

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0770.01 Jerry Barry x4341

HOUSE BILL 18-1261

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

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.

1 THE TERMS OF AN AGREEMENT BETWEEN A LABOR ORGANIZATION AND AN
2 EMPLOYER.

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

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

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

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

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

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

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

26 (a) AN ARBITRATOR OR ARBITRATION SERVICES PROVIDER FAILS TO
27 SUBSTANTIALLY COMPLY WITH THE DISCLOSURE REQUIREMENTS IMPOSED

1 BY SECTION 13-22-707; AND

2 (b) A PARTY DISCOVERS EVIDENCE OF THE ARBITRATOR'S
3 POTENTIAL PARTIALITY MORE THAN THIRTY CALENDAR DAYS AFTER
4 SELECTION OF THE ARBITRATOR.

5 (7) "LEGAL ISSUE CONFLICT" MEANS A LEGAL ISSUE THAT LIKELY
6 WILL BE PRESENTED TO THE ARBITRATOR, THE RESOLUTION OF WHICH
7 LEGAL ISSUE BY THE ARBITRATOR LIKELY WOULD BE CONTRARY TO THE
8 INTERESTS OF ONE OR MORE OF:

9 (a) THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER; OR

10 (b) THE ARBITRATOR'S OR THE ARBITRATOR'S EMPLOYER'S
11 CURRENT CLIENTS OR A CLIENT'S INDUSTRY OR TRADE GROUP.

12 (8) "PECUNIARY INTEREST" OR "FINANCIAL INTEREST" INCLUDES
13 A LEGAL ISSUE CONFLICT.

14 (9) "PERSON" MEANS:

15 (a) AN INDIVIDUAL, CORPORATION, ESTATE, TRUST, PARTNERSHIP,
16 LIMITED LIABILITY COMPANY, UNINCORPORATED ASSOCIATION, OR TWO OR
17 MORE OF SUCH INDIVIDUALS OR ENTITIES HAVING A JOINT OR COMMON
18 INTEREST;

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

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

22 (10) (a) "POTENTIAL PARTIALITY" MEANS THAT, BASED ON THE
23 TOTALITY OF THE FACTS AND CIRCUMSTANCES, A REASONABLE PERSON
24 WOULD CONCLUDE THAT THE IMPARTIALITY OF AN ARBITRATOR OR
25 ARBITRATION SERVICES PROVIDER MAY BE COMPROMISED OR IMPROPERLY
26 OR UNDULY INFLUENCED IF HE OR SHE IS ASKED TO DECIDE ONE OR MORE
27 MATTERS SUBJECT TO THE ARBITRATION DUE TO AN ACTUAL OR POTENTIAL

1 CONFLICT OF INTEREST, INCLUDING, WITHOUT LIMITATION, A PECUNIARY
2 INTEREST, A BUSINESS RELATIONSHIP, A FAMILIAL RELATIONSHIP, AN
3 ADVERSARIAL OR SYMPATHETIC RELATIONSHIP, OR A LEGAL ISSUE
4 CONFLICT ON THE PART OF THE ARBITRATOR OR ARBITRATION SERVICES
5 PROVIDER.

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

17 **13-22-704. Application.** (1) THIS PART 7 APPLIES TO ALL
18 ARBITRATIONS REQUIRED BY A PREDISPUTE ARBITRATION AGREEMENT IN
19 WHICH A CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM,
20 EXCEPT FOR ARBITRATIONS CONDUCTED PURSUANT TO A COLLECTIVE
21 BARGAINING AGREEMENT. THIS PART 7 DOES NOT APPLY TO ARBITRATIONS
22 CONDUCTED OR ADMINISTERED BY A SELF-REGULATORY ORGANIZATION,
23 AS DEFINED BY THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15
24 U.S.C. SEC. 78a, OR REGULATIONS ADOPTED PURSUANT TO THAT ACT.

25 (2) EXCEPT WHEN THEY CONFLICT WITH THE PROVISIONS OF THIS
26 PART 7, THE PROVISIONS OF THE "UNIFORM ARBITRATION ACT", PART 2 OF
27 THIS ARTICLE 22, APPLY TO CONSUMER AND EMPLOYMENT ARBITRATIONS.

