

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 18-0770.01 Jerry Barry x4341

HOUSE BILL 18-1261

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

Kagan,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO ARBITRATION FAIRNESS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill applies to certain consumer and employment arbitrations and:

- ! Establishes ethical standards for arbitrators;
- ! Specifies that any party may challenge in court the impartiality of an arbitrator or arbitration services provider;
- ! Requires specified disclosures by arbitrators and arbitration services providers; and
- ! Authorizes injunctive relief against an arbitrator or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 26, 2018

HOUSE
Amended 2nd Reading
March 23, 2018

arbitration services provider who engages in certain specified acts.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 7 to article
3 22 of title 13 as follows:


4 PART 7

5 COLORADO ARBITRATION FAIRNESS ACT

6 **13-22-701. Short title.** THE SHORT TITLE OF THIS PART 7 IS THE
7 "COLORADO ARBITRATION FAIRNESS ACT".

8 **13-22-702. Legislative declaration.** THE GENERAL ASSEMBLY
9 FINDS AND DECLARES THAT IT IS THE POLICY OF THE STATE TO ENSURE
10 THAT PRIVATE ARBITRATION IS FAIR AND IMPARTIAL AND, INsofar AS
11 POSSIBLE UNDER FEDERAL LAW, ACCESSIBLE AND AFFORDABLE FOR ALL
12 CONSUMERS AND EMPLOYEES, AND ENACTS THE FOLLOWING PROVISIONS
13 TO AMEND COLORADO'S "UNIFORM ARBITRATION ACT", PART 2 OF THIS
14 ARTICLE 22, AS IT APPLIES TO CONSUMERS AND EMPLOYEES.

15 **13-22-703. Definitions.** AS USED IN THIS PART 7, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 

18 (1) "ARBITRATION SERVICES PROVIDER" MEANS ANY COMPANY,
19 ORGANIZATION, ASSOCIATION, AGENCY, BOARD, OR COMMISSION THAT
20 SPONSORS OR ADMINISTERS ARBITRATIONS OR IS INVOLVED IN APPOINTING
21 OR PROVIDING ARBITRATORS; EXCEPT THAT THIS TERM DOES NOT INCLUDE
22 ANY LABOR ORGANIZATION OR OTHER PARTY TO A COLLECTIVE
23 BARGAINING AGREEMENT THAT INITIATES AN ARBITRATION PURSUANT TO
24 THE TERMS OF AN AGREEMENT BETWEEN A LABOR ORGANIZATION AND AN
25 EMPLOYER.

1 (2) "CLIENT" MEANS A PERSON USING THE SERVICES OF A
2 PROFESSIONAL PERSON; EXCEPT THAT A PARTY TO AN ARBITRATION
3 PROCEEDING IS NOT AN ARBITRATOR'S CLIENT.

4 (3) "CONSUMER" MEANS A PERSON WHO:

5 (a) IS AN ACTUAL OR POTENTIAL PURCHASER OR RECIPIENT OF A
6 PARTY'S, A PARTY'S AGENT'S, OR A PARTY'S INDEPENDENT CONTRACTOR'S
7 GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY;

8 (b) IS A SUCCESSOR IN INTEREST TO AN ACTUAL PURCHASER OR
9 RECIPIENT WHO PURCHASED THE PARTY'S, PARTY'S AGENT'S, OR PARTY'S
10 INDEPENDENT CONTRACTOR'S GOODS, SERVICES, OR REAL OR PERSONAL
11 PROPERTY; OR

12 (c) ALLEGES DAMAGES CAUSED BY A PARTY'S, PARTY'S AGENT'S,
13 OR PARTY'S INDEPENDENT CONTRACTOR'S GOODS, SERVICES, PROPERTY,
14 OR ACTION OR INACTION, OTHER THAN DAMAGES SUSTAINED BY A
15 FOR-PROFIT SOLE PROPRIETORSHIP OR FOR-PROFIT BUSINESS ENTITY.

