

1 A bill to be entitled
2 An act relating to international commercial arbitration;
3 amending s. 48.196, F.S.; conforming a reference to
4 changes made by the act; creating s. 684.0001, F.S.;
5 providing a short title; creating s. 684.0002, F.S.;
6 defining the scope of application of the Florida
7 International Commercial Arbitration Act; creating s.
8 684.0003, F.S.; defining terms; providing rules of
9 interpretation for the act; creating s. 684.0004, F.S.;
10 providing intent that the act be applied and interpreted
11 with respect to its purpose; creating s. 684.0005, F.S.;
12 specifying when a written communication is received;
13 creating s. 684.0006, F.S.; specifying circumstances that
14 constitute a waiver of the right to object; creating s.
15 684.0007, F.S.; limiting the ability of a court to
16 intervene in an arbitral proceeding; creating s. 684.0008,
17 F.S.; designating the circuit court in which an
18 arbitration is or will be held as the court that may take
19 certain actions authorized by the act; creating s.
20 684.0009, F.S.; requiring a court to refer matters
21 governed by an arbitration agreement to arbitration;
22 creating s. 684.001, F.S.; authorizing a court to grant an
23 interim measure of protection before or during an arbitral
24 proceeding; creating s. 684.0011, F.S.; authorizing the
25 parties to an arbitration to determine the number of
26 arbitrators; specifying the number of arbitrators for a
27 proceeding if the number of arbitrators is not determined
28 by the parties; creating s. 684.0012, F.S.; specifying

29 | procedures for the appointment of an arbitrator; creating
30 | s. 684.0013, F.S.; requiring a person who is approached to
31 | be an arbitrator to make disclosures relating to conflicts
32 | of interest; authorizing the appointment of an arbitrator
33 | to be challenged based on a perceived conflict of interest
34 | or qualifications; creating s. 684.0014, F.S.; providing
35 | procedures to challenge the appointment of an arbitrator;
36 | creating s. 684.0015, F.S.; providing for the termination
37 | of the mandate of an arbitrator due to failure or
38 | impossibility to act; creating s. 684.0016, F.S.;
39 | providing a procedure for the appointment of a substitute
40 | arbitrator; creating s. 684.0017, F.S.; authorizing an
41 | arbitral tribunal to determine its jurisdiction;
42 | authorizing a court to determine the jurisdiction of an
43 | arbitral tribunal; creating s. 684.0018, F.S.; authorizing
44 | an arbitral tribunal to grant an interim measure; creating
45 | s. 684.0019, F.S.; specifying conditions under which an
46 | interim measure may be granted; creating s. 684.002, F.S.;
47 | specifying conditions under which an interim order may be
48 | granted to prevent a party from frustrating the purpose of
49 | an interim measure; creating s. 684.0021, F.S.; requiring
50 | a party to be notified of information relating to an
51 | interim measure or preliminary order; requiring that a
52 | party be given an opportunity to object to a preliminary
53 | order; creating s. 684.0022, F.S.; authorizing an arbitral
54 | tribunal to modify, suspend, or terminate an interim
55 | measure or preliminary order under certain circumstances;
56 | creating s. 684.0023, F.S.; authorizing an arbitral

57 | tribunal to require security as a condition of granting an
58 | interim measure; requiring security as a condition of
59 | granting a preliminary order; creating s. 684.0024, F.S.;
60 | requiring certain disclosures as a condition of granting
61 | or maintaining an interim measure or preliminary order;
62 | creating s. 684.0025, F.S.; providing for liability and an
63 | award of costs and damages; creating s. 684.0026, F.S.;
64 | providing for the recognition and enforcement of an
65 | interim measure by a court; authorizing the court to
66 | require security under certain circumstances; creating s.
67 | 684.0027, F.S.; specifying grounds under which a court may
68 | refuse to enforce an interim measure; creating s.
69 | 684.0028, F.S.; authorizing a court to grant an interim
70 | measure; creating s. 684.0029, F.S.; requiring parties to
71 | an arbitral proceeding to be treated with equality and
72 | given an opportunity to present their cases; creating s.
73 | 684.003, F.S.; authorizing parties to an arbitration to
74 | agree to arbitration procedures; providing default
75 | procedures; creating s. 684.0031, F.S.; authorizing
76 | parties to an arbitration to agree on the place of
77 | arbitration; providing criteria to determine a default
78 | location for the arbitration; creating s. 684.0032, F.S.;
79 | specifying the date of commencement of an arbitral
80 | proceeding; creating s. 684.0033, F.S.; authorizing
81 | parties to an arbitration to agree on the language to be
82 | used in the proceeding; authorizing the arbitral tribunal
83 | to determine the language in the absence of a decision by
84 | the parties; creating s. 684.0034, F.S.; providing for the

85 submission of claims and defenses to an arbitral tribunal;
86 creating s. 684.0035, F.S.; providing for the
87 determination of the method by which evidence will be
88 presented before an arbitral proceeding; creating s.
89 684.0036, F.S.; specifying actions that constitute a
90 default by a party to an arbitral proceeding; creating s.
91 684.0037, F.S.; authorizing an arbitral tribunal to
92 appoint an expert and for the parties to question and
93 present other experts to the tribunal's expert, unless
94 otherwise agreed by the parties; creating s. 684.0038,
95 F.S.; authorizing a party or an arbitral tribunal to
96 request the assistance of a court in taking evidence;
97 creating s. 684.0039, F.S.; providing for the choice of
98 law applicable in an arbitral proceeding; creating s.
99 684.004, F.S.; specifying the number of arbitrators who
100 must make a decision, unless specified otherwise by the
101 parties; creating s. 684.0041, F.S.; authorizing the
102 parties to an arbitral proceeding to enter into a
103 settlement that is recorded as an award by the arbitral
104 tribunal; creating s. 684.0042, F.S.; specifying the form
105 and content of an arbitral award; creating s. 684.0043,
106 F.S.; specifying events that terminate or require an
107 arbitral tribunal to terminate an arbitral proceeding;
108 creating s. 684.0044, F.S.; authorizing an arbitral
109 tribunal to correct and interpret an arbitral award or
110 make an additional award under certain conditions;
111 creating s. 684.0045, F.S.; providing judicial immunity to
112 arbitrators acting under ch. 684, F.S.; creating s.

