

STATE OF KANSAS

SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **HB 2126**, on page 1, in line 5, before "Section" by inserting "New"; following line 15, by inserting:

"New Sec. 2. As used in sections 2 through 32, and amendments thereto:

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

(b) "arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate;

(c) "court" means a court of competent jurisdiction in this state;

(d) "knowledge" means actual knowledge;

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

(f) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

New Sec. 3. (a) Except as otherwise provided in sections 2 through 32, and amendments thereto, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

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

(c) A person receives notice when it comes to the person's attention or the notice is delivered

at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

New Sec. 4. (a) Sections 2 through 32, and amendments thereto, govern an agreement to arbitrate made on or after July 1, 2017.

(b) Sections 2 through 32, and amendments thereto, govern an agreement to arbitrate made before July 1, 2017, if all parties to the agreement or to the arbitration proceeding so agree in the record.

New Sec. 5. (a) Except as otherwise provided in subsections (b) and (c), a party to an agreement to arbitrate or to an arbitration proceeding may waive or the parties may vary the effect of, the requirements of sections 2 through 32, and amendments thereto, to the extent permitted by law.

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

(1) Waive or agree to vary the effect of the requirements of sections 6(a), 7(a), 9, 18(a) or (b), 27 or 29, and amendments thereto;

(2) agree to unreasonably restrict the right under section 10, and amendments thereto, to notice of the initiation of an arbitration proceeding;

(3) agree to unreasonably restrict the right under section 13, and amendments thereto, to disclosure of any facts by a neutral arbitrator; or

(4) waive the right under section 17, and amendments thereto, of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under sections 2 through 32, and amendments thereto, 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 arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 4, 8, 15, 19, 21(d) or (e), 23, 24,

25, 26(a) or (b), 30, 31 or 32, and amendments thereto.

New Sec. 6. (a) Except as otherwise provided in section 29, and amendments thereto, an application for judicial relief under sections 2 through 32, and amendments thereto, must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this act 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.

New Sec. 7. (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable, except upon a ground that exists at law or in equity for the revocation of a contract.

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

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

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

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

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

(2) if the refusing party opposes the motion, the court shall proceed summarily to decide the

issue and order the parties to arbitrate, unless it finds that there is no enforceable agreement to arbitrate.

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

(c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsections (a) or (b), order the parties to arbitrate.

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

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in section 28, and amendments thereto.

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

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

New Sec. 9. (a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

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

(1) The arbitrator may issue such orders for provisional remedies, including interim awards,

as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

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

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

New Sec. 10. (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under section 16(c), and amendments thereto, not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack of or insufficiency of notice.

New Sec. 11. (a) Except as otherwise provided in subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

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

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

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

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

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

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

New Sec. 12. (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

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

New Sec. 13. (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

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

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or other arbitrators.

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

(c) If an arbitrator discloses a fact required by subsection (a) or (b) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 24(a)(2), and amendments thereto, for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b), upon timely objection by a party, the court under section 24(a)(2), and amendments thereto, may vacate the award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality under section 24(a)(2), and amendments thereto.

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 24(a)(2), and amendments thereto.

New Sec. 14. If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under section 16(c), and amendments thereto.

New Sec. 15. (a) An arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

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

(c) The failure of an arbitrator to make a disclosure required by section 13, and amendments thereto, does not cause any loss of immunity under this section.

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

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

(2) to a hearing on a motion to vacate an award under section 24(a)(1) or (2), and amendments thereto, if the movant establishes prima facie that a ground for vacating the award exists.

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

New Sec. 16. (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

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

(1) If all interested parties agree; or

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

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

(d) At a hearing under subsection (c), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 12, and amendments thereto, to continue the proceeding and to resolve the controversy.

New Sec. 17. A party to an arbitration proceeding may be represented by a lawyer.

New Sec. 18. (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon 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) In order to make the proceedings fair, expeditious and most cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

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

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

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

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

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court as

to make the arbitration proceeding fair, expeditious and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitration, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

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

New Sec. 20. (a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by an arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

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

New Sec. 21. (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

- (1) Upon a ground stated in section 25(a)(1) or (3), and amendments thereto;

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

(3) to clarify the award.

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

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

(d) If a motion to the court is pending under section 23, 24 or 25, and amendments thereto, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in section 25(a)(1) or (3), and amendments thereto;

(2) because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceedings; or

(3) to clarify the award.

(e) An award modified or corrected pursuant to this section is subject to sections 20(a), 23, 24 and 25, and amendments thereto.

