

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0946.01 Jerry Barry x4341

HOUSE BILL 18-1262

HOUSE SPONSORSHIP

Jackson and Roberts,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE "ARBITRATION SERVICES PROVIDER
102 TRANSPARENCY 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 requires arbitration services providers that administer consumer or employment arbitrations to collect, publish, and make available specified information on those arbitrations administered in the previous 5 years. The bill amends a provision of the uniform arbitration act to make the bill effective.

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 (I) WHETHER ARBITRATION WAS DEMANDED PURSUANT TO A
2 PREDISPUTE ARBITRATION CLAUSE AND, IF SO, WHETHER THE PREDISPUTE
3 ARBITRATION CLAUSE DESIGNATED THE ADMINISTERING ARBITRATION
4 SERVICES PROVIDER;

5 (II) THE NAME OF A NONCONSUMER PARTY OR EMPLOYER, IF THE
6 NONCONSUMER PARTY OR EMPLOYER IS A CORPORATION OR OTHER
7 BUSINESS ENTITY, AND WHETHER THE NONCONSUMER PARTY OR
8 EMPLOYER INITIATED THE ARBITRATION OR WAS THE RESPONDING PARTY,
9 IF KNOWN;

10 (III) THE NATURE OF THE DISPUTE INVOLVED, CATEGORIZED AS
11 ONE OF THE FOLLOWING: GOODS; CREDIT; OTHER BANKING OR FINANCE;
12 INSURANCE; HEALTH CARE; CONSTRUCTION; REAL ESTATE;
13 TELECOMMUNICATIONS, INCLUDING SOFTWARE AND INTERNET USAGE;
14 DEBT COLLECTION; PERSONAL INJURY; EMPLOYMENT; OR OTHER;

15 (IV) WHETHER THE CONSUMER, NONCONSUMER, EMPLOYEE, OR
16 EMPLOYER PARTY WAS THE PREVAILING PARTY;

17 (V) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE
18 NONCONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN
19 AN ARBITRATION ADMINISTERED BY THE ARBITRATION SERVICES
20 PROVIDER;

21 (VI) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE
22 NONCONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN
23 A MEDIATION ADMINISTERED BY THE ARBITRATION SERVICES PROVIDER;

24 (VII) THE NAME OF THE ATTORNEY AND THE FULL NAME OF THE
25 LAW FIRM THAT EMPLOYS THE ATTORNEY WHO REPRESENTED A PARTY, IF
26 ANY;

27 (VIII) THE DATE THE ARBITRATION SERVICES PROVIDER RECEIVED

1 THE DEMAND FOR ARBITRATION, THE DATE THE ARBITRATOR WAS
2 APPOINTED, AND THE DATE OF DISPOSITION BY THE ARBITRATOR OR
3 ARBITRATION SERVICES PROVIDER;

4 (IX) THE TYPE OF DISPOSITION OF THE DISPUTE, IF KNOWN,
5 IDENTIFIED AS ONE OF THE FOLLOWING: WITHDRAWAL, ABANDONMENT,
6 SETTLEMENT, AWARD AFTER HEARING, AWARD WITHOUT HEARING,
7 DEFAULT, OR DISMISSAL WITHOUT HEARING;

8 (X) IF A CASE WAS ADMINISTERED IN A HEARING, WHETHER THE
9 HEARING WAS CONDUCTED IN PERSON, BY TELEPHONE OR VIDEO
10 CONFERENCE, OR BY DOCUMENTS ONLY;

11 (XI) THE AMOUNT OF THE CLAIM, WHETHER EQUITABLE RELIEF
12 WAS REQUESTED OR AWARDED, THE AMOUNT OF ANY MONETARY AWARD,
13 THE AMOUNT OF ANY ATTORNEY FEES AWARD, AND ANY OTHER RELIEF
14 GRANTED, IF ANY; AND

15 (XII) THE NAME OF THE ARBITRATOR, HIS OR HER TOTAL FEE FOR
16 THE CASE, THE PERCENTAGE OF THE ARBITRATOR'S FEE ALLOCATED TO
17 EACH PARTY, WHETHER A WAIVER OF ANY FEES WAS GRANTED, AND, IF SO,
18 THE AMOUNT OF THE WAIVER.

19 (b) THE INFORMATION REQUIRED BY SUBSECTION (2)(a) OF THIS
20 SECTION MUST BE MADE AVAILABLE IN A FORMAT THAT ALLOWS THE
21 PUBLIC TO SEARCH AND SORT THE INFORMATION USING READILY
22 AVAILABLE SOFTWARE AND BE DIRECTLY ACCESSIBLE FROM A
23 CONSPICUOUSLY DISPLAYED LINK ON THE WEBSITE OF THE ARBITRATION
24 SERVICES PROVIDER WITH THE IDENTIFYING DESCRIPTION: "CONSUMER
25 CASE INFORMATION".

