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States' Alternative Dispute Resolution Statutes

State of Oklahoma

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States' Alternative Dispute Resolution Statutes

STATE OF OKLAHOMA

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District Court Mediation Act

Title 12, Chapter 38.

Current with chapters of the Second Regular Session of 2008

§ 1821. Short title

This act shall be known and may be cited as the "District Court Mediation Act".

§ 1822. Construction with Dispute Resolution Act

Nothing in this act shall be construed to replace or supersede any provision of the Dispute Resolution Act or the rules and procedures promulgated to implement and effectuate the Dispute Resolution Act.

§ 1823. Referral to mediation

Any district court, by agreement of the parties, may refer any civil case, including any domestic relations case, or any portion thereof for mediation. A referral to mediation may be made at any time while a civil case is pending. The order of referral to mediation shall be entered on a standard form consistent with the form provided in subsection D of Section 5 of this act.

§ 1824. Provisions applying to court-ordered mediation

The following provisions shall apply to any mediation ordered by a court pursuant to Section 3 of this act:

1. Mediation shall be a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote understanding, reconciliation, and settlement. Participants shall include the mediator, the parties, interested non-parties or their representatives, and all others present.

The mediator may meet with participants together or individually;

2. The mediator shall be an advocate for settlement and use the mediation process to help the parties fully explore any potential areas of agreement. The mediator shall not serve as a judge and shall not have authority to render any decisions on any disputed issues or to force a settlement between the parties;

3. The parties shall be responsible for negotiating any resolution to a dispute. Parties shall participate in mediation in good faith, and put forth their best efforts with the intention to settle all issues if possible. If the parties are unable to settle all issues, they shall attempt to settle as many issues as possible;

4. No person with any financial or personal interest in the result of mediation may serve as a mediator. Prior to agreeing to mediate a dispute, the mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties;

5. Mediation sessions shall be private. Persons other than the parties and interested non-parties and their representatives may attend only with the consent of the parties, interested non-parties, and the mediator;

6. Any communication relating to the subject matter of the dispute made during the mediation process by a participant or any other person present at the mediation shall be a confidential communication. No admission, representation, statement, or other confidential communication made in setting up or in conducting the mediation shall be admissible as evidence or subject to discovery, except that, no fact independently discoverable shall be nondiscoverable solely by virtue of having been disclosed in such confidential communication. There shall be no stenographic or electronic record, including audio or video, of the mediation process unless it is agreed upon by the parties, interested non-parties, and the mediator, and it is not otherwise prohibited by law. No participant in the mediation proceeding, including the mediator, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the mediation proceeding; and

7. No subpoena, summons, complaint, petition, citation, or other process of any kind may be served upon any person who is at or near the site of any mediation session and is there because of the mediation.

§ 1825. List of qualified mediators--Minimum requirements--Form of order of referral

A. A district court may maintain a list of qualified mediators to assist the parties in selecting a mediator. In order to be placed on any such list, an individual shall meet the following minimum requirements:

1. Civil and commercial mediators shall:
a. be certified pursuant to the Dispute Resolution Act, or
b. (1) complete a minimum of twenty-four (24) hours of mediation training, which training has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association,
(2) observe a minimum of two (2) mediation proceedings, and

(3) complete at least six (6) hours every other year of continuing professional education in the area of mediation, which education has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association; and

2. Divorce and Family Mediators shall:
a. be certified for family and divorce mediation pursuant to the Dispute Resolution Act, or
b. (1) complete forty (40) hours of training in family and divorce mediation, which training has been approved by the Mandatory Continuing Legal Education Commission of the Oklahoma Bar Association,
(2) conduct at least twelve (12) hours of mediation with three (3) separate families, and
(3) complete at least six (6) hours every other year of professional education in the area of family mediation, or
c. have been regularly engaged in the practice of family and divorce mediation for at least four (4) years.

