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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: FAV	.	
3/25/2008	.	
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1 The Committee on Judiciary (Deutch) recommended the following
 2 **amendment:**

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

7 Section 1. Section 682.501, Florida Statutes, is created to
 8 read:

9 682.501 Florida Consumer Arbitration Act.--Sections
 10 682.501-682.533 may be cited as the "Florida Consumer Arbitration
 11 Act,"

12 Section 2. Section 682.502, Florida Statutes, is created to
 13 read:

14 682.502 Definitions.--As used in ss. 682.501-682.533, the
 15 term:

16 (1) "Arbitration organization" means an association,
 17 agency, board, commission, or other entity that is neutral and



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18 initiates, sponsors, or administers an arbitration proceeding or
19 is involved in the appointment of an arbitrator.

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

23 (3) "Consumer" means a party to an arbitration agreement
24 who, in the context of that arbitration agreement, is an
25 individual, not a business, who seeks or acquires, including by
26 lease, any goods or services primarily for personal, family, or
27 household purposes, including, but not limited to, transactions
28 involving banking, credit cards, home loans, and other financial
29 services; healthcare services; brokerage services; home
30 construction and improvements; insurance; communications; the
31 purchase and lease of motor vehicles and other personal
32 property; and the purchase and lease of real property. This
33 definition may not be construed to restrict the ability of
34 consumers to pursue arbitration on a group basis or render this
35 definition inapplicable to arbitrations involving multiple
36 consumer parties.

37 (4) "Consumer arbitration agreement" means a standardized
38 contract written by the nonconsumer party with a provision
39 requiring that disputes arising after the contract is signed be
40 submitted to binding arbitration, and the other party is a
41 consumer.

42 (5) "Evident partiality" means that a reasonable person
43 would conclude that the arbitrator was partial to one party to
44 the arbitration, or that it reasonably looks as though the
45 arbitrator would tend to favor one of the parties. This
46 definition does not require the party alleging such partiality
47 to prove that the arbitrator was actually prejudiced.

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48 (6) "Financial interest" means holding a position in a
49 business as officer, director, trustee, or partner; holding any
50 position in management; or owning more than 5 percent interest
51 in a business.

52 (7) "Knowledge" means actual knowledge.

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

58 (9) "Record" means information that is inscribed on a
59 tangible medium or that is stored in an electronic or other
60 medium and is retrievable in perceivable form.

61 (10) "Summary disposition" means an expedited determination
62 without formal evidentiary hearings and does not mean summary
63 judgment as that term is defined in the Florida Rules of Civil
64 Procedure and cases decided thereunder.

65 Section 3. Section 682.503, Florida Statutes, is created to
66 read:

67 682.503 Application in general.--

68 (1) Except as otherwise provided in ss. 682.501-682.533,
69 the provisions of this act apply to consumer arbitration
70 agreements. Notwithstanding any provision of ss. 682.01-682.022
71 to the contrary, the provisions of ss. 682.01-682.022 do not
72 apply to any arbitration agreement to which ss. 682.501-682.533
73 apply.

74 (2) Sections 682.501-682.533 do not apply to insurance
75 policies made with a consumer, and every provision in any such
76 policy requiring arbitration or restricting a party or
77 beneficiary from enforcing any right under it by usual legal

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78 proceedings or limiting the time to do so is void and
79 unenforceable.

80 (3) A provision for mandatory binding arbitration within
81 any arbitration agreement is void and unenforceable except to
82 the extent federal law provides for its enforceability.

83 Section 4. Section 682.504, Florida Statutes, is created to
84 read:

85 682.504 Effect of agreement to arbitrate; nonwaivable
86 provisions.--

87 (1) Except as otherwise provided in subsections (2) and
88 (3), a party to an agreement to arbitrate or to an arbitration
89 proceeding may waive, or the parties may vary the effect of, the
90 requirements of ss. 682.501-682.533 to the extent permitted by
91 law.

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

94 (a) Waive or agree to vary the effect of the requirements
95 of s. 682.503, s. 682.508, s. 682.510, s. 682.511, s. 682.517(1)
96 and (2), s. 682.521, or s. 682.530; or

97 (b) Waive the right under s. 682.516 of a party to an
98 agreement to arbitrate to be represented by a lawyer at any
99 proceeding or hearing under ss. 682.501-682.533, but an employer
100 and a labor organization may waive the right to representation
101 by a lawyer in a labor arbitration.

102 (3) A party to an agreement to arbitrate or an arbitration
103 proceeding may not waive, or the parties may not vary the effect
104 of, the requirements of this section, s. 682.503(1) or (3), s.
105 682.506, s. 682.518, s. 682.20, s. 682.522, s. 682.523, s.
106 682.524, s. 682.525, or s. 682.531, except that, if there is an
107 agreement to arbitrate disputes over insurance obligations by



108 two or more people engaged in the business of insurance,
109 including, but not limited to, reinsurers, self-insurers, or
110 reinsurance intermediaries, or any combination thereof, the
111 parties to the agreement may waive the right to vacate under s.
112 682.523.

113 (4) A party to an agreement to arbitrate or to an
114 arbitration proceeding may not narrow the grounds for vacating
115 an award set forth in s. 682.523, except in a subsequent
116 agreement for consideration made after the controversy that is
117 at issue in the arbitration has arisen.

118 (5) A party to an agreement that submits to having, or
119 agrees to have, a court decide an issue subject to arbitration
120 has waived his or her right to arbitrate. This includes, but is
121 not limited to, initiating a suit or responding to a suit in any
122 manner other than by a motion to compel arbitration.

123 Section 5. Section 682.505, Florida Statutes, is created to
124 read:

125 682.505 Arbitration agreements made valid, irrevocable, and
126 enforceable; scope.--Two or more parties may agree in writing to
127 submit to arbitration any controversy existing between them at
128 the time of the agreement, or they may include in a written
129 contract a provision for the settlement by arbitration of any
130 controversy thereafter arising between them relating to such
131 contract or the failure or refusal to perform the whole or any
132 part thereof. This section also applies to written interlocal
133 agreements under ss. 163.01 and 373.1962 in which two or more
134 parties agree to submit to arbitration any controversy between
135 them concerning water use permit applications and other matters,
136 regardless of whether or not the water management district having
137 jurisdiction over the subject application is a party to the



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138 interlocal agreement or a participant in the arbitration. Such
139 agreement or provision is valid, enforceable, and irrevocable
140 without regard to the justiciable character of the controversy.
141 Sections 682.501-682.533 do not apply to any such agreement or
142 provision to arbitrate in which it is stipulated that this act
143 does not apply or to any arbitration or award.

