

**Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 20-0374.01 Jerry Barry x4341

**SENATE BILL 20-093**

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**SENATE SPONSORSHIP**

**Foote and Fenberg**, Danielson, Fields, Garcia, Ginal, Gonzales, Lee, Pettersen, Rodriguez, Story, Todd, Winter

**HOUSE SPONSORSHIP**

**Jackson**, Caraveo, Cutter, Froelich, Jaquez Lewis, Lontine, Singer, Sullivan

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING PROTECTIONS RELATED TO MANDATORY AGREEMENT**  
102            **PROVISIONS, AND, IN CONNECTION THEREWITH, ENACTING THE**  
103            **"CONSUMER AND EMPLOYEE DISPUTE RESOLUTION FAIRNESS**  
104            **ACT".**

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**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 enacts the "Consumer and Employee Dispute Resolution Fairness Act" (act). For certain consumer and employment arbitrations, the act:

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.



1 "CONSUMER AND EMPLOYEE ARBITRATION FAIRNESS ACT".

2 **13-22-802. Legislative declaration.** (1) THE GENERAL ASSEMBLY  
3 FINDS AND DECLARES THAT IT IS THE POLICY OF THE STATE, TO THE  
4 EXTENT PERMITTED UNDER FEDERAL LAW, TO PROTECT THE INTEGRITY OF  
5 THE ARBITRATION PROCESS, MINIMIZE WASTED TIME AND RESOURCES, AND  
6 ENSURE THAT ARBITRATIONS OF CONSUMER AND EMPLOYEE DISPUTES  
7 UNDER PRE-DISPUTE ARBITRATION AGREEMENTS ARE FAIR, AFFORDABLE,  
8 AND EXPEDITIOUS BY:

9 (a) CLARIFYING INFORMATION RELEVANT TO EVALUATING  
10 EVIDENT PARTIALITY AND REQUIRING EARLY DISCLOSURE OF THE SAME;  
11 AND

12 (b) ENSURING THAT ARBITRATORS WHO PRESIDE OVER CONSUMER  
13 AND EMPLOYMENT DISPUTES ARE NOT EVIDENTLY PARTIAL TOWARD ANY  
14 PARTY TO THE DISPUTE.

15 **13-22-803. Definitions.** AS USED IN THIS PART 8, UNLESS THE  
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "ARBITRATION SERVICES PROVIDER" MEANS AN ASSOCIATION,  
18 AGENCY, BOARD, COMMISSION OR OTHER ENTITY, OR SOLE  
19 PROPRIETORSHIP THAT IS NEUTRAL AND INITIATES, SPONSORS, OR  
20 ADMINISTERS AN ARBITRATION PROCEEDING OR IS INVOLVED IN THE  
21 APPOINTMENT OF AN ARBITRATOR; EXCEPT THAT THIS TERM DOES NOT  
22 INCLUDE ANY PARTY TO THE ARBITRATION OR ANY LABOR ORGANIZATION  
23 OR OTHER PARTY TO A COLLECTIVE BARGAINING AGREEMENT THAT  
24 INITIATES AN ARBITRATION PURSUANT TO THE TERMS OF AN AGREEMENT  
25 BETWEEN A LABOR ORGANIZATION AND AN EMPLOYER.

26 (2) "CONSUMER" MEANS A CLAIMANT THAT OBTAINS, MAINTAINS,  
27 USES, PURCHASES, LEASES, OR HAS STANDING TO ASSERT CLAIMS

1 RELATING TO GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED  
2 PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR HOUSEHOLD  
3 PURPOSES.

4 (3) "CONSUMER DISPUTE" MEANS A DISPUTE INVOLVING A CLAIM  
5 ASSERTED BY A CONSUMER THAT RELATES TO OR ARISES FROM THE  
6 CONSUMER'S USE OF THE GOODS, SERVICES, OR REAL OR PERSONAL  
7 PROPERTY PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR  
8 HOUSEHOLD PURPOSES.

9 (4) "EMPLOYEE" MEANS:

10 (a) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
11 LAW; OR

12 (b) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS OR  
13 PURPORTED EMPLOYER AS AN EMPLOYEE BUT WHO CLAIMS TO BE AN  
14 EMPLOYEE AND WHOSE CLAIMS AGAINST THE PURPORTED EMPLOYER THAT  
15 ARE SUBJECT OR POTENTIALLY SUBJECT TO AN AGREEMENT GOVERNED BY  
16 THIS PART 8 ARE RELATED TO THIS ALLEGED MISCLASSIFICATION.

17 (5) "EMPLOYMENT DISPUTE" MEANS ANY DISPUTE BETWEEN AN  
18 EMPLOYEE AND A BUSINESS, EMPLOYER, OR PURPORTED EMPLOYER  
19 RELATING TO THE TERMS OF THE EMPLOYEE'S WORK.

20 (6) "PRE-DISPUTE ARBITRATION AGREEMENT" MEANS AN  
21 AGREEMENT TO ARBITRATE A DISPUTE OR DISPUTES THAT IS EXECUTED OR  
22 BECOMES ENFORCEABLE BEFORE THE CLAIMANT ASSERTS THE CLAIM OR  
23 CLAIMS TO WHICH THE ARBITRATION AGREEMENT APPLIES.

24 (7) "REASONABLE TIME" MEANS A REASONABLE TIME BASED ON  
25 THE STAGE OF THE PROCEEDINGS, NOT TO EXCEED TWENTY-EIGHT DAYS.