CS/HB 821

2010

113 684.0046, F.S.; specifying conditions under which a court
 114 may set aside an arbitral award; creating s. 684.0047,
 115 F.S.; providing for the recognition and enforcement of
 116 arbitral awards by a court; creating s. 684.0048, F.S.;
 117 specifying grounds under which a court may refuse to
 118 recognize or enforce an arbitral award; repealing parts I,
 119 II, and III of ch. 684, F.S., which create the Florida
 120 International Arbitration Act and provide procedures for
 121 the conduct of international arbitrations and authorize
 122 court proceedings in connection with such arbitrations;
 123 providing an effective date.

124

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

126

127 Section 1. Subsection (1) of section 48.196, Florida
 128 Statutes, is amended to read:

129 48.196 Service of process in connection with actions under
 130 the Florida International Commercial Arbitration Act.—

131 (1) Any process in connection with the commencement of an
 132 action before the courts of this state under chapter 684, the
 133 Florida International Commercial Arbitration Act, shall be
 134 served:

135 (a) In the case of a natural person, by service upon:

136 1. That person;

137 2. Any agent for service of process appointed in, or
 138 pursuant to, any applicable agreement or by operation of any law
 139 of this state; or

140 3. Any person authorized by the law of the jurisdiction

CS/HB 821

2010

141 | where process is being served to accept service for that person.

142 | (b) In the case of any person other than a natural person,
143 | by service upon:

144 | 1. Any agent for service of process appointed in, or
145 | pursuant to, any applicable agreement or by operation of any law
146 | of this state;

147 | 2. Any person authorized by the law of the jurisdiction
148 | where process is being served to accept service for that person;
149 | or

150 | 3. Any person, whether natural or otherwise and wherever
151 | located, who by operation of law or internal action is an
152 | officer, business agent, director, general partner, or managing
153 | agent or director of the person being served; or

154 | 4. Any partner, joint venturer, member or controlling
155 | shareholder, wherever located, of the person being served, if
156 | the person being served does not by law or internal action have
157 | any officer, business agent, director, general partner, or
158 | managing agent or director.

159 | Section 2. Section 684.0001, Florida Statutes, is created
160 | to read:

161 | 684.0001 Short title.—This chapter may be cited as the
162 | "Florida International Commercial Arbitration Act."

163 | Section 3. Section 684.0002, Florida Statutes, is created
164 | to read:

165 | 684.0002 Scope of application.—

166 | (1) This chapter applies to international commercial
167 | arbitration, subject to any agreement in force between the
168 | United States of America and any other country or countries.

169 (2) This chapter, except ss. 684.0009, 684.001, 684.0026,
170 684.0027, 684.0028, 684.0047, and 684.0048, applies only if the
171 place of arbitration is in this state.

172 (3) An arbitration is international if:

173 (a) The parties to an arbitration agreement have, at the
174 time of the conclusion of that agreement, their places of
175 business in different countries;

176 (b) One of the following places is situated outside the
177 country in which the parties have their places of business:

178 1. The place of arbitration if determined in, or pursuant
179 to, the arbitration agreement; or

180 2. Any place where a substantial part of the obligations
181 of the commercial relationship are to be performed or the place
182 with which the subject matter of the dispute is most closely
183 connected; or

184 (c) The parties have expressly agreed that the subject
185 matter of the arbitration agreement relates to more than one
186 country.

187 (4) For the purposes of subsection (3):

188 (a) If a party has more than one place of business, the
189 place of business is that which has the closest relationship to
190 the arbitration agreement.

191 (b) If a party does not have a place of business,
192 reference shall be made to his or her habitual residence.

193 (5) This chapter does not affect any law that may prohibit
194 a matter from being resolved by arbitration or that specifies
195 the manner in which a specific matter may be submitted or
196 resolved by arbitration.

197 Section 4. Section 684.0003, Florida Statutes, is created
 198 to read:

199 684.0003 Definitions and rules of interpretation.—

200 (1) As used in this chapter, the term:

201 (a) "Arbitral tribunal" means a sole arbitrator or panel
 202 of arbitrators.

203 (b) "Arbitration" means any arbitration whether or not
 204 administered by a permanent arbitral institution.

205 (c) "Arbitration agreement" means an agreement by the
 206 parties to submit to arbitration all or certain disputes that
 207 have arisen or may arise between them in respect of a defined
 208 legal relationship, whether contractual or not.

209 (d) "Court" means a circuit court of this state.

210 (2) A provision of this chapter, except s. 684.0038, which
 211 leaves the parties free to determine a certain issue, includes
 212 the right of the parties to authorize a third party, including
 213 an institution, to make that determination.

214 (3) A provision of this chapter which refers to the fact
 215 that the parties have agreed or that they may agree to a
 216 procedure refers to an agreement of the parties. The agreement
 217 includes any arbitration rules referenced in that agreement.

218 (4) A provision of this chapter, other than in s.
 219 684.0036(1) or s. 684.0043(2)(a), which refers to a claim also
 220 applies to a counter claim, and a provision that refers to a
 221 defense also applies to a defense to such counter claim.

222 Section 5. Section 684.0004, Florida Statutes, is created
 223 to read:

224 684.0004 International origin and general principles.—

225 (1) This chapter shall be interpreted with regard to its
 226 international origin and to the need to promote uniformity in
 227 its application and the observance of good faith.

228 (2) Questions concerning matters governed by this chapter
 229 which are not expressly settled pursuant to it shall be settled
 230 in conformity with the general principles on which this chapter
 231 is based.