B. Nothing in this act shall preclude the parties from agreeing:

1. To participate in any alternative dispute resolution process, including mediation, independent of this act or any related court order; or

2. To select a mediator not identified on any list of qualified mediators maintained by the district court.

C. Mediators who are not certified pursuant to the Dispute Resolution Act, upon request by the court, any party, or legal counsel, shall provide information demonstrating the mediator's compliance with the requirements of Section 4 of this act, and shall agree to adhere to the Model Standards of Conduct for Mediators approved by the Litigation and Dispute Resolution Sections of the American Bar Association, the American Arbitration Association, and the Society of Professionals in Dispute Resolution.

D. The following form shall be used to order mediation pursuant to this act:

IN THE DISTRICT COURT OF _____ COUNTY

STATE OF OKLAHOMA

Order of Referral To Mediation

This case is ordered to mediation pursuant to the District Court Mediation Act. Parties and legal counsel shall proceed in good faith to resolve this case. The parties shall select and contact a mediator or mediation program or service within five (5) business days to make appropriate arrangements for the mediation proceeding. Mediation shall be completed within _____ days from the date of this order.

Mediation shall be attended by persons with full settlement authority. Both parties shall participate in mediation; attorneys may participate as agreed by the parties and the mediator. Named parties shall be present except for a named party who has no interest in the outcome and no settlement authority. Each party who is represented by legal counsel shall be accompanied at mediation by an attorney who is fully familiar with the case. In addition, any interested non-party, including any insurance company or

other entity that is contractually required to defend or to pay damages, shall be represented by a person with full settlement authority.

Uniform Arbitration Act

Title 12, Chapter 38B.

Current with chapters of the Second Regular Session of 2008

§ 1851. Short title

Sections 1 through 31 of this act shall be known and may be cited as the "Uniform Arbitration Act".

§ 1852. Definitions

As used in the Uniform Arbitration Act:

1. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator;

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

3. "Court" means any court of competent jurisdiction in this state;

4. "Knowledge" means actual knowledge;

5. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity; and

6. "Record" means any information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 1853. Notice

A. Except as otherwise provided in the Uniform Arbitration Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person will be deemed to have received notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 1854. Date of applicability

A. The Uniform Arbitration Act governs an agreement to arbitrate made on or after January 1, 2006.

B. The Uniform Arbitration Act governs an agreement to arbitrate made before January 1, 2006, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

C. Beginning January 1, 2006, the Uniform Arbitration Act governs an agreement to arbitrate whenever made.

§ 1855. Waivers

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, including Section 30 of this act, 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, subsection A of Section 7 of this act, Section 9 of this act, subsection A or B of Section 18 of this act, Section 27 of this act or Section 29 of this act;

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

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

4. Waive the right under Section 17 of this act 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, Section 8 of this act, Section 15 of this act, Section 19 of this act, subsection D or E of Section 21 of this act, Section 23, 24 or 25 of this act, subsection A or B of Section 26 of this act, or Section 30 of this act.

D. The Uniform Arbitration Act shall not apply to collective bargaining agreements and contracts which reference insurance.

§ 1856. Application

A. Except as otherwise provided in Section 28 of this act, an application for judicial relief under the Uniform Arbitration Act must be made by application and motion to the court and heard in the manner

provided by law or rule of court for making and hearing motions.

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial application and motion to the court under the Uniform Arbitration Act must be served in the manner provided by law for the service of a summons in the filing of a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

§ 1857. Agreement

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

B. If necessary, a court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

C. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

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

§ 1858. Court order of arbitration

A. On application and motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

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

2. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

B. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

C. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection A or B of this section, order the parties to arbitrate.

D. The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

E. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in Section 28 of this act.

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

G. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§ 1859. Appointment of arbitrator

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

B. After an arbitrator is appointed and is authorized and able to act:

1. The arbitrator may issue such further or revised orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

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

C. A party does not waive a right of arbitration by making an application and motion under subsection A or B of this section.

§ 1860. Initiation

A. A person initiates an arbitration proceeding by giving notice in a record to all the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe:

1. The general nature of the controversy; and

2. The remedy and alleged damages sought.

B. Unless a person objects for lack or insufficiency of notice under subsection C of Section 16 of this act not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

§ 1861. Consolidation of separate proceedings

A. Except as otherwise provided in subsection C of this section, upon application and motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

1. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

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

3. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

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

B. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

C. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§ 1862. Agreement to method

A. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

B. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall not serve as an arbitrator required by an agreement to be neutral.

