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# SENATE BILL No. 147

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 15-4-11-23; IC 24-5-20-13; IC 34-6-2; IC 34-57.

**Synopsis:** Uniform arbitration act. Replaces statutory arbitration provisions with the Uniform Arbitration Act prepared by the National Conference of Commissioners on Uniform State Laws. Repeals current laws on arbitration and alternative dispute resolution.

**Effective:** July 1, 2005.

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### Simpson

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January 4, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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## SENATE BILL No. 147



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 15-4-11-23 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. Arbitration under
- 3 this chapter is not subject to ~~IC 34-57-2~~. **IC 34-57-5.**
- 4 SECTION 2. IC 24-5-20-13 IS AMENDED TO READ AS
- 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) The remedies
- 6 afforded by this chapter are:
- 7 (1) cumulative;
- 8 (2) not exclusive; and
- 9 (3) in addition to any other legal or equitable remedies available
- 10 to the consumer.
- 11 (b) In addition to any other remedies available, a consumer who
- 12 suffers loss as a result of any violation of this chapter may:
- 13 (1) bring an action to recover damages; or
- 14 (2) submit the matter to arbitration under ~~IC 34-57-2~~. **IC 34-57-5.**
- 15 SECTION 3. IC 34-6-2-10.5 IS ADDED TO THE INDIANA CODE
- 16 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
- 17 1, 2005]: **Sec. 10.5. "Arbitration organization", for purposes of**



1 **IC 34-57-5, has the meaning set forth in IC 34-57-5-1.**  
2 SECTION 4. IC 34-6-2-10.7 IS ADDED TO THE INDIANA CODE  
3 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
4 **1, 2005]: Sec. 10.7. "Arbitrator", for purposes of IC 34-57-5, has**  
5 **the meaning set forth in IC 34-57-5-1.**  
6 SECTION 5. IC 34-6-2-31 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. (a) "Court", for  
8 purposes of IC 34-51-4, refers to the court awarding a judgment.  
9 (b) "Court", for purposes of ~~IC 34-57-2~~, **IC 34-57-5**, has the  
10 meaning set forth in ~~IC 34-57-2-17~~. **IC 34-57-5-1.**  
11 SECTION 6. IC 34-6-2-71.8 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
13 **1, 2005]: Sec. 71.8. "Knowledge", for purposes of IC 34-57-5, has**  
14 **the meaning set forth in IC 34-57-5-1.**  
15 SECTION 7. IC 34-6-2-103 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 103. (a) "Person", for  
17 purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.  
18 (b) "Person", for purposes of IC 34-24-4, means:  
19 (1) an individual;  
20 (2) a governmental entity;  
21 (3) a corporation;  
22 (4) a firm;  
23 (5) a trust;  
24 (6) a partnership; or  
25 (7) an incorporated or unincorporated association that exists  
26 under or is authorized by the laws of this state, another state, or a  
27 foreign country.  
28 (c) "Person", for purposes of section 44.8 of this chapter, means an  
29 adult or a minor.  
30 (d) "Person", for purposes of IC 34-26-4, has the meaning set forth  
31 in IC 35-41-1-22.  
32 (e) "Person", for purposes of IC 34-30-5, means any of the  
33 following:  
34 (1) An individual.  
35 (2) A corporation.  
36 (3) A partnership.  
37 (4) An unincorporated association.  
38 (5) The state (as defined in IC 34-6-2-140).  
39 (6) A political subdivision (as defined in IC 34-6-2-110).  
40 (7) Any other entity recognized by law.  
41 (f) "Person", for purposes of IC 34-30-6, means an individual, a  
42 corporation, a limited liability company, a partnership, an