232 Section 6. Section 684.0005, Florida Statutes, is created
 233 to read:

234 684.0005 Receipt of written communications.—

235 (1) Unless otherwise agreed by the parties, a written
 236 communication is deemed to be received if it is delivered to the
 237 addressee personally or if it is delivered to the addressee's
 238 place of business, habitual residence, or mailing address. If
 239 one of these locations cannot be found after a reasonable
 240 inquiry, the written communication is deemed to be received if
 241 it is sent to the addressee's last known place of business,
 242 habitual residence, or mailing address by registered letter or
 243 any other means that provides a record of the attempt to deliver
 244 it. The communication is deemed to be received on the day it is
 245 delivered.

246 (2) This section does not apply to communications in court
 247 proceedings.

248 Section 7. Section 684.0006, Florida Statutes, is created
 249 to read:

250 684.0006 Waiver of right to object.—A party waives its
 251 right to object if the party proceeds with the arbitration and
 252 fails to object without undue delay or within a provided time

253 limit to:

254 (1) Noncompliance of any provision of this chapter from
 255 which the parties may derogate and have not derogated; or

256 (2) Noncompliance of any requirement under the arbitration
 257 agreement.

258 Section 8. Section 684.0007, Florida Statutes, is created
 259 to read:

260 684.0007 Extent of court intervention.—In matters governed
 261 by this chapter, a court may not intervene except to the extent
 262 authorized by this chapter.

263 Section 9. Section 684.0008, Florida Statutes, is created
 264 to read:

265 684.0008 Court for certain functions of arbitration
 266 assistance and supervision.—The functions referenced in ss.
 267 684.0012(3) and (4), 684.0014(3), 684.0015, 684.0017(3), and
 268 684.0046(2) shall be performed by the circuit court in the
 269 county in which the seat of the arbitration is located.

270 Section 10. Section 684.0009, Florida Statutes, is created
 271 to read:

272 684.0009 Arbitration agreement and substantive claim
 273 before court.—

274 (1) A court before which an action is brought in a matter
 275 that is the subject of an arbitration agreement shall, if a
 276 party so requests not later than when submitting its first
 277 statement on the substance of the dispute, refer the parties to
 278 arbitration unless it finds that the agreement is null and void,
 279 inoperative, or incapable of being performed.

280 (2) If an action described in subsection (1) has been

CS/HB 821

2010

281 brought, arbitral proceedings may nevertheless be commenced or
282 continued, and an award may be made, while the issue is pending
283 before the court.

284 Section 11. Section 684.001, Florida Statutes, is created
285 to read:

286 684.001 Arbitration agreement and interim measures by a
287 court.—It is not incompatible with an arbitration agreement for
288 a party to request from a court, before or during arbitral
289 proceedings, an interim measure of protection and for a court to
290 grant such a measure.

291 Section 12. Section 684.0011, Florida Statutes, is created
292 to read:

293 684.0011 Number of arbitrators.—

294 (1) The parties may determine the number of arbitrators.

295 (2) If the parties fail to determine the number of
296 arbitrators, the number of arbitrators shall be three.

297 Section 13. Section 684.0012, Florida Statutes, is created
298 to read:

299 684.0012 Appointment of arbitrators.—

300 (1) A person is not precluded by reason of his or her
301 nationality from acting as an arbitrator, unless otherwise
302 agreed by the parties.

303 (2) The parties may agree on a procedure of appointing the
304 arbitrator or arbitrators, subject to subsections (4) and (5).

305 (3) Failing such agreement:

306 (a) In an arbitration having three arbitrators, each party
307 shall appoint one arbitrator, and the two arbitrators thus
308 appointed shall appoint the third arbitrator. If a party fails

CS/HB 821

2010

309 to appoint the arbitrator within 30 days after receipt of a
310 request to do so from the other party, or if the two arbitrators
311 fail to agree on the third arbitrator within 30 days after their
312 appointment, the appointment shall be made, upon request of a
313 party, by the court specified in s. 684.0008.

314 (b) In an arbitration having a single arbitrator, if the
315 parties are unable to agree on the arbitrator, the arbitrator
316 shall be appointed, upon request of a party, by the court
317 specified in s. 684.0008.

318 (4) If, under an appointment procedure agreed upon by the
319 parties:

320 (a) A party fails to act as required under such procedure;

321 (b) The parties, or two arbitrators, are unable to reach
322 an agreement under such procedure; or

323 (c) A third party, including an institution, fails to
324 perform any function entrusted to it under such procedure,

325
326 any party may request the court specified in s. 684.0008 to take
327 the necessary measure, unless the agreement on the appointment
328 procedure provides other means for securing the appointment.

329 (5) A decision on a matter entrusted by subsection (3) or
330 subsection (4) to the court specified in s. 684.0008 is not
331 appealable. The court, in appointing an arbitrator, shall have
332 due regard to any qualifications required by the arbitrator by
333 the agreement of the parties and to such considerations that are
334 likely to secure the appointment of an independent and impartial
335 arbitrator. In the case of the appointment of a sole or third
336 arbitrator, the court shall take into account the advisability

CS/HB 821

2010

337 of appointing an arbitrator of a nationality other than those of
338 the parties.

339 Section 14. Section 684.0013, Florida Statutes, is created
340 to read:

341 684.0013 Grounds for challenge.—

342 (1) When a person is approached in connection with a
343 possible appointment as an arbitrator, the person must disclose
344 any circumstances likely to give rise to justifiable doubts as
345 to the person's impartiality or independence. An arbitrator,
346 from the time of appointment and throughout the arbitral
347 proceedings, shall disclose any such circumstances to the
348 parties without delay, unless they have already been informed of
349 them by him or her.

350 (2) An arbitrator may be challenged only if circumstances
351 exist that give rise to justifiable doubts as to the
352 arbitrator's impartiality or independence, or if the arbitrator
353 does not possess qualifications agreed to by the parties. A
354 party may challenge an arbitrator appointed by it, or in whose
355 appointment the party participated, only for reasons of which
356 the party became aware after the appointment was made.

357 Section 15. Section 684.0014, Florida Statutes, is created
358 to read:

359 684.0014 Challenge procedure.—

360 (1) The parties may agree on a procedure for challenging
361 an arbitrator, subject to subsection (3).

