after

1 the effective date of this subchapter.

2 (b) This subchapter governs an agreement to arbitrate made before the
3 effective date of this subchapter if all the parties to the agreement or to
4 the arbitration proceeding so agree in a record.

5
6 ~~16-108-204. Majority action by arbitrators~~ Effect of agreement to
7 arbitrate – Party may not waive provisions.

8 ~~The powers of the arbitrators may be exercised by a majority unless~~
9 ~~otherwise provided by the agreement or by this subchapter.~~

10 (a) Except as otherwise provided in subsections (b) and (c) of this
11 section, a party to an agreement to arbitrate or to an arbitration proceeding
12 may waive, or the parties may vary the effect of, the requirements of this
13 subchapter to the extent permitted by law.

14 (b) Before a controversy arises that is subject to an agreement to
15 arbitrate, a party to the agreement may not:

16 (1) Waive or agree to vary the effect of the requirements of:

17 (A) Section 16-108-205(a);

18 (B) Section 16-108-206(a);

19 (C) Section 16-108-208;

20 (D) Section 16-108-217(a);

21 (E) Section 16-108-217(b);

22 (F) Section 16-108-226; or

23 (G) Section 16-108-228;

24 (2) Agree to unreasonably restrict the right under § 16-108-209
25 to notice of the initiation of an arbitration proceeding;

26 (3) Agree to unreasonably restrict the right under § 16-108-212
27 to disclosure of any facts by a neutral arbitrator; or

28 (4)(A) Waive the right under § 16-108-216 of a party to an
29 agreement to arbitrate to be represented by a lawyer at any proceeding or
30 hearing under this subchapter.

31 (B) However, an employer and a labor organization may
32 wave the right to representation by a lawyer in a labor arbitration.

33 (c) A party to an agreement to arbitrate or arbitration proceeding may
34 not waive, or the parties may not vary the effect of, the requirements of:

35 (1) This section;

36 (2) Section 16-108-203(a);

- 1 (3) Section 16-108-207;
2 (4) Section 16-108-214;
3 (5) Section 16-108-218;
4 (6) Section 16-108-220(d);
5 (7) Section 16-108-220(e);
6 (8) Section 16-108-222;
7 (9) Section 16-108-223;
8 (10) Section 16-108-224;
9 (11) Section 16-108-225(a);
10 (12) Section 16-108-225(b);
11 (13) Section 16-108-229; or
12 (14) Section 16-108-230.

13
14 16-108-205. Hearing Application for judicial relief.

15 ~~Unless otherwise provided by the agreement:~~

16 ~~(1) The arbitrators shall appoint a time and place for the hearing and~~
17 ~~cause notification to the parties to be served personally or by registered~~
18 ~~mail not less than five (5) days before the hearing. Appearance at the~~
19 ~~hearing waives notice. The arbitrators may adjourn the hearing from time to~~
20 ~~time as necessary and, on request of a party and for good cause, or upon~~
21 ~~their own motion, may postpone the hearing to a time not later than the date~~
22 ~~fixed by the agreement for making the award unless the parties consent to a~~
23 ~~later date. The arbitrators may hear and determine the controversy upon the~~
24 ~~evidence produced notwithstanding the failure of a party duly notified to~~
25 ~~appear. The court on application may direct the arbitrators to proceed~~
26 ~~promptly with the hearing and determination of the controversy;~~

27 ~~(2) The parties are entitled to be heard, to present evidence material~~
28 ~~to the controversy, and to cross-examine witnesses appearing at the hearing;~~

29 ~~(3) The hearing shall be conducted by all the arbitrators, but a~~
30 ~~majority may determine any question and render a final award. If, during the~~
31 ~~course of the hearing, an arbitrator for any reason ceases to act, the~~
32 ~~remaining arbitrator or arbitrators appointed to act as neutrals may continue~~
33 ~~with the hearing and determination of the controversy.~~

34 (a) Except as otherwise provided in § 16-108-228, an application for
35 judicial relief under this subchapter must be made by motion to the court and
36 heard in the manner provided by law or rule of court for making and hearing

1 motions.

2 (b)(1) Unless a civil action involving the agreement to arbitrate is
3 pending, notice of an initial motion to the court under this subchapter must
4 be served in the manner provided by law for the service of a summons in a
5 civil action.

6 (2) Otherwise, notice of the motion must be given in the manner
7 provided by law or rule of court for serving motions in pending cases.

8

9 16-108-206. ~~Representation by attorney~~ Validity of agreement to
10 arbitrate.

11 ~~A party has the right to be represented by an attorney at any~~
12 ~~proceeding or hearing under this subchapter. A waiver thereof prior to the~~
13 ~~proceeding or hearing is ineffective.~~

14 (a) An agreement contained in a record to submit to arbitration any
15 existing or subsequent controversy arising between the parties to the
16 agreement is valid, enforceable, and irrevocable except upon a ground that
17 exists at law or in equity for the revocation of a contract.

18 (b) The court shall decide whether an agreement to arbitrate exists or
19 a controversy is subject to an agreement to arbitrate.

20 (c) An arbitrator shall decide whether a condition precedent to
21 arbitrability has been fulfilled and whether a contract containing a valid
22 agreement to arbitrate is enforceable.

