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States' Alternative Dispute Resolution Statutes
State of Kansas

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States' Alternative Dispute Resolution Statutes

STATE OF KANSAS

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Any Controversy Chapter 5, Article 2.

Current through 2008 Regular Session

5-201. Submission of controversy.

All persons who shall have any controversy or controversies may submit such controversy or controversies to the arbitration of any person or persons, to be mutually agreed upon by the parties, and they may make such submission a rule of any court of record in this state.

5-202. Arbitration bonds.

The parties to such submission may enter into arbitration bonds, which bonds shall be conditioned for the faithful performance of the award or umpirage, setting forth the name or names of the arbitrators or umpire and the matter or matters submitted to his, her or their determination; and when such is the agreement, that such submission be made a rule of any court of record within this state, or a rule of any particular court of record named in the submission.

5-203. Time and place of arbitration.

Said arbitration bonds shall specify some certain time and place at which said arbitration shall be held, allowing said arbitrators or umpire liberty to adjourn from time to time until an award or umpirage be made; some certain time being specified in said bonds at which said award or umpirage be made up.

5-204. Subpoenas for witnesses.

The parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the district court of any county in which said arbitration shall be held, and shall be returnable before the umpire or arbitrators on a day and place certain named therein.

5-205. Disobeying compulsory process, contempt.

Any person disobeying such process, after being duly served therewith, shall be deemed guilty of contempt of the court from which such process issued, and on complaint made by the party injured to the district court whose clerk issued such process, such court may subject the person disobeying such process to the same penalties and forfeitures and in the same manner as such court is authorized to inflict upon persons disobeying writs of subpoena in other cases.

5-206. Oaths.

The umpire or arbitrators and all witnesses for either party to such arbitration, examined by the umpire or arbitrators, shall be under oath or affirmation, to be administered by any district court judge of the proper county.

5-207. Award.

The award of the umpire or arbitrators, or a majority of them, shall be drawn up in writing, and signed by such umpire or arbitrators named in the submission, or a majority of them, and a true copy of said award or umpirage shall without delay be delivered by the umpire or arbitrators to each of the parties in interest.

5-208. Noncompliance with award.

If either of the parties shall refuse or neglect to comply with said award or umpirage, the other party may file the same, together with the submission or arbitration bond, in the court named in the submission, or if no particular court be named therein, then in the district court in the county where said arbitration is held.

5-209. Judgment and execution on award.

Such court, at the next term thereof after filing the same as aforesaid, if no legal exceptions be made or taken to said award or other proceedings, and said award is for the payment of money, shall enter up judgment thereon as on a verdict of a jury between the parties, and issue execution thereon as in other cases, immediately after the amount specified in said award is due and payable.

5-210. Contempt.

So far as said award or umpirage directs the performance of any act or thing other than the payment of money, the party disobeying the same shall be liable to be punished as for a contempt of court, either by attachment or execution as the nature of the case may require.

5-211. Setting aside award.

If any legal defects appear in the award or other proceedings, or if it shall be made to appear at the term of the court to which said award and arbitration are entered in said court, on oath or affirmation, that said award or umpirage was obtained by fraud, corruption, or other undue means, or that said arbitrator or umpire misbehaved, said court may set aside said award or umpirage, or make such order thereon as may be just or right.

5-212. Proof by party enforcing award.

In all cases, the party enforcing any award shall produce satisfactory proof to the court of the due execution of the submission or arbitration bond, and that the party refusing or neglecting to obey the award or umpirage hath been furnished with a true copy thereof, at least ten days before the term at which the application to enforce such award is made.

5-213. Fees of arbitrators and umpires.

Each person chosen and performing the duties of arbitrator or umpire under this act shall be entitled to receive one dollar (\$1) per day for services; and every witness for attendance, and judge for administering oaths or affirmations, the same fees as are prescribed by law for other cases in the district court; which fees shall be taxed by the arbitrators, and inserted in their award or umpirage.

Uniform Arbitration Act

Chapter 5, Article 2.

Current through 2008 Regular Session

5-401. 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) Except as provided in subsection (c), 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.

(c) The provisions of subsection (b) shall not apply to: (1) Contracts of insurance, except for those contracts between insurance companies, including reinsurance contracts; (2) contracts between an employer and employees, or their respective representatives; or (3) any provision of a contract providing for arbitration of a claim in tort.

