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States' Alternative Dispute Resolution Statutes

STATE OF VERMONT

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Arbitration Act

Title Twelve, Part 9, Chapter 192.

Current through the laws of the Adjourned Session of the 2007-2008 Vermont General Assembly

Subchapter 1. General Provisions

§ 5651. Short title

This chapter may be cited as the Vermont Arbitration Act.

§ 5652. Validity of arbitration agreements

(a) General rule. Unless otherwise provided in the 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 creates a duty to arbitrate, and is valid, enforceable and irrevocable, except upon such grounds as exist for the revocation of a contract.

(b) Required provision. No agreement to arbitrate is enforceable unless accompanied by or containing a written acknowledgment of arbitration signed by each of the parties or their representatives. When contained in the same document as the agreement to arbitrate, that acknowledgment shall be displayed prominently. The acknowledgment shall provide substantially as follows:

"ACKNOWLEDGMENT OF ARBITRATION.

I understand that (this agreement/my agreement with _____ of _____) contains an agreement to arbitrate. After signing (this/that) document, I understand that I will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, I agree to submit any such dispute to an impartial arbitrator."

§ 5653. Limitations

(a) This chapter applies to all arbitration agreements to the extent not inconsistent with the laws of the United States. However, this chapter does not apply to labor interest arbitration, nor to arbitration agreements contained in a contract of insurance, nor to grievance arbitration under chapter 28 of Title 3. "Labor interest arbitration" means the method of concluding labor negotiations by having a disinterested person determine what will be the terms of an agreement.

(b) No arbitration agreement shall have the effect of preventing a person from seeking or obtaining the assistance of the courts in enforcing his constitutional or civil rights.

§ 5654. 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 or substantially similar provisions.

§ 5655. Representation by attorney

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

Subchapter 2. Arbitration Procedures

§ 5661. Majority action by arbitrators

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

§ 5662. Witnesses; subpoenas; depositions

(a) Arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and may administer oaths. Subpoenas so issued shall be served in the manner provided by law for subpoenas in civil actions.

(b) 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.

(c) All provisions of law compelling a person under subpoena to appear and to testify are applicable to subpoenas issued by arbitrators. Upon application, a court shall enforce or quash such a subpoena in the same manner as a subpoena in a civil action.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior courts.

§ 5663. Award

(a) An arbitration award shall be in writing and signed by the arbitrators joining in it. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within such time as a court orders. The parties may extend the time in writing either before or after the expiration of an agreed or ordered time. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection before the award is delivered to him.

§ 5664. Modification of award by arbitrators

(a) An award may be modified by the arbitrators:

(1) on application of a party; or

(2) following submission to the arbitrators from a court, and under such conditions as the court may order.

(b) Modification may be made for the purpose of clarifying the award or upon the following grounds:

(1) 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; or

(2) 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

(3) the award is imperfect in a matter of form, not affecting the merits of the controversy.

(c) An application by a party for modification shall be made within 30 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 ten days from the notice. The award so modified or corrected is subject to being subsequently confirmed, modified or vacated by a court.

§ 5665. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses incurred in the conduct of the arbitration, shall be paid as provided in the award. An arbitration award may direct the payment of attorney fees if the parties have explicitly authorized the arbitrator to make such an award or if the award is based in whole or in part upon state or federal law which permits recovery of attorney fees.

§ 5666. Hearing

Unless otherwise provided by the agreement:

(1) 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 five days before the hearing. Appearance at the hearing waives all objections to notice.

(2) The arbitrators may adjourn the hearing from time to time as necessary. On request of a party and for good cause, or upon their own motion, the arbitrators 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.

(3) The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

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

(5) The hearing shall be conducted by all the arbitrators but the 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.

Subchapter 3. Judicial Proceedings

§ 5671. Jurisdiction

The making of an agreement to arbitrate which is subject to this chapter confers jurisdiction on the superior court for proceedings under this chapter. Except where the context requires a broader reading, the term "court" as used in this chapter means the superior court. In relation to any such agreement to arbitrate, the court may enter any one or more orders:

- (1) to compel a person to proceed with arbitration;
- (2) to stay arbitration;
- (3) to appoint arbitrators;
- (4) to enforce a subpoena issued by arbitrators;
- (5) to direct arbitrators to proceed with hearings or to make an award;
- (6) to confirm an award of arbitrators;
- (7) to vacate an award;
- (8) to modify an award or to submit to arbitrators to consider modifying an award; and
- (9) to enter judgment on the award.

§ 5672. Venue

(a) An initial application to the superior court may be made:

- (1) in any county in which the agreement provides that arbitration hearings shall be held; or
- (2) if a hearing has been held by arbitrators, in the county in which it was held; or
- (3) in other cases, in the county where the party adverse to the moving party resides or has a place of business or, if he has neither in Vermont, in Washington county.

(b) All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

§ 5673. Applications to court; service

(a) Except as otherwise provided, an application to the superior court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule for the making and hearing of motions.

(b) 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 a civil action.

