

Senate Study Bill 3026

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON REDFERN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to agreements to arbitrate and providing
2 remedies.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5492SC 80
5 rh/cf/24

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1 1 Section 1. NEW SECTION. 679A.101 DEFINITIONS.
1 2 As used in this chapter:
1 3 1. "Arbitration organization" means an association,
1 4 agency, board, commission, or other entity that is neutral and
1 5 initiates, sponsors, or administers an arbitration proceeding
1 6 or is involved in the appointment of an arbitrator.
1 7 2. "Arbitrator" means an individual appointed to render an
1 8 award, alone or with others, in a controversy that is subject
1 9 to an agreement to arbitrate.
1 10 3. "Court" means district court.
1 11 4. "Knowledge" means actual knowledge.
1 12 5. "Person" means an individual, corporation, business
1 13 trust, estate, trust, partnership, limited liability company,
1 14 association, joint venture, government, governmental
1 15 subdivision, agency, or instrumentality, public corporation,
1 16 or any other legal or commercial entity.
1 17 6. "Record" means information that is inscribed on a
1 18 tangible medium or that is stored in an electronic or other
1 19 medium and is retrievable in perceivable form.
1 20 Sec. 2. NEW SECTION. 679A.102 NOTICE.
1 21 1. Except as otherwise provided in this chapter, a person
1 22 gives notice by taking action that is reasonably necessary to
1 23 inform the other person in ordinary course, whether or not the
1 24 other person acquires knowledge of the notice.
1 25 2. A person has notice if the person has knowledge of the
1 26 notice or has received notice.
1 27 3. A person receives notice when it comes to the person's
1 28 attention or the notice is delivered at the person's place of
1 29 residence or place of business, or at another location held
1 30 out by the person as a place of delivery.
1 31 Sec. 3. NEW SECTION. 679A.103 APPLICABILITY.
1 32 1. This chapter governs an agreement to arbitrate made on
1 33 or after the effective date of this Act.
1 34 2. This chapter governs an agreement to arbitrate made
1 35 before the effective date of this Act if all the parties to
2 1 the agreement or to the arbitration proceeding so agree in a
2 2 record.
2 3 Sec. 4. NEW SECTION. 679A.104 EFFECT OF AGREEMENT TO
2 4 ARBITRATE == NONWAIVABLE PROVISIONS.
2 5 1. Except as otherwise provided in subsections 2 and 3, a
2 6 party to an agreement to arbitrate or to an arbitration
2 7 proceeding may waive, or the parties may vary the effect of,
2 8 the requirements of this chapter to the extent permitted by
2 9 law.
2 10 2. Before a controversy arises that is subject to an
2 11 agreement to arbitrate, a party to the agreement shall not:
2 12 a. Waive or agree to vary the effect of the requirements
2 13 of section 679A.105, subsection 1, section 679A.106,
2 14 subsection 1, section 679A.108, section 679A.117, subsection 1
2 15 or 2, section 679A.126, or section 679A.128.
2 16 b. Agree to unreasonably restrict the right under section
2 17 679A.109 to notice of initiation of an arbitration proceeding.
2 18 c. Agree to unreasonably restrict the right under section
2 19 679A.112 to disclosure of any facts by a neutral arbitrator.
2 20 d. Waive the right under section 679A.116 of a party to an
2 21 agreement to arbitrate to be represented by a lawyer at any
2 22 proceeding or hearing under this chapter, but an employer and

2 23 a labor organization may waive the right to representation by
2 24 a lawyer in a labor arbitration.

2 25 3. A party to an agreement to arbitrate or arbitration
2 26 proceeding shall not waive, or the parties shall not vary the
2 27 effect of, the requirements of this section or section
2 28 679A.103, subsection 1, section 679A.107, section 679A.114,
2 29 section 679A.118, section 679A.120, subsection 4 or 5, section
2 30 679A.122, section 679A.123, section 679A.124, section
2 31 679A.125, subsections 1 or 2, section 679A.129, or section
2 32 679A.130.

2 33 Sec. 5. NEW SECTION. 679A.105 APPLICATION FOR JUDICIAL
2 34 RELIEF.

2 35 1. Except as otherwise provided in section 679A.128, an
3 1 application for judicial relief under this chapter shall be
3 2 made by motion and shall be heard in the manner provided by
3 3 law or rule of civil procedure for the making and hearing of
3 4 motions.

3 5 2. Unless a civil action involving the agreement to
3 6 arbitrate is pending, notice of an initial application under
3 7 this chapter shall be served in the manner provided by law for
3 8 the service of a summons in a civil action. Otherwise, notice
3 9 of the application shall be given in the manner provided by
3 10 law or rule of civil procedure for serving motions.

