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An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Montana

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States' Alternative Dispute Resolution Statutes

STATE OF MONTANA

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Uniform Arbitration Act

Title 27, Chapter 5

Current through End of 2007 Regular Session

PART 1. SUBMISSION TO ARBITRATION

27-5-111. Short title

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

27-5-112. Uniformity of interpretation

This chapter must be construed to effectuate its general purpose to make uniform the law of those states that enact it.

27-5-113. Application to labor agreements

Arbitration agreements between employers and employees or between their respective representatives are valid and enforceable and may be subject to all or portions of this chapter if the agreement so specifies, except 27-5-115, 27- 5-311, 27-5-312(1) and (3) through (5), 27-5-313, and 27-5-322 apply in each case.

27-5-114. Validity of arbitration agreement -- exceptions

(1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract. Except as permitted under subsection (3), this subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any contract by an individual for the acquisition of real or personal property, services, or money or credit when the total consideration to be paid or furnished by the individual is \$5,000 or less;

(c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or

(d) claims for workers' compensation.

(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon grounds that exist at law or in equity for the revocation of a contract.

27-5-115. Proceedings to compel or stay arbitration

(1) On the application of a party showing an agreement described in 27-5-114 and the opposing party's refusal to arbitrate, the district 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 that issue raised and shall order arbitration if it finds for the applying party or deny the application if it finds for the opposing party.

(2) On application, the district court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if the court finds for the applying party. If the court finds for the opposing party, it shall order the parties to proceed to arbitration.

(3) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (1), the application must be made in that court. Otherwise, and subject to 27-5-323, the application may be made in any court of competent jurisdiction.

(4) An action or proceeding involving an issue subject to arbitration must be stayed if an order or application for arbitration has been made under this section. If an issue is severable, the stay may be with respect to the severable issue only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(5) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or good faith or because no fault or grounds for the claim sought to be arbitrated have been shown.

PART 2. ACTION BY ARBITRATORS

27-5-211. Appointment of arbitrators

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method is provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

27-5-212. Majority action by arbitrators

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

27-5-213. Hearing

Unless otherwise provided by the agreement, the following apply:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by certified 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 district court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

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

(3) The hearing must 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.

27-5-214. Representation by attorney

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

27-5-215. Witnesses, subpoenas, and depositions

(1) The arbitrators may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and may administer oaths. Subpoenas so issued must be served and, upon application to the district court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court.

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

(3) All provisions of law compelling a person under subpoena to testify are applicable to persons subpoenaed under this chapter.

(4) Fees for attendance as a witness are the same as for a witness in the district court.

27-5-216. Award

(1) The award must be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally by certified mail or as provided in the agreement.

(2) An award must be made within the time fixed by the agreement or, if no time is fixed, within such time as the district 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.

27-5-217. Change of award by arbitrators

On the application of a party or, if an application to the court is pending under 27-5-311, 27-5-312, or 27-5-313, 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 27-5-313(1)(a) and (1)(c) or for the purpose of clarifying the award. The application must be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given immediately to the opposing party, stating that he must serve his objections thereto, if any, within 10 days from the notice. A modified or corrected award is subject to the provisions of 27-5-311 through 27-5-313.

27-5-218. Fees and expenses of arbitration

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

PART 3. PROCEDURE FOLLOWING AWARD

27-5-311. Confirmation of award by court

Upon the application of a party, the district court shall confirm an award unless within the time limits imposed in this chapter grounds are urged for vacating, modifying, or correcting the award, in which case the court shall proceed as provided in 27-5-312 and 27-5-313.

27-5-312. Vacating an award

- (1) Upon the application of a party, the district court shall vacate an award if:
- (a) the award was procured by corruption, fraud, or other undue means;
 - (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (c) the arbitrators exceeded their powers;
 - (d) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of 27-5-213, as to prejudice substantially the rights of a party; or
 - (e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection.
- (2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.
- (3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after such grounds are known or should have been known.
- (4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.
- (5) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

27-5-313. Modification or correction of award by court

- (1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the district court shall modify or correct the award if:
- (a) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
 - (b) the arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
 - (c) the award is imperfect in a matter of form not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

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

27-5-314. Judgment on award -- costs

(1) Upon the granting of an order confirming, modifying, or correcting an award, judgment must be entered in conformity with the order 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.

(2) The judgment may be docketed as if rendered in an action.