§ 5674. Proceedings to compel or stay arbitration

(a) On application of a party showing an agreement subject to this chapter and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement, the court shall determine the issue summarily. If the court finds for the moving party, it shall order the parties to proceed with arbitration. Otherwise, the application shall be denied.

(b) On application to compel or stay arbitration, and on a showing that there is no agreement to arbitrate, the court may stay a commenced or threatened arbitration proceeding. When in substantial and bona fide dispute, the issue of whether there is an agreement to arbitrate shall be forthwith and summarily tried. The court shall order the stay if it finds no enforceable agreement to arbitrate. Otherwise, the court shall order the parties to proceed to arbitration.

(c) When the existence or validity of an agreement to arbitrate or a party's refusal to arbitrate is in substantial and bona fide dispute, the court shall proceed summarily to the determination of the issue.

(d) Notwithstanding section 5672 of this title relating to venue, if an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a superior court, applications to compel or to stay arbitration shall be made only to that court.

(e) Any action or civil proceeding involving an issue which is subject to arbitration shall be stayed if an order to compel arbitration or an application therefor has been made. If the issue is severable, the stay may be with respect only to that issue. When application to compel arbitration is made to a court other than the one in which the action or proceeding is pending, any order to compel arbitration shall include that stay.

(f) An order to compel arbitration shall not be refused on the ground that the claim in issue lacks merits or bona fides nor because the applicant has failed to show fault or grounds for the claim sought to be arbitrated.

§ 5675. Appointment of arbitrators

(a) On application of a party, a court shall appoint one or more arbitrators if:

- (1) the arbitration agreement does not provide for a method of appointment; or
- (2) the agreed method fails or for any reason cannot be followed; or
- (3) an appointed arbitrator fails or is unable to act and his successor has not been duly appointed.

(b) If the arbitration agreement provides a method of appointment of arbitrators, that method shall be followed.

(c) An arbitrator appointed by the court has all of the powers of an arbitrator appointed under an agreement.

§ 5676. Confirmation of an award

Upon application of a party to confirm, modify or vacate an award, the court shall confirm the award unless it finds grounds for vacating or modifying the award.

§ 5677. Vacating an award

(a) Upon application of a party to confirm, modify or vacate an award, the court shall vacate an award where:

- (1) the award was procured by corruption, fraud or other undue means;
- (2) 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;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing after being shown sufficient cause to do so, or refused to hear evidence material to the controversy, or otherwise conducted the hearing, contrary to this chapter so as to prejudice substantially the rights of a party; or
- (5) a court has found that there was no arbitration agreement and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that relief granted by the arbitrators could not have been granted by a court is not reason to vacate or refuse to confirm the award.

(c) An application to vacate an award shall be made within 30 days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud or other undue means, it may be made within 30 days after such grounds are known or should have been known.

(d) If the court vacates the award on grounds other than that there was no arbitration agreement, it may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of such a provision, as appointed by the court. If the court vacates the award because the arbitrators exceeded their powers or improperly conducted the hearing, the court may order a rehearing before the arbitrators who made the award or their successors. Any time within which the agreement requires an award to be made applies to the rehearing, and commences from the date of the order.

(e) If an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

§ 5678. Modification of award

(a) Upon application of a party to confirm, modify or vacate an award, and made within 30 days after delivery of a copy of an award to the applicant, the court may submit the award to the arbitrators for modification or may consider modification under this section.

(b) If the court considers modification, it shall modify the award where it finds:

- (1) 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;
- (2) 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
- (3) the award is imperfect in a matter of form, not affecting the merits of the controversy.

(c) If modification is granted, the court shall modify the award so as to effect its intent and shall confirm the award as so modified and corrected.

(d) An application to modify an award shall be made within 30 days after delivery of a copy of the

award to the applicant. It may be joined in the alternative with an application to vacate the award.

§ 5679. Judgment or decree on award

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

§ 5680. Judgment roll; docketing

(a) On entry of judgment, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (1) the agreement and each written extension of the time within which to make the award;
- (2) the award;
- (3) a copy of the order confirming, modifying or correcting the award; and
- (4) a copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

§ 5681. Appeals

(a) An appeal may be taken from:

- (1) an order denying an application to compel arbitration;
- (2) an order granting an application to stay arbitration;
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgment in a civil action.

Uniform Mediation Act
Title Twelve, Part 9, Chapter 194.

Current through the laws of the Adjourned Session of the 2007-2008 Vermont General Assembly

§ 5711. Short title

This chapter may be cited as the Vermont Uniform Mediation Act.

§ 5712. Uniformity of application

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 5713. Definitions

As used in this chapter:

- (1) "Court" means a court of competent jurisdiction in Vermont .
- (2) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
- (3) "Mediation communication" means a statement, whether oral, in a record, verbal, or nonverbal, that is made or occurs during a mediation or for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- (4) "Mediator" means an individual who conducts a mediation.
- (5) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.
- (6) "Party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.
- (7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.
- (8) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery; or a legislative hearing or similar process.
- (9) "Record," except in the phrase "record of proceeding," 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.
- (10) "Sign" includes:
 - (A) executing or adopting a tangible symbol with the present intent to authenticate a record;
 - (B) attaching or logically associating an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

§ 5714. Scope

(a) Except as otherwise provided in subsection (b) or (c) of this section, this chapter applies to a mediation in which:

- (1) the parties are required to mediate by statute or court or administrative agency rule, or referred to mediation by a court, administrative agency, or arbitrator;
- (2) the parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
- (3) the parties utilize as a mediator a person that holds himself or herself out as providing mediation services.

