

The National Agricultural
Law Center



University of Arkansas School of Law

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Maine

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UNIVERSITY of ARKANSAS
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States' Alternative Dispute Resolution Statutes

STATE OF MAINE

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Uniform Arbitration Act Title 14, Part 7, Chapter 706.

Current with legislation through the 2008 Second Regular Session

§ 5927. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, unless otherwise provided in the agreement.

§ 5928. Proceedings to compel or stay arbitration

1. Application. On application of a party showing an agreement described in section 5927 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

2. Stay of proceedings. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

3. Arbitration where action pending. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection 1, the application shall be made therein. Otherwise and subject to section 5944, the application may be made in the Superior Court.

4. Stay of action where arbitration ordered. Any action or proceeding involving an issue subject to arbitration shall be stayed, if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

5. Order for arbitration not to be refused. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

§ 5929. Appointment of arbitrators by court

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

§ 5930. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

§ 5931. Hearing

Unless otherwise provided by the agreement:

1. Notice of hearing. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

2. Evidence. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

3. Decision. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

§ 5932. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective.

§ 5933. Witnesses, subpoenas, depositions

1. Witnesses before arbitrators. The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

2. Depositions. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

3. Compelling attendance. All provisions of law compelling a person under subpoena to testify are applicable.

4. Fees. Fees for attendance as a witness shall be the same as for a witness in the Superior Court.

§ 5934. Award

1. Delivery. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

2. Times for making. An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

§ 5935. Change of award by arbitrators

On application of a party or, if an application to the court is pending under sections 5937 to 5939, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 5939, subsection 1, paragraphs A

and C or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to sections 5937 to 5939.

§ 5936. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

§ 5937. Confirmation of an award

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 5938 and 5939.

§ 5938. Vacating an award

1. Vacating award. Upon application of a party, the court shall vacate an award where:

A. The award was procured by corruption, fraud or other undue means;

B. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

C. The arbitrators exceeded their powers;

D. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 5931, as to prejudice substantially the rights of a party;

E. There was no arbitration agreement and the issue was not adversely determined in proceedings under section 5928 and the party did not participate in the arbitration hearing without raising the objection; or

F. The award was not made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court has ordered, and the party has not waived the objection.

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

2. Application. An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

3. Rehearing. In vacating the award on grounds other than stated in paragraph E of subsection 1 the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 5929, or, if the award is vacated on grounds set forth in paragraphs C and D of subsection 1 the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 5929. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

4. Confirmation of award. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§ 5939. Modification or correction of award

1. Application. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

A. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

B. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

C. The award is imperfect in a matter of form, not affecting the merits of the controversy.

2. Modification or correction of award. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected.

Otherwise, the court shall confirm the award as made.

3. Joinder of application. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 5940. Judgment or decree on award

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

§ 5941. Judgment roll, docketing

1. Entry of judgment. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

A. The agreement and each written extension of the time within which to make the award;

B. The award;

C. A copy of the order confirming, modifying or correcting the award; and

D. A copy of the judgment or decree.

2. Docketed as if in action. The judgment or decree may be docketed as if rendered in an action.

§ 5942. Applications to court

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

§ 5943. Court, jurisdiction

The term “court” means the Superior Court of this State. The making of an agreement described in section 5927 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder.

§ 5944. Venue

An initial application shall be made to the Superior Court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

§ 5945. Appeals

1. Grounds for appeal. An appeal may be taken from:
 - A. An order denying an application to compel arbitration made under section 5928;
 - B. An order granting an application to stay arbitration made under section 5928, subsection 2;
 - C. An order confirming or denying confirmation of an award;
 - D. An order modifying or correcting an award;
 - E. An order vacating an award without directing a rehearing; or
 - F. A judgment or decree entered pursuant to the provisions of this chapter.
2. Procedure. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

§ 5946. Act not retroactive

This chapter applies only to agreements made subsequent to October 7, 1967.

§ 5947. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 5948. Intent

Nothing in this chapter shall be deemed to repeal or amend Title 26, chapter 9-A, entitled "Municipal Public Employees Labor Relations Law." This chapter shall not apply to any provision contained in a policy of automobile liability insurance for arbitration of a claim under the uninsured motorist coverage.

§ 5949. Short title

This chapter may be cited as the "Uniform Arbitration Act."

Rules for Referral of Cases to the Court Alternative Dispute Resolution Service

Current with amendments received through July 2008

Rule 1. Mandatory Mediation Referrals

The following cases shall be referred by a court to CADRES for mediation on a routine basis, unless

the judge or justice having jurisdiction over a particular matter grants a waiver.

A. Contested Domestic Relations Matters. Except for Protection from Abuse cases, paternity cases filed by the Department of Health and Human Services, and all child protection cases, all contested domestic relations matters, whether or not minor children are involved, shall be referred prior to the assignment of a hearing date. Post judgment modifications may be referred prior to the filing of a motion on the request of all parties. The fee for mediation of domestic relations cases is \$120.00, payable on or before entry of the referral order.

