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States' Alternative Dispute Resolution Statutes
State of Washington

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States' Alternative Dispute Resolution Statutes

STATE OF WASHINGTON

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Uniform Arbitration Act

Title 7, Chapter 7.04A.

Current through all 2008 legislation

7.04A.010. Definitions

The definitions set forth in this section apply throughout this chapter.

- (1) "Arbitration organization" means a neutral association, agency, board, commission, or other entity that initiates, sponsors, or administers arbitration proceedings or is involved in the appointment of arbitrators.
- (2) "Arbitrator" means an individual appointed to render an award in a controversy between persons who are parties to an agreement to arbitrate.
- (3) "Authenticate" means:
 - (a) To sign; or
 - (b) To execute or adopt a record by attaching to or logically associating with the record, an electronic sound, symbol, or process with the intent to sign the record.
- (4) "Court" means a court of competent jurisdiction in this state.
- (5) "Knowledge" means actual knowledge.
- (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability

company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

7.04A.020. Notice

Unless the parties to an agreement to arbitrate otherwise agree or except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice. A person has notice if the person has knowledge of the notice or has received notice. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

7.04A.030. When chapter applies

(1) Before July 1, 2006, this chapter governs agreements to arbitrate entered into:

(a) On or after January 1, 2006; and

(b) Before January 1, 2006, if all parties to the agreement to arbitrate or to arbitration proceedings agree in a record to be governed by this chapter.

(2) On or after July 1, 2006, this chapter governs agreements to arbitrate even if the arbitration agreement was entered into before January 1, 2006.

(3) This chapter does not apply to any arbitration governed by chapter 7.06 RCW.

(4) This chapter does not apply to any arbitration agreement between employers and employees or between employers and associations of employees.

7.04A.040. Effect of agreement to arbitrate--Nonwaivable provisions

(1) Except as otherwise provided in subsections (2) and (3) of this section, the parties to an agreement to arbitrate or to an arbitration proceeding may waive or vary the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, the parties to the agreement may not:

(a) Waive or vary the requirements of RCW 7.04A.050(1), 7.04A.060(1), 7.04A.080, 7.04A.170(1) or (2), 7.04A.260, or 7.04A.280;

(b) Unreasonably restrict the right under RCW 7.04A.090 to notice of the initiation of an arbitration proceeding;

(c) Unreasonably restrict the right under RCW 7.04A.120 to disclosure of any facts by a neutral

arbitrator; or

(d) Waive the right under RCW 7.04A.160 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this chapter.

(3) The parties to an agreement to arbitrate may not waive or vary the requirements of this section or RCW 7.04A.030(1)(a) or (2), 7.04A.070, 7.04A.140, 7.04A.180, 7.04A.200(3) or (4), 7.04A.220, 7.04A.230, 7.04A.240, 7.04A.250(1) or (2), 7.04A.901, 7.04A.903, section 50, chapter 433, Laws of 2005, or section 51, chapter 433, Laws of 2005.

7.04A.050. Application to court

(1) Except as otherwise provided in RCW 7.04A.280, an application for judicial relief under this chapter must be made by motion to the court and heard in the manner and upon the notice provided by law or rule of court for making and hearing motions.

(2) Notice of an initial motion to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action unless a civil action is already pending involving the agreement to arbitrate.

7.04A.060. Validity of agreement to arbitrate

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

7.04A.070. Motion to compel or stay arbitration

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement, the court shall order the parties to arbitrate if the refusing party does not appear or does not oppose the motion. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue. Unless the court finds that there is no enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

(3) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(4) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be filed in that court. Otherwise a motion under this section may be filed in any court as required by RCW 7.04A.270.

(5) If a party files a motion with the court to order arbitration under this section, the court shall on just terms stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(6) If the court orders arbitration, the court shall on just terms stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may sever it and limit the stay to that claim.

7.04A.080. Provisional remedies

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act, the arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed and is authorized and able to act, a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or if the arbitrator cannot provide an adequate remedy.

(3) A motion to a court for a provisional remedy under subsection (1) or (2) of this section does not waive any right of arbitration.

7.04A.090. Initiation of arbitration

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by mail certified or registered, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person interposes an objection as to lack or insufficiency of notice under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing, the person's appearance at the hearing waives any objection to lack of or insufficiency of notice.

7.04A.100. Consolidation of separate arbitration proceedings

(1) Except as otherwise provided in subsection (3) of this section, upon motion of a party to an

agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

- (a) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
 - (b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
 - (c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
 - (d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.
- (2) The court may order consolidation of separate arbitration proceedings as to certain claims and allow other claims to be resolved in separate arbitration proceedings.
- (3) The court may not order consolidation of the claims of a party to an agreement to arbitrate that prohibits consolidation.

7.04A.110. Appointment of arbitrator--Service as a neutral arbitrator

- (1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. The arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed under the agreed method.
- (2) An arbitrator who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as a neutral arbitrator.

7.04A.120. Disclosure by arbitrator

- (1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, 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) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, witnesses, or the other arbitrators.
- (2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceedings and to any other arbitrators any facts that the arbitrator learns after accepting

appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or (2) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the disclosure, the objection may be a ground to vacate the award under RCW 7.04A.230(1)(b).

(4) If the arbitrator did not disclose a fact as required by subsection (1) or (2) of this section, upon timely objection of a party, an award may be vacated under RCW 7.04A.230(1)(b).

(5) An arbitrator appointed as a neutral who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under RCW 7.04A.230(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under RCW 7.04A.230(1)(b).

7.04A.130. Action by majority

If there is more than one arbitrator, the powers of the arbitrators must be exercised by a majority of them.

7.04A.140. Immunity of arbitrator--Competency to testify--Attorneys' fees and costs

(1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section supplements any other immunity.

(3) If an arbitrator does not make a disclosure required by RCW 7.04A.120, the nondisclosure does not cause a loss of immunity under this section.

(4) In any judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify or required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(a) To the extent necessary to determine the claim of an arbitrator or an arbitration organization or a representative of the arbitration organization against a party to the arbitration proceeding; or

(b) If a party to the arbitration proceeding files a motion to vacate an award under RCW 7.04A.230(1)(a) or (b) and establishes prima facie that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, an arbitration organization, or a representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify in violation of subsection (4) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from

civil liability or that the arbitrator or representative of the organization is incompetent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees and other reasonable expenses of litigation.