(b) This chapter does not apply to a mediation:

- (1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;
- (2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that this chapter applies to a mediation arising out of such a dispute that has been filed with a court or with a public agency other than the federal mediation and conciliation service or the Vermont labor relations board;

(3) conducted under the auspices of a primary or secondary school where all the parties are students, or under the auspices of a correctional institution for youths where all the parties are residents of that institution; or

(4) conducted by a judge who might make a ruling on the case.

(c) If the parties agree in advance that all or part of a mediation is not privileged, the privileges under sections 5715 through 5717 of this title do not apply to the mediation or part agreed upon. The agreement must be in a signed record or reflected in the record of a proceeding. However, sections 5715 through 5717 of this title apply to a mediation communication made by a person who has not received actual notice of the agreement before the communication is made.

§ 5715. Privilege against disclosure; admissibility; discovery

(a) A mediation communication is privileged and is not subject to discovery or admissible in evidence in a proceeding.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

§ 5716. Waiver and preclusion of privilege

(a) A privilege under section 5715 of this title may be waived in a record or orally during a proceeding, if it is expressly waived by all parties to the mediation, and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person who discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 5715 of this title to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person who intentionally uses a mediation to plan, attempt to commit, or commit a crime, or conceal an ongoing crime or ongoing criminal activity, may not assert a privilege under section 5715 of this title.

§ 5717. Exceptions to privilege

(a) There is no privilege under section 5715 of this title for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

- (2) available to the public under subchapter 3 of chapter 5 of Title 1, or made during a session of a mediation which is open, or is required by law to be open, to the public;
- (3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (4) intentionally used to plan, attempt to commit, or commit a crime, or conceal an ongoing crime or ongoing criminal activity;
- (5) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, but this exception does not apply where a child or adult protection case is referred by a court to mediation and a public agency participates in the mediation;
- (6) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator; or
- (7) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, nonparty participant, or representative of a party based on conduct occurring during a mediation, except as otherwise provided in subsection (c) of this section.

(b) There is no privilege under section 5715 of this title if a court, administrative agency, or arbitration panel finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and the mediation communication is sought or offered in:

- (1) a criminal proceeding in district court;
- (2) a child protection proceeding under chapter 49 or 55 of Title 33;
- (3) a protection proceeding involving a vulnerable adult under chapter 69 of Title 33; or
- (4) a proceeding to prove a claim to rescind or reform, or a defense to avoid liability on, a contract arising out of the mediation, except as otherwise provided in subsection (c) of this section.

(c) A mediator may not be compelled to provide evidence of a mediation communication referenced in subdivision (a)(7) or (b)(4) of this section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this section does not render the evidence or any other mediation communication discoverable or admissible for any other purpose.

§ 5718. Mediator report; disclosure; background

(a) A mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, agency, or other authority that may make a ruling on the dispute that is the subject of the mediation, but a mediator may disclose:

- (1) whether the case is not appropriate for mediation, whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
- (2) a mediation communication as permitted under section 5717 of this title; or
- (3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of a child or vulnerable adult to a public agency responsible for protecting such individuals against such mistreatment.

(b) A communication made in violation of subsection (a) of this section may not be considered by a court or other tribunal.

(c) Subsections (d), (e), (f), and (g) of this section do not apply to an individual acting as a judge.

(d) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a party or foreseeable participant in the mediation; and

(2) disclose as soon as is practicable before accepting a mediation any such fact known.

(e) If a mediator learns any fact described in subdivision (d)(1) of this section after accepting a mediation, the mediator shall disclose as soon as is practicable.

(f) A mediator shall be impartial, unless, after disclosure of the facts required in subsections (d) and (e) of this section, the parties agree otherwise.

(g) A person who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute if requested to do so by a party.

(h) A person who violates subsection (d), (e), or (f) of this section is precluded from asserting a privilege under section 5715 of this title.

(i) Unless otherwise required by law, no special qualification by background or profession is necessary to be a mediator under this chapter.

§ 5719. Nonparty participation in mediation

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

§ 5720. Confidentiality

Unless subject to subchapter 2 or 3 of chapter 5 of Title 1, mediation communications are confidential to the extent agreed to by the parties or provided by law.

§ 5721. Relation to electronic signature in global and national commerce act

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (Act), 15 U.S.C. § 7001(c), except that nothing in this chapter modifies, limits, or supersedes Section 101(c) of the Act nor authorizes electronic delivery of any of the notices described in Section 103(b) of the Act.

§ 5722. Severability clause

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this chapter are

severable.

§ 5723. Application to existing agreements or referrals

(a) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after July 1, 2006.

(b) On or after July 1, 2008, this chapter governs an agreement to mediate whenever made.