New Sec. 22. (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

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

(c) As to all remedies other than those authorized by subsections (a) and (b), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is

not a ground for refusing to confirm an award under section 23, and amendments thereto, or for vacating an award under section 24, and amendments thereto.

(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 specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of punitive damages or other exemplary relief.

New Sec. 23. 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 modified or corrected pursuant to section 21 or 25, and amendments thereto, or is vacated pursuant to section 24, and amendments thereto.

New Sec. 24. (a) Upon 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 16, and amendments thereto, 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 16(c), and amendments thereto, not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 10, and amendments thereto, so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to section 20, and amendments thereto, or within 90 days after the movant receives notice of the award pursuant to section 21, and amendments thereto, unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case, the motion must be made within 90 days after the ground is known or, by the exercise of reasonable care, would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subsection (a)(5), it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4) or (6), the rehearing must be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section 20(b), and amendments thereto, for an award.

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

New Sec. 25. (a) Upon motion made within 90 days after the movant receives notice of the award pursuant to section 20, and amendments thereto, or within 90 days after the movant receives notice of a modified or corrected award pursuant to section 21, and amendments thereto, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description

of a person, thing or property referred to in the award;

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

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

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

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

New Sec. 26. (a) Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

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

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

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

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under sections 2 through 32, and amendments thereto.

New Sec. 28. A motion pursuant to section 6, and amendments thereto, must be made in the

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

New Sec. 29. (a) An appeal may be taken from:

- (1) An order denying a motion to compel arbitration;
 - (2) an order granting a motion to stay arbitration;
 - (3) an order confirming or denying confirmation of an award;
 - (4) an order modifying or correcting an award;
 - (5) an order vacating an award without directing a rehearing; or
 - (6) a final judgment entered pursuant to sections 2 through 32, and amendments thereto.
- (b) An appeal under this section must be taken as from an order or judgment in a civil action.

New Sec. 30. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

New Sec. 31. The provisions of sections 2 through 32, and amendments thereto, governing the legal effect, validity and enforceability of electronic records or electronic signatures and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the electronic signatures in global and national commerce act.

New Sec. 32. Sections 2 through 32, and amendments thereto, do not affect an action or proceeding commenced or right accrued before sections 2 through 32, and amendments thereto, take effect. Subject to section 4, and amendments thereto, an arbitration agreement made before the effective date of sections 2 through 32, and amendments thereto, is governed by article 4 of chapter 5

of the Kansas Statutes Annotated, prior to its repeal.

Sec. 33. K.S.A. 50-6,100 is hereby amended to read as follows: 50-6,100. (a) Each consumer shall have the option of submitting any dispute arising under this act to arbitration. Upon application of the consumer all ~~manufactures~~ manufacturers shall submit to such arbitration.

(b) Such arbitration shall be conducted in accordance with the provisions of the uniform arbitration act (~~K.S.A. 5-401 et seq., sections 2 through 32,~~ and amendments thereto). Any agreement to arbitrate entered into under this section shall ensure the personal objectivity of the arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation.

Sec. 34. K.S.A. 66-1712 is hereby amended to read as follows: 66-1712. (a) When any person desires to carry out temporarily any function or activity in closer proximity to any high voltage overhead line than is permitted by this act, the person or persons responsible for the function or activity shall notify the public utility which owns or operates the high voltage overhead line of the function or activity and shall make appropriate arrangements with the public utility for temporary barriers, temporary deenergization and grounding of the conductors, temporary rerouting of electric current or temporary relocating of the conductors before proceeding with any function or activity which would impair the clearances required by this act.

(b) A person or persons requesting a public utility to provide temporary clearances or other safety precautions shall be responsible for payment of only those costs incurred by such utility in the temporary rerouting of electric current or the temporary relocating of the conductors. Upon request, a public utility shall provide a written costs estimate for the work needed to provide temporary rerouting of electric current or temporary relocating of the conductors. Unless otherwise agreed to, or unless circumstances require a longer period of time before work commences in order to assure continuity of service to electric customers, a public utility shall commence work on such temporary rerouting of

electric current, temporary relocating of the conductors, temporary barriers or temporary deenergization and grounding of the conductors as may be appropriate, within seven working days after such notification has been made in accordance with ~~subsection (a)~~ of K.S.A. 66-1712(a).