3 11 Sec. 6. NEW SECTION. 679A.106 VALIDITY OF AGREEMENT TO
3 12 ARBITRATE.

3 13 1. An agreement contained in a record to submit to
3 14 arbitration an existing or future controversy arising between
3 15 the parties to the agreement is valid, enforceable, and
3 16 irrevocable unless grounds exist at law or in equity for the
3 17 revocation of a contract.

3 18 2. The court shall decide whether an agreement to
3 19 arbitrate exists or a controversy is subject to an agreement
3 20 to arbitrate.

3 21 3. An arbitrator shall decide whether a condition
3 22 precedent to arbitrability has been fulfilled and whether a
3 23 contract containing a valid agreement to arbitrate is
3 24 enforceable.

3 25 4. If a party to a judicial proceeding challenges the
3 26 existence of, or claims that a controversy is not subject to,
3 27 an agreement to arbitrate, the arbitration proceeding may
3 28 continue pending final resolution of the issue by the court,
3 29 unless the court otherwise orders.

3 30 Sec. 7. NEW SECTION. 679A.107 PROCEEDINGS TO COMPEL OR
3 31 STAY ARBITRATION.

3 32 1. On application of a party showing an agreement to
3 33 arbitrate described in section 679A.106, and the opposing
3 34 party's refusal to arbitrate, the court shall do either of the
3 35 following:

4 1 a. Order the parties to proceed with arbitration if the
4 2 refusing party does not appear or does not oppose the
4 3 application.

4 4 b. Proceed summarily to the determination of the issue and
4 5 order the parties to arbitration if the refusing party opposes
4 6 the application and a valid and enforceable agreement is found
4 7 to exist.

4 8 2. On application of a party alleging that an arbitration
4 9 proceeding has been commenced or threatened with no agreement
4 10 to arbitrate, the court shall summarily decide the issue. If
4 11 the court finds that there is an enforceable agreement to
4 12 arbitrate, the court shall order the parties to proceed with
4 13 arbitration.

4 14 3. If the court finds that there is no enforceable
4 15 agreement, the court shall not, pursuant to subsection 1 or 2,
4 16 order the parties to arbitrate.

4 17 4. The court shall not deny an application for an order on
4 18 the ground that the claim in issue lacks merit or because any
4 19 fault or grounds for the claim sought to be arbitrated have
4 20 not been shown.

4 21 5. If an issue referable to arbitration under the alleged
4 22 agreement is involved in an action or proceeding pending in
4 23 court, the application shall be made to that court.
4 24 Otherwise, the application shall be made to any court as
4 25 provided in section 679A.127.

4 26 6. If a party makes an application to the court to order
4 27 arbitration, the court on just terms shall stay any judicial
4 28 proceeding that involves a claim alleged to be subject to the
4 29 arbitration until the court renders a final decision under
4 30 this section.

4 31 7. If the court orders arbitration, the court on just
4 32 terms shall stay any judicial proceeding that involves a claim
4 33 subject to the arbitration. If a claim subject to the

4 34 arbitration is severable, the court may limit the stay to that
4 35 claim.

5 1 Sec. 8. NEW SECTION. 679A.108 PROVISIONAL REMEDIES.

5 2 1. Before an arbitrator is appointed and is authorized and
5 3 able to act, the court, upon application of a party to an
5 4 arbitration proceeding and for good cause shown, may enter an
5 5 order for provisional remedies to protect the effectiveness of
5 6 the arbitration proceeding to the same extent and under the
5 7 same conditions as if the controversy were the subject of a
5 8 civil action.

5 9 2. After an arbitrator is appointed and is authorized and
5 10 able to act:

5 11 a. The arbitrator may issue such orders for provisional
5 12 remedies, including interim awards, as the arbitrator finds
5 13 necessary to protect the effectiveness of the arbitration
5 14 proceeding and to promote the fair and expeditious resolution
5 15 of the controversy, to the same extent and under the same
5 16 conditions as if the controversy were the subject of a civil
5 17 action.

5 18 b. A party to an arbitration proceeding may move the court
5 19 for a provisional remedy only if the matter is urgent and the
5 20 arbitrator is not able to act timely or the arbitrator cannot
5 21 provide an adequate remedy.

5 22 3. A party does not waive a right of arbitration by making
5 23 an application under subsection 1 or 2.

5 24 Sec. 9. NEW SECTION. 679A.109 INITIATION OF ARBITRATION.