23 (d) If a party to a judicial proceeding challenges the existence of or
24 claims that a controversy is not subject to an agreement to arbitrate, the
25 arbitration proceeding may continue pending final resolution of the issue by
26 the court, unless the court otherwise orders.

27

28 16-108-207. ~~Witnesses—Subpoenas—Depositions—Fees~~ Motion to compel
29 or stay arbitration.

30 ~~(a) The arbitrators may issue or cause to be issued subpoenas for the~~
31 ~~attendance of witnesses and for the production of books, records, documents,~~
32 ~~and other evidence, and shall have the power to administer oaths. Subpoenas~~
33 ~~so issued shall be served, and upon application to the court by a party or~~
34 ~~the arbitrators, enforced, in the manner provided by law for the service and~~
35 ~~enforcement of subpoenas in a civil action.~~

36 ~~(b) On application of a party and for use as evidence, the arbitrators~~

1 ~~may permit a deposition to be taken, in the manner and upon the terms~~
2 ~~designated by the arbitrators, of a witness who cannot be subpoenaed or is~~
3 ~~unable to attend the hearing.~~

4 ~~(e) All provisions of law compelling a person under subpoena to~~
5 ~~testify are applicable.~~

6 ~~(d) Fees for attendance as a witness shall be the same as for a~~
7 ~~witness in the circuit court.~~

8 (a) On motion of a person showing an agreement to arbitrate and
9 alleging another person's refusal to arbitrate pursuant to the agreement:

10 (1) If the refusing party does not appear or does not oppose the
11 motion, the court shall order the parties to arbitrate; and

12 (2) If the refusing party opposes the motion, the court shall
13 proceed summarily to decide the issue and order the parties to arbitrate
14 unless it finds that there is no enforceable agreement to arbitrate.

15 (b)(1) On motion of a person alleging that an arbitration proceeding
16 has been initiated or threatened but that there is no agreement to arbitrate,
17 the court shall proceed summarily to decide the issue.

18 (2) If the court finds that there is an enforceable agreement to
19 arbitrate, it shall order the parties to arbitrate.

20 (c) If the court finds that there is no enforceable agreement, it may
21 not under subsection (a) or subsection (b) of this section order the parties
22 to arbitrate.

23 (d) The court may not refuse to order arbitration because the claim
24 subject to arbitration lacks merit or grounds for the claim have not been
25 established.

26 (e)(1) If a proceeding involving a claim referable to arbitration
27 under an alleged agreement to arbitrate is pending in court, a motion under
28 this section must be made in that court.

29 (2) Otherwise, a motion under this section may be made in any
30 court as provided in § 16-108-227.

31 (f) If a party makes a motion to the court to order arbitration, the
32 court on just terms shall stay any judicial proceeding that involves a claim
33 alleged to be subject to the arbitration until the court renders a final
34 decision under this section.

35 (g)(1) If the court orders arbitration, the court on just terms shall
36 stay any judicial proceeding that involves a claim subject to the

1 arbitration.

2 (2) If a claim subject to the arbitration is severable, the
3 court may limit the stay to that claim.

4
5 16-108-208. ~~Award~~ Provisional remedies.

6 ~~(a) The award shall be in writing and signed by the arbitrators~~
7 ~~joining in the award. The arbitrators shall deliver a copy to each party~~
8 ~~personally or by registered mail, or as provided in the agreement.~~

9 ~~(b) An award shall be made within the time fixed therefor by the~~
10 ~~agreement or, if not so fixed, within such time as the court orders on~~
11 ~~application of a party. The parties may extend the time in writing either~~
12 ~~before or after the expiration thereof. A party waives the objection that an~~
13 ~~award was not made within the time required unless he or she notifies the~~
14 ~~arbitrators of his or her objection prior to the delivery of the award to him~~
15 ~~or her.~~

16 (a) Before an arbitrator is appointed and is authorized and able to
17 act, the court, upon motion of a party to an arbitration proceeding and for
18 good cause shown, may enter an order for provisional remedies to protect the
19 effectiveness of the arbitration proceeding to the same extent and under the
20 same conditions as if the controversy were the subject of a civil action.

21 (b) After an arbitrator is appointed and is authorized and able to
22 act:

23 (1) The arbitrator may issue such orders for provisional
24 remedies, including interim awards, as the arbitrator finds necessary to
25 protect the effectiveness of the arbitration proceeding and to promote the
26 fair and expeditious resolution of the controversy, to the same extent and
27 under the same conditions as if the controversy were the subject of a civil
28 action; and

29 (2) A party to an arbitration proceeding may move the court for
30 a provisional remedy only if the matter is urgent and the arbitrator is not
31 able to act timely or the arbitrator cannot provide an adequate remedy.

32 (c) A party does not waive a right of arbitration by making a motion
33 under subsection (a) or subsection (b) of this section.

34

35 16-108-209. ~~Change of award by arbitrators~~ Initiation of arbitration.

