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States' Alternative Dispute Resolution Statutes

STATE OF COLORADO

Index

<i>Uniform Arbitration Act</i>	2
<i>Dispute Resolution Act</i>	11
<i>Colorado International Dispute Resolution Act</i>	17
<i>Colorado Seed Act</i>	18
<i>Fence Law</i>	21

Uniform Arbitration Act

Title 13, Article 22.

Current through the Second Regular Session of 2008

§ 13-22-201. Definitions

As used in this part 2, unless the context otherwise requires:

- (1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.
- (2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
- (3) "Court" means a court of competent jurisdiction in this state.
- (4) "Knowledge" means actual knowledge.
- (5) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 13-22-202. Notice

- (1) Except as otherwise provided in this part 2, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
- (2) A person has notice if the person has knowledge of the notice or has received notice.
- (3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

§ 13-22-203. Applicability

- (1) Except as otherwise provided in subsection (2) of this section, this part 2 shall govern an agreement to arbitrate made on or after August 4, 2004.
- (2) This part 2 shall govern an agreement to arbitrate made before August 4, 2004, if all parties to the agreement or to the arbitration proceeding so agree in a record.

§ 13-22-204. Effect of agreement to arbitrate--nonwaivable provisions

- (1) Except as otherwise provided in subsections (2) and (3) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or, the parties may vary the effect of, the requirements of this part 2 to the extent permitted by law.
- (2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:
 - (a) Waive or agree to vary the effect of the requirements of section 13-22-205(1), 13-22-206(1), 13-22-208, 13-22-217(1) or (2), 13-22-226, or 13-22-228;
 - (b) Agree to unreasonably restrict the right under section 13-22-209 to notice of the initiation of an arbitration proceeding;
 - (c) Agree to unreasonably restrict the right under section 13-22-212 to disclosure of any facts by a neutral arbitrator; or
 - (d) Waive the right under section 13-22-216 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this part 2, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.
- (3)(a) Except as otherwise provided in paragraph (b) of this subsection (3), a party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 13-22-203(1), 13-22-207, 13-22-214, 13-22-218, 13-22-220(4) or (5), 13-22-222, 13-22-223, 13-22-224, 13-22-225(1) or (2), or 13-22-229.

(b) If the parties to an agreement to arbitrate or to an arbitration proceeding are a government, governmental subdivision, governmental agency, governmental instrumentality, public corporation, or any commercial entity, the parties may waive the requirements of section 13-22-223 except if the award was procured by corruption or fraud.

§ 13-22-205. Application for judicial relief

(1) Except as otherwise provided in section 13-22-228, an application for judicial relief under this part 2 must be made by motion to the court and heard in the manner provided by law or court rule for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this part 2 must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or court rule for serving motions in pending cases.

§ 13-22-206. Validity of agreement to arbitrate

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

§ 13-22-207. Motion to compel or stay arbitration

(1) On the motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On the motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is not an agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement, it may not invoke the provisions of subsection (1) or (2) of this section to order the parties to arbitrate.

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or because one or more grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion made under this section shall be filed with that court. Otherwise, a motion made under this section may be filed in any court pursuant to section 13-22-227.

(6) If a party files a motion with the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the ordering court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§ 13-22-208. Provisional remedies

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(b) A party to an arbitration proceeding may request the court to issue an order for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under subsection (1) or (2) of this section.

§ 13-22-209. Initiation of arbitration

(1) A person may initiate an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of an agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized by law for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(2) Unless a person objects to the lack of notice or the insufficiency of notice under section 13-22-215(3) not later than the beginning of the arbitration hearing, a person who appears at the arbitration hearing waives any objection to the lack of notice or insufficiency of notice.

