A BILL FOR AN ACT

CONCERNING PROTECTIONS RELATED TO MANDATORY AGREEMENT PROVISIONS, AND, IN CONNECTION THEREWITH, ENACTING THE "CONSUMER AND EMPLOYEE DISPUTE RESOLUTION 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 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.
Prohibits the waiver of standards for and challenges for evident partiality prior to a claim being filed and requires any waiver of such provisions after the claim is filed to be in writing;

Provides that the right of a party to challenge an arbitrator based on evident partiality is waived if not raised within a reasonable time of learning of the information leading to the challenge but that such right is not waived if caused by the opposing party;

Establishes ethical standards for arbitrators; and

Requires specified public disclosures by arbitration services providers but includes protections for certain confidential information.

The bill also requires an individual arbitrator for certain consumer and employment arbitrations to make additional disclosures of information that might affect the arbitrator's impartiality.

The bill specifies how attorney fees and other reasonable expenses are to be awarded if a court vacates an award because of an arbitrator’s evident partiality or failure to make required disclosures and clarifies when appeals of orders may be made in consumer and employee arbitrations.

The bill also provides that for a standard form contract involving a consumer or employee:

Specified terms are unenforceable as against public policy;

Including an unenforceable term constitutes a deceptive trade practice under the "Colorado Consumer Protection Act"; and

How certain cost-shifting provisions are to be interpreted.

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

SECTION 1. The short title of this act is the "Consumer and Employee Dispute Resolution Fairness Act".

SECTION 2. Legislative declaration. The general assembly declares that nothing in this act is intended to approve, disapprove, modify, or overrule Vallagio at Inverness Residential Condo. Ass'n v. Metro Homes, Inc., 2017 CO 69, 395 P.3d 788.

SECTION 3. In Colorado Revised Statutes, add part 8 to article 22 of title 13 as follows:
PART 8
CONSUMER AND EMPLOYEE
ARBITRATION FAIRNESS ACT

13-22-801. Short title. The short title of this Part 8 is the "Consumer and Employee Arbitration Fairness Act".

13-22-802. Legislative declaration. (1) The General Assembly finds and declares that it is the policy of the State, to the extent permitted under federal law, to protect the integrity of the arbitration process, minimize wasted time and resources, and ensure that arbitrations of consumer and employee disputes under pre-dispute arbitration agreements are fair, affordable, and expeditious by:

(a) Clarifying information relevant to evaluating evident partiality and requiring early disclosure of the same; and

(b) Ensuring that arbitrators who preside over consumer and employment disputes are not evidently partial toward any party to the dispute.

13-22-803. Definitions. As used in this Part 8, unless the context otherwise requires:

(1) "Arbitration services provider" means an association, agency, board, commission or other entity, or sole proprietorship that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator; except that this term does not include any party to the arbitration or any labor organization or other party to a collective bargaining agreement that
INITIATES AN ARBITRATION PURSUANT TO THE TERMS OF AN AGREEMENT BETWEEN A LABOR ORGANIZATION AND AN EMPLOYER.

(2) "CONSUMER" MEANS A CLAIMANT THAT OBTAINS, MAINTAINS, USES, PURCHASES, LEASES, OR HAS STANDING TO ASSERT CLAIMS RELATING TO GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED PRIMARILY FOR PERSONAL, FAMILY, RESIDENTIAL, OR HOUSEHOLD PURPOSES.

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

(4) "EMPLOYEE" MEANS:

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

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

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

(6) "PRE-DISPUTE ARBITRATION AGREEMENT" MEANS AN AGREEMENT TO ARBITRATE A DISPUTE OR DISPUTES THAT IS EXECUTED OR BECOMES ENFORCEABLE BEFORE THE CLAIMANT ASSERTS THE CLAIM OR CLAIMS TO WHICH THE ARBITRATION AGREEMENT APPLIES.
"REASONABLE TIME" MEANS A REASONABLE TIME BASED ON THE STAGE OF THE PROCEEDINGS, NOT TO EXCEED TWENTY-EIGHT DAYS.

13-22-804. Application. (1) This Part 8 applies to any arbitration that:

(a) is required by a pre-dispute arbitration agreement that was executed in the State of Colorado or is governed by the substantive law of the State of Colorado; and

(b) includes a claim or counterclaim asserted by a consumer in a consumer dispute or an employee in an employment dispute.

(2) This Part 8 is consistent with the procedures of the federal "Arbitration Act", 9 U.S.C. sec. 1 et seq., and is intended to supplement any other standards that authorize a reviewing court to vacate an arbitration award upon a finding of evident partiality.

(3) This Part 8 does not apply to an arbitration conducted pursuant to a collective bargaining agreement, to arbitrations conducted or administered by a self-regulatory organization, as defined by the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78c (26), or regulations adopted pursuant to that act, or arbitrations administered by a business or trade organization as defined by section 501(c)(6) of the "Internal Revenue Code of 1986", as amended, if all parties are members of that business or trade organization.

