

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0770.01 Jerry Barry x4341

HOUSE BILL 18-1261

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO ARBITRATION FAIRNESS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill applies to certain consumer and employment arbitrations and:

- ! Establishes ethical standards for arbitrators;
- ! Specifies that any party may challenge in court the impartiality of an arbitrator or arbitration services provider;
- ! Requires specified disclosures by arbitrators and arbitration services providers; and
- ! Authorizes injunctive relief against an arbitrator or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

arbitration services provider who engages in certain specified acts.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 7 to article
3 22 of title 13 as follows:

PART 7

COLORADO ARBITRATION FAIRNESS ACT

6 **13-22-701. Short title.** THE SHORT TITLE OF THIS PART 7 IS THE
7 "COLORADO ARBITRATION FAIRNESS ACT".

8 **13-22-702. Legislative declaration.** THE GENERAL ASSEMBLY
9 FINDS AND DECLARES THAT IT IS THE POLICY OF THE STATE TO ENSURE
10 THAT PRIVATE ARBITRATION IS FAIR AND IMPARTIAL AND, INSOFAR AS
11 POSSIBLE UNDER FEDERAL LAW, ACCESSIBLE AND AFFORDABLE FOR ALL
12 CONSUMERS AND EMPLOYEES, AND ENACTS THE FOLLOWING PROVISIONS
13 TO AMEND COLORADO'S "UNIFORM ARBITRATION ACT", PART 2 OF THIS
14 ARTICLE 22, AS IT APPLIES TO CONSUMERS AND EMPLOYEES.

15 **13-22-703. Definitions.** AS USED IN THIS PART 7, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "ADVERSARIAL OR SYMPATHETIC RELATIONSHIP" INCLUDES A
18 SIGNIFICANT PERSONAL OR PROFESSIONAL EXPERIENCE OR RELATIONSHIP
19 ALIGNED WITH FEWER THAN ALL PARTIES TO THE DISPUTE.

1 PURSUANT TO THE TERMS OF AN AGREEMENT BETWEEN A LABOR
2 ORGANIZATION AND AN EMPLOYER.

3 (3) "CONSUMER" MEANS A PERSON WHO:

4 (a) IS AN ACTUAL OR POTENTIAL PURCHASER OR RECIPIENT OF A
5 PARTY'S, A PARTY'S AGENT'S, OR A PARTY'S INDEPENDENT CONTRACTOR'S
6 GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY;

7 (b) IS A SUCCESSOR IN INTEREST TO AN ACTUAL PURCHASER OR
8 RECIPIENT WHO PURCHASED THE PARTY'S, PARTY'S AGENT'S, OR PARTY'S
9 INDEPENDENT CONTRACTOR'S GOODS, SERVICES, OR REAL OR PERSONAL
10 PROPERTY; OR

11 (c) ALLEGES DAMAGES CAUSED BY A PARTY'S, PARTY'S AGENT'S,
12 OR PARTY'S INDEPENDENT CONTRACTOR'S GOODS, SERVICES, PROPERTY,
13 OR ACTION OR INACTION, OTHER THAN DAMAGES SUSTAINED BY A
14 FOR-PROFIT SOLE PROPRIETORSHIP OR FOR-PROFIT BUSINESS ENTITY.

15 (4) "EMPLOYEE" MEANS ANY PERSON EMPLOYED BY ANOTHER AS
16 DEFINED BY STATE LAW. "EMPLOYEE" ALSO MEANS ANY PERSON WHO IS
17 NOT CLASSIFIED BY A BUSINESS AS AN EMPLOYEE BUT WHO CLAIMS TO BE
18 AN EMPLOYEE AND WHOSE CLAIMS AGAINST THE PURPORTED EMPLOYER
19 THAT ARE SUBJECT OR POTENTIALLY SUBJECT TO AN AGREEMENT
20 GOVERNED BY THIS PART 7 RELATE TO THIS ALLEGED MISCLASSIFICATION.

