University of Arkansas

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Idaho

www.NationalAgLawCenter.org

States' Alternative Dispute Resolution Statutes

STATE OF IDAHO

Index

Uniform Arbitration Act

Title 7, Chapter 9.

Current through the 2008 Second Regular Session

§ 7-901. 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 act does not apply to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

§ 7-902. Proceedings to compel or stay arbitration

(a) On application of a party showing an agreement described in section 7- 901, Idaho Code, 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.

(b) 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.

(c) 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 subdivision (a) of this section, the application shall be made therein. Otherwise and subject to section 7-918, Idaho Code, the application may be made in any court of competent jurisdiction.

(d) 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.

(e) 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.

§ 7-903. 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.

§ 7-904. Majority action by arbitrators

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

§ 7-905. Hearing

Unless otherwise provided by the agreement:

(a) 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 (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.

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

(c) 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.

§ 7-906. Representation by attorney

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

§ 7-907. Witnesses--Subpoenas--Depositions

(a) The arbitrators may issue 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.

(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 testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the district court.

§ 7-908. Award

(a) 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.

(b) 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.

§ 7-909. Change of award by arbitrators

On application of a party or, if an application to the court is pending under sections 7-911, 7-912 or 7-913, Idaho Code, 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 paragraphs (1) and (3) of subdivision (a) of section 7-913, Idaho Code, or for the purpose of clarifying the award. The application shall be made within twenty (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 ten (10) days from the notice. The award so modified or corrected is subject to the provisions of sections 7- 911, 7-912 and 7-913, Idaho Code.

§ 7-910. 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.

§ 7-911. 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 7-912 and 7-913, Idaho Code.

§ 7-912. Vacating an award

(a) Upon application of a party, 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 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 7- 905, Idaho Code, as to prejudice substantially the rights of a party; or
(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 7-902, Idaho Code, and the party did not participate in the arbitration hearing without raising the objection.
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.

(b) An application under this section shall be made within ninety (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 ninety (90) days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in clause (5) of subsection (a) 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 7-903, Idaho Code, or, if the award is vacated on grounds set forth in clauses (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 7-903, Idaho Code. 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.

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

§ 7-913. Modification or correction of award

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

(b) 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.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

§ 7-914. Judgment or decrees of 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.

§ 7-915. Judgment roll--Docketing

(a) On entry of judgment or decree, 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.

§ 7-916. Applications to court

Except as otherwise provided, an application to the court under this act 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.

§ 7-917. Court--Jurisdiction

The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section 7-901, Idaho Code, providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this act and to enter judgment on an award thereunder.

§ 7-918. Venue

An initial application shall be made to the 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.

§ 7-919. Appeals

(a) An appeal may be taken from:
(1) An order denying an application to compel arbitration made under section 7-912, Idaho Code;
(2) An order granting an application to stay arbitration made under section 7-902(b), Idaho Code;
(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 or decree entered pursuant to the provisions of this act.

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

§ 7-920. Act not retroactive

This act applies only to agreements made subsequent to the taking effect of this act.

§ 7-921. Uniformity of interpretation

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

§ 7-922. Short title

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

Seed arbitration
I.C. § 22-436

Current through the 2008 Second Regular Session

(1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of any seed for planting to produce or perform as represented by the required label to be attached to such seed under section 22-415, Idaho Code, or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a legal action against the dealer or any other seller of such seed, the buyer shall first submit the claim to arbitration as provided in this section. The monetary value of the claim must exceed three thousand dollars ($3,000). Any applicable period of limitations with respect to such claim shall be tolled until ten (10) days after the filing of the report of arbitration with the director of

the department of agriculture as provided in subsection (5)(i) of this section.

(2) Notice of arbitration requirement. Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or package. Arbitration shall not be required unless this notice is included. A notice in the following form, or equivalent language, shall be sufficient:

NOTICE OF REQUIRED ARBITRATION
Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint along with the filing fee with the Idaho Department of Agriculture within such time as to permit inspection of the crops, plants or trees. The buyer shall notify and serve a copy of the complaint upon the seller by certified mail.

