

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

**ENGROSSED**

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

LLS NO. 20-0374.01 Jerry Barry x4341

**SENATE BILL 20-093**

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**SENATE SPONSORSHIP**

**Foote and Fenberg**, Danielson, Fields, Garcia, Ginal, Gonzales, Lee, Pettersen, Rodriguez, Story, Todd, Winter

**HOUSE SPONSORSHIP**

**Jackson**, Caraveo, Cutter, Froelich, Jaquez Lewis, Lontine, Singer, Sullivan

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING PROTECTIONS RELATED TO MANDATORY AGREEMENT**  
102              **PROVISIONS, AND, IN CONNECTION THEREWITH, ENACTING THE**  
103              **"CONSUMER AND EMPLOYEE DISPUTE RESOLUTION FAIRNESS**  
104              **ACT".**

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**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 enacts the "Consumer and Employee Dispute Resolution Fairness Act" (act). For certain consumer and employment arbitrations, the act:

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.

SENATE  
Amended 2nd Reading  
February 6, 2020

- ! Prohibits the waiver of standards for and challenges for evident partiality prior to a claim being filed and requires any waiver of such provisions after the claim is filed to be in writing;
- ! Provides that the right of a party to challenge an arbitrator based on evident partiality is waived if not raised within a reasonable time of learning of the information leading to the challenge but that such right is not waived if caused by the opposing party;
- ! Establishes ethical standards for arbitrators; and
- ! Requires specified public disclosures by arbitration services providers but includes protections for certain confidential information.

The bill also requires an individual arbitrator for certain consumer and employment arbitrations to make additional disclosures of information that might affect the arbitrator's impartiality.

The bill specifies how attorney fees and other reasonable expenses are to be awarded if a court vacates an award because of an arbitrator's evident partiality or failure to make required disclosures and clarifies when appeals of orders may be made in consumer and employee arbitrations.

The bill also provides that for a standard form contract involving a consumer or employee:

- ! Specified terms are unenforceable as against public policy;
- ! Including an unenforceable term constitutes a deceptive trade practice under the "Colorado Consumer Protection Act"; and
- ! How certain cost-shifting provisions are to be interpreted.

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

2           **SECTION 1.** The short title of this act is the "Consumer and  
3 Employee Dispute Resolution Fairness Act".

4           **SECTION 2. Legislative declaration.** The general assembly  
5 declares that nothing in this act is intended to approve, disapprove,  
6 modify, or overrule *Vallagio at Inverness Residential Condo. Ass'n v.*  
7 *Metro Homes, Inc.*, 2017 CO 69, 395 P.3d 788.

8           **SECTION 3.** In Colorado Revised Statutes, **add** part 8 to article  
9 22 of title 13 as follows:

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PART 8  
CONSUMER AND EMPLOYEE  
ARBITRATION FAIRNESS ACT

**13-22-801. Short title.** THE SHORT TITLE OF THIS PART 8 IS THE  
"CONSUMER AND EMPLOYEE ARBITRATION FAIRNESS ACT".

**13-22-802. Legislative declaration.** (1) THE GENERAL ASSEMBLY  
FINDS AND DECLARES THAT IT IS THE POLICY OF THE STATE, TO THE  
EXTENT PERMITTED UNDER FEDERAL LAW, TO PROTECT THE INTEGRITY OF  
THE ARBITRATION PROCESS, MINIMIZE WASTED TIME AND RESOURCES, AND  
ENSURE THAT ARBITRATIONS OF CONSUMER AND EMPLOYEE DISPUTES  
UNDER PRE-DISPUTE ARBITRATION AGREEMENTS ARE FAIR, AFFORDABLE,  
AND EXPEDITIOUS BY:

(a) CLARIFYING INFORMATION RELEVANT TO EVALUATING  
EVIDENT PARTIALITY AND REQUIRING EARLY DISCLOSURE OF THE SAME;  
AND

(b) ENSURING THAT ARBITRATORS WHO PRESIDE OVER CONSUMER  
AND EMPLOYMENT DISPUTES ARE NOT EVIDENTLY PARTIAL TOWARD ANY  
PARTY TO THE DISPUTE.

**13-22-803. Definitions.** AS USED IN THIS PART 8, UNLESS THE  
CONTEXT OTHERWISE REQUIRES:

(1) "ARBITRATION SERVICES PROVIDER" MEANS AN ASSOCIATION,  
AGENCY, BOARD, COMMISSION OR OTHER ENTITY, OR SOLE  
PROPRIETORSHIP THAT IS NEUTRAL AND INITIATES, SPONSORS, OR  
ADMINISTERS AN ARBITRATION PROCEEDING OR IS INVOLVED IN THE  
APPOINTMENT OF AN ARBITRATOR; EXCEPT THAT THIS TERM DOES NOT  
INCLUDE ANY PARTY TO THE ARBITRATION OR ANY LABOR ORGANIZATION  
OR OTHER PARTY TO A COLLECTIVE BARGAINING AGREEMENT THAT

1 INITIATES AN ARBITRATION PURSUANT TO THE TERMS OF AN AGREEMENT  
2 BETWEEN A LABOR ORGANIZATION AND AN EMPLOYER.

3 (2) "CONSUMER" MEANS A CLAIMANT THAT OBTAINS, MAINTAINS,  
4 USES, PURCHASES, LEASES, OR HAS STANDING TO ASSERT CLAIMS  
5 RELATING TO GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED  
6 PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR HOUSEHOLD  
7 PURPOSES.