B. Small Claims Matters. All small claims matters shall be referred at filing. Mediation shall take place at the discretion of the presiding judge on the hearing date or prior to the hearing date on the request of all parties. The mediation fee for small claims matters is \$5.00, payable on filing of every action.

C. Environmental Enforcement Actions. All requests for mediation pursuant to 38 M.R.S.A. § 347-A shall be referred on the receipt of a request filed by either party. The fee for environmental enforcement mediations is \$120.00. Notwithstanding the general exemption from payment of fees for State agencies, the Department of Environmental Protection is liable for the payment of half of the fee.

D. Land Use Matters. All requests for mediation pursuant to 5 M.R.S.A. Chapter 314, Subchapter II shall be referred on filing of an application as required by 5 M.R.S.A. § 3341(4). The fee for land use mediations is \$175.00 for the initial mediation session, payable by the landowner who submits the application. The mediator shall determine the cost of providing notice, which the landowner shall pay prior to the scheduling of the mediation. If subsequent sessions occur, the parties and the mediator shall agree on an appropriate fee arrangement.

Rule 2. Discretionary Mediation Referrals

A judge or justice may refer any contested civil action for mediation, either on the filing of a motion or on the court's own motion. The referral may be to a mediator agreed to by the parties or, in the absence of agreement, to CADRES. Prior to entering a referral order the judge or justice may consult with the CADRES Director concerning its terms. The parties are responsible for payment of the mediator's charges. If the referral is made through CADRES, an administrative fee of \$20.00 shall be assessed.

Discretionary mediation referrals may not be made in cases pending in the Superior Court in Androscoggin, Aroostook, Kennebec, Oxford, Penobscot, and Sagadahoc Counties during the Superior Court ADR Pilot Project.

Rule 3. Other Adr Services

Until such time as further rules for other forms of alternative dispute resolution are adopted, CADRES is not available as a resource for other ADR services.

Rule 4. Transition

Effective immediately, the rules, policies, and procedures of the former Court Mediation Service, with appropriate interim modifications as determined necessary by the CADRES Committee or CADRES Director, will govern CADRES operations until such time as Operational Rules for CADRES are adopted and in effect.

Rules of Civil Procedure

Current with amendments received through July 2008

Rule 16B. Alternative Dispute Resolution

This rule is applicable to cases filed in the Superior Court and cases removed to the Superior Court from the District Court.

(a) **Applicability.** All parties to any civil action filed in or removed to the Superior Court, except actions exempt in accordance with subsection (b) of this rule, shall, within 60 days of the date of the Rule 16(a) scheduling order, schedule an alternative dispute resolution conference which conference shall be held and completed within 120 days of the date of the Rule 16(a) scheduling order. By agreement of all parties, reported to the court in writing within 120 days of the date of the Rule 16(a) scheduling order, the time for the completion of the alternative dispute resolution conference shall be extended for a period not to exceed 180 days from the date of the Rule 16(a) scheduling order.

(b) **Exemptions.** The following categories of cases are exempt from the requirements of this rule:

(1) Actions under Rule 80D, 80L, and Chapter XIII;

(2) Appeals under Rule 80B or Rule 80C;

(3) Appeals under 36 M.R.S.A. § 151;

(4) Actions for recovery of personal injury damages where the plaintiff requests exemption and certifies that the likely recovery of damages will not exceed \$30,000.

(5) Actions where the parties have participated in statutory prelitigation screening or dispute resolution processes including medical malpractice and Maine Human Rights Act cases;

(6) Actions where the parties certify that they have engaged in formal alternative dispute resolution before a neutral third party. The certification shall state the name of the neutral and the date(s) on which formal alternative dispute resolution conferences occurred;

(7) Actions for nonpayment of notes in mortgage foreclosures and other secured transactions;

(8) Actions by or against prisoners in state, federal or local facilities; and

(9) Actions exempted by the court on motion by a party and for good cause shown but only where the motion seeking exemption is filed within 30 days of the date of the Rule 16(a) scheduling order.

(c) **Motions and Discovery.** Motions and discovery practice shall proceed in accordance with these rules while an alternative dispute resolution process is being scheduled and held.

(d) **Neutral Selection and Conference Scheduling.**

(1) Promptly after the filing of an answer in the Superior Court or removal from the District Court, the parties shall confer and select an alternate dispute resolution process (that is, mediation, early neutral evaluation, or nonbinding arbitration) and a neutral third party to conduct the process. If the parties cannot agree on the ADR process, they shall proceed to mediation. If the parties cannot agree on the selection of a neutral, they shall notify the court, which shall designate a neutral third party, with experience appropriate to the nature of the case, from the appropriate roster of court neutrals developed by CADRES;

(2) Unless the court orders or the parties otherwise agree, fees and expenses for the neutral shall be apportioned and paid in equal shares by each party, due and payable according to fee arrangements worked out directly by the parties and the neutral. Fees and expenses paid to the neutral shall be allowed and taxed as costs in accordance with Rule 54(f). If any party is unable to pay its share of the fees and expenses of the neutral, that party may apply for in forma pauperis status pursuant to Rule 91. If granted, the court may allocate the fee among those parties who are not in forma pauperis or ask the selected neutral to undertake the conference on a reduced fee basis. Failing the consent of the selected neutral to the reduced fee, the court will designate an alternate neutral from the roster developed by CADRES who will agree to undertake the assignment on a reduced fee basis or pro bono.