5-402. Proceedings to compel or stay arbitration.

(a) On application of a party showing an agreement described in K.S.A. 5- 401, 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 arbitration if found 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 K.S.A. 5-418, the 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.

5-403. 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. An arbitrator so appointed has all the powers of one specifically named in the agreement.

5-404. Majority action by arbitrators.

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

5-405. 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 mail not less than five (5) days before the hearing. Appearance at the hearing, other than a special appearance to contest the sufficiency of notice, 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.

(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.

5-406. Representation by attorney.

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

5-407. Witnesses, subpoenas; depositions.

(a) The arbitrators may issue subpoenas for the attendance of witnesses 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, 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 the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators.

(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 district court.

5-408. 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 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. The parties may extend the time in writing either before or after the expiration thereof.

5-409. Change of award by arbitrators.

On application of a party or, if an application to the court is pending under K.S.A. 5-411, 5-412 or 5-413, 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 paragraphs (1) and (3) of subsection (a) of K.S.A. 5-413, or for the purpose of clarifying the award. The application shall be made within twenty (20) 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 objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to the provisions of K.S.A. 5-411, 5-412 or 5-413.

5-410. 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.

5-411. Confirmation of an award.

Upon 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 K.S.A. 5-412 and 5-413.

5-412. Vacating an award.

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

- (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 or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of K.S.A. 5-405, as to prejudice substantially the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under K.S.A. 5-402 and the party did not participate in the arbitration hearing without raising the objection;

But 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 (90) 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 (90) days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in paragraph (5) of subsection (a) of this section, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with K.S.A. 5-403, or, if the award is vacated on grounds set forth in paragraphs (3) and (4) of subsection (a) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with K.S.A. 5-403. 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.

5-413. Modification or correction of award.

(a) Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(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.

5-414. Judgment or decree on award.

Upon the granting of an order confirming, modifying or correcting an award, 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.

5-415. Applications to court.

Except as otherwise provided, an application to the court under this 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.

5-416. Court, jurisdiction.

The term "court" or "court of competent jurisdiction" means district court. The making of an agreement described in K.S.A. 5-401, providing for arbitration in this state, confers jurisdiction on the district court to enforce the agreement under this act and to enter judgment on an award thereunder.

5-417. 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 said party 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.

5-418. Appeals.

- (a) An appeal may be taken from: (1) An order denying an application to compel arbitration made under K.S.A. 5-402;
- (2) An order granting an application to stay arbitration made under subsection (b) of K.S.A. 5-402;
- (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 this act.
- (b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

5-419. Application of Act.

This act applies only to agreements made subsequent to the taking effect of this act. Nothing in this act shall be construed as affecting any provisions relating to arbitration in any policy of insurance or any endorsements thereon which complies with the requirements of K.S.A. 40-284.

5-420. Uniformity of interpretation.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

5-421. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given without the invalid provision or application, and to this end the provisions of this act are severable.

5-422. Citation of act.

This act shall be known and may be cited as the uniform arbitration act.

Current through 2008 Regular Session

5-501. Citation of act; application.

(a) K.S.A. 5-501 through 5-516, and amendments thereto, shall be known and may be cited as the dispute resolution act.

(b) The dispute resolution act shall apply to registered and approved programs and individuals, and personnel thereof, to parties to dispute resolution being conducted by registered programs and individuals, and to disputes referred by a court, by state government or as otherwise provided by statute to dispute resolution other than litigation. The dispute resolution act shall not apply to any judge acting in an official capacity.

5-502. Definitions.

As used in the dispute resolution act:

(a) "Registered programs" and "registered individuals" refer to those programs and individuals who have registered with the director of dispute resolution and are eligible to apply for public funding or approval from the director of dispute resolution;

(b) "approval" means the program or individual has applied for inclusion on a list of programs and individuals and has been found to have met the requirements and guidelines to be considered for the receipt of public funding or to be recommended to the court as an approved service provider.