27-5-321. Applications to court -- how made

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

27-5-322. Jurisdiction of district court

The making of an agreement described in 27-5-114 providing for arbitration in this state confers jurisdiction on the district court to enforce the agreement under this chapter and to enter judgment on an award under the agreement.

27-5-323. Venue

An initial application must be made to the court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise, the application must 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 must be made to the court hearing the initial application unless the court otherwise directs. No agreement concerning venue involving a resident of this state is valid unless the agreement requires that arbitration occur within the state of Montana. This requirement may only be waived upon the advice of counsel as evidenced by counsel's signature thereto.

27-5-324. Appeals

(1) An appeal may be taken from:

(a) an order denying an application to compel arbitration made under 27-5-115;

(b) an order granting an application to stay arbitration made under 27-5- 115(2);

- (c) an order confirming or denying confirmation of an award;
 - (d) an order modifying or correcting an award;
 - (e) an order vacating an award without directing a rehearing; or
 - (f) a judgment entered pursuant to the provisions of this chapter.
- (2) The appeal must be taken in the manner and to the same extent as from orders or judgments in a civil action in district court.

AGRICULTURAL SEED CONTRACT ALTERNATIVE DISPUTE RESOLUTION
Title 80, Chapter 5, Part 5

Current through the End of the 2007 Regular Session

80-5-501. Requirement and effect of alternative dispute resolution -- exemption

- (1) As a prerequisite to a buyer's rights to maintain legal action against a dealer or any other seller of agricultural seed for a claim as provided in subsection (2), the buyer shall submit the claim to alternative dispute resolution as provided in 80-5-506 and this section.
- (2) A buyer may claim to have been damaged by the failure of agricultural seed to produce or perform:
- (a) as represented by the label that is required to be attached pursuant to 80- 5-123;
 - (b) as represented by the bulk certificate if the agricultural seed was purchased in bulk;
 - (c) by warranty; or
 - (d) as a result of negligence.
- (3) Any applicable period of limitations with respect to the claim must be tolled until 10 days after the filing of the report of alternative dispute resolution with the director of the department as provided in 80-5-506.
- (4) (a) A claim may not be asserted as a counterclaim or defense in any action brought by a seller against a buyer until the buyer has submitted a claim to alternative dispute resolution as provided in 80-5-506 and this section.
- (b) When the buyer files a written notice of intention to assert a claim as a counterclaim or defense in the action and the notice is accompanied by a copy of the buyer's complaint in alternative dispute resolution filed under 80-5- 506, the action must be stayed and any applicable statute of limitations must be suspended with respect to the claim asserted as a counterclaim or defense until 10 days after

the filing of the report of alternative dispute resolution with the director of the department as provided in 80-5-506.

(5) To be eligible for resolution under the alternative dispute resolution process, a complaint must allege damages in excess of the amount established in 25-35-502 for jurisdiction in small claims court.

(6) This part does not apply to seed potatoes.

80-5-502. Notice of alternative dispute resolution

A notice calling attention to the requirement for alternative dispute resolution under 80-5-501 must be included on the label required under 80-5-123, on the bulk certificate, or otherwise attached to or printed on the agricultural seed bag or package. Alternative dispute resolution may not be required unless this notice is included. A notice in the following form or equivalent language is sufficient:

NOTICE

ALTERNATIVE DISPUTE RESOLUTION REQUIRED BY STATE LAW

Under Montana agricultural seed laws, alternative dispute resolution is required as a prerequisite to maintaining a legal action based upon the failure of the agricultural seed to which this notice is attached to produce as represented. The consumer shall file a complaint along with the filing fee, when applicable, with the Director of the Department of Agriculture allowing sufficient time to permit inspection of the crops, plants, or trees by the designated agency and the seller from whom the agricultural seed was purchased. A copy of the complaint must be sent to the seller by certified mail or as otherwise provided by state law.

80-5-503. Commencement of legal action -- evidence

(1) The buyer or the seller may commence legal proceedings against the other party or assert a claim as a counterclaim or defense in an action brought by the seller or buyers after the receipt of the report of alternative dispute resolution as provided in 80-5-507.