362 (2) Failing such agreement, a party who intends to
363 challenge an arbitrator shall, within 15 days after becoming
364 aware of the constitution of the arbitral tribunal or after

365 becoming aware of any circumstance described in s. 684.0013(2),
 366 send a written statement of the reasons for the challenge to the
 367 arbitral tribunal. Unless the challenged arbitrator withdraws
 368 from his or her office or the other party agrees to the
 369 challenge, the arbitral tribunal shall decide on the challenge.

370 (3) If a challenge under any procedure agreed upon by the
 371 parties or pursuant to subsection (2) is not successful, the
 372 challenging party may request, within 30 days after having
 373 received notice of the decision rejecting the challenge, the
 374 court specified in s. 684.0008 to decide on the challenge. The
 375 decision of the court is not appealable. While such a request is
 376 pending, the arbitral tribunal, including the challenged
 377 arbitrator, may continue the arbitral proceedings and make an
 378 award.

379 Section 16. Section 684.0015, Florida Statutes, is created
 380 to read:

381 684.0015 Failure or impossibility to act.-

382 (1) If an arbitrator becomes de jure or de facto unable to
 383 perform his or her functions or for other reasons fails to act
 384 without undue delay, his or her mandate terminates if he or she
 385 withdraws from office or if the parties agree on the
 386 termination. Otherwise, if a controversy remains concerning any
 387 of these grounds, any party may request the court specified in
 388 s. 684.0008 to decide on the termination of the mandate. The
 389 decision of the court is not appealable.

390 (2) If, under this section or s. 684.0014(2), an
 391 arbitrator withdraws from his or her office or a party agrees to
 392 the termination of the mandate of an arbitrator, such actions do

CS/HB 821

2010

393 not imply the acceptance of the validity of any ground described
394 in this section or in s. 684.0013(2).

395 Section 17. Section 684.0016, Florida Statutes, is created
396 to read:

397 684.0016 Appointment of substitute arbitrator.—If the
398 mandate of an arbitrator terminates pursuant to s. 684.0014 or
399 s. 684.0015 or because of his or her withdrawal from office for
400 any other reason or because of the revocation of the mandate by
401 agreement of the parties or in any other case of termination of
402 the mandate, a substitute arbitrator shall be appointed pursuant
403 to the rules that applied to the appointment of the arbitrator
404 being replaced.

405 Section 18. Section 684.0017, Florida Statutes, is created
406 to read:

407 684.0017 Competence of arbitral tribunal to rule on its
408 jurisdiction.—

409 (1) The arbitral tribunal may rule on its own
410 jurisdiction, including any objections with respect to the
411 existence or validity of the arbitration agreement. For that
412 purpose, an arbitration clause that forms part of a contract
413 shall be treated as an agreement independent of the other terms
414 of the contract. A decision by the arbitral tribunal that the
415 contract is not valid does not entail ipso jure the invalidity
416 of the arbitration clause.

417 (2) A plea that the arbitral tribunal does not have
418 jurisdiction must be raised not later than the submission of the
419 statement of defense. A party is not precluded from raising such
420 a plea by the fact that the party appointed, or participated in

CS/HB 821

2010

421 the appointment of, an arbitrator. A plea that the arbitral
422 tribunal is exceeding the scope of its authority must be raised
423 as soon as the matter alleged to be beyond the scope of its
424 authority is raised during the arbitral proceedings. The
425 arbitral tribunal may, in either case, admit a later plea it if
426 considers the delay justified.

427 (3) The arbitral tribunal may rule on a plea referenced in
428 subsection (2) as a preliminary question or in an award on the
429 merits. If the arbitral tribunal rules as a preliminary question
430 that it has jurisdiction, any party may request, within 30 days
431 after receiving notice of that ruling, that the court specified
432 in s. 684.0008 decide the matter. The decision of the court is
433 not appealable. While such a request is pending, the arbitral
434 tribunal may continue the arbitral proceedings and make an
435 award.

436 Section 19. Section 684.0018, Florida Statutes, is created
437 to read:

438 684.0018 Power of arbitral tribunal to order interim
439 measures.—Unless otherwise agreed by the parties, the arbitral
440 tribunal may, at the request of a party, grant interim measures.
441 An interim measure is any temporary measure, whether in the form
442 of an award or in another form, by which, at any time before the
443 issuance of the award by which the dispute is finally decided,
444 the arbitral tribunal orders a party to:

445 (1) Maintain or restore the status quo pending
446 determination of the dispute;

447 (2) Take action to prevent, or refrain from taking action
448 that is likely to cause, current or imminent harm or prejudice

CS/HB 821

2010

449 to the arbitral process;

450 (3) Provide a means of preserving assets out of which a
451 subsequent award may be satisfied; or

452 (4) Preserve evidence that may be relevant and material to
453 the resolution of the dispute.

454 Section 20. Section 684.0019, Florida Statutes, is created
455 to read:

456 684.0019 Conditions for granting interim measures.—

457 (1) The party requesting an interim measure under s.
458 684.0018 must satisfy the arbitral tribunal that:

459 (a) Harm not adequately reparable by an award of damages
460 is likely to result if the measure is not ordered, and such harm
461 substantially outweighs the harm that is likely to result to the
462 party against whom the measure is directed if the measure is
463 granted; and

464 (b) A reasonable possibility exists that the requesting
465 party will succeed on the merits of the claim. The determination
466 on this possibility does not affect the discretion of the
467 arbitral tribunal in making any subsequent determination.

468 (2) With regard to a request for an interim measure under
469 s. 684.0018, the requirements in subsection (1) apply only to
470 the extent the arbitral tribunal considers appropriate.

471 Section 21. Section 684.002, Florida Statutes, is created
472 to read:

473 684.002 Applications for preliminary orders and conditions
474 for granting preliminary orders.—

475 (1) Unless otherwise agreed by the parties, a party may,
476 without notice to any other party, make a request for an interim

CS/HB 821

2010

477 measure together with an application for a preliminary order
478 prohibiting a party from frustrating the purpose of the interim
479 measure requested.

