

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2430

AN ACT

AMENDING SECTIONS 10-1806, 12-2101.01 AND 41-2615, ARIZONA REVISED STATUTES;
AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 21; RELATING
TO ARBITRATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 10-1806, Arizona Revised Statutes, is amended to
3 read:

4 10-1806. Settlement of disputes; arbitration

5 The articles of incorporation may provide for arbitration of any
6 deadlock or dispute involving the internal affairs of the corporation. To
7 the extent the articles of incorporation do not provide to the contrary, such
8 arbitration shall be governed by ~~the provisions of~~ title 12, chapter ~~9;~~
9 ~~article 1~~ 21. Unless otherwise provided in the articles of incorporation, if
10 the arbitrators determine that such deadlock or dispute either impairs or
11 threatens to impair the value of the assets or continued conduct of the
12 business of the corporation, ~~then~~ the arbitrators may appoint a conservator
13 or interim manager to preserve the business and assets of the corporation or
14 to continue the operation of the business of the corporation, or both, during
15 the pendency of such arbitration proceedings. If such arbitrators appoint a
16 conservator or interim manager, the arbitrators may suspend, revoke or
17 nullify the authority of any existing manager or managers. The articles of
18 incorporation may also provide that the arbitrators may suspend, revoke or
19 nullify the employment or any employment contract of any existing manager or
20 managers without payment of compensation and without liability for damages or
21 breach of contract. Unless provided otherwise in the articles of
22 incorporation, the arbitrators may define the authority and set the
23 compensation of the conservator or interim manager, and shall immediately
24 file a certificate of the appointment of such conservator or interim manager
25 with the commission. Such arbitration proceedings shall not supersede the
26 power of the superior court of Arizona to appoint an interim manager under
27 section 10-1814. A court appointed interim manager shall replace any
28 conservator or interim manager appointed under ~~the provisions of~~ this
29 section.

30 Sec. 2. Section 12-2101.01, Arizona Revised Statutes, is amended to
31 read:

32 12-2101.01. Appeals from arbitration awards

33 A. An appeal may be taken from ANY OF THE FOLLOWING:

- 34 1. An order denying an application to compel arbitration made under
35 ~~the terms of~~ section 12-1502; ~~OR~~ 12-3007.
- 36 2. An order granting an application to stay arbitration made under ~~the~~
37 ~~terms of subsection B of~~ section 12-1502; ~~OR~~ 12-3007.
- 38 3. An order denying confirmation of an award. ~~;~~
- 39 4. An order modifying or correcting an award. ~~;~~
- 40 5. An order vacating an award without directing a rehearing. ~~;~~ ~~or~~
- 41 6. A judgment or decree entered pursuant to ~~the provisions of article~~
42 ~~1,~~ chapter 9; ~~OR~~ 21 of this title.

43 B. The appeal shall be taken in the manner and to the same extent as
44 from orders or judgments in a civil action.

1 B. BEGINNING JANUARY 1, 2011 THIS CHAPTER SHALL NOT APPLY TO AN
2 AGREEMENT TO ARBITRATE ANY EXISTING OR SUBSEQUENT CONTROVERSY:

3 1. BETWEEN AN EMPLOYER AND EMPLOYEE OR THEIR RESPECTIVE
4 REPRESENTATIVES.

5 2. CONTAINED IN A CONTRACT OF INSURANCE.

6 3. BETWEEN A NATIONAL BANKING ASSOCIATION OR A FEDERAL SAVINGS
7 ASSOCIATION OR ITS AFFILIATE, SUBSIDIARY OR HOLDING COMPANY AND ANY CUSTOMER.

8 4. IF THE ARBITRATION IS CONDUCTED OR ADMINISTERED BY A
9 SELF-REGULATORY ORGANIZATION AS DEFINED IN THE SECURITIES EXCHANGE ACT OF
10 1934 (15 UNITED STATES CODE SECTION 78c), THE COMMODITY EXCHANGE ACT (7
11 UNITED STATES CODE CHAPTER 1) OR REGULATIONS ADOPTED UNDER THOSE ACTS.

12 C. AN AGREEMENT TO ARBITRATE THAT IS DESCRIBED IN SUBSECTION B,
13 PARAGRAPHS 2, 3 AND 4 SHALL BE GOVERNED BY CHAPTER 9, ARTICLE 1 OF THIS
14 TITLE.

15 12-3004. Effect of agreement to arbitrate; nonwaivable
16 provisions

17 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS B AND C OF THIS
18 SECTION, A PARTY TO AN AGREEMENT TO ARBITRATE OR TO AN ARBITRATION PROCEEDING
19 MAY WAIVE, OR THE PARTIES MAY VARY THE EFFECT OF, THE REQUIREMENTS OF THIS
20 CHAPTER TO THE EXTENT PERMITTED BY LAW.

21 B. BEFORE A CONTROVERSY ARISES THAT IS SUBJECT TO AN AGREEMENT TO
22 ARBITRATE, A PARTY TO THE AGREEMENT MAY NOT:

23 1. WAIVE OR AGREE TO VARY THE EFFECT OF THE REQUIREMENTS PRESCRIBED IN
24 SECTION 12-2101.01, 12-3005, 12-3006 OR 12-3008, SECTION 12-3017, SUBSECTION
25 A OR B OR SECTION 12-3026.

26 2. AGREE TO UNREASONABLY RESTRICT THE RIGHT UNDER SECTION 12-3009 TO
27 NOTICE OF THE INITIATION OF AN ARBITRATION PROCEEDING.

28 3. AGREE TO UNREASONABLY RESTRICT THE RIGHT UNDER SECTION 12-3012 TO
29 DISCLOSURE OF ANY FACTS BY A NEUTRAL ARBITRATOR.

30 4. WAIVE THE RIGHT UNDER SECTION 12-3016 OF A PARTY TO AN AGREEMENT TO
31 ARBITRATE TO BE REPRESENTED BY A LAWYER AT ANY PROCEEDING OR HEARING UNDER
32 THIS CHAPTER, BUT AN EMPLOYER AND A LABOR ORGANIZATION MAY WAIVE THE RIGHT TO
33 REPRESENTATION BY A LAWYER IN A LABOR ARBITRATION.