26 **13-22-804. Application.** (1) THIS PART 8 APPLIES TO ANY  
27 ARBITRATION THAT:

1 (a) IS REQUIRED BY A PRE-DISPUTE ARBITRATION AGREEMENT  
2 THAT WAS EXECUTED IN THE STATE OF COLORADO OR IS GOVERNED BY  
3 THE SUBSTANTIVE LAW OF THE STATE OF COLORADO; AND

4 (b) INCLUDES A CLAIM OR COUNTERCLAIM ASSERTED BY A  
5 CONSUMER IN A CONSUMER DISPUTE OR AN EMPLOYEE IN AN EMPLOYMENT  
6 DISPUTE.

7 (2) THIS PART 8 IS CONSISTENT WITH THE PROCEDURES OF THE  
8 FEDERAL "ARBITRATION ACT", 9 U.S.C. SEC. 1 ET SEQ., AND IS INTENDED  
9 TO SUPPLEMENT ANY OTHER STANDARDS THAT AUTHORIZE A REVIEWING  
10 COURT TO VACATE AN ARBITRATION AWARD UPON A FINDING OF EVIDENT  
11 PARTIALITY.

12 (3) THIS PART 8 DOES NOT APPLY TO AN ARBITRATION CONDUCTED  
13 PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT OR TO  
14 ARBITRATIONS CONDUCTED OR ADMINISTERED BY A SELF-REGULATORY  
15 ORGANIZATION, AS DEFINED BY THE FEDERAL "SECURITIES EXCHANGE  
16 ACT OF 1934", 15 U.S.C. SEC. 78c (26), OR REGULATIONS ADOPTED  
17 PURSUANT TO THAT ACT.

18 **13-22-805. Limitation on pre-dispute waivers and automatic**  
19 **waiver for failure to raise a timely objection.** (1) THE STANDARDS FOR  
20 AND RIGHT TO CHALLENGE AN ARBITRATION AWARD BASED ON EVIDENT  
21 PARTIALITY AS SET FORTH IN THIS PART 8 MAY NOT BE WAIVED BY THE  
22 PARTIES BEFORE THE CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR  
23 COUNTERCLAIM SUBJECT TO THIS PART 8.

24 (2) THE PARTIES TO A DISPUTE MAY EXPRESSLY WAIVE A RIGHT  
25 CONFERRED BY THIS SECTION ONLY IF THE WAIVER IS MADE IN WRITING  
26 AND SIGNED BY ALL PARTIES TO THE DISPUTE AFTER THE ARBITRATION  
27 DEMAND HAS BEEN FILED OR AFTER THE CLAIM IS COMPELLED TO

1 ARBITRATION.

2 (3) THE RIGHT OF A PARTY TO CHALLENGE AN ARBITRATOR FOR  
3 EVIDENT PARTIALITY BASED ON A KNOWN AND DISCLOSED INTEREST,  
4 CIRCUMSTANCE, OR CONFLICT IS WAIVED IF THE PARTY DOES NOT OBJECT  
5 TO THE PROPOSED OR DESIGNATED ARBITRATOR ON THIS BASIS WITHIN A  
6 REASONABLE TIME AFTER THE DATE THE PARTY LEARNED OF OR WAS  
7 PROVIDED WITH THIS INFORMATION.

8 (4) THE RIGHT OF A PARTY TO CHALLENGE AN ARBITRATOR FOR  
9 EVIDENT PARTIALITY BASED ON THE ARBITRATOR'S FAILURE TO DISCLOSE  
10 RELEVANT INFORMATION, AS REQUIRED BY SECTION 13-22-806 (1)(a), IS  
11 WAIVED IF THE PARTY DOES NOT OBJECT TO THE PROPOSED OR  
12 DESIGNATED ARBITRATOR WITHIN A REASONABLE TIME AFTER THE PARTY  
13 LEARNED THAT THE PROPOSED OR DESIGNATED ARBITRATOR FAILED TO  
14 DISCLOSE REQUIRED INFORMATION.

15 (5) IF ANY PARTY CAUSES A PROPOSED OR DESIGNATED  
16 ARBITRATOR'S DISCLOSURE STATEMENT TO BE DELAYED OR INCOMPLETE  
17 BY FAILING TO PROVIDE INFORMATION NECESSARY FOR THE PROPOSED OR  
18 DESIGNATED ARBITRATOR TO EVALUATE POTENTIAL CONFLICTS, THE  
19 PARTY MAY NOT CLAIM THAT AN OPPOSING PARTY WAIVED ITS RIGHT TO  
20 CHALLENGE AN ARBITRATION AWARD FOR THE EVIDENT PARTIALITY OF AN  
21 ARBITRATOR PURSUANT TO SUBSECTION (3) OF THIS SECTION BY FAILING  
22 TO OBJECT TO THESE DELAYS AND OMISSIONS IN THE DISCLOSURES.

23 **13-22-806. Ethical standards for neutral arbitrators in**  
24 **consumer and employment disputes - definition.** (1) UNLESS THE  
25 PARTIES HAVE WAIVED THE RIGHT TO CHALLENGE AN ARBITRATION  
26 AWARD UNDER THE PROCESS FOR RAISING EVIDENT PARTIALITY SET FORTH  
27 IN SECTION 13-22-805, AN ARBITRATOR HAS ACTED WITH EVIDENT

1 PARTIALITY PURSUANT TO THIS SECTION IN THE ARBITRATION OF ANY  
2 CONSUMER OR EMPLOYMENT DISPUTE SUBJECT TO THIS PART 8 IF ANY OF  
3 THE FOLLOWING CIRCUMSTANCES EXIST:

4 (a) THE ARBITRATOR FAILED TO DISCLOSE, OR INACCURATELY  
5 DISCLOSED, ANY INFORMATION RELEVANT TO THE ARBITRATOR'S  
6 PARTIALITY THAT THE ARBITRATOR COULD HAVE OBTAINED THROUGH  
7 REASONABLE EFFORTS, INCLUDING ALL INFORMATION REQUIRED TO BE  
8 DISCLOSED PURSUANT TO SECTION 13-22-212 (1) OR (1.5), EITHER:

9 (I) WITHIN TWENTY-ONE DAYS AFTER BEING PROPOSED OR  
10 DESIGNATED AS AN ARBITRATOR; OR

11 (II) WITHIN A REASONABLE TIME AFTER THE ARBITRATOR  
12 LEARNED OR SHOULD HAVE LEARNED OF ANY CIRCUMSTANCE  
13 NECESSITATING ADDITIONAL DISCLOSURES;

14 (b) THE ARBITRATOR HAS OR HAD ANY INTEREST THAT WOULD  
15 DISQUALIFY A JUDICIAL OFFICER UNDER RULES 2.3(A) TO (D), 2.4(A) TO  
16 (C), AND 2.11(A) TO (C) OF THE COLORADO CODE OF JUDICIAL CONDUCT  
17 AND THE OFFICIAL COMMENTS AND CASE LAW INTERPRETING THOSE  
18 RULES;

19 (c) THE ARBITRATOR HAS ANY INTEREST THAT WOULD DISQUALIFY  
20 AN ATTORNEY UNDER RULE 1.7(a) OF THE COLORADO RULES OF  
21 PROFESSIONAL CONDUCT AND THE OFFICIAL COMMENTS AND CASE LAW  
22 INTERPRETING THOSE RULES, SUBJECT TO THE FOLLOWING LIMITATIONS:

23 (I) FOR PURPOSES OF RULE 1.7 OF THE COLORADO CODE OF  
24 PROFESSIONAL CONDUCT, A CONCURRENT CONFLICT EXISTS IF:

25 (A) THE MATTERS TO BE DECIDED IN THE ARBITRATION MAY BE  
26 DIRECTLY ADVERSE TO THE ARBITRATOR'S NON-ARBITRATION BUSINESS OR  
27 CLIENT; OR

1 (B) THERE IS A SIGNIFICANT RISK THAT THE ARBITRATOR'S ABILITY  
2 TO PRESIDE OVER THE ARBITRATION WILL BE MATERIALLY LIMITED BY THE  
3 ARBITRATOR'S RESPONSIBILITIES TO THE ARBITRATOR'S NON-ARBITRATION  
4 CLIENT OR FORMER CLIENT, OR TO A THIRD PARTY OR BY A PERSONAL  
5 INTEREST OF THE ARBITRATOR;

6 (d) THE ARBITRATOR HAS OR HAD A SIGNIFICANT BUSINESS,  
7 FAMILIAL, OR SOCIAL RELATIONSHIP WITH A PARTY OR PARTY'S LEGAL  
8 REPRESENTATIVE;

9 (e) THE ARBITRATOR HAS SIGNIFICANT EXPERIENCE AS AN  
10 ATTORNEY, INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR  
11 OTHER REPRESENTATIVE OF OR FOR CONSUMERS OR EMPLOYEES  
12 SIMILARLY SITUATED TO A CONSUMER OR EMPLOYEE PARTY AND DOES NOT  
13 HAVE SIMILARLY SIGNIFICANT EXPERIENCE AS AN ATTORNEY,  
14 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
15 REPRESENTATIVE OF OR FOR A SOLE PROPRIETORSHIP OR ENTITY ENGAGED  
16 IN A SUBSTANTIALLY SIMILAR INDUSTRY AS A NON-CONSUMER OR  
17 EMPLOYER PARTY;

18 (f) THE ARBITRATOR HAS SIGNIFICANT EXPERIENCE AS AN  
19 ATTORNEY, INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR  
20 OTHER REPRESENTATIVE OF OR FOR A SOLE PROPRIETORSHIP OR ENTITY  
21 ENGAGED IN A SUBSTANTIALLY SIMILAR INDUSTRY AS A NON-CONSUMER  
22 OR EMPLOYER PARTY AND DOES NOT HAVE SIMILARLY SIGNIFICANT  
23 EXPERIENCE AS AN ATTORNEY, INDEPENDENT CONTRACTOR, EXPERT  
24 WITNESS, AGENT, OR OTHER REPRESENTATIVE OF OR FOR CONSUMERS OR  
25 EMPLOYEES SIMILARLY SITUATED TO A CONSUMER OR EMPLOYEE PARTY;

26 (g) (I) THE ARBITRATOR WILL BE ASKED TO RESOLVE A LEGAL  
27 ISSUE THAT WOULD BE CONTRARY TO THE INTERESTS OF ONE OR MORE OF

1 THE FOLLOWING:

2 (A) THE ARBITRATOR OR ARBITRATION SERVICES PROVIDER; OR

3 (B) THE ARBITRATOR'S EMPLOYER, THE ARBITRATOR'S CURRENT  
4 CLIENTS OR THE ARBITRATOR'S CURRENT CLIENT'S INDUSTRY OR TRADE  
5 GROUP.

6 (II) FOR PURPOSES OF THIS SUBSECTION (1)(g), "CLIENT" MEANS  
7 A PERSON USING THE SERVICES OF AN ARBITRATOR OR PROPOSED  
8 ARBITRATOR IN A CAPACITY OTHER THAN AS AN ARBITRATOR OR A  
9 MEDIATOR.

10 (h) THE ARBITRATOR HAS BEEN PAID IN EXCESS OF FIVE HUNDRED  
11 DOLLARS FOR SERVICES, EXCLUDING PAYMENT FOR ARBITRATION OR  
12 MEDIATION SERVICES OR REIMBURSEMENT OF COSTS RELATING TO THE  
13 PROVISION OF ARBITRATION OR MEDIATION SERVICES, FROM A PARTY, AN  
14 ATTORNEY IN THE ARBITRATION, A LAW FIRM WITH WHICH AN ATTORNEY  
15 IN THE ARBITRATION IS CURRENTLY ASSOCIATED, OR ANY OF THE PARTIES'  
16 LIABILITY INSURERS; OR

17 (i) THE ARBITRATOR HAS A FINANCIAL OR PERSONAL INTEREST IN  
18 THE OUTCOME OF THE PROCEEDING.