480 (2) The arbitral tribunal may grant a preliminary order if
481 it considers that prior disclosure of the request for the
482 interim measure to the party against whom it is directed risks
483 frustrating the purpose of the measure.

484 (3) The conditions described in s. 684.0019 apply to any
485 preliminary order if the harm assessed under s. 684.0019(1)(a)
486 is the harm likely to result from the order being granted or not
487 granted.

488 Section 22. Section 684.0021, Florida Statutes, is created
489 to read:

490 684.0021 Specific regime for preliminary orders.—

491 (1) Immediately after the arbitral tribunal makes a
492 determination in respect of an application for a preliminary
493 order, the arbitral tribunal shall give notice to all parties of
494 the request for the interim measure, the application for the
495 preliminary order, the preliminary order, if any, and all other
496 communications. The notice shall include a description of the
497 content of any oral communication between any party and the
498 arbitral tribunal in relation to any such request or
499 application.

500 (2) At the same time, the arbitral tribunal shall give an
501 opportunity to any party against whom a preliminary order is
502 directed to present its case at the earliest practicable time.

503 (3) The arbitral tribunal must decide promptly on any
504 objection to the preliminary order.

CS/HB 821

2010

505 (4) A preliminary order expires 20 days after the date on
506 which it was issued by the arbitral tribunal. However, the
507 arbitral tribunal may issue an interim measure adopting or
508 modifying the preliminary order after the party against whom the
509 preliminary order is directed is given notice and an opportunity
510 to present its case.

511 (5) A preliminary order is binding on the parties but is
512 not enforceable by a court. Such a preliminary order does not
513 constitute an award.

514 Section 23. Section 684.0022, Florida Statutes, is created
515 to read:

516 684.0022 Modification, suspension, or termination; interim
517 measure or preliminary order.—The arbitral tribunal may modify,
518 suspend, or terminate an interim measure or a preliminary order
519 it has granted upon application of any party or, in exceptional
520 circumstances and upon prior notice to the parties, on the
521 arbitral tribunal's own initiative.

522 Section 24. Section 684.0023, Florida Statutes, is created
523 to read:

524 684.0023 Provision of security.—

525 (1) The arbitral tribunal may require the party requesting
526 an interim measure to provide appropriate security in connection
527 with the measure.

528 (2) The arbitral tribunal shall require the party applying
529 for a preliminary order to provide security in connection with
530 the order unless the arbitral tribunal considers it
531 inappropriate or unnecessary to do so.

532 Section 25. Section 684.0024, Florida Statutes, is created

CS/HB 821

2010

533 to read:

534 684.0024 Disclosure.—

535 (1) The arbitral tribunal may require any party promptly
536 to disclose any material change in the circumstances on the
537 basis of which the interim measure was requested or granted.

538 (2) The party applying for a preliminary order shall
539 disclose to the arbitral tribunal all circumstances that are
540 likely to be relevant to the arbitral tribunal's determination
541 whether to grant or maintain the order, and such obligation
542 continues until the party against whom the order has been
543 requested has had an opportunity to present its case.

544 Thereafter, subsection (1) applies.

545 Section 26. Section 684.0025, Florida Statutes, is created
546 to read:

547 684.0025 Costs and damages.—The party requesting an
548 interim measure or applying for a preliminary order is liable
549 for any costs and damages caused by the measure or the order to
550 any party if the arbitral tribunal later determines that the
551 measure or the order should not have been granted. The arbitral
552 tribunal may award such costs and damages at any point during
553 the proceedings.

554 Section 27. Section 684.0026, Florida Statutes, is created
555 to read:

556 684.0026 Recognition and enforcement.—

557 (1) An interim measure issued by an arbitral tribunal
558 shall be recognized as binding and, unless otherwise provided by
559 the arbitral tribunal, enforced upon application to the
560 competent court, irrespective of the country in which it was

CS/HB 821

2010

561 issued, subject to s. 684.0019(1).

562 (2) The party who is seeking or has obtained recognition
563 or enforcement of an interim measure shall promptly inform the
564 court of the termination, suspension, or modification of the
565 interim measure.

566 (3) The court where recognition or enforcement is sought
567 may, if it considers it proper, order the requesting party to
568 provide appropriate security if the arbitral tribunal has not
569 already made a determination with respect to security or if such
570 a decision is necessary to protect the rights of third parties.

571 Section 28. Section 684.0027, Florida Statutes, is created
572 to read:

573 684.0027 Grounds for refusing recognition or enforcement.—

574 (1) Recognition or enforcement of an interim measure may
575 be refused only:

576 (a) At the request of the party against whom it is invoked
577 if the court is satisfied that:

578 1. Such refusal is warranted on the grounds set forth in
579 s. 684.0048(1)(a)1., 2., 3., or 4.;

580 2. The arbitral tribunal's decision with respect to the
581 provision of security in connection with the interim measure
582 issued by the arbitral tribunal has not been complied with; or

583 3. The interim measure was terminated or suspended by the
584 arbitral tribunal or, if so empowered, by the court of the state
585 or country in which the arbitration takes place or under the law
586 of which that interim measure was granted; or

587 (b) If the court finds that:

588 1. The interim measure is incompatible with the powers

CS/HB 821

2010

589 conferred upon the court, unless the court decides to
 590 reformulate the interim measure to the extent necessary to adapt
 591 it to its own powers and procedures for the purpose of enforcing
 592 that interim measure and without modifying its substance; or

593 2. Any of the grounds set forth in s. 684.0048(1)(b)1. or
 594 2. apply to the recognition and enforcement of the interim
 595 measure.

596 (2) A determination made by the court on any ground in
 597 subsection (1) is effective only for the purposes of the
 598 application to recognize and enforce the interim measure. The
 599 court may not in making that determination undertake a review of
 600 the substance of the interim measure.