16 (4) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY ANOTHER AS
17 DEFINED BY STATE LAW. "EMPLOYEE" ALSO MEANS ANY PERSON WHO IS
18 NOT CLASSIFIED BY A BUSINESS AS AN EMPLOYEE BUT WHO CLAIMS TO BE
19 AN EMPLOYEE AND WHOSE CLAIMS AGAINST THE PURPORTED EMPLOYER
20 THAT ARE SUBJECT OR POTENTIALLY SUBJECT TO AN AGREEMENT
21 GOVERNED BY THIS PART 7 RELATE TO THIS ALLEGED MISCLASSIFICATION.

22 (5) "EVIDENT PARTIALITY", AS USED IN THIS PART 7 AND IN
23 SECTION 13-22-223, INCLUDES CIRCUMSTANCES WHEN:

24 (a) AN ARBITRATOR OR ARBITRATION SERVICES PROVIDER FAILS TO
25 SUBSTANTIALLY COMPLY WITH THE DISCLOSURE REQUIREMENTS IMPOSED
26 BY SECTION 13-22-707; AND

27 (b) A PARTY DISCOVERS EVIDENCE OF THE ARBITRATOR'S

1 POTENTIAL PARTIALITY MORE THAN THIRTY CALENDAR DAYS AFTER
2 SELECTION OF THE ARBITRATOR.

3

4 (6) "PERSON" MEANS:

5 (a) AN INDIVIDUAL, CORPORATION, ESTATE, TRUST, PARTNERSHIP,
6 LIMITED LIABILITY COMPANY, UNINCORPORATED ASSOCIATION, OR TWO OR
7 MORE OF SUCH INDIVIDUALS OR ENTITIES HAVING A JOINT OR COMMON
8 INTEREST;

9 (b) ANY OTHER LEGAL OR COMMERCIAL ENTITY; OR

10 (c) AN AGENT, TRUSTEE, REPRESENTATIVE, OR OTHER INDIVIDUAL
11 OR ENTITY ACTING ON BEHALF OF A PERSON.

12 (7) (a) "POTENTIAL PARTIALITY" MEANS THAT, BASED ON THE
13 TOTALITY OF THE FACTS AND CIRCUMSTANCES, A REASONABLE PERSON
14 WOULD CONCLUDE THAT THE IMPARTIALITY OF AN ARBITRATOR OR
15 ARBITRATION SERVICES PROVIDER MAY BE COMPROMISED OR IMPROPERLY
16 OR UNDULY INFLUENCED IF HE OR SHE IS ASKED TO DECIDE ONE OR MORE
17 MATTERS SUBJECT TO THE ARBITRATION DUE TO AN ACTUAL OR POTENTIAL
18 CONFLICT OF INTEREST, INCLUDING, WITHOUT LIMITATION:

19 (I) A PECUNIARY INTEREST, A BUSINESS RELATIONSHIP, OR A
20 FAMILIAL RELATIONSHIP; OR

21 (II) A SIGNIFICANT RELATIONSHIP OR EXPERIENCE ALIGNED WITH
22 A NONCONSUMER OR EMPLOYER PARTY THAT WOULD LEAD A REASONABLE
23 PERSON TO CONCLUDE THAT THE ARBITRATOR EVINCES ENMITY OR BIAS
24 AGAINST THE CONSUMER OR EMPLOYEE PARTY; OR

25 (III) A RELATIONSHIP AS OWNER, EMPLOYEE, ATTORNEY, OR
26 CONSULTANT FOR AN INDIVIDUAL OR ENTITY ENGAGED IN THE SAME OR
27 SUBSTANTIALLY THE SAME INDUSTRY AS A NONCONSUMER OR EMPLOYER

1 PARTY; OR

2 (IV) A LEGAL ISSUE THAT LIKELY WILL BE PRESENTED TO THE
3 ARBITRATOR, THE RESOLUTION OF WHICH LEGAL ISSUE BY THE
4 ARBITRATOR WOULD LIKELY BE CONTRARY TO THE INTERESTS OF THE
5 ARBITRATOR OR ARBITRATION SERVICES PROVIDER OR THE ARBITRATOR'S
6 OR THE ARBITRATOR'S EMPLOYER'S CURRENT CLIENTS OR A CLIENT'S
7 INDUSTRY OR TRADE GROUP.