26 (c) AN ARBITRATION SERVICES PROVIDER IS NOT LIABLE IN A CLAIM
27 FOR DAMAGES FOR FAILURE TO COLLECT, PUBLISH, OR DISTRIBUTE THE

1 INFORMATION REQUIRED BY THIS SECTION.

2 (d) (I) AN ARBITRATION SERVICES PROVIDER SHALL NOT CONDUCT
3 ARBITRATIONS UNLESS THE ARBITRATION SERVICES PROVIDER HAS
4 SUBSTANTIALLY COMPLIED WITH THIS SECTION.

5 (II) A PARTY TO AN ARBITRATION AGREEMENT IS ENTITLED TO
6 APPROPRIATE INJUNCTIVE RELIEF AGAINST ANY ARBITRATION SERVICES
7 PROVIDER WHO FAILS TO SUBSTANTIALLY COMPLY WITH THIS SECTION.

8 **SECTION 2.** In Colorado Revised Statutes, 13-22-223, **add** (1.3)
9 as follows:

10 **13-22-223. Vacating award - definitions.** (1.3) (a) AS USED IN
11 SUBSECTION (1)(b)(I) OF THIS SECTION, "EVIDENT PARTIALITY" INCLUDES
12 CIRCUMSTANCES WHEN:

13 (I) AN ARBITRATION SERVICES PROVIDER FAILS TO SUBSTANTIALLY
14 COMPLY WITH THE DISCLOSURE REQUIREMENTS IMPOSED BY SECTION
15 13-22-701 (2)(a); AND

16 (II) A PARTY DISCOVERS EVIDENCE OF THE ARBITRATION SERVICES
17 PROVIDER'S POTENTIAL PARTIALITY AFTER SELECTION OF THE
18 ARBITRATOR.

19 (b) (I) "POTENTIAL PARTIALITY" MEANS THAT, BASED ON THE
20 TOTALITY OF THE FACTS AND CIRCUMSTANCES, A REASONABLE PERSON
21 WOULD CONCLUDE THAT THE IMPARTIALITY OF AN ARBITRATOR OR
22 ARBITRATION SERVICES PROVIDER MAY BE COMPROMISED OR UNDULY
23 INFLUENCED IF HE OR SHE IS ASKED TO DECIDE ONE OR MORE MATTERS
24 SUBJECT TO THE ARBITRATION DUE TO AN ACTUAL OR POTENTIAL
25 CONFLICT OF INTEREST, INCLUDING, WITHOUT LIMITATION, A PECUNIARY
26 INTEREST, A BUSINESS RELATIONSHIP, A FAMILIAL RELATIONSHIP, AN
27 ADVERSARIAL OR SYMPATHETIC RELATIONSHIP, OR A LEGAL ISSUE

1 CONFLICT ON THE PART OF THE ARBITRATOR OR ARBITRATION SERVICES
2 PROVIDER.

3 (II) "POTENTIAL PARTIALITY" INCLUDES A CIRCUMSTANCE WHEN
4 A JUDICIAL OFFICER'S SIMILAR INTEREST IN THE OUTCOME OF A DISPUTE
5 BEFORE THAT OFFICER WOULD DISQUALIFY HIM OR HER UNDER THE
6 COLORADO CODE OF JUDICIAL CONDUCT FROM PRESIDING OVER A
7 PROCEEDING OR WOULD DISQUALIFY HIM OR HER UNDER THE COLORADO
8 RULES OF PROFESSIONAL CONDUCT FROM REPRESENTING A CLIENT.

9 (III) "POTENTIAL PARTIALITY" ALSO MEANS AN ARBITRATION
10 SERVICES PROVIDER'S FAILURE TO MAKE THE DISCLOSURES REQUIRED IN
11 SECTION 13-22-701 (2)(a).

12 (c) AS USED IN SUBSECTION (1.3)(b)(I) OF THIS SECTION:

13 (I) "ADVERSARIAL OR SYMPATHETIC RELATIONSHIP" INCLUDES A
14 SIGNIFICANT PERSONAL OR PROFESSIONAL EXPERIENCE ALIGNED WITH
15 FEWER THAN ALL OF THE PARTIES TO THE DISPUTE.

16 (II) "LEGAL ISSUE CONFLICT" MEANS A LEGAL ISSUE THAT WILL
17 LIKELY BE PRESENTED TO THE ARBITRATOR, THE RESOLUTION OF WHICH
18 LEGAL ISSUE BY THE ARBITRATOR LIKELY WOULD BE CONTRARY TO THE
19 INTERESTS OF ONE OR MORE OF THE ARBITRATORS OR ARBITRATION
20 SERVICES PROVIDERS OR THE ARBITRATOR'S, ARBITRATOR'S EMPLOYER'S,
21 OR ARBITRATION SERVICES PROVIDER'S CURRENT CLIENTS OR A CLIENT'S
22 INDUSTRY OR TRADE GROUP.

23 **SECTION 3. Severability.** Every provision of this act and each
24 of its subsections is severable.

25 **SECTION 4. Effective date.** This act takes effect upon passage.

26 **SECTION 5. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.