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- 1 unincorporated association, or a governmental entity that:
- 2 (1) has qualifications or experience in:
- 3 (A) storing, transporting, or handling a hazardous substance or
- 4 compressed gas;
- 5 (B) fighting fires;
- 6 (C) emergency rescue; or
- 7 (D) first aid care; or
- 8 (2) is otherwise qualified to provide assistance appropriate to
- 9 remedy or contribute to the remedy of the emergency.
- 10 (g) "Person", for purposes of IC 34-30-18, includes:
- 11 (1) an individual;
- 12 (2) an incorporated or unincorporated organization or association;
- 13 (3) the state; ~~of Indiana~~;
- 14 (4) a political subdivision (as defined in IC 36-1-2-13);
- 15 (5) an agency of the state or a political subdivision; or
- 16 (6) a group of such persons acting in concert.
- 17 (h) "Person", for purposes of sections 42, 43, 69, and 95 of this
- 18 chapter, means an individual, an incorporated or unincorporated
- 19 organization or association, or a group of such persons acting in
- 20 concert.
- 21 (i) "Person", for purposes of IC 34-30-10.5, means the following:
- 22 (1) A political subdivision (as defined in IC 36-1-2-13).
- 23 (2) A volunteer fire department (as defined in IC 36-8-12-2).
- 24 (3) An employee of an entity described in subdivision (1) or (2)
- 25 who acts within the scope of the employee's responsibilities.
- 26 (4) A volunteer firefighter (as defined in IC 36-8-12-2) who is
- 27 acting for a volunteer fire department.
- 28 (5) After March 31, 2002, a corporation, a limited liability
- 29 company, a partnership, an unincorporated association, or any
- 30 other entity recognized by law.
- 31 **(j) "Person", for purposes of IC 34-57-5, has the meaning set**
- 32 **forth in IC 34-57-5-1.**
- 33 SECTION 8. IC 34-6-2-129.4 IS ADDED TO THE INDIANA
- 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 35 [EFFECTIVE JULY 1, 2005]: **Sec. 129.4. "Record", for purposes of**
- 36 **IC 34-57-5, has the meaning set forth in IC 34-57-5-1.**
- 37 SECTION 9. IC 34-57-3-4 IS AMENDED TO READ AS
- 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. To be eligible for
- 39 funds under this chapter, a center must do the following:
- 40 (1) Comply with this chapter and the rules adopted by the chief
- 41 justice of Indiana.
- 42 (2) Provide neutral mediators who have received training in

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1 conflict resolution techniques as specified under rules adopted by  
 2 the chief justice of Indiana.  
 3 (3) Provide dispute resolution without cost to a participant who is  
 4 indigent and at nominal or no cost to other participants.  
 5 (4) Provide dispute resolution services to the community for  
 6 parties who participate on a voluntary basis.  
 7 (5) Ensure that any arbitration services offered by the center are  
 8 in compliance with ~~IC 34-57-2~~. **IC 34-57-5**.  
 9 (6) At the conclusion of the dispute resolution process do the  
 10 following, if an agreement is reached:  
 11 (A) Provide a written agreement or decision setting forth the  
 12 settlement of the issues and future responsibilities of each  
 13 participant.  
 14 (B) If the matter was referred by the court for dispute  
 15 resolution after a cause was filed, provide a written agreement  
 16 or decision to the court that made the referral.  
 17 (C) If the matter was referred by a prosecuting attorney for  
 18 dispute resolution, provide a written agreement or decision to  
 19 the prosecuting attorney that made the referral.  
 20 SECTION 10. IC 34-57-3-10 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. ~~IC 34-57-2~~  
 22 **IC 34-57-5** applies to arbitration conducted under this chapter.  
 23 SECTION 11. IC 34-57-3-15 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) This section  
 25 applies to a dispute described in section 1(3) of this chapter.  
 26 (b) Except as provided under subsection (c), the running of a statute  
 27 of limitation ceases to run after the time:  
 28 (1) arbitration is initiated under ~~IC 34-57-2-2~~ **IC 34-57-5-9** (or  
 29 **IC 34-4-2-2** or **IC 34-57-2-2** before **its their** repeal); or  
 30 (2) the parties sign an agreement to mediate.  
 31 (c) The statute of limitation resumes running after the earlier of the  
 32 following:  
 33 (1) The date the parties enter into a written agreement under  
 34 section 4(6) of this chapter (or IC 34-4-2.5-9(6) before its repeal).  
 35 (2) Six (6) months after the date that the statute of limitation was  
 36 suspended under subsection (b) (or IC 34-4-2.5-20(b) before its  
 37 repeal).  
 38 SECTION 12. IC 34-57-5 IS ADDED TO THE INDIANA CODE  
 39 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2005]:  
 41 **Chapter 5. Uniform Arbitration Act**  
 42 **Sec. 1. The following definitions apply throughout this chapter:**

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1 (1) "Arbitration organization" means an association, an  
2 agency, a board, a commission, or other entity that:

3 (A) is neutral; and

4 (B) initiates, sponsors, or administers an arbitration  
5 proceeding or is involved in the appointment of an  
6 arbitrator.