21 (5) "EVIDENT PARTIALITY", AS USED IN THIS PART 7 AND IN
22 SECTION 13-22-223, INCLUDES CIRCUMSTANCES WHEN:

23 (a) AN ARBITRATOR OR ARBITRATION SERVICES PROVIDER FAILS TO
24 SUBSTANTIALLY COMPLY WITH THE DISCLOSURE REQUIREMENTS IMPOSED
25 BY SECTION 13-22-707; AND

26 (b) A PARTY DISCOVERS EVIDENCE OF THE ARBITRATOR'S
27 POTENTIAL PARTIALITY MORE THAN THIRTY CALENDAR DAYS AFTER

1 SELECTION OF THE ARBITRATOR.

2 (6) "LEGAL ISSUE CONFLICT" MEANS A LEGAL ISSUE THAT LIKELY
3 WILL BE PRESENTED TO THE ARBITRATOR, THE RESOLUTION OF WHICH
4 LEGAL ISSUE BY THE ARBITRATOR LIKELY WOULD BE CONTRARY TO THE
5 INTERESTS OF ONE OR MORE OF:

6 (a) THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER; OR
7 (b) THE ARBITRATOR'S OR THE ARBITRATOR'S EMPLOYER'S
8 CURRENT CLIENTS OR A CLIENT'S INDUSTRY OR TRADE GROUP.

9 (7) "PECUNIARY INTEREST" OR "FINANCIAL INTEREST" INCLUDES
10 A LEGAL ISSUE CONFLICT.

11 (8) "PERSON" MEANS:

12 (a) AN INDIVIDUAL, CORPORATION, ESTATE, TRUST, PARTNERSHIP,
13 LIMITED LIABILITY COMPANY, UNINCORPORATED ASSOCIATION, OR TWO OR
14 MORE OF SUCH INDIVIDUALS OR ENTITIES HAVING A JOINT OR COMMON
15 INTEREST;

16 (b) ANY OTHER LEGAL OR COMMERCIAL ENTITY; OR
17 (c) AN AGENT, TRUSTEE, REPRESENTATIVE, OR OTHER INDIVIDUAL
18 OR ENTITY ACTING ON BEHALF OF A PERSON.

19 (9) (a) "POTENTIAL PARTIALITY" MEANS THAT, BASED ON THE
20 TOTALITY OF THE FACTS AND CIRCUMSTANCES, A REASONABLE PERSON
21 WOULD CONCLUDE THAT THE IMPARTIALITY OF AN ARBITRATOR OR
22 ARBITRATION SERVICES PROVIDER MAY BE COMPROMISED OR IMPROPERLY
23 OR UNDULY INFLUENCED IF HE OR SHE IS ASKED TO DECIDE ONE OR MORE
24 MATTERS SUBJECT TO THE ARBITRATION DUE TO AN ACTUAL OR POTENTIAL
25 CONFLICT OF INTEREST, INCLUDING, WITHOUT LIMITATION, A PECUNIARY
26 INTEREST, A BUSINESS RELATIONSHIP, A FAMILIAL RELATIONSHIP, AN
27 ADVERSARIAL OR SYMPATHETIC RELATIONSHIP, OR A LEGAL ISSUE

1 CONFLICT ON THE PART OF THE ARBITRATOR OR ARBITRATION SERVICES
2 PROVIDER.

3 (b) "POTENTIAL PARTIALITY" ALSO EXISTS IF A JUDICIAL OFFICER'S
4 SIMILAR INTEREST IN THE OUTCOME OF A DISPUTE BEFORE THAT OFFICER
5 WOULD DISQUALIFY HIM OR HER UNDER THE COLORADO CODE OF JUDICIAL
6 CONDUCT FROM PRESIDING OVER A PROCEEDING OR WOULD DISQUALIFY
7 AN ATTORNEY UNDER THE COLORADO RULES OF PROFESSIONAL CONDUCT
8 FROM REPRESENTING A CLIENT. ADDITIONALLY, AN ARBITRATOR'S OR
9 ARBITRATION SERVICES PROVIDER'S FAILURE TO MAKE ANY OF THE
10 DISCLOSURES REQUIRED IN SECTION 13-22-707 OR STANDARDS
11 PROMULGATED PURSUANT TO SECTION 13-22-705 OR THE ARBITRATOR'S
12 OR ARBITRATION SERVICES PROVIDER'S BREACH OF ANY OF THE
13 REQUIREMENTS IN THIS PART 7 CONSTITUTES POTENTIAL PARTIALITY.

14 **13-22-704. Application.** (1) THIS PART 7 APPLIES TO ALL
15 ARBITRATIONS REQUIRED BY A PREDISPUTE ARBITRATION AGREEMENT IN
16 WHICH A CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM,
17 EXCEPT FOR ARBITRATIONS CONDUCTED PURSUANT TO A COLLECTIVE
18 BARGAINING AGREEMENT. THIS PART 7 DOES NOT APPLY TO ARBITRATIONS
19 CONDUCTED OR ADMINISTERED BY A SELF-REGULATORY ORGANIZATION,
20 AS DEFINED BY THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15
21 U.S.C. SEC. 78a, OR REGULATIONS ADOPTED PURSUANT TO THAT ACT.

