

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

**REENGROSSED**

*This Version Includes All Amendments  
Adopted 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, Hansen, Moreno

**HOUSE SPONSORSHIP**

**Jackson and Weissman**, 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 3rd Reading  
March 9, 2020

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.** (1) UNLESS THE PARTIES HAVE  
11 WAIVED THE RIGHT TO CHALLENGE AN ARBITRATION AWARD UNDER THE  
12 PROCESS FOR RAISING EVIDENT PARTIALITY SET FORTH IN SECTION  
13 13-22-805, AN ARBITRATOR HAS ACTED WITH EVIDENT PARTIALITY  
14 PURSUANT TO THIS SECTION IN THE ARBITRATION OF ANY CONSUMER OR  
15 EMPLOYMENT DISPUTE SUBJECT TO THIS PART 8 IF ANY OF THE FOLLOWING  
16 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     ANY CONFLICT OF INTEREST THAT

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

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

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

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

15 (B) 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 THE ARBITRATOR'S NON-ARBITRATION  
18 CLIENT OR FORMER CLIENT, OR TO A THIRD PARTY OR BY A PERSONAL  
19 INTEREST OF THE ARBITRATOR;

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

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25 (e) THE ARBITRATOR HAS BEEN PAID IN EXCESS OF FIVE HUNDRED  
26 DOLLARS FOR SERVICES, EXCLUDING PAYMENT FOR ARBITRATION OR  
27 MEDIATION SERVICES OR REIMBURSEMENT OF COSTS RELATING TO THE



1 PROVISION OF ARBITRATION OR MEDIATION SERVICES, FROM A PARTY, AN  
2 ATTORNEY IN THE ARBITRATION, A LAW FIRM WITH WHICH AN ATTORNEY  
3 IN THE ARBITRATION IS CURRENTLY ASSOCIATED, OR ANY OF THE PARTIES'  
4 LIABILITY INSURERS; OR

5 (f) THE ARBITRATOR HAS A FINANCIAL OR PERSONAL INTEREST IN  
6 THE OUTCOME OF THE PROCEEDING.

7 (2) THE LIST OF CIRCUMSTANCES THAT CONSTITUTE EVIDENT  
8 PARTIALITY AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT AN  
9 EXCLUSIVE LIST FOR PURPOSES OF DETERMINING WHETHER EVIDENT  
10 PARTIALITY HAS BEEN ESTABLISHED PURSUANT TO SECTION 13-22-223,  
11 AND NOTHING IN THIS SECTION MODIFIES OR LIMITS A COURT'S OBLIGATION  
12 TO CONSIDER EVIDENCE OF AN ARBITRATOR'S PECUNIARY INTEREST,  
13 FAMILIAL RELATIONSHIP, OR THE EXISTENCE OF AN ADVERSARIAL OR  
14 SYMPATHETIC RELATIONSHIP TO DETERMINE EVIDENT PARTIALITY  
15 PURSUANT TO SECTION 13-22-223.

16 **13-22-807. Arbitration services providers in consumer and**  
17 **employment arbitrations.** (1) AN ARBITRATION SERVICES PROVIDER  
18 THAT ADMINISTERS ARBITRATIONS OF CONSUMER DISPUTES OR  
19 EMPLOYMENT DISPUTES SHALL COLLECT AND PROVIDE AT NO CHARGE TO  
20 PARTIES TO A CONSUMER OR EMPLOYMENT ARBITRATION ADMINISTERED  
21 OR PROPOSED TO BE ADMINISTERED BY THE ARBITRATION SERVICES  
22 PROVIDER A SINGLE CUMULATIVE REPORT \_\_\_ THAT CONTAINS ALL OF THE  
23 FOLLOWING INFORMATION REGARDING EACH CONSUMER OR EMPLOYMENT  
24 ARBITRATION ADMINISTERED, INCLUDING THOSE CONDUCTED BY THE  
25 PROVIDER WITHIN THE PRECEDING FIVE YEARS:

26 (a) THE NAME OF THE NON-CONSUMER PARTY OR EMPLOYER AND  
27 WHETHER THE NON-CONSUMER PARTY OR EMPLOYER INITIATED THE

1 ARBITRATION OR WAS THE RESPONDING PARTY, IF KNOWN;

2 (b) THE NATURE OF THE DISPUTE INVOLVED, CATEGORIZED AS ONE  
3 OF THE FOLLOWING: GOODS; CREDIT; OTHER BANKING OR FINANCE;  
4 INSURANCE; HEALTH CARE; CONSTRUCTION; REAL ESTATE;  
5 TELECOMMUNICATIONS, INCLUDING SOFTWARE AND INTERNET USAGE;  
6 DEBT COLLECTION; PERSONAL INJURY; EMPLOYMENT; OR OTHER;

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

9 (d) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE  
10 NON-CONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN  
11 AN ARBITRATION ADMINISTERED BY THE ARBITRATION SERVICES  
12 PROVIDER;

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

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

18 (g) THE DATE THE ARBITRATION SERVICES PROVIDER RECEIVED  
19 THE DEMAND FOR ARBITRATION, THE DATE THE ARBITRATOR WAS  
20 APPOINTED, AND THE DATE OF DISPOSITION BY THE ARBITRATOR OR  
21 ARBITRATION SERVICES PROVIDER;

22 (h) THE NATURE OF THE DISPOSITION OF THE DISPUTE, IF KNOWN,  
23 IDENTIFIED AS ONE OF THE FOLLOWING: WITHDRAWAL, ABANDONMENT,  
24 SETTLEMENT, AWARD AFTER HEARING, AWARD WITHOUT HEARING,  
25 DEFAULT, OR DISMISSAL WITHOUT HEARING;

26 (i) IF A MATTER WAS ADMINISTERED IN A HEARING, WHETHER THE  
27 HEARING WAS CONDUCTED IN PERSON, BY TELEPHONE OR VIDEO

1 CONFERENCE, OR BY DOCUMENTS ONLY;

2 (j) THE AMOUNT OF THE CLAIM, WHETHER EQUITABLE RELIEF WAS  
3 REQUESTED OR AWARDED, THE AMOUNT OF ANY MONETARY AWARD, AND  
4 ANY OTHER RELIEF GRANTED; AND

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

9 (l) THE IDENTITIES OF INDIVIDUALS AND ENTITIES THAT HAVE AN  
10 OWNERSHIP OR OTHER FINANCIAL INTEREST IN THE ARBITRATION SERVICES  
11 PROVIDER.

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

16 (3) (a) A PARTY OR THE ARBITRATOR SERVICES PROVIDER MAY  
17 REQUIRE THAT THE DISCLOSURES REQUIRED BY SUBSECTION (1) OF THIS  
18 SECTION BE KEPT CONFIDENTIAL OR PRIVATE.

19 (b) NOTHING IN THIS SECTION PROHIBITS AN ARBITRATION  
20 SERVICES PROVIDER FROM MAKING THE REPORT REQUIRED BY SUBSECTION  
21 (1) OF THIS SECTION AVAILABLE TO THE PUBLIC.

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

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

1           **13-22-808. Protection for confidential information.** (1) THE  
2 DISCLOSURE REQUIREMENTS IN SECTIONS 13-22-212 (1.5) AND 13-22-807  
3 DO NOT REQUIRE THE DISCLOSURE OF ANY AMOUNTS OR SPECIFIC  
4 PERFORMANCE REQUIREMENTS OF A CONFIDENTIAL SETTLEMENT  
5 AGREEMENT OR ANY INFORMATION SUBJECT TO THE ATTORNEY-CLIENT  
6 PRIVILEGE OR OTHER RECOGNIZED PRIVILEGE OR IMMUNITY FROM  
7 DISCLOSURE.

8           (2) NOTWITHSTANDING SUCH PRIVILEGE OR IMMUNITY, WHEN  
9 INFORMATION SUBJECT TO THE DISCLOSURE REQUIREMENTS IN SECTIONS  
10 13-22-212 (1.5) AND 13-22-807 IS PRIVILEGED OR IMMUNE FROM  
11 DISCLOSURE, THE FACT THAT SUCH INFORMATION EXISTS MUST BE  
12 DISCLOSED. THE GENERAL NATURE OF THE INFORMATION, DESCRIBED IN  
13 A MANNER TO ALLOW THE PARTIES TO EVALUATE THE POTENTIAL  
14 CONFLICT, MUST ALSO BE DISCLOSED. INFORMATION NOT DISCLOSED ON  
15 THE BASIS OF A CONFIDENTIALITY AGREEMENT THAT IS CLAIMED TO BE  
16 PRIVILEGED OR IMMUNE FROM DISCLOSURE MUST BE IDENTIFIED BY  
17 DISCLOSING THE NAMES OF THE PARTIES TO THE CONFIDENTIALITY  
18 AGREEMENT, UNLESS THE NAMES THEMSELVES MUST BE WITHHELD TO  
19 PROTECT THE PRIVACY CONCERNS OF A VICTIM, THE DATE OF THE  
20 AGREEMENT, AND INFORMATION REGARDING ANY LEGAL PROCEEDING OR  
21 CLAIM RELATED TO THE ENTRY INTO THE AGREEMENT.

