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States' Alternative Dispute Resolution Statutes

State of Nebraska

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States' Alternative Dispute Resolution
Statutes

STATE OF NEBRASKA

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Uniform Arbitration Act
Chapter 25, Article 26

Current through End of 2007 Regular Session

§ 25-2601. Act, how cited.

Sections 25-2601 to 25-2622 shall be known and may be cited as the Uniform Arbitration Act.

§ 25-2602.01. Validity of arbitration agreement.

- (a) A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.
- (b) A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly.
- (c) The Uniform Arbitration Act applies to arbitration agreements between employers and employees or between their respective representatives.
- (d) Contract provisions agreed to by the parties to a contract control over contrary provisions of the act other than subsections (e) and (f) of this section.
- (e) Subsections (a) and (b) of this section do not apply to a claim for workers' compensation.
- (f) Subsection (b) of this section does not apply to:

- (1) A claim arising out of personal injury based on tort;
 - (2) A claim under the Nebraska Fair Employment Practice Act;
 - (3) Any agreement between parties covered by sections 60-1401.01 to 60-1440; and
 - (4) Except as provided in section 44-811, any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract.
- (g) When a conflict exists, the Uniform Arbitration Act shall not apply to the Uniform Act on Interstate Arbitration and Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329.

§ 25-2602.02. Contract; statement required.

The following statement shall appear in capitalized, underlined type adjoining the signature block of any standardized agreement in which binding arbitration is the sole remedy for dispute resolution: THIS CONTRACT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

§ 25-2603. Proceedings to compel or stay arbitration.

- (a) On application of a party showing an agreement described in section 25- 2602.01 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 for the moving party, otherwise, the application shall be denied.
- (b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.
- (c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection (a) of this section, the application shall be made therein. Otherwise and subject to section 25-2619, such application may be made in any court of competent jurisdiction.
- (d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.
- (e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

§ 25-2604. Appointment of arbitrators by court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be

followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and a successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators, except that the court shall always appoint an odd number of arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. Upon appointment an arbitrator shall disclose his or her hourly or daily rate for arbitration services.

§ 25-2604.01. Arbitrators; disqualification.

Any person proposed for nomination by all parties or all party arbitrators to serve as a neutral arbitrator shall disqualify himself or herself, upon demand of any party to the arbitration agreement made before the commencement of the proceedings, on any of the grounds specified in section 24-739 for disqualification of a judge or on the ground that such person is an employee or independent contractor of an industry, trade, or professional association of which only one party is a member if the grounds were known or should have been known by the movant.

§ 25-2605. Majority action by arbitrators.

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by the Uniform Arbitration Act.

§ 25-2606. 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 or certified mail not less than ten 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; and

(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.

Arbitration proceedings shall take place in the county designated in section 25-403.01 unless the parties otherwise agree at a time subsequent to the arising of the controversy.

§ 25-2607. Representation by attorney.

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

§ 25-2608. Witnesses, subpoenas, depositions.

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

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

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

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

§ 25-2609. 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 or certified 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 but not more than thirty days after the hearing. 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 or she notifies the arbitrators of his or her objection prior to the delivery of the award to him or her.

§ 25-2610. Change of award by arbitrators.

On application of a party or, if an application to the court is pending under section 25-2612, 25-2613, or 25-2614, 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 subdivisions (a)(1) and (a)(3) of section 25-2614 or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he or she must serve his or her objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of sections 25-2612 to 25-2614.

§ 25-2611. Fees and expenses of arbitration.

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

§ 25-2612. Confirmation of award.

Within sixty days of the 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 25-2613 and 25-2614.

§ 25-2613. Vacating an award.

(a) Upon application of a party, the court shall vacate an award when:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of section 25- 2606, as to prejudice substantially the rights of a party;
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 25-2603, and the party did not participate in the arbitration hearing without raising the objection; or
- (6) An arbitrator was subject to disqualification pursuant to section 25- 2604.01 and failed, upon receipt of timely demand, to disqualify himself or herself as required by such section.