7.04A.150. Arbitration process

(1) The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and to determine the admissibility, relevance, materiality, and weight of any evidence.

(2) The arbitrator may decide a request for summary disposition of a claim or particular issue by agreement of all interested parties or upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the arbitration proceeding and the other parties have a reasonable opportunity to respond.

(3) The arbitrator shall set a time and place for a hearing and give notice of the hearing not less than five days before the hearing. Unless a party to the arbitration proceeding interposes an objection to lack of or insufficiency of notice not later than the commencement of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to promptly conduct the hearing and render a timely decision.

(4) If an arbitrator orders a hearing under subsection (3) of this section, the parties to the arbitration proceeding are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If there is more than one arbitrator, all of them shall conduct the hearing under subsection (3) of this section; however, a majority shall decide any issue and make a final award.

(6) If an arbitrator ceases, or is unable, to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with RCW 7.04A.110 to continue the hearing and to decide the controversy.

7.04A.160. Representation by lawyer

A party to an arbitration proceeding may be represented by a lawyer.

7.04A.170. Witnesses--Subpoenas--Depositions--Discovery

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) On request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness, including a witness who cannot be subpoenaed for or is unable to attend a hearing, to be taken under conditions determined by the arbitrator for use as evidence in order to make the proceeding fair, expeditious, and cost-effective.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(4) If an arbitrator permits discovery under subsection (3) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, including the issuance of a subpoena for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and may take action against a party to the arbitration proceeding who does not comply to the extent permitted by law as if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure as if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court in order to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

7.04A.180. Court enforcement of preaward ruling by arbitrator

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under RCW 7.04A.190. The successful party may file a motion to the court for an expedited order to confirm the award under RCW 7.04A.220, in which case the court shall proceed summarily to decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award of the arbitrator under RCW 7.04A.230 and 7.04A.240.

7.04A.190. Award

(1) An arbitrator shall make a record of an award. The record must be authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

7.04A.200. Change of award by arbitrator

(1) On motion to an arbitrator by a party to the arbitration proceeding, the arbitrator may modify or correct an award:

(a) Upon the grounds stated in RCW 7.04A.240(1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(2) A motion under subsection (1) of this section must be made and served on all parties within twenty days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must serve any objections to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under RCW 7.04A.220, 7.04A.230, or 7.04A.240, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon the grounds stated in RCW 7.04A.240(1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected under this section is subject to RCW 7.04A.220, 7.04A.230, and 7.04A.240.

7.04A.210. Remedies--Fees and expenses of arbitration proceeding

(1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized under the applicable law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award attorneys' fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by subsections (1) and (2) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the

circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under RCW 7.04A.220 or for vacating an award under RCW 7.04A.230.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

7.04A.220. Confirmation of award

After a party to the arbitration proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless the award is modified or corrected under RCW 7.04A.200 or 7.04A.240 or is vacated under RCW 7.04A.230.

7.04A.230. Vacating award

(1) Upon motion of a party to the arbitration proceeding, the court shall vacate an award if:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(i) Evident partiality by an arbitrator appointed as a neutral;

(ii) Corruption by an arbitrator; or

(iii) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to RCW 7.04A.150, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in RCW 7.04A.090 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within ninety days after the movant receives notice of the award in a record under RCW 7.04A.190 or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under RCW 7.04A.200, unless

the motion is predicated upon the ground that the award was procured by corruption, fraud, or other undue means, in which case it must be filed within ninety days after such a ground is known or by the exercise of reasonable care should have been known by the movant.

(3) In vacating an award on a ground other than that set forth in subsection (1)(e) of this section, the court may order a rehearing before a new arbitrator. If the award is vacated on a ground stated in subsection (1)(c), (d), or (f) of this section, the court may order a rehearing before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in RCW 7.04A.190(2) for an award.

(4) If a motion to vacate an award is denied and a motion to modify or correct the award is not pending, the court shall confirm the award.

7.04A.240. Modification or correction of award

(1) Upon motion filed within ninety days after the movant receives notice of the award in a record under RCW 7.04A.190 or within ninety days after the movant receives notice of an arbitrator's award in a record on a motion to modify or correct an award under RCW 7.04A.200, the court shall modify or correct the award if:

(a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a motion filed under subsection (1) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, the court shall confirm the award.

(3) A motion to modify or correct an award under this section may be joined with a motion to vacate the award.

7.04A.250. Judgment on award--Attorneys' fees and litigation expenses

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On application of a prevailing party to a contested judicial proceeding under RCW 7.04A.220, 7.04A.230, or 7.04A.240, the court may add to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award, attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made.

7.04A.260. Jurisdiction

(1) A court of this state having jurisdiction over the dispute and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

7.04A.270. Venue

A motion under RCW 7.04A.050 must be filed in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion must be filed in any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be filed in the court hearing the initial motion unless the court otherwise directs.

7.04A.280. Appeals

(1) An appeal may be taken from:

(a) An order denying a motion to compel arbitration;

(b) An order granting a motion to stay arbitration;

(c) An order confirming or denying confirmation of an award;

(d) An order modifying or correcting an award;

(e) An order vacating an award without directing a rehearing; or

(f) A final judgment entered under this chapter.

(2) An appeal under this section must be taken as from an order or a judgment in a civil action.

7.04A.290. Relationship to electronic signatures in global and national commerce act

The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of section 102 of the electronic signatures in global and national commerce act.

7.04A.900. Effective date--2005 c 433

This act takes effect January 1, 2006.

7.04A.901. Uniformity of application and construction--2005 c 433

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

7.04A.902. Captions not law--2005 c 433

Captions used in this act are not part of the law.

7.04A.903. Savings--2005 c 433

This act does not affect an action or proceeding commenced or right accrued before January 1, 2006.

Trust and Estate Dispute Resolution

Title 11, Chapter 11.96A.