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

10 (3) "Court" means a circuit or superior court. The term  
11 includes a probate court if the subject of the arbitration  
12 concerns a matter over which a probate court has  
13 jurisdiction.

14 (4) "Knowledge" means actual knowledge.

15 (5) "Person" means an individual, a corporation, a business  
16 trust, an estate, a trust, a partnership, a limited liability  
17 company, an association, a joint venture, a government, a  
18 governmental subdivision, an agency, an instrumentality, a  
19 public corporation, or any other legal or commercial entity.

20 (6) "Record" means information that is:

21 (A) inscribed on a tangible medium or stored in an  
22 electronic or other medium; and

23 (B) retrievable in perceivable form.

24 **Sec. 2. (a) Except as otherwise provided in this chapter, a person  
25 gives notice to another person by taking action that is reasonably  
26 necessary to inform the other person in ordinary course whether  
27 or not the other person acquires knowledge of the notice.**

28 **(b) A person has notice if the person has knowledge of the notice  
29 or has received notice.**

30 **(c) A person receives notice when:**

31 **(1) the notice comes to the person's attention; or**

32 **(2) the notice is delivered:**

33 **(A) at the person's place of residence or place of business;  
34 or**

35 **(B) at another location held out by the person as a place of  
36 delivery of such communications.**

37 **Sec. 3. (a) This chapter governs an agreement to arbitrate made  
38 after June 30, 2005.**

39 **(b) Subject to subsection (c), this chapter governs an agreement  
40 to arbitrate made before July 1, 2005, if all the parties to the  
41 agreement or to the arbitration proceeding so agree in a record.**

42 **(c) After June 30, 2005, this chapter governs an agreement to**

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arbitrate whenever made.

Sec. 4. (a) Except as otherwise provided in subsections (b) and (c), the parties to an agreement to arbitrate or to an arbitration proceeding may:

- (1) waive; or
- (2) vary the effect of;

the requirements of this chapter to the extent allowed 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 section 5(a), 6(a), 8, 17(a), 17(b), 26, or 28 of this chapter;
- (2) agree to restrict unreasonably the right under section 9 of this chapter to notice of the initiation of an arbitration proceeding;
- (3) agree to restrict unreasonably the right under section 12 of this chapter to disclosure of any facts by a neutral arbitrator; or
- (4) waive the right under section 16 of this chapter of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter, 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 section 3(a), 3(c), 7, 14, 18, 20(c), 20(d), 22, 23, 24, 25(a), 25(b), 29, or 30 of this chapter.

Sec. 5. (a) Except as otherwise provided in section 28 of this chapter, an application for judicial relief under this chapter must be:

- (1) made by motion to the court; and
- (2) 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 motion to the court under this chapter must be served in the manner provided by law for the service of a summons in 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.

Sec. 6. (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

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1 except on a ground that exists at law or in equity for the revocation  
2 of a contract.

3 (b) The court shall decide if:

4 (1) an agreement to arbitrate exists; or

5 (2) a controversy is subject to an agreement to arbitrate.

6 (c) An arbitrator shall decide if a:

7 (1) condition precedent to arbitrability has been fulfilled; and

8 (2) contract containing a valid agreement to arbitrate is  
9 enforceable.

10 (d) If a party to a judicial proceeding:

11 (1) challenges the existence of; or

12 (2) claims that a controversy is not subject to;

13 an agreement to arbitrate, the arbitration proceeding may  
14 continue pending final resolution of the issue by the court, unless  
15 the court otherwise orders.

16 Sec. 7. (a) On motion of a person showing an agreement to  
17 arbitrate and alleging another person's refusal to arbitrate under  
18 the agreement:

19 (1) if the refusing party does not appear or does not oppose  
20 the motion, the court shall order the parties to arbitrate; and

21 (2) if the refusing party opposes the motion, the court shall  
22 proceed summarily to decide the issue and order the parties  
23 to arbitrate unless the court finds that there is no enforceable  
24 agreement to arbitrate.

25 (b) On motion of a person alleging that an arbitration  
26 proceeding has been initiated or threatened but that there is no  
27 agreement to arbitrate, the court shall proceed summarily to  
28 decide the issue. If the court finds that there is an enforceable  
29 agreement to arbitrate, the court shall order the parties to  
30 arbitrate.