8 (b) "POTENTIAL PARTIALITY" ALSO EXISTS IF A JUDICIAL OFFICER'S
9 SIMILAR INTEREST IN THE OUTCOME OF A DISPUTE BEFORE THAT OFFICER
10 WOULD DISQUALIFY HIM OR HER UNDER THE COLORADO CODE OF JUDICIAL
11 CONDUCT FROM PRESIDING OVER A PROCEEDING OR WOULD DISQUALIFY
12 AN ATTORNEY UNDER THE COLORADO RULES OF PROFESSIONAL CONDUCT
13 FROM REPRESENTING A CLIENT. ADDITIONALLY, AN ARBITRATOR'S OR
14 ARBITRATION SERVICES PROVIDER'S FAILURE TO MAKE ANY OF THE
15 DISCLOSURES REQUIRED IN SECTION 13-22-707 OR STANDARDS DESCRIBED
16 IN SECTION 13-22-705 OR THE ARBITRATOR'S OR ARBITRATION SERVICES
17 PROVIDER'S BREACH OF ANY OF THE REQUIREMENTS IN THIS PART 7
18 CONSTITUTES POTENTIAL PARTIALITY.

19 **13-22-704. Application.** (1) THIS PART 7 APPLIES TO ALL
20 ARBITRATIONS REQUIRED BY A PREDISPUTE ARBITRATION AGREEMENT IN
21 WHICH A CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM,
22 EXCEPT FOR ARBITRATIONS CONDUCTED PURSUANT TO A COLLECTIVE
23 BARGAINING AGREEMENT. THIS PART 7 DOES NOT APPLY TO ARBITRATIONS
24 CONDUCTED OR ADMINISTERED BY A SELF-REGULATORY ORGANIZATION,
25 AS DEFINED BY THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15
26 U.S.C. SEC. 78a, OR REGULATIONS ADOPTED PURSUANT TO THAT ACT.

27 (2) EXCEPT WHEN THEY CONFLICT WITH THE PROVISIONS OF THIS

1 PART 7, THE PROVISIONS OF THE "UNIFORM ARBITRATION ACT", PART 2 OF
2 THIS ARTICLE 22, APPLY TO CONSUMER AND EMPLOYMENT ARBITRATIONS.

3 **13-22-705. Ethical standards for arbitrators. (1) Compliance**
4 **with rules.** (a) AN ARBITRATOR WHO CONDUCTS AN ARBITRATION
5 PURSUANT TO THIS PART 7 SHALL COMPLY WITH RULES 2.3(a) TO (d),
6 2.4(a) TO (c), AND 2.11(a) TO (c) OF THE COLORADO CODE OF JUDICIAL
7 CONDUCT AND RULE 1.7(a) OF THE COLORADO CODE OF PROFESSIONAL
8 CONDUCT, WHICH EACH APPLY TO THE EXTENT POSSIBLE TO AN
9 ARBITRATOR AND THE PROCEEDINGS BEFORE HIM OR HER.

10 (b) FOR PURPOSES OF RULE 1.7 OF THE COLORADO CODE OF
11 PROFESSIONAL CONDUCT, A CONCURRENT CONFLICT EXISTS IF:

12 (I) THE MATTERS TO BE DECIDED IN THE ARBITRATION MAY BE
13 DIRECTLY ADVERSE TO THE ARBITRATOR'S NONARBITRATION BUSINESS OR
14 CLIENT; OR

15 (II) THERE IS A SIGNIFICANT RISK THAT THE ARBITRATOR'S ABILITY
16 TO PRESIDE OVER THE ARBITRATION WILL BE MATERIALLY LIMITED BY THE
17 ARBITRATOR'S RESPONSIBILITIES TO A CLIENT, A FORMER CLIENT, OR A
18 THIRD PERSON OR BY A PERSONAL INTEREST OF THE ARBITRATOR.