Current through all 2008 legislation

11.96A.260. Findings--Intent

The legislature finds that it is in the interest of the citizens of the state of Washington to encourage the prompt and early resolution of disputes in trust, estate, and nonprobate matters. The legislature endorses the use of dispute resolution procedures by means other than litigation. The legislature also finds that the former chapter providing for the nonjudicial resolution of trust, estate, and nonprobate disputes, *chapter 11.96 RCW, has resulted in the successful resolution of thousands of disputes since 1984. The nonjudicial procedure has resulted in substantial savings of public funds by removing those disputes from the court system. Enhancement of the statutory framework supporting the nonjudicial process in *chapter 11.96 RCW would be beneficial and would foster even greater use of nonjudicial dispute methods to resolve trust, estate, and nonprobate disputes. The legislature further finds that it would be beneficial to allow parties to disputes involving trusts, estates, and nonprobate assets to have access to a process for required mediation followed by arbitration using mediators and arbitrators experienced in trust, estate, and nonprobate matters. Finally, the legislature also believes it would be beneficial to parties with disputes in trusts, estates, and nonprobate matters to clarify and streamline the statutory framework governing the procedures governing these cases in the court system.

Therefore, the legislature adopts RCW 11.96A.270 through 11.96A.320, that enhance *chapter 11.96 RCW and allow required mediation and arbitration in disputes involving trusts, estates, and nonprobate matters that are brought to the courts. RCW 11.96A.270 through 11.96A.320 also set forth specific civil procedures for handling trust and estate disputes in the court system. It is intended that the adoption of RCW 11.96A.270 through 11.96A.320 will encourage and direct all parties in trust, estate, and nonprobate matter disputes, and the court system, to provide for expeditious, complete, and final decisions to be made in disputed trust, estate, and nonprobate matters.

11.96A.270. Intent--Parties can agree otherwise

The intent of RCW 11.96A.260 through 11.96A.320 is to provide for the efficient settlement of disputes in trust, estate, and nonprobate matters through mediation and arbitration by providing any party the right to proceed first with mediation and then arbitration before formal judicial procedures may be utilized. Accordingly, any of the requirements or rights under RCW 11.96A.260 through 11.96A.320 are subject to any contrary agreement between the parties or the parties' virtual representatives.

11.96A.280. Scope

A party may cause the matter to be presented for mediation and then arbitration, as provided under RCW 11.96A.260 through 11.96A.320. If a party causes the matter to be presented for resolution under RCW 11.96A.260 through 11.96A.320, then judicial resolution of the matter, as provided in RCW

11.96A.060 or by any other civil action, is available only by complying with the mediation and arbitration provisions of RCW 11.96A.260 through 11.96A.320.

11.96A.290. Superior court--Venue

As used in RCW 11.96A.260 through 11.96A.320, "superior court" means: (1) Before the commencement of any legal proceedings, the appropriate superior court with respect to the matter as provided in RCW 11.96A.040; and (2) if legal proceedings have been commenced with respect to the matter, the superior court in which the proceedings are pending.

11.96A.300. Mediation procedure

(1) Notice of mediation. A party may cause the matter to be subject to mediation by service of written notice of mediation on all parties or the parties' virtual representatives as follows:

(a) If no hearing has been set. If no hearing on the matter has been set, by serving notice in substantially the following form before any petition setting a hearing on the matter is filed with the court:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW 11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless a petition objecting to mediation is filed with the superior court within twenty days of service of this notice. If a petition objecting to mediation is not filed within the twenty-day period, RCW 11.96A.300(4) requires you to furnish to all other parties or their virtual representatives a list of acceptable mediators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....

(Party or party's legal representative)

(b) If a hearing has been set. If a hearing on the matter has been set, by filing and serving notice in substantially the following form at least three days prior to the hearing that has been set on the matter:

NOTICE OF MEDIATION UNDER RCW 11.96A.300

To: (Parties)

Notice is hereby given that the following matter shall be resolved by mediation under RCW

11.96A.300:

(State nature of matter)

This matter must be resolved using the mediation procedures of RCW 11.96A.300 unless the court determines at the hearing set for ... o'clock on, (identify place of already set hearing), that mediation shall not apply pursuant to RCW 11.96A.300(3). If the court determines that mediation shall not apply, the court may decide the matter at the hearing, require arbitration, or direct other judicial proceedings.

(Optional: Our list of acceptable mediators is as follows:)

DATED:

.....

(Party or party's legal representative)

(2) Procedure when notice of mediation served before a hearing is set. The following provisions apply when notice of mediation is served before a hearing on the matter is set:

(a) The written notice required in subsection (1)(a) of this section may be served at any time without leave of the court.

(b) Any party may object to a notice of mediation under subsection (1)(a) of this section by filing a petition with the superior court and serving the petition on all parties or the parties' virtual representatives. The party objecting to notice of mediation under subsection (1)(a) of this section must file and serve the petition objecting to mediation no later than twenty days after receipt of the written notice of mediation. The petition may include a request for determination of matters subject to judicial resolution under RCW 11.96A.080 through 11.96A.200, and may also request that the matters in issue be decided at the hearing.

(c) The hearing on the petition objecting to mediation must be heard no later than twenty days after the filing of that petition.

(d) The party objecting to mediation must give notice of the hearing to all other parties at least ten days before the hearing and must include a copy of the petition.

At the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by: (i) Deciding the matter at that hearing, but only if the petition objecting to mediation contains a request for that relief, (ii) requiring arbitration, or (iii) directing other judicial proceedings.

(3) Procedure when notice of mediation served after hearing set. If the written notice of mediation required in subsection (1)(b) of this section is timely filed and served by a party and another party objects to mediation, by petition or orally at the hearing, the court shall order that mediation proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to mediation, the court shall dispose of the matter by:

(a) Deciding the matter at that hearing, (b) requiring arbitration, or (c) directing other judicial proceedings.

(4) Selection of mediator; mediator qualifications.

(a) If a petition objecting to mediation is not filed as provided in subsection (3) of this section, or if a court determines that mediation shall apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of qualified and acceptable mediators. If the parties cannot agree on a mediator within ten days after the list is required to be furnished, a party may petition the court to appoint a mediator. All parties may submit a list of qualified and acceptable mediators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified mediator from lists of acceptable mediators provided by the parties.

(b) A qualified mediator must be: (i) An attorney licensed to practice before the courts of this state having at least five years of experience in estate and trust matters, (ii) an individual, who may be an attorney, with special skill or training in the administration of trusts and estates, or (iii) an individual, who may be an attorney, with special skill or training as a mediator. The mediator may not have an interest in an affected estate, trust, or nonprobate asset, and may not be related to a party.