34 C. A PARTY TO AN AGREEMENT TO ARBITRATE OR TO AN ARBITRATION
35 PROCEEDING MAY NOT WAIVE, OR THE PARTIES MAY NOT VARY THE EFFECT OF, THE
36 REQUIREMENTS OF THIS SECTION, SECTION 12-2101.01, SECTION 12-3003, SUBSECTION
37 A, PARAGRAPH 1 OR 3, SECTION 12-3007, 12-3014 OR 12-3018, SECTION 12-3020,
38 SUBSECTION D OR E, SECTION 12-3022, 12-3023 OR 12-3024, SECTION 12-3025,
39 SUBSECTION A OR B OR SECTION 12-3028, 12-3029 OR 41-2615.

40 12-3005. Application for judicial relief

41 A. AN APPLICATION FOR JUDICIAL RELIEF UNDER THIS CHAPTER MUST BE MADE
42 BY MOTION TO THE COURT AND HEARD IN THE MANNER PROVIDED BY LAW OR COURT RULE
43 FOR MAKING AND HEARING MOTIONS.

1 B. UNLESS A CIVIL ACTION INVOLVING THE AGREEMENT TO ARBITRATE IS
2 PENDING, NOTICE OF AN INITIAL MOTION TO THE COURT UNDER THIS CHAPTER MUST BE
3 SERVED IN THE MANNER PROVIDED BY LAW FOR THE SERVICE OF A SUMMONS IN A CIVIL
4 ACTION. OTHERWISE, NOTICE OF THE MOTION MUST BE GIVEN IN THE MANNER PROVIDED
5 BY LAW OR COURT RULE FOR SERVING MOTIONS IN PENDING CASES.

6 12-3006. Validity of agreement to arbitrate

7 A. AN AGREEMENT CONTAINED IN A RECORD TO SUBMIT TO ARBITRATION ANY
8 EXISTING OR SUBSEQUENT CONTROVERSY ARISING BETWEEN THE PARTIES TO THE
9 AGREEMENT IS VALID, ENFORCEABLE AND IRREVOCABLE EXCEPT ON A GROUND THAT
10 EXISTS AT LAW OR IN EQUITY FOR THE REVOCATION OF A CONTRACT.

11 B. THE COURT SHALL DECIDE WHETHER AN AGREEMENT TO ARBITRATE EXISTS OR
12 A CONTROVERSY IS SUBJECT TO AN AGREEMENT TO ARBITRATE.

13 C. AN ARBITRATOR SHALL DECIDE WHETHER A CONDITION PRECEDENT TO
14 ARBITRABILITY HAS BEEN FULFILLED AND WHETHER A CONTRACT CONTAINING A VALID
15 AGREEMENT TO ARBITRATE IS ENFORCEABLE.

16 D. IF A PARTY TO A JUDICIAL PROCEEDING CHALLENGES THE EXISTENCE OF, OR
17 CLAIMS THAT A CONTROVERSY IS NOT SUBJECT TO, AN AGREEMENT TO ARBITRATE, THE
18 ARBITRATION PROCEEDING MAY CONTINUE PENDING FINAL RESOLUTION OF THE ISSUE BY
19 THE COURT, UNLESS THE COURT OTHERWISE ORDERS.

20 12-3007. Motion to compel or stay arbitration

21 A. ON MOTION OF A PERSON SHOWING AN AGREEMENT TO ARBITRATE AND
22 ALLEGING ANOTHER PERSON'S REFUSAL TO ARBITRATE PURSUANT TO THE AGREEMENT:

23 1. IF THE REFUSING PARTY DOES NOT APPEAR OR DOES NOT OPPOSE THE
24 MOTION, THE COURT SHALL ORDER THE PARTIES TO ARBITRATE.

25 2. IF THE REFUSING PARTY OPPOSES THE MOTION, THE COURT SHALL PROCEED
26 SUMMARILY TO DECIDE THE ISSUE AND ORDER THE PARTIES TO ARBITRATE UNLESS IT
27 FINDS THAT THERE IS NO ENFORCEABLE AGREEMENT TO ARBITRATE.

28 B. ON MOTION OF A PERSON ALLEGING THAT AN ARBITRATION PROCEEDING HAS
29 BEEN INITIATED OR THREATENED BUT THAT THERE IS NO AGREEMENT TO ARBITRATE, THE
30 COURT SHALL PROCEED SUMMARILY TO DECIDE THE ISSUE. IF THE COURT FINDS THAT
31 THERE IS AN ENFORCEABLE AGREEMENT TO ARBITRATE, IT SHALL ORDER THE PARTIES TO
32 ARBITRATE.

33 C. IF THE COURT FINDS THAT THERE IS NO ENFORCEABLE AGREEMENT, IT MAY
34 NOT ORDER THE PARTIES TO ARBITRATE PURSUANT TO SUBSECTION A OR B OF THIS
35 SECTION.

36 D. THE COURT MAY NOT REFUSE TO ORDER ARBITRATION BECAUSE THE CLAIM
37 SUBJECT TO ARBITRATION LACKS MERIT OR GROUNDS FOR THE CLAIM HAVE NOT BEEN
38 ESTABLISHED.

39 E. IF A PROCEEDING INVOLVING A CLAIM REFERABLE TO ARBITRATION UNDER AN
40 ALLEGED AGREEMENT TO ARBITRATE IS PENDING IN COURT, A MOTION UNDER THIS
41 SECTION MUST BE MADE IN THAT COURT. OTHERWISE, A MOTION UNDER THIS SECTION
42 MAY BE MADE IN ANY COURT AS PROVIDED IN SECTION 12-3027.

43 F. IF A PARTY MAKES A MOTION TO THE COURT TO ORDER ARBITRATION, THE
44 COURT ON JUST TERMS SHALL STAY ANY JUDICIAL PROCEEDING THAT INVOLVES A CLAIM

1 ALLEGED TO BE SUBJECT TO THE ARBITRATION UNTIL THE COURT RENDERS A FINAL
2 DECISION UNDER THIS SECTION.

3 G. IF THE COURT ORDERS ARBITRATION, THE COURT ON JUST TERMS SHALL STAY
4 ANY JUDICIAL PROCEEDING THAT INVOLVES A CLAIM SUBJECT TO THE ARBITRATION. IF
5 A CLAIM SUBJECT TO THE ARBITRATION IS SEVERABLE, THE COURT MAY LIMIT THE STAY
6 TO THAT CLAIM.