(3) Once the neutral is selected or designated, the parties shall agree with the neutral on a time and place for the conference. The plaintiff shall notify the court of the name of the neutral and the time and place for the conference no later than 60 days after the date of the Rule 16(a) scheduling order. The conference must be held and completed no later than 120 days after the date of the Rule 16(a) scheduling order.

(e) Conference Issues. At the alternative dispute resolution conference, the only required function is to conduct the ADR process selected by the parties. If at the conclusion of that process and, after a serious effort by the parties, agreement is not reached on all issues, then the neutral may proceed to a case management discussion with the parties to try to reach agreement on the following: (i) identification, clarification and limitation of remaining issues; (ii) stipulations; and (iii) discovery-related issues;

The neutral should not address case management issues in cases that are specially assigned or subject to single judge management, except with the approval of the assigned judge. When case management issues are addressed, the neutral may not extend deadlines or otherwise modify directives in the scheduling order set pursuant to M.R. Civ. P. 16(a). An ADR conference need not be reconvened if, after an initial session, the only remaining issues are case management issues.

(f) Conference Attendees.

(1) Conference attendees shall include:

(i) Individual parties;

(ii) A management employee or officer of a corporate party, with appropriate settlement authority, whose interests are not entirely represented by an insurance company;

(iii) A designated representative of a government agency party whose interests are not entirely represented by an insurance company;

(iv) An adjuster for any insurance company providing coverage potentially applicable to the case, provided that the adjuster participate in the conference with appropriate settlement authority;

(v) Counsel for all parties; and

(vi) Nonparties whose participation is essential to settlement discussions--including lienholders--may be requested to attend the conference.

(2) The court may impose appropriate sanctions on any party or representative required and notified to appear at a conference who fails to attend.

(3) Attendance shall be in person or, in the discretion of the neutral, for good cause shown, by telephone or video conference.

(g) Conference Documents. If requested by the neutral, five days prior to the conference, the plaintiff shall provide to the neutral:

--The complaint;

--The answer or other responsive pleading;

--Any pretrial scheduling statement;

--Any pretrial order that may have issued; and

--Any dispositive motions and memoranda that have been filed in connection with those motions.

(h) Conference Report and Order.

(1) Settlement. If the conference results in a settlement, the parties shall, within 10 days after the conference, report that fact to the court and include a proposed order concerning the settlement. The court shall order the appropriate entry to be made on the docket.

(2) Neutral Report. If the conference does not result in a settlement, the neutral shall, within 10 days after the conference, file with the court a report and, if appropriate, a proposed order which indicates any agreements of the parties on matters such as stipulations, identification and limitation of issues to be tried, discovery matters and further alternative dispute resolution efforts. If there are no agreements of the parties, the report shall so indicate. If the neutral does not file the report, the parties shall prepare and file the report indicating their points of agreement and disagreement. The parties shall be equally responsible for assuring that the neutral's report is filed in a timely manner and may be subject to appropriate sanctions if filing of the report is filed later than 130 days after the date of the Rule 16(a) scheduling order.

(i) Jury Fee. For cases required to have an alternative dispute resolution conference in accordance with

this rule, payment of the civil jury fee required by Rule 38(b) or Rule 76C, shall be deferred until 210 days after the date of the Rule 16(a) scheduling order.

(j) Standards for Alternative Dispute Resolution. No agreement or order to enter into alternative dispute resolution pursuant to this rule may be entered or issued without consideration being given to the needs of indigent or unrepresented parties or parties in situations where there is a potential for violence, abuse, or intimidation.

(k) Confidentiality. A neutral who conducts an alternative dispute resolution conference pursuant to this rule, or an alternative dispute resolution process pursuant to subsection (b)(6), shall not, without the informed written consent of the parties, disclose the outcome or disclose any conduct, statements, or other information acquired at or in connection with the ADR conference. A neutral does not breach confidentiality by making such a disclosure if the disclosure is: (i) necessary in the course of conducting the dispute resolution conference and reporting its result to the Court as required in (h)(2); (ii) information concerning the abuse or neglect of any protected person; (iii) information concerning the intention of one of the parties to commit a crime, or the information necessary to prevent the crime or to avoid subjecting others to the risk of imminent physical harm; or (iv) as otherwise required by statute or court order.

(l) Sanctions. If a party or a party's lawyer fails without good cause to appear at a dispute resolution conference scheduled pursuant to this rule, or fails to comply with any other requirement of this rule or any order made thereunder, the court may, upon motion of a party or its own motion, order the parties to submit to alternative dispute resolution, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court shall require the party or lawyer, or both, to pay the reasonable expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance, unless the judge finds an award would be unjust in the circumstances.