31 (c) If the court finds that there is no enforceable agreement to  
32 arbitrate, the court may not, under subsection (a) or (b), order the  
33 parties to arbitrate.

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

37 (e) If a proceeding involving a claim referable to arbitration  
38 under an alleged agreement to arbitrate is pending in court, a  
39 motion under this section must be made in the court where the  
40 proceeding is pending. Otherwise, a motion under this section may  
41 be made in any court as provided in section 27 of this chapter.

42 (f) If a party makes a motion to the court to order arbitration,

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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.

Sec. 8. (a) Before an arbitrator is appointed and is authorized and able to act, the court, on 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 the same orders the court is authorized to issue under subsection (a) 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 a motion under subsection (a) or (b).

Sec. 9. (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the:

- (1) manner agreed between the parties; or
- (2) 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 the nature of the controversy and the remedy sought.

(b) Unless the person objects for lack or insufficiency of notice under section 15(c) of this chapter not later than the beginning of the arbitration hearing, a person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

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1           **Sec. 10. (a) Except as otherwise provided in subsection (c), on**  
 2 **motion of a party to an agreement to arbitrate or to an arbitration**  
 3 **proceeding, the court may order consolidation of separate**  
 4 **arbitration proceedings as to all or some of the claims if:**

5           **(1) there are separate agreements to arbitrate or separate**  
 6 **arbitration proceedings between the same persons or one (1)**  
 7 **of the persons is a party to a separate agreement to arbitrate**  
 8 **or a separate arbitration proceeding with a third person;**

9           **(2) the claims subject to the agreements to arbitrate arise in**  
 10 **substantial part from the same transaction or series of related**  
 11 **transactions;**

12           **(3) the existence of a common issue of law or fact creates the**  
 13 **possibility of conflicting decisions in the separate arbitration**  
 14 **proceedings; and**

15           **(4) prejudice resulting from a failure to consolidate is not**  
 16 **outweighed by the risk of undue delay or prejudice to the**  
 17 **rights of or hardship to parties opposing consolidation.**

18           **(b) The court may:**

19           **(1) order consolidation of separate arbitration proceedings as**  
 20 **to some claims; and**

21           **(2) allow other claims to be resolved in separate arbitration**  
 22 **proceedings.**

23           **(c) The court may not order consolidation of the claims of a**  
 24 **party to an agreement to arbitrate if the agreement prohibits**  
 25 **consolidation.**

26           **Sec. 11. (a) If the parties to an agreement to arbitrate agree on**  
 27 **a method for appointing an arbitrator, that method must be**  
 28 **followed, unless the method fails. If:**

29           **(1) the parties have not agreed on a method;**

30           **(2) the agreed method fails; or**

31           **(3) an arbitrator appointed fails or is unable to act and a**  
 32 **successor has not been appointed;**

33 **the court, on motion of a party to the arbitration proceeding, shall**  
 34 **appoint the arbitrator. An arbitrator so appointed has all the**  
 35 **powers of an arbitrator designated in the agreement to arbitrate**  
 36 **or appointed under the agreed method.**

37           **(b) An individual who has:**

38           **(1) a known, direct, and material interest in the outcome of**  
 39 **the arbitration proceeding; or**

40           **(2) a known, existing, and substantial relationship with a**  
 41 **party;**

42 **may not serve as an arbitrator if the arbitrator is required by an**

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1 agreement to be neutral.

2 **Sec. 12. (a) Before accepting appointment, an individual who is**  
 3 **requested to serve as an arbitrator, after making a reasonable**  
 4 **inquiry, shall disclose to all parties to the agreement to arbitrate**  
 5 **and to the arbitration proceeding and to any other arbitrators any**  
 6 **known facts that a reasonable person would consider likely to**  
 7 **affect the impartiality of the individual as arbitrator in the**  
 8 **arbitration proceeding, including:**

9 (1) a financial or personal interest in the outcome of the  
 10 arbitration proceeding; and

11 (2) an existing or past relationship with:

12 (A) a party to the agreement to arbitrate or to the  
 13 arbitration proceeding;

14 (B) counsel or representatives of a party;

15 (C) a witness; or

16 (D) another arbitrator.