7 12-3008. Interim remedies

8 A. BEFORE AN ARBITRATOR IS APPOINTED AND IS AUTHORIZED AND ABLE TO
9 ACT, THE COURT, ON MOTION OF A PARTY TO AN ARBITRATION PROCEEDING AND FOR
10 GOOD CAUSE SHOWN, MAY ENTER AN ORDER FOR INTERIM REMEDIES TO PROTECT THE
11 EFFECTIVENESS OF THE ARBITRATION PROCEEDING TO THE SAME EXTENT AND UNDER THE
12 SAME CONDITIONS AS IF THE CONTROVERSY WERE THE SUBJECT OF A CIVIL ACTION.

13 B. AFTER AN ARBITRATOR IS APPOINTED AND IS AUTHORIZED AND ABLE TO ACT:

14 1. THE ARBITRATOR MAY ISSUE SUCH ORDERS FOR INTERIM REMEDIES,
15 INCLUDING INTERIM AWARDS, AS THE ARBITRATOR FINDS NECESSARY TO PROTECT THE
16 EFFECTIVENESS OF THE ARBITRATION PROCEEDING AND TO PROMOTE THE FAIR AND
17 EXPEDITIOUS RESOLUTION OF THE CONTROVERSY, TO THE SAME EXTENT AND UNDER THE
18 SAME CONDITIONS AS IF THE CONTROVERSY WERE THE SUBJECT OF A CIVIL ACTION.

19 2. A PARTY TO AN ARBITRATION PROCEEDING MAY MOVE THE COURT FOR AN
20 INTERIM REMEDY ONLY IF THE MATTER IS URGENT AND THE ARBITRATOR IS NOT ABLE TO
21 ACT TIMELY OR THE ARBITRATOR CANNOT PROVIDE AN ADEQUATE REMEDY.

22 C. A PARTY DOES NOT WAIVE A RIGHT OF ARBITRATION BY MAKING A MOTION
23 UNDER SUBSECTION A OR B.

24 12-3009. Initiation of arbitration; notice

25 A. A PERSON INITIATES AN ARBITRATION PROCEEDING BY GIVING NOTICE IN A
26 RECORD TO THE OTHER PARTIES TO THE AGREEMENT TO ARBITRATE IN THE AGREED
27 MANNER BETWEEN THE PARTIES OR, IN THE ABSENCE OF AN AGREEMENT, BY CERTIFIED
28 MAIL, RETURN RECEIPT REQUESTED AND OBTAINED, OR BY SERVICE AS AUTHORIZED FOR
29 THE COMMENCEMENT OF A CIVIL ACTION. THE NOTICE MUST DESCRIBE THE NATURE OF
30 THE CONTROVERSY AND THE REMEDY SOUGHT.

31 B. UNLESS A PERSON OBJECTS FOR LACK OR INSUFFICIENCY OF NOTICE UNDER
32 SECTION 12-3015, SUBSECTION C NOT LATER THAN THE BEGINNING OF THE ARBITRATION
33 HEARING, THE PERSON BY APPEARING AT THE HEARING WAIVES ANY OBJECTION TO LACK
34 OR INSUFFICIENCY OF NOTICE.

35 12-3010. Consolidation of separate arbitration proceedings

36 A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, ON MOTION OF A PARTY
37 TO AN AGREEMENT TO ARBITRATE OR TO AN ARBITRATION PROCEEDING, THE COURT MAY
38 ORDER CONSOLIDATION OF SEPARATE ARBITRATION PROCEEDINGS AS TO ALL OR SOME OF
39 THE CLAIMS IF ALL OF THE FOLLOWING APPLY:

40 1. THERE ARE SEPARATE AGREEMENTS TO ARBITRATE OR SEPARATE ARBITRATION
41 PROCEEDINGS BETWEEN THE SAME PERSONS OR ONE OF THEM IS A PARTY TO A SEPARATE
42 AGREEMENT TO ARBITRATE OR A SEPARATE ARBITRATION PROCEEDING WITH A THIRD
43 PERSON.

44 2. THE CLAIMS SUBJECT TO THE AGREEMENTS TO ARBITRATE ARISE IN
45 SUBSTANTIAL PART FROM THE SAME TRANSACTION OR SERIES OF RELATED TRANSACTIONS.

1 OBJECTION MAY BE A GROUND UNDER SECTION 12-3023, SUBSECTION A, PARAGRAPH 2
2 FOR VACATING AN AWARD MADE BY THE ARBITRATOR.

3 D. IF THE ARBITRATOR DID NOT DISCLOSE A FACT AS REQUIRED BY SUBSECTION
4 A OR B OF THIS SECTION, ON TIMELY OBJECTION BY A PARTY, THE COURT UNDER
5 SECTION 12-3023, SUBSECTION A, PARAGRAPH 2 MAY VACATE AN AWARD MADE BY THE
6 ARBITRATOR.

7 E. AN ARBITRATOR APPOINTED AS A NEUTRAL ARBITRATOR WHO DOES NOT
8 DISCLOSE A KNOWN, DIRECT AND MATERIAL INTEREST IN THE OUTCOME OF THE
9 ARBITRATION PROCEEDING OR A KNOWN, EXISTING AND SUBSTANTIAL RELATIONSHIP WITH
10 A PARTY IS PRESUMED TO ACT WITH EVIDENT PARTIALITY UNDER SECTION 12-3023,
11 SUBSECTION A, PARAGRAPH 2.

12 F. IF THE PARTIES TO AN ARBITRATION PROCEEDING AGREE TO THE PROCEDURES
13 OF AN ARBITRATION ORGANIZATION OR ANY OTHER PROCEDURES FOR CHALLENGES TO
14 ARBITRATORS BEFORE AN AWARD IS MADE, SUBSTANTIAL COMPLIANCE WITH THOSE
15 PROCEDURES IS A CONDITION PRECEDENT TO A MOTION TO VACATE AN AWARD ON THAT
16 GROUND UNDER SECTION 12-3023, SUBSECTION A, PARAGRAPH 2.