(c) If a person requesting a public utility to provide temporary rerouting of electric current or the temporary relocating of the conductors disagrees with the reasonableness of the written costs estimate or the description of the work to be performed, the following options are available to such person:

(1) Such person under protest may pay the utility for the work in accordance with the written cost estimate, but shall be entitled to seek recovery of all or any part of the money so paid in an arbitration proceeding as hereinafter provided; or

(2) prior to directing the work to be performed, the person or persons may submit to binding arbitration, as hereinafter provided, to resolve the issue of the reasonableness of the written cost estimate or the description or extent of the work to be performed by the public utility under such estimate.

(d) Disputes submitted to binding arbitration under this section shall be submitted in accordance with the procedures set forth in ~~K.S.A. 5-401 et seq.~~ sections 2 through 32, and amendments thereto. The decision of the arbitrator or arbitrators as to the reasonableness of the costs or the necessity of the work to be performed shall be final and binding upon the parties.

Sec. 35. K.S.A. 2016 Supp. 72-5436 is hereby amended to read as follows: 72-5436. As used in ~~this act~~ K.S.A. 72-5436 and 72-5438 through 72-5446, and amendments thereto: (a) "Teacher" means any professional employee who is required to hold a certificate to teach in any school district and any teacher or instructor in any technical college, the institute of technology at Washburn university or community college. The term "teacher" does not include within its meaning any supervisors, principals, superintendents or any person employed under the authority of K.S.A. 72-

8202b, and amendments thereto, or any persons employed in an administrative capacity by any technical college, the institute of technology at Washburn university or community college.

(b) "Board" means the board of education of any school district, the governing body of any technical college or the institute of technology at Washburn university, and the board of trustees of any community college.

Sec. 36. K.S.A. 2016 Supp. 72-5438 is hereby amended to read as follows: 72-5438. (a) Whenever a teacher is given written notice of intention by a board to not renew or to terminate the contract of the teacher as provided in K.S.A. 72-5437, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include: (1) A statement of the reasons for the proposed nonrenewal or termination; and (2) a statement that the teacher may have the matter heard by a hearing officer upon written request filed with the clerk of the board of education or the board of control or the secretary of the board of trustees within 15 calendar days from the date of such notice of nonrenewal or termination.

(b) Within 10 calendar days after the filing of any written request of a teacher to be heard as provided in subsection (a), the board shall notify the commissioner of education that a list of qualified hearing officers is required. Such notice shall contain the mailing address of the teacher. Within 10 days after receipt of notification from the board, the commissioner shall provide to the board and to the teacher, a list of five randomly selected, qualified hearing officers.

(c) Within five days after receiving the list from the commissioner, each party shall eliminate two names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher within five days after the teacher receives the list. The process of elimination shall be completed within five days thereafter.

(d) Either party may request that one new list be provided within five days after receiving the list. If such a request is made, the party making the request shall notify the commissioner and the other party, and the commissioner shall generate a new list and distribute it to the parties in the same manner as the original list.

(e) In lieu of using the process provided in subsections (b) and (c), if the parties agree, they may make a request to the American arbitration association for an arbitrator to serve as the hearing officer. Any party desiring to use this alternative procedure shall so notify the other party in the notice required under subsection (a). If the parties agree to use this procedure, the parties shall make a joint request to the American arbitration association for a hearing officer within 10 days after the teacher files a request for a hearing. If the parties choose to use this procedure, the parties shall each pay one-half of the cost of the arbitrator and of the arbitrator's expenses.

(f) The commissioner of education shall compile and maintain a list of hearing officers comprised of residents of this state who are attorneys at law. Such list shall include a statement of the qualifications of each hearing officer.

(g) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the commissioner of education. The commissioner shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (h).

(h) An attorney shall be eligible for appointment to the list if the attorney has: (1) Completed a minimum of 10 hours of continuing legal education credit in the area of education law, due process, administrative law or employment law within the past five years; or (2) previously served as the chairperson of a due process hearing committee prior to the effective date of this act. An attorney shall not be eligible for appointment to the list if the attorney has been employed to represent a board or a teacher in a due process hearing within the past five years.

Sec. 37. K.S.A. 2016 Supp. 72-5439 is hereby amended to read as follows: 72-5439. The

hearing provided for under K.S.A. 72-5438, and amendments thereto, shall commence within 45 calendar days after the hearing officer is selected unless the hearing officer grants an extension of time.