13-22-805. Limitation on pre-dispute waivers - automatic waiver for failure to raise a timely objection - request for provisional measures. (1) The standards for and right to challenge an
ARBITRATION AWARD BASED ON EVIDENT PARTIALITY AS SET FORTH IN THIS PART 8 MAY NOT BE WAIVED BY THE PARTIES BEFORE THE CONSUMER OR EMPLOYEE ASSERTS A CLAIM OR COUNTERCLAIM SUBJECT TO THIS PART 8.

(2) The parties to a dispute may expressly waive a right conferred by this section only if the waiver is made in writing and signed by all parties to the dispute after the arbitration demand has been filed or after the claim is compelled to arbitration.

(3) The right of a party to challenge an arbitrator for evident partiality based on a known and disclosed interest, circumstance, or conflict is waived if the party does not object to the proposed or designated arbitrator on this basis within a reasonable time after the date the party learned of or was provided with this information.

(4) The right of a party to challenge an arbitrator for evident partiality based on the arbitrator's failure to disclose relevant information, as required by section 13-22-806 (1)(a), is waived if the party does not object to the proposed or designated arbitrator within a reasonable time after the party learned that the proposed or designated arbitrator failed to disclose required information.

(5) If any party causes a proposed or designated arbitrator's disclosure statement to be delayed or incomplete by failing to provide information necessary for the proposed or designated arbitrator to evaluate potential conflicts, the party may not claim that an opposing party waived its right to
CHALLENGE AN ARBITRATION AWARD FOR THE EVIDENT PARTIALITY OF AN ARBITRATOR PURSUANT TO SUBSECTION (3) OF THIS SECTION BY FAILING TO OBJECT TO THESE DELAYS AND OMISSIONS IN THE DISCLOSURES.

(6) IF A PARTY OBJECTS TO AN ARBITRATOR AND THE PARTIES ARE NOT ABLE TO AGREE TO AN ARBITRATOR, WITHIN FOURTEEN DAYS AFTER THE OBJECTION, THE NONOBJECTING PARTY MAY SEEK PROVISIONAL REMEDIES PURSUANT TO SECTION 13-22-208 (1), AND THE COURT SHALL RESOLVE THE MOTION WITHIN NINETY DAYS AFTER THE MOTION IS FILED.

13-22-806. Ethical standards for neutral arbitrators in consumer and employment disputes. (1) UNLESS THE PARTIES HAVE WAIVED THE RIGHT TO CHALLENGE AN ARBITRATION AWARD UNDER THE PROCESS FOR RAISING EVIDENT PARTIALITY SET FORTH IN SECTION 13-22-805, AN ARBITRATOR HAS ACTED WITH EVIDENT PARTIALITY PURSUANT TO THIS SECTION IN THE ARBITRATION OF ANY CONSUMER OR EMPLOYMENT DISPUTE SUBJECT TO THIS PART 8 IF ANY OF THE FOLLOWING CIRCUMSTANCES EXIST:

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

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

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

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

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

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

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

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

(d) THE ARBITRATOR HAS OR HAD A SIGNIFICANT BUSINESS,
familial, OR SOCIAL RELATIONSHIP WITH A PARTY OR PARTY’S LEGAL
REPRESENTATIVE;

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

(f) THE ARBITRATOR HAS A FINANCIAL OR PERSONAL INTEREST IN THE OUTCOME OF THE PROCEEDING.

(2) THE LIST OF CIRCUMSTANCES THAT CONSTITUTE EVIDENT PARTIALITY AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION IS NOT AN EXCLUSIVE LIST FOR PURPOSES OF DETERMINING WHETHER EVIDENT PARTIALITY HAS BEEN ESTABLISHED PURSUANT TO SECTION 13-22-223, AND NOTHING IN THIS SECTION MODIFIES OR LIMITS A COURT'S OBLIGATION TO CONSIDER EVIDENCE OF AN ARBITRATOR'S PECUNIARY INTEREST, FAMILIAL RELATIONSHIP, OR THE EXISTENCE OF AN ADVERSARIAL OR SYMPATHETIC RELATIONSHIP TO DETERMINE EVIDENT PARTIALITY PURSUANT TO SECTION 13-22-223.