8 (3) "CONSUMER DISPUTE" MEANS A DISPUTE INVOLVING A CLAIM  
9 ASSERTED BY A CONSUMER THAT RELATES TO OR ARISES FROM THE  
10 CONSUMER'S USE OF THE GOODS, SERVICES, OR REAL OR PERSONAL  
11 PROPERTY PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR  
12 HOUSEHOLD PURPOSES.

13 (4) "EMPLOYEE" MEANS:

14 (a) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
15 LAW; OR

16 (b) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS OR  
17 PURPORTED EMPLOYER AS AN EMPLOYEE BUT WHO CLAIMS TO BE AN  
18 EMPLOYEE AND WHOSE CLAIMS AGAINST THE PURPORTED EMPLOYER THAT  
19 ARE SUBJECT OR POTENTIALLY SUBJECT TO AN AGREEMENT GOVERNED BY  
20 THIS PART 8 ARE RELATED TO THIS ALLEGED MISCLASSIFICATION.

21 (5) "EMPLOYMENT DISPUTE" MEANS ANY DISPUTE BETWEEN AN  
22 EMPLOYEE AND A BUSINESS, EMPLOYER, OR PURPORTED EMPLOYER  
23 RELATING TO THE TERMS OF THE EMPLOYEE'S WORK.

24 (6) "PRE-DISPUTE ARBITRATION AGREEMENT" MEANS AN  
25 AGREEMENT TO ARBITRATE A DISPUTE OR DISPUTES THAT IS EXECUTED OR  
26 BECOMES ENFORCEABLE BEFORE THE CLAIMANT ASSERTS THE CLAIM OR  
27 CLAIMS TO WHICH THE ARBITRATION AGREEMENT APPLIES.

1 (7) "REASONABLE TIME" MEANS A REASONABLE TIME BASED ON  
2 THE STAGE OF THE PROCEEDINGS, NOT TO EXCEED TWENTY-EIGHT DAYS.

3 **13-22-804. Application.** (1) THIS PART 8 APPLIES TO ANY  
4 ARBITRATION THAT:

5 (a) IS REQUIRED BY A PRE-DISPUTE ARBITRATION AGREEMENT  
6 THAT WAS EXECUTED IN THE STATE OF COLORADO OR IS GOVERNED BY  
7 THE SUBSTANTIVE LAW OF THE STATE OF COLORADO; AND

8 (b) INCLUDES A CLAIM OR COUNTERCLAIM ASSERTED BY A  
9 CONSUMER IN A CONSUMER DISPUTE OR AN EMPLOYEE IN AN EMPLOYMENT  
10 DISPUTE.

11 (2) THIS PART 8 IS CONSISTENT WITH THE PROCEDURES OF THE  
12 FEDERAL "ARBITRATION ACT", 9 U.S.C. SEC. 1 ET SEQ., AND IS INTENDED  
13 TO SUPPLEMENT ANY OTHER STANDARDS THAT AUTHORIZE A REVIEWING  
14 COURT TO VACATE AN ARBITRATION AWARD UPON A FINDING OF EVIDENT  
15 PARTIALITY.

16 (3) THIS PART 8 DOES NOT APPLY TO AN ARBITRATION CONDUCTED  
17 PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT, TO ARBITRATIONS  
18 CONDUCTED OR ADMINISTERED BY A SELF-REGULATORY ORGANIZATION,  
19 AS DEFINED BY THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15  
20 U.S.C. SEC. 78c (26), OR REGULATIONS ADOPTED PURSUANT TO THAT ACT,  
21 OR ARBITRATIONS ADMINISTERED BY A BUSINESS OR TRADE  
22 ORGANIZATION AS DEFINED BY SECTION 501(c)(6) OF THE "INTERNAL  
23 REVENUE CODE OF 1986", AS AMENDED. IF ALL PARTIES ARE MEMBERS OF  
24 THAT BUSINESS OR TRADE ORGANIZATION.

25 **13-22-805. Limitation on pre-dispute waivers = automatic**  
26 **waiver for failure to raise a timely objection - request for provisional**  
27 **measures.** (1) THE STANDARDS FOR AND RIGHT TO CHALLENGE AN

1 ARBITRATION AWARD BASED ON EVIDENT PARTIALITY AS SET FORTH IN  
2 THIS PART 8 MAY NOT BE WAIVED BY THE PARTIES BEFORE THE CONSUMER  
3 OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM SUBJECT TO THIS PART  
4 8.

5 (2) THE PARTIES TO A DISPUTE MAY EXPRESSLY WAIVE A RIGHT  
6 CONFERRED BY THIS SECTION ONLY IF THE WAIVER IS MADE IN WRITING  
7 AND SIGNED BY ALL PARTIES TO THE DISPUTE AFTER THE ARBITRATION  
8 DEMAND HAS BEEN FILED OR AFTER THE CLAIM IS COMPELLED TO  
9 ARBITRATION.

10 (3) THE RIGHT OF A PARTY TO CHALLENGE AN ARBITRATOR FOR  
11 EVIDENT PARTIALITY BASED ON A KNOWN AND DISCLOSED INTEREST,  
12 CIRCUMSTANCE, OR CONFLICT IS WAIVED IF THE PARTY DOES NOT OBJECT  
13 TO THE PROPOSED OR DESIGNATED ARBITRATOR ON THIS BASIS WITHIN A  
14 REASONABLE TIME AFTER THE DATE THE PARTY LEARNED OF OR WAS  
15 PROVIDED WITH THIS INFORMATION.