22 (2) EXCEPT WHEN THEY CONFLICT WITH THE PROVISIONS OF THIS
23 PART 7, THE PROVISIONS OF THE "UNIFORM ARBITRATION ACT", PART 2 OF
24 THIS ARTICLE 22, APPLY TO CONSUMER AND EMPLOYMENT ARBITRATIONS.

25 **13-22-705. Ethical standards for arbitrators.** (1) **Bias,**
26 **prejudice, and harassment.** (a) AN ARBITRATOR SHALL PERFORM HIS OR
27 HER DUTIES, INCLUDING ADMINISTRATIVE DUTIES, WITHOUT BIAS OR

1 PREJUDICE.

2 (b) AN ARBITRATOR SHALL NOT, IN THE PERFORMANCE OF HIS OR
3 HER DUTIES, BY WORDS OR CONDUCT, MANIFEST BIAS OR PREJUDICE, OR
4 ENGAGE IN HARASSMENT, INCLUDING BUT NOT LIMITED TO BIAS,
5 PREJUDICE, OR HARASSMENT BASED UPON RACE, SEX, GENDER, RELIGION,
6 NATIONAL ORIGIN, ETHNICITY, DISABILITY, AGE, SEXUAL ORIENTATION,
7 MARITAL STATUS, SOCIOECONOMIC STATUS, OR POLITICAL AFFILIATION,
8 AND SHALL NOT DIRECT OTHERS SUBJECT TO THE ARBITRATOR'S DIRECTION
9 AND CONTROL TO DO SO.

10 (c) AN ARBITRATOR SHALL REQUIRE ATTORNEYS IN PROCEEDINGS
11 TO REFRAIN FROM MANIFESTING BIAS OR PREJUDICE OR ENGAGING IN
12 HARASSMENT BASED UPON ATTRIBUTES INCLUDING BUT NOT LIMITED TO
13 RACE, SEX, GENDER, RELIGION, NATIONAL ORIGIN, ETHNICITY, DISABILITY,
14 AGE, SEXUAL ORIENTATION, MARITAL STATUS, SOCIOECONOMIC STATUS,
15 OR POLITICAL AFFILIATION, AGAINST PARTIES, WITNESSES, ATTORNEYS, OR
16 OTHERS.

17 (d) THE RESTRICTIONS OF SUBSECTIONS (1)(b) AND (1)(c) OF THIS
18 SECTION DO NOT PRECLUDE ARBITRATORS OR ATTORNEYS FROM MAKING
19 LEGITIMATE REFERENCE TO THE LISTED FACTORS OR SIMILAR FACTORS
20 WHEN THEY ARE RELEVANT TO AN ISSUE IN A PROCEEDING.

21 (2) **External influences on arbitrator conduct.** (a) AN
22 ARBITRATOR SHALL NOT BE SWAYED BY PUBLIC CLAMOR OR FEAR OF
23 CRITICISM.

24 (b) AN ARBITRATOR SHALL NOT PERMIT FAMILY, SOCIAL,
25 POLITICAL, FINANCIAL, OR OTHER INTERESTS OR RELATIONSHIPS TO
26 INFLUENCE THE ARBITRATOR'S CONDUCT OR JUDGMENT.

27 (c) AN ARBITRATOR SHALL NOT CONVEY OR PERMIT OTHERS TO

1 CONVEY THE IMPRESSION THAT ANY PERSON OR ORGANIZATION IS IN A
2 POSITION TO INFLUENCE THE ARBITRATOR.

3 **(3) Disqualification.** (a) AN ARBITRATOR SHALL DISQUALIFY
4 HIMSELF OR HERSELF IN ANY PROCEEDING IN WHICH THE ARBITRATOR'S
5 IMPARTIALITY MIGHT REASONABLY BE QUESTIONED, INCLUDING BUT NOT
6 LIMITED TO THE FOLLOWING CIRCUMSTANCES:

7 (I) THE ARBITRATOR HAS A PERSONAL BIAS OR PREJUDICE
8 CONCERNING A PARTY OR A PARTY'S ATTORNEY, OR PERSONAL
9 KNOWLEDGE OF FACTS THAT ARE IN DISPUTE IN THE PROCEEDING;

10 (II) THE ARBITRATOR KNOWS THAT THE ARBITRATOR, THE
11 ARBITRATOR'S SPOUSE, DOMESTIC PARTNER, OR CIVIL UNION PARTNER, OR
12 A PERSON WITHIN THE THIRD DEGREE OF RELATIONSHIP TO EITHER OF
13 THEM, OR THE SPOUSE, DOMESTIC PARTNER, OR CIVIL UNION PARTNER OF
14 SUCH A PERSON, IS:

15 (A) A PARTY TO THE PROCEEDING, OR AN OFFICER, DIRECTOR,
16 GENERAL PARTNER, MANAGING MEMBER, OR TRUSTEE OF A PARTY;

17 (B) ACTING AS AN ATTORNEY IN THE PROCEEDING;

18 (C) A PERSON WHO HAS MORE THAN A DE MINIMIS INTEREST THAT
19 COULD BE SUBSTANTIALLY AFFECTED BY THE PROCEEDING; OR

20 (D) LIKELY TO BE A MATERIAL WITNESS IN THE PROCEEDING;

21 (III) THE ARBITRATOR KNOWS THAT HE OR SHE, INDIVIDUALLY OR
22 AS A FIDUCIARY, OR THE ARBITRATOR'S SPOUSE, DOMESTIC PARTNER, CIVIL
23 UNION PARTNER, PARENT, CHILD, OR OTHER MEMBER OF THE
24 ARBITRATOR'S FAMILY RESIDING IN THE ARBITRATOR'S HOUSEHOLD, HAS
25 AN ECONOMIC INTEREST IN THE SUBJECT MATTER IN CONTROVERSY OR IN
26 A PARTY TO THE PROCEEDING;

27 (IV) THE ARBITRATOR, WHILE AN ARBITRATOR, HAS MADE A

1 PUBLIC STATEMENT, OTHER THAN IN AN ARBITRATION PROCEEDING,
2 DECISION, OR OPINION, THAT COMMITS OR APPEARS TO COMMIT THE
3 ARBITRATOR TO REACH A PARTICULAR RESULT OR RULE IN A PARTICULAR
4 WAY IN THE PROCEEDING OR CONTROVERSY; OR

5 (V) THE ARBITRATOR:

6 (A) SERVED AS AN ATTORNEY IN THE MATTER IN CONTROVERSY,
7 OR WAS ASSOCIATED WITH AN ATTORNEY WHO PARTICIPATED
8 SUBSTANTIALLY AS AN ATTORNEY IN THE MATTER DURING SUCH
9 ASSOCIATION;

10 (B) SERVED IN GOVERNMENTAL EMPLOYMENT, AND IN SUCH
11 CAPACITY PARTICIPATED PERSONALLY AND SUBSTANTIALLY AS AN
12 ATTORNEY OR PUBLIC OFFICIAL CONCERNING THE PROCEEDING, OR HAS
13 PUBLICLY EXPRESSED IN SUCH CAPACITY AN OPINION CONCERNING THE
14 MERITS OF THE PARTICULAR MATTER IN CONTROVERSY;

15 (C) WAS A MATERIAL WITNESS CONCERNING THE MATTER; OR

16 (D) PREVIOUSLY PRESIDED AS AN ARBITRATOR OVER THE MATTER
17 IN ANOTHER RELATED PROCEEDING.

18 (b) AN ARBITRATOR SHALL KEEP INFORMED ABOUT THE
19 ARBITRATOR'S PERSONAL AND FIDUCIARY ECONOMIC INTERESTS, AND
20 MAKE A REASONABLE EFFORT TO KEEP INFORMED ABOUT THE PERSONAL
21 ECONOMIC INTERESTS OF THE ARBITRATOR'S SPOUSE, DOMESTIC PARTNER,
22 CIVIL UNION PARTNER, AND MINOR CHILDREN RESIDING IN THE
23 ARBITRATOR'S HOUSEHOLD.

24 (c) AN ARBITRATOR SHALL NOT ARBITRATE A DISPUTE IF THE
25 ARBITRATION INVOLVES A CONCURRENT CONFLICT OF INTEREST. A
26 CONCURRENT CONFLICT OF INTEREST EXISTS IF:

27 (I) THE MATTERS TO BE DECIDED IN THE ARBITRATION MAY BE

1 DIRECTLY ADVERSE TO THE ARBITRATOR'S NONARBITRATION BUSINESS OR
2 CLIENT; OR

3 (II) THERE IS A SIGNIFICANT RISK THAT THE ARBITRATOR'S ABILITY
4 TO PRESIDE OVER THE ARBITRATION WILL BE MATERIALLY LIMITED BY THE
5 ARBITRATOR'S RESPONSIBILITIES TO A CLIENT, A FORMER CLIENT, AN
6 INDUSTRY OR TRADE GROUP, OR A THIRD PERSON OR BY A PERSONAL
7 INTEREST OF THE ARBITRATOR.