§ 13-22-210. Consolidation of separate arbitration proceedings

(1) Except as otherwise provided in subsection (3) of this section, upon the motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if all parties in the arbitration proceedings consent and:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between or among the same persons or one of the persons is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

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

(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, the method shall be followed unless the method fails. If the parties have not agreed on a method, or the agreed method fails, or an appointed arbitrator fails to act or is unable to act and a successor has not been appointed, the court, on the motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed pursuant to this subsection (1) shall have all the powers of an arbitrator designated in an agreement to arbitrate or appointed pursuant to an agreed method.

(2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator if the agreement requires the arbitrator to be neutral.

§ 13-22-212. Disclosure by arbitrator

(1) Before accepting an appointment, an individual who is requested to serve as an arbitrator, after

making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

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

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

(2) An arbitrator shall have a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required to be disclosed by subsection (1) or (2) of this section and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 13-22-223(1)(b) for vacating an award made by an arbitrator.

(4) If the arbitrator does not disclose a fact as required by subsection (1) or (2) of this section, upon timely objection by a party, the court may vacate an award under section 13-22-223(1)(b).

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall be presumed to act with evident partiality under section 13-22-223(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 13-22-223(1)(b).

§ 13-22-213. Action by majority

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, except that all of the arbitrators shall conduct the hearing under the provisions of section 13-22-215(3).

§ 13-22-214. Immunity of arbitrator--competency to testify--attorney fees and costs

(1) An arbitrator or an arbitration organization acting in the capacity of an arbitrator is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section is in addition to, and not in lieu of, or in derogation of, immunity conferred under any other provision of law.

(3) The failure of an arbitrator to make a disclosure required by section 13-22-212 shall not cause any loss of immunity that is granted under this section.

(4)(a) In a judicial proceeding, administrative proceeding, or other similar proceeding, an arbitrator or representative of an arbitration organization shall not be competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling that occurred during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) This subsection (4) shall not apply:

(I) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(II) To a hearing on a motion to vacate an award under section 13-22-223(1)(a) or (1)(b) if the movant makes a prima facie showing that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (4) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and reasonable expenses of litigation.

§ 13-22-215. Arbitration process

(1) An arbitrator may conduct an arbitration in a manner that the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator by this part 2 shall include, but not be limited to, the power to hold conferences with the parties to the arbitration proceeding before the hearing and the power to determine the admissibility, relevance, materiality, and weight of any evidence.

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) If all interested parties agree; or

(b) Upon request of one or more parties to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing shall waive the objection. Upon the request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced even if a party who was duly notified of the arbitration proceeding does not

appear. The court, on motion, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under subsection (3) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section 13-22-211 to continue the proceeding and to resolve the controversy.

§ 13-22-216. Representation by attorney

A party to an arbitration proceeding may be represented by an attorney.

§ 13-22-217. Witnesses--subpoenas--depositions--discovery

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena issued under this section shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost effective, upon the request of a party or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for a hearing or who is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(4) If an arbitrator permits discovery under subsection (3) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a non-complying party to the extent a court could take such action if the controversy were the subject of a civil action; except that the arbitrator shall not have the power of contempt.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action.

(6) All provisions of law that compel a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness shall apply to an arbitration proceeding in the same manner as if the controversy were the subject of a civil action.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action.

§ 13-22-218. Judicial enforcement of pre-award ruling by arbitrator

If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 13-22-219. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 13-22-222, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 13-22-223 or 13-22-224.

§ 13-22-219. Award

(1) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by an arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend the time or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party shall be deemed to have waived any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

§ 13-22-220. Change of award by arbitrator

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) Upon a ground stated in section 13-22-224(1)(a) or (1)(c);

(b) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(2) A motion made under subsection (1) of this section shall be made and notice shall be given to all parties within twenty days after the movant receives notice of the award.

(3) A party to the arbitration proceeding shall give notice of any objection to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under section 13-22-222, 13-22-223, or 13-22-224, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in section 13-22-224(1)(a) or (1)(c);

(b) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to the provisions of sections 13-22-219(1), 13-22-222, 13-22-223, and 13-22-224.