36 ~~On application of a party or, if an application to the court is pending~~

1 ~~under §§ 16-108-211—16-108-213, on submission to the arbitrators by the~~
2 ~~court under such conditions as the court may order, the arbitrators may~~
3 ~~modify or correct the award upon the grounds stated in § 16-108-213(a)(1) and~~
4 ~~(3) or for the purpose of clarifying the award. The application shall be made~~
5 ~~within twenty (20) days after delivery of the award to the applicant. Written~~
6 ~~notice thereof shall be given forthwith to the opposing party, stating that~~
7 ~~he or she must serve his objections thereto, if any, within ten (10) days~~
8 ~~from the notice. The award so modified or corrected is subject to the~~
9 ~~provisions of §§ 16-108-211—16-108-213.~~

10 (a)(1) A person initiates an arbitration proceeding by giving notice
11 in a record to the other parties to the agreement to arbitrate:

12 (A) In the agreed manner between the parties;

13 (B) In the absence of agreement, by:

14 (i) Certified or registered mail, return receipt
15 requested and obtained; or

16 (ii) Service as authorized for the commencement of a
17 civil action.

18 (2) The notice must describe the nature of the controversy and
19 the remedy sought.

20 (b) Unless a person objects for lack or insufficiency of notice under
21 § 16-108-215(c) not later than the beginning of the arbitration hearing, the
22 person, by appearing at the hearing, waives any objection to lack of or
23 insufficiency of notice.

24
25 ~~16-108-210. Fees and expenses of arbitration~~ Consolidation of separate
26 arbitration proceedings.

27 ~~Unless otherwise provided in the agreement to arbitrate, the~~
28 ~~arbitrators' expenses and fees, together with other expenses incurred in the~~
29 ~~conduct of the arbitration, not including counsel fees, shall be paid as~~
30 ~~provided in the award.~~

31 (a) Except as otherwise provided in subsections (c) and (d) of this
32 section, upon motion of a party to an agreement to arbitrate or to an
33 arbitration proceeding, the court may order consolidation of separate
34 arbitration proceedings as to all or some of the claims if:

35 (1) There are separate agreements to arbitrate or separate
36 arbitration proceedings between the same persons, or one (1) of them is a

1 party to a separate agreement to arbitrate or a separate arbitration
2 proceeding with a third person;

3 (2) The claims subject to the agreements to arbitrate arise in
4 substantial part from the same transaction or series of related transactions;

5 (3) The existence of a common issue of law or fact creates the
6 possibility of conflicting decisions in the separate arbitration proceedings;
7 and

8 (4) Prejudice resulting from a failure to consolidate is not
9 outweighed by the risk of undue delay or prejudice to the rights of or
10 hardship to parties opposing consolidation.

11 (b) The court may order consolidation of separate arbitration
12 proceedings as to some claims and allow other claims to be resolved in
13 separate arbitration proceedings.

14 (c) Except as provided in subsection (d) of this section, the court
15 may not order consolidation of the claims of a party to an agreement to
16 arbitrate if the agreement prohibits consolidation.

17 (d)(1) An agreement that prohibits the consolidation of arbitration
18 claims or proceedings or denies arbitration for a class of persons involving
19 substantially similar issues shall be closely scrutinized and shall not be
20 enforced if found unconscionable.

21 (2) An agreement may be found unconscionable under this
22 subdivision (d) if:

23 (A) The agreement is unreasonable, one-sided, or contains
24 language that is difficult to notice or to understand;

25 (B) A meaningful choice of whether or not to agree to the
26 arbitration provisions of the agreement is not provided; or

27 (C) The agreement is not balanced or fair under reasonable
28 standards of fair dealing.

29
30 ~~16-108-211. Confirmation of an award~~ Appointment of arbitrator -
31 Service as a neutral arbitrator.

32 ~~Upon application of a party, the court shall confirm an award, unless~~
33 ~~within the time limits hereinafter imposed grounds are urged for vacating,~~
34 ~~modifying, or correcting the award, in which case the court shall proceed as~~
35 ~~provided in §§ 16-108-212 and 16-108-213.~~

36 (a)(1) If the parties to an agreement to arbitrate agree on a method

1 for appointing an arbitrator, that method must be followed unless the method
2 fails.

3 (2)(A) If the parties have not agreed on a method, the agreed
4 method fails, or an arbitrator appointed fails or is unable to act and a
5 successor has not been appointed, the court, on motion of a party to the
6 arbitration proceeding, shall appoint the arbitrator.

7 (B) An arbitrator so appointed has all the powers of an
8 arbitrator designated in the agreement to arbitrate or appointed pursuant to
9 the agreed method.

10 (b) An individual who has a known, direct, and material interest in
11 the outcome of the arbitration proceeding or a known, existing, and
12 substantial relationship with a party may not serve as an arbitrator required
13 by an agreement to be neutral.

14

15 16-108-212. ~~Vacating an award~~ Disclosure by arbitrator.