(3) Effect of arbitration.
(a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.
(b) Commencement of legal action. In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.
(c) Use as evidence. In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the report of arbitration as evidence of the findings of the report, and the court may give such weight to the arbitration council's findings and recommendations as to damages and costs, as the court may see fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council with respect to the failure of any party to cooperate in the arbitration proceedings including, any finding as to the effect of delay in filing the arbitration claim upon the arbitration council's ability to determine the facts of the case.

(4) Seed arbitration council. The director of the department of agriculture shall appoint an arbitration council composed of six (6) members and five (5) alternate members. An Idaho department of agriculture representative and an alternate shall serve as permanent members. One (1) member and one (1) alternate shall be appointed upon the recommendation of each of the following:
(a) The associate dean of the college of agriculture; director of the Idaho agricultural experiment stations, college of agriculture, university of Idaho.
(b) The department head of plant, soil and entomological sciences, college of agriculture, university of Idaho.
(c) The president of Idaho-eastern Oregon seed association.
(d) The president of the Idaho crop improvement association.
(e) The president of the Idaho farm bureau.
Initially, three (3) members and their alternates shall be appointed for four (4) year terms and three (3) members and their alternates shall be appointed for two (2) year terms. Thereafter, members and alternates shall be appointed for four (4) year terms.

Each alternate member shall serve only in the absence of the member for whom the person is an alternate. No member or alternate shall be involved in an investigation of a complaint if he, his employer or employee is named in the filed complaint.

Either the buyer or the seller may challenge any member or alternate of the council if there is reason to believe that a conflict of interest exists. In the event that a member or alternate is challenged, the director of the department of agriculture shall appoint, with the consent of the buyer and seller, a replacement, who shall be knowledgeable about agricultural husbandry.

The council shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the council as the chairman may direct.

The purpose of the council is to conduct arbitration as provided in this section. The council may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director or such chairman in accordance with this section.

(5) Procedures.
(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a filing fee of one hundred dollars ($100) which is nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified mail within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives and by the dealer or seller from whom the seed was purchased. If the seeds are not planted, the buyer shall serve a copy of the complaint upon the seller by certified mail not later than two (2) years after the purchase of the seed lot.
(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.
(c) Referral to arbitration council. The director shall refer the complaint and answer to the council for investigation, findings and recommendation.
(d) Investigation. Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.
(e) Scope of report. The report of the council shall include findings and recommendations as to investigation costs, if any, for settlement of a complaint.
(f) Authority of council. In the course of its investigation, the council or any of its members may:
(i) Examine the buyer and the seller on all matters which the council considers relevant.
(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.
(iii) Submit seed samples for testing by state seed laboratory or appropriate laboratory.
(iv) Hold informal hearings at such time and place as the chairman may direct upon reasonable notice to all parties.
(v) Upon the chairman's request, call any person in for comments knowledgeable on any matter under investigation.
(vi) Assess the cost of conducting the investigation to the nonprevailing party or between the parties of a given complaint when deemed appropriate.
(vii) Include as the cost of investigation: travel, lodging and meals as established by the state, for any witness called by the council, and other administrative and secretarial expenses.

(g) Delegation. The council may delegate all or any part of any investigation to one (1) or more of its members. Any such delegated investigation shall be summarized in writing and considered by the council in its report.
(h) Compensation. The members of the council shall be compensated as provided in section 59-509(b), Idaho Code.
(i) Distribution of report. After the council has made its report the director shall promptly transmit the report by certified mail to all parties.

Seed Potato Arbitration
I.C. § 22-510

Current through the 2008 Second Regular Session

(1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of seed potatoes to perform as represented, or when any buyer claims to have been damaged by the failure of any seed potato to produce or perform as represented by the required label to be attached to such seed as prescribed in rules, or by warranty, or as a result of negligence, the buyer shall submit the claim to arbitration as provided in this section.