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

27           **13-22-809. Severability.** EVERY PROVISION OF THIS PART 8 AND

1 EACH OF ITS SECTIONS AND SUBSECTIONS IS SEVERABLE.

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

4 **13-22-212. Disclosure by arbitrator.** (1) Before accepting an  
5 appointment, an individual who is requested to serve as an arbitrator, after  
6 making a reasonable inquiry IN ACCORDANCE WITH THE PROCESS SET  
7 FORTH IN SUBSECTION (1.5)(b) OF THIS SECTION, shall disclose to all  
8 parties to the agreement to arbitrate and arbitration proceeding and to any  
9 other arbitrators any known facts that a reasonable person would consider  
10 likely to affect the impartiality of the arbitrator in the arbitration  
11 proceeding, including:

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

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

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

19 (1.5) (a) IN ADDITION TO THE INFORMATION REQUIRED BY  
20 SUBSECTION (1) OF THIS SECTION, AN INDIVIDUAL WHO IS REQUESTED TO  
21 SERVE AS AN ARBITRATOR IN ANY CONSUMER OR EMPLOYMENT DISPUTE  
22 GOVERNED BY PART 8 OF THIS ARTICLE 22 SHALL, BEFORE AGREEING TO  
23 SERVE AS AN ARBITRATOR OF THE DISPUTE, DISCLOSE TO ALL PARTIES TO  
24 THE AGREEMENT TO ARBITRATE AND ARBITRATION PROCEEDING AND TO  
25 ANY OTHER ARBITRATORS ANY INFORMATION THAT A REASONABLE  
26 PERSON WOULD CONSIDER LIKELY TO AFFECT THE IMPARTIALITY OF THE  
27 ARBITRATOR IN THE CONSUMER OR EMPLOYMENT ARBITRATION

1 PROCEEDING, TO THE EXTENT SUCH INFORMATION CAN BE ASCERTAINED  
2 BY REASONABLE EFFORTS, INCLUDING:

3 (I) ANY PECUNIARY OR FINANCIAL INTEREST THE PROPOSED  
4 ARBITRATOR MAY HAVE RELATING TO THE ISSUES IN THE ARBITRATION OR  
5 THE OUTCOME OF THE ARBITRATION;

6 (II) EXCEPT FOR PAYMENT FOR ARBITRATION OR MEDIATION  
7 SERVICES OR REIMBURSEMENT OF COSTS, WHETHER THE PROPOSED  
8 ARBITRATOR HAS BEEN PAID AN AMOUNT EXCEEDING FIVE HUNDRED  
9 DOLLARS FOR SERVICES BY A PARTY, AN ATTORNEY IN THE ARBITRATION,  
10 A LAW FIRM WITH WHICH AN ATTORNEY IN THE ARBITRATION IS  
11 CURRENTLY ASSOCIATED, OR ANY OF THE PARTIES' LIABILITY INSURERS;

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

15 (IV) ANY EXPERIENCE AS AN ATTORNEY, CONSULTANT,  
16 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
17 REPRESENTATIVE OF OR FOR AN ENTITY OR SOLE PROPRIETORSHIP  
18 ENGAGED IN THE SAME OR SUBSTANTIALLY SIMILAR INDUSTRY AS A  
19 NON-CONSUMER OR EMPLOYER PARTY;

20 (V) ANY EXPERIENCE AS A REPRESENTATIVE, ATTORNEY,  
21 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
22 REPRESENTATIVE OF OR FOR CONSUMERS OR EMPLOYEES SIMILARLY  
23 SITUATED TO A CONSUMER OR EMPLOYEE PARTY;