17 (b) An arbitrator has a continuing obligation to disclose to:

18 (1) all parties to the agreement to arbitrate and the  
 19 arbitration proceeding; and

20 (2) any other arbitrators;

21 any facts that the arbitrator learns after accepting appointment  
 22 that a reasonable person would consider likely to affect the  
 23 impartiality of the arbitrator.

24 (c) If:

25 (1) an arbitrator discloses a fact required by subsection (a) or  
 26 (b) to be disclosed; and

27 (2) a party timely objects to the appointment or continued  
 28 service of the arbitrator based on the fact disclosed;

29 the objection may be a ground under section 23(a)(2) of this  
 30 chapter for vacating an award made by the arbitrator.

31 (d) If the arbitrator did not disclose a fact as required under  
 32 subsection (a) or (b) upon timely objection by a party, the court  
 33 under section 23(a)(2) of this chapter may vacate an award.

34 (e) An arbitrator who is appointed as a neutral arbitrator and  
 35 who does not disclose:

36 (1) a known, direct, and material interest in the outcome of  
 37 the arbitration proceeding; or

38 (2) a known, existing, and substantial relationship with a  
 39 party;

40 is presumed to act with evident partiality under section 23(a)(2) of  
 41 this chapter.

42 (f) If the parties to an arbitration proceeding agree to the

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1 procedures of an arbitration organization or any other procedures  
 2 for challenges to arbitrators before an award is made, substantial  
 3 compliance with the procedures is a condition precedent to a  
 4 motion to vacate an award on the grounds of not complying with  
 5 section 23(a)(2) of this chapter.

6 Sec. 13. If there is more than one (1) arbitrator, the powers of  
 7 an arbitrator must be exercised by a majority of the arbitrators,  
 8 but all the arbitrators shall conduct a hearing ordered under  
 9 section 15(c) of this chapter.

10 Sec. 14. (a) An arbitrator or an arbitration organization acting  
 11 in the capacity of an arbitrator is immune from civil liability to the  
 12 same extent as a judge of a court of Indiana acting in a judicial  
 13 capacity.

14 (b) The immunity provided under this section supplements  
 15 immunity provided under other law.

16 (c) The failure of an arbitrator to make a disclosure required by  
 17 section 12 of this chapter does not result in the loss of immunity  
 18 provided under this section.

19 (d) This subsection does not apply:

20 (1) to the extent necessary to determine the claim of an  
 21 arbitrator, an arbitration organization, or a representative of  
 22 the arbitration organization against a party to the arbitration  
 23 proceeding; or

24 (2) to a hearing on a motion to vacate an award under section  
 25 23(a)(1) or 23(a)(2) of this chapter if the movant establishes  
 26 prima facie that a ground for vacating the award exists.

27 In a judicial, an administrative, or a similar proceeding, an  
 28 arbitrator or a representative of an arbitration organization is not  
 29 competent to testify and may not be required to produce records  
 30 as to any statement, conduct, decision, or ruling occurring during  
 31 the arbitration proceeding to the same extent as a judge of a court  
 32 of Indiana acting in a judicial capacity.

33 (e) If a person:

34 (1) commences a civil action against an arbitrator, an  
 35 arbitration organization, or a representative of an arbitration  
 36 organization arising from the services of the arbitrator,  
 37 organization, or representative; or

38 (2) seeks to compel an arbitrator or a representative of an  
 39 arbitration organization to testify or produce records in  
 40 violation of subsection (d);

41 and the court decides that the arbitrator, arbitration organization,  
 42 or representative of an arbitration organization is immune from

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1 civil liability or that the arbitrator or representative of the  
 2 organization is not competent to testify, the court shall award to  
 3 the arbitrator, organization, or representative reasonable  
 4 attorney's fees and other reasonable expenses of litigation.

5 **Sec. 15. (a) An arbitrator may conduct an arbitration in any**  
 6 **manner the arbitrator considers appropriate for a fair and**  
 7 **expeditious disposition of the proceeding. The arbitrator may:**

8 (1) hold conferences with the parties to the arbitration  
 9 proceeding before the hearing; and

10 (2) determine the admissibility, relevance, materiality, and  
 11 weight of evidence.

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

14 (1) if all interested parties agree; or

15 (2) upon request of one (1) party to the arbitration proceeding  
 16 if the party gives notice to all other parties to the proceeding  
 17 and the other parties have a reasonable opportunity to  
 18 respond.