(2) Notice of required arbitration. In addition to the certification tag required under section 22-502, Idaho Code, conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on a notice of required arbitration tag, or otherwise attached to the seed bag or package. A notice in the following form, or equivalent language, shall be sufficient.

NOTICE OF REQUIRED ARBITRATION
Under the seed laws of certain states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint, along with the filing fee, with the State Department of Agriculture within such time as to permit inspection of the crops and notify seller of complaint by certified mail.

Arbitration shall not be required unless this notice is attached to the seed bag or package.

(3) Establishment of arbitration panel. Any individual or organization recognized by the potato industry in Idaho may provide a nomination list of five (5) names to the director. From that list of nominations, the director shall comprise a list consisting of fifteen (15) names from which the arbitration panel may be established.

(4) Procedures:
(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a nonrefundable filing fee of one hundred dollars ($100). The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in cases of seed which has not been planted, the complaint shall be filed within such time as to permit effective inspection of the plants under field conditions.
(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration panel. The complaint and answer shall be referred to a three (3) person arbitration panel. Each party shall select one (1) arbitrator from the arbitration panel established under the provisions of subsection (3) of this section. Those arbitrators shall select a third arbitrator from the director's list of nominees. Upon request by the chairman, the department may provide administrative support to the arbitration panel.
(d) Findings and recommendations. The panel is empowered, upon review of the buyer's complaint and the seller's answer, to conduct an investigation and make findings and recommendations.
(e) Investigation. Upon referral of a complaint for investigation, the panel shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.
(f) Scope of report. The report of the panel shall include findings and recommendations as to costs, if any, for settlement of a complaint.
(g) Authority of panel. In the course of its investigation, the panel or any of its members may:
(i) Question the buyer and the seller and any other person having knowledge of the matter under investigation.
(ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.
(iii) Submit seed samples for testing by the state seed laboratory or other appropriate laboratory.
(iv) Hold informal meetings or hearings at such time and place as the chairman may direct upon reasonable notice to all parties.
(v) Assess the cost of conducting the investigation to the nonprevailing party of a given complaint.
(h) After the investigation and the report of the panel has been released, either party may request at their own expense, a final determination by an independent mediator. If the parties cannot come to an agreement through mediation, no record of the arbitration findings will be discussed or used in a court of law against either side.

Taking up hogs--Arbitration of damages
I.C. § 25-2104

Current through the 2008 Second Regular Session

If the owner and taker-up of such hog cannot agree as to the amount of damage, they must each select a disinterested person, residing in the precinct where such trespass has been committed, who must, after first hearing all the facts in the case from both parties interested, fix the amount of damages, if any, to be paid, and the same are a lien upon said hog and other personal property of the owner, not exempt by law, and if said amount is not paid within five (5) days, together with the costs of keeping said hog, the taker-up must notify the constable of the precinct, whose duty it is to levy upon the hog and a sufficient amount of other personal property of the owner not exempt by law, as shall pay all damages and costs, and shall sell at public auction on the premises where the said hog was taken up, after first giving five (5) days' notice of such sale, in the manner prescribed in the last section, and must be applied, first, to the payment of the constable's fees, which are the same as on execution; second, the payment of the award, and subsequent charges for keeping, to the taker-up of such hog, and the remainder, if any, must be paid to the owner of such hog: provided, that either party feeling aggrieved by the award may appeal to any justice's or probate court within the county, within five (5) days after said award, and the party so appealing must file a good and sufficient bond for the payment

of all costs and expenses arising from said appeal.

Uniform Mediation Act

Title, 9, Ch. 8.

Current through the 2008 Second Regular Session

§ 9-801. Short title

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

§ 9-802. Definitions

In this chapter:

(1) "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.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(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) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Proceeding" means:
(a) A judicial, administrative, arbitral or other adjudicative process, including related prehearing and posthearing motions, conferences and discovery; or
(b) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:
(a) To execute or adopt a tangible symbol with the present intent to authenticate a record;
(b) To attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate a record; or
(c) To assent on a stenographic record with the present intent to authenticate a record.

