

By Senator Diaz de la Portilla

36-01261-12

20121458__

1 A bill to be entitled
2 An act relating to dispute resolution; amending s.
3 682.01, F.S.; revising the short title of the "Florida
4 Arbitration Code" to the "Revised Florida Arbitration
5 Code"; creating s. 682.011, F.S.; providing
6 definitions; creating s. 682.012, F.S.; specifying how
7 a person gives notice to another person and how a
8 person receives notice; creating s. 682.013, F.S.;
9 specifying the applicability of the revised code;
10 creating s. 682.014, F.S.; providing that an agreement
11 may waive or vary the effect of statutory arbitration
12 provisions; providing exceptions; creating s. 682.015,
13 F.S.; providing for petitions for judicial relief;
14 providing for service of notice of an initial petition
15 for such relief; amending s. 682.02, F.S.; revising
16 provisions relating to the making of arbitration
17 agreements; requiring a court to decide whether an
18 agreement to arbitrate exists or a controversy is
19 subject to an agreement to arbitrate; providing for
20 determination of specified issues by an arbitrator;
21 providing for continuation of an arbitration
22 proceeding pending resolution of certain issues by a
23 court; revising provisions relating to applicability
24 of provisions to certain interlocal agreements;
25 amending s. 682.03, F.S.; revising provisions relating
26 to proceedings to compel and to stay arbitration;
27 creating s. 682.031, F.S.; providing for a court to
28 order provisional remedies before an arbitrator is
29 appointed and is authorized and able to act; providing

36-01261-12

20121458__

for orders for provisional remedies by an arbitrator;
providing that a party does not waive a right of
arbitration by seeking provisional remedies in court;
creating s. 682.032, F.S.; providing for initiation of
arbitration; providing that a person waives any
objection to lack of or insufficiency of notice by
appearing at the arbitration hearing; providing an
exception; creating s. 682.033, F.S.; providing for
consolidation of separate arbitration proceedings as
to all or some of the claims in certain circumstances;
prohibiting consolidation if the agreement prohibits
consolidation; amending s. 682.04, F.S.; revising
provisions relating to appointment of an arbitrator;
prohibiting an individual with an interest in the
outcome of an arbitration from serving as a neutral
arbitrator; creating s. 682.041, F.S.; requiring
certain disclosures of interests and relationships by
a person before accepting appointment as an
arbitrator; providing a continuing obligation to make
such disclosures; providing for objections to an
arbitrator based on information disclosed; providing
for vacation of an award if an arbitrator failed to
disclose a fact as required; providing that an
arbitrator appointed as a neutral arbitrator who does
not disclose certain interests or relationships is
presumed to act with partiality for specified
purposes; requiring parties to substantially comply
with agreed to procedures of an arbitration
organization or any other procedures for challenges to

36-01261-12

20121458__

59 arbitrators before an award is made in order to seek
60 vacation of an award on specified grounds; amending s.
61 682.05, F.S.; requiring that if there is more than one
62 arbitrator, the powers of an arbitrator must be
63 exercised by a majority of the arbitrators; requiring
64 all arbitrators to conduct the arbitration hearing;
65 creating s. 682.051, F.S.; providing immunity from
66 civil liability for an arbitrator or an arbitration
67 organization acting in the capacity of an arbitrator;
68 providing that this immunity is supplemental to any
69 immunity under other law; providing that failure to
70 make a required disclosure does not remove immunity;
71 providing that an arbitrator or representative of an
72 arbitration organization is not competent to testify
73 and may not be required to produce records concerning
74 the arbitration; providing exceptions; providing for
75 awarding an arbitrator, arbitration organization, or
76 representative of an arbitration organization with
77 reasonable attorney fees and expenses of litigation
78 under certain circumstances; amending s. 682.06, F.S.;
79 revising provisions relating to the conduct of
80 arbitration hearings; providing for summary
81 disposition, notice of hearings, adjournment, and
82 rights of a party to the arbitration proceeding;
83 requiring appointment of a replacement arbitrator in
84 certain circumstances; amending s. 682.07, F.S.;
85 providing that a party to an arbitration proceeding
86 may be represented by an attorney; amending s. 682.08,
87 F.S.; revising provisions relating to the issuance,

36-01261-12

20121458__

88 service, and enforcement of subpoenas; revising
89 provisions relating to depositions; authorizing an
90 arbitrator to permit discovery in certain
91 circumstances; authorizing an arbitrator to order
92 compliance with discovery; authorizing protective
93 orders by an arbitrator; providing for applicability
94 of laws compelling a person under subpoena to testify
95 and all fees for attending a judicial proceeding, a
96 deposition, or a discovery proceeding as a witness;
97 providing for court enforcement of a subpoena or
98 discovery-related order; providing for witness fees;
99 creating s. 682.081, F.S.; providing for judicial
100 enforcement of a preaward ruling by an arbitrator in
101 certain circumstances; amending s. 682.09, F.S.;
102 revising provisions relating to the record needed for
103 an award; revising provisions relating to the time
104 within which an award must be made; amending s.
105 682.10, F.S.; revising provisions relating to
106 requirements for a motion to modify or correct an
107 award; amending s. 682.11, F.S.; revising provisions
108 relating to fees and expenses of arbitration;
109 authorizing punitive damages and other exemplary
110 relief and remedies; amending s. 682.12, F.S.;
111 revising provisions relating to confirmation of an
112 award; amending s. 682.13, F.S.; revising provisions
113 relating to grounds for vacating an award; revising
114 provisions relating to a motion for vacating an award;
115 providing for a rehearing in certain circumstances;
116 amending s. 682.14, F.S.; revising provisions relating