19 (c) If an arbitrator orders a hearing, the arbitrator shall set a  
 20 time and place and give notice of the hearing not less than five (5)  
 21 days before the hearing begins. Unless a party to the arbitration  
 22 proceeding makes an objection to the lack of or the insufficiency of  
 23 notice not later than the beginning of the hearing, the party's  
 24 appearance at the hearing waives the objection. On request of a  
 25 party to the arbitration proceeding and for good cause shown, or  
 26 on the arbitrator's own initiative, the arbitrator may adjourn the  
 27 hearing from time to time as necessary but may not postpone the  
 28 hearing to a time later than that fixed by the agreement to  
 29 arbitrate for making the award unless the parties to the arbitration  
 30 proceeding consent to a later date. The arbitrator may hear and  
 31 decide the controversy upon the evidence produced although a  
 32 party who was duly notified of the arbitration proceeding did not  
 33 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), a party to the arbitration  
 36 proceeding has a right to:

37 (1) be heard;

38 (2) present evidence material to the controversy; and

39 (3) cross-examine witnesses appearing at the hearing.

40 (e) If an arbitrator ceases or is unable to act during the  
 41 arbitration proceeding, a replacement arbitrator must be  
 42 appointed in accordance with section 11 of this chapter to continue

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the proceeding and to resolve the controversy.

**Sec. 16.** A party to an arbitration proceeding may be represented by a lawyer.

**Sec. 17. (a)** An arbitrator may:

- (1) issue a subpoena for the attendance of a witness and for the production of records and other evidence at hearings; and
- (2) administer oaths.

A subpoena must be served in the manner for service of subpoenas in a civil action and, on 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.

**(b)** To make the proceedings fair, expeditious, and cost effective, on 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 allow discovery the arbitrator decides is appropriate in the circumstances, taking into account the:

- (1) needs of the parties to the arbitration proceeding and other affected persons; and
- (2) desirability of making the proceeding fair, expeditious, and cost effective.

**(d)** If an arbitrator allows discovery under subsection (c), the arbitrator may:

- (1) order a party to the arbitration proceeding to comply with the arbitrator's discovery related orders;
- (2) issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding; and
- (3) take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in Indiana.

**(e)** An arbitrator may issue a protective order to prevent the disclosure of:

- (1) privileged information;
- (2) confidential information;
- (3) trade secrets; and
- (4) any other information protected from disclosure;

to the extent a court could issue a protective order if the controversy were the subject of a civil action in Indiana.

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1           (1) laws compelling a person under subpoena to testify; and  
 2           (2) fees for attending a judicial proceeding, deposition, or  
 3           discovery proceeding as a witness;  
 4       **apply to an arbitration proceeding as if the controversy were the**  
 5       **subject of a civil action in Indiana.**

6           (g) The court may enforce a subpoena or discovery related  
 7       order for the attendance of a witness in Indiana and for the  
 8       production of records and other evidence issued by an arbitrator  
 9       in connection with an arbitration proceeding in another state upon  
 10       conditions determined by the court to make the arbitration  
 11       proceeding fair, expeditious, and cost effective. A subpoena or  
 12       discovery related order issued by an arbitrator in another state  
 13       must be:

- 14           (1) served in the manner provided by law for service of
- 15           subpoenas in a civil action in Indiana; and
- 16           (2) on motion to the court by a party to the arbitration
- 17           proceeding or the arbitrator, enforced in the manner
- 18           provided by law for enforcement of subpoenas in a civil action
- 19           in Indiana.

20       **Sec. 18. If an arbitrator makes a pre-award ruling in favor of a**  
 21       **party to the arbitration proceeding, the party may request the**  
 22       **arbitrator to incorporate the ruling into an award under section 19**  
 23       **of this chapter. A prevailing party may make a motion to the court**  
 24       **for an expedited order to confirm the award under section 22 of**  
 25       **this chapter, in which case the court shall summarily decide the**  
 26       **motion. The court shall issue an order to confirm the award unless**  
 27       **the court vacates, modifies, or corrects the award under section 23**  
 28       **or 24 of this chapter.**

29       **Sec. 19. (a) An arbitrator shall make a record of an award. The**  
 30       **record must be signed or otherwise authenticated by any**  
 31       **arbitrator who concurs with the award. The arbitrator or the**  
 32       **arbitration organization shall give notice of the award, including**  
 33       **a copy of the award, to each party to the arbitration proceeding.**

