

The National Agricultural
Law Center



University of Arkansas

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Illinois

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States' Alternative Dispute Resolution Statutes

STATE OF ILLINOIS

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Uniform Arbitration Act

Chapter 710, Act 5.

Current through the 2008 Regular Session

5/1. Validity of arbitration agreement

§ 1. 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 for the revocation of any contract, except that any agreement between a patient and a hospital or health care provider to submit to binding arbitration a claim for damages arising out of (1) injuries alleged to have been received by a patient, or (2) death of a patient, due to hospital or health care provider negligence or other wrongful act, but not including intentional torts, is also subject to the Health Care Arbitration Act.

5/2. Proceedings to compel or stay arbitration

§ 2. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in Section 1, 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. That 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 17, the application may be made in any circuit court.

(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.

5/3. Appointment of arbitrators

§ 3. Appointment of arbitrators. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, any method of appointment of arbitrators agreed upon by the parties to the contract shall be followed. An arbitrator so appointed has all the powers of one specifically named in the agreement. When an arbitrator appointed fails or is unable to act, his successor shall be appointed in the same manner as the original appointment. If the method of appointment of arbitrators is not specified in the agreement and cannot be agreed upon by the parties, the entire arbitration agreement shall terminate.

5/4. Majority action by arbitrators

§ 4. 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.

5/5. Hearing

§ 5. 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 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, unless otherwise provided in the agreement.

5/6. Representation by attorney

§ 6. 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.

5/7. Witnesses, subpoenas, depositions

§ 7. 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 civil cases.

(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 Circuit Court.

5/8. Award

§ 8. 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.

5/9. Change of award by arbitrators

§ 9. Change of award by arbitrators. On application of a party to the arbitrators or, if an application to the court is pending under Sections 11, 12 or 13, 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 13, 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 the provisions of Sections 11, 12 and 13.

5/10. Fees and expenses of arbitration

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

5/11. Confirmation of an award

§ 11. 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 12 and 13.

5/12. Vacating an award

§ 12. 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 one 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 5, 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 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is not ground for vacating or refusing to confirm the award.

(b) 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.

(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 Section 3, 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 3. 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.

(e) Nothing in this Section or any other Section of this Act shall apply to the vacating, modifying, or correcting of any award entered as a result of an arbitration agreement which is a part of or pursuant to a collective bargaining agreement; and the grounds for vacating, modifying, or correcting such an award shall be those which existed prior to the enactment of this Act.

5/13. Modification or correction of awards

§ 13. Modification or correction of awards. (a) 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:

(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.

5/14. Judgment on award

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

5/15. Applications to court

§ 15. 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 in civil cases. 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 summons in civil cases.

5/16. Court, jurisdiction

§ 16. Court, jurisdiction. The term “court” means any circuit court of this State. The making of an agreement described in Section 1 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.

5/17. Venue

§ 17. 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.

5/18. Appeals

§ 18. Appeals. Appeals may be taken in the same manner, upon the same terms, and with like effect as in civil cases.

5/19. Act not retroactive

§ 19. Act not retroactive. This Act applies only to agreements made subsequent to the effective date of this Act.

5/20. Construction of Act

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

5/21. Severability

§ 21. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

5/22. Short title

§ 22. Short title. This Act shall be known and may be cited as the “Uniform Arbitration Act”.

Seed Arbitration Act
Chapter 710, Act 25

Current through the 2008 Regular Session

25/1. Short title

§ 1. Short title. This Act may be cited as the Seed Arbitration Act.

25/5. Definitions

§ 5. Definitions.

“Arbitration” means arbitration under this Act.

“Council” means the Seed Arbitration Council.

“Department” means the Illinois Department of Agriculture.

“Director” means the Illinois Director of Agriculture.

“Seed” means agricultural and vegetable seed as defined in the Illinois Seed Law.

25/10. Purchaser required to arbitrate claim

§ 10. Purchaser required to arbitrate claim.

(a) A purchaser of seed cannot maintain a civil action against the seller for failure of the seed to produce or perform (i) as represented by a label attached to the seed or furnished under the Illinois Seed Law, (ii) as represented by warranty, or (iii) because of negligence, unless the buyer has first submitted the claim to arbitration.

(b) Any applicable period of limitation with respect to a claim subject to arbitration is tolled for the period beginning on the date the arbitration complaint is filed and the filing fee paid and ending on the date the findings of the administrative hearing officer are rendered.

25/15. Review Committee

§ 15. Review Committee.

(a) There shall be established a Review Committee consisting of the Director, the President of the Illinois Seed Dealers' Association, and a director of the Cooperative Extension Service, or a designee for each person. Membership on the Review Committee shall be for a period of one year. Each respective organization shall appoint its member.

(b) The Review Committee shall have the following powers: (1) to meet and review all complaints filed under this Act; (2) to require the purchaser and seller to be present when the complaint is reviewed; (3) to subpoena, through the Director; (4) to negotiate factors and to make recommendations concerning settlement of a complaint; (5) to prepare and present to the purchaser and seller the recommended arbitration procedure and costs if agreement cannot be attained through the review process; and (6) to prepare and report to the Seed Arbitration Council on the Review Committee's results and recommendations.