17 12-3013. Action by majority

18 IF THERE IS MORE THAN ONE ARBITRATOR, THE POWERS OF AN ARBITRATOR MUST
19 BE EXERCISED BY A MAJORITY OF THE ARBITRATORS, BUT ALL OF THEM SHALL CONDUCT
20 THE HEARING UNDER SECTION 12-3015, SUBSECTION C.

21 12-3014. Immunity of arbitrator; competency to testify;
22 attorney fees and litigation expenses

23 A. AN ARBITRATOR OR AN ARBITRATION ORGANIZATION ACTING IN THAT
24 CAPACITY IS IMMUNE FROM CIVIL LIABILITY TO THE SAME EXTENT AS A JUDGE OF A
25 COURT OF THIS STATE ACTING IN A JUDICIAL CAPACITY.

26 B. THE IMMUNITY AFFORDED BY THIS SECTION SUPPLEMENTS ANY IMMUNITY
27 UNDER OTHER LAW.

28 C. THE FAILURE OF AN ARBITRATOR TO MAKE A DISCLOSURE REQUIRED BY
29 SECTION 12-3012 DOES NOT CAUSE ANY LOSS OF IMMUNITY UNDER THIS SECTION.

30 D. IN A JUDICIAL, ADMINISTRATIVE OR SIMILAR PROCEEDING, AN ARBITRATOR
31 OR REPRESENTATIVE OF AN ARBITRATION ORGANIZATION IS NOT COMPETENT TO TESTIFY,
32 AND MAY NOT BE REQUIRED TO PRODUCE RECORDS AS TO ANY STATEMENT, CONDUCT,
33 DECISION OR RULING OCCURRING DURING THE ARBITRATION PROCEEDING, TO THE SAME
34 EXTENT AS A JUDGE OF A COURT OF THIS STATE ACTING IN A JUDICIAL CAPACITY.
35 THIS SUBSECTION DOES NOT APPLY:

36 1. TO THE EXTENT NECESSARY TO DETERMINE THE CLAIM OF AN ARBITRATOR,
37 ARBITRATION ORGANIZATION OR REPRESENTATIVE OF THE ARBITRATION ORGANIZATION
38 AGAINST A PARTY TO THE ARBITRATION PROCEEDING.

39 2. TO A HEARING ON A MOTION TO VACATE AN AWARD UNDER SECTION 12-3023,
40 SUBSECTION A, PARAGRAPH 1 OR 2 IF THE MOVANT ESTABLISHES PRIMA FACIE THAT A
41 GROUND FOR VACATING THE AWARD EXISTS.

42 E. IF A PERSON COMMENCES A CIVIL ACTION AGAINST AN ARBITRATOR,
43 ARBITRATION ORGANIZATION OR REPRESENTATIVE OF AN ARBITRATION ORGANIZATION
44 ARISING FROM THE SERVICES OF THE ARBITRATOR, ORGANIZATION OR REPRESENTATIVE
45 OR IF A PERSON SEEKS TO COMPEL AN ARBITRATOR OR A REPRESENTATIVE OF AN

1 ARBITRATION ORGANIZATION TO TESTIFY OR PRODUCE RECORDS IN VIOLATION OF
2 SUBSECTION D OF THIS SECTION, AND THE COURT DECIDES THAT THE ARBITRATOR,
3 ARBITRATION ORGANIZATION OR REPRESENTATIVE OF AN ARBITRATION ORGANIZATION IS
4 IMMUNE FROM CIVIL LIABILITY OR THAT THE ARBITRATOR OR REPRESENTATIVE OF THE
5 ORGANIZATION IS NOT COMPETENT TO TESTIFY, THE COURT SHALL AWARD TO THE
6 ARBITRATOR, ORGANIZATION OR REPRESENTATIVE REASONABLE ATTORNEY FEES AND OTHER
7 REASONABLE EXPENSES OF LITIGATION.

8 12-3015. Arbitration process

9 A. AN ARBITRATOR MAY CONDUCT AN ARBITRATION IN SUCH MANNER AS THE
10 ARBITRATOR CONSIDERS APPROPRIATE FOR A FAIR AND EXPEDITIOUS DISPOSITION OF
11 THE PROCEEDING. THE AUTHORITY CONFERRED ON THE ARBITRATOR INCLUDES THE POWER
12 TO HOLD CONFERENCES WITH THE PARTIES TO THE ARBITRATION PROCEEDING BEFORE THE
13 HEARING AND, AMONG OTHER MATTERS, TO DETERMINE THE ADMISSIBILITY, RELEVANCE,
14 MATERIALITY AND WEIGHT OF ANY EVIDENCE.

15 B. AN ARBITRATOR MAY DECIDE A REQUEST FOR SUMMARY DISPOSITION OF A
16 CLAIM OR PARTICULAR ISSUE EITHER:

17 1. IF ALL INTERESTED PARTIES AGREE.

18 2. ON REQUEST OF ONE PARTY TO THE ARBITRATION PROCEEDING IF THAT PARTY
19 GIVES NOTICE TO ALL OTHER PARTIES TO THE PROCEEDING AND THE OTHER PARTIES
20 HAVE A REASONABLE OPPORTUNITY TO RESPOND.