34       **(b) An award must be made within the time specified by the**  
 35       **agreement to arbitrate or, if not specified in the agreement, within**  
 36       **the time ordered by the court. The court may extend the time, or**  
 37       **the parties to the arbitration proceeding may agree in a record to**  
 38       **extend the time. The court or the parties may do so within or after**  
 39       **the time specified or ordered. A party waives any objection that an**  
 40       **award was not timely made unless the party gives notice of the**  
 41       **objection to the arbitrator before receiving notice of the award.**

42       **Sec. 20. (a) On motion to an arbitrator by a party to an**

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1 arbitration proceeding, the arbitrator may modify or correct an  
 2 award:  
 3 (1) on a ground stated in section 24(a)(1) or 24(a)(3) of this  
 4 chapter;  
 5 (2) because the arbitrator has not made a final and definite  
 6 award on a claim submitted by the parties to the arbitration  
 7 proceeding; or  
 8 (3) to clarify the award.  
 9 (b) A motion under subsection (a) must be made and notice  
 10 given to all parties within twenty (20) days after the movant  
 11 receives notice of the award.  
 12 (c) A party to the arbitration proceeding must give notice of any  
 13 objection to the motion not more than ten (10) days after receipt of  
 14 the notice.  
 15 (d) If a motion to the court is pending under section 22, 23, or 24  
 16 of this chapter, the court may submit the claim to the arbitrator to  
 17 consider whether to modify or correct the award:  
 18 (1) on a ground stated in section 24(a)(1) or 24(a)(3) of this  
 19 chapter;  
 20 (2) because the arbitrator has not made a final and definite  
 21 award on a claim submitted by the parties to the arbitration  
 22 proceeding; or  
 23 (3) to clarify the award.  
 24 (e) An award modified or corrected under this section is subject  
 25 to sections 19(a), 22, 23, and 24 of this chapter.  
 26 Sec. 21. (a) An arbitrator may award punitive damages or other  
 27 exemplary relief if:  
 28 (1) the award is authorized by law in a civil action involving  
 29 the same claim; and  
 30 (2) the evidence produced at the hearing justifies the award  
 31 under the legal standards otherwise applicable to the claim.  
 32 (b) An arbitrator may award reasonable attorney's fees and  
 33 other reasonable expenses of arbitration if the award is authorized  
 34 by:  
 35 (1) law in a civil action involving the same claim; or  
 36 (2) the agreement of the parties to the arbitration proceeding.  
 37 (c) For remedies other than those authorized by subsections (a)  
 38 and (b), an arbitrator may order remedies that the arbitrator  
 39 considers just and appropriate under the circumstances of the  
 40 arbitration proceeding. The fact that the remedy could not or  
 41 would not be granted by the court is not a ground for:  
 42 (1) refusing to confirm an award under section 22 of this

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chapter; or

(2) vacating an award under section 23 of this chapter.

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

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a), the arbitrator shall:

(1) specify in the award the basis in fact justifying and the basis in law authorizing the award; and

(2) state separately the amount of the punitive damages or other exemplary relief.

Sec. 22. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award, at which time the court shall issue a confirming order unless the award is:

(1) modified or corrected under section 20 or 24 of this chapter; or

(2) vacated under section 23 of this chapter.

Sec. 23. (a) On 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 15 of this chapter 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 section 15(c) of this chapter 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 under section 9 of this chapter so as to prejudice substantially the rights of a party

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1 to the arbitration proceeding.

2 (b) A motion under this section must be made not more than  
3 ninety (90) days after the movant receives notice of the award  
4 under section 19 of this chapter or not more than ninety (90) days  
5 after the movant receives notice of a modified or corrected award  
6 under section 20 of this chapter, unless the movant alleges that the  
7 award was procured by corruption, fraud, or other undue means,  
8 in which case the motion must be made not more than ninety (90)  
9 days after the ground is known or by the exercise of reasonable  
10 care would have been known by the movant.

11 (c) If the court vacates an award on a ground other than that set  
12 forth in subsection (a)(5), the court may order a rehearing. If the  
13 award is vacated on a ground stated in:

14 (1) subsection (a)(1) or (a)(2), the rehearing must be before a  
15 new arbitrator; and

16 (2) subsection (a)(3), (a)(4), or (a)(6), the rehearing may be  
17 before the arbitrator who made the award or the arbitrator's  
18 successor.