36-01261-12

20121458__

to the time for moving to modify or correct an award;
deleting references to the term "umpire"; revising a
provision concerning confirmation of awards; amending
s. 682.15, F.S.; revising provisions relating to a
court order confirming, vacating without directing a
rehearing, modifying, or correcting an award;
providing for award of costs and attorney fees in
certain circumstances; repealing s. 682.16, F.S.,
relating to judgment roll and docketing of certain
orders; repealing s. 682.17, F.S., relating to
application to court; repealing s. 682.18, F.S.,
relating to the definition of the term "court" and
jurisdiction; creating s. 682.181, F.S.; providing for
jurisdiction relating to the revised code; amending s.
682.19, F.S.; revising provisions relating to venue
for actions relating to the code; amending s. 682.20,
F.S.; providing that an appeal may be taken from an
order denying confirmation of an award unless the
court has entered an order under specified provisions;
providing that all other orders denying confirmation
of an award are final orders; repealing s. 682.21,
F.S., relating to the previous code not applying
retroactively; repealing s. 682.22, F.S., relating to
conflict of laws; creating s. 682.23, F.S.; specifying
the relationship of the code to the Electronic
Signatures in Global and National Commerce Act;
creating s. 682.24, F.S.; specifying the effective
date of the revised code; providing for applicability;
creating s. 682.25, F.S.; providing that the revised

36-01261-12

20121458__

code does not apply to any dispute involving child custody, visitation, or child support; amending s. 44.104, F.S.; deleting references to binding arbitration from provisions providing for voluntary trial resolution; providing for temporary relief; revising provisions relating to procedures in voluntary trial resolution; providing that a judgment is reviewable in the same manner as a judgment in a civil action; deleting provisions relating to applicability of the harmless error doctrine; providing limitations on the jurisdiction of a trial resolution judge; providing for the use of juries; providing for the title of a trial resolution judge and the use of judicial robes; amending s. 44.107, F.S.; providing immunity for voluntary trial resolution judges serving under specified provisions; amending ss. 440.1926 and 489.1402, F.S.; conforming cross-references; amending s. 731.401, F.S.; revising a reference to binding arbitration under a specified provision; providing directives to the Division of Statutory Revision, including redesignating the title of chapter 44, Florida Statutes, as "Alternative Dispute Resolution"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 682.01, Florida Statutes, is amended to read:

682.01 Short title ~~Florida Arbitration Code.~~ This chapter

36-01261-12

20121458__

Sections ~~682.01-682.22~~ may be cited as the "Revised Florida Arbitration Code."

Section 2. Section 682.011, Florida Statutes, is created to read:

682.011 Definitions.—As used in this chapter, the term:

(1) "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.

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

(3) "Court" means a court of competent jurisdiction in this state.

(4) "Knowledge" means actual knowledge.

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

(6) "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.

Section 3. Section 682.012, Florida Statutes, is created to read:

682.012 Notice.—

(1) Except as otherwise provided in the Revised Florida Arbitration Code, a person gives notice to another person by taking action that is reasonably necessary to inform the other

36-01261-12

20121458__

person in ordinary course, whether or not the other person
acquires knowledge of the notice.

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

(3) 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.

Section 4. Section 682.013, Florida Statutes, is created to
read:

682.013 Applicability of revised code.—

(1) The Revised Florida Arbitration Code governs an
agreement to arbitrate made on or after the effective date of
this act.

(2) The Revised Florida Arbitration Code governs an
agreement to arbitrate made before the effective date of this
act if all the parties to the agreement or to the arbitration
proceeding so agree in a record.

(3) Beginning July 1, 2015, the Revised Florida Arbitration
Code governs an agreement to arbitrate whenever made.

Section 5. Section 682.014, Florida Statutes, is created to
read:

682.014 Effect of agreement to arbitrate; nonwaivable
provisions.—

(1) Except as otherwise provided in subsections (2) and
(3), 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 the Revised Florida Arbitration Code to the
extent permitted by law.

36-01261-12

20121458__

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

235 (a) Waive or agree to vary the effect of the requirements
236 of s. 682.015(1), s. 682.02(1), s. 682.031, s. 682.08(1) or (2),
237 s. 682.181, or s. 682.20;

238 (b) Agree to unreasonably restrict the right under s.
239 682.032 to notice of the initiation of an arbitration
240 proceeding;

241 (c) Agree to unreasonably restrict the right under s.
242 682.041 to disclosure of any facts by a neutral arbitrator; or

243 (d) Waive the right under s. 682.07 of a party to an
244 agreement to arbitrate to be represented by an attorney at any
245 proceeding or hearing under the Revised Florida Arbitration
246 Code, but an employer and a labor organization may waive the
247 right to representation by an attorney in a labor arbitration.