5 25 1. A party initiates an arbitration proceeding by giving
5 26 notice in a record to the other parties to the agreement in
5 27 the agreed upon manner or, in the absence of an agreement, by
5 28 certified mail or restricted certified mail, or by service as
5 29 authorized for the commencement of a civil action. The notice
5 30 must describe the nature of the controversy and the remedy
5 31 sought.

5 32 2. Unless a party objects, based upon lack or
5 33 insufficiency of notice under section 679A.115, subsection 3,
5 34 not later than the beginning of the arbitration hearing, the
5 35 party waives any objection to lack or insufficiency of notice
6 1 by appearing at the hearing.

6 2 Sec. 10. NEW SECTION. 679A.110 CONSOLIDATION OF SEPARATE
6 3 ARBITRATION PROCEEDINGS.

6 4 1. Except as otherwise provided in subsection 3, upon
6 5 application of a party, the court may order consolidation of
6 6 separate arbitration proceedings as to all or some of the
6 7 claims if all of the following conditions are met:

6 8 a. There are separate agreements to arbitrate, separate
6 9 arbitration proceedings between the same parties, or one of
6 10 them is a party to a separate agreement to arbitrate or a
6 11 separate arbitration proceeding with a third person.

6 12 b. The claims subject to the agreements to arbitrate arise
6 13 in substantial part from the same transaction or series of
6 14 related transactions.

6 15 c. The existence of a common issue of law or fact creates
6 16 the possibility of conflicting decisions in the separate
6 17 arbitration proceedings.

6 18 d. Prejudice resulting from a failure to consolidate is
6 19 not outweighed by the risk of undue delay or prejudice to the
6 20 rights of or hardship to parties opposing consolidation.

6 21 2. The court may order consolidation of separate
6 22 arbitration proceedings as to some claims and allow other
6 23 claims to be resolved in separate arbitration proceedings.

6 24 3. The court shall not order consolidation of the claims
6 25 of a party to an agreement to arbitrate if the agreement
6 26 prohibits consolidation.

6 27 Sec. 11. NEW SECTION. 679A.111 APPOINTMENT OF ARBITRATOR
6 28 == SERVICE AS A NEUTRAL ARBITRATOR.

6 29 1. If the parties to an agreement to arbitrate agree on a
6 30 method for appointing an arbitrator, this method shall be
6 31 followed, unless the method fails. If the parties have not
6 32 agreed on a method, if the agreed method fails, or if an
6 33 arbitrator appointed fails or is unable to act and a successor
6 34 has not been appointed, the court, on application of a party,
6 35 shall appoint the arbitrator. An arbitrator appointed by the
7 1 court has the same powers as an arbitrator specifically named
7 2 in the agreement to arbitrate or appointed pursuant to an
7 3 agreed method.

7 4 2. An individual who has a known, direct, and material
7 5 interest in the outcome of the arbitration proceeding or a
7 6 known, existing, and substantial relationship with a party
7 7 shall not serve as an arbitrator if the agreement requires the
7 8 arbitrator to be neutral.

7 9 Sec. 12. NEW SECTION. 679A.112 DISCLOSURE BY ARBITRATOR.

7 10 1. Before accepting appointment, an individual who is
7 11 requested to serve as an arbitrator, after making a reasonable
7 12 inquiry, shall disclose to all parties and to any other
7 13 arbitrators any known facts that a reasonable person would
7 14 consider likely to affect the impartiality of the individual
7 15 in the arbitration proceeding, including:

7 16 a. Any financial or personal interest in the outcome of
7 17 the arbitration proceeding.

7 18 b. An existing or past relationship with any of the
7 19 parties, any of the parties' counsel or representatives, a
7 20 witness, or other arbitrators.

7 21 2. An arbitrator has a continuing obligation to disclose
7 22 to all parties and to any other arbitrators any facts that the
7 23 arbitrator learns after accepting appointment which a
7 24 reasonable person would consider likely to affect the
7 25 impartiality of the arbitrator.

7 26 3. If an arbitrator discloses a fact required by
7 27 subsection 1 or 2 to be disclosed and a party makes a timely
7 28 objection to the appointment or continued service of the
7 29 arbitrator based upon the fact disclosed, the objection may be
7 30 a ground under section 679A.123, subsection 1, paragraph "b",
7 31 for vacating an award made by the arbitrator.

7 32 4. If the arbitrator did not disclose a fact as required
7 33 by subsection 1 or 2, upon a timely objection by a party, the
7 34 court under section 679A.123, subsection 1, paragraph "b", may
7 35 vacate an award.