19 The arbitrator must render the decision in the rehearing within the  
20 same time as that provided in section 19(b) of this chapter for an  
21 award.

22 (d) If the court denies a motion to vacate an award, the court  
23 shall confirm the award unless a motion to modify or correct the  
24 award is pending.

25 Sec. 24. (a) On motion made within ninety (90) days after the  
26 movant receives notice of the award under section 19 of this  
27 chapter or within ninety (90) days after the movant receives notice  
28 of a modified or corrected award under section 20 of this chapter,  
29 the court shall modify or correct the award if:

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

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

37 (3) the award is imperfect in a matter of form not affecting  
38 the merits of the decision on the claims submitted.

39 (b) If a motion made under subsection (a) is granted, the court  
40 shall modify or correct and confirm the award as modified or  
41 corrected. Otherwise, unless a motion to vacate is pending, the  
42 court shall confirm the award.

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

3 Sec. 25. (a) Upon granting an order confirming, vacating  
4 without directing a rehearing, modifying, or correcting an award,  
5 the court shall enter a judgment in conformity with the order. The  
6 judgment may be recorded, docketed, and enforced as any other  
7 judgment in a civil action.

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

10 (c) On application of a prevailing party to a contested judicial  
11 proceeding under section 22, 23, or 24 of this chapter, the court  
12 may add reasonable attorney's fees and other reasonable expenses  
13 of litigation incurred in a judicial proceeding after the award is  
14 made to a judgment confirming, vacating without directing a  
15 rehearing, modifying, or correcting an award.

16 Sec. 26. (a) A court in Indiana that has jurisdiction over the  
17 controversy and the parties may enforce an agreement to arbitrate.

18 (b) An agreement to arbitrate providing for arbitration in  
19 Indiana confers exclusive jurisdiction on the court to enter  
20 judgment on an award under this chapter.

21 Sec. 27. A motion under section 5 of this chapter must be made:

- 22 (1) in the court of the county in which the agreement to
- 23 arbitrate specifies the arbitration hearing is to be held; or
- 24 (2) if the hearing has been held, in the court of the county in
- 25 which the hearing was held.

26 Otherwise, the motion may be made in the court of any county in  
27 which an adverse party resides or has a place of business or, if an  
28 adverse party does not have a residence or place of business in  
29 Indiana, in the court of any county in Indiana. All subsequent  
30 motions must be made in the court hearing the initial motion unless  
31 the court otherwise directs.

32 Sec. 28. (a) An appeal may be taken from:

- 33 (1) an order denying a motion to compel arbitration;
- 34 (2) an order granting a motion to stay arbitration;
- 35 (3) an order confirming or denying confirmation of an award;
- 36 (4) an order modifying or correcting an award;
- 37 (5) an order vacating an award without directing a rehearing;
- 38 or
- 39 (6) a final judgment entered under this chapter.

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

42 Sec. 29. In applying and construing this uniform act,

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1 consideration must be given to the need to promote uniformity of  
2 the law with respect to the uniform act's subject matter among  
3 states that enact the uniform act.

4 **Sec. 30.** The provisions of this chapter governing the legal effect,  
5 validity, or enforceability of electronic records or signatures and  
6 of contracts formed or performed with the use of these records or  
7 signatures conform to the requirements of Section 102 of the  
8 federal Electronic Signatures in Global and National Commerce  
9 Act, P. L. 106-229, 114 Stat. 464 (2000), and supersede, modify, and  
10 limit the federal Electronic Signatures in Global and National  
11 Commerce Act.

12 SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE  
13 JULY 1, 2005]: IC 34-57-1; IC 34-57-2.

14 SECTION 14. [EFFECTIVE JULY 1, 2005] (a) IC 34-57-5, as  
15 added by this act, and the repeal of IC 34-57-1 and IC 34-57-2 by  
16 this act do not affect:

- 17 (1) an action or proceeding commenced; or
  - 18 (2) rights accrued;
- 19 before July 1, 2005.

20 (b) Subject to IC 34-57-5-3, as added by this act, an arbitration  
21 agreement made before July 1, 2005, is governed by IC 34-57-1 (as  
22 it existed before its repeal) and IC 34-57-2 (as it existed before its  
23 repeal).

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