601 Section 29. Section 684.0028, Florida Statutes, is created
 602 to read:

603 684.0028 Court-ordered interim measures.—A court has the
 604 same power of issuing an interim measure in relation to
 605 arbitration proceedings, irrespective of whether the arbitration
 606 proceedings are held in this state, as it has in relation to the
 607 proceedings in courts. The court shall exercise such power in
 608 accordance with its own procedures and in consideration of the
 609 specific features of international arbitration.

610 Section 30. Section 684.0029, Florida Statutes, is created
 611 to read:

612 684.0029 Equal treatment of parties.—The parties shall be
 613 treated with equality and each party shall be given a full
 614 opportunity of presenting its case.

615 Section 31. Section 684.003, Florida Statutes, is created
 616 to read:

CS/HB 821

2010

617 684.003 Determination of rules of procedure.—Subject to
618 the provisions of this chapter, the parties may agree on the
619 procedure to be followed by the arbitral tribunal in conducting
620 the proceedings. Failing such agreement, the arbitral tribunal
621 may, subject to the provisions of this chapter, conduct the
622 arbitration in such manner as it considers appropriate. The
623 power conferred upon the arbitral tribunal includes the power to
624 determine the admissibility, relevance, materiality, and weight
625 of evidence.

626 Section 32. Section 684.0031, Florida Statutes, is created
627 to read:

628 684.0031 Place of arbitration.—

629 (1) The parties may agree on the place of arbitration.
630 Failing such agreement, the place of arbitration shall be
631 determined by the arbitral tribunal having regard to the
632 circumstances of the case, including the convenience of the
633 parties.

634 (2) Notwithstanding subsection (1), the arbitral tribunal
635 may, unless otherwise agreed by the parties, meet at any place
636 it considers appropriate for consultation among its members, for
637 hearing witnesses, experts, or the parties, or for inspection of
638 goods, other property, or documents.

639 Section 33. Section 684.0032, Florida Statutes, is created
640 to read:

641 684.0032 Commencement of arbitral proceedings.—Unless
642 otherwise agreed by the parties, the arbitral proceedings in
643 respect of a particular dispute commence on the date on which a
644 request for that dispute to be referred to an arbitration is

CS/HB 821

2010

645 received by the respondent.

646 Section 34. Section 684.0033, Florida Statutes, is created
647 to read:

648 684.0033 Language.—

649 (1) The parties may agree on the language or languages to
650 be used in the arbitral proceedings. Failing such agreement, the
651 arbitral tribunal shall specify the language or languages to be
652 used in the proceedings. This agreement or determination, unless
653 otherwise specified therein, applies to any written statement by
654 a party, any hearing, and any award, decision, or other
655 communication by the arbitral tribunal.

656 (2) The arbitral tribunal may order that any documentary
657 evidence be accompanied by a translation into the language or
658 languages agreed upon by the parties or specified by the
659 arbitral tribunal.

660 Section 35. Section 684.0034, Florida Statutes, is created
661 to read:

662 684.0034 Statements of claim and defense.—

663 (1) Within the period of time agreed by the parties or
664 specified by the arbitral tribunal, the claimant shall state the
665 facts supporting its claim, the points at issue, and the relief
666 or remedy sought, and the respondent shall state its defense to
667 the claim, unless the parties have otherwise agreed as to the
668 required elements of such statements. The parties may submit
669 with their statements all documents they consider to be relevant
670 or may add a reference to the documents or other evidence they
671 will submit.

672 (2) Unless otherwise agreed by the parties, either party

CS/HB 821

2010

673 may amend or supplement its claim or defense during the course
 674 of the arbitral proceedings, unless the arbitral tribunal
 675 considers it inappropriate to allow such amendment having regard
 676 to the delay in making it.

677 Section 36. Section 684.0035, Florida Statutes, is created
 678 to read:

679 684.0035 Hearings and written proceedings.—

680 (1) Subject to any contrary agreement by the parties, the
 681 arbitral tribunal shall decide whether to hold oral hearings for
 682 the presentation of evidence or for oral argument, or whether
 683 the proceedings shall be conducted on the basis of documents and
 684 other materials. However, unless the parties have agreed that no
 685 hearings will be held, the arbitral tribunal shall hold such
 686 hearings at an appropriate stage of the proceedings, if so
 687 requested by a party.

688 (2) The parties shall be given sufficient advance notice
 689 of any hearing and of any meeting of the arbitral tribunal for
 690 the purposes of inspection of goods, other property, or
 691 documents.

692 (3) All statements, documents, or other information
 693 supplied to the arbitral tribunal by one party shall be provided
 694 to the other party. Also, any expert report or evidentiary
 695 document on which the arbitral tribunal may rely in making its
 696 decision shall be provided to the parties.

697 Section 37. Section 684.0036, Florida Statutes, is created
 698 to read:

699 684.0036 Default of a party.—Unless otherwise agreed by
 700 the parties, if, without showing sufficient cause:

701 (1) The claimant fails to provide its statement of claim
 702 pursuant to s. 684.0034(1), the arbitral tribunal shall
 703 terminate the proceedings.

704 (2) The respondent fails to communicate its statement of
 705 defense pursuant to s. 684.0034(1), the arbitral tribunal shall
 706 continue the proceedings without treating such failure in itself
 707 as an admission of the claimant's allegations.

708 (3) A party fails to appear at a hearing or to produce
 709 documentary evidence, the arbitral tribunal may continue the
 710 proceedings and make the award on the evidence before it.

711 Section 38. Section 684.0037, Florida Statutes, is created
 712 to read:

713 684.0037 Expert appointed by arbitral tribunal.—

714 (1) Unless otherwise agreed by the parties, the arbitral
 715 tribunal may:

716 (a) Appoint one or more experts to report to it on
 717 specific issues to be determined by the arbitral tribunal.

718 (b) Require a party to give the expert any relevant
 719 information or produce or provide access to any relevant
 720 documents, goods, or other property for inspection by the
 721 expert.