8 1 5. An arbitrator appointed as a neutral arbitrator who
8 2 does not disclose a known, direct, and material interest in
8 3 the outcome of the arbitration proceeding or a known,
8 4 existing, and substantial relationship with a party is
8 5 presumed to act with evident partiality under section
8 6 679A.123, subsection 1, paragraph "b".

8 7 6. If the parties to an arbitration proceeding agree to
8 8 the procedures of an arbitration organization or any other
8 9 procedures for challenges to arbitrators before an award is
8 10 made, substantial compliance with those procedures is a
8 11 condition precedent to an application to vacate an award on
8 12 that ground under section 679A.123, subsection 1, paragraph
8 13 "b".

8 14 Sec. 13. NEW SECTION. 679A.113 ACTION BY MAJORITY.

8 15 If there is more than one arbitrator, the powers of an
8 16 arbitrator shall be exercised by a majority of the
8 17 arbitrators, but all of them shall be present and conduct the
8 18 hearing as provided under section 679A.115, subsection 3.

8 19 Sec. 14. NEW SECTION. 679A.114 IMMUNITY OF ARBITRATOR ==
8 20 COMPETENCY TO TESTIFY == ATTORNEY FEES AND COSTS.

8 21 1. An arbitrator or an arbitration organization acting in
8 22 that capacity is immune from civil liability to the same
8 23 extent as a judge of a court of this state acting in a
8 24 judicial capacity.

8 25 2. The immunity afforded by this section supplements any
8 26 immunity under any other law.

8 27 3. The failure of an arbitrator to make a disclosure
8 28 required by section 679A.112 does not cause any loss of
8 29 immunity under this section.

8 30 4. In a judicial, administrative, or similar proceeding,
8 31 an arbitrator or representative of an arbitration organization
8 32 is not competent to testify, and shall not be required to
8 33 produce records as to any statement, conduct, decision, or
8 34 ruling occurring during the arbitration proceeding, to the
8 35 same extent as a judge of a court of this state acting in a
9 1 judicial capacity. This subsection does not apply to any of
9 2 the following:

9 3 a. To the extent necessary to determine the claim of an
9 4 arbitrator, arbitration organization, or representative of the
9 5 arbitration organization against a party to the arbitration
9 6 proceeding.

9 7 b. To a hearing on an application to vacate an award under
9 8 section 679A.123, subsection 1, paragraph "a" or "b", if the
9 9 applicant establishes prima facie that a ground for vacating
9 10 the award exists.

9 11 5. If a person commences a civil action against an
9 12 arbitrator, arbitration organization, or representative of an
9 13 arbitration organization arising from the services of the
9 14 arbitrator, organization, or representative or if a person
9 15 seeks to compel an arbitrator or a representative of an
9 16 arbitration organization to testify or produce records in
9 17 violation of subsection 4, and the court decides that the
9 18 arbitrator, arbitration organization, or representative of an
9 19 arbitration organization is immune from civil liability or
9 20 that the arbitrator or representative of the organization is

9 21 not competent to testify, the court shall award to the
9 22 arbitrator, organization, or representative reasonable
9 23 attorney fees and other reasonable expenses of litigation.

9 24 Sec. 15. NEW SECTION. 679A.115 ARBITRATION PROCESS.

9 25 1. An arbitrator shall conduct an arbitration proceeding
9 26 in such manner as the arbitrator considers appropriate for a
9 27 fair and expeditious disposition of the proceeding. The
9 28 authority conferred upon the arbitrator includes the power to
9 29 hold conferences with the parties to the arbitration
9 30 proceeding before the hearing and, among other matters,
9 31 determine the admissibility, relevance, materiality, and
9 32 weight of any evidence.

9 33 2. An arbitrator may decide a request for summary
9 34 disposition of a claim or particular issue under any of the
9 35 following conditions:

10 1 a. If all interested parties agree.

10 2 b. Upon the request of one party to the arbitration
10 3 proceeding, if that party gives notice to all other parties to
10 4 the proceeding and the other parties have a reasonable
10 5 opportunity to respond.

10 6 3. If an arbitrator orders a hearing, the arbitrator shall
10 7 set a time and place and give notice of the hearing not less
10 8 than five days before the hearing begins. Unless a party to
10 9 the arbitration proceeding makes an objection to lack or
10 10 insufficiency of notice not later than the beginning of the
10 11 hearing, the party's appearance at the hearing waives any
10 12 objection. Upon request of a party to the arbitration
10 13 proceeding and for good cause shown, or upon the arbitrator's
10 14 own initiative, the arbitrator may adjourn the hearing as
10 15 necessary but shall not postpone the hearing to a time later
10 16 than that fixed by the agreement for making the award unless
10 17 the parties to the arbitration proceeding consent to a later
10 18 date. The arbitrator may hear and decide the controversy upon
10 19 the evidence produced even though a party who was duly
10 20 notified of the arbitration proceeding did not appear. The
10 21 court, on request, may direct the arbitrator to conduct the
10 22 hearing promptly and render a decision in a timely fashion.