248 (3) A party to an agreement to arbitrate or arbitration
249 proceeding may not waive, or the parties may not vary the effect
250 of, the requirements in this section or s. 682.013(1) or (3), s.
251 682.03, s. 682.051, s. 682.081, s. 682.10(4) or (5), s. 682.12,
252 s. 682.13, s. 682.14, s. 682.15(1) or (2), s. 682.23, s. 682.24,
253 or s. 682.25.

254 Section 6. Section 682.015, Florida Statutes, is created to
255 read:

256 682.015 Petition for judicial relief.—

257 (1) Except as otherwise provided in s. 682.20, a petition
258 for judicial relief under this chapter must be made to the court
259 and heard in the manner provided by law or rule of court for
260 making and hearing motions.

261 (2) Unless a civil action involving the agreement to

36-01261-12

20121458__

arbitrate is pending, notice of an initial petition 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.

Section 7. Section 682.02, Florida Statutes, is amended to
read:

682.02 Arbitration agreements made valid, irrevocable, and
enforceable; scope.—

(1) 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.

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

(3) 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.

(4) 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.

~~(5) Two or more parties may agree in writing to submit to~~
~~arbitration any controversy existing between them at the time of~~
~~the agreement, or they may include in a written contract a~~

36-01261-12

20121458__

~~provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof.~~

This section also applies to written interlocal agreements under ss. 163.01 and 373.713 in which two or more parties agree to submit to arbitration any controversy between them concerning water use permit motions ~~applications~~ and other matters, regardless of whether or not the water management district with jurisdiction over the subject motion ~~application~~ is a party to the interlocal agreement or a participant in the arbitration. ~~Such agreement or provision shall be valid, enforceable, and irrevocable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such agreement or provision to arbitrate in which it is stipulated that this law shall not apply or to any arbitration or award thereunder.~~

Section 8. Section 682.03, Florida Statutes, is amended to read:

682.03 Proceedings to compel and to stay arbitration.—

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate.

(b) 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. ~~A party to an agreement or~~

36-01261-12

20121458__

~~provision for arbitration subject to this law claiming the
neglect or refusal of another party thereto to comply therewith
may make application to the court for an order directing the
parties to proceed with arbitration in accordance with the terms
thereof. If the court is satisfied that no substantial issue
exists as to the making of the agreement or provision, it shall
grant the application. If the court shall find that a
substantial issue is raised as to the making of the agreement or
provision, it shall summarily hear and determine the issue and,
according to its determination, shall grant or deny the
application.~~

(2) 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. ~~If an issue referable to arbitration under an
agreement or provision for arbitration subject to this law
becomes involved in an action or proceeding pending in a court
having jurisdiction to hear an application under subsection (1),
such application shall be made in said court. Otherwise and
subject to s. 682.19, such application may be made in any court
of competent jurisdiction.~~

(3) If the court finds that there is no enforceable
agreement to arbitrate, it may not order the parties to
arbitrate pursuant to subsection (1) or subsection (2). ~~Any
action or proceeding involving an issue subject to arbitration
under this law shall be stayed if an order for arbitration or an
application therefor has been made under this section or, if the~~

36-01261-12

20121458

~~issue is severable, the stay may be with respect thereto only.
When the application is made in such action or proceeding, the
order for arbitration shall include such stay.~~

(4) 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. ~~On application the court may
stay an arbitration proceeding commenced or about to be
commenced, if it shall find that no agreement or provision for
arbitration subject to this law exists between the party making
the application and the party causing the arbitration to be had.
The court shall summarily hear and determine the issue of the
making of the agreement or provision and, according to its
determination, shall grant or deny the application.~~

(5) 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 s. 682.19. ~~An order for arbitration shall
not be refused on the ground that the claim in issue lacks merit
or bona fides or because any fault or grounds for the claim
sought to be arbitrated have not been shown.~~

(6) 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.

(7) 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

36-01261-12

20121458__

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

Section 9. Section 682.031, Florida Statutes, is created to read:

682.031 Provisional remedies.—

(1) 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.

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

(a) 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.

(b) 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.

(3) A party does not waive a right of arbitration by making a motion under this section.

Section 10. Section 682.032, Florida Statutes, is created to read:

36-01261-12

20121458__

682.032 Initiation of arbitration.—

(1) 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.

(2) Unless a person objects for lack or insufficiency of notice under s. 682.06(3) 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.

Section 11. Section 682.033, Florida Statutes, is created to read:

682.033 Consolidation of separate arbitration proceedings.—

(1) Except as otherwise provided in subsection (3), 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:

(a) 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;

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

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate

36-01261-12

20121458__

436 arbitration proceedings; and

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

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

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

446 Section 12. Section 682.04, Florida Statutes, is amended to
447 read:

448 682.04 Appointment of arbitrators by court.—

449 (1) If the parties to an agreement to arbitrate agree on ~~or~~
450 ~~provision for arbitration subject to this law provides~~ a method
451 ~~for appointing the appointment of arbitrators or an umpire,~~ this
452 method ~~must~~ shall be followed, unless the method fails.