(c) The Review Committee shall prepare and provide to both parties estimates of costs that will be incurred during the investigation of the complaint. Costs deposits shall be remitted to the Department before beginning the investigation process. It is the responsibility of the purchaser to pay one-half and the seller to pay one-half of the total estimated costs. Cost deposits shall be deposited by the Department into a non-appropriated trust account in an adequately protected financial institution, and the Department shall pay costs from that account. In the event the actual costs exceed the original estimated costs, each party shall pay one-half of the difference. In the event the actual costs are less than the original estimated costs, each party shall be reimbursed a prorated portion of the original

funds.

(d) The Review Committee shall serve without pay, but members shall be reimbursed for reasonable travel expenses.

25/20. Filing and serving of complaint

§ 20. Filing and serving of complaint. A purchaser shall start the arbitration procedure by filing a verified complaint with the Director together with a filing fee which shall be deposited into the General Revenue Fund. The amount of the filing fee shall be set by rule. The Director shall serve a copy of the complaint upon the seller by certified mail. Except in case of seed that has not been planted, the claim shall be filed within a time that will permit effective inspection of the plants under field conditions and in no case later than 90 days after completion of harvest.

25/25. Filing and serving of answer

§ 25. Filing and serving of answer. Within 10 days after the seller receives 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 purchaser by certified mail.

25/30. Referral of complaint to Review Committee

§ 30. Referral of complaint to Review Committee. The Director shall refer the complaint and the seller's response to the Review Committee for negotiation and recommendations.

25/35. Seed Arbitration Council

§ 35. Seed Arbitration Council.

(a) The Seed Arbitration Council is established.

(b) The following persons or their designees are members of the Council:

(1) The Director.

(2) The Director of Extension Services of the University of Illinois College of Agriculture.

(3) The Dean of the University of Illinois College of Agriculture.

(4) The president of an Illinois seed dealers trade association selected by the Director.

(5) The president of an Illinois farmers organization selected by the Director.

(c) The Council shall meet at the call of the Director, who shall serve as its chairperson.

(d) Members shall serve without pay but shall be reimbursed for their reasonable and necessary expenses.

(e) The Council shall be staffed by employees of the Department.

25/40. Powers of the Council

§ 40. Powers of the Council.

The Council shall have the following duties: (1) to examine all records of the purchaser and seller that the Council may consider relevant to the complaint; (2) to investigate and conduct such tests as may be necessary to determine the validity of the complaint or to contract for qualified persons to perform such investigation and tests; (3) to hold meetings at a time and place as the chairperson may direct upon at least 10 days written notice to all parties; (4) to negotiate and recommend to the purchaser and seller conditions for settlement of the complaint; (5) to present at an administrative hearing results of the investigation of the complaint with recommendations to the purchaser and seller of conditions for settlement of the complaint; (6) to subpoena the purchaser and seller; (7) to require all records and information to be presented to the Council (duces tecum); (8) to enter upon the premises of the purchaser and seller to secure information and perform investigations under this Act; and (9) to recommend to the Director that an administrative hearing be held when the arbitration recommendation was not accepted by the purchaser and seller.

25/45. Investigation and report of Council

§ 45. Investigation and report of Council.

(a) Upon referral by the Review Committee of a complaint for investigation, the Council shall make a prompt and full investigation of the matters complained of, attempt to negotiate a settlement, and report its findings and recommendations to the Director.

(b) The report of the Council shall include its findings and recommendations as to damages and costs, if any.

(c) After the Council has made its report, the Director shall promptly transmit the report by certified mail to all parties.

25/50. Delegated investigation

§ 50. Delegated investigation. The Council may delegate all or any part of an investigation to one or more of its members. A delegated investigation shall be summarized in writing and considered by the Council in its report.

25/55. Administrative hearing

§ 55. Administrative hearing.

(a) The Department shall within 10 days of receipt of the Seed Arbitration Council's report and recommendation set a date for an administrative hearing to be held not less than 30 days after receiving the Council's report and recommendation.

(b) The Department at the administrative hearing shall present the Council's report and recommendation for the record. The purchaser and seller may present any testimony and evidence pertinent to the complaint. The hearing officer shall issue an order within 30 days from the conclusion of the hearing. The hearing officer's decision is the final decision and terminates arbitration.

25/60. Failure of parties to participate in proceedings

§ 60. Failure of parties to participate in proceedings. Failure of the parties to participate in the proceedings as set forth in this Act shall not constitute a defense in any court proceedings. The Council, based upon its investigation and findings, shall issue a report concerning the complaint that is admissible as evidence in any court proceedings.

25/65. Legal representation

§ 65. Legal representation. Any party may be represented by legal council at all proceedings as set forth in accordance with this Act.

25/70. Arbitration

§ 70. Arbitration. Participation in the arbitration proceedings is required by all parties, but the arbitration findings are non-binding.

25/75. Inapplicability of Uniform Arbitration Act and Health Care Arbitration Act

§ 75. Inapplicability of Uniform Arbitration Act and Health Care Arbitration Act. Claims to which this Act applies are not subject to the Uniform Arbitration Act or the Health Care Arbitration Act.

25/80. Rules

§ 80. Rules. The Department may adopt rules for the enforcement of this Act.

International Commercial Arbitration Act
Chapter 710, Act 30.

Current through the 2008 Regular Session

30/1-1. Short title

§ 1-1. Short title. This Act may be cited as the International Commercial Arbitration Act.

30/1-5. Scope of application

§ 1-5. Scope of application.