144 Section 6. Section 682.506, Florida Statutes, is created to
145 read:

146 682.506 Proceedings to compel and to stay arbitration.--

147 (1) A party to an agreement or provision for arbitration
148 which is subject to this act who claims the neglect or refusal
149 of another party to comply may make application to the court for
150 an order directing the parties to proceed with arbitration in
151 accordance with the terms thereof. If the court is satisfied
152 that no substantial issue exists as to the making of the
153 agreement or provision, it shall grant the application. If the
154 court finds that a substantial issue is raised as to the making
155 of the agreement or provision, it shall summarily hear and
156 determine the issue and, according to its determination, shall
157 grant or deny the application.

158 (2) If an issue referable to arbitration under an
159 agreement or provision for arbitration subject to this act
160 becomes involved in an action or proceeding pending in a court
161 having jurisdiction to hear an application under subsection (1),
162 such application shall be made in that court. Otherwise and
163 subject to s. 682.529, such application may be made in any court
164 of competent jurisdiction.

165 (3) Any action or proceeding involving an issue subject to
166 arbitration under this act shall be stayed if an order for
167 arbitration or an application has been made under this section



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

171 (4) On application, the court may stay an arbitration
172 proceeding commenced or about to be commenced if it finds that
173 no agreement or provision for arbitration subject to this act
174 exists between the party making the application and the party
175 causing the arbitration to be had. The court shall summarily
176 hear and determine the issue of the making of the agreement or
177 provision and, according to its determination, shall grant or
178 deny the application.

179 (5) An order for arbitration may not be refused on the
180 ground that the claim in issue lacks merit or bona fides or
181 because any fault or grounds for the claim sought to be
182 arbitrated have not been shown.

183 Section 7. Section 682.507, Florida Statutes, is created to
184 read:

185 682.507 Notice.--

186 (1) Except as otherwise provided in ss. 682.501-682.533, a
187 person gives notice to another party by delivering notice to the
188 party's place of residence by certified or registered mail,
189 return receipt requested and obtained, or by in-hand delivery,
190 with notice of service of process.

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

193 Section 8. Section 682.508, Florida Statutes, is created to
194 read:

195 682.508 Initiation of arbitration.--Unless initiated by a
196 consumer, a person or entity initiates an arbitration proceeding
197 by giving notice in a record to the other parties to the



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198 agreement to arbitrate by certified or registered mail, return
199 receipt requested and obtained, or by service as authorized for
200 the commencement of a civil action. The notice must describe the
201 nature of the controversy and the remedy sought.

202 Section 9. Section 682.509, Florida Statutes, is created to
203 read:

204 682.509 Appointment of arbitrators by court.--

205 (1) The parties shall select the arbitrator after the
206 arbitration has been initiated. If the parties are unable to
207 come to an agreement, the court shall appoint one or more
208 arbitrators or an umpire deemed by both parties to be
209 acceptable. An arbitrator or umpire so appointed shall have like
210 powers as if named or provided for in the agreement or
211 provision.

212 (2) An individual may not serve as an arbitrator if the
213 individual has, at the time of arbitration or at some time in
214 the past, a direct and material interest in the outcome of the
215 arbitration proceeding, an existing relationship with a party,
216 or any other interest more than a de minimis interest which
217 could be affected by the proceeding.

218 (3) An individual may not serve as an arbitrator if the
219 arbitration service through which the individual has been
220 contracted has an interest, direct or indirect, in the outcome
221 of the arbitration.

222 Section 10. Section 682.511, Florida Statutes, is created
223 to read:

224 682.511 Disclosure by arbitrator.--

225 (1) Before accepting appointment, an individual who is
226 requested to serve as an arbitrator, after making a reasonable
227 inquiry, shall disclose to all parties to the agreement to



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228 arbitrate and the arbitration proceeding and to any other
229 arbitrators involved in the proceedings any facts that might
230 affect, or appear to affect, the impartiality of the arbitrator
231 in the arbitration proceeding, including:

232 (a) Any financial or personal interest in the outcome of
233 the arbitration proceeding.

234 (b) Any existing or past relationship with any of the
235 parties to the agreement to arbitrate or the arbitration
236 proceeding, their counsel or representatives, a witness, or
237 other arbitrators, including the number of past arbitrations
238 conducted involving either party, the outcomes of those past
239 arbitrations, and the dates of decision.

240 (2) The parties must be informed that information
241 concerning the arbitration service provider's past cases is
242 available in a hard copy or on the provider's website.

243 (3) An arbitrator has a continuing obligation to disclose
244 to all parties to the agreement to arbitrate and the arbitration
245 proceeding and to any other arbitrators involved in the
246 proceeding any facts that the arbitrator learns after accepting
247 appointment which might affect, or appear to affect, the
248 impartiality of the arbitrator, including, but not limited to,
249 the information or facts required to be disclosed under
250 subsection (1).

251 (4) If an arbitrator discloses a fact as required by
252 subsection (1) or subsection (3) and a party timely objects to
253 the appointment or continued service of the arbitrator based
254 upon the fact disclosed, the objection may be grounds for
255 removal of the arbitrator or for vacating an award made by the
256 arbitrator under s. 682.520.

257 (5) If the arbitrator did not disclose a fact as required



258 by subsection (1) or subsection (3), upon timely objection by a
259 party, the party may make a motion to the court for an expedited
260 order to remove the arbitrator and appoint a successor. Failure
261 of an arbitrator to make such disclosure is cause for the court
262 to vacate an award under s. 682.523.

263 (6) An arbitrator appointed as a neutral arbitrator who
264 fails to comply with any of the disclosure requirements of this
265 section is presumed to have acted with evident partiality under
266 s. 682.523(1)(b).