§ 13-22-221. Remedies--fees and expenses of arbitration proceeding

(1) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(2) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

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

§ 13-22-222. Confirmation of award

(1) After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 13-22-220 or 13-22-224 or is vacated pursuant to section 13-22-223.

Dispute Resolution Act

§ 13-22-301. Short title

This part 3 shall be known and may be cited as the "Dispute Resolution Act".

§ 13-22-302. Definitions

As used in this part 3, unless the context otherwise requires:

(1) "Arbitration" means the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants.

(1.3) "Chief justice" means the chief justice of the Colorado supreme court.

- (1.7) “Director” means the director of the office of dispute resolution.
- (2) “Early neutral evaluation” means an early intervention in a lawsuit by a court-appointed evaluator to narrow, eliminate, and simplify issues and assist in case planning and management. Settlement of the case may occur under early neutral evaluation.
- (2.1) “Fact finding” means an investigation of a dispute by a public or private body that examines the issues and facts in a case and may or may not recommend settlement procedures.
- (2.3) “Med-arb” means a process in which parties begin by mediation, and failing settlement, the same neutral third party acts as arbitrator of the remaining issues.
- (2.4) “Mediation” means an intervention in dispute negotiations by a trained neutral third party with the purpose of assisting the parties to reach their own solution.
- (2.5) “Mediation communication” means any oral or written communication prepared or expressed for the purposes of, in the course of, or pursuant to, any mediation services proceeding or dispute resolution program proceeding, including, but not limited to, any memoranda, notes, records, or work product of a mediator, mediation organization, or party; except that a written agreement to enter into a mediation service proceeding or dispute resolution proceeding, or a final written agreement reached as a result of a mediation service proceeding or dispute resolution proceeding, which has been fully executed, is not a mediation communication unless otherwise agreed upon by the parties.
- (2.7) “Mediation organization” means any public or private corporation, partnership, or association which provides mediation services or dispute resolution programs through a mediator or mediators.
- (3) “Mediation services” or “dispute resolution programs” means a process by which parties involved in a dispute, whether or not an action has been filed in court, agree to enter into one or more settlement discussions with a mediator in order to resolve their dispute.
- (4) “Mediator” means a trained individual who assists disputants to reach a mutually acceptable resolution of their disputes by identifying and evaluating alternatives.
- (4.3) “Mini-trial” means a structured settlement process in which the principals involved meet at a hearing before a neutral advisor to present the merits of each side of the dispute and attempt to formulate a voluntary settlement.
- (4.5) “Multi-door courthouse concepts” means that form of alternative dispute resolution in which the parties select any combination of problem solving methods designed to achieve effective resolution, including, but not limited to, arbitration, early neutral evaluation, med-arb, mini-trials, settlement conference, special masters, and summary jury trials.
- (5) “Office” means the office of dispute resolution.
- (6) “Party” means a mediation participant other than the mediator and may be a person, public officer, corporation, partnership, association, or other organization or entity, either public or private.

(7) "Settlement conference" means an informal assessment and negotiation session conducted by a legal professional who hears both sides of the case and may advise the parties on the law and precedent relating to the dispute and suggest a settlement.

(8) "Special master" means a court-appointed magistrate, auditor, or examiner who, subject to specifications and limitations stated in the court order, shall exercise the power to regulate all proceedings in every hearing before such special master, and to do all acts and take all measures necessary or proper for compliance with the court's order.

(9) "Summary jury trial" means summary presentations in complex cases before a jury empaneled to make findings which may or may not be binding.

§ 13-22-303. Office of dispute resolution--establishment

There is hereby established in the judicial department the office of dispute resolution, the head of which shall be the director of the office of dispute resolution, who shall be appointed by the chief justice of the supreme court and who shall receive such compensation as determined by the chief justice.

§ 13-22-304. Director--assistants

The director shall be an employee of the judicial department and shall be responsible to the chief justice for the administration of the office. The director may be but need not be an attorney and shall be hired on the basis of training and experience in management and mediation. The director, subject to the approval of the chief justice, may appoint such additional employees as deemed necessary for the administration of the office of dispute resolution.