(c) "council" means the advisory council on dispute resolution;

(d) "director" means the director of dispute resolution;

(e) "dispute resolution" means a process by which the parties involved in a dispute voluntarily agree or are referred or ordered by a court to enter into discussion and negotiation with the assistance of a neutral person;

(f) "mediation" means the intervention into a dispute by a third party who has no decision making authority, is impartial to the issues being discussed, assists the parties in defining the issues in dispute, facilitates communication between the parties and assists the parties in reaching resolution;

(g) "arbitration" means a proceeding in which a neutral person or panel hears a formal case presentation and makes an award, which can be binding or nonbinding upon the parties relative to a prior agreement;

(h) "neutral evaluation" means a proceeding conducted by a neutral person who helps facilitate settlement of a case by giving the parties to the dispute an evaluation of the case;

(i) "summary jury trial" means a formal case presentation to a jury and judge which results in a nonbinding decision;

(j) "mini trial" means a formal case presentation to a party representative and an expert neutral person who makes a nonbinding decision;

(k) "settlement" means a proceeding in which someone other than the presiding judge assists the parties in reaching a resolution;

(l) "conciliation" means a proceeding in which a neutral person assists the parties in reconciliation efforts;

(m) "neutral person" or "neutral" means the impartial third party who intervenes in a dispute at the request of the parties or the court in order to help facilitate settlement or resolution of a dispute.

5-503. Director of dispute resolution; appointment.

The director of dispute resolution shall be appointed by the judicial administrator and work for the office of judicial administration. The director of dispute resolution shall be in the unclassified service under the Kansas civil service act. The director may be but is not required to be an attorney and shall be selected for appointment on the basis of the individual's training and experience in dispute resolution. The director shall administer the dispute resolution act and shall provide administrative and clerical assistance to the council. If the person appointed as director is an attorney, such person shall devote full time to the duties of the office of director and shall not engage in the private practice of law during the period such person serves as director.

5-504. Advisory council on dispute resolution; members; terms, election of officers.

(a) The advisory council on dispute resolution is hereby created. The council shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in dispute resolution and shall be selected to be representative of the geographical and cultural diversity of the state and to reflect balanced gender representation. The council shall consist of no more than 19 voting members. The voting members shall include not more than six persons who are licensed to practice law in Kansas. The council shall be appointed by the chief justice of the supreme court in accordance with this section. The chief justice shall solicit nominations from Kansas judges, dispute resolution organizations, legal and mental health professional organizations, social and legal services agencies, domestic violence advocacy groups, state and local government agencies, business organizations, consumer organizations, court service officers, social workers, mental health professionals, educators and other interested groups or individuals. The chief justice is not restricted to the solicited lists of nominees in making such appointments.

(b) The initial members of the council shall be appointed for terms of one, two or three years so that the terms of not more than four voting members shall expire during the same calendar year. All successor appointments shall be made for terms of three years. Any vacancy on the council shall be filled in the same manner in which the original appointment was made and for the duration of the term vacated.

(c) The council annually shall elect a chairperson, a vice-chairperson and such other officers as deemed necessary by the council.

5-505. Same; duties and functions; meeting requirements; subcommittees.

(a) The council shall:

- (1) Advise the director on the administration of the dispute resolution act and on policy development therefor;
- (2) assist the director in providing technical assistance to programs, individuals and other entities, including courts, requesting the study and development of dispute resolution programs;
- (3) consult with appropriate and necessary state agencies and offices to promote a cooperative and comprehensive implementation of the dispute resolution act;
- (4) advise the director with respect to the awarding of grants or any other financial assistance program which is administered under the dispute resolution act;
- (5) advise the director with respect to applications submitted by programs and individuals for approval under K.S.A. 5-507, and amendments thereto;
- (6) assist the director with the review, supervision and evaluation of dispute resolution programs; and
- (7) make recommendations to the director pertaining to legislation affecting dispute resolution.

(b) The council shall meet at least four times per year and at other times deemed necessary to perform its functions. Members of the council attending meetings of the council or attending a subcommittee meeting thereof authorized by the council shall receive amounts provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(c) The council may appoint subcommittees of the council and task forces to carry out its work. Subcommittee and task force members shall have knowledge of, responsibility for, or interest in an area related to the duties of the council assigned to the subcommittee or task force.

5-506. Director's duties; annual report.