24 (VI) ANY CURRENT OR FORMER RELATIONSHIP WITH ANY  
25 LIABILITY OR OTHER INSURER THAT THE PROPOSED ARBITRATOR KNOWS  
26 MAY PROVIDE COVERAGE FOR THE AWARD;

27 (VII) A LIST OF ALL OF THE ARBITRATIONS, IDENTIFIED BY PARTY

1 NAMES, THAT THE PROPOSED ARBITRATOR HAS PARTICIPATED IN AS AN  
2 ARBITRATOR DURING THE PRIOR FIVE YEARS, MODIFIED IF NECESSARY TO  
3 PROTECT REASONABLE PRIVACY CONCERNS OF A CONSUMER OR EMPLOYEE  
4 PARTY OR ENFORCEABLE CONFIDENTIALITY AGREEMENTS; AND

5 (VIII) THE NAMES OF THE PARTIES TO ARBITRATIONS IN WHICH THE  
6 PROPOSED ARBITRATOR HAS PARTICIPATED AS AN ARBITRATOR DURING  
7 THE PAST FIVE YEARS AND THEIR ATTORNEYS, AND COPIES OF ANY  
8 DECISIONS AND AWARDS RENDERED, MODIFIED IF NECESSARY TO PROTECT  
9 REASONABLE PRIVACY CONCERNS OF A CONSUMER OR EMPLOYEE PARTY  
10 OR ENFORCEABLE CONFIDENTIALITY AGREEMENTS.

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

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

17 (II) MAY ASK EITHER PARTY ABOUT THE PARTY'S BUSINESS OR  
18 OCCUPATION, COUNSEL, AGENTS, REPRESENTATIVES, EMPLOYEES,  
19 INDEPENDENT CONTRACTORS, AND INSURERS, TO THE EXTENT SUCH  
20 PERSONS OR ENTITIES MAY HAVE KNOWLEDGE RELEVANT TO A CLAIM OR  
21 DEFENSE OR MAY PROVIDE POTENTIAL INSURANCE COVERAGE FOR AN  
22 AWARD; AND

23 (III) MAY RESPOND TO INQUIRIES FROM A PARTY OR ITS COUNSEL  
24 DESIGNED TO DETERMINE HIS OR HER SUITABILITY AND AVAILABILITY FOR  
25 THE APPOINTMENT. IN ANY SUCH DIALOGUE, THE PROSPECTIVE  
26 ARBITRATOR MAY RECEIVE INFORMATION FROM A PARTY OR ITS COUNSEL  
27 DISCLOSING THE GENERAL NATURE OF THE DISPUTE BUT SHOULD NOT

1 PERMIT THE PARTY OR ITS COUNSEL TO DISCUSS THE MERITS OF THE CASE.

2 (1.8) THE DISCLOSURES REQUIRED BY SUBSECTIONS (1) AND (1.5)  
3 OF THIS SECTION MUST BE GIVEN TO THE PARTIES IN A SEPARATE  
4 DOCUMENT.

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

7 **13-22-225. Judgment on award - attorney fee and litigation**  
8 **expenses.** (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
9 CONTRARY, WHEN A COURT VACATES AN AWARD ON THE BASIS OF AN  
10 ARBITRATOR'S EVIDENT PARTIALITY, AS DESCRIBED IN SECTION 13-22-806,  
11 THE COURT SHALL AWARD TO THE PARTY THAT OBJECTED TO THE  
12 ARBITRATOR'S EVIDENT PARTIALITY ON A BASIS THAT WAS ULTIMATELY  
13 FOUND TO CONSTITUTE EVIDENT PARTIALITY AND AGAINST THE PARTY  
14 THAT REQUIRED ARBITRATION WITH THE ARBITRATOR OVER THE OTHER  
15 PARTY'S OBJECTION REASONABLE ATTORNEY FEES AND OTHER  
16 REASONABLE EXPENSES INCURRED IN BOTH THE ARBITRATION AND COURT  
17 PROCEEDINGS FROM THE DATE A PARTY OBJECTED IN WRITING TO THE  
18 ARBITRATOR'S EVIDENT PARTIALITY ON A BASIS THAT WAS ULTIMATELY  
19 FOUND TO CONSTITUTE EVIDENT PARTIALITY.

