April 7, 2026

The Honorable Javier Mabrey, Chair
Judiciary Committee
Colorado House of Representatives
200 E Colfax
RM 307
Denver, Colorado 80203

Testimony on Colorado House Bill 1236: Arbitration Reform

Chair Mabrey and Members of the Judiciary Committee:

The Financial Industry Regulatory Authority (FINRA)[1] appreciates this opportunity to submit written testimony on House Bill 1236 (HB 1236), Arbitration Reform.

FINRA is a 501(c)(6) not-for-profit regulator of the securities industry that operates under authority granted under the Securities Exchange Act of 1934 (the 1934 Act). FINRA is registered with the U.S. Securities and Exchange Commission (SEC) as a national securities association and is a self-regulatory organization of member broker-dealer firms under the 1934 Act.[2] FINRA writes rules, examines for and enforces compliance with both FINRA rules and federal securities laws and regulations. Additionally, FINRA regularly communicates with the Colorado Division of Securities (Division) about the broker-dealer firms and their associated persons, including agents, who fall under the jurisdiction of both FINRA and the Division.

FINRA rules, including the FINRA Arbitration Codes, are filed with and approved by the SEC, after a comment process and a finding by the SEC that such rules are in the public interest. The SEC regularly examines FINRA's arbitration forum (Forum).

As part of our mission to protect investors and ensure market integrity, FINRA administers the largest securities arbitration forum in the United States to assist in the resolution of disputes involving investors and broker-dealer firms and their registered employees. In its capacity as a neutral administrator of the Forum, FINRA does not have any input into the outcome of arbitrations. The Forum has 69 hearing locations across the country, including Denver.

The Forum already provides for many of the protections that HB 1236 addresses. For instance, FINRA rules protect a party's right to pursue class actions in court notwithstanding any predispute arbitration agreement.

[1] For more information, please visit www.FINRA.org/about.
[2] Pursuant to the Maloney Act of 1938, 15 U.S.C. §§ 78o-3, et seq., amending the Securities Exchange Act of 1934, 15 U.S.C. §§ 73a, et seq.

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In addition, FINRA rules require that all awards be made publicly available. FINRA hosts a public Arbitration Awards Online database, which demonstrates our commitment to transparency by enabling users to perform web-based searches for FINRA arbitration awards free of charge, twenty-four hours a day, seven days a week.[3]

We are concerned that the requirements set forth in HB 1236 could potentially create a conflict with the Forum's uniform investor protection practices.[4]

FINRA arbitrators are independent and are chosen by the parties. In addition to allowing parties to rank and strike proposed arbitrators prior to appointment, the FINRA Arbitration Codes also provide parties with the right to challenge arbitrators for cause.[5] Further, arbitrators are required to disclose interests, relationships, experience or background that may affect, or appear to affect, the arbitrator's ability to be impartial. Anti-discrimination standards provided in HB 1236 could potentially conflict with FINRA rules relating to arbitrator qualifications, selection and impartiality standards. For instance, FINRA requires public arbitrators to have no connection to the financial industry to ensure impartiality. However, FINRA's categorical disqualification of industry-affiliated individuals from serving as public arbitrators could potentially be reinterpreted under HB 1236's "demonstrated pattern" standard as systematic exclusion of a category of individuals, thereby creating potential legal ambiguity with the bill's anti-discrimination provisions.

Additionally, the bill could potentially conflict with FINRA rules relating to compliance with awards, which already require that monetary awards be paid within 30 days of receipt and that an award shall bear interest from the date of the award, assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s). The bill imposes treble damages for non-compliance by a Merchant or Employer within 30 days but does not address whether this deadline is suspended during post-award motions or appeals—potentially requiring immediate compliance even while the award's enforceability is being challenged.

Other states[6] have recognized conflicts and have exempted FINRA from arbitration-related proposals.

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[3] Please see https://www.finra.org/arbitration-mediation/arbitration-awards.

[4] In the past, where the FINRA Arbitration Codes have conflicted with state statutes, federal and state courts have held that the FINRA Arbitration Codes preempt state law. Two such examples are: Credit Suisse First Boston Corp. v. Grunwald, 400 F.3d 1119 (9th Cir. 2005) and Jevne v. Superior Court, 35 Cal. 4th 935 (Cal. 2005).