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

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

(c) In vacating the award on grounds other than stated in subdivision (a)(5) of this section, the court may order a rehearing before the new arbitrators chosen as provided in the agreement or, in the absence thereof, by the court in accordance with section 25-2604, or if the award is vacated on grounds set forth in subdivisions (a)(3) and (a)(4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 25-2604. 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.

§ 25-2614. Modification or correction of award.

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

(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.

§ 25-2615. Judgment or decree on award.

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

§ 25-2616. Judgment roll, docketing.

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

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying, or correcting the award; and

(4) A copy of the judgment or decree.

(b) The judgment

§ 25-2617. Application to court; procedure.

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

§ 25-2618. District court; jurisdiction; act; how construed.

(a) The term court shall mean any district court of this state. The making of an agreement described in section 25-2602.01 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under the Uniform Arbitration Act and to enter judgment on an award thereunder.

(b) Nothing in the Uniform Arbitration Act shall be construed to empower the Commission of Industrial Relations to order that any party under its jurisdiction submit to, or contract to submit to, arbitration.

§ 25-2618.01. Small Claims Court; jurisdiction; when; transfer limited; appeal.

(a) Whenever the amount of a controversy subject to the terms of an otherwise valid arbitration agreement is within the jurisdiction of the Small Claims Court under section 25-2802, a party may submit the controversy to the Small Claims Court for ultimate resolution under sections 25-2801 to 25-2807.

(b) A controversy submitted to the Small Claims Court under this section shall not be transferred to the regular docket of the county court under section 25- 2805.

(c) In all appeals involving cases submitted under subsection (a) of this section, the judgment shall be affirmed unless:

(i) The judgment was procured by corruption, fraud, or other undue means;

(ii) There was evident partiality or corruption by the judge or misconduct prejudicing the rights of any party;

(iii) The judge exceeded his or her powers;

(iv) The judge refused to postpone the trial upon sufficient cause being shown therefor, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of section 25-2606, as to prejudice substantially the rights of a party;

(v) There was no arbitration agreement and the issue was not adversely determined in proceedings under section 25-2603, and the party did not participate in the Small Claims Court hearing without raising the objection; or

(vi) The judge was subject to disqualification and failed, upon receipt of timely demand, to disqualify himself or herself as required by law.

§ 25-2619. 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 or she 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.

§ 25-2620. Appeals.

(a) An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under section 25-2603;
- (2) An order granting an application to stay arbitration made under subsection (b) of section 25-2603;
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of the Uniform Arbitration Act.

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

§ 25-2621. Act not retroactive.

The Uniform Arbitration Act applies only to agreements made subsequent to August 30, 1987.

§ 25-2622. Act, how construed.

The Uniform Arbitration Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Uniform Mediation Act
Chapter 25, Article 29

Current through End of 2007 Regular Session

§ 25-2930. Act, how cited.

Sections 25-2930 to 25-2942 shall be known and may be cited as the Uniform Mediation Act.

§ 25-2931. Terms, defined.

For purposes of the Uniform Mediation 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 prehearing 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.

§ 25-2932. Scope.

(a) Except as otherwise provided in subsection (b) or (c) of this section, the Uniform Mediation 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 Uniform Mediation 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 and the mediator are students; or

(B) a correctional institution for youths or a juvenile center if all the parties and the mediator are residents of that institution.

(c) If the parties agree in advance in a signed record or a record of proceeding so reflects that all or part of a mediation is not privileged, the privileges under sections 25-2933 to 25-2935 do not apply to the mediation or part agreed upon. However, such sections apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

§ 25-2933. Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in section 25-2935, a mediation communication is privileged as provided in subsection (b) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 25-2934.

(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.

§ 25-2934. Waiver and preclusion of privilege.

(a) A privilege under section 25-2933 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 25-2933, 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 25-2933.

§ 25-2935. Exceptions to privilege.

(a) There is no privilege under section 25-2933 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 sections 84-712 to 84-712.09 or made during a session of a mediation which is open, or is required by law to be open, to the public;
- (3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (4) intentionally used to plan a crime, attempt to commit a crime, or 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) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or
- (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.

(b) There is no privilege under section 25-2933 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) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in

subdivision (a)(6) or (b)(2) of this section.

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

§ 25-2936. Prohibited mediator reports.