267 (7) If circumstances do not exist which would affect the
268 impartiality of any designated arbitrator, such arbitrator shall
269 sign an oath provided by the court affirming the absence of such
270 present or preexisting ties.

271 Section 11. Section 682.512, Florida Statutes, is created
272 to read:

273 682.512 Consolidation of separate arbitration
274 proceedings.--

275 (1) Except as otherwise provided in subsection (2), upon
276 motion of a party to an agreement to arbitrate or to an
277 arbitration proceeding, the court shall order consolidation of
278 separate arbitration proceedings as to all or some of the claims
279 if:

280 (a) There are separate agreements to arbitrate or separate
281 arbitration proceedings between the same persons or one of them
282 is a party to a separate agreement to arbitrate or a separate
283 arbitration proceeding with a third person.

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

287 (c) The existence of a common issue of law or fact creates



288 the possibility of conflicting decisions in the separate
289 arbitration proceedings.

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

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

296 (3) This section does not prevent a party's participation
297 in a class action lawsuit.

298 Section 12. Section 682.513, Florida Statutes, is created
299 to read:

300 682.513 Majority action by arbitrators.--The powers of the
301 arbitrators shall be exercised by a majority of their number, but
302 all of them shall conduct the hearing under s. 682.514.

303 Section 13. Section 682.514, Florida Statutes, is created
304 to read:

305 682.514 Arbitration process.--

306 (1) An arbitrator must conduct an arbitration in a manner
307 that is fundamentally fair. "Fundamental fairness" includes
308 notice, an opportunity to be heard, an opportunity to present
309 relevant and material evidence, an opportunity for argument
310 before the decisionmakers, and an unbiased decisionmaker.

311 (2) The authority conferred upon the arbitrator includes
312 the power to hold conferences with the parties to the
313 arbitration proceeding before the hearing and, among other
314 matters, determine the admissibility, relevance, materiality,
315 and weight of any evidence in accordance with the Florida Rules
316 of Evidence and the Florida Rules of Civil Procedure. The
317 parties to an arbitration proceeding may, after the arbitration



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318 has been instituted, stipulate in writing to apply arbitration
319 rules that vary from the Florida Rules of Evidence and the
320 Florida Rules of Civil Procedure.

321 (3) Unless after a dispute arises both parties settle the
322 dispute or in cases of extreme hardship, both parties or their
323 attorneys must be physically present at all hearings and
324 conferences with the arbitrator.

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

327 (a) If all interested parties agree to permit summary
328 disposition of the issue; or

329 (b) Upon request of one party to the arbitration
330 proceeding if that party gives actual, written notice to all
331 other parties to the proceeding in the manner provided in s.
332 682.505, and the other parties have been given 30 days to
333 respond after receiving such notice.

334 Section 14. Section 682.515, Florida Statutes, is created
335 to read:

336 682.515 Hearing.--Unless otherwise provided by the
337 agreement or provision for arbitration:

338 (1) (a) The arbitrators shall appoint a time and place for
339 the hearing and cause notification to the parties to be served
340 personally or by registered or certified mail not less than 30
341 days before the initial hearing, and not less than 10 days for
342 any subsequent hearings. Notice shall include a statement that a
343 party is entitled to representation. Appearance at the hearing
344 does not waive a party's right to object to the proceeding on
345 the basis of insufficient notice or lack of notice. The
346 arbitrators may adjourn the hearing from time to time upon their
347 own motion and shall do so upon the request of any party to the



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348 arbitration for good cause shown. An adjournment or postponement
349 of the hearing may not extend beyond the date fixed in the
350 agreement or provision for making the award unless the parties
351 consent to a later date. An umpire authorized to hear and decide
352 the cause upon failure of the arbitrators to agree upon an award
353 shall, in the course of his or her jurisdiction, have like
354 powers and be subject to like limitations thereon.

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

362 (2) The parties are entitled to be heard, to present
363 evidence material to the controversy, and to cross-examine
364 witnesses appearing at the hearing in accordance with the
365 Florida Rules of Evidence and the Florida Rules of Civil
366 Procedure unless otherwise stipulated by the parties after the
367 cause of action has arisen and the arbitration proceeding has
368 been instituted.

369 (3) The hearing shall be conducted by all of the
370 arbitrators, but a majority may determine any question and render
371 a final award. An umpire authorized to hear and decide the cause
372 upon the failure of the arbitrators to agree upon an award shall
373 sit with the arbitrators throughout the hearing, but may not be
374 counted as a part of the quorum or in the making of the award.
375 If, during the course of the hearing, an arbitrator for any
376 reason ceases to act, a replacement arbitrator must be appointed



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377 in accordance with s. 682.507 to continue the proceeding and to
378 resolve the controversy.

379 Section 15. Section 682.516, Florida Statutes, is created
380 to read:

381 682.516 Representation by attorney.--A party has the right
382 to be represented by an attorney at any arbitration proceeding
383 or hearing under this act. A waiver prior to the proceeding or
384 hearing is ineffective. The parties to an arbitration must be
385 provided with information concerning institutions that might
386 offer assistance, such as bar associations, legal service
387 associations, civil rights organizations, and trade unions.

388 Section 16. Section 682.517, Florida Statutes, is created
389 to read:

390 682.517 Witnesses, subpoenas, depositions, discovery.--

391 (1) An arbitrator, or an umpire authorized to hear and
392 decide the cause upon failure of the arbitrators to agree upon
393 an award, in the course of his or her jurisdiction, may issue
394 subpoenas for the attendance of witnesses and for the production
395 of books, records, documents, and other evidence, and shall have
396 the power to administer oaths. Subpoenas so issued shall be
397 served, and upon application to the court by a party to the
398 arbitration, the arbitrators, or the umpire, enforced in the
399 manner provided by law for the service and enforcement of
400 subpoenas in a civil action. The issuance of a subpoena must be
401 included in the record of the arbitration.