19 (2) **Conflict with rules.** IN THE EVENT OF A CONFLICT BETWEEN
20 THE RULES SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION, AS
21 CONSTRUED TO APPLY TO AN ARBITRATOR AND THE PROCEEDINGS BEFORE
22 HIM OR HER, AND THIS PART 7, THIS PART 7 CONTROLS.

23 (3) **Interpretation.** THE OFFICIAL COMMENTS TO AND ANY CASE
24 LAW INTERPRETING RULES 2.3(a) TO (d), 2.4(a) TO (c), AND 2.11(a) TO (c)
25 OF THE COLORADO CODE OF JUDICIAL CODE OF CONDUCT OR RULE 1.7(a)
26 OF THE COLORADO RULES OF PROFESSIONAL CONDUCT APPLY EQUALLY TO
27 THIS SECTION. ■ ■

1 (4) **Violation.** A VIOLATION OF SUBSECTIONS (1) TO (3) OF THIS
2 SECTION CONSTITUTES EVIDENT PARTIALITY.

3 **13-22-706. Conflicts of interest, bias, or prejudice as grounds**
4 **for disqualification.** (1) IN ANY ARBITRATION SUBJECT TO THIS PART 7,
5 ANY PARTY MAY CHALLENGE IN COURT, PURSUANT TO SECTION 13-22-205,
6 THE IMPARTIALITY OF THE ARBITRATOR OR ARBITRATION SERVICES
7 PROVIDER. THE PARTY MUST CHALLENGE THE POTENTIAL PARTIALITY OF
8 THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER NOT LATER THAN
9 THIRTY CALENDAR DAYS AFTER THE ARBITRATOR'S AND ARBITRATOR
10 SERVICES PROVIDER'S DISCLOSURES ARE DUE PURSUANT TO SECTION
11 13-22-707 (1)(b).

12 (2) UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE
13 POTENTIAL OR EVIDENT PARTIALITY OF THE ARBITRATOR, THE COURT
14 SHALL DISQUALIFY THE ARBITRATOR FROM SERVING AS AN ARBITRATOR
15 IN THE ARBITRATION AND SHALL APPOINT AN ARBITRATOR PURSUANT TO
16 SECTION 13-22-211 (1).

17 (3) UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE
18 POTENTIAL OR EVIDENT PARTIALITY OF THE ARBITRATION SERVICES
19 PROVIDER, THE COURT SHALL DISQUALIFY THE ARBITRATION SERVICES
20 PROVIDER FROM ADMINISTERING THE ARBITRATION AND SHALL APPOINT
21 AN ARBITRATOR PURSUANT TO SECTION 13-22-211 (1).

22 **13-22-707. Required disclosures - arbitration conflicts**
23 **checklist.** (1) (a) (I) BEFORE AN ARBITRATOR OR ARBITRATION SERVICES
24 PROVIDER MUST MAKE ANY OF THE DISCLOSURES REQUIRED BY THIS PART
25 7, THE PARTIES TO THE ARBITRATION SHALL EACH DISCLOSE AN
26 ARBITRATION CONFLICTS CHECKLIST. THE ARBITRATION CONFLICTS
27 CHECKLIST MUST DESCRIBE AND DISCLOSE IN GOOD FAITH, TO THE EXTENT

1 SUCH INFORMATION IS KNOWN OR REASONABLY AVAILABLE TO THE PARTY:

2 (A) DISPUTED MATERIAL, FACTUAL, AND LEGAL ISSUES TO BE
3 RESOLVED IN THE ARBITRATION;

4 (B) PARTIES' IDENTITIES, BUSINESS OR OCCUPATION, AND
5 COUNSEL;

6 (C) PARTIES' AGENTS, REPRESENTATIVES, EMPLOYEES,
7 INDEPENDENT CONTRACTORS, OR INSURERS, TO THE EXTENT SUCH
8 PERSONS OR ENTITIES HAVE KNOWLEDGE RELEVANT TO A CLAIM OR
9 DEFENSE OR MAY PROVIDE COVERAGE FOR AN AWARD; AND

10 (D) ANY MATTER OF WHICH A PROSPECTIVE ARBITRATOR SHOULD
11 REASONABLY BE MADE AWARE TO EVALUATE WHETHER HE OR SHE HAS
12 POTENTIAL PARTIALITY.