(5) Date for mediation. Upon designation of a mediator by the parties or court appointment of a mediator, the mediator and the parties or the parties' virtual representatives shall establish a date for the mediation. If a date cannot be agreed upon within ten days of the designation or appointment of the mediator, a party may petition the court to set a date for the mediation session.

(6) Duration of mediation. The mediation must last at least three hours unless the matter is earlier resolved.

(7) Mediation agreement. A resolution of the matter that is the subject of the mediation must be evidenced by a nonjudicial dispute resolution agreement under RCW 11.96A.220.

(8) Costs of mediation. Costs of the mediation, including reasonable compensation for the mediator's services, shall be borne equally by the parties. The details of those costs and fees, including the compensation of the mediator, must be set forth in a mediation agreement between the mediator and all parties to the matter. Each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the mediation proceeding: (a) Except as may occur otherwise as provided in RCW 11.96A.320, or (b) unless the matter is not resolved by mediation and the arbitrator or court finally resolving the matter directs otherwise.

11.96A.310. Arbitration procedure

(1) When arbitration available. Arbitration under RCW 11.96A.260 through 11.96A.320 is available only if:

(a) A party has first petitioned for mediation under RCW 11.96A.300 and such mediation has been concluded;

(b) The court has determined that mediation under RCW 11.96A.300 is not required and has not

ordered that the matter be disposed of in some other manner;

(c) All of the parties or the parties' virtual representatives have agreed not to use the mediation procedures of RCW 11.96A.300; or

(d) The court has ordered that the matter must be submitted to arbitration.

(2) Commencement of arbitration. Arbitration must be commenced as follows:

(a) If the matter is not settled through mediation under RCW 11.96A.300, or the court orders that mediation is not required, a party may commence arbitration by serving written notice of arbitration on all other parties or the parties' virtual representatives. The notice must be served no later than twenty days after the later of the conclusion of the mediation procedure, if any, or twenty days after entry of the order providing that mediation is not required. If arbitration is ordered by the court under RCW 11.96A.300(3), arbitration must proceed in accordance with the order.

(b) If the parties or the parties' virtual representatives agree that mediation does not apply and have not agreed to another procedure for resolving the matter, a party may commence arbitration without leave of the court by serving written notice of arbitration on all other parties or the parties' virtual representatives at any time before or at the initial judicial hearing on the matter. After the initial judicial hearing on the matter, the written notice required in subsection (1) of this section may only be served with leave of the court.

Any notice required by this section must be in substantially the following form:

NOTICE OF ARBITRATION UNDER RCW 11.96A.310

To: (Parties)

Notice is hereby given that the following matter must be resolved by arbitration under RCW 11.96A.310:

(State nature of matter)

The matter must be resolved using the arbitration procedures of RCW 11.96A.310 unless a petition objecting to arbitration is filed with the superior court within twenty days of receipt of this notice. If a petition objecting to arbitration is not filed within the twenty-day period, RCW 11.96A.310 requires you to furnish to all other parties or the parties' virtual representatives a list of acceptable arbitrators within thirty days of your receipt of this notice.

(Optional: Our list of acceptable arbitrators is as follows:)

DATED:

.....

(Party or party's legal representative)

(3) Objection to arbitration. A party may object to arbitration by filing a petition with the superior

court and serving the petition on all parties or the parties' virtual representatives. The objection to arbitration may be filed at any time unless a written notice of arbitration has been served, in which case the objection to arbitration must be filed and served no later than twenty days after receipt of the written notice of arbitration. The hearing on the objection to arbitration must be heard no later than twenty days after the filing of that petition. The party objecting to arbitration must give notice of the hearing to all parties at least ten days before the hearing and shall include a copy of the petition. At the hearing, the court shall order that arbitration proceed except for good cause shown. Such order shall not be subject to appeal or revision. If the court determines that the matter should not be subject to arbitration, the court shall dispose of the matter by: (a) Deciding the matter at that hearing, but only if the petition objecting to arbitration contains a request for such relief; or (b) directing other judicial proceedings.

(4) Selection of arbitrator; qualifications of arbitrator.

(a) If a petition objecting to arbitration is not filed as provided in subsection (3) of this section, or if a court determines that arbitration must apply, each party shall, within thirty days of receipt of the initial notice or within twenty days after the court determination, whichever is later, furnish all other parties or the parties' virtual representatives a list of acceptable arbitrators. If the parties cannot agree on an arbitrator within ten days after the list is required to be furnished, a party may petition the court to appoint an arbitrator. All parties may submit a list of qualified and acceptable arbitrators to the court no later than the date on which the hearing on the petition is to be held. At the hearing the court shall select a qualified arbitrator from lists of acceptable arbitrators provided by the parties.

(b) A qualified arbitrator must be an attorney licensed to practice before the courts of this state having at least five years of experience in trust or estate matters or five years of experience in litigation or other formal dispute resolution involving trusts or estates, or an individual, who may be an attorney, with special skill or training with respect to the matter. The arbitrator may be the same person selected and used as a mediator under the mediation procedures of RCW 11.96A.300.

(5) Arbitration rules. Arbitration must be under chapter 7.06 RCW, mandatory arbitration of civil actions, as follows:

(a) Chapter 7.06 RCW, the superior court mandatory arbitration rules adopted by the supreme court, and any local rules for mandatory arbitration adopted by the superior court apply to this title. If the superior court has not adopted chapter 7.06 RCW, then the local rules for mandatory arbitration applicable in King county apply, except all the duties of the director of arbitration must be performed by the presiding judge of the superior court.

(b) If a party has already filed a petition with the court with respect to the matter that will be the subject of the arbitration proceedings, then all other parties to the arbitration proceedings who have not yet filed a reply thereto must file a reply with the arbitrator within ten days of the date on which the arbitrator is selected or appointed.

(c) The arbitration provisions of this subsection apply to all matters in dispute. The dollar limits and restrictions to monetary damages of RCW 7.06.020 do not apply to arbitrations under this subsection. To the extent any provision in this title is inconsistent with chapter 7.06 RCW or the rules referenced in (a) of this subsection, the provisions of this title control.