§ 13-22-305. Mediation services

(1) In order to resolve disputes between persons or organizations, dispute resolution programs shall be established or made available in such judicial districts or combinations of such districts as shall be designated by the chief justice of the supreme court, subject to moneys available for such purpose. For all office of dispute resolution programs, the director shall establish rules, regulations, and procedures for the prompt resolution of disputes. Such rules, regulations, and procedures shall be designed to establish a simple nonadversary format for the resolution of disputes by neutral mediators in an informal setting for the purpose of allowing each participant, on a voluntary basis, to define and articulate the participant's particular problem for the possible resolution of such dispute.

(2) Persons involved in a dispute shall be eligible for the mediation services set forth in this section before or after the filing of an action in either the county or the district court.

(3) Each party who uses the mediation services or ancillary forms of alternative dispute resolution in section 13-22-313 of the office of dispute resolution shall pay a fee as prescribed by order of the supreme court. Fees shall be set at a level necessary to cover the reasonable and necessary expenses of operating the program. Any fee may be waived at the discretion of the director. The fees established in this part 3 shall be transmitted to the state treasurer, who shall credit the same to the dispute resolution

fund created in section 13-22-310.

(4) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(5) No adjudication, sanction, or penalty may be made or imposed by any mediator or the director.

(6) The liability of mediators shall be limited to willful or wanton misconduct.

§ 13-22-306. Office of dispute resolution programs--mediators

In order to implement the dispute resolution programs described in section 13-22-305, the director may contract with mediators or mediation organizations on a case-by-case or service or program basis. Such mediators or mediation organizations shall be subject to the rules, regulations, procedures, and fees set by the director. The tasks of the mediators or mediation organizations shall be defined by the director. The director may also use qualified volunteers to assist in mediation service or dispute resolution program efforts.

§ 13-22-307. Confidentiality

(1) Dispute resolution meetings may be closed at the discretion of the mediator.

(2) Any party or the mediator or mediation organization in a mediation service proceeding or a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any mediation communication or any communication provided in confidence to the mediator or a mediation organization, unless and to the extent that:

(a) All parties to the dispute resolution proceeding and the mediator consent in writing; or

(b) The mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen years; or

(c) The mediation communication is required by statute to be made public; or

(d) Disclosure of the mediation communication is necessary and relevant to an action alleging willful or wanton misconduct of the mediator or mediation organization.

(3) Any mediation communication that is disclosed in violation of this section shall not be admitted into evidence in any judicial or administrative proceeding.

(4) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a mediation service proceeding or dispute resolution proceeding.

(5) Nothing in this section shall prevent the gathering of information for research or educational purposes, or for the purpose of evaluating or monitoring the performance of a mediator, mediation organization, mediation service, or dispute resolution program, so long as the parties or the specific

circumstances of the parties' controversy are not identified or identifiable.

§ 13-22-308. Settlement of disputes

(1) If the parties involved in a dispute reach a full or partial agreement, the agreement upon request of the parties shall be reduced to writing and approved by the parties and their attorneys, if any. If reduced to writing and signed by the parties, the agreement may be presented to the court by any party or their attorneys, if any, as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

§ 13-22-310. Dispute resolution fund--creation--source of funds

(1) There is hereby created in the state treasury a fund to be known as the dispute resolution fund, which fund shall consist of:

(a) All moneys collected pursuant to section 13-22-305(3);

(b) Any moneys appropriated by the general assembly for credit to the fund; and

(c) Any moneys collected by the office from federal grants and other contributions, grants, gifts, bequests, and donations.

(2) All moneys in the fund shall be subject to annual appropriation by the general assembly. Any moneys not appropriated shall remain in the fund at the end of any fiscal year and shall not revert to the general fund.