453 (2) The court, on application of a party to an arbitration
454 agreement, shall appoint one or more arbitrators, if:

455 (a) The parties have not agreed on a method;

456 (b) The agreed method fails;

457 (c) One or more of the parties failed to respond to the
458 demand for arbitration; or

459 (d) An arbitrator fails to act and a successor has not been
460 appointed.

461 (3) ~~In the absence thereof, or if the agreed method fails~~
462 ~~or for any reason cannot be followed, or if an arbitrator or~~
463 ~~umpire who has been appointed fails to act and his or her~~
464 ~~successor has not been duly appointed, the court, on application~~

36-01261-12

20121458__

~~of a party to such agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed has all the shall have like powers of an arbitrator designated as if named or provided for in the agreement to arbitrate appointed pursuant to the agreed method or provision.~~

(4) 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.

Section 13. Section 682.041, Florida Statutes, is created to read:

682.041 Disclosure by arbitrator.—

(1) 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 person's impartiality as an arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding.

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representative, a witness, or another arbitrator.

(2) 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

36-01261-12

20121458__

arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or subsection (2) 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 s. 682.13(1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by subsection (1) or subsection (2), upon timely objection by a party, the court may vacate an award under s. 682.13(1)(b).

(5) 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 s. 682.13(1)(b).

(6) 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 s. 682.13(1)(b).

Section 14. Section 682.05, Florida Statutes, is amended to read:

682.05 Majority action by arbitrators.—If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of the arbitrators shall conduct the hearing under s. 682.06(3). ~~The~~

36-01261-12

20121458__

~~powers of the arbitrators may be exercised by a majority of
their number unless otherwise provided in the agreement or
provision for arbitration.~~

Section 15. Section 682.051, Florida Statutes, is created
to read:

682.051 Immunity of arbitrator; competency to testify;
attorney fees and costs.—

(1) An arbitrator or an arbitration organization acting in
the capacity of an arbitrator is immune from civil liability to
the same extent as a judge of a court of this state acting in a
judicial capacity.

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

(3) The failure of an arbitrator to make a disclosure
required by s. 682.041 does not cause any loss of immunity under
this section.

(4) 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:

(a) 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

(b) To a hearing on a motion to vacate an award under s.
682.13(1) (a) or (b) if the movant establishes prima facie that a

36-01261-12

20121458__

ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the 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 (4), 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.

Section 16. Section 682.06, Florida Statutes, is amended to read:

682.06 Hearing.—

(1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The arbitrator's authority 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. Unless otherwise provided by the agreement or provision for arbitration:

~~(1)(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives a~~

36-01261-12

20121458__

~~party's right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his or her jurisdiction, have like powers and be subject to like limitations thereon.~~

~~(b) The arbitrators, or umpire in the course of his or her jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his or her jurisdiction, to proceed promptly with the hearing and making of the award.~~

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

(a) If all interested parties agree; or

(b) 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. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the

36-01261-12

20121458__

610 arbitration proceeding makes an objection to lack or
611 insufficiency of notice not later than the beginning of the
612 hearing, the party's appearance at the hearing waives the
613 objection. Upon request of a party to the arbitration proceeding
614 and for good cause shown, or upon the arbitrator's own
615 initiative, the arbitrator may adjourn the hearing from time to
616 time as necessary but may not postpone the hearing to a time
617 later than that fixed by the agreement to arbitrate for making
618 the award unless the parties to the arbitration proceeding
619 consent to a later date. The arbitrator may hear and decide the
620 controversy upon the evidence produced although a party who was
621 duly notified of the arbitration proceeding did not appear. The
622 court, on request, may direct the arbitrator to conduct the
623 hearing promptly and render a timely decision. ~~The hearing shall~~
624 ~~be conducted by all of the arbitrators but a majority may~~
625 ~~determine any question and render a final award. An umpire~~
626 ~~authorized to hear and decide the cause upon the failure of the~~
627 ~~arbitrators to agree upon an award shall sit with the~~
628 ~~arbitrators throughout their hearing but shall not be counted as~~
629 ~~a part of their quorum or in the making of their award. If,~~
630 ~~during the course of the hearing, an arbitrator for any reason~~
631 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~
632 ~~appointed to act as neutrals may continue with the hearing and~~
633 ~~determination of the controversy.~~

634 (4) At a hearing under subsection (3), a party to the
635 arbitration proceeding has a right to be heard, to present
636 evidence material to the controversy, and to cross-examine
637 witnesses appearing at the hearing.

638 (5) If an arbitrator ceases or is unable to act during the

36-01261-12

20121458__

639 arbitration proceeding, a replacement arbitrator must be
640 appointed in accordance with s. 682.04 to continue the
641 proceeding and to resolve the controversy.