- (a) This Act applies to international commercial arbitration, subject to any agreement in force between the United States and any other country or countries.
- (b) The provisions of this Act, except Sections 5-10 and 5-15, apply only if the place of arbitration is in the State of Illinois.
- (c) An arbitration is international if:

- (1) the parties to an arbitration agreement have, at the time of the conclusion of execution of that agreement, their places of business in different countries; or
- (2) one of the following places is situated outside the country or countries in which the parties have their places of business: (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement or (ii) the place where the predominant part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
- (3) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(d) For the purposes of subsection (c) of this Section:

- (1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement.
- (2) If a party does not have a place of business, reference is to be made to his or her habitual residence.

(e) This Act shall not affect any other law in force in the State of Illinois by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Act.

30/1-10. Definitions and rules of interpretation

§ 1-10. Definitions and rules of interpretation. For the purposes of this Act:

- (a) “Arbitration” means any arbitration whether or not administered by a permanent arbitral institution.
- (b) “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators.
- (c) “Court” means a court of competent jurisdiction of a country or state.
- (d) Where a provision of this Act, except Section 25-5, leaves the parties free to determine a certain issue, the freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.
- (e) Where a provision of this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, the agreement includes any arbitration rules referred to in that agreement.
- (f) Where a provision of this Act, other than in subsection (a) of Section 20-40 and subsection (a) of Section 25-25, refers to a claim, it also applies to a counter claim, and where it refers to a defense, it also applies to a defense to the counter claim.

30/1-15. Receipt of written communications

§ 1-15. Receipt of written communications.

- (a) Unless otherwise agreed by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally, or if it is delivered at his or her place of business,

habitual residence, or mailing address. If none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or any other means that provides a record of the attempt to deliver it.

(b) Unless otherwise agreed by the parties, the communication is deemed to have been received on the day it is so delivered.

(c) The provisions of this Section do not apply to communications in court proceedings.

30/1-20. Waiver of right to object

§ 1-20. Waiver of right to object. If a party knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating its objection to the non-compliance without undue delay, or, if a time limit is provided, within that period of time, that party shall be deemed to have waived his or her right to object.

30/1-25. Extent of court intervention

§ 1-25. Extent of court intervention. In matters governed by this Act, no court shall intervene except where so provided in this Act or applicable federal law.

30/1-30. Functions of a court

§ 1-30. Functions of a court. The functions referred to in subsections (c), (d), and (e) of Section 10-10, subsection (c) of Section 10-20, Section 10-25, subsection (c) of Section 15-5, Section 20-50, and Section 20-55 of this Act shall be performed by the Illinois circuit court of the county in which the place of arbitration is located.

Article 5. Arbitration Agreement

30/5-5. Definition and form of arbitration agreement

§ 5-5. Definition and form of arbitration agreement.

(a) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(b) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of telecommunication that provides a record of the agreement or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part

of the contract.

30/5-10. Arbitration agreement and substantive claim before court

§ 5-10. Arbitration agreement and substantive claim before court.

(a) A court before which an action is brought in a matter that is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his or her first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative, or incapable of being performed.

(b) When an action referred to in subsection (a) of this Section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

30/5-15. Arbitration agreement and interim measures by court

§ 5-15. Arbitration agreement and interim measures by court. It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant the measure.

Article 10. Composition of Arbitral Tribunal

30/10-5. Number of arbitrators

§ 10-5. Number of arbitrators. The parties are free to determine the number of arbitrators. In the event this determination is not made, the arbitration shall be conducted by a sole arbitrator, selected in accordance with the provisions of subsection (d) of Section 10-10 of this Act.

30/10-10. Appointment of arbitrators

§ 10-10. Appointment of arbitrators.

(a) No person shall be precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(b) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of subsections (e) and (f) of this Section.

(c) In an arbitration with 3 arbitrators and where the parties fail to reach an agreement on an appointment procedure, each party shall appoint one arbitrator, and the 2 arbitrators thus appointed shall appoint the third arbitrator. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party or if the 2 arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in Section 1-30 of this Act.

(d) In an arbitration with a sole arbitrator and where the parties fail to reach an agreement on an

appointment procedure, the arbitrator shall be appointed, upon request of a party, by the court specified in Section 1-30 of this Act.

(e) Where, under an appointment procedure agreed upon by the parties, (i) a party fails to act as required under the procedure or (ii) the parties or the two party-appointed arbitrators are unable to reach an agreement expected of them under the procedure or (iii) a third party, including an institution, fails to perform any function entrusted to it under the procedure, any party may request the court specified in Section 1-30 of this Act to take the necessary measure, unless the agreement on the appointment procedure provides other means of securing the appointment.

(f) A decision on a matter entrusted by subsections (c), (d), and (e) of this Section to the court specified in Section 1-30 of this Act is not subject to appeal; provided that this provision shall not preclude the parties from raising any ground for setting aside or refusing to recognize or enforce an arbitral award to the extent otherwise permitted under applicable federal law. The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to any considerations that are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

30/10-15. Grounds for challenge

§ 10-15. Grounds for challenge.

(a) When a person is approached in connection with his or her possible appointment as an arbitrator, that person shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any of these circumstances to the parties unless they have already been informed of them by the arbitrator.

(b) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence or if he or she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons of which that party becomes aware after the appointment has been made.

30/10-20. Challenge procedure

§ 10-20. Challenge procedure.

(a) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (c) of this Section.