Maine Rules of Court. XII. General Provisions

Current with amendments received through July 2008

Rule 92. Court Alternative Dispute Resolution Service

This rule shall govern the operation of the Court Alternative Dispute Resolution Service established pursuant to 4 M.R.S. § 18-B.

(a) Alternative Dispute Resolution in General Civil Actions.

(1) Rule 16B Referrals in the Superior Court. Unless exempted, all contested civil actions filed in or removed to the Superior Court are subject to the alternative dispute resolution (ADR) process specified in Rule 16B.

(2) Referees. Rule 53 governs reference of cases in the Superior Court or the District Court, including reference of family matters.

(3) CADRES Referrals Not Otherwise Governed. By agreement of the parties or in the court's discretion upon a finding of good cause, any civil action not otherwise governed or exempted by statute, rule, or order, may be referred to ADR through the Court Alternative Dispute Resolution Service ("CADRES") or another ADR agreed to by the parties. The following applies to civil actions referred to ADR through CADRES:

(A) Administrative Fee. If the referral is made through CADRES, the parties shall pay an administrative fee, which shall be shared equally by the parties and paid to the clerk, unless in forma pauperis status has been granted pursuant to Rule 91;

(B) Notification to CADRES. Upon payment of the administrative fee, the clerk shall notify CADRES of payment and send a copy of the referral order to CADRES;

(C) Selection of Provider. Except when proceeding pursuant to Rule 16B or Rule 53, in actions referred to mediation or another form of ADR through CADRES, the parties shall select their ADR provider from the roster approved by CADRES;

(D) Date and Location of ADR. Once selected, the ADR provider shall assist the parties in arranging a mutually agreeable date, time, and location for mediation. ADR may take place at a courthouse, if space is available and if authorized by the clerk; and

(E) Compensation to Provider. The parties and the ADR provider shall negotiate and agree on compensation for services, and such compensation shall be paid directly to the ADR provider.

(b) Mediation of Family Matters.

(1) Mediation Required. All contested divorce, parental rights, judicial separation, and child support actions shall be referred to mediation, unless mediation is waived pursuant to 19-A M.R.S. § 251(2)(B).

(2) Mediation Optional. Actions for visitation rights of grandparents, emancipation of minors, paternity, and motions to modify a preliminary injunction, motions to enforce a judgment, and motions for contempt may be referred to mediation.

(3) Mediation Not Available. Protection from abuse and protective custody actions (other than those that may be specially referred or included in a pilot mediation program) are not subject to referral to mediation.

(4) Court Defined. As used in this subdivision (b) of the Rule, the term "Court" includes a Justice, Judge or Family Law Magistrate.

(5) CADRES Referral. In all contested family matters referred to mediation through CADRES, the following shall apply:

(A) Date and Location of Mediation. Mediation shall occur prior to the assignment of a hearing date unless otherwise ordered by the court. Mediation shall be scheduled to occur within 28 days of the order for mediation, unless otherwise ordered by the court. Mediation shall be held at a courthouse,

unless otherwise authorized by the court or the Director of CADRES;

(B) Mediation Fee. A mediation fee as set by the court shall be paid by the date ordered, which shall be before the mediation or when mediation is requested by a party. The fee entitles the parties to two mediation sessions. An additional mediation fee is due for any further mediation. When a mediation session is not held due to failure of one or more participants to appear, the court may reschedule the mediation session at no additional cost and/or impose sanctions. No mediation fee is required for mediation of motions solely to enforce child support orders or when mediation is requested by the Department of Health and Human Services;

(C) Apportionment and Payment of Mediation Fee. The mediation fee shall be shared equally by the parties, unless otherwise ordered by the court. In ordering payment of the mediation fee, the court shall specify the amount due by each party with a payment date;

(D) Assignment of Mediators. Mediators on the Domestic Relations Mediation Roster shall notify the clerk of the courts to which they are assigned by CADRES of the dates and times at which they are available to mediate. The clerks shall assign mediation to eligible rostered mediators on a rotating basis that is generally equitable over time. If a party or attorney requests assignment of a specific mediator, the clerk shall attempt to honor that request to the extent practicable. If a party or attorney objects to the assignment of a certain mediator, the clerk shall honor that request and assign a different mediator. At least twice annually, CADRES shall supply to every District Court a current list of mediators on the Domestic Relations Mediation Roster for that court;

(E) Attendance at Mediation. Each party and their attorney, if any, shall be present at mediation and shall make a good faith effort to mediate all disputed issues. In exceptional circumstances, a party may participate by telephone with the prior approval of the court. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions;

(F) Exchange of Information. If any financial issues, including child support, spousal support, or property division are contested, each party shall complete and file with the court, with a copy to the other party, a properly completed Child Support Affidavit, Child Support Worksheet and Financial Statement. When required, these documents shall be filed with the court at least three (3) business days prior to the scheduled mediation; and

(G) Continuances. A party requesting a continuance of a mediation session shall file a written motion with the clerk at least four (4) days in advance of the scheduled mediation, and shall otherwise comply with the requirements of Rule 40(c), including the requirement that the motion to continue or cancel a scheduled mediation must be filed immediately after the cause or grounds becomes known. All continuance requests shall be heard and ruled on by the court. A mediator may not grant a continuance for mediation or reschedule a mediation session.