402 (2) On application of a party to the arbitration and for
403 use as evidence, the arbitrators or the umpire in the course of
404 his or her jurisdiction, may permit a deposition to be taken, in
405 the manner and upon the terms designated by them or him or her
406 of a witness who cannot be subpoenaed or is unable to attend the



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407 hearing. Any deposition must be conducted in the manner provided
408 by the Florida Rules of Civil Procedure. A copy of every
409 deposition given by a witness called to testify during the
410 arbitration must be filed and included in the record of the
411 arbitration.

412 (3) Discovery shall be conducted in a manner consistent
413 with the Florida Rules of Civil Procedure and general law.

414 (4) A party to an arbitration may petition an arbitrator
415 to permit additional discovery, as provided by the Florida Rules
416 of Civil Procedure and consistent with general law, as the
417 arbitrator decides is appropriate in the circumstances, taking
418 into account the needs of the parties to the arbitration
419 proceeding and other affected persons and the desirability of
420 making the proceeding fair, expeditious, and cost effective.

421 (5) The arbitrator may order a party to the arbitration
422 proceeding to comply with the arbitrator's discovery-related
423 orders, issue subpoenas for the attendance of a witness and for
424 the production of records and other evidence at a discovery
425 proceeding, and take action against a noncomplying party to the
426 extent a court could if the controversy were the subject of a
427 civil action in this state.

428 (6) An arbitrator may issue only a protective order to
429 prevent the disclosure of privileged information, confidential
430 information, and trade secrets and only under circumstances in
431 which a court could issue a protective order if the arbitrator
432 makes a finding on the record that any public interest in
433 disclosure of information relevant to the protection of public
434 health and safety is outweighed by a specific and substantial
435 harm that would result from disclosure.

436 (7) All provisions of law compelling a person under



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437 subpoena to testify apply.

438 (8) The court may enforce a subpoena or discovery-related
439 order for the attendance of a witness within the state and for
440 the production of records and other evidence issued by an
441 arbitrator considered by an arbitrator in connection with an
442 arbitration proceeding in another state and consistent with the
443 laws of the jurisdiction. A subpoena or discovery-related order
444 issued by an arbitrator in another state must be served in the
445 manner provided by law for service of subpoenas in a civil
446 action in the state and, upon motion to the court by a party to
447 the arbitration proceeding or the arbitrator, enforced in the
448 manner provided by law for enforcement of subpoenas in a civil
449 action in the state.

450 (9) All witnesses must be under oath during testimony,
451 including testimony given during a deposition.

452 (10) Fees for attendance as a witness shall be the same as
453 for a witness in the circuit court.

454 (11) All materials produced, generated, considered, or in
455 any way referenced as part of an arbitration proceeding shall be
456 maintained by the arbitration company and accessible by any
457 consumer seeking information as to the arbitration company for 10
458 years after the arbitration proceeding has been fully and finally
459 concluded, including the expiration of all appeals, if any.

460 Section 17. Section 682.518, Florida Statutes, is created
461 to read:

462 682.518 Judicial enforcement of preaward ruling.--A party
463 may request the arbitrator to incorporate any preaward ruling in
464 favor of a party to the arbitration proceeding into an award made
465 pursuant to s. 682.519. The court shall issue an order to confirm



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466 the award unless the court vacates, modifies, or corrects the
467 award under ss. 682.523 and 682.524.

468 Section 18. Section 682.519, Florida Statutes, is created
469 to read:

470 682.519 Award.--

471 (1) The award shall be in writing and shall contain a
472 summary and findings of the issues raised and the damages
473 awarded. The award shall be signed by the arbitrators joining in
474 the award or by the umpire in the course of his or her
475 jurisdiction. A copy of the award shall be delivered to each
476 party to the arbitration personally or by registered or
477 certified mail.

478 (2) An award shall be made within the time fixed by the
479 agreement or provision for arbitration or, if not so fixed,
480 within such time as the court may order on application of a
481 party to the arbitration. The parties may, by written agreement,
482 extend the time before or after the expiration thereof. Any
483 objection that an award was not made within the time required is
484 waived unless the objecting party notifies the arbitrators or
485 umpire in writing of his or her objection before the delivery of
486 the award to him or her.

487 (3) The written opinion, including all evidence required to
488 be filed under this act and the opinion and award, shall be
489 entered into the court record by filing with the clerk of the
490 court having jurisdiction over the arbitration at such time as
491 entry of judgment is sought. If a court file has not been
492 previously opened, the party seeking entry of judgment shall pay
493 the applicable filing fee and file the documents specified in
494 this section prior to entry of judgment.

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495 Section 19. Section 682.520, Florida Statutes, is created
496 to read:

497 682.520 Change of award by arbitrators or umpire.--On
498 application of a party to the arbitration, or if an application
499 to the court is pending under s. 682.522, s. 682.523, or s.
500 682.524, on submission to the arbitrators, or to the umpire in
501 the case of an umpire's award, by the court under such
502 conditions as the court may order, the arbitrators, or umpire
503 may modify or correct the award upon the grounds stated in s.
504 682.24(1)(a) and (c) or for the purpose of clarifying the award.
505 The application shall be made within 20 days after delivery of
506 the award to the applicant. Written notice shall be given to the
507 other party to the arbitration, stating that he or she must
508 serve his or her objections, if any, within 10 days after the
509 notice. The award so modified or corrected is subject to the
510 provisions of ss. 682.22-682.24.

511 Section 20. Section 682.521, Florida Statutes, is created
512 to read:

513 682.521 Remedies; fees and expenses of arbitration.--
514 (1) An arbitrator may award punitive damages or other
515 exemplary relief to the extent that he or she would be
516 authorized by law in a civil action involving the same claim and
517 the evidence produced at the hearing justifies the award under
518 the legal standards otherwise applicable to the claim.

519 (2) Unless otherwise agreed to by the parties to the
520 arbitration after the dispute has arisen and the arbitration
521 proceeding instituted, the circuit court shall establish the
522 amount of compensation, if any, that each arbitrator or umpire
523 shall receive for services rendered in each case. The
524 arbitrators' and umpire's expenses and fees, together with other



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525 expenses incurred in the conduct of the arbitration, shall be
526 reasonable and paid as provided in the award.

527 (3) An arbitrator shall award reasonable attorney's fees
528 and other reasonable expenses of arbitration to the extent
529 authorized by law in a civil claim involving the same claim or
530 by the agreement of the parties to the arbitration proceeding.