642 Section 17. Section 682.07, Florida Statutes, is amended to
643 read:

644 682.07 Representation by attorney.—A party to an
645 arbitration proceeding may ~~has the right to~~ be represented by an
646 attorney ~~at any arbitration proceeding or hearing under this~~
647 ~~law. A waiver thereof prior to the proceeding or hearing is~~
648 ~~ineffective.~~

649 Section 18. Section 682.08, Florida Statutes, is amended to
650 read:

651 682.08 Witnesses, subpoenas, depositions.—

652 (1) An arbitrator may issue a subpoena for the attendance
653 of a witness and for the production of records and other
654 evidence at any hearing and may administer oaths. A subpoena
655 must be served in the manner for service of subpoenas in a civil
656 action and, upon motion to the court by a party to the
657 arbitration proceeding or the arbitrator, enforced in the manner
658 for enforcement of subpoenas in a civil action. ~~Arbitrators, or~~
659 ~~an umpire authorized to hear and decide the cause upon failure~~
660 ~~of the arbitrators to agree upon an award, in the course of her~~
661 ~~or his jurisdiction, may issue subpoenas for the attendance of~~
662 ~~witnesses and for the production of books, records, documents~~
663 ~~and other evidence, and shall have the power to administer~~
664 ~~oaths. Subpoenas so issued shall be served, and upon application~~
665 ~~to the court by a party to the arbitration or the arbitrators,~~
666 ~~or the umpire, enforced in the manner provided by law for the~~
667 ~~service and enforcement of subpoenas in a civil action.~~

36-01261-12

20121458__

668 (2) In order to make the proceedings fair, expeditious, and
669 cost effective, upon request of a party to, or a witness in, an
670 arbitration proceeding, an arbitrator may permit a deposition of
671 any witness to be taken for use as evidence at the hearing,
672 including a witness who cannot be subpoenaed for or is unable to
673 attend a hearing. The arbitrator shall determine the conditions
674 under which the deposition is taken. ~~On application of a party~~
675 ~~to the arbitration and for use as evidence, the arbitrators, or~~
676 ~~the umpire in the course of her or his jurisdiction, may permit~~
677 ~~a deposition to be taken, in the manner and upon the terms~~
678 ~~designated by them or her or him of a witness who cannot be~~
679 ~~subpoenaed or is unable to attend the hearing.~~

680 (3) An arbitrator may permit such discovery as the
681 arbitrator decides is appropriate in the circumstances, taking
682 into account the needs of the parties to the arbitration
683 proceeding and other affected persons and the desirability of
684 making the proceeding fair, expeditious, and cost effective. ~~All~~
685 ~~provisions of law compelling a person under subpoena to testify~~
686 ~~are applicable.~~

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

695 (5) An arbitrator may issue a protective order to prevent
696 the disclosure of privileged information, confidential

36-01261-12

20121458__

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.

(6) 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.

(7) 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 so 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 arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

(8)~~(4)~~ Fees for attendance as a witness shall be the same as for a witness in the circuit court.

Section 19. Section 682.081, Florida Statutes, is created to read:

682.081 Judicial enforcement of preaward ruling by arbitrator.—If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request that the arbitrator incorporate the ruling into an award under

36-01261-12

20121458__

s. 682.12. A prevailing party may make a motion to the court for an expedited order to confirm the award under s. 682.12, 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 s. 682.13 or s. 682.14.

Section 20. Section 682.09, Florida Statutes, is amended to read:

682.09 Award.—

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any 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. ~~The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his or her jurisdiction. They or he or she shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.~~

(2) 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. ~~An award shall be made within the time fixed therefor by~~

36-01261-12

20121458__

~~the agreement or provision for arbitration or, if not so fixed,
within such time as the court may order on application of a
party to the arbitration. The parties may, by written agreement,
extend the time either before or after the expiration thereof.
Any objection that an award was not made within the time
required is waived unless the objecting party notifies the
arbitrators or umpire in writing of his or her objection prior
to the delivery of the award to him or her.~~

Section 21. Section 682.10, Florida Statutes, is amended to read:

682.10 Change of award by arbitrators ~~or umpire.~~

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

(a) Upon a ground stated in s. 682.14(1) (a) or (c);

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

(c) To clarify the award.

(2) A motion under subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

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

(4) If a motion to the court is pending under s. 682.12, s. 682.13, or s. 682.14, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in s. 682.14(1) (a) or (c);

(b) Because the arbitrator has not made a final and

36-01261-12

20121458__

784 definite award upon a claim submitted by the parties to the
785 arbitration proceeding; or

786 (c) To clarify the award.

787 (5) An award modified or corrected pursuant to this section
788 is subject to ss. 682.09(1), 682.12, 682.13, and 682.14. On
789 application of a party to the arbitration, or if an application
790 to the court is pending under s. 682.12, s. 682.13 or s. 682.14,
791 on submission to the arbitrators, or to the umpire in the case
792 of an umpire's award, by the court under such conditions as the
793 court may order, the arbitrators or umpire may modify or correct
794 the award upon the grounds stated in s. 682.14(1)(a) and (c) or
795 for the purpose of clarifying the award. The application shall
796 be made within 20 days after delivery of the award to the
797 applicant. Written notice thereof shall be given forthwith to
798 the other party to the arbitration, stating that he or she must
799 serve his or her objections thereto, if any, within 10 days from
800 the notice. The award so modified or corrected is subject to the
801 provisions of ss. 682.12-682.14.