(c) Mediation of Small Claims.

(1) Mediation Required. The parties to all Small Claims cases may be required to participate in mediation as ordered by the court. This requirement does not apply to Small Claims disclosure actions, which are not subject to referral to mediation.

(2) Date and Location of Mediation. Mediation shall take place on the hearing date, unless all parties agree to hold mediation prior to the hearing date, and CADRES is able to arrange for mediation. Mediation shall take place at a courthouse, unless otherwise authorized by the court or the CADRES Director.

(3) Mediation Fee. The mediation fee is included in the small claims filing fee, and no additional fee is required for mediation.

(4) Assignment of Mediators. The clerk of court, or a designee, shall notify CADRES of all dates on which the Small Claims docket is to be scheduled, as well as any subsequent scheduling changes. CADRES shall assign one or more mediators to provide mediation services at every scheduled Small Claims docket. At least twice annually, CADRES shall supply to every District Court a current list of Small Claims mediation assignments, as well as a current list of mediators on the Small Claims Mediation Roster.

(5) Continuances. All requests for continuance of mediation or a hearing date shall be presented to and ruled on by the court. A mediator may not grant a continuance for mediation or a hearing date in a Small Claims case.

(d) Mediation of Land Use and Natural Gas Pipeline Matters.

(1) Referral to Mediation. All requests for mediation of land use or natural gas pipeline matters pursuant to 5 M.R.S. §§ 3341 or 3345 shall be referred to CADRES upon the filing of an application with the Superior Court as required by 5 M.R.S. §§ 3341(4) and 3345(4). The original application will be docketed and retained by the clerk in an "SA" file, and a copy sent to the CADRES Director. In addition to these statutory land use matters, any case involving a land use dispute may be referred to CADRES at the discretion of the court or on request of the parties.

(2) Date and Location of Mediation. Once the mediator is selected, the mediator shall assist the parties in arranging a mutually agreeable date, time and location for mediation. The mediation may take place at a courthouse, if space is available, and if authorized by the clerk.

(3) Mediation Fee. The fee for the initial land use and natural gas pipeline mediation session is payable by the landowner who submits the application. Additionally, the CADRES Director shall determine the cost of providing notice, if any, which the landowner shall pay prior to the scheduling of mediation. If subsequent mediation sessions occur, the parties and mediator shall agree on an appropriate fee arrangement.

(4) Selection of Mediator. The parties shall choose their mediator from the Land Use and Environmental Mediation Roster list provided by CADRES. A list of mediators on the Land Use and Environmental Mediation Roster shall be available to the public in printed copy upon request and posted on the Judicial Branch website, where it shall be updated at least twice annually.

(e) Mediation of Environmental Enforcement Actions.

(1) Referral. All requests for mediation pursuant to 38 M.R.S. § 347-A shall be referred to CADRES upon the receipt of a request from a party.

(2) Mediation Fee. A fee for environmental enforcement mediation shall be paid. If an action pursuant to Rule 80K is not already pending, the additional applicable filing fee is required. Notwithstanding the general exemption for state agencies from payment of fees, the State of Maine Department of Environmental Protection (DEP) shall pay one-half of the fee and may pay the entire fee. The DEP is exempt from payment of any filing fee.

(3) Selection of Mediator. The parties shall choose their mediator from a Land Use and Environmental Mediation Roster provided by CADRES. A current listing of the mediators on the Land Use and Environmental Mediation Roster shall be available to the public in printed copy upon request and posted on the Judicial Branch website, where it shall be updated at least twice annually.

(4) Date and Location of Mediation. Once the mediator is selected, the mediator shall assist the parties in arranging a mutually agreeable date, time, and location for mediation. The mediation may take place at a courthouse, if space is available, and if authorized by the clerk.

(f) Mediation in Forcible Entry and Detainer Actions.

(1) Mediation Required. The parties to all Forcible Entry and Detainer actions may be required to participate in mediation as ordered by the court. The court may not order mediation if no mediator is available on the hearing date or if mediation would delay the hearing.

(2) Date and Location of Mediation. Mediation shall take place on the hearing date, unless all parties agree to hold mediation prior to the hearing date, and CADRES is able to arrange for mediation. Mediation shall take place at a courthouse, unless otherwise authorized by the court or the CADRES Director.

(3) Mediation Fee. The mediation fee is included in the filing fee.

(4) Assignment of Mediators. The clerk of court, or a designee, shall notify CADRES of all dates on which the Forcible Entry and Detainer docket is to be scheduled, as well as any subsequent scheduling changes. CADRES shall assign one or more mediators to provide mediation services at every scheduled Forcible Entry and Detainer docket. At least twice annually, CADRES shall supply to every District Court a current list of Forcible Entry and Detainer mediation assignments, as well as a current list of mediators on the Forcible Entry and Detainer Mediation Roster.

(5) Continuances. All requests for continuance of mediation or a hearing date shall be presented to and ruled on by the court. A mediator may not grant a continuance for mediation or a hearing date.