19 (2) THE LIST OF CIRCUMSTANCES THAT CONSTITUTE EVIDENT  
20 PARTIALITY AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT AN  
21 EXCLUSIVE LIST FOR PURPOSES OF DETERMINING WHETHER EVIDENT  
22 PARTIALITY HAS BEEN ESTABLISHED PURSUANT TO SECTION 13-22-223.

23 **13-22-807. Arbitration services providers in consumer and**  
24 **employment arbitrations - public disclosures.** (1) AN ARBITRATION  
25 SERVICES PROVIDER THAT ADMINISTERS ARBITRATIONS OF CONSUMER  
26 DISPUTES OR EMPLOYMENT DISPUTES SHALL COLLECT, PUBLISH AT LEAST  
27 QUARTERLY, AND MAKE REASONABLY AVAILABLE TO THE PUBLIC FOR NO

1 CHARGE ON THE WEBSITE OF THE ARBITRATION SERVICES PROVIDER, IF  
2 ANY, AND IN WRITING UPON REQUEST, A SINGLE CUMULATIVE REPORT  
3 THAT CONTAINS ALL OF THE FOLLOWING INFORMATION REGARDING EACH  
4 CONSUMER OR EMPLOYMENT ARBITRATION ADMINISTERED, INCLUDING  
5 THOSE CONDUCTED BY THE PROVIDER WITHIN THE PRECEDING FIVE YEARS:

6 (a) THE NAME OF THE NON-CONSUMER PARTY OR EMPLOYER AND  
7 WHETHER THE NON-CONSUMER PARTY OR EMPLOYER INITIATED THE  
8 ARBITRATION OR WAS THE RESPONDING PARTY, IF KNOWN;

9 (b) THE NATURE OF THE DISPUTE INVOLVED, CATEGORIZED AS ONE  
10 OF THE FOLLOWING: GOODS; CREDIT; OTHER BANKING OR FINANCE;  
11 INSURANCE; HEALTH CARE; CONSTRUCTION; REAL ESTATE;  
12 TELECOMMUNICATIONS, INCLUDING SOFTWARE AND INTERNET USAGE;  
13 DEBT COLLECTION; PERSONAL INJURY; EMPLOYMENT; OR OTHER;

14 (c) WHETHER THE CONSUMER, NON-CONSUMER, EMPLOYEE, OR  
15 EMPLOYER PARTY WAS THE PREVAILING PARTY;

16 (d) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE  
17 NON-CONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN  
18 AN ARBITRATION ADMINISTERED BY THE ARBITRATION SERVICES  
19 PROVIDER;

20 (e) THE TOTAL NUMBER OF OCCASIONS, IF ANY, THAT THE  
21 NON-CONSUMER OR EMPLOYER PARTY HAS PREVIOUSLY BEEN A PARTY IN  
22 A MEDIATION ADMINISTERED BY THE ARBITRATION SERVICES PROVIDER;

23 (f) THE NAME OF THE ATTORNEY AND THE FULL NAME OF THE LAW  
24 FIRM THAT EMPLOYS THE ATTORNEY WHO REPRESENTED A PARTY, IF ANY;

25 (g) THE DATE THE ARBITRATION SERVICES PROVIDER RECEIVED  
26 THE DEMAND FOR ARBITRATION, THE DATE THE ARBITRATOR WAS  
27 APPOINTED, AND THE DATE OF DISPOSITION BY THE ARBITRATOR OR

1 ARBITRATION SERVICES PROVIDER;

2 (h) THE NATURE OF THE DISPOSITION OF THE DISPUTE, IF KNOWN,  
3 IDENTIFIED AS ONE OF THE FOLLOWING: WITHDRAWAL, ABANDONMENT,  
4 SETTLEMENT, AWARD AFTER HEARING, AWARD WITHOUT HEARING,  
5 DEFAULT, OR DISMISSAL WITHOUT HEARING;

6 (i) IF A MATTER WAS ADMINISTERED IN A HEARING, WHETHER THE  
7 HEARING WAS CONDUCTED IN PERSON, BY TELEPHONE OR VIDEO  
8 CONFERENCE, OR BY DOCUMENTS ONLY;

9 (j) THE AMOUNT OF THE CLAIM, WHETHER EQUITABLE RELIEF WAS  
10 REQUESTED OR AWARDED, THE AMOUNT OF ANY MONETARY AWARD, AND  
11 ANY OTHER RELIEF GRANTED; AND

12 (k) THE NAME OF THE ARBITRATOR, HIS OR HER TOTAL FEE FOR THE  
13 CASE, THE PERCENTAGE OF THE ARBITRATOR'S FEE ALLOCATED TO EACH  
14 PARTY, WHETHER A WAIVER OF ANY FEES WAS GRANTED, AND, IF SO, THE  
15 AMOUNT OF THE WAIVER; AND

16 (l) THE IDENTITIES OF INDIVIDUALS AND ENTITIES THAT HAVE AN  
17 OWNERSHIP OR OTHER FINANCIAL INTEREST IN THE ARBITRATION SERVICES  
18 PROVIDER.

19 (2) THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS  
20 SECTION MUST BE MADE AVAILABLE IN A SPREADSHEET FORMAT THAT  
21 ALLOWS THE PUBLIC TO DOWNLOAD, EXPORT, SEARCH, AND SORT THE  
22 INFORMATION USING READILY AVAILABLE SOFTWARE AND MUST BE  
23 DIRECTLY ACCESSIBLE FROM A CONSPICUOUSLY DISPLAYED LINK ON THE  
24 WEBSITE OF THE ARBITRATION SERVICES PROVIDER WITH THE IDENTIFYING  
25 DESCRIPTION: "CONSUMER AND EMPLOYEE CASE INFORMATION".