13 (II) THE PARTY DEMANDING ARBITRATION OR THE PARTY THAT
14 FILED THE LAWSUIT GIVING RISE TO THE ARBITRATION SHALL SUBMIT THE
15 ARBITRATION CONFLICTS CHECKLIST, AS DESCRIBED IN SUBSECTION
16 (1)(a)(I) OF THIS SECTION, TO ALL PARTIES TO THE ARBITRATION, ANY
17 ARBITRATION SERVICES PROVIDER INVOLVED IN THE ARBITRATION, AND
18 ANY KNOWN POTENTIAL ARBITRATORS WITHIN SEVEN CALENDAR DAYS
19 AFTER THE FILING OF AN ARBITRATION DEMAND OR A COURT ORDER
20 COMPELLING ARBITRATION.

21 (III) WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING AN
22 ARBITRATION CONFLICTS CHECKLIST FROM THE PARTY THAT DEMANDED
23 ARBITRATION OR FILED THE LAWSUIT GIVING RISE TO THE ARBITRATION,
24 ALL OTHER PARTIES TO THE ARBITRATION SHALL SUBMIT AN ARBITRATION
25 CONFLICTS CHECKLIST TO ALL OTHER PARTIES TO THE ARBITRATION, ANY
26 ARBITRATION SERVICES PROVIDER INVOLVED IN THE ARBITRATION, AND
27 ANY KNOWN PROSPECTIVE ARBITRATORS.

1 (IV) A PARTY TO AN ARBITRATION SHALL AMEND HIS OR HER
2 ARBITRATION CONFLICTS CHECKLIST BEFORE ALL ARBITRATORS ARE
3 SELECTED AND HAVE AGREED TO SERVE AS ARBITRATORS IF THE PARTY
4 LEARNS THAT THE INFORMATION IS INCOMPLETE OR INCORRECT IN SOME
5 MATERIAL RESPECT. OTHER PARTIES, THE ARBITRATOR, AND THE
6 ARBITRATION SERVICES PROVIDER SHALL SUPPLEMENT THEIR CHECKLIST
7 OR DISCLOSURES WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING AN
8 AMENDMENT OR SUPPLEMENT IF THE NEW INFORMATION WOULD HAVE
9 REQUIRED SUCH DISCLOSURE IF INCLUDED IN AN INITIAL CHECKLIST.

10 (V) A PARTY TO AN ARBITRATION SHALL NOT ASSERT AS A BASIS
11 TO DISQUALIFY AN ARBITRATOR OR ARBITRATION SERVICES PROVIDER OR
12 TO VACATE AN ARBITRATION AWARD ANY APPEARANCE OF POTENTIAL
13 PARTIALITY THAT REASONABLY SHOULD HAVE BEEN IDENTIFIED AND
14 DISCLOSED BY AN ARBITRATOR BUT FOR THE FAILURE OF THAT PARTY TO
15 TIMELY DISCLOSE INFORMATION IN THAT PARTY'S ARBITRATION CONFLICTS
16 CHECKLIST.

17 (VI) THE DISCLOSURE REQUIREMENTS IN THIS SECTION DO NOT
18 REQUIRE THE DISCLOSURE OF ANY INFORMATION SUBJECT TO THE
19 ATTORNEY-CLIENT PRIVILEGE OR OTHER PROTECTION FROM DISCLOSURE.
20 NOTWITHSTANDING SUCH PROTECTION, WHEN INFORMATION SUBJECT TO
21 THE DISCLOSURE REQUIREMENTS IN THIS SECTION IS PROTECTED FROM
22 DISCLOSURE, THE FACT THAT SUCH INFORMATION EXISTS MUST BE
23 DISCLOSED. THE GENERAL NATURE OF THE INFORMATION, DESCRIBED IN
24 A SUFFICIENT MANNER TO ALLOW THE PARTIES TO EVALUATE THE
25 POTENTIAL CONFLICT, MUST ALSO BE DISCLOSED.