(g) Sanctions.

If a party or party's attorney fails to appear at mediation or other ADR process scheduled pursuant to this Rule, or fails to comply with any other requirement of this Rule or any court order issued pursuant to this rule, the court may, upon motion of a party or on its own motion, order the parties to submit to mediation or other ADR, dismiss the action or any part of the action, render a decision or judgment by default, or impose any other sanction that is just and appropriate in the circumstances. In lieu of or in addition to any other sanction, the court shall require the party or attorney, or both, to pay reasonable

expenses, including attorney fees, of the opposing party, and any fees and expenses of a neutral, incurred by reason of the nonappearance, unless the court finds that an award would be unjust in the circumstances.

Land Use Mediation Program
Title 5, Part 8, Chapter 314, Subchapter 2.

Current with legislation through the 2008 Second Regular Session

§ 3341. Land use mediation program

1. Program established. The land use mediation program is established to provide eligible private landowners with a prompt, independent, inexpensive and local forum for mediation of governmental land use actions as an alternative to court action.

2. Provision of mediation services; forms, filing and fees. The Court Alternative Dispute Resolution Service created in Title 4, section 18-B shall provide mediation services under this subchapter. The Court Alternative Dispute Resolution Service shall:

A. Assign mediators under this subchapter who are knowledgeable in land use regulatory issues and environmental law;

B. Establish a simple and expedient application process. Not later than February 1st of each year, the Court Alternative Dispute Resolution Service shall send to the chair of the Land and Water Resources Council a copy of each completed application received and each agreement signed during the previous calendar year; and

C. Establish a fee for services in an amount not to exceed \$175 for every 4 hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under subsection 7.

3. Application; eligibility. A landowner may apply for mediation under this subchapter if that landowner:

A. Has suffered significant harm as a result of a governmental action regulating land use;

B. Applies for mediation under subsection 4 within the time allowed under law or rules of the court for filing for judicial review of that governmental action;

C. Has:

(1) For mediation of municipal governmental land use action, sought and failed to obtain a permit, variance or special exception and has pursued all reasonable avenues of administrative appeal; or

(2) For mediation of state governmental land use action, sought and failed to obtain governmental approval for a land use of that landowner's land and has a right to judicial review under section 11001

either due to a final agency action or the failure or refusal of an agency to act; and

D. Submits to the Superior Court clerk all necessary fees at the time of application.

4. Submission of application for mediation. A landowner may apply for mediation under this subchapter by filing an application for mediation with the Superior Court clerk in the county in which the land that is the subject of the conflict is located. The Superior Court clerk shall forward the application to the Court Mediation Service.

5. Stay of filing period. Notwithstanding any other provision of law, the period of time allowed by law or by rules of the court for any person to file for judicial review of the governmental action for which mediation is requested under this subchapter is stayed for 30 days beyond the date the mediator files the report required under subsection 12 with the Superior Court clerk, but in no case longer than 120 days from the date the landowner files the application for mediation with the Superior Court clerk.

6. Purpose; conduct of mediation. The purpose of a mediation under this subchapter is to facilitate, within existing land use laws, ordinances and regulations, a mutually acceptable solution to a conflict between a landowner and a governmental entity regulating land use. The mediator, whenever possible and appropriate, shall conduct the mediation in the county in which the land that is the subject of the conflict is located. When mediating that solution, the mediator shall balance the need for public access to proceedings with the flexibility, discretion and private caucus techniques required for effective mediation.

7. Schedule; notice; participants. The mediator is responsible for scheduling all mediation sessions. The mediator shall provide a list of the names and addresses and a copy of the notice of the mediation schedule to the Superior Court clerk, who shall mail the notices. The mediator shall include on the list persons identified in the following ways.

A. The landowner and the governmental entity shall provide to the mediator the names and addresses of the parties, intervenors and other persons who significantly participated in the underlying governmental land use action proceedings.

B. Any other person who believes that that person's participation in the mediation is necessary may file a request with the mediator to be included in the mediation.

C. The mediator shall determine if any other person's participation is necessary for effective mediation.

8. Parties to mediation. A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation, including persons representing municipal, county or state agencies and abutters, parties, intervenors or other persons significantly involved in the underlying governmental land use action. A mediator may exclude or limit a person's participation in mediation when the mediator determines that exclusion or limitation necessary for effective mediation. This subsection does not require a municipality to participate in mediation under this subchapter.

9. Sharing of costs. Participants in the mediation may share the cost of mediation after the initial 4 hours of mediation services have been provided.

10. Admissibility. The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by the Maine Rules of Evidence, Rule 408(a) for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.

11. Agreements. A mediated agreement must be in writing. The landowner, the governmental entity and all other participants who agree must sign the agreement as participants and the mediator must sign as the mediator.

A. An agreement that requires any additional governmental action is not self-executing. If any additional governmental action is required, the landowner is responsible for initiating that action and providing any additional information reasonably required by the governmental entity to implement the agreement. The landowner must notify the governmental entity in writing within 30 days, after the mediator files the mediator's report under subsection 12, that the landowner will be taking action in accordance with the agreement.