531 (4) Upon a showing by the consumer, evidenced by an
532 affidavit that includes a statement of financial resources
533 possessed by the consumer, that the consumer is unable to pay
534 the costs of arbitration, the court may order such costs to be
535 shared between the two parties in an equitable manner. A
536 nonconsumer may be ordered to pay the entire cost of an
537 arbitration when continuing the arbitration proceeding would
538 create a financial hardship due to a consumer's lack of
539 financial resources. This subsection does not apply to any
540 voluntary arbitration proceeding begun by joint stipulation of
541 the parties after a lawsuit has been instituted or conducted
542 pursuant to s. 44.104.

543 (5) If an arbitrator awards punitive damages or other
544 exemplary relief under subsection (1), the arbitrator shall
545 specify in the award the basis in fact justifying and the basis
546 in law authorizing the award and state separately the amount of
547 the punitive damages or other exemplary relief.

548 Section 21. Section 682.522, Florida Statutes, is created
549 to read:

550 682.522 Confirmation of an award.--After a party to an
551 arbitration proceeding receives notice of an award and upon
552 application of a party to the arbitration, the court shall
553 confirm an award, unless within the time limits hereinafter
554 imposed grounds are urged for vacating or modifying or



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555 correcting the award, in which case the court shall proceed as
556 provided in ss. 682.523 and 682.524.

557 Section 22. Section 682.523, Florida Statutes, is created
558 to read:

559 682.523 Vacating an award.--

560 (1) Upon application of a party, the court shall vacate an
561 award when:

562 (a) The award was procured by corruption, fraud, or other
563 undue means.

564 (b) There was evident partiality by an arbitrator
565 appointed as a neutral arbitrator, corruption in any of the
566 arbitrators or umpire, or misconduct prejudicing the rights of
567 any party.

568 (c) The arbitrators or the umpire in the course of his or
569 her jurisdiction exceeded their powers. Partiality may be
570 demonstrated by the appearance of bias if bias is apparent based
571 upon established facts. Such facts are not limited to those
572 facts disclosed by the arbitrator or arising during the course
573 of the arbitration. The mere nondisclosure of facts that
574 demonstrate potential arbitrator bias creates a presumption of
575 partiality.

576 (d) The arbitrators or the umpire in the course of his or
577 her jurisdiction refused to postpone the hearing upon sufficient
578 cause being shown therefor, refused to hear evidence material to
579 the controversy, or otherwise so conducted the hearing contrary
580 to the provisions of s. 682.515 so as to prejudice substantially
581 the rights of a party.

582 (e) There was not an agreement or provision for
583 arbitration subject to this act, unless the matter was
584 determined in proceedings under s. 682.506 and unless the party



585 participated in the arbitration hearing without raising the
586 objection.

587 (f) The arbitration was conducted without proper notice of
588 the initiation of any stage of arbitration as required pursuant
589 to s. 682.512 so as to substantially prejudice the rights of a
590 party to the arbitration proceeding.

591 (g) The arbitration award is inconsistent with applicable
592 law.

593 (h) The arbitration award violates public policy.

594 (i) The arbitration award is arbitrary and capricious or
595 lacks a rational basis.

596 (j) The arbitration award is not supported by substantial
597 evidence on the record as a whole.

598
599 The fact that the relief was such that it could not or would not
600 be granted by a court of law or equity is not ground for
601 vacating or refusing to confirm the award.

602 (2) In addition to the grounds to vacate an award under
603 subsection (1), the parties may contract in the arbitration
604 agreement for judicial review of errors of law in the
605 arbitration award. If the parties have so contracted, the court
606 shall vacate the award if the arbitrator has committed an error
607 of law substantially prejudicing the rights of a party.

608 (3) An application under this section shall be made within
609 90 days after delivery of a copy of the award to the applicant,
610 except that, if predicated upon corruption, fraud, or other
611 undue means, it shall be made within 90 days after such grounds
612 are known or should have been known. A court may extend any time
613 limitation in this subsection upon a showing of good cause.

614 (4) In vacating the award on grounds other than those



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615 stated in paragraph (1)(e), the court may order a rehearing
616 before new arbitrators chosen as provided in the agreement or
617 provision for arbitration or by the court in accordance with s.
618 682.509, or, if the award is vacated on grounds other than those
619 provided in paragraphs (1)(a) and (e), the court may order a
620 rehearing before the arbitrators or umpire who made the award or
621 their successors appointed in accordance with s. 682.509. The
622 time within which the agreement or provision for arbitration
623 requires the award to be made applies to the rehearing and
624 commences on the date of the order.

625 (5) If the application to vacate is denied and no motion to
626 modify or correct the award is pending, the court shall confirm
627 the award.

628 Section 23. Section 682.524, Florida Statutes, is created
629 to read:

630 682.524 Modification or correction of award.--

631 (1) Upon application made within 90 days after delivery of
632 a copy of the award to the applicant, the court shall modify or
633 correct the award when:

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

637 (b) The arbitrators or umpire have made an award upon a
638 matter not submitted to them or him or her and the award may be
639 corrected without affecting the merits of the decision upon the
640 issues submitted.

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

643 (2) If the application is granted, the court shall modify
644 and correct the award so as to effect its intent and shall



645 confirm the award as modified and corrected. Otherwise, the
646 court shall confirm the award as made.

647 (3) An application to modify or correct an award may be
648 joined in the alternative with an application to vacate the
649 award.

650 (4) Irrespective of the periods established under this
651 section and s. 682.523, a consumer may also seek to modify or
652 vacate an award issued pursuant to a consumer arbitration
653 agreement within 30 days after receiving notice of a motion to
654 confirm the award.

655 Section 24. Section 682.525, Florida Statutes, is created
656 to read:

657 682.525 Judgment or decree on award.--Upon the granting of
658 an order confirming, vacating without directing a rehearing,
659 modifying, or correcting an award, the judgment or decree shall
660 be entered in conformity therewith and be enforced as any other
661 judgment or decree. The judgment may be recorded, docketed, and
662 enforced as any other judgment in a civil action. Costs of the
663 application and of the proceedings subsequent thereto and
664 disbursements may be awarded by the court.

