

**SENATE BILL NO. 2061**

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to adopt the Uniform Arbitration Act; and to repeal chapter 32-29.2 of the  
2 North Dakota Century Code, relating to the Uniform Arbitration Act.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "Arbitration organization" means an association, agency, board, commission, or  
6 other entity that is neutral and initiates, sponsors, or administers in arbitration  
7 proceeding or is involved in the appointment of an arbitrator.  
8 2. "Arbitrator" means an individual appointed to render an award, alone or with  
9 others, in a controversy that is subject to an agreement to arbitrate.  
10 3. "Court" means the district court.  
11 4. "Knowledge" means actual knowledge.  
12 5. "Record" means information that is inscribed on a tangible medium or that is stored  
13 in an electronic or other medium and is retrievable in perceivable form.

14 **SECTION 2. Notice.**

- 15 1. Except as otherwise provided in this Act, a person gives notice to another person  
16 by taking action that is reasonably necessary to inform the other person in ordinary  
17 course, whether or not the other person acquires knowledge of the notice.  
18 2. A person has notice if the person has knowledge of the notice or has received  
19 notice.  
20 3. A person receives notice when it comes to the person's attention or the notice is  
21 delivered at the person's place of residence or place of business, or at another  
22 location held out by the person as a place of delivery of such communications.

23 **SECTION 3. When Act applies.**

- 24 1. This Act governs an agreement to arbitrate made after July 31, 2003.

- 1           2. This Act governs an agreement to arbitrate made before August 1, 2003, if all the  
2           parties to the agreement or to the arbitration proceeding so agree in a record.  
3           3. After July 31, 2005, this Act governs an agreement to arbitrate whenever made.  
4           Until August 1, 2005, chapter 32-29.2, as it existed on July 31, 2003, applies to  
5           agreements made after June 30, 1987.

6           **SECTION 4. Effect of agreement to arbitrate - Nonwaivable provisions.**

- 7           1. Except as otherwise provided in subsections 2 and 3, a party to an agreement to  
8           arbitrate or to an arbitration proceeding may waive or, the parties may vary the  
9           effect of, the requirements of this Act to the extent permitted by law.  
10          2. Before a controversy arises that is subject to an agreement to arbitrate, a party to  
11          the agreement may not:  
12          a. Waive or agree to vary the effect of the requirements of subsection 1 of  
13          section 5, subsection 1 of section 6, section 8, subsections 1 and 2 of section  
14          17, section 26, or section 28 of this Act;  
15          b. Agree to unreasonably restrict the right under section 9 of this Act to notice of  
16          the initiation of an arbitration proceeding;  
17          c. Agree to unreasonably restrict the right under section 12 of this Act to  
18          disclosure of any facts by a neutral arbitrator; or  
19          d. Waive the right under section 16 of a party to an agreement to arbitrate to be  
20          represented by a lawyer at any proceeding or hearing under this Act, but an  
21          employer and a labor organization may waive the right to representation by a  
22          lawyer in a labor arbitration.  
23          3. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the  
24          parties may not vary the effect of, the requirements of this section or subsection 1  
25          or 3 of section 3, section 7, section 14, section 18, subsection 4 or 5 of section 20,  
26          section 22, section 23, section 24, subsection 1 or 2 of section 24, section 29, or  
27          section 30 of this Act.

28          **SECTION 5. Application for judicial relief.**

- 29          1. Except as otherwise provided in section 28 of this Act, an application for judicial  
30          relief under this Act must be made by motion to the court and heard in the manner  
31          provided by law or rule of court for making and hearing motions.

- 1           2. Unless a civil action involving the agreement to arbitrate is pending, notice of an  
2           initial motion to the court under this Act must be served in the manner provided by  
3           law for the service of a summons in a civil action. Otherwise, notice of the motion  
4           must be given in the manner provided by law or rule of court of serving motions in  
5           pending cases.