1 **13-22-705. Ethical standards for arbitrators. (1) Bias,**
2 **prejudice, and harassment.** (a) AN ARBITRATOR SHALL PERFORM HIS OR
3 HER DUTIES, INCLUDING ADMINISTRATIVE DUTIES, WITHOUT BIAS OR
4 PREJUDICE.

5 (b) AN ARBITRATOR SHALL NOT, IN THE PERFORMANCE OF HIS OR
6 HER DUTIES, BY WORDS OR CONDUCT, MANIFEST BIAS OR PREJUDICE, OR
7 ENGAGE IN HARASSMENT, INCLUDING BUT NOT LIMITED TO BIAS,
8 PREJUDICE, OR HARASSMENT BASED UPON RACE, SEX, GENDER, RELIGION,
9 NATIONAL ORIGIN, ETHNICITY, DISABILITY, AGE, SEXUAL ORIENTATION,
10 MARITAL STATUS, SOCIOECONOMIC STATUS, OR POLITICAL AFFILIATION,
11 AND SHALL NOT DIRECT OTHERS SUBJECT TO THE ARBITRATOR'S DIRECTION
12 AND CONTROL TO DO SO.

13 (c) AN ARBITRATOR SHALL REQUIRE ATTORNEYS IN PROCEEDINGS
14 TO REFRAIN FROM MANIFESTING BIAS OR PREJUDICE OR ENGAGING IN
15 HARASSMENT BASED UPON ATTRIBUTES INCLUDING BUT NOT LIMITED TO
16 RACE, SEX, GENDER, RELIGION, NATIONAL ORIGIN, ETHNICITY, DISABILITY,
17 AGE, SEXUAL ORIENTATION, MARITAL STATUS, SOCIOECONOMIC STATUS,
18 OR POLITICAL AFFILIATION, AGAINST PARTIES, WITNESSES, ATTORNEYS, OR
19 OTHERS.

20 (d) THE RESTRICTIONS OF SUBSECTIONS (1)(b) AND (1)(c) OF THIS
21 SECTION DO NOT PRECLUDE ARBITRATORS OR ATTORNEYS FROM MAKING
22 LEGITIMATE REFERENCE TO THE LISTED FACTORS OR SIMILAR FACTORS
23 WHEN THEY ARE RELEVANT TO AN ISSUE IN A PROCEEDING.

24 (2) **External influences on arbitrator conduct.** (a) AN
25 ARBITRATOR SHALL NOT BE SWAYED BY PUBLIC CLAMOR OR FEAR OF
26 CRITICISM.

27 (b) AN ARBITRATOR SHALL NOT PERMIT FAMILY, SOCIAL,

1 POLITICAL, FINANCIAL, OR OTHER INTERESTS OR RELATIONSHIPS TO
2 INFLUENCE THE ARBITRATOR'S CONDUCT OR JUDGMENT.

3 (c) AN ARBITRATOR SHALL NOT CONVEY OR PERMIT OTHERS TO
4 CONVEY THE IMPRESSION THAT ANY PERSON OR ORGANIZATION IS IN A
5 POSITION TO INFLUENCE THE ARBITRATOR.

6 (3) **Disqualification.** (a) AN ARBITRATOR SHALL DISQUALIFY
7 HIMSELF OR HERSELF IN ANY PROCEEDING IN WHICH THE ARBITRATOR'S
8 IMPARTIALITY MIGHT REASONABLY BE QUESTIONED, INCLUDING BUT NOT
9 LIMITED TO THE FOLLOWING CIRCUMSTANCES:

10 (I) THE ARBITRATOR HAS A PERSONAL BIAS OR PREJUDICE
11 CONCERNING A PARTY OR A PARTY'S ATTORNEY, OR PERSONAL
12 KNOWLEDGE OF FACTS THAT ARE IN DISPUTE IN THE PROCEEDING;