802 Section 22. Section 682.11, Florida Statutes, is amended to
803 read:

804 682.11 Remedies; fees and expenses of arbitration
805 proceeding.-

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

811 (2) An arbitrator may award reasonable attorney fees and
812 other reasonable expenses of arbitration if such an award is

36-01261-12

20121458

authorized by law in a civil action involving the same claim or
by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by
subsections (1) and (2), 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 s. 682.12 or for
vacating an award under s. 682.13.

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

(5) If an arbitrator awards punitive damages or other
exemplary relief under subsection (1), 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
the punitive damages or other exemplary relief. ~~Unless otherwise
provided in the agreement or provision for arbitration, the
arbitrators' and umpire's expenses and fees, together with other
expenses, not including counsel fees, incurred in the conduct of
the arbitration, shall be paid as provided in the award.~~

Section 23. Section 682.12, Florida Statutes, is amended to
read:

682.12 Confirmation of an award.—~~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 s. 682.10 or s.
682.14 or is vacated pursuant to s. 682.13. Upon application of
a party to the arbitration, the court shall confirm an award,~~

36-01261-12

20121458__

~~unless within the time limits hereinafter imposed grounds are
urged for vacating or modifying or correcting the award, in
which case the court shall proceed as provided in ss. 682.13 and
682.14.~~

Section 24. Section 682.13, Florida Statutes, is amended to
read:

682.13 Vacating an award.—

(1) Upon motion ~~application~~ of a party to an arbitration
proceeding, the court shall vacate an arbitration award if ~~when~~:

(a) The award was procured by corruption, fraud, or other
undue means;—

(b) There was:

1. Evident partiality by an arbitrator appointed as a
neutral arbitrator;

2. Corruption by an arbitrator; or

3. Misconduct by an arbitrator prejudicing the rights of a
party to the arbitration proceeding; or corruption in any of the
arbitrators or umpire or misconduct prejudicing the rights of
any party.

(c) 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 s. 682.06, so as to prejudice
substantially the rights of a party to the arbitration
proceeding; The arbitrators or the umpire in the course of her
or his jurisdiction exceeded their powers.

(d) An arbitrator exceeded the arbitrator's powers; The
arbitrators or the umpire in the course of her or his
jurisdiction refused to postpone the hearing upon sufficient

36-01261-12

20121458__

~~cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.~~

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under s. 682.06(3) not later than the beginning of the arbitration hearing; or ~~There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.~~

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in s. 682.032 so as to prejudice substantially the rights of a party to the arbitration proceeding.

~~But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.~~

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, 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. An ~~application under this section shall be made within 90 days~~

36-01261-12

20121458

after ~~delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.~~

(3) If the court vacates an award on a ground other than that set forth in paragraph (1)(e), it may order a rehearing. If the award is vacated on a ground stated in paragraph (1)(a) or paragraph (1)(b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph (1)(c), paragraph (1)(d), or paragraph (1)(f), the rehearing may 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 s. 682.09(2) for an award. ~~In vacating the award on grounds other than those stated in paragraph (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with s. 682.04, or, if the award is vacated on grounds set forth in paragraphs (1)(c) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with s. 682.04. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.~~

(4) If a motion ~~the application~~ to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Section 25. Section 682.14, Florida Statutes, is amended to read:

36-01261-12

20121458__

682.14 Modification or correction of award.—

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, the court shall modify or correct the award if ~~Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:~~

(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award.

(b) The arbitrators ~~or umpire~~ have awarded upon a matter not submitted in the arbitration ~~to them or him or her~~ and the award may be corrected without affecting the merits of the decision upon the issues submitted.

(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award ~~so as to effect its intent and shall~~ confirm the award as so modified and corrected. Otherwise, unless a motion to vacate the award under s. 682.13 is pending, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award under s. 682.13.

Section 26. Section 682.15, Florida Statutes, is amended to read:

682.15 Judgment or decree on award.—

(1) Upon granting an order confirming, vacating without

36-01261-12

20121458

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.

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

(3) On motion of a prevailing party to a contested judicial proceeding under s. 682.12, s. 682.13, or s. 682.14, 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. ~~Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.~~

Section 27. Section 682.16, Florida Statutes, is repealed.

Section 28. Section 682.17, Florida Statutes, is repealed.

Section 29. Section 682.18, Florida Statutes, is repealed.

Section 30. Section 682.181, Florida Statutes, is created to read:

682.181 Jurisdiction.—

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

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Revised Florida Arbitration Code.

36-01261-12

20121458__

Section 31. Section 682.19, Florida Statutes, is amended to read:

682.19 Venue.—A petition pursuant to s. 682.015 must be filed 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 petition 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 petitions must be made in the court hearing the initial petition unless the court otherwise directs.

~~Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if she or he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.~~

Section 32. Section 682.20, Florida Statutes, is amended to read:

682.20 Appeals.—

(1) An appeal may be taken from:

(a) An order denying an application to compel arbitration made under s. 682.03.