(a) Consistent with provisions of the dispute resolution act and the rules of the supreme court adopted pursuant to the dispute resolution act, and in consultation with the council, the director shall:

- (1) Make information on dispute resolution available throughout the state and encourage the development of new programs;
- (2) approve programs and individuals which meet requirements and guidelines for approval which are prescribed by the dispute resolution act or by rules of the supreme court adopted pursuant to the dispute resolution act;
- (3) develop and administer a uniform system of reporting and collecting statistical data from approved programs and individuals;

- (4) develop and administer a uniform system of evaluating approved programs and individuals for compliance with the requirements of the dispute resolution act and the rules of the supreme court adopted pursuant to the dispute resolution act;
 - (5) prepare an annual budget for the implementation and administration of the dispute resolution act and disburse funds to approved programs and individuals;
 - (6) develop guidelines for a sliding scale of fees that may be charged by approved programs and individuals;
 - (7) develop and approve curricula and initiate training sessions for neutral persons and staff of registered programs, registered individuals and of courts, including continuing education programs;
 - (8) establish and approve volunteer training and continuing education programs;
 - (9) promote public awareness of the dispute resolution process;
 - (10) apply for and receive funds from public and private sources for carrying out the purposes and objectives of the dispute resolution act; and
 - (11) provide technical assistance to any program, individual and other entities, including courts, requesting the study and development of dispute resolution programs.
- (b) The director shall report annually to the supreme court, the governor and the legislature on the implementation of the dispute resolution act. The report shall include, but not be limited to, information on types of disputes being handled by registered programs and registered individuals, recommendations to address problems, recommendations for program development, statistics concerning numbers and resolutions of disputes, when available, and any other information available which is relevant to achieving the goals of the dispute resolution act.

5-507. Programs or individuals in dispute resolution; approval of; application; annual report.

- (a) A program or individual not connected with a court and desiring approval may apply to the director to be approved under the dispute resolution act by submitting an application which includes:
- (1) A plan for the operation of the program or service;
 - (2) the program or individual's objectives;
 - (3) the areas of population to be served;
 - (4) the administrative organization of the program or service;
 - (5) recordkeeping procedures;
 - (6) the procedures for client intake and for scheduling, conducting and terminating dispute resolution

sessions;

(7) qualifications for neutral persons for the program;

(8) an annual budget for the program; and

(9) such additional criteria for approval or for grants which are prescribed by the director in accordance with the dispute resolution act or by rules of the supreme court adopted pursuant to the dispute resolution act.

(b) The director shall approve or disapprove each application submitted for approval under this section by the end of the second meeting of the advisory council occurring after the date the application was submitted.

(c) Each approved program shall submit an annual report to the director. The reports shall include the number and types of cases handled in the year and a showing of continued compliance with the dispute resolution act.

(d) Any entities, programs or individuals providing dispute resolution services and existing on July 1, 1994, shall not be approved under the dispute resolution act unless such entities apply and are approved under this section.

5-508. Same; funds; fees.

An approved program or individual may use sources of funds, both public and private, in addition to funds appropriated by the legislature. An approved program or individual may require each party to pay a fee to help defray costs based upon ability to pay. Each approved program or individual shall have a sliding scale system for assessing fees.

5-509. Same; cases accepted.

(a) Upon finding that alternatives to litigation may provide a more appropriate means to resolve the issues in a case and that the costs of the dispute resolution process are justified relative to the parties' ability to pay such costs, a judge may order the parties to the case to participate in a settlement conference or a non-binding dispute resolution process conducted by: (1) A program or individual approved pursuant to rules of the supreme court adopted pursuant to the dispute resolution act; or (2) an individual licensed to practice law in the state of Kansas.

(b) If a court refers a case, information shall be provided to the court as to whether an agreement was reached and, if available, a copy of the signed agreement shall be provided to the court.

(c) Before the dispute resolution process begins, the neutral person conducting the process shall provide the parties with a written statement setting forth the procedures to be followed.

5-510. Supreme court adopts standards; ethics requirements; compensation for services.

(a) After reviewing the recommendations of the advisory council on dispute resolution, the supreme

court shall adopt rules which establish standards for training and qualifications for neutral persons and which prescribe procedures for registration and approval by the director of training of neutral persons in accordance with such standards. All approved programs and individuals shall satisfy the standards for training and qualifications established by rules of the supreme court.

(b) Registered and approved programs and individuals shall comply with the ethics requirements and standards and the annual continuing education requirements which are prescribed by the director in accordance with the dispute resolution act or by rules of the supreme court adopted pursuant to the dispute resolution act.

(c) Services provided by approved programs or individuals may be compensated or provided on a volunteer basis.

5-511. Rules of procedure and ethics.

Approved programs and individuals providing services under the dispute resolution act shall comply with rules of procedure and ethics as set forth by the supreme court or the director.