8 (d) AN ARBITRATOR SUBJECT TO DISQUALIFICATION MAY DISCLOSE
9 THE BASIS OF THE ARBITRATOR'S DISQUALIFICATION AND MAY ASK THE
10 PARTIES AND THEIR ATTORNEYS TO CONSIDER, OUTSIDE THE PRESENCE OF
11 THE ARBITRATOR, WHETHER TO WAIVE DISQUALIFICATION. IF, FOLLOWING
12 THE DISCLOSURE, THE PARTIES AND ATTORNEYS AGREE, WITHOUT
13 PARTICIPATION BY THE ARBITRATOR, THAT THE ARBITRATOR SHOULD NOT
14 BE DISQUALIFIED, THE ARBITRATOR MAY PARTICIPATE IN THE PROCEEDING.
15 THE AGREEMENT MUST BE INCORPORATED INTO THE RECORD OF THE
16 PROCEEDING.

17 (4) **Violation.** A VIOLATION OF SUBSECTIONS (1) TO (3) OF THIS
18 SECTION CONSTITUTES EVIDENT PARTIALITY.

19 **13-22-706. Conflicts of interest, bias, or prejudice as grounds
20 for disqualification.** (1) IN ANY MATTER SUBJECT TO ARBITRATION, ANY
21 PARTY MAY CHALLENGE IN COURT, PURSUANT TO SECTION 13-22-205, THE
22 IMPARTIALITY OF THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER
23 ON THE BASIS OF POTENTIAL PARTIALITY. THE PARTY MUST CHALLENGE
24 THE IMPARTIALITY NOT LATER THAN THIRTY CALENDAR DAYS AFTER THE
25 ARBITRATOR'S AND ARBITRATOR SERVICES PROVIDER'S DISCLOSURES ARE
26 DUE PURSUANT TO SECTION 13-22-707 (1)(b).

27 (2) UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE

1 POTENTIAL OR EVIDENT PARTIALITY OF THE ARBITRATOR, THE COURT
2 SHALL DISQUALIFY THE ARBITRATOR FROM SERVING AS AN ARBITRATOR
3 IN THE ARBITRATION AND SHALL APPOINT AN ARBITRATOR PURSUANT TO
4 SECTION 13-22-211 (1).

5 (3) UPON ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE
6 POTENTIAL OR EVIDENT PARTIALITY OF THE ARBITRATION SERVICES
7 PROVIDER, THE COURT SHALL DISQUALIFY THE ARBITRATION SERVICES
8 PROVIDER FROM ADMINISTERING THE ARBITRATION AND SHALL APPOINT
9 AN ARBITRATOR PURSUANT TO SECTION 13-22-211 (1).

10 **13-22-707. Required disclosures - arbitration conflicts**
11 **checklist.** (1) (a) (I) BEFORE AN ARBITRATOR OR ARBITRATION SERVICES
12 PROVIDER MUST MAKE ANY OF THE DISCLOSURES REQUIRED BY THIS PART
13 7, THE PARTIES TO THE ARBITRATION SHALL EACH DISCLOSE AN
14 ARBITRATION CONFLICTS CHECKLIST. THE ARBITRATION CONFLICTS
15 CHECKLIST MUST DESCRIBE AND DISCLOSE IN GOOD FAITH, TO THE EXTENT
16 SUCH INFORMATION IS KNOWN OR REASONABLY AVAILABLE TO THE PARTY:

17 (A) THE MATERIAL, FACTUAL, AND LEGAL ISSUES THEY CONTEND
18 ARE DISPUTED AND TO BE RESOLVED IN THE ARBITRATION;

19 (B) THE IDENTITIES OF THE PARTIES TO THE ARBITRATION,
20 INCLUDING A DESCRIPTION OF THE BUSINESS OR OCCUPATION OF THE
21 PARTIES TO THE ARBITRATION;

22 (C) THE PARTIES' AGENTS, REPRESENTATIVES, EMPLOYEES, OR
23 INDEPENDENT CONTRACTORS, TO THE EXTENT SUCH AGENT,
24 REPRESENTATIVE, EMPLOYEE, OR INDEPENDENT CONTRACTOR HAS
25 KNOWLEDGE RELEVANT TO THE CLAIMS OR DEFENSES OF ANY PARTY;

26 (D) THE PARTIES' COUNSEL;

27 (E) ANY LIABILITY INSURERS OR OTHER INSURERS THAT MAY

1 PROVIDE COVERAGE FOR AN AWARD; AND

2 (F) SUCH OTHER MATTERS AS THE PARTIES BELIEVE IN GOOD FAITH
3 OF WHICH A PROSPECTIVE ARBITRATOR SHOULD REASONABLY BE MADE
4 AWARE IN ORDER FOR THAT ARBITRATOR TO EVALUATE WHETHER HE OR
5 SHE HAS POTENTIAL PARTIALITY.