10 23 4. At a hearing under subsection 3, a party to the
10 24 arbitration proceeding has a right to be heard, to present
10 25 evidence material to the controversy, and to cross-examine
10 26 witnesses appearing at the hearing.

10 27 5. If an arbitrator ceases or is unable to act during the
10 28 arbitration proceeding, a replacement arbitrator shall be
10 29 appointed in accordance with section 679A.111 to continue the
10 30 proceeding and to resolve the controversy.

10 31 Sec. 16. NEW SECTION. 679A.116 REPRESENTATION BY LAWYER.

10 32 A party has the right to be represented by an attorney at
10 33 any proceeding or hearing under this chapter.

10 34 Sec. 17. NEW SECTION. 679A.117 WITNESSES == SUBPOENAS ==
10 35 DEPOSITIONS == DISCOVERY.

11 1 1. An arbitrator may issue subpoenas for the attendance of
11 2 witnesses and for the production of records and other evidence
11 3 at any hearing and may administer oaths. Subpoenas shall be
11 4 served and, upon application to the court by a party or the
11 5 arbitrators, enforced in the manner provided by law for the
11 6 service and enforcement of subpoenas in a civil action.

11 7 2. Upon request of a party to or a witness in an
11 8 arbitration proceeding, an arbitrator may permit a deposition
11 9 to be taken for use as evidence at a hearing, including a
11 10 deposition of a witness who cannot be subpoenaed or is unable
11 11 to attend a hearing. The arbitrator shall determine the
11 12 conditions under which the deposition is to be taken.

11 13 3. An arbitrator may permit such discovery as the
11 14 arbitrator decides is appropriate in the circumstances, taking
11 15 into account the needs of the parties and other affected
11 16 persons to the arbitration proceeding and the desirability of
11 17 making the proceeding fair, expeditious, and cost-effective.

11 18 4. If an arbitrator permits discovery under subsection 3,
11 19 the arbitrator may order a party to the arbitration proceeding
11 20 to comply with the arbitrator's discovery orders, issue
11 21 subpoenas for the attendance of witnesses and for the
11 22 production of records and other evidence at a discovery
11 23 proceeding, and take action against a noncomplying party to
11 24 the extent possible as if the controversy were the subject of
11 25 a civil action in this state.

11 26 5. An arbitrator may issue a protective order to prevent
11 27 the disclosure of privileged or confidential information,
11 28 trade secrets, and other information protected from disclosure
11 29 to the extent possible as if the controversy were the subject
11 30 of a civil action in this state.

11 31 6. All laws compelling a person under subpoena to testify

11 32 and all fees for attending a judicial proceeding, a
11 33 deposition, or a discovery proceeding as a witness apply to an
11 34 arbitration proceeding as if the controversy were the subject
11 35 of a civil action in this state.

12 1 7. The court may enforce a subpoena or discovery order for
12 2 the attendance of a witness within this state and for the
12 3 production of records and other evidence issued by an
12 4 arbitrator in connection with an arbitration proceeding in
12 5 another state as determined by the court in order to make the
12 6 arbitration proceeding fair, expeditious, and cost-effective.
12 7 A subpoena or discovery order issued by an arbitrator in
12 8 another state shall be served in the manner provided by law
12 9 for service of subpoenas in a civil action in this state and,
12 10 upon application to the court, enforced in the manner provided
12 11 by law for enforcement of subpoenas in a civil action in this
12 12 state.

12 13 Sec. 18. NEW SECTION. 679A.118 JUDICIAL ENFORCEMENT OF
12 14 PREAWARD RULING BY ARBITRATOR.

12 15 If an arbitrator makes a preaward ruling in favor of a
12 16 party to the arbitration proceeding, the party may request the
12 17 arbitrator to incorporate the ruling into an award under
12 18 section 679A.119. A prevailing party may make application to
12 19 the court for an expedited order to confirm the award under
12 20 section 679A.122, in which case the court shall summarily
12 21 decide the application. The court shall confirm an award
12 22 unless the court vacates, modifies, or corrects the award
12 23 under section 679A.123 or 679A.124.

12 24 Sec. 19. NEW SECTION. 679A.119 AWARD.