6           **SECTION 6. Validity of agreements to arbitrate.**

- 7           1. An agreement contained in a record to submit to arbitration any existing or  
8           subsequent controversy arising between the parties to the agreement is valid,  
9           enforceable, and irrevocable except upon a ground that exists at law or in equity  
10          for the revocation of a contract.
- 11          2. The court shall decide whether an agreement to arbitrate exists or a controversy is  
12          subject to an agreement to arbitrate.
- 13          3. An arbitrator shall decide whether a condition precedent to arbitrability has been  
14          fulfilled and whether a contract containing a valid agreement to arbitrate is  
15          enforceable.
- 16          4. If a party to a judicial proceeding challenges the existence of, or claims that a  
17          controversy is not subject to, an agreement to arbitrate, the arbitration proceeding  
18          may continue pending final resolution of the issue by the court, unless the court  
19          otherwise orders.

20          **SECTION 7. Motion to compel or stay arbitration.**

- 21          1. On motion to a person showing an agreement to arbitrate and alleging another  
22          person's refusal to arbitrate pursuant to the the agreement:
- 23               a. If the refusing party does not appear or does not oppose the motion, the court  
24               shall order the parties to arbitrate; and
- 25               b. If the refusing party opposes the motion, the court shall proceed summarily to  
26               decide the issue and order the parties to arbitrate unless it finds that there is  
27               no enforceable agreement to arbitrate.
- 28          2. On motion of a person alleging that an arbitration proceeding has been initiated or  
29          threatened but that there is no agreement to arbitrate, the court shall proceed  
30          summarily to decide the issue. If the court finds that there is an enforceable  
31          agreement to arbitrate, it shall order the parties to arbitrate.

- 1           3. If the court finds that there is not enforceable agreement, it may pursuant to  
2           subsection 1 or 2 order the parties to arbitrate.
- 3           4. The court may not refuse to order arbitration because the claim subject to  
4           arbitration lacks merit or grounds for the claim have not been established.
- 5           5. If a proceeding involving a claim referable to arbitration under an alleged  
6           agreement to arbitrate is pending in court, a motion under this section must be  
7           made in that court. Otherwise a motion under this section may be made in any  
8           court as provided in section 27 of this Act.
- 9           6. If a party makes a motion to the court to order arbitration, the court on just terms  
10          shall stay any judicial proceeding that involves a claim alleged to be subject to the  
11          arbitration until the court renders a final decision under this section.
- 12          7. If the court orders arbitration, the court on just terms shall stay any judicial  
13          proceeding that involves a claim subject to the arbitration. If a claim subject to the  
14          arbitration is severable, the court may limit the stay to that claim.

15          **SECTION 8. Provisional remedies.**

- 16          1. Before an arbitrator is appointed and is authorized and able act, the court, upon  
17          motion of a party to an arbitration proceeding and for good cause shown, may  
18          enter an order for provisional remedies to protect the effectiveness of the  
19          arbitration proceeding to the same extent and under the same conditions as if the  
20          controversy were the subject of a civil action.
- 21          2. After an arbitrator is appointed and is authorized and able to act:
- 22                a. The arbitrator may issue such orders for provisional remedies, including  
23                interim awards, as the arbitrator finds necessary to protect the effectiveness  
24                of the arbitration proceeding and to promote the fair and expeditious  
25                resolution of the controversy, to the same extent and under the same  
26                conditions as if the controversy were the subject of a civil action; and
- 27                b. A party to an arbitration proceeding may move the court for a provisional  
28                remedy only if the matter is urgent and the arbitrator is not able to act timely  
29                or the arbitrator cannot provide an adequate remedy.
- 30          3. A party does not waive a right of arbitration by making a motion under subsection 1  
31          or 2.