16 ~~(a) Upon application of a party, the court shall vacate an award in~~
17 ~~which:~~

18 ~~(1) The award was procured by corruption, fraud, or other undue~~
19 ~~means;~~

20 ~~(2) There was evident partiality by an arbitrator appointed as a~~
21 ~~neutral or corruption in any of the arbitrators or misconduct prejudicing the~~
22 ~~rights of any party;~~

23 ~~(3) The arbitrators exceeded their powers;~~

24 ~~(4) The arbitrators refused to postpone the hearing upon~~
25 ~~sufficient cause being shown therefor or refused to hear evidence material to~~
26 ~~the controversy or otherwise so conducted the hearing, contrary to the~~
27 ~~provisions of § 16-108-205, as to prejudice substantially the rights of a~~
28 ~~party; or~~

29 ~~(5)(A) There was no arbitration agreement and the issue was not~~
30 ~~adversely determined in proceedings under § 16-108-202 and the party did not~~
31 ~~participate in the arbitration hearing without raising the objection;~~

32 ~~(B) But the fact that the relief was such that it could~~
33 ~~not or would not be granted by a court is not ground for vacating or refusing~~
34 ~~to confirm the award.~~

35 ~~(b) An application under this section shall be made within ninety (90)~~
36 ~~days after delivery of a copy of the award to the applicant, except that, if~~

1 ~~predicated upon corruption, fraud, or other undue means, it shall be made~~
2 ~~within ninety (90) days after such grounds are known or should have been~~
3 ~~known.~~

4 ~~(c) In vacating the award on grounds other than those stated in~~
5 ~~subdivision (a)(5) of this section, the court may order a rehearing before~~
6 ~~new arbitrators chosen as provided in the agreement, or in the absence~~
7 ~~thereof, by the court in accordance with § 16-108-203, or, if the award is~~
8 ~~vacated on grounds set forth in subdivisions (a)(3) and (4) of this section,~~
9 ~~the court may order a rehearing before the arbitrators who made the award or~~
10 ~~their successors appointed in accordance with § 16-108-203. The time within~~
11 ~~which the agreement requires the award to be made is applicable to the~~
12 ~~rehearing and commences from the date of the order.~~

13 ~~(d) If the application to vacate is denied and no motion to modify or~~
14 ~~correct the award is pending, the court shall confirm the award.~~

15 (a) Before accepting appointment, an individual who is requested to
16 serve as an arbitrator, after making a reasonable inquiry, shall disclose to
17 all parties to the agreement to arbitrate and the arbitration proceeding and
18 to any other arbitrators any known facts that a reasonable person would
19 consider likely to affect the impartiality of the arbitrator in the
20 arbitration proceeding, including:

21 (1) A financial or personal interest in the outcome of the
22 arbitration proceeding; and

23 (2) An existing or past relationship with any of the parties to
24 the agreement to arbitrate or the arbitration proceeding, their counsel or
25 representatives, a witness, or another arbitrator.

26 (b) An arbitrator has a continuing obligation to disclose to all
27 parties to the agreement to arbitrate and the arbitration proceeding and to
28 any other arbitrators any facts that the arbitrator learns after accepting
29 appointment that a reasonable person would consider likely to affect the
30 impartiality of the arbitrator.

31 (c) If an arbitrator discloses a fact required by subsection (a) or
32 subsection (b) of this section to be disclosed and a party timely objects to
33 the appointment or continued service of the arbitrator based upon the fact
34 disclosed, the objection may be a ground under § 16-108-223(a)(2) for
35 vacating an award made by the arbitrator.

36 (d) If the arbitrator did not disclose a fact as required by

1 subsection (a) or subsection (b) of this section, the court under § 16-108-
2 223(a)(2) may vacate an award, upon timely objection by a party.

3 (e) An arbitrator appointed as a neutral arbitrator who does not
4 disclose a known, direct, and material interest in the outcome of the
5 arbitration proceeding or a known, existing, and substantial relationship
6 with a party is presumed to act with evident partiality under § 16-108-
7 223(a)(2).

8 (f) If the parties to an arbitration proceeding agree to the
9 procedures of an arbitration organization or any other procedures for
10 challenges to arbitrators before an award is made, substantial compliance
11 with those procedures is a condition precedent to a motion to vacate an award
12 on that ground under § 16-108-223(a)(2).

13
14 ~~16-108-213. Modification or correction of award~~ Action by majority.

15 ~~(a) Upon application made within ninety (90) days after delivery of a~~
16 ~~copy of the award to the applicant, the court shall modify or correct the~~
17 ~~award where:~~

18 ~~(1) There was an evident miscalculation of figures or an evident~~
19 ~~mistake in the description of any person, thing, or property referred to in~~
20 ~~the award;~~

21 ~~(2) The arbitrators have awarded upon a matter not submitted to~~
22 ~~them and the award may be corrected without affecting the merits of the~~
23 ~~decision upon the issues submitted; or~~

24 ~~(3) The award is imperfect in a matter of form not affecting the~~
25 ~~merits of the controversy.~~

26 ~~(b) If the application is granted, the court shall modify and correct~~
27 ~~the award so as to effect its intent and shall confirm the award as so~~
28 ~~modified and corrected. Otherwise, the court shall confirm the award as made.~~

29 ~~(c) An application to modify or correct an award may be joined in the~~
30 ~~alternative with an application to vacate the award.~~

31 If there is more than one (1) arbitrator, the powers of an arbitrator
32 must be exercised by a majority of the arbitrators, but all arbitrators shall
33 conduct the hearing under § 16-108-215(c).

34
35 ~~16-108-214. Judgment or decree on award~~ Immunity of arbitrator -
36 Competency to testify - Attorney's fees and costs.