§ 13-22-311. Court referral to mediation--duties of mediator

(1) Any court of record may, in its discretion, refer any case for mediation services or dispute resolution programs, subject to the availability of mediation services or dispute resolution programs; except that the court shall not refer the case to mediation services or dispute resolution programs where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into mediation services or dispute resolution programs. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to mediation and demonstrating compelling reasons why mediation should not be ordered. Compelling reasons may include, but are not limited to, that the costs of mediation would be higher than the requested relief and previous attempts to resolve the issues were not successful. Parties referred to mediation services or dispute resolution programs may select said services or programs from mediators or mediation organizations or from the office of dispute resolution. This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

(2) Upon completion of mediation services or dispute resolution programs, the mediator shall supply to the court, unless counsel for a party is required to do so by local rule or order of the court, a written statement certifying that parties have met with the mediator.

(3) In the event the mediator and the parties agree and inform the court that the parties are engaging in good faith mediation, any pending hearing in the action filed by the parties shall be continued to a date

certain.

(4) In no event shall a party be denied the right to proceed in court in the action filed because of failure to pay the mediator.

§ 13-22-312. Applicability

This part 3 shall apply to all mediation services or dispute resolution programs conducted in this state, whether conducted through the office of dispute resolution or through a mediator or mediation organization.

§ 13-22-313. Judicial referral to ancillary forms of alternative dispute resolution

(1) Any court of record, in its discretion, may refer a case to any ancillary form of alternative dispute resolution; except that the court shall not refer the case to any ancillary form of alternative dispute resolution where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into ancillary forms of alternative dispute resolution. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to ancillary forms of alternative dispute resolution and demonstrating compelling reasons why ancillary forms of alternative dispute resolution should not be ordered. Compelling reasons may include, but are not limited to, that the costs of ancillary forms of alternative dispute resolution would be higher than the requested relief and previous attempts to resolve the issues were not successful. Such forms of alternative dispute resolution may include, but are not limited to: arbitration, early neutral evaluation, med-arb, mini-trial, multi-door courthouse concepts, settlement conference, special master, summary jury trial, or any other form of alternative dispute resolution which the court deems to be an effective method for resolving the dispute in question. Parties and counsel are encouraged to seek the most appropriate forum for the resolution of their dispute. Judges may provide guidance or suggest an appropriate forum. However, nothing in this section shall impinge upon the right of parties to have their dispute tried in a court of law, including trial by jury.

(2) Ancillary programs may be established, made available, and promoted in any judicial district or combination of districts as designated by the chief judge of the affected district. Rules and regulations for ancillary forms of alternative dispute resolution shall be promulgated by the director of the office of dispute resolution.

(3) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(4) Nothing in this section shall preclude any court from making a referral to mediation services provided for in this article.

(5) All referrals under this section shall be made subject to the availability of alternative dispute resolution programs. Parties referred to ancillary forms of alternative dispute resolution may select services offered by the office of dispute resolution or by other individuals or organizations.

(6) This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

Colorado International Dispute Resolution Act

§ 13-22-501. Short title

This part 5 shall be known and may be cited as the “Colorado International Dispute Resolution Act”.

§ 13-22-502. Legislative declaration

The general assembly finds and declares that it is the policy of the state of Colorado to encourage parties to international commercial or noncommercial agreements or transactions to resolve disputes arising from such agreements or transactions, when appropriate, through arbitration, mediation, or conciliation. Therefore, it is the intent of the general assembly that arbitration and ancillary forms of alternative dispute resolution be made available to resolve international disputes.

§ 13-22-503. Definitions

As used in this part 5, unless the context otherwise requires:

- (1) “Arbitration” means the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants.
- (2) “Conciliation” means all forms of dispute resolution including, but not limited to, arbitration and mediation.
- (3) “International dispute” means any dispute which involves the following:
 - (a) A dispute between persons who are residents of more than one country or entities which have facilities or operations relevant to the dispute located in more than one country;
 - (b) A dispute in which the parties have expressly agreed that the subject matter relates to interests in more than one country; or
 - (c) A dispute which is otherwise related to interests in more than one country.
- (4) “Mediation” means an intervention in dispute negotiations by a trained, neutral third party with the purpose of assisting the parties to reach their own solution.