(d) The compensation of the arbitrator must be set by written agreement between the parties and the arbitrator. The arbitrator must be compensated at the arbitrator's stated rate of compensation for acting as an arbitrator of disputes in trusts, estates, and nonprobate matters unless the parties or the parties' virtual representatives agree otherwise.

(e) Unless directed otherwise by the arbitrator in accord with subsection (6) of this section or RCW 11.96A.320, or unless the matter is not resolved by arbitration and the court finally resolving the matter directs otherwise:

(i) Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration, with the details of those costs and fees to be set forth in an arbitration agreement between the arbitrator and all parties to the matter; and

(ii) A party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(f) The arbitrator and the parties shall execute a written agreement setting forth the terms of the arbitration and the process to be followed. This agreement must also contain the fee agreement provided in (d) of this subsection. A dispute as to this agreement must be resolved by the director of arbitration.

(g) The rules of evidence and discovery applicable to civil causes of action before the superior court as defined in RCW 11.96A.290 apply, unless the parties have agreed otherwise or the arbitrator rules otherwise.

(6) Costs of arbitration. The arbitrator may order costs, including reasonable attorneys' fees and expert witness fees, to be paid by any party to the proceedings as justice may require.

(7) Decision of arbitrator. The arbitrator shall issue a final decision in writing within thirty days of the conclusion of the final arbitration hearing. Promptly after the issuance of the decision, the arbitrator shall serve each of the parties to the proceedings with a copy of the written arbitration decision. Proof of service shall be filed with the court. Service shall be made in conformity with CR 5(b) of the rules for superior court.

(8) Arbitration decision may be filed with the court. The arbitrator or any party to the arbitration may file the arbitrator's decision with the clerk of the superior court at any time after its issuance. Notice of such filing shall be promptly given to each party to the arbitration proceedings.

(9) Appeal. (a) The final decision of the arbitrator may be appealed by filing a notice of appeal with the superior court requesting a trial de novo on all issues of law and fact. The notice of appeal must be filed within thirty days after the date on which the decision was served on the party filing the notice of appeal. A trial de novo shall then be held, including a right to jury, if demanded.

(b) If an appeal is not filed within the time provided in (a) of this subsection, the arbitration decision is conclusive and binding on all parties. If the arbitrator's decision has been filed with the clerk of the superior court, a judgment shall be entered and may be presented to the court by any party on ten days'

prior notice. The judgment when entered shall have the same force and effect as judgments in civil actions.

(10) Costs on appeal of arbitration decision. The prevailing party in any such de novo superior court decision after an arbitration result must be awarded costs, including expert witness fees and attorneys' fees, in connection with the judicial resolution of the matter. Such costs shall be charged against the nonprevailing parties in such amount and in such manner as the court determines to be equitable. The provisions of this subsection take precedence over the provisions of RCW 11.96A.150 or any other similar provision.

11.96A.320. Petition for order compelling compliance

If a party does not comply with any procedure of RCW 11.96A.260 through 11.96A.310, the other party or parties may petition the superior court for an order compelling compliance. A party obtaining an order compelling compliance is entitled to reimbursement of costs and attorneys' fees incurred in connection with: The petition and any other actions taken after the issuance of the order to compel compliance with the order, unless the court at the hearing on the petition determines otherwise for good cause shown. Reimbursement must be from the party or parties whose failure to comply was the basis for the petition.

11.96A.900. Short title

This chapter may be known and cited as the trust and estate dispute resolution act or "TEDRA."

11.96A.901. Captions not law--1999 c 42

Part headings and captions used in chapter 42, Laws of 1999 are not any part of the law.

11.96A.902. Effective date--1999 c 42

This act takes effect January 1, 2000.

Seeds

Title 15, Chapter 15.49.

Current through all 2008 legislation

15.49.071. Damages--Arbitration prerequisite to legal action

(1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the arbitration of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date arbitration proceedings are instituted until ten days after the date on which the arbitration award becomes final.

(2) Similarly, no such claim may be asserted as a counterclaim or defense in any action brought by a dealer against a buyer until the buyer has first provided for arbitration of the claim. Upon the buyer's filing of a written notice of intention to assert such a claim as a counterclaim or defense in the action accompanied by a copy of the buyer's complaint in arbitration filed as provided in this chapter, the

action shall be stayed, and any applicable statute of limitations shall be tolled with respect to such claim from the date arbitration proceedings are instituted until ten days after the arbitration award becomes final.

(3) Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under RCW 15.49.011 through 15.49.101.

(4) If the parties agree to submit the claim to arbitration and to be bound by the arbitration award, then the arbitration shall be subject to chapter 7.04A RCW, and RCW 15.49.081 through 15.49.111 will not apply to the arbitration. If the parties do not so agree, then the buyer may provide for mandatory arbitration by the arbitration committee under RCW 15.49.081 through 15.49.111. An award rendered in such mandatory arbitration shall not be binding upon the parties and any trial on any claim so arbitrated shall be de novo.

(5) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of two thousand dollars. All claims for two thousand dollars or less shall be commenced in either district court or small claims court.

15.49.081. Arbitration--Filing fee--Rules

The director shall adopt rules, in conformance with chapter 34.05 RCW, providing for mandatory arbitration under this chapter and governing the proceedings of the arbitration committee. The decisions and proceedings of the arbitration committee shall not be subject to chapter 34.05 RCW. The department shall establish by rule a filing fee to cover the administrative costs of processing a complaint and submitting it to the arbitration committee.

15.49.091. Arbitration--Procedure

(1) To submit a claim to mandatory arbitration, the buyer shall make and file with the department a sworn complaint against the dealer alleging the damages sustained. The buyer shall send a copy of the complaint to the dealer by United States registered mail. The filing fee shall be submitted to the department with each complaint filed and may be recovered from the dealer or other seller upon recommendations of the arbitration committee.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the department, by United States registered mail, the answer to the complaint. Failure of a dealer to file a timely answer to the complaint shall be so documented for the record.

(3) The director shall, upon receipt of the answer, refer the complaint and answer to the arbitration committee for investigation, findings, and recommendations.

(4) Any dealer may request an investigation by the arbitration committee for any dispute involving seed which may not otherwise be before the arbitration committee.

15.49.101. Investigation of complaint by arbitration committee

(1) Upon referral of a complaint for investigation, the arbitration committee shall make a prompt and full investigation of the matters complained of and report its award to the director within sixty days of such referral or such later date as parties may determine or as may be required in subsection (3) of this

section.