§ 9-803. Scope

(1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:
(a) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency or arbitrator;
(b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
(c) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:
(a) Relating to the establishment, negotiation, administration or termination of a collective bargaining relationship;
(b) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the chapter applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
(c) Conducted by a judge who might make a ruling on the case; or
(d) Conducted under the auspices of:
(i) A primary or secondary school if all the parties are students, or
(ii) A correctional institution for youth if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under sections 9-804 through 9-806, Idaho Code, do not apply to the mediation or part agreed upon. However, sections 9-804 through 9-806, Idaho Code, apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

§ 9-804. Privilege against disclosure--Admissibility--Discovery

(1) Except as otherwise provided in section 9-806, Idaho Code, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 9-805, Idaho Code.

(2) In a proceeding, the following privileges apply:
(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.
(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) 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.

§ 9-805. Waiver and preclusion of privilege

(1) A privilege under section 9-804, Idaho Code, may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:
(a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and
(b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under section 9-804, Idaho Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 9-804, Idaho Code.

§ 9-806. Exceptions to privilege

(1) There is no privilege under section 9-804, Idaho Code, for a mediation communication that is:
(a) In an agreement evidenced by a record signed by all parties to the agreement;
(b) Available to the public under sections 9-337 through 9-347, Idaho Code, or made during a session of a mediation which is open, or is required by law to be open, to the public;
(c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
(d) Intentionally used to plan a crime, attempt to commit or commit a crime or to conceal an ongoing crime or ongoing criminal activity;
(e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
(f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant or representative of a party based on conduct occurring during a mediation; or
(g) 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, unless the public agency participates in the mediation.

(2) There is no privilege under section 9-804, Idaho Code, if a court, administrative agency or arbitrator 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 that the mediation communication is sought or offered in:
(a) A court proceeding involving a felony or misdemeanor; or
(b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) 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 (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

§ 9-807. Prohibited mediator reports

(1) Except as otherwise provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court, administrative agency or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:
(a) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;
(b) A mediation communication as permitted under section 9-806, Idaho Code;
(c) A mediation communication evidencing abuse, neglect, abandonment or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment; or
(d) In mediation governed by Idaho rule of civil procedure 16(j), information permitted under Idaho rule of civil procedure 16(j).

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency or arbitrator.

§ 9-808. Confidentiality

Unless subject to sections 9-337 through 9-347 or 67-2340 through 67-2347, Idaho Code, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

§ 9-809. Mediator's disclosure of conflicts of interest--Background

(1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:
(a) 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 or create the appearance of affecting 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 mediation party or foreseeable participant in the mediation; and
(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

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

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under section 9-804, Idaho Code.

(5) Subsections (1), (2) and (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession.

(7) A mediator must be impartial unless, after disclosure of the facts required in subsections (1) and (2) of this section to be disclosed, the parties agree otherwise.

§ 9-810. Participation in mediation

Unless otherwise provided by court rule or order, 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.

§ 9-811. International commercial mediation

(1) In this section, "model law" means the model law on international commercial conciliation adopted by the United Nations commission on international trade law on June 28, 2002, and recommended by the United Nations general assembly in a resolution (A/RES/57/18) dated November 19, 2002, and "international commercial mediation" means an international commercial conciliation as defined in article 1 of the model law.

(2) Except as otherwise provided in subsections (3) and (4) of this section, if a mediation is an international commercial mediation, the mediation is governed by the model law.

(3) Unless the parties agree in accordance with section 9-803(3), Idaho Code, that all or part of an international commercial mediation is not privileged, sections 9-804, 9-805 and 9-806, Idaho Code, and any applicable definitions in section 9-802, Idaho Code, also apply to the mediation and nothing in article 10 of the model law derogates from sections 9-804, 9-805 and 9-806, Idaho Code.