13-22-807. Arbitration services providers in consumer and employment arbitrations. (1) AN ARBITRATION SERVICES PROVIDER THAT ADMINISTERS ARBITRATIONS OF CONSUMER DISPUTES OR EMPLOYMENT DISPUTES SHALL COLLECT AND PROVIDE AT NO CHARGE TO PARTIES TO A CONSUMER OR EMPLOYMENT ARBITRATION ADMINISTERED OR PROPOSED TO BE ADMINISTERED BY THE ARBITRATION SERVICES PROVIDER A SINGLE CUMULATIVE REPORT THAT CONTAINS ALL OF THE FOLLOWING INFORMATION REGARDING EACH CONSUMER OR EMPLOYMENT ARBITRATION ADMINISTERED, INCLUDING THOSE CONDUCTED BY THE PROVIDER WITHIN THE PRECEDING FIVE YEARS:

(a) THE NAME OF THE NON-CONSUMER PARTY OR EMPLOYER AND WHETHER THE NON-CONSUMER PARTY OR EMPLOYER INITIATED THE
(a) The nature of the dispute involved, categorized as one of the following: Goods; credit; other banking or finance; insurance; health care; construction; real estate; telecommunications, including software and internet usage; debt collection; personal injury; employment; or other;

(b) Whether the consumer, non-consumer, employee, or employer party was the prevailing party;

(c) The total number of occasions, if any, that the non-consumer or employer party has previously been a party in an arbitration administered by the arbitration services provider;

(d) The total number of occasions, if any, that the non-consumer or employer party has previously been a party in a mediation administered by the arbitration services provider;

(e) The name of the attorney and the full name of the law firm that employs the attorney who represented a party, if any;

(f) The date the arbitration services provider received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration services provider;

(g) The nature of the disposition of the dispute, if known, identified as one of the following: withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing;

(h) If a matter was administered in a hearing, whether the hearing was conducted in person, by telephone or video
CONFERENCE, OR BY DOCUMENTS ONLY;

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

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

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

(2) THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS SECTION MUST BE MADE AVAILABLE IN A SPREADSHEET FORMAT THAT ALLOWS THE PARTIES TO DOWNLOAD, EXPORT, SEARCH, AND SORT THE INFORMATION USING READILY AVAILABLE SOFTWARE.

(3) (a) A PARTY OR THE ARBITRATOR SERVICES PROVIDER MAY REQUIRE THAT THE DISCLOSURES REQUIRED BY SUBSECTION (1) OF THIS SECTION BE KEPT CONFIDENTIAL OR PRIVATE.

(b) NOTHING IN THIS SECTION PROHIBITS AN ARBITRATION SERVICES PROVIDER FROM MAKING THE REPORT REQUIRED BY SUBSECTION (1) OF THIS SECTION AVAILABLE TO THE PUBLIC.

(4) AN ARBITRATION SERVICES PROVIDER IS NOT LIABLE FOR DAMAGES FOR FAILURE TO COLLECT OR DISTRIBUTE THE INFORMATION REQUIRED BY THIS SECTION.

(5) AN ARBITRATION SERVICES PROVIDER SHALL NOT CONDUCT CONSUMER OR EMPLOYMENT ARBITRATIONS UNLESS THE ARBITRATION SERVICES PROVIDER HAS SUBSTANTIALLY COMPLIED WITH THIS SECTION.
13-22-808. **Protection for confidential information.** (1) The disclosure requirements in Sections 13-22-212(1.5) and 13-22-807 do not require the disclosure of any amounts or specific performance requirements of a confidential settlement agreement or any information subject to the attorney-client privilege or other recognized privilege or immunity from disclosure.

(2) Notwithstanding such privilege or immunity, when information subject to the disclosure requirements in Sections 13-22-212(1.5) and 13-22-807 is privileged or immune from disclosure, the fact that such information exists must be disclosed. The general nature of the information, described in a manner to allow the parties to evaluate the potential conflict, must also be disclosed. Information not disclosed on the basis of a confidentiality agreement that is claimed to be privileged or immune from disclosure must be identified by disclosing the names of the parties to the confidentiality agreement, unless the names themselves must be withheld to protect the privacy concerns of a victim, the date of the agreement, and information regarding any legal proceeding or claim related to the entry into the agreement.

(3) If a party challenges an arbitrator's evident partiality pursuant to Section 13-22-805, any information that is withheld pursuant to this section must be disclosed in camera to the court and considered by the court when determining whether evident partiality exists.

13-22-809. **Severability.** Every provision of this Part 8 and
EQUALITY OF ITS SECTIONS AND SUBSECTIONS IS SEVERABLE.