26 (b) BEFORE THE APPOINTMENT OR SELECTION OF ANY
27 ARBITRATORS, AN ARBITRATION SERVICES PROVIDER SHALL DISCLOSE IN

1 WRITING TO THE PARTIES SUBJECT TO THE ARBITRATION THE FOLLOWING:

2 (I) ANY PAST, PRESENT, OR CURRENTLY EXPECTED FINANCIAL OR
3 PROFESSIONAL RELATIONSHIP OR AFFILIATION BETWEEN THE ARBITRATION
4 SERVICES PROVIDER AND A PARTY OR ATTORNEYS IN THE ARBITRATION,
5 INCLUDING:

6 (A) ANY FINANCIAL INTEREST THAT THE ARBITRATION SERVICES
7 PROVIDER HAS IN ANY OF THE PARTIES TO THE ARBITRATION OR THEIR
8 ATTORNEYS;

9 (B) ANY FINANCIAL INTEREST THAT ANY OF THE PARTIES TO THE
10 ARBITRATION OR THEIR ATTORNEYS HAVE IN THE ARBITRATION SERVICES
11 PROVIDER; AND

12 (C) EXCEPT FOR PAYMENT FOR ARBITRATION SERVICES, WHETHER
13 THE ARBITRATION SERVICES PROVIDER HAS RECEIVED A GIFT, BEQUEST, OR
14 OTHER THING OF VALUE FROM A PARTY, AN ATTORNEY IN THE
15 ARBITRATION, A LAW FIRM WITH WHICH AN ATTORNEY IN THE
16 ARBITRATION IS CURRENTLY ASSOCIATED, OR ANY PARTIES' LIABILITY
17 INSURERS;

18 (II) ANY AGREEMENTS THE ARBITRATION SERVICES PROVIDER HAS
19 WITH ANY OF THE PARTIES TO THE ARBITRATION, THEIR COUNSEL, AND
20 THEIR LIABILITY INSURERS AND THEIR ATTORNEYS, INCLUDING, WITHOUT
21 LIMITATION, ANY DISCOUNT, COMPENSATION, OR REFERRAL
22 ARRANGEMENTS MADE AVAILABLE TO ANY OF THE PARTIES TO THE
23 ARBITRATION AND ARRANGEMENTS REGARDING HOW, WHERE, OR WHEN
24 THE ARBITRATION SERVICES PROVIDER WILL ADMINISTER DISPUTES
25 BETWEEN THE PARTIES TO THE ARBITRATION; AND

26 (III) ANY SOLICITATION MADE TO A PARTY OR ATTORNEY FOR A
27 PARTY TO THE ARBITRATION, INCLUDING PRIVATE PRESENTATIONS MADE

1 TO A PARTY OR ATTORNEY FOR A PARTY BY THE ARBITRATION SERVICES
2 PROVIDER, OR ORAL OR WRITTEN DISCUSSIONS, MEETINGS, OR
3 NEGOTIATIONS TO DESIGNATE THE ARBITRATION SERVICES PROVIDER AS
4 THE ARBITRATION SERVICES PROVIDER FOR A PARTY. SOLICITATIONS DO
5 NOT INCLUDE ADVERTISEMENTS TO THE GENERAL PUBLIC.

6 (c) PRIOR TO THE SELECTION OF AN ARBITRATOR, BUT AFTER ALL
7 PARTIES TO THE ARBITRATION HAVE DELIVERED THEIR ARBITRATION
8 CONFLICTS CHECKLISTS OR RESPONSIVE ARBITRATION CONFLICTS
9 CHECKLISTS TO THE ARBITRATION SERVICES PROVIDER, AND THE
10 ARBITRATION SERVICES PROVIDER HAS PROVIDED SUCH ARBITRATION
11 CONFLICTS CHECKLISTS TO THE PROSPECTIVE ARBITRATOR, THE
12 ARBITRATOR MUST DISCLOSE:

13 (I) THE USUAL OCCUPATION OR BUSINESS OF THE ARBITRATOR;