665 Section 25. Section 682.526, Florida Statutes, is created
666 to read:

667 682.526 Judgment roll, docketing.--

668 (1) On entry of judgment or decree, the clerk shall
669 prepare the judgment roll consisting, to the extent filed, of
670 the following:

671 (a) The agreement or provision for arbitration and each
672 written extension of the time within which to make the award;

673 (b) The award;

674 (c) A copy of the order confirming, modifying, or



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675 correcting the award; and

676 (d) A copy of the judgment or decree.

677 (2) The judgment or decree may be docketed as if rendered
678 in a civil action.

679 Section 26. Section 682.527, Florida Statutes, is created
680 to read:

681 682.527 Application to the court.--Except as otherwise
682 provided, an application to the court under this act shall be by
683 motion and shall be heard in the manner and upon the notice
684 provided by law or rule of court for the making and hearing of
685 motions. Unless the parties have agreed otherwise, notice of an
686 initial application for an order shall be served in the manner
687 provided by law for the service of a summons in an action.

688 Section 27. Section 682.528, Florida Statutes, is created
689 to read:

690 682.528 Court; definition; jurisdiction.--

691 (1) The term "court" means any court of competent
692 jurisdiction of this state. The making of an agreement or
693 provision for arbitration subject to this act and providing for
694 arbitration in this state shall, whether made within or outside
695 this state, confer jurisdiction on the court to enforce the
696 agreement or provision under this act, to enter judgment on an
697 award duly rendered in an arbitration thereunder, and to vacate,
698 modify, or correct an award rendered thereunder for such cause
699 and in the manner provided in this act.

700 (2) Any judgment entered upon an award by a court of
701 competent jurisdiction of any state, territory, the Commonwealth
702 of Puerto Rico, or foreign country shall be enforceable by
703 application as provided in s. 682.527 and regardless of the time
704 when the award may have been made.

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705 Section 28. Section 682.529, Florida Statutes, is created
706 to read:

707 682.529 Venue.--Any application under this act may be made
708 to the court of the county in which the other party to the
709 agreement or provision for arbitration resides or has a place of
710 business, or, if she or he has no residence or place of business
711 in this state, to the court of any county. All applications under
712 this act subsequent to an initial application shall be made to
713 the court hearing the initial application unless it orders
714 otherwise.

715 Section 29. Section 682.530, Florida Statutes, is created
716 to read:

717 682.530 Appeals.--

718 (1) An appeal may be taken from the arbitration to a court
719 having proper jurisdiction upon:

720 (a) An order denying or granting an application to compel
721 arbitration made under s. 682.506.

722 (b) An order granting an application to stay arbitration
723 made under s. 682.506(2)-(4).

724 (c) A decision regarding the impartiality or lack of
725 conflict on the part of the arbitrator.

726 (d) An evidentiary ruling, except as provided in paragraph
727 (2)(a), after final award or decision.

728 (2) The following rules may be reviewed by writ of
729 certiorari:

730 (a) A ruling concerning evidentiary privileges or
731 confidentiality rights of the parties.

732 (b) A grant of a protective order preventing the
733 disclosure of privileged information, confidential information,
734 or trade secrets under s. 682.517.



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735 (3) An appeal may be taken from a circuit or county court
736 to a court of appeals on the basis of any decision made in
737 subsection (1) or subsection (2) and upon:

738 (a) An order confirming or denying confirmation of an
739 award;

740 (b) An order modifying or correcting an award;

741 (c) An order vacating an award without directing a
742 rehearing; or

743 (d) A judgment or decree entered pursuant to the
744 provisions of ss. 682.501-682.533.

745 (4) The appeal or petition for certiorari shall be taken
746 in the manner and to the same extent as from orders or judgments
747 in a civil action.

748 Section 30. Section 682.531, Florida Statutes, is created
749 to read:

750 682.531 Relationship to Electronic Signatures in Global and
751 National Commerce Act.--Sections 682.501-682.533 modify, limit,
752 and supersede the federal Electronic Signatures in Global and
753 National Commerce Act, 15 U.S.C. ss. 7001 et. seq., but do not
754 modify, limit, or supersede s. 101(c) of that act or authorize
755 electronic delivery of any of the notices described in s. 103(b)
756 of that act.

757 Section 31. Section 682.532, Florida Statutes, is created
758 to read:

759 682.532 Regulation of arbitration service providers.--

760 (1) Any arbitration organization that administers or is
761 otherwise involved in 10 or more consumer arbitrations a year
762 shall collect, publish at least quarterly, and make available to
763 the public in a searchable, sortable, and downloadable computer
764 database that permits searching using multiple search terms in



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765 the same search all of the information in paragraphs (a)-(i)
766 regarding each consumer arbitration within the preceding 5
767 years. Such information shall be prominently displayed,
768 accessible, and easily comprehensible to an ordinary user who
769 has ordinary knowledge of computer databases, at the Internet
770 website of the private arbitration organization, and on paper
771 upon request:

772 (a) The name of any corporation or other business entity
773 that is party to the arbitration.

774 (b) The type and subject matter of the transaction that
775 gave rise to the dispute involved, including, but not limited
776 to, goods, banking, insurance, health care, debt collection,
777 employment, and, if it involves employment, the amount of the
778 employee's annual wage divided into the following ranges:

779 1. Less than \$100,000.

780 2. From \$100,000 to \$250,000, inclusive.

781 3. More than \$250,000.

782 (c) The name of the prevailing party.

783 (d) The number of occasions, if any, that a corporation or
784 business entity that is a party to an arbitration has previously
785 been a party in an arbitration or mediation administered by the
786 arbitration organization.

787 (e) Whether or not the consumer in each prior arbitration
788 was represented by an attorney and, if so, the identifying
789 information for that attorney, including the attorney's name,
790 law firm affiliation, business telephone number, and the address
791 of the attorney's law firm.

792 (f) The date the arbitration organization received the
793 demand for arbitration, the date the arbitrator was appointed,
794 and the date of disposition by the arbitrator or arbitration



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795 organization.