722 (2) Unless otherwise agreed by the parties, if a party so
 723 requests or if the arbitral tribunal considers it necessary, the
 724 expert shall, after delivery of a written or oral report,
 725 participate in a hearing in which the parties have the
 726 opportunity to question the expert and to present expert
 727 witnesses in order to testify on the points at issue.

728 Section 39. Section 684.0038, Florida Statutes, is created

CS/HB 821

2010

729 to read:

730 684.0038 Court assistance in taking evidence.—The arbitral
 731 tribunal, or a party upon the approval of the arbitral tribunal,
 732 may request assistance in taking evidence from a competent court
 733 of this state. The court may execute the request within its
 734 competence and according to its rules on taking evidence.

735 Section 40. Section 684.0039, Florida Statutes, is created
 736 to read:

737 684.0039 Rules applicable to substance of dispute.—

738 (1) The arbitral tribunal shall decide the dispute
 739 pursuant to the rules of law chosen by the parties to apply to
 740 the substance of the dispute. Any designation of the law or
 741 legal system of a state or country shall be construed, unless
 742 otherwise expressed, as directly referring to the substantive
 743 law of that state or country and not to its conflict-of-laws
 744 rule.

745 (2) Failing any designation by the parties, the arbitral
 746 tribunal shall apply the law determined by the conflict-of-laws
 747 rules that it considers applicable.

748 (3) The arbitral tribunal shall decide ex aequo et bono or
 749 as amiable compositeur, only if the parties have expressly
 750 authorized it to do so.

751 (4) In all cases, the arbitral tribunal shall decide in
 752 accordance with the terms of the contract and shall take into
 753 account the usages of the trade which apply to the transaction.

754 Section 41. Section 684.004, Florida Statutes, is created
 755 to read:

756 684.004 Decisionmaking by panel of arbitrators.—In

CS/HB 821

2010

757 arbitral proceedings having more than one arbitrator, any
758 decision of the arbitral tribunal shall be made, unless
759 otherwise agreed by the parties, by a majority of all its
760 members. However, questions of procedure may be decided by a
761 presiding arbitrator, if so authorized by the parties or all
762 members of the arbitral tribunal.

763 Section 42. Section 684.0041, Florida Statutes, is created
764 to read:

765 684.0041 Settlement.—

766 (1) If, during arbitral proceedings, the parties settle
767 the dispute, the arbitral tribunal shall terminate the
768 proceedings and, if requested by the parties and not objected to
769 by the arbitral tribunal, record the settlement in the form of
770 an arbitral award on agreed terms.

771 (2) An award on agreed terms shall be made pursuant to s.
772 684.0042 and shall state that it is an award. Such an award has
773 the same status and effect as any other award on the merits of
774 the case.

775 Section 43. Section 684.0042, Florida Statutes, is created
776 to read:

777 684.0042 Form and contents of award.—

778 (1) The award shall be made in writing and shall be signed
779 by the arbitrator or arbitrators. In arbitral proceedings having
780 more than one arbitrator, the signatures of the majority of all
781 members of the arbitral tribunal shall suffice, if the reason
782 for any omitted signature is stated.

783 (2) The award shall state the reasons upon which it is
784 based, unless the parties have agreed that no reasons are to be

785 given or the award is an award on agreed terms under s.
 786 684.0041.

787 (3) The award shall state its date and the place of
 788 arbitration as determined pursuant to s. 684.0031(1). The award
 789 shall be deemed to have been made at that place.

790 (4) After the award is made, a copy signed by the
 791 arbitrators pursuant to subsection (1) shall be delivered to
 792 each party.

793 Section 44. Section 684.0043, Florida Statutes, is created
 794 to read:

795 684.0043 Termination of proceedings.-

796 (1) Arbitral proceedings are terminated by the final award
 797 or by an order of the arbitral tribunal pursuant to subsection
 798 (2).

799 (2) The arbitral tribunal shall issue an order for the
 800 termination of the arbitral proceedings when:

801 (a) The claimant withdraws its claim, unless the
 802 respondent objects to the withdrawal of the claim and the
 803 arbitral tribunal recognizes that the respondent has a
 804 legitimate interest in obtaining a final settlement of the
 805 dispute;

806 (b) The parties agree on the termination of the
 807 proceedings; or

808 (c) The arbitral tribunal finds that the continuation of
 809 the proceedings has for any other reason become unnecessary or
 810 impossible.

811 (3) The mandate of the arbitral tribunal terminates with
 812 the termination of the arbitral proceedings, subject to ss.

CS/HB 821

2010

813 684.0044 and 684.0046(4).

814 Section 45. Section 684.0044, Florida Statutes, is created
815 to read:

816 684.0044 Correction and interpretation of award;
817 additional award.—

818 (1) (a) Within 30 days after receipt of the award, unless
819 another period of time has been agreed upon by the parties:

820 1. A party, with notice to the other party, may request
821 the arbitral tribunal to correct in the award any errors in
822 computation, any clerical or typographical errors, or any errors
823 of similar nature.

824 2. If so agreed by the parties, a party, with notice to
825 the other party, may request the arbitral tribunal to give an
826 interpretation of a specific point or part of the award.

827 (b) If the arbitral tribunal considers the request to be
828 justified, it shall make the correction or give the
829 interpretation within 30 days after the request. The
830 interpretation becomes part of the award.

831 (2) The arbitral tribunal may correct any error described
832 in subparagraph (1) (a) 1. on its own initiative within 30 days
833 after the date of the award.

834 (3) Unless otherwise agreed by the parties, a party, with
835 notice to the other party, may request, within 30 days after the
836 receipt of the award, the arbitral tribunal to make an
837 additional award as to claims presented in the arbitral
838 proceedings but omitted from the award. If the arbitral tribunal
839 considers the request to be justified, it shall make the
840 additional award within 60 days after the request.

CS/HB 821

2010

841 (4) The arbitral tribunal may extend, if necessary, the
842 period of time within which it shall make a correction,
843 interpretation, or additional award pursuant to subsection (1)
844 or subsection (3).