§ 13-22-504. Agreement for alternative dispute resolution

The parties to an international dispute may agree to submit such dispute to arbitration, mediation, or conciliation for resolution of such dispute by means other than by litigation. Such dispute resolution pursuant to this part 5 shall be subject to any treaties or agreements which are in force and effect between the United States and any other country.

§ 13-22-505. Applicability

The provisions of part 2 of this article and sections 13-22-307 and 13-22-308 shall apply to any international dispute submitted to alternative dispute resolution pursuant to this part 5.

§ 13-22-506. Choice of language

The parties to any international dispute submitted for alternative dispute resolution pursuant to this part 5 may agree upon the language or languages to be used in the dispute resolution proceedings.

§ 13-22-507. Immunity

None of the arbitrators, mediators, conciliators, witnesses, parties, or representatives of the parties involved in the arbitration, mediation, or conciliation of an international dispute pursuant to this part 5 shall be subject to service of process on any civil matter while such persons are present in this state for the purpose of participating in the arbitration, mediation, or conciliation of that international dispute.

Colorado Seed Act
Title 35, Article 27.

Current through the Second Regular Session of 2008

§ 35-27-122. Arbitration council--procedures

(1)(a) The commissioner shall appoint an arbitration council for each case composed of three members. The following shall each recommend one member:

(I) Deleted by Laws 2007, Ch. 175, § 6, eff. April 26, 2007.

(II) The dean of the college of agriculture, Colorado state university;

(III) The president of the Colorado seedsmen's association;

(IV) The president of any organization of farmers in the state as the commissioner determines to be appropriate; and

(V) Deleted by Laws 2007, Ch. 175, § 6, eff. April 26, 2007.

(b) Deleted by Laws 2007, Ch. 175, § 6, eff. April 26, 2007.

(c) The council shall elect a chair from its membership. The chair shall conduct the deliberations of the council and shall direct all of its other activities. The commissioner shall serve as staff to the council and shall keep accurate records of all such deliberations and shall perform such other duties for the council as the chair directs.

(d) The council shall conduct the arbitration for the case.

(2)(a) A buyer of seed shall request arbitration by filing a verified complaint with the commissioner together with a filing fee of ten dollars; except that the commissioner by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402(3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commissioner by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402(4), C.R.S. The commissioner shall serve a copy of the complaint upon the seller of such seed by certified mail or personal service.

(b) Within five working days after receipt of a copy of the complaint, the seller shall file a verified answer to the complaint with the commissioner, who shall serve a copy of the answer upon the buyer by certified mail.

(c) The commissioner shall investigate the allegations in the complaint. In conducting such investigation, the commissioner may employ the services of any expert that he or she deems appropriate. Upon completion of the investigation, the commissioner shall refer the complaint to the council along with a report of the results of the investigation.

(d) Upon referral of a complaint for investigation, the council shall conduct an arbitration hearing in accordance with the "Uniform Arbitration Act", part 2 of article 22 of title 13, C.R.S., and shall report its findings and recommendations to the commissioner in an arbitration report. Such arbitration report shall be filed with the commissioner within sixty days after the conclusion of the arbitration hearing or a later date if the parties agree.

(e) The arbitration report of the council shall include findings of fact, conclusions of law, and recommendations as to costs, if any, including but not limited to costs of any investigation conducted by the commissioner.

(f) In the course of his or her investigation, the commissioner may:

(I) Examine the buyer, the seller, and any other person who may have relevant information;

(II) Grow a representative sample of the seed through the facilities of Colorado state university to production; and

(III) Conduct any other investigative activities that he or she deems necessary to obtain information relevant to the allegations in the complaint pursuant to his or her authority in section 35-27-115.

(g) Deleted by Laws 2007, Ch. 175, § 6, eff. April 26, 2007.

(h) The members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for actual and necessary expenses.