13 (II) THE ARBITRATOR KNOWS THAT THE ARBITRATOR, THE
14 ARBITRATOR'S SPOUSE, DOMESTIC PARTNER, OR CIVIL UNION PARTNER, OR
15 A PERSON WITHIN THE THIRD DEGREE OF RELATIONSHIP TO EITHER OF
16 THEM, OR THE SPOUSE, DOMESTIC PARTNER, OR CIVIL UNION PARTNER OF
17 SUCH A PERSON, IS:

18 (A) A PARTY TO THE PROCEEDING, OR AN OFFICER, DIRECTOR,
19 GENERAL PARTNER, MANAGING MEMBER, OR TRUSTEE OF A PARTY;

20 (B) ACTING AS AN ATTORNEY IN THE PROCEEDING;

21 (C) A PERSON WHO HAS MORE THAN A DE MINIMIS INTEREST THAT
22 COULD BE SUBSTANTIALLY AFFECTED BY THE PROCEEDING; OR

23 (D) LIKELY TO BE A MATERIAL WITNESS IN THE PROCEEDING;

24 (III) THE ARBITRATOR KNOWS THAT HE OR SHE, INDIVIDUALLY OR
25 AS A FIDUCIARY, OR THE ARBITRATOR'S SPOUSE, DOMESTIC PARTNER, CIVIL
26 UNION PARTNER, PARENT, CHILD, OR OTHER MEMBER OF THE
27 ARBITRATOR'S FAMILY RESIDING IN THE ARBITRATOR'S HOUSEHOLD, HAS

1 AN ECONOMIC INTEREST IN THE SUBJECT MATTER IN CONTROVERSY OR IN
2 A PARTY TO THE PROCEEDING;

3 (IV) THE ARBITRATOR, WHILE AN ARBITRATOR, HAS MADE A
4 PUBLIC STATEMENT, OTHER THAN IN AN ARBITRATION PROCEEDING,
5 DECISION, OR OPINION, THAT COMMITS OR APPEARS TO COMMIT THE
6 ARBITRATOR TO REACH A PARTICULAR RESULT OR RULE IN A PARTICULAR
7 WAY IN THE PROCEEDING OR CONTROVERSY; OR

8 (V) THE ARBITRATOR:

9 (A) SERVED AS AN ATTORNEY IN THE MATTER IN CONTROVERSY,
10 OR WAS ASSOCIATED WITH AN ATTORNEY WHO PARTICIPATED
11 SUBSTANTIALLY AS AN ATTORNEY IN THE MATTER DURING SUCH
12 ASSOCIATION;

13 (B) SERVED IN GOVERNMENTAL EMPLOYMENT, AND IN SUCH
14 CAPACITY PARTICIPATED PERSONALLY AND SUBSTANTIALLY AS AN
15 ATTORNEY OR PUBLIC OFFICIAL CONCERNING THE PROCEEDING, OR HAS
16 PUBLICLY EXPRESSED IN SUCH CAPACITY AN OPINION CONCERNING THE
17 MERITS OF THE PARTICULAR MATTER IN CONTROVERSY;

18 (C) WAS A MATERIAL WITNESS CONCERNING THE MATTER; OR

19 (D) PREVIOUSLY PRESIDED AS AN ARBITRATOR OVER THE MATTER
20 IN ANOTHER RELATED PROCEEDING.

21 (b) AN ARBITRATOR SHALL KEEP INFORMED ABOUT THE
22 ARBITRATOR'S PERSONAL AND FIDUCIARY ECONOMIC INTERESTS, AND
23 MAKE A REASONABLE EFFORT TO KEEP INFORMED ABOUT THE PERSONAL
24 ECONOMIC INTERESTS OF THE ARBITRATOR'S SPOUSE, DOMESTIC PARTNER,
25 CIVIL UNION PARTNER, AND MINOR CHILDREN RESIDING IN THE
26 ARBITRATOR'S HOUSEHOLD.

