



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 18-1261

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 9, 2018)

Drafting Number:	LLS 18-0770	Date:	April 17, 2018
Prime Sponsors:	Rep. Weissman Sen. Kagan	Bill Status:	Senate SVMA
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Bill Topic: COLORADO ARBITRATION FAIRNESS ACT

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue (<i>minimal</i>)	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure (<i>minimal</i>)	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill establishes ethical standards for arbitrators and creates procedures for disclosures and disqualifications from arbitrations related to potential conflicts of interest. Beginning in the current FY 2017-18, the bill increases state revenue and workload by a minimal amount on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Summary of Legislation

This bill creates the "Colorado Arbitration Fairness Act." The bill establishes ethical standards for arbitrators of arbitrations required by a predispute arbitration agreement in which a consumer or employee asserts a claim or counterclaim, except for arbitrations conducted under a collective bargaining agreement or most arbitrations conducted or administered by a self-regulatory organization as defined by the federal Securities Exchange Act of 1934. Under the bill, arbitrators must comply with specified rules of the Colorado Code of Judicial Conduct and the Colorado Code of Professional Conduct. Failure to do so constitutes evident partiality.

Disqualification. An arbitrator is required to disqualify him- or herself from a proceeding in which his or her impartiality might reasonably be questioned and under specified circumstances, such as the existence of a concurrent conflict of interest. An arbitrator subject to disqualification may disclose the basis of the disqualification and provide an opportunity for the parties involved to waive disqualification. Violation of these requirements constitute evident partiality.

Disclosures. The bill establishes procedures and processes to make required disclosures, including time frames and the types of information that must be disclosed, such as the financial interests, personal relationships, prior agreements of the arbitrator and any of the affected parties, as well as a five-year history of prior arbitrations, modified as necessary to protect reasonable privacy concerns of a consumer or employee party or enforceable confidentiality agreements.

Court procedures. In any matter subject to arbitration, any party may challenge, in court, the impartiality or potential partiality of the arbitrator or arbitration services provider. The challenge must be filed no later than 30 days after the disclosures are due. If the court finds potential or evident impartiality, it is required to disqualify the arbitrator or arbitration services provider and to appoint a new arbitrator. The bill also provides a party to an arbitration injunctive relief if an arbitrator or arbitrator services provider has potential or evident partiality or fails to substantially comply with its requirements. The court may award reasonable attorney fees against a party seeking injunctive relief if the court finds the motion lacked substantial justification or was the result of an attempt to delay or harass a party or an attorney or party unnecessarily expanded the proceeding by improper conduct. The provisions of Rule 11 of the Colorado Rules of Civil Procedure, or successor rule, apply to motions for injunctive relief.

State Revenue

Beginning in the current FY 2017-18, this bill may increase state cash fund revenue by a minimal amount. If the publication of arbitration case history leads more parties to seek relief from the courts to vacate existing arbitration awards, civil filing fees will increase. Typically this fee is \$224 per case, the majority of which is credited to the Judicial Stabilization Cash Fund, with a portion of fees credited to the Justice Center Fund, the Court Security Fund, and the General Fund.

TABOR Refund

The bill may increase state revenue subject to TABOR by a minimal amount in FY 2017-18, FY 2018-19 and FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in any of these years and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

To the extent that this bill increases filings to vacate arbitration awards, trial court workload will increase. No change in appropriations for the Judicial Department is required.

Effective Date

The bill takes effect upon passage and applies to arbitrations conducted pursuant to arbitration demands filed and orders to compel arbitration entered on or after this date.

State and Local Government Contacts

Judicial