(b) If the parties are unable to reach an agreement, a party that intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in subsection (b) of Section 10-15 of this Act, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(c) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (b) of this Section is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the court specified in Section 1-30 of this Act to decide on the challenge, which decision is not subject to appeal; provided that this provision shall not preclude the parties from raising any ground for setting aside or refusing to recognize or enforce an arbitral award to the extent otherwise permitted under applicable federal law. While the request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

30/10-25. Failure or impossibility to act
§ 10-25. Failure or impossibility to act.

(a) If an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, that arbitrator's mandate terminates if he or she withdraws from office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court specified in Section 1-30 of this Act to decide on the termination of the mandate, which decision is not subject to appeal.

(b) If, under this Section or under subsection (b) of Section 10-20 of this Act, an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Section or subsection (b) of Section 10-15 of this Act.

30/10-30. Appointment of substitute arbitrator

§ 10-30. Appointment of substitute arbitrator. Where the mandate of an arbitrator terminates under Sections 10-20 or 10-25 of this Act or because of his or her withdrawal from office for any other reason or because of the revocation or termination of that arbitrator's mandate, a substitute arbitrator shall be appointed according to the rules or procedures that were applicable to the appointment of the arbitrator being replaced.

Article 15. Jurisdiction of Arbitral Tribunal

30/15-5. Competence of arbitral tribunal to rule on its jurisdiction

§ 15-5. Competence of arbitral tribunal to rule on its jurisdiction.

(a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not by itself mean that the contract's arbitration clause is invalid.

(b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party is not precluded from raising the plea by the fact that he or she has appointed or participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be

beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(c) The arbitral tribunal may rule on a plea referred to in subsection (b) of this Section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within 30 days after having received notice of that ruling, the court specified in Section 1-30 of this Act to decide the matter, which decision is not subject to appeal; provided that this provision shall not preclude the parties from raising any ground for setting aside or refusing to recognize or enforce an arbitral award to the extent otherwise permitted under applicable federal law. While the request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

30/15-10. Power of arbitral tribunal to award interim measures

§ 15-10. Power of arbitral tribunal to award interim measures. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take any interim measure of protection that the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with the measure.

Article 20. Conduct of Arbitral Proceedings

30/20-5. Equal treatment of parties

§ 20-5. Equal treatment of parties. The parties shall be treated with equality, and each party shall be given a full opportunity of presenting his or her case.

30/20-10. Determination of rules of procedure

§ 20-10. Determination of rules of procedure.

(a) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(b) If the parties do not reach an agreement, the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in a manner that it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

30/20-15. Place of arbitration

§ 20-15. Place of arbitration.

(a) The parties are free to agree on the place of arbitration. If the parties do not reach an agreement, the place of arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.

(b) Notwithstanding the provisions of subsection (a) of this Section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property, or documents.

30/20-20. Commencement of arbitral proceedings

§ 20-20. Commencement of arbitral proceedings. Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

30/20-25. Language

§ 20-25. Language.

(a) The parties are free to agree on the language or languages to be used in the arbitral proceedings. If the parties do not reach an agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing, and any award, decision, or other communication by the arbitral tribunal.

(b) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

30/20-30. Statements of claim and defense

§ 20-30. Statements of claim and defense.

(a) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his or her claim, the points at issue, and the relief or remedy sought, and the respondent shall state his or her defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of the statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(b) Unless otherwise agreed by the parties, either party may amend or supplement its claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment, having regard to the delay in making it.

30/20-35. Hearings and written proceedings

§ 20-35. Hearings and written proceedings.

(a) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral arguments or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that

no hearings shall be held, the arbitral tribunal shall hold the hearings at an appropriate stage of the proceedings, if so requested by a party.

(b) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

(c) All statements, documents, or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also, any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

30/20-40. Default of a party

§ 20-40. Default of a party. Unless otherwise agreed by the parties:

(a) If, without showing sufficient cause, the claimant fails to communicate its statement of claim in accordance with subsection (a) of Section 20-30 of this Act the arbitral tribunal shall terminate the proceedings.

(b) If, without showing sufficient cause, the respondent fails to communicate its statement of defense in accordance with subsection (a) of Section 20-30 of this Act the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegations.

(c) If, without showing sufficient cause, any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

30/20-45. Expert appointed by arbitral tribunal

§ 20-45. Expert appointed by arbitral tribunal. Unless objected to by one or both parties:

(a) The arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal.

(b) The arbitral tribunal may require a party to give the expert any relevant information or to produce or provide access to any relevant documents, goods, or other property for the expert's inspection.

(c) If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his or her written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and to present expert witnesses in order to testify on the points at issue.

30/20-50. Witnesses, subpoenas, depositions

§ 20-50. Witnesses, subpoenas, depositions.

(a) The arbitral tribunal may issue subpoenas to parties or third parties for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths. The production will be for the purpose of presenting evidence at the arbitration hearing and will not include pre-trial discovery as known in common law countries. Subpoenas so

issued shall be served and, upon application to the court by a party or the arbitral tribunal, enforced, in the manner provided by law for the service and enforcement of subpoenas in civil cases.

(b) All provisions of law compelling a person under subpoena to testify are applicable.

(c) On application of a party and for use as evidence, the arbitral tribunal 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.

(d) No other discovery shall be permitted unless otherwise agreed by the parties.

30/20-55. Court assistance in taking evidence

§ 20-55. Court assistance in taking evidence. The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a court assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

Article 25. Making of Award and Termination of Proceedings

30/25-5. Rules applicable to substance of dispute

§ 25-5. Rules applicable to substance of dispute.

