

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0296.02 Jacob Baus x2173

HOUSE BILL 26-1236

HOUSE SPONSORSHIP

Zokaie and Mabrey,

SENATE SPONSORSHIP

Ball and Hinrichsen,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ARBITRATION REFORM.

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:

- Prohibits a provision in an arbitration agreement that waives a party's ability to participate in a representative action except as preempted by federal law and disallows the waiver of this prohibition;
- Prohibits a provision in an arbitration agreement that requires an employee to an employer and employee contract or a consumer to a merchant and consumer

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

contract to pay fees that substantially exceed the costs required to file a claim in state or federal court, except as preempted by federal law, and disallows the waiver of this prohibition;

- Prohibits an individual from serving as an arbitrator if the individual has a rule, policy, procedure, or demonstrated pattern of conduct that discriminates or prevents, or has the effect of discriminating or preventing, a certain party or type of party from asserting their rights or prevailing in arbitration or that discriminates against an attorney; and
- Requires an employer or merchant to fully comply with requirements of a record of an award, within 30 days after the date of the record of an award, or be liable for additional damages caused by their failure to comply.

Under current law, exemplary damages are prohibited in arbitration proceedings. The bill repeals this prohibition.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-22-204, **amend**
3 (2)(a); and **add** (4) as follows:

4 **13-22-204. Effect of agreement to arbitrate - nonwaivable**
5 **provisions.**

6 (2) Before a controversy arises that is subject to an agreement to
7 arbitrate, a party to the agreement may not:

8 (a) Waive or agree to vary the effect of the requirements of
9 section **13-22-204.5**, 13-22-205 (1), 13-22-206 (1), 13-22-208, **13-22-209**
10 **(3)**, 13-22-217 (1) or (2), 13-22-226, or 13-22-228;

11 (4) A PARTY TO AN ARBITRATION AGREEMENT OR ARBITRATION
12 PROCEEDING SHALL NOT WAIVE, AND THE PARTIES SHALL NOT VARY THE
13 EFFECT OF, THE REQUIREMENTS IN SECTION 13-22-204.5.

14 **SECTION 2.** In Colorado Revised Statutes, **add** 13-22-204.5 as
15 follows:

16 **13-22-204.5. Representative action provisions - application.**

1 EXCEPT AS PREEMPTED BY FEDERAL LAW, IF THE PARTIES TO THE
2 ARBITRATION AGREEMENT OR PROCEEDING ARE AN EMPLOYER AND
3 EMPLOYEE OR A MERCHANT AND CONSUMER, A PROVISION IN THE
4 CONTRACT THAT WAIVES A PARTY'S ABILITY TO PARTICIPATE IN A
5 REPRESENTATIVE ACTION, INCLUDING A CLASS ACTION OR COLLECTIVE
6 ACTION, IS VOID AND UNENFORCEABLE.

7 **SECTION 3.** In Colorado Revised Statutes, 13-22-209, **add** (3)
8 as follows:

9 **13-22-209. Initiation of arbitration - application.**

10 (3) EXCEPT AS PREEMPTED BY FEDERAL LAW, IF THE PARTIES TO
11 THE ARBITRATION AGREEMENT OR PROCEEDING ARE AN EMPLOYER AND
12 EMPLOYEE OR A MERCHANT AND CONSUMER, A PROVISION IN THE
13 CONTRACT THAT REQUIRES THE PARTY THAT IS THE EMPLOYEE OR
14 CONSUMER TO PAY FEES AND COSTS THAT EXCEED THE FEES AND COSTS
15 REQUIRED BY STATE COURTS TO BRING A STATE CLAIM, OR REQUIRED BY
16 FEDERAL COURTS TO BRING A FEDERAL CLAIM, IS VOID AND
17 UNENFORCEABLE, AND THE PARTY THAT IS THE EMPLOYEE OR CONSUMER
18 MAY FILE THE CASE IN COURT.