21 C. IF AN ARBITRATOR ORDERS A HEARING, THE ARBITRATOR SHALL SET A TIME
22 AND PLACE AND GIVE NOTICE OF THE HEARING AT LEAST FIVE DAYS BEFORE THE
23 HEARING BEGINS. UNLESS A PARTY TO THE ARBITRATION PROCEEDING MAKES AN
24 OBJECTION TO LACK OR INSUFFICIENCY OF NOTICE NOT LATER THAN THE BEGINNING OF
25 THE HEARING, THE PARTY'S APPEARANCE AT THE HEARING WAIVES THE OBJECTION. ON
26 REQUEST OF A PARTY TO THE ARBITRATION PROCEEDING AND FOR GOOD CAUSE SHOWN, OR
27 ON THE ARBITRATOR'S OWN INITIATIVE, THE ARBITRATOR MAY ADJOURN THE HEARING
28 FROM TIME TO TIME AS NECESSARY BUT MAY NOT POSTPONE THE HEARING TO A TIME
29 LATER THAN THAT FIXED BY THE AGREEMENT TO ARBITRATE FOR MAKING THE AWARD
30 UNLESS THE PARTIES TO THE ARBITRATION PROCEEDING CONSENT TO A LATER
31 DATE. THE ARBITRATOR MAY HEAR AND DECIDE THE CONTROVERSY ON THE EVIDENCE
32 PRODUCED ALTHOUGH A PARTY WHO WAS DULY NOTIFIED OF THE ARBITRATION PROCEEDING
33 DID NOT APPEAR. THE COURT, ON REQUEST, MAY DIRECT THE ARBITRATOR TO CONDUCT
34 THE HEARING PROMPTLY AND RENDER A TIMELY DECISION.

35 D. AT A HEARING UNDER SUBSECTION C OF THIS SECTION, A PARTY TO THE
36 ARBITRATION PROCEEDING HAS A RIGHT TO BE HEARD, TO PRESENT EVIDENCE MATERIAL
37 TO THE CONTROVERSY AND TO CROSS-EXAMINE WITNESSES APPEARING AT THE HEARING.

38 E. IF AN ARBITRATOR CEASES OR IS UNABLE TO ACT DURING THE ARBITRATION
39 PROCEEDING, A REPLACEMENT ARBITRATOR MUST BE APPOINTED IN ACCORDANCE WITH
40 SECTION 12-3011 TO CONTINUE THE PROCEEDING AND TO RESOLVE THE CONTROVERSY.

41 12-3016. Representation by lawyer

42 A PARTY TO AN ARBITRATION PROCEEDING MAY BE REPRESENTED BY A LAWYER.

43 12-3017. Witnesses; subpoenas; depositions; discovery

44 A. AN ARBITRATOR MAY ISSUE A SUBPOENA FOR THE ATTENDANCE OF A WITNESS
45 AND FOR THE PRODUCTION OF RECORDS AND OTHER EVIDENCE AT ANY HEARING AND MAY

1 ADMINISTER OATHS. A SUBPOENA MUST BE SERVED IN THE MANNER FOR SERVICE OF
2 SUBPOENAS IN A CIVIL ACTION AND, ON MOTION TO THE COURT BY A PARTY TO THE
3 ARBITRATION PROCEEDING OR THE ARBITRATOR, ENFORCED IN THE MANNER FOR
4 ENFORCEMENT OF SUBPOENAS IN A CIVIL ACTION.

5 B. IN ORDER TO MAKE THE PROCEEDINGS FAIR, EXPEDITIOUS AND COST
6 EFFECTIVE, ON REQUEST OF A PARTY TO OR A WITNESS IN AN ARBITRATION
7 PROCEEDING, AN ARBITRATOR MAY PERMIT A DEPOSITION OF ANY WITNESS TO BE TAKEN
8 FOR USE AS EVIDENCE AT THE HEARING, INCLUDING A WITNESS WHO CANNOT BE
9 SUBPOENAED FOR OR IS UNABLE TO ATTEND A HEARING. THE ARBITRATOR SHALL
10 DETERMINE THE CONDITIONS UNDER WHICH 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, THE
16 ARBITRATOR MAY ORDER A PARTY TO THE ARBITRATION PROCEEDING TO COMPLY WITH THE
17 ARBITRATOR'S DISCOVERY RELATED ORDERS, ISSUE SUBPOENAS FOR THE ATTENDANCE OF
18 A WITNESS AND FOR THE PRODUCTION OF RECORDS AND OTHER EVIDENCE AT A DISCOVERY
19 PROCEEDING AND TAKE ACTION AGAINST A NONCOMPLYING PARTY TO THE EXTENT A COURT
20 COULD IF THE CONTROVERSY WERE THE SUBJECT OF A CIVIL ACTION IN THIS STATE.

21 E. AN ARBITRATOR MAY ISSUE A PROTECTIVE ORDER TO PREVENT THE
22 DISCLOSURE OF PRIVILEGED INFORMATION, CONFIDENTIAL INFORMATION, TRADE SECRETS
23 AND OTHER INFORMATION PROTECTED FROM DISCLOSURE TO THE EXTENT A COURT COULD
24 IF THE CONTROVERSY WERE THE SUBJECT OF A CIVIL ACTION IN THIS STATE.

25 F. ALL LAWS COMPELLING A PERSON UNDER SUBPOENA TO TESTIFY AND ALL FEES
26 FOR ATTENDING A JUDICIAL PROCEEDING, A DEPOSITION OR A DISCOVERY PROCEEDING
27 AS A WITNESS APPLY TO AN ARBITRATION PROCEEDING AS IF THE CONTROVERSY WERE
28 THE SUBJECT OF A CIVIL ACTION IN THIS STATE.

29 G. THE COURT MAY ENFORCE A SUBPOENA OR DISCOVERY RELATED ORDER FOR THE
30 ATTENDANCE OF A WITNESS WITHIN THIS STATE AND FOR THE PRODUCTION OF RECORDS
31 AND OTHER EVIDENCE ISSUED BY AN ARBITRATOR IN CONNECTION WITH AN ARBITRATION
32 PROCEEDING IN ANOTHER STATE ON CONDITIONS DETERMINED BY THE COURT SO AS TO
33 MAKE THE ARBITRATION PROCEEDING FAIR, EXPEDITIOUS AND COST EFFECTIVE. A
34 SUBPOENA OR DISCOVERY RELATED ORDER ISSUED BY AN ARBITRATOR IN ANOTHER STATE
35 MUST BE SERVED IN THE MANNER PROVIDED BY LAW FOR SERVICE OF SUBPOENAS IN A
36 CIVIL ACTION IN THIS STATE AND, ON MOTION TO THE COURT BY A PARTY TO THE
37 ARBITRATION PROCEEDING OR THE ARBITRATOR, ENFORCED IN THE MANNER PROVIDED BY
38 LAW FOR ENFORCEMENT OF SUBPOENAS IN A CIVIL ACTION IN THIS STATE.