1 ~~Upon the granting of an order confirming, modifying, or correcting an~~
2 ~~award, a judgment or decree shall be entered in conformity therewith and be~~
3 ~~enforced as any other judgment or decree. Costs of the application and of the~~
4 ~~proceedings subsequent thereto, and disbursements, may be awarded by the~~
5 ~~court.~~

6 (a) An arbitrator or an arbitration organization acting in that
7 capacity is immune from civil damages for any statement or decision made in
8 connection with or arising out of the conduct of an arbitrator in a dispute
9 resolution process unless the person acted in a manner exhibiting willful or
10 wanton misconduct.

11 (b) The immunity afforded by this section supplements any immunity
12 under other law.

13 (c) The failure of an arbitrator to make a disclosure required by §
14 16-108-212 does not cause any loss of qualified immunity under this section.

15 (d)(1) In a judicial, administrative, or similar proceeding, an
16 arbitrator or representative of an arbitration organization is not competent
17 to testify and may not be required to produce records as to any statement,
18 conduct, decision, or ruling occurring during the arbitration proceeding, to
19 the same extent as a judge of a court of this state acting in a judicial
20 capacity.

21 (2) Subdivision (d)(1) of this section does not apply to:

22 (A) The extent necessary to determine the claim of an
23 arbitrator, arbitration organization, or representative of the arbitration
24 organization against a party to the arbitration proceeding; or

25 (B) A hearing on a motion to vacate an award under § 16-
26 108-223(a)(1) or (a)(2) if the movant establishes prima facie that a ground
27 for vacating the award exists.

28 (e) If a person commences a civil action against an arbitrator,
29 arbitration organization, or representative of an arbitration organization
30 arising from the services of the arbitrator, organization, or representative
31 or if a person seeks to compel an arbitrator or a representative of an
32 arbitration organization to testify or produce records in violation of
33 subsection (d) of this section, and the court decides that the arbitrator,
34 arbitration organization, or representative of an arbitration organization is
35 immune from civil liability or that the arbitrator or representative of the
36 organization is not competent to testify, the court shall award to the

1 arbitrator, organization, or representative reasonable attorney's fees and
2 other reasonable expenses of litigation.

3
4 16-108-215. ~~Judgment roll~~ Docketing Arbitration process.

5 ~~(a) On entry of judgment or decree, the clerk shall prepare the~~
6 ~~judgment roll consisting, to the extent filed, of the following:~~

7 ~~(1) The agreement and each written extension of the time within~~
8 ~~which to make the award;~~

9 ~~(2) The award;~~

10 ~~(3) A copy of the order confirming, modifying, or correcting the~~
11 ~~award; and~~

12 ~~(4) A copy of the judgment or decree.~~

13 ~~(b) The judgment or decree may be docketed as if rendered in an~~
14 ~~action.~~

15 (a)(1) An arbitrator may conduct an arbitration in such manner as the
16 arbitrator considers appropriate for a fair and expeditious disposition of
17 the proceeding.

18 (2) The authority conferred upon the arbitrator includes the
19 power to hold conferences with the parties to the arbitration proceeding
20 before the hearing and, among other matters, determine the admissibility,
21 relevance, materiality, and weight of any evidence.

22 (b) An arbitrator may decide a request for summary disposition of a
23 claim or particular issue:

24 (1) If all interested parties agree; or

25 (2) Upon request of one (1) party to the arbitration proceeding
26 if that party gives notice to all other parties to the proceeding, and the
27 other parties have a reasonable opportunity to respond.

28 (c)(1) If an arbitrator orders a hearing, the arbitrator shall set a
29 time and place and give notice of the hearing not less than five (5) days
30 before the hearing begins.

31 (2) Unless a party to the arbitration proceeding makes an
32 objection to lack or insufficiency of notice not later than the beginning of
33 the hearing, the party's appearance at the hearing waives the objection.

34 (3) Upon request of a party to the arbitration proceeding and
35 for good cause shown, or upon the arbitrator's own initiative, the arbitrator
36 may adjourn the hearing from time to time as necessary but may not postpone

1 the hearing to a time later than that fixed by the agreement to arbitrate for
2 making the award unless the parties to the arbitration proceeding consent to
3 a later date.

4 (4) The arbitrator may hear and decide the controversy upon the
5 evidence produced although a party who was notified of the arbitration
6 proceeding does not appear.

7 (5) The court, on request, may direct the arbitrator to conduct
8 the hearing promptly and render a timely decision.

9 (d) At a hearing under subsection (c) of this section, a party to the
10 arbitration proceeding has a right to:

11 (1) Be heard;

12 (2) Present evidence material to the controversy; and

13 (3) Cross-examine witnesses appearing at the hearing.

14 (e) If an arbitrator ceases or is unable to act during the arbitration
15 proceeding, a replacement arbitrator must be appointed under § 16-108-211 to
16 continue the proceeding and to resolve the controversy.

17
18 ~~16-108-216. Applications to court~~ Representation by lawyer.

19 ~~Except as otherwise provided, an application to the court under this~~
20 ~~subchapter shall be by motion and shall be heard in the manner and upon the~~
21 ~~notice provided by law or rule of court for the making and hearing of~~
22 ~~motions. Unless the parties have agreed otherwise, notice of an initial~~
23 ~~application for an order shall be served in the manner provided by law for~~
24 ~~the service of a summons in an action.~~

25 A party to an arbitration proceeding may be represented by a lawyer.

26
27 ~~16-108-217. Court—Jurisdiction~~ Witnesses – Subpoenas – Depositions –
28 Discovery.