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

(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 25-2935; 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) of this section may not be considered by a court, administrative agency, or arbitrator.

§ 25-2937. Confidentiality.

Unless subject to the Open Meetings Act or sections 84-712 to 84-712.09, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

§ 25-2938. 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 subdivision (a)(1) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) 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) of this section is precluded by the violation from asserting a privilege under section 25-2933.

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

(f) The Uniform Mediation 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) of this section to be disclosed, the parties agree otherwise.

§ 25-2939. Participation in mediation.

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

§ 25-2940. Relation to federal Electronic Signatures in Global and National Commerce Act.

The Uniform Mediation Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but the Uniform Mediation Act does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

§ 25-2941. Uniformity of application and construction.

In applying and construing the Uniform Mediation 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.

§ 25-2942. Application to existing agreements or referrals.

(a) The Uniform Mediation Act governs a mediation pursuant to a referral or an agreement to mediate made on or after August 31, 2003.

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

(c) The Uniform Mediation Act is intended to address issues of privilege and does not diminish any other mediation requirements of the statutes of Nebraska.

Farm Mediation
Chapter 2, Article 48

The statute is current through the First Special Session of 2008

§ 2-4801. Act, how cited.

Sections 2-4801 to 2-4816 shall be known and may be cited as the Farm Mediation Act.

§ 2-4802. Terms, defined.

As used in the Farm Mediation Act, unless the context otherwise requires:

- (1) Administrator means the Department of Agriculture or any other appropriate state agency designated by the Governor;
- (2) Borrower means an individual, limited liability company, corporation, trust, cooperative, joint venture, or other entity entitled to contract who is engaged in farming or ranching, who derives more than fifty percent of his or her gross income from farming or ranching, and who holds an agricultural loan;
- (3) Creditor means any individual, organization, cooperative, partnership, limited liability company, trust, or state or federally chartered corporation to whom an agricultural loan is owed;
- (4) Farm mediation service means an entity with which the administrator contracts to conduct mediation and related services pursuant to the act;
- (5) Mediation means a process by which the parties present, discuss, and explore practical and realistic alternatives to the resolution of a dispute; and
- (6) Mediator means anyone responsible for and engaged in the performance of mediation pursuant to the act.

§ 2-4803. Administrator; duties.

The administrator shall serve as the farm mediation program coordinator and shall be responsible for placing into effect and implementing the Farm Mediation Act.

§ 2-4804. Financial, legal, and farm mediation services; contracts to provide.

- (1) Borrowers involved in mediation under the Farm Mediation Act shall be offered assistance, at no cost to borrowers, in the analysis of their business and personal financial situation. The administrator shall contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if he or she has staff trained and experienced in farm and ranch financial analysis, is familiar with the unique aspects of production agriculture, is able to work effectively with borrowers and creditors, and demonstrates an ability to assist each borrower in developing alternatives and to evaluate such alternatives for potential viability.
- (2) The administrator shall provide any available information regarding legal assistance programs for borrowers and may contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if such assistance is provided by attorneys who are qualified in agricultural credit problems of borrowers.

(3) The administrator shall contract with one or more eligible persons to provide farm mediation services pursuant to the Farm Mediation Act. A person shall be eligible to contract to provide farm mediation services if he or she is qualified or provides agricultural mediation training of mediators to a level of expertise specified by the administrator and ensures that all mediation sessions are confidential.

(4) Any person contracting with the administrator to provide services pursuant to this section shall demonstrate an ability to perform high quality service for the least cost within the time limits established by the administrator.

(5) The contract or contracts entered into pursuant to this section may be terminated by either party upon written notice. Any person awarded a contract shall be designated as the contractor for the service area of the state set forth in such contract for the duration of the contract.

§ 2-4805. Farm mediation service; advise borrower of assistance programs.

After receiving a mediation request, the farm mediation service shall advise the borrower that financial and legal preparation assistance may be available. The farm mediation service shall provide any other available information regarding assistance programs to farmers.

§ 2-4806. Fees.