§ 1863. Disclosure of facts

A. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including but not limited to:

1. A financial or personal interest in the outcome of the arbitration proceeding; and

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

B. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

C. If an arbitrator discloses a fact required by subsection A or B of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under paragraph 2 of subsection A of Section 24 of this act for vacating an award made by the arbitrator.

D. If the arbitrator did not disclose a fact as required by subsection A or B of this section, upon timely objection by a party, the court under paragraph 2 of subsection A of Section 24 of this act may vacate an award.

E. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under paragraph 2 of subsection A of Section 24 of this act.

F. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to an application and motion to vacate an award on that ground under paragraph 2 of subsection A of Section 24 of this act.

§ 1864. Multiple arbitrators

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under subsection C of Section 16 of this act.

§ 1865. Immunity of arbitrator

A. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

B. The immunity afforded by this section supplements any immunity under other law.

C. The failure of an arbitrator to make a disclosure required by Section 13 of this act shall not cause any loss of immunity under this action.

D. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection shall not apply:

1. To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

2. To a hearing on an application and motion to vacate an award under paragraph 1 or 2 of subsection A of Section 24 of this act if the movant establishes prima facie that a ground for vacating the award exists.

E. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection D of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

§ 1866. Role of arbitrator

A. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence, as well as ask questions of any witnesses during the proceedings.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. If all interested parties agree; or

2. Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

D. At a hearing under subsection C of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with Section 12 of this act to continue the proceeding and to resolve the controversy.

§ 1867. Legal representation

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

§ 1868. Subpoena

A. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon application and motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. A witness may be allowed to appear telephonically or by any other available means that allows contemporaneous cross-examination.

B. In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

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

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

E. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

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

G. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration

proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

§ 1869. Preaward ruling

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under Section 20 of this act. A prevailing party may make an application and motion to the court for an expedited order to confirm the award under Section 23 of this act, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under Section 24 or 25 of this act.

§ 1870. Record of award

A. An arbitrator shall make a record of an award. The award may, or may not, contain the evidence and conclusion upon which the award was based unless the parties agreement specifies the type of award to be issued. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

C. Upon rendering a final decision on the merits of a case, the arbitrator shall support his or her decision by likewise rendering findings of fact and conclusions of law.

§ 1871. Modification of award

A. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. Upon a ground stated in paragraph 1 or 3 of subsection A of Section 25 of this act;

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

3. To clarify the award.

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

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

D. If a motion to the court is pending under Section 23, 24 or 25 of this act, the court may submit the

claim to the arbitrator to consider whether to modify or correct the award:

1. Upon a ground stated in paragraph 1 or 3 of subsection A of Section 25 of this act;

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

3. To clarify the award.

E. An award modified or corrected pursuant to this section is subject to the provisions of subsection A of Section 20 of this act and Sections 23, 24 and 25 of this act.

§ 1872. Amount of award

A. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

C. As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under Section 23 of this act or for vacating an award under Section 24 of this act.

D. An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

E. If an arbitrator awards punitive damages or other exemplary relief under subsection A of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

§ 1873. Award confirmation

After a party to an arbitration proceeding receives notice of an award, the party may make an application and motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to Section 21 or 25 of this act or is vacated pursuant to Section 24 of this act.

§ 1874. Application to vacate an award

A. Upon an application and motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

1. The award was procured by corruption, fraud, or other undue means;

2. There was:
a. evident partiality by an arbitrator appointed as a neutral arbitrator,
b. corruption by an arbitrator, or
c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

3. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 6 of this act, so as to prejudice substantially the rights of a party to the arbitration proceeding;

4. An arbitrator exceeded the arbitrator's powers;

5. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection C of Section 16 of this act not later than the beginning of the arbitration hearing; or

6. The arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 10 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding.