26 (3) AN ARBITRATION SERVICES PROVIDER IS NOT LIABLE FOR  
27 DAMAGES FOR FAILURE TO COLLECT, PUBLISH, OR DISTRIBUTE THE

1 INFORMATION REQUIRED BY THIS SECTION.

2 (4) AN ARBITRATION SERVICES PROVIDER SHALL NOT CONDUCT  
3 CONSUMER OR EMPLOYMENT ARBITRATIONS UNLESS THE ARBITRATION  
4 SERVICES PROVIDER HAS SUBSTANTIALLY COMPLIED WITH THIS SECTION.

5 **13-22-808. Protection for confidential information.** (1) THE  
6 DISCLOSURE REQUIREMENTS IN SECTIONS 13-22-212 (1.5) AND 13-22-807  
7 DO NOT REQUIRE THE DISCLOSURE OF ANY INFORMATION SUBJECT TO THE  
8 ATTORNEY-CLIENT PRIVILEGE OR OTHER RECOGNIZED PRIVILEGE OR  
9 IMMUNITY FROM DISCLOSURE.

10 (2) NOTWITHSTANDING SUCH PRIVILEGE OR IMMUNITY, WHEN  
11 INFORMATION SUBJECT TO THE DISCLOSURE REQUIREMENTS IN SECTIONS  
12 13-22-212 (1.5) AND 13-22-807 IS PRIVILEGED OR IMMUNE FROM  
13 DISCLOSURE, THE FACT THAT SUCH INFORMATION EXISTS MUST BE  
14 DISCLOSED. THE GENERAL NATURE OF THE INFORMATION, DESCRIBED IN  
15 A MANNER TO ALLOW THE PARTIES TO EVALUATE THE POTENTIAL  
16 CONFLICT, MUST ALSO BE DISCLOSED. INFORMATION NOT DISCLOSED ON  
17 THE BASIS OF A CONFIDENTIALITY AGREEMENT THAT IS CLAIMED TO BE  
18 PRIVILEGED OR IMMUNE FROM DISCLOSURE MUST BE IDENTIFIED BY  
19 DISCLOSING THE NAMES OF THE PARTIES TO THE CONFIDENTIALITY  
20 AGREEMENT, UNLESS THE NAMES THEMSELVES MUST BE WITHHELD TO  
21 PROTECT THE PRIVACY CONCERNS OF A VICTIM, THE DATE OF THE  
22 AGREEMENT, AND INFORMATION REGARDING ANY LEGAL PROCEEDING OR  
23 CLAIM RELATED TO THE ENTRY INTO THE AGREEMENT.

24 (3) IF A PARTY CHALLENGES AN ARBITRATOR'S EVIDENT  
25 PARTIALITY PURSUANT TO SECTION 13-22-805, ANY INFORMATION THAT  
26 IS WITHHELD PURSUANT TO THIS SECTION MUST BE DISCLOSED IN CAMERA  
27 TO THE COURT AND CONSIDERED BY THE COURT WHEN DETERMINING

1 WHETHER EVIDENT PARTIALITY EXISTS.

2 **13-22-809. Severability.** EVERY PROVISION OF THIS PART 8 AND  
3 EACH OF ITS SECTIONS AND SUBSECTIONS IS SEVERABLE.

4 **SECTION 3.** In Colorado Revised Statutes, 13-22-212, **amend**  
5 (1); and **add** (1.5) and (1.8) as follows:

6 **13-22-212. Disclosure by arbitrator.** (1) Before accepting an  
7 appointment, an individual who is requested to serve as an arbitrator, after  
8 making a reasonable inquiry IN ACCORDANCE WITH THE PROCESS SET  
9 FORTH IN SUBSECTION (1.5)(b) OF THIS SECTION, shall disclose to all  
10 parties to the agreement to arbitrate and arbitration proceeding and to any  
11 other arbitrators any known facts that a reasonable person would consider  
12 likely to affect the impartiality of the arbitrator in the arbitration  
13 proceeding, including:

14 (a) A financial or personal interest in the outcome of the  
15 arbitration proceeding; and

16 (b) A current or previous relationship with any of the parties to the  
17 agreement to arbitrate or the arbitration proceeding, their counsel or  
18 representatives, a witness, or another arbitrator; AND

19 (c) ANY INFORMATION REQUIRED TO BE DISCLOSED PURSUANT TO  
20 SUBSECTION (1.5) OF THIS SECTION.

21 (1.5) (a) IN ADDITION TO THE INFORMATION REQUIRED BY  
22 SUBSECTION (1) OF THIS SECTION, AN INDIVIDUAL WHO IS REQUESTED TO  
23 SERVE AS AN ARBITRATOR IN ANY CONSUMER OR EMPLOYMENT DISPUTE  
24 GOVERNED BY PART 8 OF THIS ARTICLE 22 SHALL, BEFORE AGREEING TO  
25 SERVE AS AN ARBITRATOR OF THE DISPUTE, DISCLOSE TO ALL PARTIES TO  
26 THE AGREEMENT TO ARBITRATE AND ARBITRATION PROCEEDING AND TO  
27 ANY OTHER ARBITRATORS ANY INFORMATION THAT A REASONABLE

1 PERSON WOULD CONSIDER LIKELY TO AFFECT THE IMPARTIALITY OF THE  
2 ARBITRATOR IN THE CONSUMER OR EMPLOYMENT ARBITRATION  
3 PROCEEDING, TO THE EXTENT SUCH INFORMATION CAN BE ASCERTAINED  
4 BY REASONABLE EFFORTS, INCLUDING:

5 (I) ANY PECUNIARY OR FINANCIAL INTEREST THE PROPOSED  
6 ARBITRATOR MAY HAVE RELATING TO THE ISSUES IN THE ARBITRATION OR  
7 THE OUTCOME OF THE ARBITRATION;

8 (II) EXCEPT FOR PAYMENT FOR ARBITRATION OR MEDIATION  
9 SERVICES OR REIMBURSEMENT OF COSTS, WHETHER THE PROPOSED  
10 ARBITRATOR HAS BEEN PAID AN AMOUNT EXCEEDING FIVE HUNDRED  
11 DOLLARS FOR SERVICES BY A PARTY, AN ATTORNEY IN THE ARBITRATION,  
12 A LAW FIRM WITH WHICH AN ATTORNEY IN THE ARBITRATION IS  
13 CURRENTLY ASSOCIATED, OR ANY OF THE PARTIES' LIABILITY INSURERS;

14 (III) ANY EXPERIENCE AS AN OWNER OR EMPLOYEE OF AN ENTITY  
15 OR SOLE PROPRIETORSHIP ENGAGED IN THE SAME OR SUBSTANTIALLY  
16 SIMILAR INDUSTRY AS A PARTY;

17 (IV) ANY EXPERIENCE AS AN ATTORNEY, CONSULTANT,  
18 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
19 REPRESENTATIVE OF OR FOR AN ENTITY OR SOLE PROPRIETORSHIP  
20 ENGAGED IN THE SAME OR SUBSTANTIALLY SIMILAR INDUSTRY AS A  
21 NON-CONSUMER OR EMPLOYER PARTY;

22 (V) ANY EXPERIENCE AS A REPRESENTATIVE, ATTORNEY,  
23 INDEPENDENT CONTRACTOR, EXPERT WITNESS, AGENT, OR OTHER  
24 REPRESENTATIVE OF OR FOR CONSUMERS OR EMPLOYEES SIMILARLY  
25 SITUATED TO A CONSUMER OR EMPLOYEE PARTY;

26 (VI) ANY CURRENT OR FORMER RELATIONSHIP WITH ANY  
27 LIABILITY OR OTHER INSURER THAT THE PROPOSED ARBITRATOR KNOWS

1 MAY PROVIDE COVERAGE FOR THE AWARD;

2 (VII) A LIST OF ALL OF THE ARBITRATIONS, IDENTIFIED BY PARTY  
3 NAMES, THAT THE PROPOSED ARBITRATOR HAS PARTICIPATED IN AS AN  
4 ARBITRATOR DURING THE PRIOR FIVE YEARS, MODIFIED IF NECESSARY TO  
5 PROTECT REASONABLE PRIVACY CONCERNS OF A CONSUMER OR EMPLOYEE  
6 PARTY OR ENFORCEABLE CONFIDENTIALITY AGREEMENTS; AND

7 (VIII) THE NAMES OF THE PARTIES TO ARBITRATIONS IN WHICH THE  
8 PROPOSED ARBITRATOR HAS PARTICIPATED AS AN ARBITRATOR DURING  
9 THE PAST FIVE YEARS AND THEIR ATTORNEYS, AND COPIES OF ANY  
10 DECISIONS AND AWARDS RENDERED, MODIFIED IF NECESSARY TO PROTECT  
11 REASONABLE PRIVACY CONCERNS OF A CONSUMER OR EMPLOYEE PARTY  
12 OR ENFORCEABLE CONFIDENTIALITY AGREEMENTS.

13 (b) TO AID THE PROPOSED ARBITRATOR OF A CONSUMER OR  
14 EMPLOYMENT DISPUTE GOVERNED BY PART 8 OF THIS ARTICLE 22 IN  
15 DISCLOSING INFORMATION THAT MUST BE DISCLOSED PURSUANT TO  
16 SUBSECTION (1.5)(a) OF THIS SECTION, THE PROPOSED ARBITRATOR:

17 (I) MAY ASK EITHER PARTY ABOUT THE DISPUTED MATERIAL,  
18 FACTUAL, AND LEGAL ISSUES TO BE RESOLVED IN THE ARBITRATION;

19 (II) MAY ASK EITHER PARTY ABOUT THE PARTY'S BUSINESS OR  
20 OCCUPATION, COUNSEL, AGENTS, REPRESENTATIVES, EMPLOYEES,  
21 INDEPENDENT CONTRACTORS, AND INSURERS, TO THE EXTENT SUCH  
22 PERSONS OR ENTITIES MAY HAVE KNOWLEDGE RELEVANT TO A CLAIM OR  
23 DEFENSE OR MAY PROVIDE POTENTIAL INSURANCE COVERAGE FOR AN  
24 AWARD; AND

25 (III) MAY RESPOND TO INQUIRIES FROM A PARTY OR ITS COUNSEL  
26 DESIGNED TO DETERMINE HIS OR HER SUITABILITY AND AVAILABILITY FOR  
27 THE APPOINTMENT. IN ANY SUCH DIALOGUE, THE PROSPECTIVE

1 ARBITRATOR MAY RECEIVE INFORMATION FROM A PARTY OR ITS COUNSEL  
2 DISCLOSING THE GENERAL NATURE OF THE DISPUTE BUT SHOULD NOT  
3 PERMIT THE PARTY OR ITS COUNSEL TO DISCUSS THE MERITS OF THE CASE.

4 (1.8) THE DISCLOSURES REQUIRED BY SUBSECTIONS (1) AND (1.5)  
5 OF THIS SECTION MUST BE GIVEN TO THE PARTIES IN A SEPARATE  
6 DOCUMENT IN AT LEAST FOURTEEN-POINT TYPE.