14 (II) IF THE ARBITRATOR IS A PRACTICING ATTORNEY, THE GENERAL
15 NATURE OF THE PRACTICE AND TYPES OF CLIENTS SERVED BY THAT
16 ATTORNEY;

17 (III) ANY BUSINESS, PECUNIARY, SOCIAL, FAMILIAL, LEGAL, OR
18 OTHER SIGNIFICANT RELATIONSHIP THE ARBITRATOR HAS WITH ANY OF THE
19 PERSONS SUBJECT TO THE ARBITRATION, THEIR COUNSEL, AND THEIR
20 LIABILITY INSURERS OR OTHER INSURERS DISCLOSED BY THE PARTIES THAT
21 MAY PROVIDE COVERAGE FOR THE AWARD;

22 (IV) ANY PECUNIARY OR FINANCIAL INTEREST THE ARBITRATOR
23 MAY HAVE RELATING TO THE ISSUES IN THE ARBITRATION OR THE
24 OUTCOME OF THE ARBITRATION;

25 (V) ANY CIRCUMSTANCES THAT MIGHT REASONABLY GIVE THE
26 APPEARANCE OF POTENTIAL PARTIALITY ON THE PART OF THE ARBITRATOR
27 IN LIGHT OF THE MATTERS DISCLOSED IN THE ARBITRATION CONFLICTS

1 CHECKLISTS OR RESPONSIVE ARBITRATION CONFLICTS CHECKLISTS; AND

2 (VI) A LIST OF ALL OF THE ARBITRATIONS THAT THE ARBITRATOR
3 HAS PARTICIPATED IN AS AN ARBITRATOR DURING THE PRIOR FIVE YEARS,
4 MODIFIED IF NECESSARY TO PROTECT REASONABLE PRIVACY CONCERNS OF
5 A CONSUMER OR EMPLOYEE PARTY OR ENFORCEABLE CONFIDENTIALITY
6 AGREEMENTS; AND

7 (VII) SUBJECT TO REASONABLE PRIVACY CONCERNS AND
8 ENFORCEABLE CONFIDENTIALITY AGREEMENTS, THE NAMES OF THE
9 PARTIES TO ARBITRATIONS IN WHICH THE ARBITRATOR HAS PARTICIPATED
10 AS AN ARBITRATOR DURING THE PAST FIVE YEARS, THEIR ATTORNEYS, AND
11 COPIES OF ANY DECISIONS AND AWARDS RENDERED.

12 (d) THE DISCLOSURES BY THE ARBITRATION SERVICES PROVIDER
13 AND ANY POTENTIAL ARBITRATORS THAT THIS SECTION REQUIRES MUST BE
14 MADE NO LATER THAN TWENTY-ONE CALENDAR DAYS AFTER THE
15 ARBITRATION SERVICES PROVIDER OR POTENTIAL ARBITRATOR RECEIVES
16 THE RESPONSIVE ARBITRATION CONFLICTS CHECKLIST.

17 (e) ALL ARBITRATORS AND ARBITRATION SERVICES PROVIDERS
18 HAVE A CONTINUING DUTY TO PROMPTLY SUPPLEMENT THEIR DISCLOSURE
19 THROUGH THE DATE THAT THEY RENDER THEIR DECISION OR AWARD OR
20 THAT THE ARBITRATION HAS TERMINATED, WHICHEVER OCCURS SOONER.

21 **13-22-708. Injunctive relief available against arbitration**
22 **services providers.** (1) CONSISTENT WITH THE FEDERAL ARBITRATION
23 ACT, CHAPTER 1 OF TITLE 9, U.S.C., ANY PARTY TO AN ARBITRATION IS
24 ENTITLED TO APPROPRIATE INJUNCTIVE RELIEF IN COURT AGAINST ANY
25 ARBITRATOR OR ARBITRATION SERVICES PROVIDER WHO ENGAGES IN ANY
26 OF THE FOLLOWING ACTS:

27 (a) ADMINISTERING OR CONDUCTING AN ARBITRATION FOR WHICH

1 THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER HAS POTENTIAL OR
2 EVIDENT PARTIALITY;

3 (b) APPOINTING AN ARBITRATOR WHO HAS POTENTIAL OR EVIDENT
4 PARTIALITY; OR

5 (c) FAILING TO SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS
6 OF THIS PART 7.