B. Notwithstanding any procedural restriction that would otherwise prevent reconsideration of the governmental action, a governmental entity may reconsider its decision in the underlying governmental land use action in accordance with the agreement as long as that reconsideration does not violate any substantive application or review requirement.

12. Mediator's report. Within 90 days after the landowner files an application for mediation, the mediator shall file a report with the Superior Court clerk. The mediator shall file the report as soon as possible if the mediator determines that a mediated agreement is not possible. The report must contain:

A. The names of the mediation participants, including the landowner, the governmental entity and any other persons;

B. The nature of any agreements reached during the course of mediation, which mediation participants were parties to the agreements and what further action is required of any person;

C. The nature of any issues remaining unresolved and the mediation participants involved in those unresolved issues; and

D. A copy of any written agreement under subsection 11.

13. Application. This subchapter applies to final agency actions and failures and refusals to act occurring after July 4, 1996.

14. Repealed. Laws 2001, c. 184, § 4.

Court Alternative Dispute Resolution Service
Title 4, Chapter 1, Subchapter 1-B.

Current with legislation through the 2008 Second Regular Session

§ 18-B. Court Alternative Dispute Resolution Service

1. Court Alternative Dispute Resolution Service. There is established within the Administrative Office of the Courts a Court Alternative Dispute Resolution Service to provide alternative dispute resolution, referred to in this section as “ADR,” services in the courts throughout the State.

2. ADR providers. The Judicial Department, through the State Court Administrator or the administrator's designee, shall contract for the services of qualified persons or organizations to serve as providers of ADR services to parties. The ADR providers are not employees of the State for any purpose. The ADR providers are entitled to be paid a reasonable per diem fee plus reimbursement of their actual, necessary and reasonable expenses incurred in the performance of their duties, consistent with policies established by the Administrative Office of the Courts.

3. Immunity from civil liability. A person serving as an ADR provider under contract with the Judicial Department or as the Director of the Court Alternative Dispute Resolution Service is immune from any civil liability, as are employees of governmental entities, under the Maine Tort Claims Act, for acts performed within the scope of the provider's or the director's duties.

4. Staff. With the advice and approval of the Court Alternative Dispute Resolution Service Committee, the State Court Administrator shall employ or contract with a person to serve as the Director of the Court Alternative Dispute Resolution Service. The State Court Administrator shall provide other necessary staff and clerical assistance to the Court Alternative Dispute Resolution Service, within the limits of funds available.

5. Facilities. The State Court Administrator shall provide a principal office for the Court Alternative Dispute Resolution Service and shall arrange for facilities throughout the State as necessary and adequate for the conduct of ADR sessions, within the limits of funds available.

6. Court Alternative Dispute Resolution Service Committee. The Court Alternative Dispute Resolution Service Committee, or “committee,” is established to set policy for and monitor the Court Alternative Dispute Resolution Service. The committee consists of:

A. The Chief Justice of the Supreme Judicial Court or a designee;

B. The Chief Justice of the Superior Court or a designee;

C. The Chief Judge of the District Court or a designee;

D. The State Court Administrator or a designee;

E. A Justice of the Superior Court, who is appointed by and serves at the pleasure of the Chief Justice of the Supreme Judicial Court;

F. A Judge of the District Court, who is appointed by and serves at the pleasure of the Chief Justice of the Supreme Judicial Court; and

G. Any additional members appointed by the Chief Justice of the Supreme Judicial Court that the Chief Justice considers necessary to the committee's operation.

7. Fees. When a court refers parties to the Court Alternative Dispute Resolution Service, the court shall assess the parties a fee to be apportioned equally among the parties, unless the court otherwise directs. The fee must be deposited in the dedicated account created in subsection 8.

A party may file an in forma pauperis application for waiver of fee. If the court finds that the party does not have sufficient funds to pay the fee, it shall order the fee waived.

8. Court Alternative Dispute Resolution Service Fund. The Court Alternative Dispute Resolution Service Fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected for ADR services provided pursuant to this section must be deposited in the fund.

Except as otherwise provided in this section, the Administrative Office of the Courts shall use 100% of the resources in the funds from nondesignated cases to cover the costs of providing ADR services as required under this section. All funds from cases handled by the Court Alternative Dispute Resolution Service pursuant to Title 38, section 347-A, subsection 4, paragraph E must be used for the costs of providing ADR services as required under this section.

9. Rules. The Supreme Judicial Court shall adopt rules to govern the referral of cases to the Court Alternative Dispute Resolution Service.

10. Land use mediation. The land use mediation program is a program within the Court Alternative Dispute Resolution Service.

A. The Director of the Court Alternative Dispute Resolution Service shall administer the land use mediation program established in Title 5, chapter 314, subchapter II.

B. A land use mediation fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected for mediation services pursuant to Title 5, chapter 314, subchapter II must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 5, chapter 314, subchapter II.

11. Mediation of disputes involving natural gas pipelines. The natural gas pipeline dispute resolution program is a program within the Court Alternative Dispute Resolution Service.