16 (4) THE RIGHT OF A PARTY TO CHALLENGE AN ARBITRATOR FOR  
17 EVIDENT PARTIALITY BASED ON THE ARBITRATOR'S FAILURE TO DISCLOSE  
18 RELEVANT INFORMATION, AS REQUIRED BY SECTION 13-22-806 (1)(a), IS  
19 WAIVED IF THE PARTY DOES NOT OBJECT TO THE PROPOSED OR  
20 DESIGNATED ARBITRATOR WITHIN A REASONABLE TIME AFTER THE PARTY  
21 LEARNED THAT THE PROPOSED OR DESIGNATED ARBITRATOR FAILED TO  
22 DISCLOSE REQUIRED INFORMATION.

23 (5) IF ANY PARTY CAUSES A PROPOSED OR DESIGNATED  
24 ARBITRATOR'S DISCLOSURE STATEMENT TO BE DELAYED OR INCOMPLETE  
25 BY FAILING TO PROVIDE INFORMATION NECESSARY FOR THE PROPOSED OR  
26 DESIGNATED ARBITRATOR TO EVALUATE POTENTIAL CONFLICTS, THE  
27 PARTY MAY NOT CLAIM THAT AN OPPOSING PARTY WAIVED ITS RIGHT TO

1 CHALLENGE AN ARBITRATION AWARD FOR THE EVIDENT PARTIALITY OF AN  
2 ARBITRATOR PURSUANT TO SUBSECTION (3) OF THIS SECTION BY FAILING  
3 TO OBJECT TO THESE DELAYS AND OMISSIONS IN THE DISCLOSURES.

4 (6) IF A PARTY OBJECTS TO AN ARBITRATOR AND THE PARTIES ARE  
5 NOT ABLE TO AGREE TO AN ARBITRATOR, WITHIN FOURTEEN DAYS AFTER  
6 THE OBJECTION, THE NONOBJECTING PARTY MAY SEEK PROVISIONAL  
7 REMEDIES PURSUANT TO SECTION 13-22-208 (1), AND THE COURT SHALL  
8 RESOLVE THE MOTION WITHIN NINETY DAYS AFTER THE MOTION IS FILED.

9 **13-22-806. Ethical standards for neutral arbitrators in**  
10 **consumer and employment disputes - definition.** (1) UNLESS THE  
11 PARTIES HAVE WAIVED THE RIGHT TO CHALLENGE AN ARBITRATION  
12 AWARD UNDER THE PROCESS FOR RAISING EVIDENT PARTIALITY SET FORTH  
13 IN SECTION 13-22-805, AN ARBITRATOR HAS ACTED WITH EVIDENT  
14 PARTIALITY PURSUANT TO THIS SECTION IN THE ARBITRATION OF ANY  
15 CONSUMER OR EMPLOYMENT DISPUTE SUBJECT TO THIS PART 8 IF ANY OF  
16 THE FOLLOWING CIRCUMSTANCES EXIST:

17 (a) THE ARBITRATOR FAILED TO DISCLOSE, OR INACCURATELY  
18 DISCLOSED, ANY INFORMATION RELEVANT TO THE ARBITRATOR'S  
19 PARTIALITY THAT THE ARBITRATOR COULD HAVE OBTAINED THROUGH  
20 REASONABLE EFFORTS, INCLUDING ALL INFORMATION REQUIRED TO BE  
21 DISCLOSED PURSUANT TO SECTION 13-22-212 (1) OR (1.5), EITHER:

22 (I) WITHIN TWENTY-ONE DAYS AFTER BEING PROPOSED OR  
23 DESIGNATED AS AN ARBITRATOR; OR

24 (II) WITHIN A REASONABLE TIME AFTER THE ARBITRATOR  
25 LEARNED OR SHOULD HAVE LEARNED OF ANY CIRCUMSTANCE  
26 NECESSITATING ADDITIONAL DISCLOSURES;

27 (b) THE ARBITRATOR HAS OR HAD ANY INTEREST THAT WOULD

1 DISQUALIFY A JUDICIAL OFFICER UNDER RULES 2.3(A) TO (D), 2.4(A) TO  
2 (C), AND 2.11(A) TO (C) OF THE COLORADO CODE OF JUDICIAL CONDUCT  
3 AND THE OFFICIAL COMMENTS AND CASE LAW INTERPRETING THOSE  
4 RULES;

5 (c) THE ARBITRATOR HAS ANY INTEREST THAT WOULD DISQUALIFY  
6 AN ATTORNEY UNDER RULE 1.7(a) OF THE COLORADO RULES OF  
7 PROFESSIONAL CONDUCT AND THE OFFICIAL COMMENTS AND CASE LAW  
8 INTERPRETING THOSE RULES, SUBJECT TO THE FOLLOWING LIMITATIONS:

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

11 (A) THE MATTERS TO BE DECIDED IN THE ARBITRATION MAY BE  
12 DIRECTLY ADVERSE TO THE ARBITRATOR'S NON-ARBITRATION BUSINESS OR  
13 CLIENT; OR

14 (B) THERE IS A SIGNIFICANT RISK THAT THE ARBITRATOR'S ABILITY  
15 TO PRESIDE OVER THE ARBITRATION WILL BE MATERIALLY LIMITED BY THE  
16 ARBITRATOR'S RESPONSIBILITIES TO THE ARBITRATOR'S NON-ARBITRATION  
17 CLIENT OR FORMER CLIENT, OR TO A THIRD PARTY OR BY A PERSONAL  
18 INTEREST OF THE ARBITRATOR;

19 (d) THE ARBITRATOR HAS OR HAD A SIGNIFICANT BUSINESS,  
20 FAMILIAL, OR SOCIAL RELATIONSHIP WITH A PARTY OR PARTY'S LEGAL  
21 REPRESENTATIVE;