12 25 1. An arbitrator shall make a record of an award. The
12 26 record must be signed or otherwise authenticated by an
12 27 arbitrator who concurs with the award. The arbitrator or the
12 28 arbitration organization shall give notice of the award,
12 29 including a copy of the record of the award, to each party to
12 30 the arbitration proceeding.

12 31 2. An award shall be made within the time specified by the
12 32 agreement to arbitrate or, if not specified therein, within
12 33 the time ordered by the court. The court or the parties may
12 34 agree in a record to extend the time specified or ordered.
12 35 The court or the parties may do so within or after the time
13 1 specified or ordered. A party waives any objection that an
13 2 award was not timely made unless the party gives notice of the
13 3 objection to the arbitrator before receiving notice of the
13 4 award.

13 5 Sec. 20. NEW SECTION. 679A.120 CHANGE OF AWARD BY
13 6 ARBITRATOR.

13 7 1. On application of a party to an arbitration proceeding,
13 8 the arbitrator may modify or correct an award for any of the
13 9 following reasons:

13 10 a. Upon a ground stated in section 679A.124, subsection 1,
13 11 paragraph "a" or "c".

13 12 b. Because the arbitrator has not made a final and
13 13 definite award upon a claim submitted by the parties to the
13 14 arbitration proceeding.

13 15 c. To clarify the award.

13 16 2. An application under subsection 1 shall be made and
13 17 notice given to all parties within twenty days after the
13 18 applicant receives notice of the award.

13 19 3. A party to the arbitration proceeding must give notice
13 20 of any objection to the application within ten days of the
13 21 notice.

13 22 4. If an application to the court is pending under section
13 23 679A.122, 679A.123, or 679A.124, the court may submit the
13 24 claim to the arbitrator to consider whether to modify or
13 25 correct the award for any of the following reasons:

13 26 a. Upon a ground stated in section 679A.124, subsection 1,
13 27 paragraph "a" or "c".

13 28 b. Because the arbitrator has not made a final and
13 29 definite award upon a claim submitted by the parties to the
13 30 arbitration proceeding.

13 31 c. To clarify the award.

13 32 5. An award modified or corrected pursuant to this section
13 33 is subject to section 679A.119, subsection 1, sections
13 34 679A.122, 679A.123, and 679A.124.

13 35 Sec. 21. NEW SECTION. 679A.121 REMEDIES == FEES AND
14 1 EXPENSES OF ARBITRATION PROCEEDING.

14 2 1. An arbitrator may award punitive damages or other
14 3 exemplary relief if such an award is authorized by law in a
14 4 civil action involving the same claim and the evidence
14 5 produced at the hearing justifies the award under the legal
14 6 standards otherwise applicable to the claim.

14 7 2. An arbitrator may award reasonable attorney fees and

14 8 other reasonable expenses of arbitration if such an award is
14 9 authorized by law in a civil action involving the same claim
14 10 or by agreement of the parties.

14 11 3. As to all remedies other than those authorized by
14 12 subsections 1 and 2, an arbitrator may order such remedies as
14 13 the arbitrator considers just and appropriate under the
14 14 circumstances of the arbitration proceeding. The fact that
14 15 such a remedy could not or would not be granted by the court
14 16 is not a ground for refusing to confirm an award under section
14 17 679A.122 or for vacating an award under section 679A.123.

14 18 4. An arbitrator's expenses and fees, together with other
14 19 expenses, shall be paid as provided in the award.

14 20 5. If an arbitrator awards punitive damages or other
14 21 exemplary relief under subsection 1, the arbitrator shall
14 22 specify in the award the basis in fact justifying and the
14 23 basis in law authorizing the award and state separately the
14 24 amount of the punitive damages or other exemplary relief.

14 25 Sec. 22. NEW SECTION. 679A.122 CONFIRMATION OF AWARD BY
14 26 COURT.

14 27 After a party to an arbitration proceeding receives notice
14 28 of an award, the party may make application to the court for
14 29 an order confirming the award at which time the court shall
14 30 issue an order confirming the award unless the award is
14 31 modified or corrected pursuant to section 679A.120 or 679A.124
14 32 or the award is vacated pursuant to section 679A.123.

14 33 Sec. 23. NEW SECTION. 679A.123 VACATING AWARD BY COURT.

14 34 1. Upon application of a party, the court shall vacate an
14 35 award if any of the following apply:

15 1 a. The award was procured by corruption, fraud, or other
15 2 undue means.

15 3 b. There was evident partiality by an arbitrator appointed
15 4 as a neutral arbitrator, corruption of an arbitrator, or
15 5 misconduct by an arbitrator prejudicing the rights of a party.