7 **SECTION 4.** In Colorado Revised Statutes, 13-22-225, **add** (4)  
8 as follows:

9 **13-22-225. Judgment on award - attorney fee and litigation**  
10 **expenses.** (4) NOTWITHSTANDING ANY PROVISION OF LAW TO THE  
11 CONTRARY, WHEN A COURT VACATES AN AWARD ON THE BASIS OF AN  
12 ARBITRATOR'S EVIDENT PARTIALITY, AS DESCRIBED IN SECTION 13-22-806,  
13 THE COURT SHALL AWARD REASONABLE ATTORNEY FEES AND OTHER  
14 REASONABLE EXPENSES INCURRED IN BOTH THE ARBITRATION AND COURT  
15 PROCEEDINGS FROM THE EARLIEST OF:

16 (a) THE DATE A PARTY OBJECTED IN WRITING TO THE  
17 ARBITRATOR'S EVIDENT PARTIALITY ON A BASIS THAT WAS ULTIMATELY  
18 FOUND TO CONSTITUTE EVIDENT PARTIALITY; OR

19 (b) THE DATE ON WHICH THE ARBITRATOR FAILED TO DISCLOSE OR  
20 INACCURATELY DISCLOSED INFORMATION THAT WAS ULTIMATELY FOUND  
21 TO CONSTITUTE EVIDENT PARTIALITY.

22 **SECTION 5.** In Colorado Revised Statutes, 13-22-228, **add** (3)  
23 as follows:

24 **13-22-228. Appeals - definitions.** (3) (a) NOTWITHSTANDING  
25 ANY PROVISION OF LAW TO THE CONTRARY, THE FOLLOWING LIMITATIONS  
26 ON APPELLATE JURISDICTION APPLY IN A CIVIL ACTION IN WHICH A  
27 CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM:

1 (I) APPELLATE COURTS DO NOT HAVE JURISDICTION TO REVIEW A  
2 TRIAL COURT'S INTERLOCUTORY ORDER DENYING A MOTION TO COMPEL  
3 ARBITRATION OR OTHERWISE CONCLUDING THAT AN ARBITRATION  
4 AGREEMENT IS UNENFORCEABLE OR DOES NOT COVER A PARTICULAR  
5 CLAIM;

6 (II) APPELLATE REVIEW OF THE DENIAL OF A MOTION TO COMPEL  
7 ARBITRATION MAY BE HAD ONLY AFTER FINAL JUDGMENT HAS ISSUED; AND

8 (III) AN INTERLOCUTORY APPEAL IS ALLOWED IF THE TRIAL COURT  
9 ORDERS ARBITRATION AND DISMISSES THE SUIT OR ORDERS ARBITRATION  
10 AND STAYS THE LITIGATION.

11 (b) FOR THE PURPOSES OF THIS SUBSECTION (3):

12 (I) "CONSUMER" MEANS A PARTY THAT OBTAINS, MAINTAINS,  
13 USES, PURCHASES, LEASES, OR HAS STANDING TO ASSERT CLAIMS  
14 RELATING TO GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED  
15 PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR HOUSEHOLD  
16 PURPOSES.

17 (II) "EMPLOYEE" MEANS:

18 (A) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
19 LAW; OR

20 (B) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS AS AN  
21 EMPLOYEE BUT WHO CLAIMS TO BE AN EMPLOYEE AND WHOSE CLAIMS  
22 AGAINST THE PURPORTED EMPLOYER RELATE TO THIS ALLEGED  
23 MISCLASSIFICATION.

24 **SECTION 6.** In Colorado Revised Statutes, **add** part 9 to article  
25 22 of title 13 as follows:

26 PART 9  
27 ENFORCEABILITY OF CERTAIN

1 STANDARD FORM CONTRACT TERMS

2 **13-22-901. Standard form contract terms - enforceability -**  
3 **definitions.** (1) AS USED IN THIS PART 9, UNLESS THE CONTEXT  
4 OTHERWISE REQUIRES:

5 (a) "CONSUMER" MEANS AN INDIVIDUAL, PARTNERSHIP,  
6 ASSOCIATION, OR CORPORATION THAT OBTAINS, MAINTAINS, USES,  
7 PURCHASES, LEASES, OR HAS LEGAL OR PRACTICAL RESPONSIBILITY FOR  
8 GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED PRIMARILY FOR  
9 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

10 (b) "EMPLOYEE" MEANS:

11 (I) ANY PERSON EMPLOYED BY ANOTHER AS DEFINED BY STATE  
12 LAW; OR

13 (II) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS AS AN  
14 EMPLOYEE BUT WHO CLAIMS TO BE AN EMPLOYEE AND WHOSE CLAIMS  
15 AGAINST THE PURPORTED EMPLOYER RELATE TO THIS ALLEGED  
16 MISCLASSIFICATION.

17 (c) (I) "STANDARD FORM CONTRACT" MEANS A WRITING IN WHICH  
18 THE TERMS AND CONDITIONS STATED IN THE WRITING ARE SET BY ONE OR  
19 MORE OF THE PARTIES WHILE THE CONSUMER OR EMPLOYEE PARTY OR  
20 PARTIES HAVE LITTLE OR NO ABILITY TO NEGOTIATE THE WRITING'S  
21 MATERIAL TERMS AT THE TIME THE WRITING IS EXECUTED OR BECAME  
22 ENFORCEABLE AND AFFECTS THE CONSUMER'S OR EMPLOYEE'S INTEREST  
23 IN:

24 (A) GOODS OR SERVICES;

25 (B) REAL OR PERSONAL PROPERTY; OR

26 (C) EMPLOYMENT.

27 (II) THE FACT THAT A CONSUMER OR EMPLOYEE PARTY MAY

1 NEGOTIATE LIMITED TERMS WITHIN THE WRITING DOES NOT PRECLUDE A  
2 FINDING THAT THE WRITING IS A STANDARD FORM CONTRACT.