7 (2) PURSUANT TO SECTION 13-17-102 (4) TO (7), THE COURT MAY
8 AWARD REASONABLE ATTORNEY FEES AGAINST A PARTY SEEKING
9 INJUNCTIVE RELIEF UNDER THIS SECTION IF THE COURT FINDS THAT THE
10 MOTION FOR INJUNCTIVE RELIEF LACKED SUBSTANTIAL JUSTIFICATION OR
11 WAS INTERPOSED FOR DELAY OR HARASSMENT OR IF IT FINDS THAT AN
12 ATTORNEY OR PARTY UNNECESSARILY EXPANDED THE PROCEEDING BY
13 OTHER IMPROPER CONDUCT.

14 (3) THE PROVISIONS OF RULE 11 OF THE COLORADO RULES OF CIVIL
15 PROCEDURE, OR ANY SIMILAR SUCCESSOR RULE, APPLY TO MOTIONS FOR
16 INJUNCTIVE RELIEF FILED PURSUANT TO THIS SECTION.

17 **13-22-709. Waiver - severability.** (1) NO RIGHT CONFERRED BY
18 THIS PART 7 MAY BE WAIVED BEFORE A PARTY TO THE DISPUTE DEMANDS
19 ARBITRATION OR FILES A CLAIM THAT IS COMPELLED TO ARBITRATION.
20 AFTER AN ARBITRATION DEMAND HAS BEEN FILED OR AFTER A CLAIM IS
21 COMPELLED TO ARBITRATION, THE PARTIES TO A DISPUTE MAY WAIVE ANY
22 RIGHT CONFERRED BY THIS SECTION, IF THE WAIVER IS MADE IN WRITING
23 AND SIGNED BY THE PARTIES TO THE ARBITRATION.

24 (2) EVERY PROVISION OF THIS PART 7 AND EACH OF ITS SECTIONS
25 AND SUBSECTIONS IS SEVERABLE.

26 **SECTION 2.** In Colorado Revised Statutes, 13-22-204, **amend**
27 (3)(a) as follows:

1 **13-22-204. Effect of agreement to arbitrate - nonwaivable**
2 **provisions.** (3) (a) Except as otherwise provided in ~~paragraph (b) of this~~
3 ~~subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION, a party to an
4 agreement to arbitrate or arbitration proceeding may not waive, or the
5 parties may not vary the effect of, the requirements of this section or
6 section 13-22-203 (1), 13-22-207, 13-22-214, 13-22-218, 13-22-220 (4)
7 or (5), 13-22-222, 13-22-223, 13-22-224, 13-22-225 (1) or (2), or
8 13-22-229, OR PART 7 OF THIS ARTICLE 22.

9 **SECTION 3.** In Colorado Revised Statutes, 13-22-212, **add** (7)
10 as follows:

11 **13-22-212. Disclosure by arbitrators.** (7) EXCEPT FOR THE
12 CONTINUING OBLIGATIONS IMPOSED BY SUBSECTION (2) OF THIS SECTION,
13 THIS SECTION DOES NOT APPLY TO ARBITRATIONS COVERED BY PART 7 OF
14 THIS ARTICLE 22.

15 **SECTION 4.** In Colorado Revised Statutes, 13-22-214, **amend**
16 (3) as follows:

17 **13-22-214. Immunity of arbitrator - competency to testify -**
18 **attorney fees and costs.** (3) The failure of an arbitrator to make a
19 disclosure required by section 13-22-212 ~~shall~~ OR 13-22-707 DOES not
20 cause any loss of immunity that is granted under this section.

21 **SECTION 5. Effective date - applicability.** This act takes effect
22 upon passage and applies to arbitrations conducted pursuant to arbitration
23 demands filed and orders to compel arbitration entered on or after said
24 date.

25 **SECTION 6. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.