B. An application and motion under this section must be filed within ninety (90) days after the movant receives notice of the award pursuant to Section 20 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 21 of this act, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety (90) days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the court vacates an award on a ground other than that set forth in paragraph 5 of subsection A of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph 1 or 2 of subsection A of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph 3, 4 or 6 of subsection A of this subsection, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection B of Section 20 of this act for an award.

D. If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

§ 1875. Motion to vacate or correct an award

A. Upon application and motion made within ninety (90) days after movant receives notice of the award pursuant to Section 20 of this act or within ninety (90) days after the movant receives notice of a modified or corrected award pursuant to Section 21 of this act, the court shall modify or correct the award if:

1. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

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

3. The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

B. If a motion made under subsection A of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

C. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

§ 1876. Judgment in conformity

A. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

B. A court may allow reasonable costs of the motion and subsequent judicial proceedings.

C. On application of a prevailing party to a contested judicial proceeding under Section 23, 24, or 25, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

§ 1877. Enforcement of agreement to arbitrate

A. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

B. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Uniform Arbitration Act.

§ 1878. Location of arbitration

An application and motion pursuant to Section 6 of this act must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

§ 1879. Appeal

A. An appeal may be taken from:

1. An order denying a motion to compel arbitration;

2. An order granting a motion to stay arbitration;

3. An order confirming or denying confirmation of an award;

4. An order modifying or correcting an award;

5. An order vacating an award without directing a rehearing; or

6. A final judgment entered pursuant to the Uniform Arbitration Act.

B. An appeal under this section shall be taken as from an order or a judgment in a civil action.

§ 1880. Considerations of conformity

A. In applying and construing the Uniform Arbitration Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

B. In applying and construing the Uniform Arbitration Act, to the extent permitted by federal law, recognition shall be given to the following considerations as applicable:

1. Agreements to arbitrate are often included in standard forms prepared by one party and in a context where there is little or no ability to negotiate or change the terms of the agreement to arbitrate; and

2. In such cases, clauses providing for the location for arbitration, for the expenses of arbitration, denying the ability to consolidate arbitrations or to have arbitration for a class of persons involving substantially similar issues, and for other matters that may represent a serious disadvantage to the party or parties that did not prepare the form shall be closely reviewed for unconscionability based on unreasonable one-sidedness and understandable or unnoticeable language or lack of meaningful choice and for balance and fairness in accordance with reasonable standards of fair dealing.

§ 1881. Conformity with Electronic Signatures in Global and National Commerce Act

The provisions of the Uniform Arbitration Act governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures shall conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act.

Choice in Mediation Act

Title 12, Chapter 38A

Current with chapters of the Second Regular Session of 2008

§ 1831. Short title--Purpose

A. Sections 11 through 20 of this act shall be known as the "Choice in Mediation Act".

B. The Legislature has previously enacted measures designed to create programs for and encourage the use of mediation in resolving disputes involving citizens of this state. These measures provide guidelines and standards for qualifications of mediators and their use in resolving disputes. Over the years since the first of these measures was enacted, there has developed a significant number of trained and experienced mediators, some of whom work solely in volunteer programs under the Dispute Resolution Act and some of whom provide mediation services on a "for fee" basis, either solely or in addition to volunteer work. The power of the parties to a dispute to settle their own dispute with the help of a neutral person being the essence of mediation, there now exists a need to clarify the choice available to disputants to select a mediator.

§ 1832. Mediation as an alternative dispute resolution process or on an ad hoc basis

Any county, municipality, accredited law school, school district, board, commission, department, or agency of this state or its political subdivisions is hereby authorized to establish programs for the purpose of providing mediation as an alternative dispute resolution process or for referring disputes to mediation on an ad hoc basis. For the purposes of the Choice in Mediation Act, "mediation" means a process in which an impartial person, the mediator, facilitates communication between disputing parties to promote settlement of disputes, whether before or in the process of litigation or administrative proceedings.