39 12-3018. Judicial enforcement of preaward ruling by arbitrator

40 IF AN ARBITRATOR MAKES A PREAWARD RULING IN FAVOR OF A PARTY TO THE
41 ARBITRATION PROCEEDING, THE PARTY MAY REQUEST THE ARBITRATOR TO INCORPORATE
42 THE RULING INTO AN AWARD UNDER SECTION 12-3019. A PREVAILING PARTY MAY MAKE
43 A MOTION TO THE COURT FOR AN EXPEDITED ORDER TO CONFIRM THE AWARD UNDER
44 SECTION 12-3022, IN WHICH CASE THE COURT SHALL SUMMARILY DECIDE THE MOTION.

1 THE COURT SHALL ISSUE AN ORDER TO CONFIRM THE AWARD UNLESS THE COURT VACATES,
2 MODIFIES OR CORRECTS THE AWARD UNDER SECTION 12-3023 OR 12-3024.

3 12-3019. Award

4 A. AN ARBITRATOR SHALL MAKE A RECORD OF AN AWARD. THE RECORD MUST BE
5 SIGNED OR OTHERWISE AUTHENTICATED BY ANY ARBITRATOR WHO CONCURS WITH THE
6 AWARD. THE ARBITRATOR OR THE ARBITRATION ORGANIZATION SHALL GIVE NOTICE OF
7 THE AWARD, INCLUDING A COPY OF THE AWARD, TO EACH PARTY TO THE ARBITRATION
8 PROCEEDING.

9 B. AN AWARD MUST BE MADE WITHIN THE TIME SPECIFIED BY THE AGREEMENT TO
10 ARBITRATE OR, IF NOT SPECIFIED THEREIN, WITHIN THE TIME ORDERED BY THE COURT.
11 THE COURT MAY EXTEND OR THE PARTIES TO THE ARBITRATION PROCEEDING MAY AGREE
12 IN A RECORD TO EXTEND THE TIME. THE COURT OR THE PARTIES MAY DO SO WITHIN OR
13 AFTER THE TIME SPECIFIED OR ORDERED. A PARTY WAIVES ANY OBJECTION THAT AN
14 AWARD WAS NOT TIMELY MADE UNLESS THE PARTY GIVES NOTICE OF THE OBJECTION TO
15 THE ARBITRATOR BEFORE RECEIVING NOTICE OF THE AWARD.

16 12-3020. Change of award by arbitrator

17 A. ON MOTION TO AN ARBITRATOR BY A PARTY TO AN ARBITRATION PROCEEDING,
18 THE ARBITRATOR MAY MODIFY OR CORRECT AN AWARD EITHER:

19 1. ON A GROUND STATED IN SECTION 12-3024, SUBSECTION A, PARAGRAPH 1
20 OR 3.

21 2. BECAUSE THE ARBITRATOR HAS NOT MADE A FINAL AND DEFINITE AWARD ON A
22 CLAIM SUBMITTED BY THE PARTIES TO THE ARBITRATION PROCEEDING.

23 3. TO CLARIFY THE AWARD.

24 B. A MOTION UNDER SUBSECTION A OF THIS SECTION MUST BE MADE AND NOTICE
25 GIVEN TO ALL PARTIES WITHIN TWENTY DAYS AFTER THE MOVANT RECEIVES NOTICE OF
26 THE AWARD.

27 C. A PARTY TO THE ARBITRATION PROCEEDING MUST GIVE NOTICE OF ANY
28 OBJECTION TO THE MOTION WITHIN TEN DAYS AFTER RECEIPT OF THE NOTICE.

29 D. IF A MOTION TO THE COURT IS PENDING UNDER SECTION 12-3022, 12-3023
30 OR 12-3024, THE COURT MAY SUBMIT THE CLAIM TO THE ARBITRATOR TO CONSIDER
31 WHETHER TO MODIFY OR CORRECT THE AWARD EITHER:

32 1. ON A GROUND STATED IN SECTION 12-3024, SUBSECTION A, PARAGRAPH 1
33 OR 3.

34 2. BECAUSE THE ARBITRATOR HAS NOT MADE A FINAL AND DEFINITE AWARD ON A
35 CLAIM SUBMITTED BY THE PARTIES TO THE ARBITRATION PROCEEDING.

36 3. TO CLARIFY THE AWARD.

37 E. AN AWARD MODIFIED OR CORRECTED PURSUANT TO THIS SECTION IS SUBJECT
38 TO SECTION 12-3019, SUBSECTION A AND SECTIONS 12-3022, 12-3023 AND 12-3024.

39 12-3021. Remedies; fees and expenses of arbitration proceeding

40 A. AN ARBITRATOR MAY AWARD PUNITIVE DAMAGES OR OTHER EXEMPLARY RELIEF
41 IF SUCH AN AWARD IS AUTHORIZED BY LAW IN A CIVIL ACTION INVOLVING THE SAME
42 CLAIM AND THE EVIDENCE PRODUCED AT THE HEARING JUSTIFIES THE AWARD UNDER THE
43 LEGAL STANDARDS OTHERWISE APPLICABLE TO THE CLAIM.

1 B. AN ARBITRATOR MAY AWARD REASONABLE ATTORNEY FEES AND OTHER
2 REASONABLE EXPENSES OF ARBITRATION ONLY IF THAT AWARD IS AUTHORIZED BY LAW IN
3 A CIVIL ACTION INVOLVING THE SAME CLAIM OR BY THE AGREEMENT OF THE PARTIES TO
4 THE ARBITRATION PROCEEDING.

5 C. AS TO ALL REMEDIES OTHER THAN THOSE AUTHORIZED BY SUBSECTIONS A
6 AND B OF THIS SECTION, AN ARBITRATOR MAY ORDER SUCH REMEDIES AS THE
7 ARBITRATOR CONSIDERS JUST AND APPROPRIATE UNDER THE CIRCUMSTANCES OF THE
8 ARBITRATION PROCEEDING. THE FACT THAT SUCH A REMEDY COULD NOT OR WOULD NOT
9 BE GRANTED BY THE COURT IS NOT A GROUND FOR REFUSING TO CONFIRM AN AWARD
10 UNDER SECTION 12-3022 OR FOR VACATING AN AWARD UNDER SECTION 12-3023.