6 (II) THE PARTY DEMANDING ARBITRATION OR THE PARTY THAT
7 FILED THE LAWSUIT GIVING RISE TO THE ARBITRATION SHALL SUBMIT THE
8 ARBITRATION CONFLICTS CHECKLIST, AS DESCRIBED IN SUBSECTION
9 (1)(a)(I) OF THIS SECTION, TO ALL PARTIES TO THE ARBITRATION, ANY
10 ARBITRATION SERVICES PROVIDER INVOLVED IN THE ARBITRATION, AND
11 ANY KNOWN POTENTIAL ARBITRATORS WITHIN SEVEN CALENDAR DAYS
12 AFTER THE FILING OF AN ARBITRATION DEMAND OR A COURT ORDER
13 COMPELLING ARBITRATION.

14 (III) WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING AN
15 ARBITRATION CONFLICTS CHECKLIST FROM THE PARTY THAT DEMANDED
16 ARBITRATION OR FILED THE LAWSUIT GIVING RISE TO THE ARBITRATION,
17 ALL OTHER PARTIES TO THE ARBITRATION SHALL SUBMIT AN ARBITRATION
18 CONFLICTS CHECKLIST TO ALL OTHER PARTIES TO THE ARBITRATION, ANY
19 ARBITRATION SERVICES PROVIDER INVOLVED IN THE ARBITRATION, AND
20 ANY KNOWN PROSPECTIVE ARBITRATORS.

21 (IV) A PARTY TO AN ARBITRATION SHALL AMEND HIS OR HER
22 ARBITRATION CONFLICTS CHECKLIST BEFORE ALL ARBITRATORS ARE
23 SELECTED AND HAVE AGREED TO SERVE AS ARBITRATORS IF THE PARTY
24 LEARNS THAT THE INFORMATION IS INCOMPLETE OR INCORRECT IN SOME
25 MATERIAL RESPECT. OTHER PARTIES, THE ARBITRATOR, AND THE
26 ARBITRATION SERVICES PROVIDER SHALL SUPPLEMENT THEIR CHECKLIST
27 OR DISCLOSURES WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING AN

1 AMENDMENT OR SUPPLEMENT IF THE NEW INFORMATION WOULD HAVE
2 REQUIRED SUCH DISCLOSURE IF INCLUDED IN AN INITIAL CHECKLIST.

3 (V) A PARTY TO AN ARBITRATION SHALL NOT ASSERT AS A BASIS
4 TO DISQUALIFY AN ARBITRATOR OR ARBITRATION SERVICES PROVIDER OR
5 TO VACATE AN ARBITRATION AWARD ANY APPEARANCE OF POTENTIAL
6 PARTIALITY THAT REASONABLY SHOULD HAVE BEEN IDENTIFIED AND
7 DISCLOSED BY AN ARBITRATOR BUT FOR THE FAILURE OF THAT PARTY TO
8 TIMELY DISCLOSE INFORMATION IN THAT PARTY'S ARBITRATION CONFLICTS
9 CHECKLIST.

10 (VI) THE DISCLOSURE REQUIREMENTS IN THIS SECTION DO NOT
11 REQUIRE THE DISCLOSURE OF ANY INFORMATION SUBJECT TO THE
12 ATTORNEY-CLIENT PRIVILEGE OR OTHER PROTECTION FROM DISCLOSURE.
13 NOTWITHSTANDING SUCH PROTECTION, WHEN INFORMATION SUBJECT TO
14 THE DISCLOSURE REQUIREMENTS IN THIS SECTION IS PROTECTED FROM
15 DISCLOSURE, THE FACT THAT SUCH INFORMATION EXISTS MUST BE
16 DISCLOSED. THE GENERAL NATURE OF THE INFORMATION, DESCRIBED IN
17 A SUFFICIENT MANNER TO ALLOW THE PARTIES TO EVALUATE THE
18 POTENTIAL CONFLICT, MUST ALSO BE DISCLOSED.