(a) The arbitral tribunal shall decide the dispute in accordance with any rules of law that are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country or jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country or jurisdiction and not to its conflict of laws rules.

(b) If the parties do not make the designation described in subsection (a) of this Section, the arbitral tribunal shall apply the law as determined by the conflict of laws rules that it considers applicable.

(c) The arbitral tribunal shall decide according to what is just and good (“ex aequo et bono”) or according to equity and good conscience (as “amiabile compositeur”) rather than by the strict rule of law only if the parties have expressly authorized it to do so.

(d) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

30/25-10. Decision making by panel of arbitrators

§ 25-10. Decision making by panel of arbitrators. In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

30/25-15. Settlement

§ 25-15. Settlement.

- (a) With the agreement of the parties, the arbitral tribunal may use mediation, conciliation, or other dispute resolution procedures at any time during the arbitral proceedings to encourage settlement.
- (b) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (c) An award on agreed terms shall be made in accordance with the provisions of Section 25-20 of this Act and shall state that it is an award. The award has the same status and effect as any other award on the merits of the case.

30/25-20. Form and content of award

§ 25-20. Form and content of award.

- (a) The award shall be made in writing and shall be signed by the arbitrator or arbitrators.
- (b) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (c) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Section 25-15 of this Act.
- (d) The award shall state its date and the place of arbitration as determined in accordance with subsection (a) of Section 20-15 of this Act. The award shall be deemed to have been made at that place.
- (e) After the award is made, a copy signed by the arbitrators in accordance with subsection (a) of this Section shall be delivered to each party.
- (f) The arbitral tribunal may, at any time during the proceedings, make an interim award on any matter with respect to which it may make a final award. The interim award may be enforced in the same manner as a final award.
- (g) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.
- (h) Unless otherwise agreed by the parties, the costs of an arbitration are at the discretion of the arbitral tribunal.
- (i) In making an order for costs, the arbitral tribunal may include as costs any of the following:
 - (1) the fees and expenses of the arbitrators and expert witnesses;
 - (2) legal fees and expenses;
 - (3) any administration fees of the institution supervising the arbitration; and
 - (4) any other expenses incurred in connection with the arbitral proceedings.

- (j) In making an order for costs, the arbitral tribunal may specify:
- (1) the party entitled to costs;
 - (2) the party who shall pay the costs;
 - (3) the amount of costs or method of determining that amount; and
 - (4) the manner in which the costs are to be paid.

30/25-25. Termination of proceedings

§ 25-25. Termination of proceedings.

(a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (b) of this Section.

(b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when any one of the following events occurs:

- (1) The claimant withdraws its claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his or her part in obtaining a final settlement of the dispute.
- (2) The parties agree on the termination of the proceedings.
- (3) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(c) Subject to Section 25-30 of this Act, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

30/25-30. Correction or interpretation of award; additional award

§ 25-30. Correction or interpretation of award; additional award.

(a) Within 30 days of receipt of the award, unless the parties agree to another period of time:

- (1) A party, with notice to the other party, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical errors, or any errors of similar nature.
- (2) If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the award.

(b) The arbitral tribunal may correct any error of the type referred to in subdivision (1) of subsection (a) of this Section on its own initiative within 30 days of the day of the award.

(c) Unless otherwise agreed to by the parties, a party, with notice to the other party, may, within 30 days of receipt of the award, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days after the date of receipt of the request.

(d) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation, or an additional award under subsections (a) or (c) of this Section.

(e) The provisions of Section 25-20 of this Act shall apply to a correction or interpretation of the award or to an additional award made under this Section.

Mandatory Arbitration System
Chapter 735, Act 5, Article II, Part 10A.

Current through the 2008 Regular Session

5/2-1001A. Authorization

§ 2-1001A. Authorization. The Supreme Court of Illinois, by rule, may provide for mandatory arbitration of such civil actions as the Court deems appropriate in order to expedite in a less costly manner any litigation wherein a party asserts a claim not exceeding \$50,000 or any lesser amount as authorized by the Supreme Court for a particular Circuit, or a judge of the circuit court, at a pretrial conference, determines that no greater amount than that authorized for the Circuit appears to be genuinely in controversy.

5/2-1002A. Implementation by Supreme Court Rules

§ 2-1002A. Implementation by Supreme Court Rules. The Supreme Court shall by rule adopt procedures adapted to each judicial circuit to implement mandatory arbitration under this Act.

5/2-1003A. Qualification, Appointment, and Compensation of Arbitrators

§ 2-1003A. Qualification, Appointment, and Compensation of Arbitrators. The qualification and the method of appointment of arbitrators shall be prescribed by rule. Arbitrators shall be entitled to reasonable compensation for their services. Arbitration hearings shall be conducted by arbitrators sitting in panels of three or of such lesser number as may be stipulated by the parties.

5/2-1004A. Decision and Award

§ 2-1004A. Decision and Award. Following an arbitration hearing as prescribed by rule, the arbitrators' decision shall be filed with the circuit court, together with proof of service on the parties. Within the time prescribed by rule, any party to the proceeding may file with the clerk of the court a written notice of the rejection of the award. In case of such rejection, the parties may, upon payment of appropriate costs and fees imposed by Supreme Court Rule as a consequence of the rejection, proceed to trial before a judge or jury. Costs and fees received by the clerk of the circuit court pursuant to this Section shall be remitted within one month after receipt to the State Treasurer for deposit into the Mandatory Arbitration Fund.