15 6 c. The arbitrator refused to postpone the hearing upon
15 7 sufficient cause being shown for the postponement, refused to
15 8 consider evidence material to the controversy, or conducted
15 9 the hearing contrary to the provisions of section 679A.115, in
15 10 a manner which substantially prejudiced the rights of a party.

15 11 d. The arbitrator exceeded the arbitrator's powers.

15 12 e. There was no arbitration agreement, unless a party
15 13 participated in the arbitration proceeding and failed to raise
15 14 an objection under section 679A.115, subsection 3, prior to
15 15 the beginning of the arbitration hearing.

15 16 f. The arbitration was conducted without proper notice of
15 17 the initiation of an arbitration proceeding as required in
15 18 section 679A.109 so as to prejudice substantially the rights
15 19 of a party to the arbitration proceeding.

15 20 2. An application under this section shall be filed within
15 21 ninety days after the applicant receives notice of the award
15 22 pursuant to section 679A.119 or within ninety days after the
15 23 applicant receives notice of a modified or corrected award
15 24 pursuant to section 679A.120, unless the applicant alleges
15 25 that the award was procured by corruption, fraud, or other
15 26 undue means, in which case the application shall be made
15 27 within ninety days after the ground is known or by the
15 28 exercise of reasonable care should have been known by the
15 29 applicant.

15 30 3. If the court vacates an award on a ground other than
15 31 that set forth in subsection 1, paragraph "e", the court may
15 32 order a rehearing. If the award is vacated on a ground stated
15 33 in subsection 1, paragraph "a" or "b", the rehearing shall be
15 34 before a new arbitrator. If the award is vacated on a ground
15 35 stated in subsection 1, paragraph "c", "d", or "f", the
16 1 rehearing may be before the arbitrator who made the award or
16 2 the arbitrator's successor. The arbitrator shall render the
16 3 decision in the rehearing within the same time as that
16 4 provided in section 679A.119, subsection 2, for an award.

16 5 4. If the court denies an application to vacate an award,
16 6 it shall confirm the award unless an application to modify or
16 7 correct the award is pending.

16 8 Sec. 24. NEW SECTION. 679A.124 MODIFICATION OR
16 9 CORRECTION OF AWARD BY COURT.

16 10 1. Upon application made within ninety days after the
16 11 applicant receives notice of the award pursuant to section
16 12 679A.119 or made within ninety days after the applicant
16 13 receives notice of a modified or corrected award pursuant to
16 14 section 679A.120, the court shall modify or correct the award
16 15 if any of the following apply:

16 16 a. There is an evident mathematical miscalculation or an
16 17 evident mistake in the description of a person, thing, or
16 18 property referred to in the award.

16 19 b. The arbitrator has made an award on a claim not
16 20 submitted to the arbitrator and the award may be corrected
16 21 without affecting the merits of the decision upon the claims
16 22 submitted.

16 23 c. The award is imperfect in a matter of form, not
16 24 affecting the decision on the merits of the claims submitted.

16 25 2. If the application made under subsection 1 is granted,
16 26 the court shall modify or correct and confirm the award as
16 27 modified or corrected. Unless a motion to vacate is pending,
16 28 the court shall confirm the award.

16 29 3. An application to modify or correct an award pursuant
16 30 to this section may be joined with an application to vacate
16 31 the award.

16 32 Sec. 25. NEW SECTION. 679A.125 JUDGMENT ON AWARD ==
16 33 ATTORNEY FEES AND LITIGATION EXPENSES.

16 34 1. Upon the issuance of an order confirming, vacating
16 35 without directing a rehearing, modifying, or correcting an
17 1 award, the court shall enter a judgment in conformity with the
17 2 order enforced as any other judgment or decree.

17 3 2. Reasonable costs of the application and the subsequent
17 4 proceedings may be awarded by the court.

17 5 3. On the application of a prevailing party to a contested
17 6 judicial proceeding under section 679A.122, 679A.123, or
17 7 679A.124, the court may add reasonable attorney fees and other
17 8 reasonable expenses of litigation incurred in a judicial
17 9 proceeding after the award is made to a judgment confirming,
17 10 vacating without directing a rehearing, modifying, or
17 11 correcting an award.

17 12 Sec. 26. NEW SECTION. 679A.126 JURISDICTION.

17 13 1. A court of this state having jurisdiction over the
17 14 controversy and the parties may enforce an agreement to
17 15 arbitrate.

17 16 2. An agreement to arbitrate providing for arbitration in
17 17 this state confers exclusive jurisdiction on the court to
17 18 enter judgment on an award under this chapter.

17 19 Sec. 27. NEW SECTION. 679A.127 VENUE.