19 (b) BEFORE THE APPOINTMENT OR SELECTION OF ANY
20 ARBITRATORS, AN ARBITRATION SERVICES PROVIDER SHALL DISCLOSE IN
21 WRITING TO THE PARTIES SUBJECT TO THE ARBITRATION THE FOLLOWING:

22 (I) ANY PAST, PRESENT, OR CURRENTLY EXPECTED FINANCIAL OR
23 PROFESSIONAL RELATIONSHIP OR AFFILIATION BETWEEN THE ARBITRATION
24 SERVICES PROVIDER AND A PARTY OR ATTORNEYS IN THE ARBITRATION,
25 INCLUDING:

26 (A) ANY FINANCIAL INTEREST THAT THE ARBITRATION SERVICES
27 PROVIDER HAS IN ANY OF THE PARTIES TO THE ARBITRATION OR THEIR

1 ATTORNEYS;

2 (B) ANY FINANCIAL INTEREST THAT ANY OF THE PARTIES TO THE
3 ARBITRATION OR THEIR ATTORNEYS HAVE IN THE ARBITRATION SERVICES
4 PROVIDER; AND

5 (C) WHETHER THE ARBITRATION SERVICES PROVIDER HAS
6 RECEIVED A GIFT, BEQUEST, OR OTHER THING OF VALUE FROM A PARTY, AN
7 ATTORNEY IN THE ARBITRATION, A LAW FIRM WITH WHICH AN ATTORNEY
8 IN THE ARBITRATION IS CURRENTLY ASSOCIATED, OR ANY PARTIES'
9 LIABILITY INSURERS;

10 (II) ANY AGREEMENTS THE ARBITRATION SERVICES PROVIDER HAS
11 WITH ANY OF THE PARTIES TO THE ARBITRATION, THEIR COUNSEL, AND
12 THEIR LIABILITY INSURERS AND THEIR ATTORNEYS, INCLUDING, WITHOUT
13 LIMITATION, ANY DISCOUNT, COMPENSATION, OR REFERRAL
14 ARRANGEMENTS MADE AVAILABLE TO ANY OF THE PARTIES TO THE
15 ARBITRATION AND ARRANGEMENTS REGARDING HOW, WHERE, OR WHEN
16 THE ARBITRATION SERVICES PROVIDER WILL ADMINISTER DISPUTES
17 BETWEEN THE PARTIES TO THE ARBITRATION; AND

18 (III) ANY SOLICITATION MADE TO A PARTY OR ATTORNEY FOR A
19 PARTY TO THE ARBITRATION, INCLUDING PRIVATE PRESENTATIONS MADE
20 TO A PARTY OR ATTORNEY FOR A PARTY BY THE ARBITRATION SERVICES
21 PROVIDER, OR ORAL OR WRITTEN DISCUSSIONS, MEETINGS, OR
22 NEGOTIATIONS TO DESIGNATE THE ARBITRATION SERVICES PROVIDER AS
23 THE ARBITRATION SERVICES PROVIDER FOR A PARTY. SOLICITATIONS DO
24 NOT INCLUDE ADVERTISEMENTS TO THE GENERAL PUBLIC.

25 (c) PRIOR TO THE SELECTION OF AN ARBITRATOR, BUT AFTER ALL
26 PARTIES TO THE ARBITRATION HAVE DELIVERED THEIR ARBITRATION
27 CONFLICTS CHECKLISTS OR RESPONSIVE ARBITRATION CONFLICTS

1 CHECKLISTS TO THE ARBITRATION SERVICES PROVIDER, AND THE
2 ARBITRATION SERVICES PROVIDER HAS PROVIDED SUCH ARBITRATION
3 CONFLICTS CHECKLISTS TO THE PROSPECTIVE ARBITRATOR, THE
4 ARBITRATOR MUST DISCLOSE:

5 (I) THE USUAL OCCUPATION OR BUSINESS OF THE ARBITRATOR;

6 (II) IF THE ARBITRATOR IS A PRACTICING ATTORNEY, THE GENERAL
7 NATURE OF THE PRACTICE AND TYPES OF CLIENTS SERVED BY THAT
8 ATTORNEY;

9 (III) ANY BUSINESS, PECUNIARY, SOCIAL, FAMILIAL, LEGAL, OR
10 OTHER SIGNIFICANT RELATIONSHIP THE ARBITRATOR HAS WITH ANY OF THE
11 PERSONS SUBJECT TO THE ARBITRATION, THEIR COUNSEL, AND THEIR
12 LIABILITY INSURERS OR OTHER INSURERS THAT MAY PROVIDE COVERAGE
13 FOR THE AWARD;

14 (IV) ANY PECUNIARY OR FINANCIAL INTEREST THE ARBITRATOR
15 MAY HAVE RELATING TO THE ISSUES IN THE ARBITRATION OR THE
16 OUTCOME OF THE ARBITRATION;