29 ~~The term “court” means any circuit court of this state. The making of~~
30 ~~an agreement described in § 16-108-201 providing for arbitration in this~~
31 ~~state confers jurisdiction on the court to enforce the agreement under this~~
32 ~~subchapter and to enter judgment on an award thereunder.~~

33 (a)(1) An arbitrator may issue a subpoena for the attendance of a
34 witness and for the production of records and other evidence at any hearing
35 and may administer oaths.

36 (2) A subpoena must be served in the manner for service of

1 subpoenas in a civil action and, upon motion to the court by a party to the
2 arbitration proceeding or the arbitrator, enforced in the manner for
3 enforcement of subpoenas in a civil action.

4 (b)(1) In order to make the proceedings fair, expeditious, and cost
5 effective, upon request of a party to or a witness in an arbitration
6 proceeding, an arbitrator may permit a deposition of any witness to be taken
7 for use as evidence at the hearing, including a witness who cannot be
8 subpoenaed for or is unable to attend a hearing.

9 (2) The arbitrator shall determine the conditions under which
10 the deposition is taken.

11 (c) An arbitrator may permit such discovery as the arbitrator decides
12 is appropriate in the circumstances, taking into account the needs of the
13 parties to the arbitration proceeding and other affected persons and the
14 desirability of making the proceeding fair, expeditious, and cost-effective.

15 (d) If an arbitrator permits discovery under subsection (c) of this
16 section, the arbitrator may order a party to the arbitration proceeding to
17 comply with the arbitrator's discovery-related orders, issue subpoenas for
18 the attendance of a witness and for the production of records and other
19 evidence at a discovery proceeding, and take action against a noncomplying
20 party to the extent a court could if the controversy were the subject of a
21 civil action in this state.

22 (e) An arbitrator may issue a protective order to prevent the
23 disclosure of privileged information, confidential information, trade
24 secrets, and other information protected from disclosure to the extent a
25 court could if the controversy were the subject of a civil action in this
26 state.

27 (f) All laws compelling a person under subpoena to testify and all
28 fees for attending a judicial proceeding, a deposition, or a discovery
29 proceeding as a witness apply to an arbitration proceeding as if the
30 controversy were the subject of a civil action in this state.

31 (g)(1) The court may enforce a subpoena or discovery-related order for
32 the attendance of a witness within this state and for the production of
33 records and other evidence issued by an arbitrator in connection with an
34 arbitration proceeding in another state upon conditions determined by the
35 court so as to make the arbitration proceeding fair, expeditious, and cost
36 effective.

1 (2) A subpoena or discovery-related order issued by an
2 arbitrator in another state must be served in the manner provided by law for
3 service of subpoenas in a civil action in this state and, upon motion to the
4 court by a party to the arbitration proceeding or the arbitrator, enforced in
5 the manner provided by law for enforcement of subpoenas in a civil action in
6 this state.

7
8 16-108-218. ~~Venue~~ Judicial enforcement of preaward ruling by
9 arbitrator.

10 ~~An initial application shall be made to the circuit court of the county~~
11 ~~in which the agreement provides the arbitration hearing shall be held or, if~~
12 ~~the hearing has been held, in the county in which it was held. Otherwise, the~~
13 ~~application shall be made in the county where the adverse party resides or~~
14 ~~has a place of business or, if he or she has no residence or place of~~
15 ~~business in this state, to the court of any county. All subsequent~~
16 ~~applications shall be made to the court hearing the initial application~~
17 ~~unless the court otherwise directs.~~

18 (a) If an arbitrator makes a preaward ruling in favor of a party to
19 the arbitration proceeding, the party may request the arbitrator to
20 incorporate the ruling into an award under § 16-108-219.

21 (b)(1) A prevailing party may make a motion to the court for an
22 expedited order to confirm the award under § 16-108-222, in which case the
23 court shall summarily decide the motion.

24 (2) The court shall issue an order to confirm the award unless
25 the court vacates, modifies, or corrects the award under § 16-108-223 or §
26 16-108-224.

27
28 16-108-219. ~~Appeals~~ Award.

29 ~~(a) An appeal may be taken from:~~

30 ~~(1) An order denying an application to compel arbitration made~~
31 ~~under § 16-108-202;~~

32 ~~(2) An order granting an application to stay arbitration made~~
33 ~~under § 16-108-202(b);~~

34 ~~(3) An order confirming or denying confirmation of an award;~~

35 ~~(4) An order modifying or correcting an award;~~

36 ~~(5) An order vacating an award without directing a rehearing; or~~

1 ~~(6) A judgment or decree entered pursuant to the provisions of~~
2 ~~this subchapter.~~

3 ~~(b) The appeal shall be taken in the manner and to the same extent as~~
4 ~~from orders or judgments in a civil action.~~

5 (a)(1)(A) An arbitrator shall make a record of an award.

6 (B) The record must be signed or otherwise authenticated
7 by any arbitrator who concurs with the award.

8 (2) The arbitrator or the arbitration organization shall give
9 notice of the award, including a copy of the award, to each party to the
10 arbitration proceeding.

11 (b)(1) An award must be made within the time specified by the
12 agreement to arbitrate or, if not specified in the agreement, within the time
13 ordered by the court.