[5] For more information on FINRA's arbitrator selection process, please see https://www.finra.org/arbitration-mediation/about/arbitration-process/arbitrator-selection.

[6] These states include Arizona, California, the District of Columbia, Maryland, Nevada and West Virginia.

As we are concerned about the conflicts created by HB 1236, FINRA respectfully urges you to consider adding the following language to § 13-22-201:

> "Arbitration organization" does not include an arbitration forum administered by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78a, et seq., as amended) and the rules and implementing regulations promulgated thereunder.

If you have any questions, or if there is further information we can provide, please reach out to me at kristen.standifer@finra.org or (415) 217-1126. Thank you for your consideration.

Sincerely,

Kristen Standifer

Kristen Standifer
Senior Director, State Government Affairs

cc: The Honorable Yara Zokaie
The Honorable Matt Ball
The Honorable Nick Hinrichsen

HB26-1236: Arbitration Reform
2026.04.07

Thank you, madam chair. My name is Kevin Eronimous. I'm an architect and member of the Colorado chapter of the American Institute of Architects. I'm here today on behalf of AIA Colorado in an amend position on House Bill 26-1236.

The architecture profession isn't the target of this bill but can be affected sections that apply to all arbitration agreements. Parts of the bill as drafted are problematic but AIA Colorado had a productive conversation with Rep. Zokaie to discuss the intent of the bill.

Our first concern is Section 4, regarding arbitrator neutrality. In the world of construction defect disputes, every construction professional wants an arbitrator with experience in this area. Finding the root cause of an issue can be very complex given the number of factors at play, so this is a specialized area of practice. Relevant experience includes an understanding of the professional responsibilities of different parties, how contracts are structured, and case law history. We want to avoid this bill creating a situation where expertise could be interpreted as bias.

This bill attempts to clarify what neutrality means by stating circumstances that suggest bias. One part of the trigger for bias is having "a rule, policy, procedure, or *demonstrated pattern of conduct*". The other part is a list of suspect behaviors. In that list is "prevents, or *has the effect of preventing*" a party from asserting their rights. This could mean that an arbitrator is declared biased if they have "*a demonstrated pattern of conduct that **has the effect** of preventing a party from asserting their rights*". Our fear is that a lawyer could apply this to any pattern of arbitrator decisions even if there's no evidence that any were suspect. Good arbitrators who can navigate difficult issues would be penalized for their expertise.

Second is Section 5 and how we interpret the 30-day trigger for treble damages. It appears to start tolling upon the record of an award. This would override existing statute language stating the record of award includes a timeline for when a liable party has to pay. If the new 30-day period starts after the agreed-upon timeline, we would have no issue with this section.

In both cases, we believe this bill can be amended to clarify its intent without the unintended consequences we flagged. Our hope is that the amendments introduced today do exactly that. If so, AIA Colorado would shift to a neutral position as the reforms proposed wouldn't have a substantial impact on architects.

Thank you for your time and I'm happy to answer any questions.

We are aware that some amendments are in consideration:

- **L.002:** Technical change in section: no concerns after speaking with sponsor.
- **L.005:** 90 days is better than 30 for the treble damages trigger. However, I still think the formatting section as drafted could cause confusion as stated in testimony.
    - Recommend highlighted addition to page 4 line 15 "A PARTY THAT FAILS TO FULLY COMPLY WITH THE REQUIREMENTS OF A RECORD OF AN AWARD WITHIN THIRTY

[90 per amendment] DAYS AFTER THE DATE OF THE RECORD OF AN AWARD, OR DEADLINE DETERMINED AS PART OF THE RECORD OF AN AWARD, IS LIABLE TO THE OTHER PARTY FOR DAMAGES CAUSED BY THE FAILURE TO FULLY COMPLY.

- L.006: Neutral. This class-action section will likely never have real-world direct impact on architects.
- Non-numbered: Good change. Language might be improved, but it does directly address our concern about how previous decisions could be used to imply bias.

Thank you,
Kevin Eronimous, AIA
SAR+ Architects
Representing The Colorado Chapter of the American Institute of Architects