22 (e) THE ARBITRATOR HAS SIGNIFICANT EXPERIENCE AS AN  
23 ATTORNEY, INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR  
24 OTHER REPRESENTATIVE OF OR FOR CONSUMERS OR EMPLOYEES  
25 SIMILARLY SITUATED TO A CONSUMER OR EMPLOYEE PARTY AND DOES NOT  
26 HAVE SIMILARLY SIGNIFICANT EXPERIENCE AS AN ATTORNEY,  
27 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER



1 REPRESENTATIVE OF OR FOR A SOLE PROPRIETORSHIP OR ENTITY ENGAGED  
2 IN A SUBSTANTIALLY SIMILAR INDUSTRY AS A NON-CONSUMER OR  
3 EMPLOYER PARTY;

4 (f) THE ARBITRATOR HAS SIGNIFICANT EXPERIENCE AS AN  
5 ATTORNEY, INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR  
6 OTHER REPRESENTATIVE OF OR FOR A SOLE PROPRIETORSHIP OR ENTITY  
7 ENGAGED IN A SUBSTANTIALLY SIMILAR INDUSTRY AS A NON-CONSUMER  
8 OR EMPLOYER PARTY AND DOES NOT HAVE SIMILARLY SIGNIFICANT  
9 EXPERIENCE AS AN ATTORNEY, INDEPENDENT CONTRACTOR, EXPERT  
10 WITNESS, AGENT, OR OTHER REPRESENTATIVE OF OR FOR CONSUMERS OR  
11 EMPLOYEES SIMILARLY SITUATED TO A CONSUMER OR EMPLOYEE PARTY;

12 == ==

13 (g) THE ARBITRATOR HAS BEEN PAID IN EXCESS OF FIVE HUNDRED  
14 DOLLARS FOR SERVICES, EXCLUDING PAYMENT FOR ARBITRATION OR  
15 MEDIATION SERVICES OR REIMBURSEMENT OF COSTS RELATING TO THE  
16 PROVISION OF ARBITRATION OR MEDIATION SERVICES, FROM A PARTY, AN  
17 ATTORNEY IN THE ARBITRATION, A LAW FIRM WITH WHICH AN ATTORNEY  
18 IN THE ARBITRATION IS CURRENTLY ASSOCIATED, OR ANY OF THE PARTIES'  
19 LIABILITY INSURERS; OR

20 (h) THE ARBITRATOR HAS A FINANCIAL OR PERSONAL INTEREST IN  
21 THE OUTCOME OF THE PROCEEDING.

22 (2) THE LIST OF CIRCUMSTANCES THAT CONSTITUTE EVIDENT  
23 PARTIALITY AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT AN  
24 EXCLUSIVE LIST FOR PURPOSES OF DETERMINING WHETHER EVIDENT  
25 PARTIALITY HAS BEEN ESTABLISHED PURSUANT TO SECTION 13-22-223.

26 **13-22-807. Arbitration services providers in consumer and**  
27 **employment arbitrations - public disclosures. (1) AN ARBITRATION**

1 SERVICES PROVIDER THAT ADMINISTERS ARBITRATIONS OF CONSUMER  
2 DISPUTES OR EMPLOYMENT DISPUTES SHALL COLLECT AND PROVIDE AT NO  
3 CHARGE TO PARTIES TO A CONSUMER OR EMPLOYMENT ARBITRATION  
4 ADMINISTERED OR PROPOSED TO BE ADMINISTERED BY THE ARBITRATION  
5 SERVICES PROVIDER A SINGLE CUMULATIVE REPORT \_\_\_ THAT CONTAINS  
6 ALL OF THE FOLLOWING INFORMATION REGARDING EACH CONSUMER OR  
7 EMPLOYMENT ARBITRATION ADMINISTERED, INCLUDING THOSE  
8 CONDUCTED BY THE PROVIDER WITHIN THE PRECEDING FIVE YEARS:

9 (a) THE NAME OF THE NON-CONSUMER PARTY OR EMPLOYER AND  
10 WHETHER THE NON-CONSUMER PARTY OR EMPLOYER INITIATED THE  
11 ARBITRATION OR WAS THE RESPONDING PARTY, IF KNOWN;

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

17 (c) WHETHER THE CONSUMER, NON-CONSUMER, EMPLOYEE, OR  
18 EMPLOYER PARTY WAS THE PREVAILING PARTY;

19 (d) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE  
20 NON-CONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN  
21 AN ARBITRATION ADMINISTERED BY THE ARBITRATION SERVICES  
22 PROVIDER;

23 (e) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE  
24 NON-CONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN  
25 A MEDIATION ADMINISTERED BY THE ARBITRATION SERVICES PROVIDER;

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

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

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

9 (i) IF A MATTER WAS ADMINISTERED IN A HEARING, WHETHER THE  
10 HEARING WAS CONDUCTED IN PERSON, BY TELEPHONE OR VIDEO  
11 CONFERENCE, OR BY DOCUMENTS ONLY;

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

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

19 (l) THE IDENTITIES OF INDIVIDUALS AND ENTITIES THAT HAVE AN  
20 OWNERSHIP OR OTHER FINANCIAL INTEREST IN THE ARBITRATION SERVICES  
21 PROVIDER.

22 (2) THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS  
23 SECTION MUST BE MADE AVAILABLE IN A SPREADSHEET FORMAT THAT  
24 ALLOWS THE PARTIES TO DOWNLOAD, EXPORT, SEARCH, AND SORT THE  
25 INFORMATION USING READILY AVAILABLE SOFTWARE.