1           **SECTION 9. Initiation of arbitration.**

- 2           1. A person initiates an arbitration proceeding by giving notice in a record to the other  
3           parties to the agreement to arbitrate in the agreed manner between the parties or,  
4           in the absence of agreement, by certified or registered mail, return receipt  
5           requested and obtained, or by service as authorized for the commencement of a  
6           civil action. The notice must describe the nature of the controversy and the  
7           remedy sought.
- 8           2. Unless a person objects for lack or insufficiency of notice under subsection 3 of  
9           section 15 of this Act not later than the beginning of the arbitration hearing, the  
10          person by appearing at the hearing waives any objection to lack of or insufficiency  
11          of notice.

12          **SECTION 10. Consolidation of separate arbitration proceedings.**

- 13          1. Except as otherwise provided in subsection 3, upon motion of a party to an  
14          agreement to arbitrate or to an arbitration proceeding, the court may order  
15          consolidation of separate arbitration proceedings as to all or some of the claims if:
- 16           a. There are separate agreements to arbitrate or separate arbitration  
17           proceedings between the same persons or one of them is a party to a  
18           separate agreement to arbitrate or a separate arbitration proceeding with a  
19           third person;
- 20           b. The claims subject to the agreements to arbitrate arise in substantial part from  
21           the same transaction or series of related transactions;
- 22           c. The existence of a common issue of law or fact creates the possibility of  
23           conflicting decisions in the separate arbitration proceedings; and
- 24           d. Prejudice resulting from a failure to consolidate is not outweighed by the risk  
25           of undue delay or prejudice to the rights of or hardship to parties opposing  
26           consolidation.
- 27          2. The court may order consolidation of separate arbitration proceedings as to some  
28          claims and allow other claims to be resolved in separate arbitration proceedings.
- 29          3. The court may not order consolidation of the claims of a party to an agreement to  
30          arbitrate if the agreement prohibits consolidation.

31          **SECTION 11. Appointment of arbitrator - Service as a neutral arbitrator.**

- 1           1. If the parties to an agreement to arbitrate agree on a method for appointing an  
2           arbitrator, that method must be followed, unless the method fails. If the parties  
3           have not agreed on a method, the agreed method fails, or an arbitrator appointed  
4           fails or is unable to act and a successor has not been appointed, the court, on  
5           motion of a party to the arbitration proceeding, shall appoint the arbitrator. An  
6           arbitrator so appointed has all the powers of an arbitrator designated in the  
7           agreement to arbitrate or appointed pursuant to the agreed method.  
8           2. An individual who has a known, direct, and material interest in the outcome of the  
9           arbitration proceeding or a known, existing and substantial relationship with a party  
10          may not serve as an arbitrator required by an agreement to be neutral.

11          **SECTION 12. Disclosure by arbitrator.**

- 12          1. Before accepting appointment, an individual who is requested to serve as an  
13          arbitrator, after making a reasonable inquiry, shall disclose to all parties to the  
14          agreement to arbitrate and arbitration proceeding and to any other arbitrators any  
15          known facts that a reasonable person would consider likely to affect the impartiality  
16          of the arbitrator in the arbitration proceeding, including:  
17          a. A financial or personal interest in the outcome of the arbitration proceeding;  
18          and  
19          b. An existing or past relationship with any of the parties to the agreement to  
20          arbitrate or the arbitration proceeding, their counsel or representatives, a  
21          witness, or other arbitrators.  
22          2. An arbitrator has a continuing obligation to disclose to all parties to the agreement  
23          to arbitrate and arbitration proceeding and to any other arbitrators any facts that  
24          the arbitrator learns after accepting appointment which a reasonable person would  
25          consider likely to affect the impartiality of the arbitrator.  
26          3. If an arbitrator discloses a fact required by subsection 1 or 2 to be disclosed and a  
27          party timely objects to the appointment or continued service of the arbitrator based  
28          upon the fact disclosed, the objection may be a ground under subdivision b of  
29          subsection 1 of section 23 of this Act for vacating an award made by the arbitrator.