20 ==  
21 =====

22 **SECTION 6.** In Colorado Revised Statutes, **add** part 9 to article  
23 22 of title 13 as follows:

24 PART 9  
25 ENFORCEABILITY OF CERTAIN  
26 STANDARD FORM CONTRACT TERMS  
27 **13-22-901. Standard form contract terms - enforceability -**



1 **definitions.** (1) AS USED IN THIS PART 9, UNLESS THE CONTEXT  
2 OTHERWISE REQUIRES:

3

==

4 (a) "EMPLOYEE" MEANS:

5 (I) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
6 LAW; OR

7 (II) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS AS AN  
8 EMPLOYEE BUT WHO CLAIMS TO BE AN EMPLOYEE AND WHOSE CLAIMS  
9 AGAINST THE PURPORTED EMPLOYER RELATE TO THIS ALLEGED  
10 MISCLASSIFICATION.

11 (b) == "STANDARD FORM CONTRACT" MEANS A WRITING IN WHICH  
12 THE TERMS AND CONDITIONS STATED IN THE WRITING ARE SET BY ONE OR  
13 MORE OF THE PARTIES WHILE THE == EMPLOYEE PARTY OR PARTIES HAVE  
14 LITTLE OR NO ABILITY TO NEGOTIATE THE WRITING'S MATERIAL TERMS AT  
15 THE TIME THE WRITING IS EXECUTED OR BECAME ENFORCEABLE AND  
16 AFFECTS THE == EMPLOYEE'S INTEREST IN EMPLOYMENT IN COLORADO.

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

21 (a) A REQUIREMENT THAT THE == EMPLOYEE PARTY ADJUDICATE  
22 A CLAIM ARISING IN COLORADO IN A LOCATION THAT IS OUTSIDE OF  
23 COLORADO; ==

24 (b) A REQUIREMENT THAT A PARTY OR PARTIES TO THE CONTRACT  
25 BE ALLOWED TO UNILATERALLY SELECT ONE OR MORE OF THE  
26 INDIVIDUALS == WHO WILL RESOLVE DISPUTES BETWEEN THE PARTIES; OR

27 (c) A TERM THAT ATTEMPTS TO AWARD OR LIMIT COSTS OR FEES IN

1 A MANNER THAT IS PROHIBITED BY COLORADO LAW.

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

6

7 (4) IN ORDERING A REMEDY FOR AN UNENFORCEABLE TERM IN A  
8 STANDARD FORM CONTRACT, A COURT SHALL CONSIDER THE FOLLOWING  
9 FACTORS:

10 (a) WHETHER SEVERING THE UNENFORCEABLE TERM AND  
11 ENFORCING THE CONTRACT IN ITS ABSENCE:

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

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

17 (b) WHETHER INCLUSION OF AN UNENFORCEABLE TERM MIGHT  
18 DETER THE      EMPLOYEE PARTY FROM ASSERTING THE PARTY'S RIGHTS  
19 UNDER THE CONTRACT OR MIGHT DETER THE      EMPLOYEE PARTY FROM  
20 CHALLENGING THE ENFORCEMENT OF THE UNENFORCEABLE TERM;

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

25 (d) THE PARTIES' ACTUAL PURPOSES.

26 (5) (a) NOTWITHSTANDING SUBSECTION (2)(d) OF THIS SECTION,  
27 WHEN A STANDARD FORM CONTRACT PROVIDES FOR AN AWARD OF

1 ATTORNEY FEES OR LITIGATION EXPENSES TO ONE OR MORE PARTIES TO A  
2 CONTRACT, THE PROVISION MUST BE CONSTRUED AS AWARDED SUCH FEES  
3 AND EXPENSES TO THE PREVAILING PARTY AS A MATTER OF RIGHT, BUT IF  
4 A MORE SPECIFIC STATUTE PROVIDES ATTORNEY FEES SOLELY TO ONE  
5 PARTY, A FEE SHIFTING OR LOSER PAYS TERM IS VOID.

6 (b) WHEN AN ACTION HAS BEEN VOLUNTARILY DISMISSED OR  
7 DISMISSED PURSUANT TO A SETTLEMENT OF THE CASE, THERE IS NO  
8 PREVAILING PARTY FOR THE PURPOSES OF THIS SECTION.

9 **SECTION 7. Effective date - applicability.** This act takes effect  
10 upon passage and applies to actions, including arbitrations filed or  
11 arbitrators selected, and to contracts entered into, on or after said date.

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