796 (g) The type of disposition of the dispute, if known,
797 including withdrawal, abandonment, settlement, award after
798 hearing, award without hearing, default, or dismissal without
799 hearing.

800 (h) The amount of the claim, the amount of the award, and
801 any other relief granted.

802 (i) The name of the arbitrator, his or her fee for the
803 case, and the percentage of the arbitrator's fee allocated to
804 each party.

805 (2) If the required information is provided by the
806 arbitration organization in a computer-searchable format at the
807 company's Internet website and may be downloaded without any
808 fee, the company may charge the actual cost of copying to any
809 person who requests the information on paper. If the information
810 required is not accessible by the Internet, the company shall
811 provide that information without charge to any person who
812 requests the information on paper.

813 (3) All fees and costs charged to or assessed in the state
814 against a consumer by an arbitration organization in a consumer
815 arbitration shall be waived for any person having a gross
816 monthly income that is less than 500 percent of the poverty line
817 as defined in 42 U.S.C. s. 9902(2).

818 (4) Before requesting or obtaining any fee, an arbitration
819 organization shall provide written notice of the right to obtain
820 a waiver of fees in a manner calculated to bring the matter to
821 the attention of a reasonable consumer, including, but not
822 limited to, prominently placing a notice in its first written
823 communication to a consumer and in any invoice, bill, submission
824 form, fee schedule, rules, or code of procedure.



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825 (5) Any person requesting a waiver of fees or costs may
826 establish eligibility by making a declaration under oath on a
827 form provided by the arbitration organization indicating the
828 person's monthly income and the number of persons living in the
829 household. An arbitration organization may not require a
830 consumer to provide any further statement or evidence of
831 indigence. The form and the information contained therein is
832 confidential and may not be disclosed to any adverse party or
833 any nonparty to the arbitration.

834 (6) An arbitration organization may not keep confidential
835 the number of waiver requests received or granted, or the total
836 amount of fees waived, and must disclose all fees charged.

837 (7) An arbitrator or arbitration organization may not
838 administer an arbitration under any agreement or rule requiring
839 that a consumer who is a party to the arbitration pay the fees
840 and costs incurred by any opposing party if the consumer does
841 not prevail in the arbitration, including, but not limited to,
842 the fees and costs of the arbitrator, provider organization,
843 attorney, or witnesses.

844 (8) An arbitration organization may not administer a
845 consumer arbitration to be conducted in the state, or provide
846 any other services related to such a consumer arbitration, if:

847 (a) The arbitration organization has, or within the
848 preceding year has had, a financial interest in any party or
849 attorney for a party involved in the arbitration; or

850 (b) Any party or attorney for a party in the arbitration
851 has, or within the preceding year has had, any type of financial
852 interest in the arbitration organization.

853 (9) Any affected person or entity, including the Office of
854 the Attorney General, may request a court to enjoin an



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855 arbitration organization from violating the provisions of this
856 section and order such restitution as appropriate. The
857 arbitration organization is liable for that person's or entity's
858 reasonable attorney's fees and costs if that person or entity
859 prevails or if, after the action is commenced, the arbitration
860 organization voluntarily complies with the section.

861 Section 32. Section 682.533, Florida Statutes, is created
862 to read:

863 682.533 Disclosure of arbitration costs.--

864 (1) A party drafting an arbitration agreement shall
865 clearly and conspicuously disclose in regard to any arbitration:

866 (a) The filing fee.

867 (b) The average daily cost for an arbitrator and hearing
868 room if the consumer elects to appear in person.

869 (c) Other charges that the arbitrator or arbitration
870 service provider will assess in conjunction with an arbitration
871 when the consumer appears in person.

872 (d) The proportion of these costs which each party bears
873 in the event that the consumer prevails and in the event that
874 the consumer does not prevail.

875 (2) The costs specified in subsection (1) need not include
876 attorney's fees and, to the extent that, with regard to the
877 disclosures required by subsection (1), a precise amount is not
878 known, the disclosures may be based on a reasonable, good faith
879 estimate. A party providing a reasonable, good faith cost
880 estimate is not liable if the actual costs of a particular
881 arbitration varies within reason from the estimate provided.

882 (3) Failure to provide disclosures pursuant to subsection
883 (1), constitutes a deceptive act pursuant to the Florida
884 Deceptive and Unfair Trade Practices Act. Further, the



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885 information provided in the disclosure may be considered in a
886 determination of whether an arbitration agreement is
887 unconscionable or is otherwise not enforceable under law.

888 (4) Any person or entity, including the Office of the
889 Attorney General, may request a court to enjoin the drafting
890 party from violating the provisions of this section as to
891 agreements it enters into in the future. The drafting party is
892 liable to the person or entity bringing such an action for that
893 person or entity's reasonable attorney's fees and costs if the
894 court issues an injunction or if, after the action is commenced,
895 the drafting party voluntarily complies with the Florida
896 Deceptive and Unfair Trade Practices Act.

897 Section 33. This act shall take effect July 1, 2008.

898
899 ===== T I T L E A M E N D M E N T =====

900 And the title is amended as follows:

901 Delete everything before the enacting clause
902 and insert:

903 A bill to be entitled
904 An act relating to arbitration; creating s. 682.501, F.S.;
905 providing a short title; creating s. 682.502, F.S.;
906 providing definitions; creating s. 682.503, F.S.;
907 providing that the act applies to consumer arbitration
908 agreements; providing that the Florida Consumer
909 Arbitration Act does not apply to certain insurance
910 policies; providing that mandatory binding arbitration is
911 void and unenforceable except as otherwise provided by
912 federal law; creating s. 682.504, F.S.; providing for the
913 effect of an arbitration agreement; prohibiting the waiver
914 of certain rights and requirements; providing an exception



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915 to provisions prohibiting waiving the right of a court to
916 vacate an award; providing that an agreement to a court
917 decision constitutes a waiver of the right to arbitrate;
918 creating s. 682.505, F.S.; authorizing parties to agree to
919 arbitration of any controversy; providing for application
920 to written interlocal agreements; providing that the act
921 does not apply to certain agreements; creating s. 682.506,
922 F.S.; authorizing a party to comply with arbitration;
923 providing for a stay in arbitration proceedings; providing
924 circumstances in which an order of arbitration may not be
925 refused; creating s. 682.507, F.S.; specifying actions
926 that constitute notice; creating s. 682.508, F.S.;