5/2-1005A. Judgment of the Court

§ 2-1005A. Judgment of the Court. If no rejection of the award is filed, a judge of the circuit court may enter the award as the judgment of the court.

5/2-1006A. Uniform Arbitration Act

§ 2-1006A. Uniform Arbitration Act. The provisions of the Uniform Arbitration Act shall not be applicable to the proceedings under this Part 10A of Article II.

5/2-1007A. Expenses

§ 2-1007A. The expenses of conducting mandatory arbitration programs in the circuit court, including arbitrator fees, and the expenses related to conducting such other alternative dispute resolution programs as may be authorized by circuit court rule for operation in counties that have implemented mandatory arbitration, shall be determined by the Supreme Court and paid from the State Treasury on the warrant of the Comptroller out of appropriations made for that purpose by the General Assembly.

5/2-1008A. Evaluation; report

§ 2-1008A. The Supreme Court shall conduct an evaluation of the effectiveness of mandatory court-annexed arbitration and shall report the results of the evaluation to the General Assembly on or before January 31, 1989, and annually thereafter.

5/2-1009A. Filing Fees

§ 2-1009A. Filing Fees. In each county authorized by the Supreme Court to utilize mandatory arbitration, the clerk of the circuit court shall charge and collect, in addition to any other fees, an arbitration fee of \$8, except in counties with 3,000,000 or more inhabitants the fee shall be \$10, at the time of filing the first pleading, paper or other appearance filed by each party in all civil cases, but no additional fee shall be required if more than one party is represented in a single pleading, paper or other appearance. Arbitration fees received by the clerk of the circuit court pursuant to this Section shall be remitted within one month after receipt to the State Treasurer for deposit into the Mandatory Arbitration Fund, a special fund in the State treasury for the purpose of funding mandatory arbitration programs and such other alternative dispute resolution programs as may be authorized by circuit court rule for operation in counties that have implemented mandatory arbitration, with a separate account being maintained for each county. Notwithstanding any other provision of this Section to the contrary, the Mandatory Arbitration Fund may be used for any other purpose authorized by the Supreme Court.

Mandatory Arbitration
Illinois Supreme Court Rules, Article I.

Current with amendments received through November 2008

Rule 86. Actions Subject to Mandatory Arbitration

(a) Applicability to Circuits. Mandatory arbitration proceedings shall be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as may be directed by the Supreme Court.

(b) Eligible Actions. A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money in an amount or of a value not in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs.

(c) Local Rules. Each judicial circuit court may adopt rules for the conduct of arbitration proceedings which are consistent with these rules and may determine which matters within the general classification of eligible actions shall be heard in arbitration.

(d) Assignment from Pretrials. Cases not assigned to an arbitration calendar may be ordered to

arbitration at a status call or pretrial conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, irrespective of defenses.

(e) Applicability of Code of Civil Procedure and Rules of the Supreme Court. Notwithstanding that any action, upon filing, is initially placed in an arbitration track or is thereafter so designated for hearing, the provisions of the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to its proceedings except insofar as these rules otherwise provide.

Rule 87. Appointment, Qualification and Compensation of Arbitrators

(a) List of Arbitrators. A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice of law and retired judges within the circuit in which the court is situated.

(b) Panel. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

(c) Disqualification. Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

(d) Oath of Office. Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators.

Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

(e) Compensation. Each arbitrator shall be compensated in the amount of \$100 per hearing.

Rule 88. Scheduling of Hearings

The procedure for fixing the date, time and place of a hearing before a panel of arbitrators shall be prescribed by circuit rule provided that not less than 60 days' notice in writing shall be given to the parties or their attorneys of record. The hearing shall be held on the scheduled date and within one year of the date of filing of the action, unless continued by the court upon good cause shown. The hearing shall be held at a location provided or authorized by the court.

Rule 89. Discovery

Discovery may be conducted in accordance with established rules and shall be completed prior to the hearing in arbitration. However, such discovery shall be conducted in accordance with Rule 222, except that the timelines may be shortened by local rule. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

Rule 90. Conduct of the Hearings

(a) Powers of Arbitrators. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) Established Rules of Evidence Apply. Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) Documents Presumptively Admissible. All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure;

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package.

(d) Opinions of Expert Witnesses. A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

(e) Right to Subpoena Maker of the Document. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section

2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) Adverse Examination of Parties or Agents. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to arbitration hearings as upon the trial of a case.

(g) Compelling Appearance of Witness at Hearing. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b) may include an order debarring that party from rejecting the award.

(h) Prohibited Communication. Until the arbitration award is issued and has become final by either acceptance or rejection, an arbitrator may not be contacted ex parte, nor may an arbitrator publicly comment or respond to questions regarding a particular arbitration case heard by that arbitrator. Discussions between an arbitrator and judge regarding an infraction or impropriety during the arbitration process are not prohibited by this rule. Nothing in this rule shall be construed to limit or expand judicial review of an arbitration award or limit or expand the testimony of an arbitrator at judicial hearing to clarify a mistake or error appearing on the face of an award.