14 (2)(A) The court may extend or the parties to the arbitration
15 proceeding may agree in a record to extend the time.

16 (B) The court or the parties may do so within or after the
17 time specified or ordered.

18 (3) A party waives any objection that an award was not timely
19 made unless the party gives notice of the objection to the arbitrator before
20 receiving notice of the award.

21
22 16-108-220. ~~Subchapter not retroactive~~ Change of award by arbitrator.

23 ~~This subchapter applies only to agreements made subsequent to its~~
24 ~~taking effect.~~

25 (a) On motion to an arbitrator by a party to an arbitration
26 proceeding, the arbitrator may modify or correct an award:

27 (1) Upon a ground stated in § 16-108-224(a)(1) or § 16-108-
28 224(a)(3);

29 (2) Because the arbitrator has not made a final and definite
30 award upon a claim submitted by the parties to the arbitration proceeding; or

31 (3) To clarify the award.

32 (b) A motion under subsection (a) of this section must be made and
33 notice given to all parties within twenty (20) days after the movant receives
34 notice of the award.

35 (c) A party to the arbitration proceeding must give notice of any
36 objection to the motion within ten (10) days after receipt of the notice.

1 (d) If a motion to the court is pending under § 16-108-222, § 16-108-
2 223, or § 16-108-224, the court may submit the claim to the arbitrator to
3 consider whether to modify or correct the award:

4 (1) Upon a ground stated in § 16-108-224(a)(1) or § 16-108-
5 224(a)(3);

6 (2) Because the arbitrator has not made a final and definite
7 award upon a claim submitted by the parties to the arbitration proceeding; or

8 (3) To clarify the award.

9 (e) An award modified or corrected under this section is subject to §
10 16-108-219(a) and §§ 16-108-222 – 16-108-224.

11
12 16-108-221. Uniformity of interpretation Remedies – Fees and expenses
13 of arbitration proceeding.

14 This subchapter shall be so construed as to effectuate its general
15 purpose to make uniform the law of those states which enact it.

16 (a)(1) An arbitrator may award any damages that a court is authorized
17 to award by law in a civil action involving the same claim, and the evidence
18 produced at the hearing justifies the award under the legal standard
19 otherwise applicable to the claim.

20 (2) An arbitrator may award reasonable attorney's fees and other
21 reasonable expenses of arbitration if such an award is authorized by law in a
22 civil action involving the same claim or by the agreement of the parties to
23 the arbitration proceeding.

24 (b)(1) As to all remedies other than those authorized by subsection
25 (a) of this section, an arbitrator may order such remedies as the arbitrator
26 considers just and appropriate under the circumstances of the arbitration
27 proceeding.

28 (2) The fact that such a remedy could not or would not be
29 granted by the court is not a ground for:

30 (A) Refusing to confirm an award under § 16-108-222; or

31 (B) Vacating an award under § 16-108-223.

32 (c) An arbitrator's expenses and fees, together with other expenses,
33 must be paid as provided in the award.

34 (d) If requested by a party at any time prior to receipt of notice of
35 the award, the arbitrator shall specify in the award the basis in fact
36 justifying and the basis in law authorizing the award.

1
2 16-108-222. Constitutionality Confirmation of award.

3 ~~If any provision of this subchapter, or the application thereof to any~~
4 ~~person or circumstance, is held invalid, the invalidity shall not affect~~
5 ~~other provisions or applications of the subchapter which can be given without~~
6 ~~the invalid provision or application, and to this end the provisions of this~~
7 ~~subchapter are severable.~~

8 After a party to an arbitration proceeding receives notice of an award,
9 the party may make a motion to the court for an order confirming the award,
10 at which time the court shall issue a confirming order unless the award is
11 modified or corrected under § 16-108-220 or § 16-108-224 or is vacated under
12 § 16-108-223.

13
14 16-108-223. ~~Short title~~ Vacating award.

15 ~~This subchapter may be cited as the "Uniform Arbitration Act."~~

16 (a) Upon motion to the court by a party to an arbitration proceeding,
17 the court shall vacate an award made in the arbitration proceeding if:

18 (1) The award was procured by corruption, fraud, or other undue
19 means;

20 (2) There was:

21 (A) Evident partiality by an arbitrator appointed as a
22 neutral arbitrator;

23 (B) Corruption by an arbitrator; or

24 (C) Misconduct by an arbitrator prejudicing the rights of
25 a party to the arbitration proceeding;

26 (3) An arbitrator refused to postpone the hearing upon showing
27 of sufficient cause for postponement, refused to consider evidence material
28 to the controversy, or otherwise conducted the hearing contrary to § 16-108-
29 215 so as to prejudice substantially the rights of a party to the arbitration
30 proceeding;

31 (4) An arbitrator exceeded the arbitrator's powers;

32 (5) There was no agreement to arbitrate, unless the person
33 participated in the arbitration proceeding without raising the objection
34 under § 16-108-215(c) not later than the beginning of the arbitration
35 hearing; or

36 (6) The arbitration was conducted without proper notice of the

1 initiation of an arbitration as required in § 16-108-209 so as to prejudice
2 substantially the rights of a party to the arbitration proceeding.