(b) An order granting a motion ~~an application~~ to stay arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

(c) An order confirming ~~or denying confirmation of~~ an award.

36-01261-12

20121458__

(d) An order denying confirmation of an award unless the court has entered an order under s. 682.10(4) or s. 682.13. All other orders denying confirmation of an award are final orders.

~~(e)-(d)~~ An order modifying or correcting an award.

~~(f)-(e)~~ An order vacating an award without directing a rehearing.

~~(g)-(f)~~ A judgment or decree entered pursuant to this chapter ~~the provisions of this law.~~

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

Section 33. Section 682.21, Florida Statutes, is repealed.

Section 34. Section 682.22, Florida Statutes, is repealed.

Section 35. Section 682.23, Florida Statutes, is created to read:

682.23 Relationship to Electronic Signatures in Global and National Commerce Act.—The provisions of this chapter 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 s. 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7002.

Section 36. Section 682.24, Florida Statutes, is created to read:

682.24 Effective date; applicability.—

(1) The Revised Florida Arbitration Code takes effect on July 1, 2012.

(2) The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before the Revised Florida Arbitration Code takes effect. Subject to s.

36-01261-12

20121458__

1045 682.013, an arbitration agreement made before July 1, 2012, is
1046 governed by the former Florida Arbitration Code.

1047 Section 37. Section 682.25, Florida Statutes, is created to
1048 read:

1049 682.25 Disputes excluded.—The Revised Florida Arbitration
1050 Code does not apply to any dispute involving child custody,
1051 visitation, or child support.

1052 Section 38. Section 44.104, Florida Statutes, is amended to
1053 read:

1054 44.104 Voluntary ~~binding arbitration and voluntary~~ trial
1055 resolution.—

1056 (1) Two or more opposing parties who are involved in a
1057 civil dispute may agree in writing to submit the controversy to
1058 ~~voluntary binding arbitration, or voluntary trial resolution, in~~
1059 lieu of judicial litigation of the issues involved, prior to or
1060 after a lawsuit has been filed, ~~provided no constitutional issue~~
1061 ~~is involved.~~

1062 (2) If the parties have entered into such an agreement and
1063 the agreement ~~which provides in voluntary binding arbitration~~
1064 ~~for a method for appointing of one or more arbitrators, or which~~
1065 ~~provides in voluntary trial resolution a method for appointing~~
1066 ~~the a member of The Florida Bar in good standing for more than 5~~
1067 ~~years to act as trial resolution judge, that method shall be~~
1068 followed ~~the court shall proceed with the appointment as~~
1069 ~~prescribed. However, in voluntary binding arbitration at least~~
1070 ~~one of the arbitrators, who shall serve as the chief arbitrator,~~
1071 ~~shall meet the qualifications and training requirements adopted~~
1072 ~~pursuant to s. 44.106.~~ In the absence of an agreement on a
1073 method for appointing the trial resolution judge, or if the

36-01261-12

20121458__

1074 agreement method fails or for any reason cannot be followed, and
1075 the parties fail to agree on the person to serve as the trial
1076 resolution judge, the court, on application of a party, shall
1077 appoint ~~one or more qualified arbitrators, or~~ the trial
1078 resolution judge, as the case requires. A trial resolution judge
1079 must be a member of The Florida Bar in good standing for 5 years
1080 or more who has agreed to serve.

1081 (3) The ~~arbitrators or~~ trial resolution judge shall be
1082 compensated by the parties according to their agreement with the
1083 trial resolution judge.

1084 (4) Within 10 days after the submission of the request for
1085 ~~binding arbitration, or~~ voluntary trial resolution, the court
1086 shall provide for the appointment of the ~~arbitrator or~~
1087 ~~arbitrators, or~~ trial resolution judge, as the case requires.
1088 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
1089 notify the parties of the time and place for the hearing.

1090 (5) Application for ~~voluntary binding arbitration or~~
1091 voluntary trial resolution shall be filed and fees paid to the
1092 clerk of court as if for complaints initiating civil actions.
1093 The clerk of the court shall handle and account for these
1094 matters in all respects as if they were civil actions, except
1095 that the clerk of court shall keep separate ~~the records of the~~
1096 ~~applications for voluntary binding arbitration and~~ the records
1097 of the applications for voluntary trial resolution from all
1098 other civil actions.

1099 (6) Filing of the application for ~~binding arbitration or~~
1100 voluntary trial resolution tolls ~~will toll~~ the running of the
1101 applicable statutes of limitation.

1102 (7) The ~~chief arbitrator or~~ trial resolution judge may

36-01261-12

20121458__

administer oaths or affirmations and conduct the proceedings as the rules of court shall provide. At the request of any party, the ~~chief arbitrator or~~ trial resolution judge shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law. The trial resolution judge may order temporary relief in the same manner, and to the same extent, as in civil actions generally. Any party may enforce such an order by filing a petition in the court. Orders entered by the court are reviewable by the appellate court in the same manner, and to the same extent, as orders in civil actions generally.