27 (c) AN ARBITRATOR SHALL NOT ARBITRATE A DISPUTE IF THE

1 ARBITRATION INVOLVES A CONCURRENT CONFLICT OF INTEREST. A
2 CONCURRENT CONFLICT OF INTEREST EXISTS IF:

3 (I) THE MATTERS TO BE DECIDED IN THE ARBITRATION MAY BE
4 DIRECTLY ADVERSE TO THE ARBITRATOR'S NONARBITRATION BUSINESS OR
5 CLIENT; OR

6 (II) THERE IS A SIGNIFICANT RISK THAT THE ARBITRATOR'S ABILITY
7 TO PRESIDE OVER THE ARBITRATION WILL BE MATERIALLY LIMITED BY THE
8 ARBITRATOR'S RESPONSIBILITIES TO A CLIENT, A FORMER CLIENT, AN
9 INDUSTRY OR TRADE GROUP, OR A THIRD PERSON OR BY A PERSONAL
10 INTEREST OF THE ARBITRATOR.

11 (d) AN ARBITRATOR SUBJECT TO DISQUALIFICATION MAY DISCLOSE
12 THE BASIS OF THE ARBITRATOR'S DISQUALIFICATION AND MAY ASK THE
13 PARTIES AND THEIR ATTORNEYS TO CONSIDER, OUTSIDE THE PRESENCE OF
14 THE ARBITRATOR, WHETHER TO WAIVE DISQUALIFICATION. IF, FOLLOWING
15 THE DISCLOSURE, THE PARTIES AND ATTORNEYS AGREE IN WRITING,
16 WITHOUT PARTICIPATION BY THE ARBITRATOR, THAT THE ARBITRATOR
17 SHOULD NOT BE DISQUALIFIED, THE ARBITRATOR MAY PARTICIPATE IN THE
18 PROCEEDING. ■

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

21 **13-22-706. Conflicts of interest, bias, or prejudice as grounds**
22 **for disqualification.** (1) IN ANY MATTER SUBJECT TO ARBITRATION, ANY
23 PARTY MAY CHALLENGE IN COURT, PURSUANT TO SECTION 13-22-205, THE
24 IMPARTIALITY OF THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER.
25 THE PARTY MUST CHALLENGE THE POTENTIAL PARTIALITY OF THE
26 ARBITRATOR OR ARBITRATION SERVICES PROVIDER NOT LATER THAN
27 THIRTY CALENDAR DAYS AFTER THE ARBITRATOR'S AND ARBITRATOR

1 SERVICES PROVIDER'S DISCLOSURES ARE DUE PURSUANT TO SECTION
2 13-22-707 (1)(b).

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

8 (3) UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE
9 POTENTIAL OR EVIDENT PARTIALITY OF THE ARBITRATION SERVICES
10 PROVIDER, THE COURT SHALL DISQUALIFY THE ARBITRATION SERVICES
11 PROVIDER FROM ADMINISTERING THE ARBITRATION AND SHALL APPOINT
12 AN ARBITRATOR PURSUANT TO SECTION 13-22-211 (1).

13 **13-22-707. Required disclosures - arbitration conflicts**
14 **checklist.** (1) (a) (I) BEFORE AN ARBITRATOR OR ARBITRATION SERVICES
15 PROVIDER MUST MAKE ANY OF THE DISCLOSURES REQUIRED BY THIS PART
16 7, THE PARTIES TO THE ARBITRATION SHALL EACH DISCLOSE AN
17 ARBITRATION CONFLICTS CHECKLIST. THE ARBITRATION CONFLICTS
18 CHECKLIST MUST DESCRIBE AND DISCLOSE IN GOOD FAITH, TO THE EXTENT
19 SUCH INFORMATION IS KNOWN OR REASONABLY AVAILABLE TO THE PARTY:

20 (A) THE MATERIAL, FACTUAL, AND LEGAL ISSUES THEY CONTEND
21 ARE DISPUTED AND TO BE RESOLVED IN THE ARBITRATION;

22 (B) THE IDENTITIES OF THE PARTIES TO THE ARBITRATION,
23 INCLUDING A DESCRIPTION OF THE BUSINESS OR OCCUPATION OF THE
24 PARTIES TO THE ARBITRATION;