17 20 An application pursuant to section 679A.105 shall be made
17 21 in the court of the county in which the agreement to arbitrate
17 22 specifies the arbitration hearing is to be held or, if the
17 23 hearing has been held, in the court of the county in which the
17 24 hearing was held. Otherwise, the application may be made in
17 25 the court of the county in which an adverse party resides or
17 26 has a place of business or, if the adverse party has no
17 27 residence or place of business in this state, in the court of
17 28 any county in this state. All subsequent applications shall
17 29 be made in the court which heard the initial application
17 30 unless the court otherwise directs.

17 31 Sec. 28. NEW SECTION. 679A.128 APPEALS.

17 32 1. An appeal may be taken from any of the following:

17 33 a. An order denying an application to compel arbitration.

17 34 b. An order granting an application to stay arbitration.

17 35 c. An order confirming or denying confirmation of an
18 1 award.

18 2 d. An order modifying or correcting an award.

18 3 e. An order vacating an award without directing a
18 4 rehearing.

18 5 f. A final judgment or decree entered pursuant to the
18 6 provisions of this chapter.

18 7 2. An appeal shall be taken in the manner and to the same
18 8 extent as from orders or judgments in a civil action.

18 9 Sec. 29. NEW SECTION. 679A.129 UNIFORMITY OF APPLICATION
18 10 AND CONSTRUCTION.

18 11 In applying and construing this chapter, consideration
18 12 shall be given to the need to promote uniformity of the law
18 13 among states that enact the uniform arbitration act.

18 14 Sec. 30. NEW SECTION. 679A.130 RELATIONSHIP TO
18 15 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

18 16 The provisions of this chapter governing the legal effect,
18 17 validity, and enforceability of electronic records or
18 18 electronic signatures, and of contracts performed with the use
18 19 of such records or signatures, shall be construed to conform
18 20 to the requirements of section 102 of the federal Electronic
18 21 Signatures in Global and National Commerce Act, as codified at
18 22 15 U.S.C. } 7001, 7002.

18 23 Sec. 31. Sections 679A.1 through 679A.19, Code 2003, are
18 24 repealed.

18 25 Sec. 32. SAVINGS CLAUSE. Except as provided in section
18 26 679A.103 as enacted in this Act, this Act does not affect an
18 27 action or proceeding commenced or right accrued before this
18 28 Act takes effect. Except as provided in section 679A.103 as
18 29 enacted in this Act, an arbitration agreement made before the

18 30 effective date of this Act is governed by chapter 679A, Code
18 31 2003.

18 32 Sec. 33. SHORT TITLE. This chapter may be cited as the
18 33 "Iowa Uniform Arbitration Act".

18 34 EXPLANATION

18 35 This bill relates to agreements to arbitrate in Iowa, by
19 1 enacting the 2000 Uniform Arbitration Act.

19 2 The bill describes the effect and validity of agreements to
19 3 arbitration and how judicial relief in an arbitration
19 4 proceeding may be obtained.

19 5 The bill specifically permits the district court, or an
19 6 arbitrator, when selected, to order provisional remedies
19 7 during the course of an arbitration.

19 8 The bill provides for consolidation of separate arbitration
19 9 proceedings for multiple parties, multiple agreements, and
19 10 complex litigation.

19 11 The bill establishes the grounds upon which an award may be
19 12 vacated, which may include an arbitrator's lack of neutrality.

19 13 The bill provides that a lack of neutrality may include a
19 14 financial or personal interest in the outcome of the
19 15 arbitration proceeding or an existing or past relationship
19 16 with a party. The bill provides that a lack of disclosure may
19 17 also be a ground for vacating an award, and provides for a
19 18 presumption of partiality when nondisclosure occurs. Upon
19 19 disclosure, a party has the opportunity to object to the
19 20 appointment of an arbitrator intended to be neutral.

19 21 The bill further provides arbitrators with immunity from
19 22 civil liability to the same extent as a judge of a court of
19 23 this state acting in a judicial capacity.

19 24 The bill provides that an arbitrator has the express power
19 25 to make summary dispositions of claims or issues under certain
19 26 procedures, to hold prearbitration meetings or to use any
19 27 other discovery process applicable to resolution of the
19 28 dispute. The bill provides an arbitrator with the authority
19 29 to grant punitive damages or other exemplary relief to the
19 30 extent authorized by law in a civil action involving the same
19 31 claim. The arbitrator may award attorney fees under the same
19 32 standard.

19 33 The bill provides that most of the provisions of this Act
19 34 may be varied or waived by agreement, but that certain
19 35 provisions may not be varied or waived.

20 1 LSB 5492SC 80

20 2 rh/cf/24