The administrator shall adopt and promulgate rules and regulations setting appropriate fee guidelines for the services provided under the Farm Mediation Act, which fees shall not exceed actual costs and shall be borne equally by all parties, and setting forth any procedures or requirements necessary to implement the act. The rules and regulations shall provide that the fees shall be collected by the farm mediation service and retained by the farm mediation service to offset its costs and that the farm mediation service may require payment of the fees or a portion thereof prior to a mediation meeting. The administrator may adopt and promulgate rules and regulations that allow a separate fee schedule for mediation services that are not eligible for partial or full federal reimbursement.

§ 2-4807. Creditor; provide notification of availability of mediation; when.

(1) At least thirty days prior to the initiation of a proceeding on an agricultural debt in excess of forty thousand dollars, a creditor, except as provided in subsection (2) or (3) of this section, shall provide written notice directly to the borrower of the availability of mediation and the address and telephone number of the farm mediation service in the service area of the borrower.

(2) Subsection (1) of this section shall not apply to creditors subject to the federal Agricultural Credit Act of 1987 if such act and the rules and regulations adopted and promulgated thereunder require otherwise.

(3) Subsection (1) of this section shall not apply if a court of competent jurisdiction determines that the time delay required would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe the borrower may dissipate or divert collateral.

§ 2-4808. Mediation; request; participants.

(1) Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service may also accept disputes regarding division fences, including disputes referred by a court pursuant to section 34-112.02.

(2) The farm mediation service shall notify all the parties and, upon their consent, schedule a meeting with a mediator. The parties shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of any party in any manner. Participation in mediation under this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by any party.

§ 2-4809. Initial mediation meeting.

After receiving a mediation request under section 2-4808, the farm mediation service shall send a mediation meeting notice to all the consenting parties setting a time and place for an initial mediation meeting between the parties and a mediator associated with the farm mediation service. Adequate preparation by all parties shall be advised by the farm mediation service prior to the mediation meeting. An initial mediation meeting shall be held within forty days after receiving the mediation request or as otherwise agreed by the parties.

§ 2-4810. Mediation period; duration; continuation.

The farm mediation service shall conduct and conclude a mediation meeting during the mediation period which extends for sixty days after the farm mediation service receives the mediation request. If all parties consent, mediation may continue after the end of the mediation period. If any party elects not to participate in mediation, the farm mediation service shall so notify all parties.

§ 2-4811. Agreement; mediator; powers; enforcement.

If an agreement is reached between the parties, the mediator may (1) draft a written mediation agreement encompassing the agreement, (2) have it signed by the parties, and (3) file the agreement with the farm mediation service. Any party to the mediation agreement may enforce the agreement as a legal contract.

§ 2-4812. Mediator; duties; confidentiality required.

(1) At the initial mediation meeting and any subsequent meetings, the mediator associated with the farm mediation service shall:

(a) Listen to every party desiring to be heard;

(b) Attempt to mediate between the parties;

(c) Allow for exploration of legitimate and fair interests of the parties; and

(d) Advise the parties as to the existence of any available assistance programs including financial preparation and legal assistance.

(2) All documents and data regarding the finances of borrowers and creditors or the involvement of parties in an adverse decision from a United States Department of Agriculture agency which are created, collected, and maintained by the farm mediation service shall not be public records and shall be held in strict confidence by the farm mediation service and all parties to the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

(3) No mediation shall commence until the mediator makes a statement to the effect of language contained in subsection (2) of this section. At the end of a mediation session, the mediator shall obtain a signed statement by all parties to the mediation agreeing to abide by the requirements of this section.

§ 2-4813. Administrator; farm mediation service; promote services.

The administrator and the farm mediation service shall make an extensive effort to educate borrowers and creditors and other eligible participants on the mediation process; financial, legal, and federal agricultural program issues; and the availability of farm mediation services.

§ 2-4814. Applicability of act.

Except as otherwise provided in the Farm Mediation Act, nothing in the act shall be applicable to or shall affect any legal proceedings filed by any party in mediation.

§ 2-4815. Farm mediation service; maintain statistical records.

The farm mediation service shall maintain complete statistical records of program participation and costs and make them available upon request.

§ 2-4816. Act, termination.

The Farm Mediation Act shall terminate on June 30, 2009, unless extended by action of the Legislature.