5-512. Confidentiality of proceedings.

(a) All verbal or written information transmitted between any party to a dispute and a neutral person conducting a proceeding under the dispute resolution act or the staff of an approved program shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A neutral person conducting a proceeding under the dispute resolution act shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party and the neutral person conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the neutral person or anyone the party or the neutral person authorized to claim the privilege.

(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to allow investigation of or action for ethical violations against the neutral person conducting the proceeding or for the defense of the neutral person or staff of an approved program conducting the proceeding in an action against the neutral person or staff of an approved program if the action is filed by a party to the proceeding;

(2) any information that the neutral person conducting the proceeding is required to report under K.S.A. 2007 Supp. 38-2223, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;

(4) any information that the neutral person conducting the proceeding is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court;

or

(5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the mediator or an officer or employee of the court with the apparent intention of carrying out such threat.

5-513. Immunity from liability.

No neutral person, staff member, or member of a governing board of an approved program may be held liable for civil damages for any statement or decision made in the process of dispute resolution unless such person acts, or fails to act, in a manner constituting gross negligence with malicious purpose or in a manner exhibiting willful disregard of the rights, safety or property of any party to the process of dispute resolution.

5-514. Mediation agreement.

If the parties involved in the dispute reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, such agreement shall be enforceable as an order of the court.

5-515. Statute of limitations.

During the period of the dispute resolution process, any applicable statute of limitations shall be tolled as to the parties. The tolling shall commence on the date that the parties jointly agree in writing to participate in a proceeding under the dispute resolution act and shall end on the date the proceeding is officially terminated by the neutral person. This period shall be no longer than 60 days without consent of all the parties.

5-516. Supreme court adopts rules.

The supreme court, upon recommendation by the director in consultation with the council, shall adopt rules for the administration of the dispute resolution act and to prescribe ethics requirements and standards for approved programs and individuals.

5-517. Dispute resolution fund; expenditures.

There is hereby created the dispute resolution fund in the state treasury which shall be administered by the judicial administrator. All expenditures from the dispute resolution fund shall be for the purpose of carrying out the dispute resolution act. In addition to funds generated by remittances under K.S.A. 20-367, and amendments thereto, funds acquired through grants, training fees, registration and approval fees, and other public or private sources and designated for dispute resolution, shall be remitted to the dispute resolution fund for carrying out the dispute resolution act. All expenditures from the dispute resolution fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the judicial administrator or by the judicial administrator's designee.

5-518. Intentional avoidance of mediation; penalty.

(a) The avoidance of mediation ordered pursuant to K.S.A. 5-509, and amendments thereto, without just cause or excuse, shall constitute evidence of bad faith.

(b) Upon a finding that a party to a dispute has acted in bad faith by deliberately and intentionally avoiding mediation, the court may order such party to pay the reasonable attorney fees of the other party or parties which are directly related to the mediation.

Swine Contracts and Marketing Pools

Chapter 16, Article 15.

Current through 2008 Regular Session

16-1505. Contract language required concerning mediation or arbitration

Any swine purchasing contract, swine marketing contract or swine production contract between a contractor and a swine production facility owner or swine marketing pool or swine producer shall contain language providing for resolution of contract disputes by either mediation or arbitration. If there is a contract dispute the parties may submit the disputed issue to an arbitrator or mediator selected by the parties pursuant to the contract provisions. All arbitration proceedings held pursuant to this act shall follow the procedures set forth in K.S.A. 5-201 et seq., and amendments thereto. If the parties cannot agree upon a mediator or arbitrator, either party may make a written request to the secretary of agriculture for mediation or arbitration services to facilitate resolution of the dispute.

Kansas Agriculture Remediation Reimbursement Program

Kan. Admin. Regs. § 125-1-5

Current through November 2008

125-1-5 Arbitration.

Any person whose application for reimbursement of corrective action costs has been denied, either in part or in full, may seek arbitration in accordance with the Kansas uniform arbitration act, excluding K.S.A. 5-409 and K.S.A. 5- 411 through K.S.A. 5-418 and amendments thereto. The arbitrator and the parties shall use their best efforts to hold the arbitration hearing within 30 days after the commencement of the arbitration. At the next board meeting following the receipt of the arbitrator's award, the arbitrator's award shall be adopted, modified, or rejected by the board, and a final order shall be issued by the board.