11 D. AN ARBITRATOR'S EXPENSES AND FEES, TOGETHER WITH OTHER EXPENSES,
12 MUST BE PAID AS PROVIDED IN THE AWARD.

13 E. IF AN ARBITRATOR AWARDS PUNITIVE DAMAGES OR OTHER EXEMPLARY RELIEF
14 UNDER SUBSECTION A OF THIS SECTION, THE ARBITRATOR SHALL SPECIFY IN THE AWARD
15 THE BASIS IN FACT JUSTIFYING AND THE BASIS IN LAW AUTHORIZING THE AWARD AND
16 STATE SEPARATELY THE AMOUNT OF THE PUNITIVE DAMAGES OR OTHER EXEMPLARY
17 RELIEF.

18 12-3022. Confirmation of award

19 AFTER A PARTY TO AN ARBITRATION PROCEEDING RECEIVES NOTICE OF AN AWARD,
20 THE PARTY MAY MAKE A MOTION TO THE COURT FOR AN ORDER CONFIRMING THE AWARD AT
21 WHICH TIME THE COURT SHALL ISSUE A CONFIRMING ORDER UNLESS THE AWARD IS
22 MODIFIED OR CORRECTED PURSUANT TO SECTION 12-3020 OR 12-3024 OR IS VACATED
23 PURSUANT TO SECTION 12-3023.

24 12-3023. Vacating award

25 A. ON MOTION TO THE COURT BY A PARTY TO AN ARBITRATION PROCEEDING, THE
26 COURT SHALL VACATE AN AWARD MADE IN THE ARBITRATION PROCEEDING IF ANY OF THE
27 FOLLOWING APPLIES:

- 28 1. THE AWARD WAS PROCURED BY CORRUPTION, FRAUD OR OTHER UNDUE MEANS.
- 29 2. THERE WAS EITHER:

30 (a) EVIDENT PARTIALITY BY AN ARBITRATOR APPOINTED AS A NEUTRAL
31 ARBITRATOR.

32 (b) CORRUPTION BY AN ARBITRATOR.

33 (c) MISCONDUCT BY AN ARBITRATOR PREJUDICING THE RIGHTS OF A PARTY TO
34 THE ARBITRATION PROCEEDING.

35 3. AN ARBITRATOR REFUSED TO POSTPONE THE HEARING ON SHOWING OF
36 SUFFICIENT CAUSE FOR POSTPONEMENT, REFUSED TO CONSIDER EVIDENCE MATERIAL TO
37 THE CONTROVERSY OR OTHERWISE CONDUCTED THE HEARING CONTRARY TO SECTION
38 12-3015, SO AS TO PREJUDICE SUBSTANTIALLY THE RIGHTS OF A PARTY TO THE
39 ARBITRATION PROCEEDING.

40 4. AN ARBITRATOR EXCEEDED THE ARBITRATOR'S POWERS.

41 5. THERE WAS NO AGREEMENT TO ARBITRATE, UNLESS THE PERSON PARTICIPATED
42 IN THE ARBITRATION PROCEEDING WITHOUT RAISING THE OBJECTION UNDER SECTION
43 12-3015, SUBSECTION C NOT LATER THAN THE BEGINNING OF THE ARBITRATION
44 HEARING.

1 6. THE ARBITRATION WAS CONDUCTED WITHOUT PROPER NOTICE OF THE
2 INITIATION OF AN ARBITRATION AS REQUIRED IN SECTION 12-3009 SO AS TO
3 PREJUDICE SUBSTANTIALLY THE RIGHTS OF A PARTY TO THE ARBITRATION PROCEEDING.

4 B. A MOTION UNDER THIS SECTION MUST BE FILED WITHIN NINETY DAYS AFTER
5 THE MOVANT RECEIVES NOTICE OF THE AWARD PURSUANT TO SECTION 12-3019 OR WITHIN
6 NINETY DAYS AFTER THE MOVANT RECEIVES NOTICE OF A MODIFIED OR CORRECTED AWARD
7 PURSUANT TO SECTION 12-3020, UNLESS THE MOVANT ALLEGES THAT THE AWARD WAS
8 PROCURED BY CORRUPTION, FRAUD OR OTHER UNDUE MEANS, IN WHICH CASE THE MOTION
9 MUST BE MADE WITHIN NINETY DAYS AFTER THE GROUND IS KNOWN OR BY THE EXERCISE
10 OF REASONABLE CARE WOULD HAVE BEEN KNOWN BY THE MOVANT.

11 C. IF THE COURT VACATES AN AWARD ON A GROUND OTHER THAN THAT SET FORTH
12 IN SUBSECTION A, PARAGRAPH 5 OF THIS SECTION, IT MAY ORDER A REHEARING. IF
13 THE AWARD IS VACATED ON A GROUND STATED IN SUBSECTION A, PARAGRAPH 1 OR 2 OF
14 THIS SECTION, THE REHEARING MUST BE BEFORE A NEW ARBITRATOR. IF THE AWARD IS
15 VACATED ON A GROUND STATED IN SUBSECTION A, PARAGRAPH 3, 4 OR 6 OF THIS
16 SECTION, THE REHEARING MAY BE BEFORE THE ARBITRATOR WHO MADE THE AWARD OR THE
17 ARBITRATOR'S SUCCESSOR. THE ARBITRATOR MUST RENDER THE DECISION IN THE
18 REHEARING WITHIN THE SAME TIME AS THAT PROVIDED IN SECTION 12-3019,
19 SUBSECTION 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 12-3024. Modification or correction of award

23 A. ON MOTION MADE WITHIN NINETY DAYS AFTER THE MOVANT RECEIVES NOTICE
24 OF THE AWARD PURSUANT TO SECTION 12-3019 OR WITHIN NINETY DAYS AFTER THE
25 MOVANT RECEIVES NOTICE OF A MODIFIED OR CORRECTED AWARD PURSUANT TO SECTION
26 12-3020, THE COURT SHALL MODIFY OR CORRECT THE AWARD IF EITHER:

27 1. THERE WAS AN EVIDENT MATHEMATICAL MISCALCULATION OR AN EVIDENT
28 MISTAKE IN THE DESCRIPTION OF A PERSON OR THING OR PROPERTY REFERRED TO IN
29 THE AWARD.