A. The Director of the Court Alternative Dispute Resolution Service shall administer the natural gas pipeline dispute resolution program established in Title 5, chapter 314, subchapter III.

B. A natural gas pipeline dispute resolution fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected for mediation services pursuant to Title 5, chapter 314, subchapter III must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 5, chapter 314, subchapter III.

Maine Agricultural Marketing and Bargaining Act of 1973
Title 13, Part 2, Chapter 85, Subchapter 2, Article 6.

Current with legislation through the 2008 Second Regular Session

§ 1958-B. Dispute resolution

1. Voluntary mediation. At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. Voluntary mediation may not last for more than 3 days for annual crops; voluntary mediation for all other commodities may not last more than 5 days. Mediation may be extended by mutual agreement by the bargaining parties.

2. Required mediation. Any matters remaining in dispute between the handler and a qualified association 30 days prior to the contract date, as defined in subsection 4, must be submitted by the parties to required mediation. No later than 30 days prior to the contract date, the parties must have mutually agreed on a mediator and on sharing the costs of mediation or must have notified the board that the services of the State's Panel of Mediators will be needed. If services of the State's Panel of Mediators are used, the parties shall share all costs of mediation equally. Mediation may not continue for more than 3 consecutive business days for annual crops; all other commodities may not last more than 5 days, unless the mediator earlier declares that resolution by mediation is not possible. Mediation may be extended by mutual agreement by the bargaining parties. At the end of the mediation period or upon the mediator's earlier declaration, the mediator shall promptly prepare a report specifying all agreements reached in mediation and recommending that the parties either resume bargaining as to all matters remaining in dispute for a period of time not to exceed 2 days or that the parties submit all matters remaining in dispute to arbitration. The parties shall proceed according to the mediator's recommendation. If the parties are to resume bargaining, that bargaining must commence on the day after the day on which the mediator makes the recommendation. Any matters remaining in dispute at the end of the specified bargaining period must be submitted to arbitration.

3. Different contract date. Once a contract date has been established as provided in subsection 2, the parties may mutually agree to a different contract date, provided that they do so no less than 45 days prior to the contract date established as provided in subsection 4.

4. Definition. The term “contract date” as used in subsection 2, shall have the following meaning.

A. Where, on the effective date of this section, there is no contract under this article in existence between the parties, the contract date shall be the date set by the board, in consultation with the parties, as the date by which a contract must be signed by both parties. After that date, as between those parties, the contract date shall be the anniversary of the date set by the board initially.

B. Where, on the effective date of this section, a contract under this article exists between the parties, the contract date shall be the anniversary of the date upon which that contract was signed by both parties.

5. Arbitration. The parties shall notify the board and the Commissioner of Agriculture, Food and Rural Resources at the commencement of required mediation and an arbitrator must be selected as provided in paragraph D. One day after the mediator recommends arbitration or one day after the conclusion of the period of further bargaining, as provided in subsection 2, each party shall submit to the arbitrator its final offer in which it shall identify all matters as to which the parties agree with contractual language setting forth these agreements, and all matters as to which the parties do not agree with contractual language setting forth the party's final offer for resolution of those disagreements.

A. For all matters submitted to arbitration, the arbitrator shall choose between the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer that the arbitrator shall accept and render as the decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may utilize other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within 10 days of the commencement of arbitration and that decision shall be binding on the parties. If the parties reach an agreement on the matters in the arbitrator's decision prior to signing the contract, they may submit a joint final offer to the arbitrator. The arbitrator shall rescind the previous decision and accept and render the joint final offer as the decision.

B. Within 5 days of the arbitrator's decision, the board shall prepare a contract which must include all terms agreed to by the parties in bargaining or settled by voluntary or required mediation or by arbitration and must present the contract to the parties who shall sign the contract within 2 days of its presentation.

C. The commissioner, in consultation with the board, shall establish a panel of arbitrators, who must be qualified by education, training or experience to carry out the responsibilities of an arbitrator under this article.

D. Upon notification by the parties as provided in this subsection, the commissioner shall submit to the parties a list containing an odd number of names of members of the panel of arbitrators who are available for the specific pending arbitration and have expressed a willingness to serve. The parties shall alternately strike names from the list until a single name is left, who shall serve as the arbitrator. The order of striking names must be determined by chance.

E. All costs of arbitration must be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the board. Each party shall pay the arbitrator directly.

5-A. Criteria for arbitrator decisions. The arbitrator shall consider the following factors in making a decision pursuant to subsection 5:

A. Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing market areas;

B. The quantity of the commodity produced or projections of production in the production area or competing market areas;

C. The relationship between the quantity produced and the quantity handled by the handler;

D. The producer's costs of production including the cost that would be involved in paying farm labor a fair wage rate;

E. The average consumer prices for goods and services, commonly known as the cost of living;

F. The impact of the award on the competitive position of the handler in the market area or competing market areas;

G. The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities;

H. A fair return on investment;

I. The kind, quality or grade of the commodity involved;

J. Prior agreements of the parties; and

K. Other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved.

6. Violation. Failure by a party to comply with any of the requirements of this section is a violation of this article.