26 (3) NOTHING IN THIS SECTION PROHIBITS AN ARBITRATION  
27 SERVICES PROVIDER FROM MAKING THE REPORT REQUIRED BY SUBSECTION

1     (1) OF THIS SECTION AVAILABLE TO THE PUBLIC.

2             (4) AN ARBITRATION SERVICES PROVIDER IS NOT LIABLE FOR  
3 DAMAGES FOR FAILURE TO COLLECT OR DISTRIBUTE THE INFORMATION  
4 REQUIRED BY THIS SECTION.

5             (5) AN ARBITRATION SERVICES PROVIDER SHALL NOT CONDUCT  
6 CONSUMER OR EMPLOYMENT ARBITRATIONS UNLESS THE ARBITRATION  
7 SERVICES PROVIDER HAS SUBSTANTIALLY COMPLIED WITH THIS SECTION.

8             **13-22-808. Protection for confidential information.** (1) THE  
9 DISCLOSURE REQUIREMENTS IN SECTIONS 13-22-212 (1.5) AND 13-22-807  
10 DO NOT REQUIRE THE DISCLOSURE OF ANY AMOUNTS OR SPECIFIC  
11 PERFORMANCE REQUIREMENTS OF A CONFIDENTIAL SETTLEMENT  
12 AGREEMENT OR ANY INFORMATION SUBJECT TO THE ATTORNEY-CLIENT  
13 PRIVILEGE OR OTHER RECOGNIZED PRIVILEGE OR IMMUNITY FROM  
14 DISCLOSURE.

15             (2) NOTWITHSTANDING SUCH PRIVILEGE OR IMMUNITY, WHEN  
16 INFORMATION SUBJECT TO THE DISCLOSURE REQUIREMENTS IN SECTIONS  
17 13-22-212 (1.5) AND 13-22-807 IS PRIVILEGED OR IMMUNE FROM  
18 DISCLOSURE, THE FACT THAT SUCH INFORMATION EXISTS MUST BE  
19 DISCLOSED. THE GENERAL NATURE OF THE INFORMATION, DESCRIBED IN  
20 A MANNER TO ALLOW THE PARTIES TO EVALUATE THE POTENTIAL  
21 CONFLICT, MUST ALSO BE DISCLOSED. INFORMATION NOT DISCLOSED ON  
22 THE BASIS OF A CONFIDENTIALITY AGREEMENT THAT IS CLAIMED TO BE  
23 PRIVILEGED OR IMMUNE FROM DISCLOSURE MUST BE IDENTIFIED BY  
24 DISCLOSING THE NAMES OF THE PARTIES TO THE CONFIDENTIALITY  
25 AGREEMENT, UNLESS THE NAMES THEMSELVES MUST BE WITHHELD TO  
26 PROTECT THE PRIVACY CONCERNS OF A VICTIM, THE DATE OF THE  
27 AGREEMENT, AND INFORMATION REGARDING ANY LEGAL PROCEEDING OR

1 CLAIM RELATED TO THE ENTRY INTO THE AGREEMENT.

2 (3) IF A PARTY CHALLENGES AN ARBITRATOR'S EVIDENT  
3 PARTIALITY PURSUANT TO SECTION 13-22-805, ANY INFORMATION THAT  
4 IS WITHHELD PURSUANT TO THIS SECTION MUST BE DISCLOSED IN CAMERA  
5 TO THE COURT AND CONSIDERED BY THE COURT WHEN DETERMINING  
6 WHETHER EVIDENT PARTIALITY EXISTS.

7 **13-22-809. Severability.** EVERY PROVISION OF THIS PART 8 AND  
8 EACH OF ITS SECTIONS AND SUBSECTIONS IS SEVERABLE.

9 **SECTION 4.** In Colorado Revised Statutes, 13-22-212, **amend**  
10 (1); and **add** (1.5) and (1.8) as follows:

11 **13-22-212. Disclosure by arbitrator.** (1) Before accepting an  
12 appointment, an individual who is requested to serve as an arbitrator, after  
13 making a reasonable inquiry IN ACCORDANCE WITH THE PROCESS SET  
14 FORTH IN SUBSECTION (1.5)(b) OF THIS SECTION, shall disclose to all  
15 parties to the agreement to arbitrate and arbitration proceeding and to any  
16 other arbitrators any known facts that a reasonable person would consider  
17 likely to affect the impartiality of the arbitrator in the arbitration  
18 proceeding, including:

19 (a) A financial or personal interest in the outcome of the  
20 arbitration proceeding; and

21 (b) A current or previous relationship with any of the parties to the  
22 agreement to arbitrate or the arbitration proceeding, their counsel or  
23 representatives, a witness, or another arbitrator; AND

24 (c) ANY INFORMATION REQUIRED TO BE DISCLOSED PURSUANT TO  
25 SUBSECTION (1.5) OF THIS SECTION.