17 (V) ANY CIRCUMSTANCES THAT MIGHT REASONABLY GIVE THE
18 APPEARANCE OF POTENTIAL PARTIALITY ON THE PART OF THE ARBITRATOR
19 IN LIGHT OF THE MATTERS DISCLOSED IN THE ARBITRATION CONFLICTS
20 CHECKLISTS OR RESPONSIVE ARBITRATION CONFLICTS CHECKLISTS; AND

21 (VI) A LIST OF ALL OF THE ARBITRATIONS THAT THE ARBITRATOR
22 HAS PARTICIPATED IN AS AN ARBITRATOR DURING THE PRIOR FIVE YEARS
23 AND, TO THE MAXIMUM EXTENT POSSIBLE IN CONSIDERATION OF
24 REASONABLE PRIVACY CONCERNs AND ENFORCEABLE CONFIDENTIALITY
25 AGREEMENTs, THE NAMES OF THE PARTIES TO THOSE ARBITRATIONS AND
26 THEIR ATTORNEYS, ALONG WITH COPIES OF THE DECISIONS AND AWARDS
27 RENDERED.

6 (e) ALL ARBITRATORS AND ARBITRATION SERVICES PROVIDERS
7 HAVE A CONTINUING DUTY TO PROMPTLY SUPPLEMENT THEIR DISCLOSURE
8 THROUGH THE DATE THAT THEY RENDER THEIR DECISION OR AWARD OR
9 THAT THE ARBITRATION HAS TERMINATED, WHICHEVER OCCURS SOONER.

10 **13-22-708. Injunctive relief available against arbitration**
11 **services providers.** (1) ANY PARTY TO AN ARBITRATION IS ENTITLED TO
12 APPROPRIATE INJUNCTIVE RELIEF IN COURT AGAINST ANY ARBITRATOR OR
13 ARBITRATION SERVICES PROVIDER WHO ENGAGES IN ANY OF THE
14 FOLLOWING ACTS:

15 (a) ADMINISTERING OR CONDUCTING AN ARBITRATION FOR WHICH
16 THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER HAS POTENTIAL OR
17 EVIDENT PARTIALITY:

18 (b) APPOINTING AN ARBITRATOR WHO HAS POTENTIAL OR EVIDENT
19 PARTIALITY; OR

20 (c) FAILING TO SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS
21 OF THIS PART 7

22 **13-22-709. Waiver - severability.** (1) NO RIGHT CONFERRED BY
23 THIS PART 7 MAY BE WAIVED BEFORE THE DISPUTE SUBJECT TO
24 ARBITRATION HAS ARISEN, AND ANY SUCH WAIVER IS ONLY EFFECTIVE IF
25 MADE IN A WRITING SIGNED BY THE PARTIES TO THE ARBITRATION

26 (2) EVERY PROVISION OF THIS PART 7 AND EACH OF ITS SECTIONS
27 AND SUBSECTIONS IS SEVERABLE

1 **SECTION 2.** In Colorado Revised Statutes, 13-22-204, **amend**
2 (3)(a) as follows:

3 **13-22-204. Effect of agreement to arbitrate - nonwaivable**
4 **provisions.** (3) (a) Except as otherwise provided in ~~paragraph (b) of this~~
5 ~~subsection~~ (3) SUBSECTION (3)(b) OF THIS SECTION, a party to an
6 agreement to arbitrate or arbitration proceeding may not waive, or the
7 parties may not vary the effect of, the requirements of this section or
8 section 13-22-203 (1), 13-22-207, 13-22-214, 13-22-218, 13-22-220 (4)
9 or (5), 13-22-222, 13-22-223, 13-22-224, 13-22-225 (1) or (2), or
10 13-22-229, OR PART 7 OF THIS ARTICLE 22.

11 **SECTION 3.** In Colorado Revised Statutes, 13-22-212, **add** (7)
12 as follows:

13 **13-22-212. Disclosure by arbitrators.** (7) EXCEPT FOR THE
14 CONTINUING OBLIGATIONS IMPOSED BY SUBSECTION (2) OF THIS SECTION,
15 THIS SECTION DOES NOT APPLY TO ARBITRATIONS COVERED BY PART 7 OF
16 THIS ARTICLE 22.

17 **SECTION 4. Effective date - applicability.** This act takes effect
18 upon passage and applies to arbitrations conducted pursuant to arbitration
19 demands filed and orders to compel arbitration entered on or after said
20 date.

21 **SECTION 5. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.