(2) The report of the arbitration committee shall include, in addition to its award, recommendations as to costs, if any.

(3) In the course of its investigation, the arbitration committee may examine the buyer and the dealer on all matters that the arbitration committee may consider relevant; may grow a representative sample of the seed referred to in the complaint if considered necessary; and may hold informal hearings at such time and place as the committee chairman may direct upon reasonable notice to all parties. If the committee decides to grow a representative sample of the seed, the sixty-day period identified in this section shall be extended an additional thirty days.

(4) After the committee has made its award, the director shall promptly transmit the report by certified mail to all parties.

15.49.111. Arbitration committee--Creation--Generally

(1) The director shall create an arbitration committee composed of five members, including the director, or a department employee designated by the director, and four members appointed by the director. The director shall make appointments so that the committee is balanced and does not favor the interests of either buyers or dealers. The director also shall appoint four alternates to the committee. In making appointments the director, to the extent practical, shall seek the recommendations of each of the following:

(a) The dean of the college of agriculture and home economics at Washington State University;

(b) The chief officer of an organization in this state representing the interests of seed dealers;

(c) The chief officer of an agriculture organization in this state as the director may determine to be appropriate; and

(d) The president of an agricultural organization in this state representing persons who purchase seed.

(2) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(3) The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the committee and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the commission as the chairman may direct.

(4) The purpose of the committee is to conduct arbitration as provided in this chapter. The committee may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director in accordance with this chapter.

(5) The members of the committee shall receive no compensation for performing their duties but shall be reimbursed for travel expenses; expense reimbursement shall be borne equally by the parties to the arbitration.

(6) For purposes of this chapter, a quorum of four members or their alternates is necessary to conduct an arbitration investigation or to make an award. If a quorum is present, a simple majority of members present shall be sufficient to make a decision. Any member disagreeing with the award may prepare a dissenting opinion and such opinion also will be included in the committee's report.

(7) The director shall make provisions for staff support, including legal advice, as the committee finds necessary.

15.49.900. Existing liabilities not affected

The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1969.

15.49.920. Effective date--1969 c 63

The effective date of this 1969 act is July 1, 1969.

15.49.930. Continuation of rules adopted pursuant to repealed sections--Adoption, amendment or repeal

The repeal of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900 and the enactment of this 1969 act shall not be deemed to have repealed any regulations adopted under the provisions of sections 15.48.010 through 15.48.260 and 15.48.900, chapter 11, Laws of 1961 and RCW 15.48.010 through 15.48.260 and 15.48.900, and in effect immediately prior to such repeal and not inconsistent with the provisions of this 1969 act. For the purpose of this 1969 act, it shall be deemed that such rules have been adopted under the provisions of this 1969 act pursuant to chapter 34.05 RCW, as enacted or hereafter amended concerning the adoption of rules. Any amendment or repeal of such rules after July 1, 1969, shall be subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended, concerning the adoption of rules.

15.49.940. Short title

RCW 15.49.020 through 15.49.950 shall be known as the "Washington State Seed Act."

15.49.950. Severability--1969 c 63

If any section or provision of this 1969 act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional.

Uniform Mediation Act

Title 7, Chapter 7.07.

Current through all 2008 legislation

7.07.010. Definitions

In this chapter:

- (1) “Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) “Mediation communication” means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- (3) “Mediator” means an individual who conducts a mediation.
- (4) “Nonparty participant” means a person, other than a party or mediator, that participates in a mediation.
- (5) “Mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.
- (6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; or public corporation, or any other legal or commercial entity.
- (7) “Proceeding” means:
 - (a) A judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, and discovery; or
 - (b) A legislative hearing or similar process.
- (8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (9) “Sign” means:
 - (a) To execute or adopt a tangible symbol with the present intent to authenticate a record; or
 - (b) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

7.07.020. Scope

- (1) Except as otherwise provided in subsection (2) or (3) of this section, this chapter applies to a mediation in which:
 - (a) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;
 - (b) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or
 - (c) The mediation parties use as a mediator an individual who holds himself or herself out as a

mediator or the mediation is provided by a person that holds itself out as providing mediation.

(2) This chapter does not apply to a mediation:

(a) Conducted by a judge who might make a ruling on the case; or

(b) Conducted under the auspices of:

(i) A primary or secondary school if all the parties are students; or

(ii) A correctional institution for youths if all the parties are residents of that institution.

(3) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under RCW 7.07.030 through 7.07.050 do not apply to the mediation or part agreed upon. However, RCW 7.07.030 through 7.07.050 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

7.07.030. Privilege against disclosure--Admissibility--Discovery

(1) Except as otherwise provided in RCW 7.07.050, a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by RCW 7.07.040.

(2) In a proceeding, the following privileges apply:

(a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication;

(b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator; and

(c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

7.07.040. Waiver and preclusion of privilege

(1) A privilege under RCW 7.07.030 may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(a) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(b) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(2) A person that discloses or makes a representation about a mediation communication which

prejudices another person in a proceeding is precluded from asserting a privilege under RCW 7.07.030, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(3) A person that intentionally uses a mediation to plan, attempt to commit, or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under RCW 7.07.030.

7.07.050. Exceptions to privilege

(1) There is no privilege under RCW 7.07.030 for a mediation communication that is:

(a) In an agreement evidenced by a record signed by all parties to the agreement;

(b) Made during a session of a mediation which is open, or is required by law to be open, to the public;

(c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(d) Intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(g) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the child or adult protection mediation.

(2) There is no privilege under RCW 7.07.030 if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(a) A criminal court proceeding involving a felony; or

(b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may

be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

(5) Records of mediation communications that are privileged under this chapter are exempt from the requirements of chapter 42.56 RCW.

7.07.060. Prohibited mediator reports

(1) Except as provided in subsection (2) of this section, a mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(2) A mediator may disclose:

(a) Whether the mediation occurred or has terminated, whether a settlement was reached, attendance, and efforts to schedule a mediation ordered by a court, administrative agency, or other authority that may make a ruling on the dispute;

(b) A mediation communication as permitted under RCW 7.07.050; or

(c) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(3) A communication made in violation of subsection (1) of this section may not be considered by a court, administrative agency, or arbitrator.