- 1           4. If the arbitrator did not disclose a fact as required by subsection 1 or 2, upon timely  
2           objection by a party, the court under subdivision b subsection 1 of section 23 of  
3           this Act may vacate an award.
- 4           5. An arbitrator appointed as a neutral arbitrator who does not disclose a known,  
5           direct, and material interest in the outcome of the arbitration proceeding or a  
6           known, existing, and substantial relationship with a party is presumed to act with  
7           evident partiality under subdivision b of subsection 1 of section 23 of this Act.
- 8           6. If the parties to an arbitration proceeding agree to the procedures of an arbitration  
9           organization or any other procedures for challenges to arbitrators before an award  
10          is made, substantial compliance with those procedures is a condition precedent to  
11          a motion to vacate an award on that ground under subdivision b of subsection 1 of  
12          section 23 of this Act.

13           **SECTION 13. Action by majority.** If there is more than one arbitrator, the powers of  
14          an arbitrator must be exercised by a majority of the arbitrators, but all of them must conduct the  
15          hearing under subsection 3 of section 15 of this Act.

16           **SECTION 14. Immunity or arbitrator - Competency to testify - attorney's fees and**  
17          **costs.**

- 18          1. An arbitrator or an arbitration organization acting in that capacity is immune from  
19          civil liability to the same extent as a judge of a court of this state acting in a judicial  
20          capacity.
- 21          2. The immunity afforded by this section supplements any immunity under other law.
- 22          3. The failure of an arbitrator to make a disclosure required by section 12 of this Act  
23          does not cause any loss of immunity under this section.
- 24          4. In a judicial, administrative, or similar proceeding, an arbitrator or representative of  
25          an arbitration organization is not competent to testify and may not be required to  
26          produce records as to any statement, conduct, decision, or ruling occurring during  
27          the arbitration proceeding, to the same extent as a judge of a court of this state  
28          acting in a judicial capacity. This subsection does not apply:
- 29           a. To the extent necessary to determine the claim of an arbitrator, arbitration  
30           organization, or representative of the arbitration organization against a party  
31           to the arbitration proceeding; or

- 1           b. To a hearing on a motion to vacate an award under subdivision a or b of  
2           subsection 1 of section 23 of this Act if the movant establishes prima facie  
3           that a ground for vacating the award exists.
- 4           5. If a person commences a civil action against an arbitrator, arbitration organization,  
5           or representative of an arbitration organization arising from the services of the  
6           arbitrator, organization, or representative or if a person seeks to compel an  
7           arbitrator or a representative of an arbitration organization to testify or produce  
8           records in violation of subsection 4, and the court decides that the arbitrator,  
9           arbitration organization, or representative of an arbitration organization is immune  
10          from civil liability or that the arbitrator or representative of the organization is not  
11          competent to testify, the court shall award to the arbitrator, organization, or  
12          representative reasonable attorney's fees and other reasonable expenses of  
13          litigation.

14          **SECTION 15. Arbitration process**

- 15          1. An arbitrator may conduct an arbitration in such manner as the arbitrator considers  
16          appropriate for a fair and expeditious disposition of the proceeding. The authority  
17          conferred upon the arbitrator includes the power to hold conferences with the  
18          parties to the arbitration proceeding before the hearing and among other matters,  
19          determine the admissibility, relevance, materiality, and weight of any evidence.
- 20          2. An arbitrator may decide a request for summary disposition of a claim or particular  
21          issue:
- 22               a. If all interested parties agree; or
- 23               b. Upon request of one party to the arbitration proceeding if that party gives  
24               notice to all other parties to the proceeding, and the other parties have a  
25               reasonable opportunity to respond.
- 26          3. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give  
27          notice of the hearing not less than five days before the hearing begins. Unless a  
28          party to the arbitration proceeding makes an objection to lack or insufficiency of  
29          notice not later than the beginning of the hearing, the party's appearance at the  
30          hearing waives the objection. Upon request of a party to the arbitration proceeding  
31          and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may

1 adjourn the hearing from time to time as necessary but may not postpone the  
2 hearing to a time later than that fixed by the agreement to arbitrate for making the  
3 award unless the parties to the arbitration proceeding consent to a later date. The  
4 arbitrator may hear and decide the controversy upon the evidence produced  
5 although a party who was duly notified of the arbitration proceeding did not appear.  
6 The court, on request, may direct the arbitrator to conduct the hearing promptly  
7 and render a timely decision.