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

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

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

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

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

(1.5) (a) In addition to the information required by
SUBSECTION (1) OF THIS SECTION, an individual who is requested to
serve as an arbitrator in any consumer or employment dispute
governed by part 8 of this article 22 shall, before agreeing to
serve as an arbitrator of the dispute, disclose to all parties to
the agreement to arbitrate and arbitration proceeding and to
two other arbitrators any information that a reasonable
person would consider likely to affect the impartiality of the
arbitrator in the consumer or employment arbitration
PROCEEDING, TO THE EXTENT SUCH INFORMATION CAN BE ASCERTAINED
BY REASONABLE EFFORTS, INCLUDING:

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

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

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

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

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

(VI) ANY CURRENT OR FORMER RELATIONSHIP WITH ANY
LIABILITY OR OTHER INSURER THAT THE PROPOSED ARBITRATOR KNOWS
MAY PROVIDE COVERAGE FOR THE AWARD;

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

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

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

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

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

(III) MAY RESPOND TO INQUIRIES FROM A PARTY OR ITS COUNSEL DESIGNED TO DETERMINE HIS OR HER SUITABILITY AND AVAILABILITY FOR THE APPOINTMENT. IN ANY SUCH DIALOGUE, THE PROSPECTIVE ARBITRATOR MAY RECEIVE INFORMATION FROM A PARTY OR ITS COUNSEL DISCLOSING THE GENERAL NATURE OF THE DISPUTE BUT SHOULD NOT
PERMIT THE PARTY OR ITS COUNSEL TO DISCUSS THE MERITS OF THE CASE.

   (1.8) The disclosures required by subsections (1) and (1.5) of this section must be given to the parties in a separate document.

SECTION 5. In Colorado Revised Statutes, 13-22-225, add (4) as follows:

13-22-225. Judgment on award - attorney fee and litigation expenses. (4) Notwithstanding any provision of law to the contrary, when a court vacates an award on the basis of an arbitrator's evident partiality, as described in section 13-22-806, the court shall award to the party that objected to the arbitrator's evident partiality on a basis that was ultimately found to constitute evident partiality and against the party that required arbitration with the arbitrator over the other party's objection reasonable attorney fees and other reasonable expenses incurred in both the arbitration and court proceedings from the date a party objected in writing to the arbitrator's evident partiality on a basis that was ultimately found to constitute evident partiality.

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

PART 9

ENFORCEABILITY OF CERTAIN STANDARD FORM CONTRACT TERMS

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

(a) "EMPLOYEE" MEANS:

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

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

(b) "STANDARD FORM CONTRACT" MEANS A WRITING IN WHICH
THE TERMS AND CONDITIONS STATED IN THE WRITING ARE SET BY ONE OR
MORE OF THE PARTIES WHILE THE __ EMPLOYEE PARTY OR PARTIES HAVE
LITTLE OR NO ABILITY TO NEGOTIATE THE WRITING'S MATERIAL TERMS AT
THE TIME THE WRITING IS EXECUTED OR BECAME ENFORCEABLE AND
AFFECTS THE __ EMPLOYEE'S INTEREST IN EMPLOYMENT IN COLORADO.

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

(a) A REQUIREMENT THAT THE __ EMPLOYEE PARTY ADJUDICATE
A CLAIM ARISING IN COLORADO IN A LOCATION THAT IS OUTSIDE OF
COLORADO;

(b) A REQUIREMENT THAT A PARTY OR PARTIES TO THE CONTRACT
BE ALLOWED TO UNILATERALLY SELECT ONE OR MORE OF THE
INDIVIDUALS __ WHO WILL RESOLVE DISPUTES BETWEEN THE PARTIES; OR

(c) A TERM THAT ATTEMPTS TO AWARD OR LIMIT COSTS OR FEES IN
A MANNER THAT IS PROHIBITED BY COLORADO LAW.

(3) The fact that a term in a standard form contract is not listed in subsection (2) of this section does not mean that the term may not be found to be unenforceable or void as against public policy pursuant to common law.

(4) In ordering a remedy for an unenforceable term in a standard form contract, a court shall consider the following factors:

(a) Whether severing the unenforceable term and enforcing the contract in its absence:
   (I) Creates an incentive for drafters to include unenforceable terms in standard form contracts; or
   (II) Removes in whole or in part the incentive for drafters to draft enforceable standard form contracts that do not include such terms;

(b) Whether inclusion of an unenforceable term might deter the employee party from asserting the party's rights under the contract or might deter the employee party from challenging the enforcement of the unenforceable term;

(c) Whether the drafting party acted in bad faith, for example, by including a term that was, at the time the contract was executed or became enforceable, unenforceable under established law; and

(d) The parties' actual purposes.

(5) (a) Notwithstanding subsection (2)(d) of this section, when a standard form contract provides for an award of
ATTORNEY FEES OR LITIGATION EXPENSES TO ONE OR MORE PARTIES TO A
CONTRACT, THE PROVISION MUST BE CONSTRUED AS AWARDING SUCH FEES
AND EXPENSES TO THE PREVAILING PARTY AS A MATTER OF RIGHT, BUT IF
A MORE SPECIFIC STATUTE PROVIDES ATTORNEY FEES SOLELY TO ONE
PARTY, A FEE SHIFTING OR LOSER PAYS TERM IS VOID.

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

SECTION 7. Effective date - applicability. This act takes effect
upon passage and applies to actions, including arbitrations filed or
arbitrators selected, and to contracts entered into, on or after said date.

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