25 (C) THE PARTIES' AGENTS, REPRESENTATIVES, EMPLOYEES, OR
26 INDEPENDENT CONTRACTORS, TO THE EXTENT SUCH AGENT,
27 REPRESENTATIVE, EMPLOYEE, OR INDEPENDENT CONTRACTOR HAS

1 KNOWLEDGE RELEVANT TO THE CLAIMS OR DEFENSES OF ANY PARTY;
2 (D) THE PARTIES' COUNSEL;
3 (E) ANY LIABILITY INSURERS OR OTHER INSURERS THAT MAY
4 PROVIDE COVERAGE FOR AN AWARD; AND
5 (F) SUCH OTHER MATTERS AS THE PARTIES BELIEVE IN GOOD FAITH
6 OF WHICH A PROSPECTIVE ARBITRATOR SHOULD REASONABLY BE MADE
7 AWARE IN ORDER FOR THAT ARBITRATOR TO EVALUATE WHETHER HE OR
8 SHE HAS POTENTIAL PARTIALITY.

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

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

24 (IV) A PARTY TO AN ARBITRATION SHALL AMEND HIS OR HER
25 ARBITRATION CONFLICTS CHECKLIST BEFORE ALL ARBITRATORS ARE
26 SELECTED AND HAVE AGREED TO SERVE AS ARBITRATORS IF THE PARTY
27 LEARNS THAT THE INFORMATION IS INCOMPLETE OR INCORRECT IN SOME

1 MATERIAL RESPECT. OTHER PARTIES, THE ARBITRATOR, AND THE
2 ARBITRATION SERVICES PROVIDER SHALL SUPPLEMENT THEIR CHECKLIST
3 OR DISCLOSURES WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING AN
4 AMENDMENT OR SUPPLEMENT IF THE NEW INFORMATION WOULD HAVE
5 REQUIRED SUCH DISCLOSURE IF INCLUDED IN AN INITIAL CHECKLIST.

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

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

22 (b) BEFORE THE APPOINTMENT OR SELECTION OF ANY
23 ARBITRATORS, AN ARBITRATION SERVICES PROVIDER SHALL DISCLOSE IN
24 WRITING TO THE PARTIES SUBJECT TO THE ARBITRATION THE FOLLOWING:

25 (I) ANY PAST, PRESENT, OR CURRENTLY EXPECTED FINANCIAL OR
26 PROFESSIONAL RELATIONSHIP OR AFFILIATION BETWEEN THE ARBITRATION
27 SERVICES PROVIDER AND A PARTY OR ATTORNEYS IN THE ARBITRATION,

1 INCLUDING:

2 (A) ANY FINANCIAL INTEREST THAT THE ARBITRATION SERVICES
3 PROVIDER HAS IN ANY OF THE PARTIES TO THE ARBITRATION OR THEIR
4 ATTORNEYS;

5 (B) ANY FINANCIAL INTEREST THAT ANY OF THE PARTIES TO THE
6 ARBITRATION OR THEIR ATTORNEYS HAVE IN THE ARBITRATION SERVICES
7 PROVIDER; AND

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

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

22 (III) ANY SOLICITATION MADE TO A PARTY OR ATTORNEY FOR A
23 PARTY TO THE ARBITRATION, INCLUDING PRIVATE PRESENTATIONS MADE
24 TO A PARTY OR ATTORNEY FOR A PARTY BY THE ARBITRATION SERVICES
25 PROVIDER, OR ORAL OR WRITTEN DISCUSSIONS, MEETINGS, OR
26 NEGOTIATIONS TO DESIGNATE THE ARBITRATION SERVICES PROVIDER AS
27 THE ARBITRATION SERVICES PROVIDER FOR A PARTY. SOLICITATIONS DO

1 NOT INCLUDE ADVERTISEMENTS TO THE GENERAL PUBLIC.

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

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

10 (II) IF THE ARBITRATOR IS A PRACTICING ATTORNEY, THE GENERAL
11 NATURE OF THE PRACTICE AND TYPES OF CLIENTS SERVED BY THAT
12 ATTORNEY;