The hearing shall afford procedural due process, including the following:

(a) The right of each party to have counsel of such party's own choice present and to receive the advice of such counsel or other person whom such party may select;

(b) the right of each party or such party's counsel to cross-examine any person who provides information for the consideration of the hearing officer, except those persons whose testimony is presented by affidavit;

(c) the right of each party to present such party's own witnesses in person, or their testimony by affidavit or deposition, except that testimony of a witness by affidavit may be presented only if such witness lives more than 100 miles from the location of the unified school district office, the technical college, institute of technology at Washburn university or community college, or is absent from the state, or is unable to appear because of age, illness, infirmity or imprisonment. When testimony is presented by affidavit the same shall be served upon the clerk of the board of education, the board of control, the secretary of the board of trustees or the agent of the board and upon the teacher in person or by first-class mail to the address of the teacher which is on file with the board not less than 10 calendar days prior to presentation to the hearing officer;

(d) the right of the teacher to testify in the teacher's own behalf and give reasons for the teacher's conduct, and the right of the board to present its testimony through such persons as the board may call to testify in its behalf and to give reasons for its actions, rulings or policies;

(e) the right of the parties to have an orderly hearing; and

(f) the right of the teacher to a fair and impartial decision based on substantial evidence.

Sec. 38. K.S.A. 2016 Supp. 72-5445 is hereby amended to read as follows: 72-5445. (a) Except as otherwise provided in this section, the provisions of K.S.A. 72-5438 through 72-5443, and

amendments thereto, apply only to:

(1) Teachers who have completed not less than three consecutive years of employment, and been offered a fourth contract, in the school district, the technical college, institute of technology at Washburn university or community college by which any such teacher is currently employed; and

(2) teachers who have completed not less than two consecutive years of employment, and been offered a third contract, in the school district, the technical college, institute of technology at Washburn university or community college by which any such teacher is currently employed if at any time prior to the current employment the teacher has completed the years of employment requirement of paragraph (1) of this subsection in any school district, technical college, the institute of technology at Washburn university or community college in this state.

(b) Any board may waive, at any time, the years of employment requirements of subsection (a)(1) for any teacher employed by it.

(c) The provisions of this ~~subsection~~ section are subject to the provisions of K.S.A. 72-5446, and amendments thereto.

(d) The provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto, do not apply to any teacher whose license has been non-renewed or revoked by the state board of education because the teacher has:

(1) Been convicted of a felony under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009;

(2) been convicted of a felony described in any section of article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, or an act described in K.S.A. 21-3412, prior to its repeal, or K.S.A. 2016 Supp. 21-5413(a), or K.S.A. 21-

3412a, prior to its repeal, or K.S.A. 2016 Supp. 21-5414, and amendments thereto, if the victim is a minor or student;

(3) been convicted of a felony described in any section of article 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016 Supp. 21-6419 through 21-6421, and amendments thereto, or has been convicted of an act described in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(a), and amendments thereto, if the victim is a minor or student;

(4) been convicted of any act described in any section of article 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 56 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto;

(5) been convicted of a felony described in article 37 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 58 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2016 Supp. 21-6412(a)(6), and amendments thereto;

(6) been convicted of an attempt under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2016 Supp. 21-5301, and amendments thereto, to commit any act specified in this subsection;

(7) been convicted of any act which is described in K.S.A. 21-4301, 21-4301a or 21-4301c, prior to their repeal, or K.S.A. 2016 Supp. 21-6401 or 21-6402, and amendments thereto;

(8) been convicted in another state or by the federal government of an act similar to any act described in this subsection; or

(9) has entered into a criminal diversion agreement after having been charged with any offense described in this subsection.

Sec. 39. K.S.A. 5-401, 5-402, 5-403, 5-404, 5-405, 5-406, 5-407, 5-408, 5-409, 5-410, 5-411, 5-412, 5-413, 5-414, 5-415, 5-416, 5-417, 5-418, 5-419, 5-420, 5-421, 5-422, 50-6,100 and 66-1712 and K.S.A. 2016 Supp. 72-5436, 72-5438, 72-5439 and 72-5445 are hereby repealed.";

And by renumbering sections accordingly;

Also on page 1, in the title, in line 1, by striking "trust instruments" and inserting "dispute resolution"; in line 2, by striking all before the period and inserting "; trust instruments; enacting the uniform arbitration act of 2000; teacher contracts; amending K.S.A. 50-6,100 and 66-1712 and K.S.A. 2016 Supp. 72-5436, 72-5438, 72-5439 and 72-5445 and repealing the existing sections; also repealing K.S.A. 5-401, 5-402, 5-403, 5-404, 5-405, 5-406, 5-407, 5-408, 5-409, 5-410, 5-411, 5-412, 5-413, 5-414, 5-415, 5-416, 5-417, 5-418, 5-419, 5-420, 5-421 and 5-422"

Senator _____