845 (5) Section 684.0042, specifying the form and contents of
846 an award, applies to a correction or interpretation of the award
847 or to an additional award.

848 Section 46. Section 684.0045, Florida Statutes, is created
849 to read:

850 684.0045 Immunity for arbitrators.—An arbitrator serving
851 under this chapter shall have judicial immunity in the same
852 manner and to the same extent as a judge.

853 Section 47. Section 684.0046, Florida Statutes, is created
854 to read:

855 684.0046 Application to set aside as exclusive recourse
856 against arbitral award.—

857 (1) Recourse to a court against an arbitral award may be
858 made only by an application to set aside an arbitral award
859 pursuant to subsections (2) and (3).

860 (2) An arbitral award may be set aside by the court
861 specified in s. 684.0008 only if:

862 (a) The party making the application furnishes proof that:

863 1. A party to the arbitration agreement defined in s.
864 684.0003(1)(c) was under some incapacity or the arbitration
865 agreement is not valid under the law to which the parties have
866 subjected it or, failing any indication thereon, under the law
867 of this state;

868 2. The party making the application was not given proper

869 notice of the appointment of an arbitrator or of the arbitral
 870 proceedings or was otherwise unable to present its case;
 871 3. The award deals with a dispute not contemplated by or
 872 not falling within the terms of the submissions to arbitration,
 873 or contains decisions on matters beyond the scope of the
 874 submission to arbitration. However, if the decisions on matters
 875 submitted to arbitration can be separated from those not so
 876 submitted, only that part of the award which contains decisions
 877 on matters not submitted to arbitration may be set aside; or
 878 4. The composition of the arbitral tribunal or the
 879 arbitral procedure was not in accordance with the agreement of
 880 the parties, unless such agreement was in conflict with a
 881 provision of this chapter from which the parties may not
 882 derogate, or, failing such agreement, was not in accordance with
 883 this chapter; or
 884 (b) The court finds that:
 885 1. The subject matter of the dispute is not capable of
 886 settlement by arbitration under the law of this state; or
 887 2. The award is in conflict with the public policy of this
 888 state.
 889 (3) An application to set aside an arbitral award may not
 890 be made after 3 months have elapsed after the date on which the
 891 party making that application receives the award or, if a
 892 request had been made under s. 684.0044, after 3 months have
 893 elapsed after the date on which that request had been disposed
 894 of by the arbitral tribunal.
 895 (4) The court, when asked to set aside an award, may, if
 896 appropriate and so requested by a party, suspend the proceedings

CS/HB 821

2010

897 to set aside the award for a period of time determined by it in
 898 order to give the arbitral tribunal an opportunity to resume the
 899 arbitral proceedings or to take such other action as in the
 900 arbitral tribunal's opinion will eliminate the grounds to set
 901 aside the award.

902 Section 48. Section 684.0047, Florida Statutes, is created
 903 to read:

904 684.0047 Recognition and enforcement.—

905 (1) An arbitral award, irrespective of the country in
 906 which it was made, shall be recognized as binding and, upon
 907 application in writing to the competent court, shall be enforced
 908 subject to this section and s. 684.0048.

909 (2) The party relying on an award or applying for its
 910 enforcement shall supply the original or copy of the award. If
 911 the award is not made in the English language, the court may
 912 request the party to supply a translation of the award.

913 Section 49. Section 684.0048, Florida Statutes, is created
 914 to read:

915 684.0048 Grounds for refusing recognition or enforcement.—

916 (1) Recognition or enforcement of an arbitral award,
 917 irrespective of the country in which it was made, may be refused
 918 only:

919 (a) At the request of the party against whom it is
 920 invoked, if that party furnishes to the competent court where
 921 recognition or enforcement is sought proof that:

922 1. A party to the arbitration agreement defined in s.
 923 684.0003(1)(c) was under some incapacity or the arbitration
 924 agreement is not valid under the law to which the parties have

925 subjected it or, failing any indication thereon, under the law
926 of the country where the award was made;

927 2. The party against whom the award is invoked was not
928 given proper notice of the appointment of an arbitrator or of
929 the arbitral proceedings or was otherwise unable to present its
930 case;

931 3. The award deals with a dispute not contemplated by or
932 not falling within the terms of the submission to arbitration,
933 or it contains decisions on matters beyond the scope of the
934 submission to arbitration. However, if the decisions on matters
935 submitted to arbitration can be separated from those not so
936 submitted, that part of the award which contains decisions on
937 matters submitted to arbitration may be recognized and enforced;

938 4. The composition of the arbitral tribunal or the
939 arbitral procedure was not in accordance with the agreement of
940 the parties or, failing such agreement, was not in accordance
941 with the law of the country where the arbitration took place; or

942 5. The award has not yet become binding on the parties or
943 has been set aside or suspended by a court of the country in
944 which, or under the law of which, that award was made; or

945 (b) If the court finds that:

946 1. The subject matter of the dispute is not capable of
947 settlement by arbitration under the laws of this state; or

948 2. The recognition or enforcement of the award would be
949 contrary to the public policy of this state.

950 (2) If an application for setting aside or suspension of
951 an award has been made to a court referenced in subparagraph
952 (1) (a) 5., the court where recognition or enforcement is sought

CS/HB 821

2010

953 may, if it considers it proper, adjourn its decision and may
954 also, on the application of the party claiming recognition or
955 enforcement of the award, order the other party to provide
956 appropriate security.

957 Section 50. Parts I, II, and III of chapter 684, Florida
958 Statutes, consisting of sections 684.01, 684.02, 684.03, 684.04,
959 684.05, 684.06, 684.07, 684.08, 684.09, 684.10, 684.11, 684.12,
960 684.13, 684.14, 684.15, 684.16, 684.17, 684.18, 684.19, 684.20,
961 684.21, 684.22, 684.23, 684.24, 684.25, 684.26, 684.27, 684.28,
962 684.29, 684.30, 684.31, 684.32, 684.33, 684.34, and 684.35, are
963 repealed.

964 Section 51. This act shall take effect July 1, 2010.