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

11 5. If an arbitrator ceases or is unable to act during the arbitration proceeding, a  
12 replacement arbitrator must be appointed in accordance with section 11 of this Act  
13 to continue the proceeding and to resolve the controversy.

14 **SECTION 16. Representation by lawyer.** A party to an arbitration proceeding may  
15 be represented by a lawyer.

16 **SECTION 17. Witnesses - Subpoenas - Depositions - Discovery.**

17 1. An arbitrator may issue a subpoena for the attendance of a witness and for the  
18 production of records and other evidence at any hearing and may administer oaths.  
19 A subpoena must be served in the manner for service of subpoenas in a civil action  
20 and, upon motion to the court by a party to the arbitration proceeding or the  
21 arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

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

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

- 1           4. If an arbitrator permits discovery under subsection 3, the arbitrator may order a  
2           party to the arbitration proceeding to comply with the arbitrator's discovery-related  
3           orders, issue subpoenas for the attendance of a witness and for the production of  
4           records and other evidence at a discovery proceeding, and take action against a  
5           noncomplying party to the extent a court could if the controversy were the subject  
6           of a civil action in this state.
- 7           5. An arbitrator may issue a protective order to prevent the disclosure of privileged  
8           information, confidential information, trade secrets, and other information protected  
9           from disclosure to the extent a court could if the controversy were the subject of a  
10          civil action in this state.
- 11          6. All laws compelling a person under subpoena to testify and all fees for attending a  
12          judicial proceeding, a deposition, or a discovery proceeding as a witness apply to  
13          an arbitration proceeding as if the controversy were the subject of a civil action in  
14          this state.
- 15          7. The court may enforce a subpoena or discovery-related order for the attendance of  
16          a witness within this state and for the production of records and other evidence  
17          issued by an arbitrator in connection with an arbitration proceeding in another state  
18          upon conditions determined by the court so as to make the arbitration proceeding  
19          fair, expeditious, and cost-effective. A subpoena or discovery-related order issued  
20          by an arbitrator in another state must be served in the manner provided by law for  
21          service of subpoenas in a civil action in this state and, upon motion to the court by  
22          a party to the arbitration proceeding or the arbitrator, enforced in the manner  
23          provided by law for enforcement of subpoenas in a civil action in this state.

24           **SECTION 18. Judicial enforcement of preaward ruling by arbitrator.** If an  
25          arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party  
26          may request the arbitrator to incorporate the ruling into an award under section 19 of this Act. A  
27          prevailing party may make a motion to the court for an expedited order to confirm the award  
28          under section 22 of this Act, in which case the court shall summarily decide the motion. The  
29          court shall issue an order to confirm the award unless the court vacates, modified, or corrects  
30          the award under section 23 or 24 of this Act.

31           **SECTION 19. Award.**

- 1           1. An arbitrator shall make a record of an award. The record must be signed or  
2           otherwise authenticated by any arbitrator who concurs with the award. The  
3           arbitrator or the arbitration organization shall give notice of the award, including a  
4           copy of the award, to each party to the arbitration proceeding.
- 5           2. An award must be made within the time specified by the agreement to arbitrate or,  
6           if not specified therein, within the time ordered by the court. The court may extend  
7           or the parties to the arbitration proceeding may agree in a record to extend the  
8           time. The court or the parties may do so within or after the time specified or  
9           ordered. A party waives any objection that an award was not timely made unless  
10          the party gives notice of the objection to the arbitrator before receiving notice of the  
11          award.