3 (2) IN ORDER TO PROMOTE THE EFFICIENT ADMINISTRATION OF  
4 JUSTICE, THE FOLLOWING CONTRACTUAL TERMS ARE NEVER ENFORCEABLE  
5 AND ARE DECLARED VOID AS AGAINST PUBLIC POLICY WHEN INCLUDED IN  
6 A STANDARD FORM CONTRACT:

7 (a) A REQUIREMENT THAT THE CONSUMER OR EMPLOYEE PARTY  
8 ADJUDICATE A CLAIM ARISING IN COLORADO IN A LOCATION THAT IS MORE  
9 THAN ONE HUNDRED MILES FROM WHERE THE CONSUMER OR EMPLOYEE  
10 PARTY RESIDES OR WHERE THE CONTRACT WAS EXECUTED;

11 (b) A PRECONDITION TO INITIATING A LEGAL PROCEEDING THAT:

12 (I) WAIVES THE CONSUMER OR EMPLOYEE PARTY'S RIGHT TO  
13 CLAIMS OR DAMAGES RESULTING FROM A FAILURE TO COMPLY WITH THE  
14 PRECONDITION; OR

15 (II) PREVENTS OR IS REASONABLY LIKELY TO PREVENT THE  
16 CONSUMER OR EMPLOYEE PARTY FROM ASSERTING LEGAL CLAIMS FOR A  
17 PERIOD OF MORE THAN SIXTY DAYS;

18 (c) A REQUIREMENT THAT A PARTY OR PARTIES TO THE CONTRACT  
19 BE ALLOWED TO UNILATERALLY SELECT ONE OR MORE OF THE  
20 INDIVIDUALS OR ENTITIES WHO WILL RESOLVE DISPUTES BETWEEN THE  
21 PARTIES; OR

22 (d) A TERM THAT ATTEMPTS TO AWARD OR LIMIT COSTS OR FEES  
23 IN A MANNER THAT IS INCONSISTENT WITH COLORADO STATUTE OR  
24 CONTROLLING CASE LAW.

25 (3) THE FACT THAT A TERM IN A STANDARD FORM CONTRACT IS  
26 NOT LISTED IN SUBSECTION (2) OF THIS SECTION DOES NOT MEAN THAT THE  
27 TERM MAY NOT BE FOUND TO BE UNENFORCEABLE OR VOID AS AGAINST

1 PUBLIC POLICY PURSUANT TO COMMON LAW.

2 (4) INCLUSION OF ANY OF THE UNENFORCEABLE TERMS DECLARED  
3 VOID PURSUANT TO SUBSECTION (2) OF THIS SECTION CONSTITUTES A  
4 DECEPTIVE TRADE PRACTICE UNDER SECTION 6-1-105.

5 (5) IN ORDERING A REMEDY FOR AN UNENFORCEABLE TERM IN A  
6 STANDARD FORM CONTRACT, A COURT SHALL CONSIDER THE FOLLOWING  
7 FACTORS:

8 (a) WHETHER SEVERING THE UNENFORCEABLE TERM AND  
9 ENFORCING THE CONTRACT IN ITS ABSENCE:

10 (I) CREATES AN INCENTIVE FOR DRAFTERS TO INCLUDE  
11 UNENFORCEABLE TERMS IN STANDARD FORM CONTRACTS; OR

12 (II) REMOVES IN WHOLE OR IN PART THE INCENTIVE FOR DRAFTERS  
13 TO DRAFT ENFORCEABLE STANDARD FORM CONTRACTS THAT DO NOT  
14 INCLUDE SUCH TERMS;

15 (b) WHETHER INCLUSION OF AN UNENFORCEABLE TERM MIGHT  
16 DETER THE CONSUMER OR EMPLOYEE PARTY FROM ASSERTING THE  
17 PARTY'S RIGHTS UNDER THE CONTRACT OR MIGHT DETER THE CONSUMER  
18 OR EMPLOYEE PARTY FROM CHALLENGING THE ENFORCEMENT OF THE  
19 UNENFORCEABLE TERM;

20 (c) WHETHER THE DRAFTING PARTY ACTED IN BAD FAITH, FOR  
21 EXAMPLE, BY INCLUDING A TERM THAT WAS, AT THE TIME THE CONTRACT  
22 WAS EXECUTED OR BECAME ENFORCEABLE, UNENFORCEABLE UNDER  
23 ESTABLISHED LAW; AND

24 (d) THE PARTIES' ACTUAL PURPOSES.

25 (6) (a) NOTWITHSTANDING SUBSECTION (2)(d) OF THIS SECTION,  
26 WHEN A STANDARD FORM CONTRACT PROVIDES FOR AN AWARD OF  
27 ATTORNEY FEES OR LITIGATION EXPENSES TO ONE OR MORE PARTIES TO A

1 CONTRACT, THE PROVISION MUST BE CONSTRUED AS AWARDING SUCH FEES  
2 AND EXPENSES TO THE PREVAILING PARTY AS A MATTER OF RIGHT, BUT IF  
3 A MORE SPECIFIC STATUTE PROVIDES ATTORNEY FEES SOLELY TO ONE  
4 PARTY, A FEE SHIFTING OR LOSER PAYS TERM IS VOID.

5 (b) WHEN AN ACTION HAS BEEN VOLUNTARILY DISMISSED OR  
6 DISMISSED PURSUANT TO A SETTLEMENT OF THE CASE, THERE IS NO  
7 PREVAILING PARTY FOR THE PURPOSES OF THIS SECTION.

8 **SECTION 7. Effective date - applicability.** This act takes effect  
9 upon passage and applies to actions, including arbitrations filed or  
10 arbitrators selected, on or after said date.

11 **SECTION 8. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, or safety.