(i) After the council has filed its arbitration report with the commissioner, the commissioner shall promptly transmit such arbitration report by certified mail to all parties.

§ 35-27-123. Requirement and effect of arbitration

(1)(a) If a buyer of seed suffers damage because such seed does not produce or perform in conformance with the labeling or warranty or because of negligence by the seller, the buyer shall submit such buyer's claim to arbitration pursuant to this section and section 35-27-122. Such submittal shall be a prerequisite to such buyer's right to maintain any legal action against the seller of such seed. Any statute of limitations shall be tolled until ten days after the filing of the arbitration report.

(b) No claim may be asserted as a counterclaim or defense in any action brought pursuant to paragraph (a) of this subsection (1) by a seller against a buyer, if the buyer has not submitted such claim to arbitration. After the buyer files a written notice of intention to assert a claim as a counterclaim or defense in such action, accompanied by a copy of the buyer's complaint filed under section 35-27-122(2)(a), the statute of limitations shall be tolled for such claim until ten days after the filing of the arbitration report pursuant to section 35-27-122(2)(d).

(2)(a) Every label required pursuant to section 35-27-105 shall include clear language that arbitration is required for claims arising out of the sale of seed; except that arbitration shall not be required if the notice required pursuant to this paragraph (a) is not included.

(b) A notice in the following form or equivalent language shall be sufficient to comply with paragraph (a) of this subsection (2):

“NOTICE OF REQUIRED ARBITRATION

UNDER THE “COLORADO SEED ACT”, ARTICLE 27 OF TITLE 35, COLORADO REVISED STATUTES, ARBITRATION IS REQUIRED AS A PREREQUISITE TO CERTAIN LEGAL ACTIONS, COUNTERCLAIMS, OR DEFENSES AGAINST A SELLER OF SEED.

INFORMATION ABOUT THIS REQUIREMENT MAY BE OBTAINED FROM THE COLORADO COMMISSIONER OF AGRICULTURE.”

(3)(a) An arbitration report filed pursuant to section 35-27-122(2)(d) shall be binding upon all parties to the extent agreed upon in any contract governing the sale which was the subject of the arbitration.

(b) In the absence of an agreement to be bound by arbitration, a buyer may bring legal action against a seller or assert such claim as a counterclaim or defense in any action brought by the seller at any time after the arbitration report has been filed.

(c) During litigation involving a complaint which has been arbitrated pursuant to this section, any party who was subject to such arbitration may introduce the arbitration report as evidence of the facts found in the report if the party against whom the report is offered was also subject to the arbitration. The court may give such weight to the council's findings and conclusions of law and recommendations as to damages and costs as the court sees fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council of any failure of any party to cooperate in such arbitration proceedings, including any finding as to the effect of delay in filing the arbitration claim or answer upon the ability of the arbitration council to determine the facts of the case.

Fence Law
Title 35, Article 46.

Current through the Second Regular Session of 2008

§ 35-46-101. Definitions

As used in this article, unless the context otherwise requires:

(1) “Lawful fence” is a well-constructed three barbed wire fence with substantial posts set at a distance of approximately twenty feet apart, and sufficient to turn ordinary horses and cattle, with all gates equally as good as the fence, or any other fence of like efficiency. Railroad right-of-way fences constructed in compliance with the statute in force on the date of construction and maintained in good condition shall be considered legal fences.

(2) “Livestock” includes horses, cattle, mules, asses, goats, sheep, swine, buffalo, and cattalo, but does not include “alternative livestock” as defined in section 35-41.5-102(1).

§ 35-46-102. Owner may recover for trespass

(1) Any person maintaining in good repair a lawful fence, as described in section 35-46-101, may recover damages for trespass and injury to grass, garden or vegetable products, or other crops of such person from the owner of any livestock which break through such fence. No person shall recover damages for such a trespass or injury unless at the time thereof such grass, garden or vegetable products, or crops were protected by such a lawful fence. Even though such land, grass, garden or vegetable products, or other crops were not at such time protected on all sides by a lawful fence, if it is proved by clear and convincing evidence that livestock have broken through a lawful fence on one side of such land to reach such land, grass, products, or crops, recovery and the remedies under this section may be had the same as if such land, grass, products, or crops had been at such time protected on all sides by a lawful fence.