927 providing procedures for initiating arbitration; creating
928 s. 682.509, F.S.; requiring that the court appoint
929 arbitrators if the parties do not agree on such selection;
930 prohibiting a person having an interest in the outcome of
931 the proceeding or an existing relationship with a party
932 from serving as an arbitrator; creating s. 682.511, F.S.;

933 requiring that an arbitrator disclose any facts that may
934 affect the impartiality of the proceeding; providing that
935 a financial or personal interest in the outcome of a
936 proceeding or an existing or past relationship with a
937 party constitutes grounds for removal of the arbitrator;
938 providing for the court to order the removal of the
939 arbitrator and appoint a successor; providing that failure
940 to disclose an interest in the outcome of a proceeding or
941 to disclose a relationship with a party is evidence of
942 partiality; creating s. 682.512, F.S.; providing for the
943 consolidation of separate arbitration proceedings;
944 authorizing the court to consolidate some claims and allow



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945 other claims to be resolved separately; creating s.
946 682.513, F.S.; providing that the powers of the
947 arbitrators is exercised by the majority of their number;
948 creating s. 682.514, F.S.; providing procedures for an
949 arbitration proceeding; requiring that all parties be
950 physically present except in certain cases; providing for
951 a summary disposition of a claim or particular issue;
952 creating s. 682.515, F.S.; providing for requirements for
953 conducting the arbitration hearing; creating s. 682.516,
954 F.S.; providing that a party has a right to be represented
955 by an attorney at an arbitration proceeding; requiring
956 that the parties receive information concerning available
957 assistance; creating s. 682.517, F.S.; authorizing an
958 arbitrator to issue subpoenas for the attendance of
959 witnesses and production of documents and to permit
960 depositions; requiring that a subpoena be included in the
961 record of the arbitration; providing for dispositions to
962 be conducted under the Florida Rules of Civil Procedure;
963 providing for additional discovery, the issuance of
964 subpoenas, and other orders; authorizing a arbitrator to
965 issue a protective order under limited circumstances;
966 providing for a subpoena or order to be enforced by a
967 court; requiring that witnesses testify under oath;
968 providing for witness fees; requiring the arbitration
969 company to maintain all materials pertaining to an
970 arbitration proceeding for a specified period of time;
971 creating s. 682.518, F.S.; providing for judicial
972 enforcement of a preaward ruling; creating s. 682.519,
973 F.S.; providing certain requirements for issuing an
974 arbitration award; requiring the award contain findings



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975 and damages or other relief; requiring that the award and
976 written opinion be entered into the court of record;
977 creating s. 682.520, F.S.; authorizing the arbitrators or
978 umpire to modify or correct an arbitration award; creating
979 s. 682.521, F.S.; authorizing an arbitrator to award
980 punitive damages; requiring the circuit court to establish
981 the amount of compensation for arbitrators and an umpire;
982 providing certain limitations on expenses and fees;
983 authorizing an arbitrator to award attorney's fees and
984 other expenses of arbitration; authorizing the court to
985 order that the costs of arbitration be shared among the
986 parties; requiring an arbitrator to specify the basis in
987 fact and in law authorizing an award for punitive damages;
988 creating s. 682.522, F.S.; requiring the court to confirm
989 an award; creating s. 682.523, F.S.; circumstances under
990 which a court may vacate an award; authorizing the parties
991 to an arbitration to contract for judicial review of
992 errors of law in the award; providing for application for
993 which a court may vacate an award; authorizing the court
994 to conduct a rehearing for the vacating of an award under
995 certain circumstances; creating s. 682.524, F.S.;
996 authorizing the court to modify or correct an award;
997 requiring that a consumer seek to modify or vacate an
998 award issued under a consumer arbitration agreement within
999 a specified period; creating s. 682.525, F.S.; providing
1000 for the recording and enforcement of an award; creating s.
1001 682.526, F.S.; providing requirements for the court clerk
1002 to follow when preparing the judgment roll; creating s.
1003 682.527, F.S.; providing requirements for an application
1004 to the court with regard to arbitration; creating s.

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1005 682.528, F.S.; providing the definition to the term
1006 "court"; providing for the court's jurisdiction; creating
1007 s. 682.529, F.S.; providing for venue; creating s.
1008 682.530, F.S.; providing for an appeal from an
1009 arbitration; providing rules that may be reviewed by writ
1010 of certiorari; providing additional circumstances under
1011 which an arbitration decision may be appealed; creating s.
1012 682.531, F.S.; specifying that the act modifies, limits,
1013 and supersedes certain provisions of federal law; creating
1014 s. 682.532, F.S.; requiring that certain arbitration
1015 organizations make information available to the public
1016 concerning the type and number of disputes it handles;
1017 requiring that such information be provided free of
1018 charge; requiring that an arbitration organization waive
1019 the fees for low-income persons involved in a consumer
1020 arbitration; requiring that an arbitration organization
1021 provide notice of the right to such waiver; requiring a
1022 declaration of oath of indigency; prohibiting an
1023 arbitration organization from keeping confidential the
1024 number of waiver requests received or granted or the total
1025 amount of fees waived; requiring the arbitration
1026 organization to disclose all fees charged; prohibiting an
1027 arbitrator or arbitration organization from requiring a
1028 consumer to pay the fees and costs incurred by an opposing
1029 party; providing that an arbitration organization may not
1030 administer a consumer arbitration under certain
1031 circumstances; authorizing a person or entity to request a
1032 court to enjoin an arbitration organization from violating
1033 provisions of the act and order restitution; providing
1034 that the arbitration organization is liable for such



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1035 | person's or entity's reasonable attorney's fees and costs
1036 | under certain circumstances; creating s. 682.533, F.S.;
1037 | requiring that a party drafting an arbitration agreement
1038 | disclose filing fees and costs; providing that failure to
1039 | make such disclosures constitutes a deceptive and unfair
1040 | trade practice; providing for enforcement of such
1041 | provision by injunction; providing for application of the
1042 | act; providing an effective date.