(2) In litigation involving a complaint that has been subject to alternative dispute resolution under this part, a party may introduce the report of alternative dispute resolution as evidence of the facts found in the report. The court may give weight to the alternative dispute resolution council's findings and conclusions of law and recommendations regarding damages and costs. The court may also take into account any findings of the council with respect to the failure of a party to cooperate in the alternative dispute resolution proceedings, including findings regarding the effect that a delay in filing the alternative dispute resolution claim may have had upon the council's ability to determine the facts of the case.

80-5-504. Alternative dispute resolution council

(1) The purpose of the alternative dispute resolution council is to conduct alternative dispute resolution, as provided in this part, on an as-needed basis when an alternative dispute resolution complaint has been filed. The council must be called into session by the director of the department or

the council presiding officer to consider matters referred to the council by the director or the presiding officer.

(2) The director shall appoint an alternative dispute resolution council, upon the receipt of an alternative dispute resolution complaint, composed of five members and five alternate members. Two of the five appointed members of the alternative dispute resolution council must be Montana production growers. One member and one alternate member must be appointed upon the recommendation of each of the following:

(a) vice provost and director, Montana state university extension service;

(b) director, Montana state university agricultural experiment station;

(c) president, Montana seed trade association;

(d) president, Montana seed growers association; and

(e) director, Montana department of agriculture.

(3) An alternate member may only serve in the absence of the member for whom the person is an alternate.

(4) The council shall elect a presiding officer and a secretary from its membership. The presiding officer conducts meetings and deliberations of the council and directs all of its activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as directed by the presiding officer.

80-5-505. Authority of alternative dispute resolution council -- compensation

(1) The alternative dispute resolution council or its members may:

(a) examine the buyer and the seller on all matters that the council considers relevant;

(b) grow a representative sample of the agricultural seed to production stage under the director's supervision through the facilities of the department or a designated university;

(c) hold informal hearings at the time and place directed by the council presiding officer, provided that reasonable notice was given to all parties; and

(d) delegate all or any part of an investigation to one or more of the council members.

(2) The members of the council may not receive compensation for the performance of their duties with respect to this part, except for reimbursement for travel expenses and per diem.

80-5-506. Alternative dispute resolution procedure

(1) A buyer may institute alternative dispute resolution by filing a sworn complaint and a \$250 filing fee with the director of the department. The buyer shall serve a copy of the complaint on the seller by certified mail or as otherwise provided in state law. Except in a case of agricultural seed that has not been planted, the claim must be filed allowing sufficient time to permit effective inspection of the plants under field conditions.

(2) Within 21 days after receipt of a copy of the complaint, the seller shall:

(a) file an answer to the complaint with the director;

(b) submit a \$250 filing fee to the department; and

(c) serve a copy of the answer on the buyer by certified mail or as otherwise provided in state law.

(3) The director shall refer the complaint and answer to the alternative dispute resolution council for investigation, findings, and recommendations within 30 days of receiving the answer.

(4) When a complaint is referred to the council for investigation, the council shall make an investigation of the matters contained in the complaint and file a report of its findings and recommendations with the director within 60 days of receiving the referral, unless the parties subject to the alternative dispute resolution agree to a later date.

80-5-507. Findings

(1) The report of the alternative dispute resolution council must:

(a) include findings of fact and recommendations regarding costs, if any; and

(b) consider the written summary provided when an investigation is delegated as provided in 80-5-505.

(2) The director shall send copies of the completed report to the buyer and seller by certified mail.

80-5-508. Costs of alternative dispute resolution

Costs of alternative dispute resolution that exceed the amount paid in filing fees must be assessed to the nonprevailing party or equally distributed between the parties to the extent that the parties have agreed in writing to the equal distribution.

80-5-509. Program administration and rulemaking

(1) The agricultural seed contract alternative dispute resolution program must be administered by the department.

(2) The department may adopt rules that are necessary for the efficient administration of this part. The rules may include but are not limited to:

(a) the content and format of the buyer's claim to alternative dispute resolution and the seller's answer;

(b) procedures for conducting investigations;

(c) a procedure for assessing costs of alternative dispute resolution to the parties; and

(d) types of seed that are exempted from the requirements of this part.

80-5-510. Administration of fees

Filing fees and reimbursed costs must be deposited in the seed account established in 80-5-132 for the purpose of funding costs of investigation and alternative dispute resolution. Funds deposited under this section are statutorily appropriated, as provided in 17-7-502, to pay actual expenses incurred by the department to administer the alternative dispute resolution program provided for in this part.