Rule 90(c) Cover Sheet
IN THE CIRCUIT OF COUNTY, ILLINOIS

Plaintiff)
)
) No.
)
v.)
)
)
Defendant)
)

NOTICE OF INTENT PURSUANT TO SUPREME COURT RULE 90(C)

Pursuant to Supreme Court Rule 90(c), the plaintiff(s) intend(s) to offer the following documents that are attached into evidence at the arbitration proceeding:

I. Healthcare Provider Bills	Amount Paid	Amount Unpaid
1.		
2.		
3.		
4.		
5.		
6.		

- 7.
- 8.
- 9.
- 10.

II. Other Items of Compensable Damages

- 1.
- 2.
- 3.
- 4.
- 5.

Attorney for Plaintiff

Rule 91. Absence of Party at Hearing

(a) Failure to be Present at Hearing. The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the vacation of judgments by default, sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief.

(b) Good-Faith Participation. All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be prima facie evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions, against that party.

Rule 92. Award and Judgment on Award

(a) Definition of Award. An award is a determination in favor of a plaintiff or defendant.

(b) Determining an Award. The panel shall make an award promptly upon termination of the hearing.

The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default.

(c) Judgment on the Award. In the event none of the parties files a notice of rejection of the award and requests to proceed to trial within the time required herein, any party thereafter may move the court to enter judgment on the award.

(d) Correction of Award. Where the record and the award disclose an obvious and unambiguous error in mathematics or language, the court, on application of a party within the 30-day period allowed for rejection of an award, may correct the same. The filing of such an application shall stay all proceedings, including the running of the 30-day period for rejection of the award, until disposition of the application by the court.

Rule 93. Rejection of Award

(a) Rejection of Award and Request for Trial. Within 30 days after the filing of an award with the clerk of the court, and upon payment to the clerk of the court of the sum of \$200 for awards of \$30,000 or less or \$500 for awards greater than \$30,000, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting an award.

(b) Arbitrator May Not Testify. An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

(c) Waiver of Costs. Upon application of a poor person, pursuant to Rule 298, herein, the sum required to be paid as costs upon rejection of the award may be waived by the court.

Rule 94. Form of Oath, Award and Notice of Award

The oath, award of arbitrators, and notice of award shall be in substantially the following form:

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

OATH

I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the Constitution of the State of Illinois and that I will faithfully discharge the duties of my office.

Name of Arbitrator

Date

AWARD OF ARBITRATORS

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

A.B., C.D., etc.)

(naming all plaintiffs),)

Plaintiffs)

v.) No.

H.J., K.L., etc.)

_____ Amount Claimed

(naming all defendants),)

Defendants)

- All parties participated in good faith.
- did NOT participate in good faith based upon the following findings.

Findings:

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award:

_____ Dissents as to the Award

Date of Award: _____

NOTICE OF AWARD

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois)

A.B., C.D., etc.)
(naming all plaintiffs),)
Plaintiffs)
v.) No.

H.J., K.L., etc.) _____
) Amount Claimed
(naming all defendants),) _____
Defendants)

On the ___ day of _____, 20 ___, the award of the arbitrators dated _____, 20 ___, a copy of which is attached hereto, was filed and entered of record in this Cause. A copy of this NOTICE has on this date been sent by regular mail, postage prepaid, addressed to each of the parties appearing herein, at their last known address, or to their attorney of record.

Dated this ___ day of _____, 20 ___.

Clerk of the Circuit Court

Rule 95. Form of Notice of Rejection of Award

The notice of rejection of the award shall be in substantially the following form:

In the Circuit Court of the _____ Judicial Circuit,
_____ County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois.)

A.B., C.D. etc.)
(naming all plaintiffs),)
Plaintiffs)
v.) No.

H.J., K.L. etc.) Amount Claimed

(naming all defendants),)
Defendants)

NOTICE OF REJECTION OF AWARD

To the Clerk of the Circuit Court:

Notice is given that _____
rejects the award of the arbitrators entered in this cause on _____,
and hereby requests a trial of this
action.

By: _____
(Certificate of Notice of Attorney)

Rule 99. Mediation Programs

(a) Applicability to Circuits. Mediation programs may be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as directed by the Supreme Court.

(b) Local Rules.

(1) Each judicial circuit electing to establish a mediation program shall adopt rules for the conduct of the mediation proceedings. A person approved by the circuit to act as a mediator under these rules shall have judicial immunity in the same manner and to the same extent as a judge. Prior to the establishment of such a program, the Chief Judge of the circuit shall submit to the Supreme Court for its review and approval, through its Administrative Office, rules governing the operation of the circuit's program. A circuit operating a mediation program on the effective date of this Rule may continue the program for one year after the effective date of this Rule, but must, within 90 days of the effective date of this Rule, submit for the Supreme Court's review and approval the rules under which the mediation program is operating. Any amendments to approved local rules must be submitted to the Administrative Office for review and approval prior to implementation.

(2) At a minimum, the local circuit court rules shall address:

- (i) Actions eligible for referral to mediation;
- (ii) Appointment, qualifications and compensation of the mediators;
- (iii) Scheduling of the mediation conferences;
- (iv) Conduct of the conferences;
- (v) Discovery;
- (vi) Absence of party at the conference and sanctions;
- (vii) Termination and report of mediation conference;
- (viii) Finalization of agreement;
- (ix) Confidentiality;
- (x) Mechanism for reporting to the Supreme Court on the mediation program.

Reviewing Court Alternative Dispute Resolution Act
Chapter 710, Act 40.

Current through the 2008 Regular Session

40/1. Short title

§ 1. Short title. This Act may be cited as the Reviewing Court Alternative Dispute Resolution Act.