26 (1.5) (a) IN ADDITION TO THE INFORMATION REQUIRED BY  
27 SUBSECTION (1) OF THIS SECTION, AN INDIVIDUAL WHO IS REQUESTED TO

1 SERVE AS AN ARBITRATOR IN ANY CONSUMER OR EMPLOYMENT DISPUTE  
2 GOVERNED BY PART 8 OF THIS ARTICLE 22 SHALL, BEFORE AGREEING TO  
3 SERVE AS AN ARBITRATOR OF THE DISPUTE, DISCLOSE TO ALL PARTIES TO  
4 THE AGREEMENT TO ARBITRATE AND ARBITRATION PROCEEDING AND TO  
5 ANY OTHER ARBITRATORS ANY INFORMATION THAT A REASONABLE  
6 PERSON WOULD CONSIDER LIKELY TO AFFECT THE IMPARTIALITY OF THE  
7 ARBITRATOR IN THE CONSUMER OR EMPLOYMENT ARBITRATION  
8 PROCEEDING, TO THE EXTENT SUCH INFORMATION CAN BE ASCERTAINED  
9 BY REASONABLE EFFORTS, INCLUDING:

10 (I) ANY PECUNIARY OR FINANCIAL INTEREST THE PROPOSED  
11 ARBITRATOR MAY HAVE RELATING TO THE ISSUES IN THE ARBITRATION OR  
12 THE OUTCOME OF THE ARBITRATION;

13 (II) EXCEPT FOR PAYMENT FOR ARBITRATION OR MEDIATION  
14 SERVICES OR REIMBURSEMENT OF COSTS, WHETHER THE PROPOSED  
15 ARBITRATOR HAS BEEN PAID AN AMOUNT EXCEEDING FIVE HUNDRED  
16 DOLLARS FOR SERVICES BY A PARTY, AN ATTORNEY IN THE ARBITRATION,  
17 A LAW FIRM WITH WHICH AN ATTORNEY IN THE ARBITRATION IS  
18 CURRENTLY ASSOCIATED, OR ANY OF THE PARTIES' LIABILITY INSURERS;

19 (III) ANY EXPERIENCE AS AN OWNER OR EMPLOYEE OF AN ENTITY  
20 OR SOLE PROPRIETORSHIP ENGAGED IN THE SAME OR SUBSTANTIALLY  
21 SIMILAR INDUSTRY AS A PARTY;

22 (IV) ANY EXPERIENCE AS AN ATTORNEY, CONSULTANT,  
23 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
24 REPRESENTATIVE OF OR FOR AN ENTITY OR SOLE PROPRIETORSHIP  
25 ENGAGED IN THE SAME OR SUBSTANTIALLY SIMILAR INDUSTRY AS A  
26 NON-CONSUMER OR EMPLOYER PARTY;

27 (V) ANY EXPERIENCE AS A REPRESENTATIVE, ATTORNEY,

1 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
2 REPRESENTATIVE OF OR FOR CONSUMERS OR EMPLOYEES SIMILARLY  
3 SITUATED TO A CONSUMER OR EMPLOYEE PARTY;

4 (VI) ANY CURRENT OR FORMER RELATIONSHIP WITH ANY  
5 LIABILITY OR OTHER INSURER THAT THE PROPOSED ARBITRATOR KNOWS  
6 MAY PROVIDE COVERAGE FOR THE AWARD;

7 (VII) A LIST OF ALL OF THE ARBITRATIONS, IDENTIFIED BY PARTY  
8 NAMES, THAT THE PROPOSED ARBITRATOR HAS PARTICIPATED IN AS AN  
9 ARBITRATOR DURING THE PRIOR FIVE YEARS, MODIFIED IF NECESSARY TO  
10 PROTECT REASONABLE PRIVACY CONCERNS OF A CONSUMER OR EMPLOYEE  
11 PARTY OR ENFORCEABLE CONFIDENTIALITY AGREEMENTS; AND

12 (VIII) THE NAMES OF THE PARTIES TO ARBITRATIONS IN WHICH THE  
13 PROPOSED ARBITRATOR HAS PARTICIPATED AS AN ARBITRATOR DURING  
14 THE PAST FIVE YEARS AND THEIR ATTORNEYS, AND COPIES OF ANY  
15 DECISIONS AND AWARDS RENDERED, MODIFIED IF NECESSARY TO PROTECT  
16 REASONABLE PRIVACY CONCERNS OF A CONSUMER OR EMPLOYEE PARTY  
17 OR ENFORCEABLE CONFIDENTIALITY AGREEMENTS.

18 (b) TO AID THE PROPOSED ARBITRATOR OF A CONSUMER OR  
19 EMPLOYMENT DISPUTE GOVERNED BY PART 8 OF THIS ARTICLE 22 IN  
20 DISCLOSING INFORMATION THAT MUST BE DISCLOSED PURSUANT TO  
21 SUBSECTION (1.5)(a) OF THIS SECTION, THE PROPOSED ARBITRATOR:

22 (I) MAY ASK EITHER PARTY ABOUT THE DISPUTED MATERIAL,  
23 FACTUAL, AND LEGAL ISSUES TO BE RESOLVED IN THE ARBITRATION;

24 (II) MAY ASK EITHER PARTY ABOUT THE PARTY'S BUSINESS OR  
25 OCCUPATION, COUNSEL, AGENTS, REPRESENTATIVES, EMPLOYEES,  
26 INDEPENDENT CONTRACTORS, AND INSURERS, TO THE EXTENT SUCH  
27 PERSONS OR ENTITIES MAY HAVE KNOWLEDGE RELEVANT TO A CLAIM OR

1 DEFENSE OR MAY PROVIDE POTENTIAL INSURANCE COVERAGE FOR AN  
2 AWARD; AND

3 (III) MAY RESPOND TO INQUIRIES FROM A PARTY OR ITS COUNSEL  
4 DESIGNED TO DETERMINE HIS OR HER SUITABILITY AND AVAILABILITY FOR  
5 THE APPOINTMENT. IN ANY SUCH DIALOGUE, THE PROSPECTIVE  
6 ARBITRATOR MAY RECEIVE INFORMATION FROM A PARTY OR ITS COUNSEL  
7 DISCLOSING THE GENERAL NATURE OF THE DISPUTE BUT SHOULD NOT  
8 PERMIT THE PARTY OR ITS COUNSEL TO DISCUSS THE MERITS OF THE CASE.