12          **SECTION 20. Change of award by arbitrator.**

- 13          1. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator  
14          may modify or correct an award:
- 15           a. Upon a ground stated in subdivision a or c of subsection 1 of section 24 of  
16           this Act;
- 17           b. Because the arbitrator has not made a final and definite award upon a claim  
18           submitted by the parties to the arbitration proceeding; or
- 19           c. To clarify the award.
- 20          2. A motion under subsection 1 must be made and notice given to all parties within  
21          twenty days after the movant receives notice of the award.
- 22          3. A party to the arbitration proceeding must give notice of any objection to the motion  
23          within ten days after receipt of the notice.
- 24          4. If a motion to the court is pending under section 22, 23, or 24 of this Act, the court  
25          may submit the claim to the arbitrator to consider whether to modify or correct the  
26          award;
- 27           a. Upon a ground stated in subdivision a or c of subsection 1 of section 24 of  
28           this Act;
- 29           b. Because the arbitrator has not made a final and definite award upon a claim  
30           submitted by the parties to the arbitration proceeding; or
- 31           c. To clarify the award.

- 1           5. An award modified or corrected pursuant to this section is subject to subdivision 1  
2           of section 19 of this Act and sections 22, 23, and 24 of this Act.

3           **SECTION 21. Remedies - Fees and expenses of arbitration proceedings.**

- 4           1. An arbitrator may award punitive damages or other exemplary relief if such an  
5           award is authorized by law in a civil action involving the same claim and the  
6           evidence produced at the hearing justifies the award under the legal standards  
7           otherwise applicable to the claim.
- 8           2. An arbitrator may award reasonable attorney's fees and other reasonable  
9           expenses of arbitration if such an award is authorized by law in a civil action  
10          involving the same claim or by the agreement of the parties to the arbitration  
11          proceeding.
- 12          3. As to all remedies other than those authorized by subsections 1 and 2, an  
13          arbitration may order such remedies as the arbitrator considers just and  
14          appropriate under the circumstances of the arbitration proceeding. The fact that  
15          such a remedy could not or would not be granted by the court is not a ground for  
16          refusing to confirm an award under section 22 of this Act or for vacating an award  
17          under section 23 of this Act.
- 18          4. An arbitrator's expenses and fees, together with other expenses, must be paid as  
19          provided in the award.
- 20          5. If an arbitrator awards punitive damages or other exemplary relief under  
21          subsection 1, the arbitrator shall specify in the award the basis in fact justifying and  
22          the basis in law authorizing the award and state separately the amount of the  
23          punitive damages or other exemplary relief.

24          **SECTION 22. CONFIRMATION OF AWARD.** After a party to an arbitration  
25          proceeding receives notice of an award, the party may make a motion to the court for an order  
26          confirming the award at which time the court shall issue a confirming order unless the award is  
27          modified or corrected pursuant to section 20 or 24 of this Act or is vacated pursuant to  
28          section 23 of this Act.

29          **SECTION 23. Vacating award.**

- 30          1. Upon motion to the court by a party to an arbitration proceeding, the court shall  
31          vacate an award made in the arbitration proceeding if:

- 1           a. The award was procured by corruption, fraud, or other undue means;
- 2           b. There was:
- 3               (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;
- 4               (2) Corruption by an arbitrator; or
- 5               (3) Misconduct by an arbitrator prejudicing the rights of a party to the
- 6                       arbitration proceeding;
- 7           c. An arbitrator refused to postpone the hearing upon showing of sufficient
- 8               cause for postponement, refused to consider evidence material to the
- 9               controversy, or otherwise conducted the hearing contrary to section 15 of this
- 10              Act, so as to prejudice substantially the rights of a party to the arbitration
- 11              proceeding;
- 12           d. An arbitrator exceeded the arbitrator's powers;
- 13           e. There was no agreement to arbitrate, unless the person participated in the
- 14              arbitration proceeding without raising the objection under subsection 3 of
- 15              section 15 of this Act not later than the beginning of the arbitration hearing; or
- 16           f. The arbitration was conducted without proper notice of the initiation of an
- 17              arbitration as required in section 9 of this Act so as to prejudice substantially
- 18              the rights of a party to the arbitration proceeding.
- 19        2. A motion under this section must be filed within ninety days after the movant
- 20              receives notice of the award pursuant to section 19 of this Act or within ninety days
- 21              after the movant receives notice of a modified or corrected award pursuant to
- 22              section 20 of this Act, unless the movant alleges that the award was procured by
- 23              corruption, fraud, or other undue means, in which case the motion must be made
- 24              within ninety days after the ground is known or by the exercise of reasonable care
- 25              would have been known by the movant.
- 26        3. If the court vacates an award on a ground other than that set forth in subdivision e
- 27              of subsection 1, it may order a rehearing. If the award is vacated on a ground
- 28              stated in subdivision a or b of subsection 1, the rehearing must be before a new
- 29              arbitrator. If the award is vacated on a ground stated in subdivision c, d, or f of
- 30              subsection 1, the rehearing may be before the arbitrator who made the award or
- 31              the arbitrator's successor. The arbitrator must render the decision in the rehearing