30 2. THE ARBITRATOR MADE AN AWARD ON A CLAIM NOT SUBMITTED TO THE
31 ARBITRATOR AND THE AWARD MAY BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE
32 DECISION ON THE CLAIMS SUBMITTED.

33 3. THE AWARD IS IMPERFECT IN A MATTER OF FORM NOT AFFECTING THE MERITS
34 OF THE DECISION ON THE CLAIMS SUBMITTED.

35 B. IF A MOTION MADE UNDER SUBSECTION A OF THIS SECTION IS GRANTED, THE
36 COURT SHALL MODIFY OR CORRECT AND CONFIRM THE AWARD AS MODIFIED OR CORRECTED.
37 OTHERWISE, UNLESS A MOTION TO VACATE IS PENDING, THE COURT SHALL CONFIRM THE
38 AWARD.

39 C. A MOTION TO MODIFY OR CORRECT AN AWARD PURSUANT TO THIS SECTION MAY
40 BE JOINED WITH A MOTION TO VACATE THE AWARD.

41 12-3025. Judgment on award; attorney fees and litigation
42 expenses

43 A. ON GRANTING AN ORDER VACATING AN AWARD WITHOUT DIRECTING A
44 REHEARING OR CONFIRMING, MODIFYING OR CORRECTING AN AWARD, THE COURT SHALL

1 ENTER A JUDGMENT IN CONFORMITY WITH THE ORDER. THE JUDGMENT MAY BE RECORDED,
2 DOCKETED AND ENFORCED AS ANY OTHER JUDGMENT IN A CIVIL ACTION.

3 B. A COURT MAY ALLOW REASONABLE COSTS OF THE MOTION AND SUBSEQUENT
4 JUDICIAL PROCEEDINGS.

5 C. ON APPLICATION OF A PREVAILING PARTY TO A CONTESTED JUDICIAL
6 PROCEEDING UNDER SECTION 12-3022, 12-3023 OR 12-3024, THE COURT MAY ADD
7 REASONABLE ATTORNEY FEES AND OTHER REASONABLE EXPENSES OF LITIGATION INCURRED
8 IN A JUDICIAL PROCEEDING AFTER THE AWARD IS MADE TO A JUDGMENT VACATING AN
9 AWARD WITHOUT DIRECTING A REHEARING OR CONFIRMING, MODIFYING OR CORRECTING AN
10 AWARD.

11 12-3026. Jurisdiction

12 A. A COURT OF THIS STATE HAVING JURISDICTION OVER THE CONTROVERSY AND
13 THE PARTIES MAY ENFORCE AN AGREEMENT TO ARBITRATE.

14 B. AN AGREEMENT TO ARBITRATE PROVIDING FOR ARBITRATION IN THIS STATE
15 CONFERS EXCLUSIVE JURISDICTION ON THE COURT TO ENTER JUDGMENT ON AN AWARD
16 UNDER THIS CHAPTER.

17 12-3027. Venue

18 A MOTION PURSUANT TO SECTION 12-3005 MUST BE MADE IN THE COURT OF THE
19 COUNTY IN WHICH THE AGREEMENT TO ARBITRATE SPECIFIES THE ARBITRATION HEARING
20 IS TO BE HELD OR, IF THE HEARING HAS BEEN HELD, IN THE COURT OF THE COUNTY IN
21 WHICH IT WAS HELD. OTHERWISE, THE MOTION MAY BE MADE IN THE COURT OF ANY
22 COUNTY IN WHICH AN ADVERSE PARTY RESIDES OR HAS A PLACE OF BUSINESS OR, IF NO
23 ADVERSE PARTY HAS A RESIDENCE OR PLACE OF BUSINESS IN THIS STATE, IN THE
24 COURT OF ANY COUNTY IN THIS STATE. ALL SUBSEQUENT MOTIONS MUST BE MADE IN
25 THE COURT HEARING THE INITIAL MOTION UNLESS THE COURT OTHERWISE DIRECTS.

26 12-3028. Uniformity of application and construction

27 IN APPLYING AND CONSTRUING THIS CHAPTER, CONSIDERATION MUST BE GIVEN TO
28 THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER
29 AMONG STATES THAT ENACT IT.

30 12-3029. Relationship to electronic signatures in global and
31 national commerce act

32 THE PROVISIONS OF THIS CHAPTER GOVERNING THE LEGAL EFFECT, VALIDITY AND
33 ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES AND OF
34 CONTRACTS PERFORMED WITH THE USE OF SUCH RECORDS OR SIGNATURES CONFORM TO THE
35 REQUIREMENTS OF SECTION 102 OF THE ELECTRONIC SIGNATURES IN GLOBAL AND
36 NATIONAL COMMERCE ACT (P.L. 106-229; 114 STAT. 463; 15 UNITED STATES CODE
37 SECTIONS 7001 AND 7002).

38 Sec. 4. Section 41-2615, Arizona Revised Statutes, is amended to read:

39 41-2615. Exclusive remedy

40 Notwithstanding any law to the contrary, including ~~the provisions of~~
41 title 12, chapter 7, article 2 and title 12, chapter ~~9, article 1~~ 21, this
42 article and the rules ~~promulgated~~ ADOPTED under this article shall provide
43 the exclusive procedure for asserting a claim against this state or any
44 agency of this state arising in relation to any procurement conducted under
45 this chapter.

1 Sec. 5. Savings clause

2 Title 12, chapter 21, Arizona Revised Statutes, as added by this act,
3 does not affect an action or proceeding commenced or a right accrued before
4 January 1, 2011. Subject to section 12-3003, Arizona Revised Statutes, as
5 added by this act, an arbitration agreement made before January 1, 2011 is
6 governed by title 12, chapter 9, article 1, Arizona Revised Statutes.

7 Sec. 6. Effective date

8 Sections 10-1806, 12-2101.01 and 41-2615, Arizona Revised Statutes, as
9 amended by this act, and title 12, chapter 21, Arizona Revised Statutes, as
10 added by this act, are effective from and after December 31, 2010.