7.07.070. Confidentiality

Unless subject to chapter 42.30 RCW, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

7.07.080. Mediator's disclosure of conflicts of interest--Background

(1) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(a) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(b) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(2) If a mediator learns any fact described in subsection (1)(a) of this section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(4) A person that violates subsection (1) or (2) of this section is precluded by the violation from asserting a privilege under RCW 7.07.030.

(5) Subsections (1) through (3) of this section do not apply to an individual acting as a judge.

(6) This chapter does not require that a mediator have a special qualification by background or profession.

7.07.090. Participation in mediation

An attorney or other individual designated by a party may accompany the party to and participate in a mediation, except that if the dispute being mediated is the subject of pending proceedings under chapter 12.40 RCW, then a party may not be represented by an attorney in mediation unless the party may be represented by an attorney in the proceedings under chapter 12.40 RCW. A waiver of participation given before the mediation may be rescinded.

7.07.100. Relation to electronic signatures in global and national commerce act

This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.), but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

7.07.110. Uniformity of application and construction

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

7.07.900. Short title--2005 c 172

This act may be cited as the Uniform Mediation Act.

7.07.901. Captions not law--2005 c 172

Captions used in this act are not any part of the law.

7.07.902. Severability--2005 c 172

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

7.07.903. Application to existing agreements or referrals

(1) This chapter governs a mediation pursuant to a referral or an agreement to mediate made on or after January 1, 2006.

(2) If all parties agree in a signed record or a record of proceeding reflects such an agreement by all parties, then this chapter governs a mediation pursuant to a referral or an agreement to mediate whenever made.

7.07.904. Effective date--2005 c 172

This act takes effect January 1, 2006

SEED ARBITRATION
WAC Title 16, Chapter 16-301.

Current with amendments adopted through October 1, 2008.

16-301-100. Matters subject to mandatory arbitration.

A civil dispute is subject to arbitration under these rules if it involves a claim of damage caused by the failure of any seed covered by the provisions of chapter 15.49 RCW, seeds, to perform as represented on the required label, by warranty, or as a result of negligence. This arbitration is a prerequisite to maintaining a legal action against the dealer of the seed. All the following conditions must be met:

- (1) The parties have not agreed to submit the dispute to arbitration and to be bound by the arbitration award.
- (2) The claim or counterclaim where relief is sought is, or includes, a monetary amount in excess of two thousand dollars.
- (3) Any statutory period of limitations with respect to such claim had not expired.

16-301-105. Filing of a complaint for arbitration.

To submit a demand for mandatory arbitration, a buyer shall make and file with the director of the department a sworn complaint against the seed dealer.

- (1) Such complaint shall contain:
 - (a) A statement setting forth the nature of the claim and damages.
 - (b) The dollar amount involved in the claim.
 - (c) The remedy sought.
- (2) The complaint must be accompanied by a filing fee of one hundred dollars to cover the costs of processing the complaint.
- (3) The buyer shall send the dealer that is the subject of the complaint a copy of the complaint by registered mail.

16-301-110. Requirement to respond to complaint.

Within twenty days within receipt of the sworn complaint, the seed dealer shall file an answer to the complaint with the director by United States registered mail.

- (1) If no answer is filed within the stated time:
 - (a) It will be deemed that the claim is denied.
 - (b) The failure to file a timely response will be recorded and made a part of the official record.
- (2) Failure to file a timely response shall not operate to delay the arbitration process.

16-301-115. Acceptance of filing by telefax.

Complaints, responses to complaints, counterclaims and other communications from parties to the dispute to the committee may be transmitted electronically by telefax except where this chapter specifically requires transmission by registered mail. Such transmissions shall be regarded with the same validity as if sent by United States mail.

16-301-120. Arbitration committee.

The director shall create a seed arbitration committee composed of five members, including the director, or a department of agriculture employee as his or her designee, and four members. Four alternates shall also be appointed by the director according to the requirements of RCW 15.49.111.

- (1) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.
- (2) The arbitration committee shall elect a chairperson and a secretary from among its members.
 - (a) The chairperson shall conduct meetings and deliberations of the committee and direct its other activities.
 - (b) The secretary shall keep accurate records of all meetings and deliberations and perform other duties as assigned by the chairperson.
- (3) The committee shall be called into session at the direction of the director or the chairperson.
- (4) The members of the committee shall receive no compensation for their duties but shall be reimbursed for travel expenses according to established state travel and per diem rates. Expense reimbursement shall be borne equally by the parties to the arbitration.
- (5) A committee member, delegated with investigative responsibilities outside of the hearing under WAC 16-318-395, may not participate in making the final decision and award.

16-301-125. Referral to arbitration committee.

Within fifteen days of the receipt of the answer or forty-five days of the receipt of a complaint, the director shall refer the claim to the seed arbitration committee established by RCW 15.49.101 for investigation, finding and recommendation. The buyer and seller shall be notified by certified mail:

- (1) That the claim has been submitted to the arbitration committee.
- (2) The names of the members of the arbitration committee and the alternates. Within ten days after receipt of notification from the director, either buyer or seller may petition the director that a member of the arbitration committee be disqualified for cause and replaced by an available alternate member: Provided, That either buyer or seller may petition the director at any time during the process upon discovering facts that establish grounds for disqualification. Such decision shall be solely at the discretion of the director.
- (3) No person may serve on the committee in any arbitration where he or she has a financial or personal interest in the result of the arbitration unless the parties, in writing, waive such disqualification.

16-301-130. Scheduling of hearing.

The chairperson of the arbitration committee shall fix the time and place for each hearing and shall notify each party in writing of the scheduled hearing at least seven days in advance of the hearing date.

- (1) Such notice shall include:
 - (a) The names and addresses of the parties to whom notice has been given.
 - (b) The address and telephone number of the chairperson of the arbitration committee.
 - (c) The names and addresses of the members of the arbitration committee.
 - (d) The date, time, place, and subject of the hearing.
 - (e) A statement of the legal authority under which the hearing is being held including the sections of statute and rules involved.
- (2) To the extent possible, the chairperson of the arbitration committee shall attempt to schedule the hearing at a time and place mutually agreeable to the parties: Provided, That if a mutually agreeable time and place cannot be found, the chairperson may set the time and place.
- (3) The chairperson of the committee may allow all or a part of the hearing to be conducted by telephone, or other electronic means when the rights of the parties will not be prejudiced thereby and each party has an opportunity to participate.