40/5. Purpose

§ 5. Purpose. Conflict resolution techniques such as mediation, settlement conferences, arbitration, and other alternative forms of dispute resolution may reduce costs for civil litigants and simplify issues and reduce caseloads in the reviewing courts. The purpose of this Act is to facilitate the funding of alternative dispute resolution programs in the reviewing courts should the Supreme Court, in its discretion, adopt rules to establish such programs in Illinois.

40/10. Reviewing Court Alternative Dispute Resolution Fund

§ 10. Reviewing Court Alternative Dispute Resolution Fund. The Reviewing Court Alternative Dispute Resolution Fund is created as a special fund in the State Treasury. The Supreme Court may designate an amount to be included in the filing fees collected by the clerks of the Appellate Court for the funding of alternative dispute resolution programs in the reviewing courts. The portion of the filing fees designated for alternative dispute resolution programs in the reviewing courts shall be remitted within one month after receipt to the State Treasurer for deposit in the Reviewing Court Alternative Dispute Resolution Fund. All money in the Reviewing Court Alternative Dispute Resolution Fund shall be maintained in separate accounts for each Appellate Court district that has established approved alternative dispute resolution programs pursuant to Supreme Court rule and used, subject to appropriation, by the Supreme Court solely for the purpose of funding alternative dispute resolution programs in the reviewing courts. Notwithstanding any other provision of this Section, the Reviewing Court Alternative Dispute Resolution Fund may be used for any other purpose authorized by the Supreme Court.

40/15. Alternative Dispute Resolution Programs in the Reviewing Courts

§ 15. Alternative Dispute Resolution Programs in the Reviewing Courts. The practice, procedure, and administration of alternative dispute resolution programs in the reviewing courts shall be as provided by Supreme Court rule. The Uniform Arbitration Act, the Uniform Mediation Act, and other statutory provisions relating to arbitration, mediation, or other forms of alternative dispute resolution shall not be applicable to any alternative dispute resolution program in the reviewing courts, except as provided by Supreme Court rule.

40/20. Expenses

§ 20. Expenses. The expenses of conducting alternative dispute resolution programs in the reviewing courts shall be determined by the Supreme Court and paid from the State Treasury on the warrant of the Comptroller out of appropriations made for that purpose by the General Assembly.

40/99. Effective date

§ 99. Effective date. This Act takes effect upon becoming law.

Uniform Mediation Act
Chapter 710, Act 35.

Current through the 2008 Regular Session

35/1. Short title

§ 1. Title. This Act may be cited as the Uniform Mediation Act.

35/2. Definitions

§ 2. Definitions. In this Act:

- (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) "Mediator" means an individual who conducts a mediation.
- (4) "Nonparty participant" means a person, other than a party or mediator, that participates in a mediation.
- (5) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.
- (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 pre-hearing and post-hearing 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; or
 - (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.

35/3. Scope

§ 3. Scope.

- (a) Except as otherwise provided in subsection (b) or (c), this Act 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 Act 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 Act 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 Sections 4 through 6 do not apply to the mediation or part agreed upon. However, Sections 4 through 6 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

35/4. Privilege against disclosure; admissibility; discovery

§ 4. Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in Section 6, 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 Section 5.

(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.

35/5. Waiver and preclusion of privilege

§ 5. Waiver and preclusion of privilege.

(a) A privilege under Section 4 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 Section 4, 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 Section 4.

35/6. Exceptions to privilege

§ 6. Exceptions to privilege.

(a) There is no privilege under Section 4 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 Freedom of Information Act or made during a session or 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 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 case is referred by a court to mediation and a public agency participates.

(b) There is no privilege under Section 4 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

(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.

35/7. Prohibited mediator reports

§ 7. Prohibited mediator reports.

(a) Except as required in subsection (b), 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.

(b) A mediator may disclose:

(1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) a mediation communication as permitted under Section 6; or

(3) a mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

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

35/8. Confidentiality

§ 8. Confidentiality. Unless subject to the Open Meetings Act or the Freedom of Information Act, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

35/9. Mediator's disclosure of conflicts of interest; background

§ 9. Mediator's disclosure of conflicts of interest; background.

(a) 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 mediation party or foreseeable participant in the mediation; and

(2) disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

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

(c) 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.

(d) A person that violates subsection (a), (b), or (g) is precluded by the violation from asserting a privilege under Section 4.

(e) Subsections (a), (b), (c), and (g) do not apply to an individual acting as a judge.

- (f) This Act does not require that a mediator have a special qualification by background or profession.
- (g) A mediator must be impartial, unless after disclosure of the facts required in subsections (a) and (b) to be disclosed, the parties agree otherwise.

35/10. Participation in mediation

§ 10. 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.

35/11. Relation to Electronic Signatures in Global and National Commerce Act

§ 11. Relation to Electronic Signatures in Global and National Commerce Act. This Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this Act 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.

35/12. Uniformity of application and construction

§ 12. Uniformity of application and construction. In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

35/13. Severability clause

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

35/16. Application to existing agreements or referrals

§ 16. Application to existing agreements or referrals.

(a) This Act governs a mediation pursuant to a referral or an agreement to mediate made on or after January 1, 2004.

(b) On or after January 1, 2004, this Act governs an agreement to mediate whenever made.

35/99. Effective date

§ 99. Effective date. This Act takes effect January 1, 2004.