§ 1833. Options to operating a mediation program or referring matters exclusively to mediators or programs qualified under the Dispute Resolution Act

Nothing in the Choice in Mediation Act shall require any such county, municipality, accredited law school, school district, board, commission, department, or agency of this state or its political subdivisions to operate a mediation program under the auspices of the Dispute Resolution Act or to refer matters for mediation exclusively to mediators or programs qualified under the Dispute Resolution Act. Instead, any such entity may elect to do one or more of the following:

1. Utilize mediators certified under the Dispute Resolution Act or qualified under the District Court Mediation Act;

2. Specify required training in addition to that required for certification under the Dispute Resolution Act or qualification under the District Court Mediation Act in order to receive referrals or disputes for mediation;

3. Maintain a list of qualified mediators to whom it may refer disputes for mediation;

4. Contract with the Administrative Office of the Courts to provide training for a fee for mediators to whom it may refer disputes for mediation;

5. Refer disputes to a center under the Dispute Resolution Act to be mediated under the rules and procedures applicable to such center;

6. Elect to be treated as a center for all purposes under the Dispute Resolution Act and make appropriate application pursuant to the Dispute Resolution Act;

7. Contract with another public agency providing mediation services under the Choice in Mediation Act or with a private individual, company, or organization, whether for-profit or not-for-profit, to provide mediators or mediation training or both, so long as the contracting entity requires certification of mediators under the Dispute Resolution Act, or qualification of mediators under the District Court Mediation Act, if applicable; or

8. Utilize a mediator of the parties' choice.

§ 1834. Compensation to mediators

Except in those instances in which a specific statute or rule prohibits compensation of mediators, the program authorized by Section 12 of this act may provide for appropriate compensation of the mediator.

§ 1835. Disclosure regarding the mediator

Any program for mediation under the Choice in Mediation Act shall make provision for disclosure to the parties of the background, qualifications, experience, and actual or potential conflicts of interest of the mediator, sufficient to permit the parties to participate in the choice of a mediator for their dispute and to determine that the mediator selected is qualified and neutral.

§ 1836. Procedures--Confidentiality and impartiality

Any program for mediation under the Choice in Mediation Act shall adopt appropriate procedures for the conduct of mediation under the program, to ensure confidentiality of proceedings and impartiality of the mediator and to encourage participation in good faith by the disputing parties. The program may comply with this provision by adopting the provisions in Section 1824 of Title 12 of the Oklahoma Statutes or by becoming a center under the Dispute Resolution Act and complying with the procedures of the Dispute Resolution Act.

§ 1837. Feedback on process or mediator--Due process prior to removal or decertification of mediator

Any program for mediation under the Choice in Mediation Act shall make provision for a procedure whereby parties to a dispute or the administrator of the program may make complaints about the mediation process and/or the conduct of the mediator. Any such procedure shall include due process prior to removal of a mediator from a list of qualified mediators or "decertification" of a mediator.

§ 1838. Program certification--Intent of provision

Any entity, including the Administrative Office of the Courts, "certifying" mediators for its program shall make clear in all communications regarding the "certification" that the mediator is "certified" for that program only. Any mediator certified under the Dispute Resolution Act or qualified under the District Court Mediation Act shall be considered "certified" for purposes of any federal programs that require the use of "certified mediators" or "certified programs". The intent of this provision is to avoid the misconception that there is one certifying body for mediators in Oklahoma and to permit agencies to utilize available state and federal funds for operation of mediation programs and, where appropriate,

for the compensation of mediators.

§ 1839. Authority of the courts--Court-ordered settlement conferences

Nothing in the Choice in Mediation Act shall impair the authority of trial courts or appellate courts of this state to establish or continue in effect programs for mediation of disputes within their jurisdiction or for conducting court-ordered settlement conferences.

§ 1840. Parties--Selection and compensation of mediators

Nothing in the Choice in Mediation Act shall limit the ability of parties to a dispute to select and, if appropriate, compensate a mediator of their choice, whether or not that mediator is certified under the Dispute Resolution Act or qualified under the District Court Mediation Act; nor shall anything in the Choice in Mediation Act prohibit any person from acting as a mediator of a dispute when so requested by the parties to the dispute.