16-301-135. Representation by counsel.

Any party in the arbitration may be represented by counsel. A party intending to be so represented shall notify the other party and the committee chairperson of the name and address of the counsel at least three days in advance of the hearing at which the counsel is first scheduled to appear. When arbitration is initiated on behalf of a buyer by counsel or when a dealer replies through a counsel, such notice shall be deemed to have been given. The director shall make provision for legal support through the office of the attorney general, as requested by the arbitration committee.

16-301-140. Waiver of oral hearing.

The parties may provide, by written agreement submitted to the chairperson, that the hearing shall be conducted on the pleadings submitted without oral argument or testimony.

16-301-145. Record of the hearing.

The secretary of the arbitration committee shall maintain summary minutes of the hearing and shall provide for a recording of all oral proceedings. Any party may request copies of all recordings or transcription of testimony. The costs of duplication, transcription and mailing shall be entirely borne by the requesting party.

16-301-150. Attendance at hearings.

The hearing shall be open to the parties to the dispute and other persons having a financial interest. The committee chairperson shall have the authority to require that any witness or witnesses retire from the hearing during the testimony of other witnesses. The admission of other persons to the arbitration hearing shall be at the discretion of the chairperson of the arbitration committee.

16-301-155. Committee investigation.

Upon referral of a complaint for investigation to the committee, the arbitration committee shall make a prompt and full investigation by the proceedings specified in this chapter of the matters in the complaint, and report its award to the director within sixty days of such referral, unless the parties in the dispute agree in writing to the chairperson to a later date: Provided, That if the committee decides to grow a representative sample of the seed that sixty-day period shall be extended an additional thirty days.

16-301-160. Evidence.

The parties may produce such evidence as they desire and such additional evidence as the arbitration committee may deem necessary to understand the dispute and determine an award. The committee shall be the judge of the admissibility and relevance of all evidence offered. Conformity to strict legal rules of evidence shall not be required. All evidence shall be taken in the presence of the parties concerned, except where a party has waived that right or is absent after receiving proper notice.

16-301-165. Evidence by affidavit.

Evidence may be submitted for consideration of the arbitration committee in the form of witness by affidavit. The committee shall consider such evidence and give to it only such weight as the committee deems appropriate after consideration of any objections made to its admission. All parties shall be entitled to examine such documents and shall be entitled to a copy upon request and payment of duplication and mailing costs.

16-301-170. Discovery.

Use of discovery is limited in mandatory arbitration cases.

(1) The following types of discovery may be requested of the arbitration committee:

(a) Deposition.

(b) Written interrogatories.

(c) Request for production of documents.

(2) The arbitration committee may allow and condition use of discovery on a showing of necessity and an unavailability by other means.

16-301-175. Arbitration in the absence of a party.

The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to request an adjournment or postponement. An award may not be made solely on the failure to appear. The arbitration committee, in these cases, shall require the party who is present to present such evidence or information as the committee deems necessary to determine an award.

16-301-180. Order of proceedings.

When an oral hearing is held, the order of procedure for conducting arbitration hearings shall be as follows:

(1) The chairperson shall open the hearing on behalf of the committee stating the place, time and date of the hearing; the members of the arbitration committee and the parties to the arbitration and their counsel, if any; and recital of the buyer's claim, any counterclaim, and the dealer's response, if any.

(2) The parties shall have the opportunity to present an opening statement.

(3) The complaining party shall have the opportunity to present the claim for damages, the proof and witnesses and shall submit to questions and other examination by the arbitration committee.

(4) The defending party shall present the defense and his or her proof including witnesses and shall submit to questions or other examination by the arbitration committee.

(5) Each party shall have the right of cross-examination.

(6) The arbitration committee may vary this procedure: Provided, That both parties are provided a full and equal opportunity to present their evidence and proofs.

(7) The names and addresses of all witnesses shall be recorded and made a part of the record.

(8) Both parties shall have an opportunity to present a summary statement.

16-301-185. Expert evidence and performance tests.

The committee may delegate one of its members to seek advice from experts in the seed industry and/or the seed inspection service of the department of agriculture or the Washington State Crop Improvement Association; may cause to be obtained and grow out a representative sample of the seed; may delegate a portion of the investigation to one of its members who reports back to the committee as a whole at the hearing; or may cause to be performed such other tests of seed quality as may be deemed necessary to render a decision. The results of any such investigation or tests shall be entered into the record at the arbitration hearing. The costs of any such tests necessary to determine an award shall be considered in the award.

16-301-190. Conservation of property.

The chairperson, on behalf of the arbitration committee, may issue such orders as may be deemed necessary to safeguard the seed and/or the crop in the field that is the subject of the dispute without prejudice to the rights of the parties or to the final determination of the dispute.

16-301-195. Reopening of a hearing.

An arbitration hearing may be reopened by the following:

- (1) The chairperson of the arbitration committee with the assent of a majority of the committee members may reopen a hearing.
- (2) A hearing may be reopened by the chairperson with assent of a majority of the committee upon petition of either party prior to the final committee report.
- (3) A hearing may not be reopened if such action would cause the sixty-day time limit as defined in WAC 16-301-155 (ninety days with a grow out test) to be exceeded without the written consent of both parties.

16-301-200. Expenses.

The expenses for witnesses for either side shall be borne entirely by the party producing such witnesses. The expenses of expert witnesses deemed necessary by the committee shall be borne by the department according to established state travel and per diem rates. The costs of grow out tests or other tests that may be required that exceed the amount of the filing fee may be allocated by the committee in making the award.

16-301-205. Arbitration committee report.

The arbitration committee shall prepare a written report of its findings within the established time frames. The report shall include findings of fact and conclusions, the award and allocations as to costs, if any.

- (1) If a quorum is present, a simple majority of the arbitration committee shall be sufficient to make a

decision.

(2) Any member disagreeing with an award may prepare a dissenting opinion and that opinion shall be included in the committee report.

(3) The report shall be sent to the director.

The director shall promptly send copies of the report to the parties by registered mail.

16-301-210. Award upon settlement.

If the parties to a dispute settle that dispute during the course of an arbitration, the committee, at the request of the parties, may set forth the terms of the agreed settlement in the award.