9 (1.8) THE DISCLOSURES REQUIRED BY SUBSECTIONS (1) AND (1.5)  
10 OF THIS SECTION MUST BE GIVEN TO THE PARTIES IN A SEPARATE  
11 DOCUMENT.

12 **SECTION 5.** In Colorado Revised Statutes, 13-22-225, **add** (4)  
13 as follows:

14 **13-22-225. Judgment on award - attorney fee and litigation**  
15 **expenses.** (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
16 CONTRARY, WHEN A COURT VACATES AN AWARD ON THE BASIS OF AN  
17 ARBITRATOR'S EVIDENT PARTIALITY, AS DESCRIBED IN SECTION 13-22-806,  
18 THE COURT SHALL AWARD TO THE PARTY THAT OBJECTED TO THE  
19 ARBITRATOR'S EVIDENT PARTIALITY ON A BASIS THAT WAS ULTIMATELY  
20 FOUND TO CONSTITUTE EVIDENT PARTIALITY AND AGAINST THE PARTY  
21 THAT REQUIRED ARBITRATION WITH THE ARBITRATOR OVER THE OTHER  
22 PARTY'S OBJECTION REASONABLE ATTORNEY FEES AND OTHER  
23 REASONABLE EXPENSES INCURRED IN BOTH THE ARBITRATION AND COURT  
24 PROCEEDINGS FROM THE DATE A PARTY OBJECTED IN WRITING TO THE  
25 ARBITRATOR'S EVIDENT PARTIALITY ON A BASIS THAT WAS ULTIMATELY  
26 FOUND TO CONSTITUTE EVIDENT PARTIALITY.

27

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1           **SECTION 6.** In Colorado Revised Statutes, 13-22-228, **add** (3)  
2 as follows:

3           **13-22-228. Appeals - definitions.** (3) (a) NOTWITHSTANDING  
4 ANY PROVISION OF LAW TO THE CONTRARY, THE FOLLOWING LIMITATIONS  
5 ON APPELLATE JURISDICTION APPLY IN A CIVIL ACTION IN WHICH A  
6 CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM:

7           (I) APPELLATE COURTS DO NOT HAVE JURISDICTION TO REVIEW A  
8 TRIAL COURT'S INTERLOCUTORY ORDER DENYING A MOTION TO COMPEL  
9 ARBITRATION OR OTHERWISE CONCLUDING THAT AN ARBITRATION  
10 AGREEMENT IS UNENFORCEABLE OR DOES NOT COVER A PARTICULAR  
11 CLAIM;

12           (II) APPELLATE REVIEW OF THE DENIAL OF A MOTION TO COMPEL  
13 ARBITRATION MAY BE HAD ONLY AFTER FINAL JUDGMENT HAS ISSUED; AND

14           (III) AN INTERLOCUTORY APPEAL IS ALLOWED IF THE TRIAL COURT  
15 ORDERS ARBITRATION AND DISMISSES THE SUIT OR ORDERS ARBITRATION  
16 AND STAYS THE LITIGATION.

17           (b) FOR THE PURPOSES OF THIS SUBSECTION (3):

18           (I) "CONSUMER" MEANS A PARTY THAT OBTAINS, MAINTAINS,  
19 USES, PURCHASES, LEASES, OR HAS STANDING TO ASSERT CLAIMS  
20 RELATING TO GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED  
21 PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR HOUSEHOLD  
22 PURPOSES.

23           (II) "EMPLOYEE" MEANS:

24           (A) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
25 LAW; OR

26           (B) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS AS AN  
27 EMPLOYEE BUT WHO CLAIMS TO BE AN EMPLOYEE AND WHOSE CLAIMS

1 AGAINST THE PURPORTED EMPLOYER RELATE TO THIS ALLEGED  
2 MISCLASSIFICATION.

3 **SECTION 7.** In Colorado Revised Statutes, **add** part 9 to article  
4 22 of title 13 as follows:

5 PART 9  
6 ENFORCEABILITY OF CERTAIN  
7 STANDARD FORM CONTRACT TERMS

8 **13-22-901. Standard form contract terms - enforceability -**  
9 **definitions.** (1) AS USED IN THIS PART 9, UNLESS THE CONTEXT  
10 OTHERWISE REQUIRES:

11 (a) "CONSUMER" MEANS AN INDIVIDUAL, PARTNERSHIP,  
12 ASSOCIATION, OR CORPORATION THAT OBTAINS, MAINTAINS, USES,  
13 PURCHASES, LEASES, OR HAS LEGAL OR PRACTICAL RESPONSIBILITY FOR REAL  
14 REAL OR PERSONAL PROPERTY USED PRIMARILY FOR PERSONAL, FAMILY,  
15 OR HOUSEHOLD PURPOSES.

16 (b) "EMPLOYEE" MEANS:

17 (I) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
18 LAW; OR

19 (II) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS AS AN  
20 EMPLOYEE BUT WHO CLAIMS TO BE AN EMPLOYEE AND WHOSE CLAIMS  
21 AGAINST THE PURPORTED EMPLOYER RELATE TO THIS ALLEGED  
22 MISCLASSIFICATION.