1           within the same time as that provided in subdivision 2 of section 19 of this Act for  
2           an award.

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

5           **SECTION 24. Modification or correction of award.**

6           1. Upon motion made within ninety days after the movant receives notice of the  
7           award pursuant to section 19 of this Act or within ninety days after the movant  
8           receives notice of a modified or corrected award pursuant to section 20 of this Act,  
9           the court shall modify or correct the award if:

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

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

15          c. The award is imperfect in a matter of form not affecting the merits of the  
16          decision on the claim submitted.

17          2. If a motion made under subsection 1 is granted, the court shall modify or correct  
18          and confirm the award as modified or corrected. Otherwise, unless a motion to  
19          vacate is pending, the court shall confirm the award.

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

22          **SECTION 25. Judgment on award - Attorney's fees and litigation expenses.**

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

27          2. A court may allow reasonable costs of the motion and subsequent judicial  
28          proceedings.

29          3. On application of a prevailing party to a contested judicial proceeding under  
30          section 22, 23, or 24 of this Act, the court may add reasonable attorney's fees and  
31          other reasonable expenses of litigation incurred in a judicial proceeding after the

1 award is made to a judgment confirming, vacating without directing a rehearing,  
2 modifying, or correcting an award.

3 **SECTION 26. Jurisdiction.**

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

6 2. An agreement to arbitrate providing for arbitration in this state confers exclusive  
7 jurisdiction on the court to enter judgment on an award under this Act.

8 **SECTION 27. Venue.** A motion pursuant to section 5 of this Act must be made in the  
9 court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be  
10 held or, if the hearing has been held, in the court of the county in which it was held. Otherwise,  
11 the motion may be made in the court of any county in which an adverse party resides or has a  
12 place of business or, if no adverse party has a residence or place of business in this state, in  
13 the court of any county in this state. All subsequent motions must be made in the court hearing  
14 the initial motion unless the court otherwise directs.

15 **SECTION 28. Appeals.**

16 1. An appeal may be taken from:

- 17 a. An order denying a motion to compel arbitration;
- 18 b. An order granting a motion to stay arbitration;
- 19 c. An order confirming or denying confirmation of an award;
- 20 d. An order modifying or correcting an award;
- 21 e. An order vacating an award without directing a rehearing; or
- 22 f. A final judgment entered pursuant to this Act.

23 2. An appeal under this section must be taken as from an order or a judgment in a  
24 civil action.

25 **SECTION 29. Relationship to Electronic Signatures in Global and National**

26 **Commerce Act.** The provisions of sections 1 and 19 of this Act which relate to the legal effect,  
27 validity, and enforceability of electronic records or electronic signatures, and of contracts  
28 performed with the use of such records or signatures must be construed to conform to the  
29 requirements of section 102 of the Electronic Signatures in Global and National Commerce Act  
30 [Pub. L. 106-229; 15 U.S.C. 7001, 7002].

- 1           **SECTION 30. REPEAL.** Chapter 32-29.2 of the North Dakota Century Code is
- 2 repealed.