3 (b) A motion under this section must be filed within ninety (90) days
4 after the movant receives notice of the award under § 16-108-219 or within
5 ninety (90) days after the movant receives notice of a modified or corrected
6 award under § 16-108-220, unless the movant alleges that the award was
7 procured by corruption, fraud, or other undue means, in which case the motion
8 must be made within ninety (90) days after the ground is known or, by the
9 exercise of reasonable care, would have been known by the movant.

10 (c)(1) If the court vacates an award on a ground other than that set
11 forth in subsection (a)(5) of this section, it may order a rehearing.

12 (2) If the award is vacated on a ground stated in subdivision
13 (a)(1) or (a)(2) of this section, the rehearing must be before a new
14 arbitrator.

15 (3) If the award is vacated on a ground stated in subdivision
16 (a)(3), (a)(4), or (a)(6) of this section, the rehearing may be before the
17 arbitrator who made the award or the arbitrator's successor.

18 (4) The arbitrator must render the decision in the rehearing
19 within the same time as that provided in § 16-108-219(b) for an award.

20 (d) If the court denies a motion to vacate an award, it shall confirm
21 the award unless a motion to modify or correct the award is pending.

22
23 16-108-224. Repeal Modification or correction of award.

24 All acts or parts of acts which are inconsistent with the provisions of
25 this subchapter are hereby repealed.

26 (a) Upon motion made within ninety (90) days after the movant receives
27 notice of the award under § 16-108-219 or within ninety (90) days after the
28 movant receives notice of a modified or corrected award under § 16-108-220,
29 the court shall modify or correct the award if:

30 (1) There was an evident mathematical miscalculation or an
31 evident mistake in the description of a person, thing, or property referred
32 to in the award;

33 (2) The arbitrator has made an award on a claim not submitted to
34 the arbitrator and the award may be corrected without affecting the merits of
35 the decision upon the claims submitted; or

36 (3) The award is imperfect in a matter of form not affecting the

1 merits of the decision on the claims submitted.

2 (b)(1) If a motion made under subsection (a) of this section is
3 granted, the court shall modify or correct and confirm the award as modified
4 or corrected.

5 (2) Otherwise, unless a motion to vacate is pending, the court
6 shall confirm the award.

7 (c) A motion to modify or correct an award under this section may be
8 joined with a motion to vacate the award.

9
10 16-108-225. Judgment on award – Attorney’s fees and litigation
11 expenses.

12 (a)(1) Upon granting an order confirming, vacating without directing a
13 rehearing, modifying, or correcting an award, the court shall enter a
14 judgment in conformity with the award.

15 (2) The judgment may be recorded, docketed, and enforced as any
16 other judgment in a civil action.

17 (b) A court may allow reasonable costs of the motion and subsequent
18 judicial proceedings.

19 (c) On application of a prevailing party to a contested judicial
20 proceeding under § 16-108-222, § 16-108-223, or § 16-108-224, the court may
21 add reasonable attorney’s fees and other reasonable expenses of litigation
22 incurred in a judicial proceeding after the award is made to a judgment
23 confirming, vacating without directing a rehearing, modifying, or correcting
24 an award.

25
26 16-108-226. Jurisdiction.

27 (a) A court of this state having jurisdiction over the controversy and
28 the parties may enforce an agreement to arbitrate.

29 (b) An agreement to arbitrate providing for arbitration in this state
30 confers exclusive jurisdiction on the court to enter judgment on an award
31 under this subchapter.

32
33 16-108-227. Venue.

34 (a)(1) A motion under § 16-108-205 must be made in the court of the
35 county in which the agreement to arbitrate specifies the arbitration hearing
36 is to be held or, if the hearing has been held, in the court of the county in

1 which it was held.

2 (2) Otherwise, the motion may be made in the court of any county
3 in which an adverse party resides or has a place of business or, if no
4 adverse party has a residence or place of business in this state, in the
5 court of any county in this state.

6 (b) All subsequent motions must be made in the court hearing the
7 initial motion unless the court otherwise directs.

8
9 16-108-228. Appeals.

10 (a) An appeal may be taken from:

11 (1) An order denying a motion to compel arbitration;

12 (2) An order granting a motion to stay arbitration;

13 (3) An order confirming or denying confirmation of an award;

14 (4) An order modifying or correcting an award;

15 (5) An order vacating an award without directing a rehearing; or

16 (6) A final judgment entered under this subchapter.

17 (b) An appeal under this section must be taken as from an order or a
18 judgment in a civil action.

19
20 16-108-229. Relationship to Electronic Signatures in Global and
21 National Commerce Act.

22 The provisions of this subchapter governing the legal effect, validity,
23 and enforceability of electronic records or electronic signatures, and of
24 contracts performed with the use of such records or signatures, conform to
25 the requirements of Section 102 of the Electronic Signatures in Global and
26 National Commerce Act, § 15 U.S.C. § 7001 et seq.

27
28 16-108-230. Savings clause – Certain actions excluded.

29 (a) This subchapter does not affect an action or proceeding commenced
30 or a right accrued before this subchapter takes effect.

31 (b) This subchapter does not apply to:

32 (1) Personal injury or tort matters;

33 (2) Employer-employee disputes; or

34 (3) An insured or beneficiary under any insurance policy or
35 annuity contract.

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/s/Williams

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