23 (c) (I) "STANDARD FORM CONTRACT" MEANS A WRITING IN WHICH  
24 THE TERMS AND CONDITIONS STATED IN THE WRITING ARE SET BY ONE OR  
25 MORE OF THE PARTIES WHILE THE CONSUMER OR EMPLOYEE PARTY OR  
26 PARTIES HAVE LITTLE OR NO ABILITY TO NEGOTIATE THE WRITING'S  
27 MATERIAL TERMS AT THE TIME THE WRITING IS EXECUTED OR BECAME

1 ENFORCEABLE AND AFFECTS THE CONSUMER'S OR EMPLOYEE'S INTEREST  
2 IN:

3                   
4           (A) REAL OR PERSONAL PROPERTY; OR

5           (B) EMPLOYMENT IN COLORADO.

6           (II) THE FACT THAT A CONSUMER OR EMPLOYEE PARTY MAY  
7 NEGOTIATE LIMITED TERMS WITHIN THE WRITING DOES NOT PRECLUDE A  
8 FINDING THAT THE WRITING IS A STANDARD FORM CONTRACT.

9           (2) IN ORDER TO PROMOTE THE EFFICIENT ADMINISTRATION OF  
10 JUSTICE, THE FOLLOWING CONTRACTUAL TERMS ARE NEVER ENFORCEABLE  
11 AND ARE DECLARED VOID AS AGAINST PUBLIC POLICY WHEN INCLUDED IN  
12 A STANDARD FORM CONTRACT:

13           (a) A REQUIREMENT THAT THE CONSUMER OR EMPLOYEE PARTY  
14 ADJUDICATE A CLAIM ARISING IN COLORADO IN A LOCATION THAT IS  
15 OUTSIDE OF COLORADO;       

16           (b) A REQUIREMENT THAT A PARTY OR PARTIES TO THE CONTRACT  
17 BE ALLOWED TO UNILATERALLY SELECT ONE OR MORE OF THE  
18 INDIVIDUALS        WHO WILL RESOLVE DISPUTES BETWEEN THE PARTIES; OR

19           (c) A TERM THAT ATTEMPTS TO AWARD OR LIMIT COSTS OR FEES IN  
20 A MANNER THAT IS INCONSISTENT WITH COLORADO STATUTE OR  
21 CONTROLLING CASE LAW.

22           (3) THE FACT THAT A TERM IN A STANDARD FORM CONTRACT IS  
23 NOT LISTED IN SUBSECTION (2) OF THIS SECTION DOES NOT MEAN THAT THE  
24 TERM MAY NOT BE FOUND TO BE UNENFORCEABLE OR VOID AS AGAINST  
25 PUBLIC POLICY PURSUANT TO COMMON LAW.

26                   
27           (4) IN ORDERING A REMEDY FOR AN UNENFORCEABLE TERM IN A

1 STANDARD FORM CONTRACT, A COURT SHALL CONSIDER THE FOLLOWING  
2 FACTORS:

3 (a) WHETHER SEVERING THE UNENFORCEABLE TERM AND  
4 ENFORCING THE CONTRACT IN ITS ABSENCE:

5 (I) CREATES AN INCENTIVE FOR DRAFTERS TO INCLUDE  
6 UNENFORCEABLE TERMS IN STANDARD FORM CONTRACTS; OR

7 (II) REMOVES IN WHOLE OR IN PART THE INCENTIVE FOR DRAFTERS  
8 TO DRAFT ENFORCEABLE STANDARD FORM CONTRACTS THAT DO NOT  
9 INCLUDE SUCH TERMS;

10 (b) WHETHER INCLUSION OF AN UNENFORCEABLE TERM MIGHT  
11 DETER THE CONSUMER OR EMPLOYEE PARTY FROM ASSERTING THE  
12 PARTY'S RIGHTS UNDER THE CONTRACT OR MIGHT DETER THE CONSUMER  
13 OR EMPLOYEE PARTY FROM CHALLENGING THE ENFORCEMENT OF THE  
14 UNENFORCEABLE TERM;

15 (c) WHETHER THE DRAFTING PARTY ACTED IN BAD FAITH, FOR  
16 EXAMPLE, BY INCLUDING A TERM THAT WAS, AT THE TIME THE CONTRACT  
17 WAS EXECUTED OR BECAME ENFORCEABLE, UNENFORCEABLE UNDER  
18 ESTABLISHED LAW; AND

19 (d) THE PARTIES' ACTUAL PURPOSES.

20 (5) (a) NOTWITHSTANDING SUBSECTION (2)(d) OF THIS SECTION,  
21 WHEN A STANDARD FORM CONTRACT PROVIDES FOR AN AWARD OF  
22 ATTORNEY FEES OR LITIGATION EXPENSES TO ONE OR MORE PARTIES TO A  
23 CONTRACT, THE PROVISION MUST BE CONSTRUED AS AWARDING SUCH FEES  
24 AND EXPENSES TO THE PREVAILING PARTY AS A MATTER OF RIGHT, BUT IF  
25 A MORE SPECIFIC STATUTE PROVIDES ATTORNEY FEES SOLELY TO ONE  
26 PARTY, A FEE SHIFTING OR LOSER PAYS TERM IS VOID.

27 (b) WHEN AN ACTION HAS BEEN VOLUNTARILY DISMISSED OR

1 DISMISSED PURSUANT TO A SETTLEMENT OF THE CASE, THERE IS NO  
2 PREVAILING PARTY FOR THE PURPOSES OF THIS SECTION.

3 **SECTION 8. Effective date - applicability.** This act takes effect  
4 upon passage and applies to actions, including arbitrations filed or  
5 arbitrators selected, on or after said date.

6 **SECTION 9. Safety clause.** The general assembly hereby finds,  
7 determines, and declares that this act is necessary for the immediate  
8 preservation of the public peace, health, or safety.