~~(8) A voluntary binding arbitration hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision.~~ A trial resolution judge shall conduct a voluntary trial resolution hearing. The trial resolution judge may determine any question and render a final decision.

(9) The Florida Evidence Code and Florida Rules of Civil Procedure ~~shall~~ apply to all proceedings under this section, except that voluntary trial resolution is not governed by procedural rules regulating general and special magistrates, and rulings of the trial resolution judge are not reviewable by filing exceptions with the court.

~~(10) An appeal of a voluntary binding arbitration decision shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:~~

~~(a) Any alleged failure of the arbitrators to comply with~~

36-01261-12

20121458__

the applicable rules of procedure or evidence.

~~(b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.~~

~~(c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.~~

(10)~~(11)~~ Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. The judgment is reviewable by the appellate court in the same manner, and to the same extent, as a judgment in a civil action. ~~Factual findings determined in the voluntary trial are not subject to appeal.~~

~~(12) The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.~~

(11)~~(13)~~ If no appeal is taken within the time provided by rules promulgated by the Supreme Court, ~~then~~ the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision. Equitable remedies are, ~~which orders shall be enforceable by the contempt powers of the court to the same extent as in civil actions generally. When a judgment provides for execution, and for which judgments~~ execution shall issue on request of a party.

(12)~~(14)~~ This section does ~~shall~~ not apply to any dispute

36-01261-12

20121458__

1161 ~~involving child custody, visitation, or child support, or to any~~
1162 dispute that ~~which~~ involves the rights of a third party not a
1163 party to the ~~arbitration or~~ voluntary trial resolution when the
1164 third party would be an indispensable party if the dispute were
1165 resolved in court or when the third party notifies ~~the chief~~
1166 ~~arbitrator or~~ the trial resolution judge that the third party
1167 would be a proper party if the dispute were resolved in court,
1168 that the third party intends to intervene in the action in
1169 court, and that the third party does not agree to proceed under
1170 this section.

1171 (13) A trial resolution judge does not have jurisdiction to
1172 declare unconstitutional a statute, ordinance, or provision of a
1173 constitution. If any such claim is made in the voluntary trial
1174 resolution proceeding, that claim shall be severed and
1175 adjudicated by a judge of the court.

1176 (14) (a) The parties may agree to a trial by a privately
1177 selected jury. The court's jury pool may not be used for this
1178 purpose. In all other cases, the trial resolution judge shall
1179 conduct a bench trial.

1180 (b) The trial resolution judge may wear a judicial robe and
1181 use the title "Trial Resolution Judge" when acting in that
1182 capacity.

1183 Section 39. Subsection (1) of section 44.107, Florida
1184 Statutes, is amended to read:

1185 44.107 Immunity for arbitrators, voluntary trial resolution
1186 judges, mediators, and mediator trainees.—

1187 (1) Arbitrators serving under s. 44.103, voluntary trial
1188 resolution judges serving under ~~or~~ s. 44.104, mediators serving
1189 under s. 44.102, and trainees fulfilling the mentorship

36-01261-12

20121458__

requirements for certification by the Supreme Court as a mediator ~~shall~~ have judicial immunity in the same manner and to the same extent as a judge and are entitled to the same immunity and remedies provided in s. 682.051.

Section 40. Section 440.1926, Florida Statutes, is amended to read:

440.1926 Alternate dispute resolution; claim arbitration.— Notwithstanding any other provision of this chapter, the employer, carrier, and employee may mutually agree to seek consent from a judge of compensation claims to enter into binding claim arbitration in lieu of any other remedy provided for in this chapter to resolve all issues in dispute regarding an injury. Arbitrations agreed to pursuant to this section shall be governed by chapter 682, the Revised Florida Arbitration Code, except that, notwithstanding any provision in chapter 682, the term "court" shall mean a judge of compensation claims. An arbitration award in accordance with this section is ~~shall be~~ enforceable in the same manner and with the same powers as any final compensation order.

Section 41. Paragraph (a) of subsection (1) of section 489.1402, Florida Statutes, is amended to read:

489.1402 Homeowners' Construction Recovery Fund; definitions.—

(1) The following definitions apply to ss. 489.140-489.144:

(a) "Arbitration" means alternative dispute resolution entered into between a claimant and a contractor either pursuant to a construction contract that contains a mandatory arbitration clause or through any binding arbitration under the Revised Florida Arbitration Code.

36-01261-12

20121458__

1219 Section 42. Subsection (2) of section 731.401, Florida
1220 Statutes, is amended to read:

1221 731.401 Arbitration of disputes.—

1222 (2) Unless otherwise specified in the will or trust, a will
1223 or trust provision requiring arbitration shall be presumed to
1224 require voluntary trial resolution ~~binding arbitration~~ under s.
1225 44.104.

1226 Section 43. The Division of Statutory Revision is directed
1227 to redesignate the title of chapter 44, Florida Statutes, as
1228 "Alternative Dispute Resolution."

1229 Section 44. The Division of Statutory Revision is directed
1230 to replace the phrase "the effective date of this act" wherever
1231 it occurs in this act with the date this act becomes a law.

1232 Section 45. This act shall take effect July 1, 2012.