(4) If the parties to an international commercial mediation agree under article 1, subsection 7., of the model law that the model law does not apply, this chapter applies.

§ 9-812. Relation to electronic signatures in global and national commerce act

This chapter modifies, limits or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but this chapter does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

§ 9-813. Uniformity of application and construction

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

§ 9-814. Application to existing agreements or referrals

This chapter governs a mediation occurring after the effective date of this chapter pursuant to a referral or an agreement to mediate, whenever made.

Conduct of Mediations

Idaho Rules of Evidence (I.R.E.), Rule 507

Current with amendments received through December 2008

(1) Definitions. In this Rule:

(a) "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.

(b) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(c) "Mediator" means an individual who conducts a mediation.

(d) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.

(e) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(f) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(g) "Proceeding" means any proceeding referenced in Idaho Rule of Evidence 101(c).

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(i) "Sign" means:
(1) to execute or adopt a tangible symbol with the present intent to authenticate a record; or
(2) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record; or
(3) to assent on a record with the present intent to authenticate a record.

(2) Scope.

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

(1) the mediation 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 mediation 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 mediation parties use as a mediator an individual who holds himself or herself out as a mediator or the mediation is provided by a person that holds itself out as providing mediation.

(b) The Rule 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 the Rule applies to a mediation arising out of a dispute that has been filed with an administrative agency or court;
(3) conducted by a judge who might make a ruling on the case; or
(4) conducted under the auspices of:
(A) a primary or secondary school if all the parties are students or
(B) a correctional institution for youths if all the parties are residents of that institution.

(c) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under subparts 3 through 5 do not apply to the mediation or part agreed upon. However, subparts 3 through 5 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

(3) Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in subpart 5, a mediation communication is privileged as provided in subsection (b) and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by subpart 4.

(b) In a proceeding, the following privileges apply:
(1) A mediation 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.

(4) Waiver and preclusion of privilege.

(a) A privilege under subpart 3 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 that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under subpart 3, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under subpart 3.

(5) Exceptions to privilege.

(a) There is no privilege under subpart 3 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 the Idaho Open Records Act 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 a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;
(5) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;
(6) except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or
(7) 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, unless the public agency participates in the mediation.

(b) There is no privilege under subpart 3 if a court, administrative agency, or arbitrator 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 that the mediation communication is sought or offered in:
(1) a court proceeding involving a felony or misdemeanor; or
(2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

(d) If a mediation communication is not privileged under subsection (a) or (b), 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) does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

(6) Application to existing agreements or referrals.

(a) The privileges created in this rule apply to communication made in the course of a mediation pursuant to a referral or an agreement to mediate made on or after the effective date of this Rule.

(b) On or after one year following the effective date, the privileges created in this rule apply to any mediation regardless of when the referral or agreement to mediate was made.

ALTERNATIVE DISPUTE RESOLUTION

Idaho Admin. Code 04.11.01.500

Current through December 2008.

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES.

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (7-1-93)

501. NEUTRALS.

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (7-1- 93)

502. CONFIDENTIALITY Rule.

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or agency rule to be make public. (7-1-93)

RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

Idaho Admin. Code 58.01.23

Current through December 2008.

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES.

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR) and the parties to a contested case may agree to use ADR. For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact finding, minitrials, and arbitration, or any combination of them. (3-15-02)

501. NEUTRALS.

When alternate dispute resolution (ADR) is agreed by the parties to be used for all or a portion of a contested case, a neutral may be used to assist the parties in resolving their disputed issues. The neutral may be an employee of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (3-15-02)

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.

Evidence of furnishing, offering, or promising to furnish, or accepting, offering, or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for, invalidity of, or amount of the claim or any other claim. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This section does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This section does not require exclusion if the evidence is offered for another purpose, such as proving bias or prejudice of a witness or negating a contention of undue delay. Compromise negotiations encompass mediation. (3-15-02)