19 **SECTION 4.** In Colorado Revised Statutes, 13-22-211, **add** (3)
20 as follows:

21 **13-22-211. Appointment of arbitrator - service as a neutral**
22 **arbitrator.**

23 (3) AN INDIVIDUAL OR ARBITRATOR, OR AN INDIVIDUAL OR
24 ARBITRATOR ASSOCIATED WITH AN ARBITRATION ORGANIZATION, IS
25 INELIGIBLE TO INITIATE, SPONSOR, OR ADMINISTER AN ARBITRATION
26 PROCEEDING OR TO APPOINT OR SERVE AS AN ARBITRATOR IF THE
27 INDIVIDUAL, ARBITRATOR, OR ARBITRATION ORGANIZATION HAS A RULE,

1 POLICY, PROCEDURE, OR DEMONSTRATED PATTERN OF CONDUCT THAT:

2 (a) DISCRIMINATES AGAINST A CERTAIN PARTY, TYPE OF PARTY, OR
3 ATTORNEY, OR APPLIES DIFFERENT RULES, POLICIES, OR PROCEDURES
4 BASED ON HOW MANY CLAIMANTS HAVE FILED SIMILAR CLAIMS OR HOW
5 MANY CLAIMS HAVE BEEN FILED FROM THE SAME ATTORNEY; OR

6 (b) PREVENTS, OR HAS THE EFFECT OF PREVENTING, A CERTAIN
7 PARTY, TYPE OF PARTY, OR ATTORNEY FROM:

8 (I) ASSERTING THE PARTY'S RIGHTS IN ARBITRATION; OR

9 (II) PREVAILING IN FULL OR IN PART IN ARBITRATION.

10 **SECTION 5.** In Colorado Revised Statutes, 13-22-219, **add** (3)
11 as follows:

12 **13-22-219. Award - application.**

13 (3) (a) A PARTY THAT FAILS TO FULLY COMPLY WITH THE
14 REQUIREMENTS OF A RECORD OF AN AWARD WITHIN THIRTY DAYS AFTER
15 THE DATE OF THE RECORD OF AN AWARD IS LIABLE TO THE OTHER PARTY
16 FOR DAMAGES CAUSED BY THE FAILURE TO FULLY COMPLY.

17 (b) NOTWITHSTANDING SUBSECTION (3)(a) OF THIS SECTION, IF THE
18 PARTIES OF THE ARBITRATION AGREEMENT OR PROCEEDING ARE AN
19 EMPLOYER AND EMPLOYEE OR MERCHANT AND CONSUMER AND THE PARTY
20 THAT IS THE EMPLOYER OR MERCHANT FAILS TO FULLY COMPLY WITH THE
21 REQUIREMENTS OF A RECORD OF AN AWARD WITHIN THIRTY DAYS AFTER
22 THE DATE OF THE RECORD OF AN AWARD, THE PARTY THAT IS THE
23 EMPLOYER OR MERCHANT IS LIABLE TO THE OTHER PARTY FOR DAMAGES
24 IN TREBLE THE TOTAL AMOUNT IN THE RECORD OF AN AWARD CAUSED BY
25 THE FAILURE TO FULLY COMPLY.

26 (c) THE LIABILITY DESCRIBED IN SUBSECTIONS (3)(a) AND (3)(b)
27 OF THIS SECTION IS IN ADDITION TO THE REQUIREMENTS OF A RECORD OF

1 AN AWARD.

2 **SECTION 6.** In Colorado Revised Statutes, 13-22-221, **repeal** (3)
3 as follows:

4 **13-22-221. Remedies - fees and expenses of arbitration**
5 **proceeding.**

6 (3) ~~Nothing in this section shall be construed to alter or amend the~~
7 ~~provisions of section 13-21-102 (5).~~

8 **SECTION 7.** In Colorado Revised Statutes, 13-21-102, **amend**
9 (5) as follows:

10 **13-21-102. Exemplary damages.**

11 (5) Unless otherwise provided by law, exemplary damages shall
12 not be awarded in administrative ~~or arbitration~~ proceedings, even if the
13 award or decision is enforced or approved in an action commenced in a
14 court.

15 **SECTION 8. Act subject to petition - effective date -**
16 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
17 the expiration of the ninety-day period after final adjournment of the
18 general assembly (August 12, 2026, if adjournment sine die is on May 13,
19 2026); except that, if a referendum petition is filed pursuant to section 1
20 (3) of article V of the state constitution against this act or an item, section,
21 or part of this act within such period, then the act, item, section, or part
22 will not take effect unless approved by the people at the general election
23 to be held in November 2026 and, in such case, will take effect on the
24 date of the official declaration of the vote thereon by the governor.

25 (2) This act applies to arbitration agreements entered into or
26 renewed on or after the applicable effective date of this act.