(2) Whenever any person stocks land, not enclosed by a lawful fence, on which such person has a lawful right to pasture or forage livestock, with a greater number of livestock than such land can properly support or water and any of such livestock pasture, forage, or water on the lands of another person, in order to obtain the proper amount of pasture, forage, or water or whenever any person stocks with livestock land on which such person has no lawful right to pasture or forage livestock and such livestock pasture, forage, or water on such land or on other land on which such person has no right to pasture or forage livestock, he shall be deemed a trespasser and shall be liable in damages and subject to injunction.

(3) All damages sustained on account of the foregoing trespasses may be recovered, together with costs of court and arbitration, and the livestock so trespassing may be taken up by the person damaged and held as security for the payment of such damages and costs. A court of competent jurisdiction in any proper case may issue an injunction to prevent further trespasses. In any action for trespass where the injury complained of has been aggravated and attended by a willful or reckless disregard of the injured person's rights, the board of arbitration, court, or jury may in addition to awarding actual damages include reasonable exemplary damages. Recovery may be had under this section either in a court of law or by arbitration as provided in section 35-46-103.

§ 35-46-103. Board of arbitration

When any person is trespassed upon or damaged by any livestock or takes into his custody any livestock under section 35-46-102, the claim for damages occasioned by said livestock may be arbitrated by a board of three arbitrators, at the option of the party aggrieved selecting one, the owner

of the livestock selecting a second, and the two thus chosen selecting a third. Said arbitrators so chosen shall meet and act as a board of arbitration within five days after a written application is made therefor by either party and written notice given to the other party. It is the duty of the person so taking into custody such livestock to notify in writing within five days after the taking into custody thereof the owner or person in charge of such livestock. If the owner or person in charge of such livestock is not known to the person taking the livestock into custody or cannot be found after diligent search and inquiry, then the person so taking custody of such livestock shall publish within one week a notice containing a full description of such livestock, including all marks and brands as nearly as can be ascertained, in a paper published nearest the place where the alleged damage occurred. In the event the owner of such livestock cannot be found within ten days after the date of the publication of such notice, the livestock shall be an estray and the state board of stock inspection commissioners shall be entitled to said livestock subject to the lien for damage sustained and cost and care and feeding of the same by the person taking such livestock into custody. Such person shall deliver the same to the owner thereof whenever such owner furnishes the person so damaged by such livestock a bond in double the amount of the damage claimed, executed by two responsible persons, said bond to be satisfactory to such damaged party or approved by a county judge or district judge of such county, conditioned upon the payment to the person taking custody of such livestock all damages and costs, if any such damages or costs are awarded.

§ 35-46-104. Finding of board--enforcement

The finding of said board of arbitration, when reduced to writing and signed by a majority of the members thereof, constitutes an obligation on the part of the person against whom the finding is made to pay to the aggrieved party the sum set forth in the finding of said board of arbitration. In the event the person against whom the finding of such board of arbitration is made fails, neglects, or refuses to pay to the aggrieved party the sum set forth in the finding of said board of arbitration, within thirty days from the date of the written findings of such board, then the finding of said board of arbitration may be filed in any court of record within the jurisdiction where the damage was sustained. The finding of such board so filed shall be deemed for the purposes of sections 35-46-101 to 35-46-110 a judgment of said court and execution may issue thereon as by law provided in judgments of said court. The costs agreed upon to be incurred in said arbitration shall follow the findings as in suits at court. If the owner of any livestock makes a tender in money of all damages to the person claiming damages, the person claiming damages shall pay all costs and expenses thereafter accruing unless he is awarded a larger amount than was tendered by the owner of such livestock.