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

18 (IV) ANY PECUNIARY OR FINANCIAL INTEREST THE ARBITRATOR
19 MAY HAVE RELATING TO THE ISSUES IN THE ARBITRATION OR THE
20 OUTCOME OF THE ARBITRATION;

21 (V) ANY CIRCUMSTANCES THAT MIGHT REASONABLY GIVE THE
22 APPEARANCE OF POTENTIAL PARTIALITY ON THE PART OF THE ARBITRATOR
23 IN LIGHT OF THE MATTERS DISCLOSED IN THE ARBITRATION CONFLICTS
24 CHECKLISTS OR RESPONSIVE ARBITRATION CONFLICTS CHECKLISTS; AND

25 (VI) A LIST OF ALL OF THE ARBITRATIONS THAT THE ARBITRATOR
26 HAS PARTICIPATED IN AS AN ARBITRATOR DURING THE PRIOR FIVE YEARS
27 AND, TO THE MAXIMUM EXTENT POSSIBLE IN CONSIDERATION OF

1 REASONABLE PRIVACY CONCERNS AND ENFORCEABLE CONFIDENTIALITY
2 AGREEMENTS, THE NAMES OF THE PARTIES TO THOSE ARBITRATIONS AND
3 THEIR ATTORNEYS, ALONG WITH COPIES OF THE DECISIONS AND AWARDS
4 RENDERED.

5 (d) THE DISCLOSURES BY THE ARBITRATION SERVICES PROVIDER
6 AND ANY POTENTIAL ARBITRATORS THAT THIS SECTION REQUIRES MUST BE
7 MADE NO LATER THAN TWENTY-ONE CALENDAR DAYS AFTER THE
8 ARBITRATION SERVICES PROVIDER OR POTENTIAL ARBITRATOR RECEIVES
9 THE RESPONSIVE ARBITRATION CONFLICTS CHECKLIST.

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

14 **13-22-708. Injunctive relief available against arbitration**
15 **services providers.** (1) ANY PARTY TO AN ARBITRATION IS ENTITLED TO
16 APPROPRIATE INJUNCTIVE RELIEF IN COURT AGAINST ANY ARBITRATOR OR
17 ARBITRATION SERVICES PROVIDER WHO ENGAGES IN ANY OF THE
18 FOLLOWING ACTS:

19 (a) ADMINISTERING OR CONDUCTING AN ARBITRATION FOR WHICH
20 THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER HAS POTENTIAL OR
21 EVIDENT PARTIALITY;

22 (b) APPOINTING AN ARBITRATOR WHO HAS POTENTIAL OR EVIDENT
23 PARTIALITY; OR

24 (c) FAILING TO SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS
25 OF THIS PART 7.

26 **13-22-709. Waiver - severability.** (1) NO RIGHT CONFERRED BY
27 THIS PART 7 MAY BE WAIVED BEFORE THE DISPUTE SUBJECT TO

1 ARBITRATION HAS ARISEN, AND ANY SUCH WAIVER IS ONLY EFFECTIVE IF
2 MADE IN A WRITING SIGNED BY THE PARTIES TO THE ARBITRATION.

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

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

7 **13-22-204. Effect of agreement to arbitrate - nonwaivable**
8 **provisions.** (3) (a) Except as otherwise provided in ~~paragraph (b) of this~~
9 ~~subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION, a party to an
10 agreement to arbitrate or arbitration proceeding may not waive, or the
11 parties may not vary the effect of, the requirements of this section or
12 section 13-22-203 (1), 13-22-207, 13-22-214, 13-22-218, 13-22-220 (4)
13 or (5), 13-22-222, 13-22-223, 13-22-224, 13-22-225 (1) or (2), or
14 13-22-229, OR PART 7 OF THIS ARTICLE 22.

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

17 **13-22-212. Disclosure by arbitrators.** (7) EXCEPT FOR THE
18 CONTINUING OBLIGATIONS IMPOSED BY SUBSECTION (2) OF THIS SECTION,
19 THIS SECTION DOES NOT APPLY TO ARBITRATIONS COVERED BY PART 7 OF
20 THIS ARTICLE 22.

21 **SECTION 4. 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 5. 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.