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An Agricultural Law Research Project

## **States' Alternative Dispute Resolution Statutes**

### **State of Ohio**

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## States' Alternative Dispute Resolution Statutes

### STATE OF OHIO

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#### **Arbitration**

Title XXVII, Chapter 2711.

*Current through 2008*

#### 2711.01 Provision in contract for arbitration of controversies valid; exceptions

(A) A provision in any written contract, except as provided in division (B) of this section, to settle by arbitration a controversy that subsequently arises out of the contract, or out of the refusal to perform the whole or any part of the contract, or any agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, or arising after the agreement to submit, from a relationship then existing between them or that they simultaneously create, shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract.

(B)(1) Sections 2711.01 to 2711.16 of the Revised Code do not apply to controversies involving the title to or the possession of real estate, with the following exceptions:

(a) Controversies involving the amount of increased or decreased valuation of the property at the termination of certain periods, as provided in a lease;

(b) Controversies involving the amount of rentals due under any lease;

(c) Controversies involving the determination of the value of improvements at the termination of any lease;

(d) Controversies involving the appraisal of property values in connection with making or renewing any lease;

(e) Controversies involving the boundaries of real estate.

(2) Sections 2711.01 to 2711.16 of the Revised Code do not apply to controversies involving international commercial arbitration or conciliation that are subject to Chapter 2712. of the Revised Code.

#### 2711.02 Court may stay trial; appeal

(A) As used in this section and section 2711.03 of the Revised Code, “commercial construction contract” means any written contract or agreement for the construction of any improvement to real property, other than an improvement that is used or intended to be used as a single-family, two-family, or three-family detached dwelling house and accessory structures incidental to that use.

(B) If any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, shall on application of one of the parties stay the trial of the action until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration.

(C) Except as provided in division (D) of this section, an order under division (B) of this section that grants or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

(D) If an action is brought under division (B) of this section upon any issue referable to arbitration under an agreement in writing for arbitration that is included in a commercial construction contract, an order under that division that denies a stay of a trial of the action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order and may be reviewed, affirmed, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

#### 2711.03 Enforcing arbitration agreement

(A) The party aggrieved by the alleged failure of another to perform under a written agreement for arbitration may petition any court of common pleas having jurisdiction of the party so failing to perform for an order directing that the arbitration proceed in the manner provided for in the written agreement. Five days' notice in writing of that petition shall be served upon the party in default. Service of the notice shall be made in the manner provided for the service of a summons. The court shall hear the parties, and, upon being satisfied that the making of the agreement for arbitration or the failure to comply with the agreement is not in issue, the court shall make an order directing the parties

to proceed to arbitration in accordance with the agreement.

(B) If the making of the arbitration agreement or the failure to perform it is in issue in a petition filed under division (A) of this section, the court shall proceed summarily to the trial of that issue. If no jury trial is demanded as provided in this division, the court shall hear and determine that issue. Except as provided in division (C) of this section, if the issue of the making of the arbitration agreement or the failure to perform it is raised, either party, on or before the return day of the notice of the petition, may demand a jury trial of that issue. Upon the party's demand for a jury trial, the court shall make an order referring the issue to a jury called and impaneled in the manner provided in civil actions. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding under the agreement, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding under the agreement, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with that agreement.

(C) If a written agreement for arbitration is included in a commercial construction contract and the making of the arbitration agreement or the failure to perform it is in issue in a petition filed under division (A) of this section, the court shall proceed summarily to the trial of that issue, and the court shall hear and determine that issue.

#### 2711.04 Appointment of arbitrator

If, in the arbitration agreement, provision is made for a method of naming or appointing an arbitrator or an umpire, such method shall be followed. If no method is provided therein, or if a method is provided and any party thereto fails to avail himself of such method, or if for any other reason there is a lapse in the naming of an arbitrator or an umpire, or in filling a vacancy, then upon the application of either party to the controversy the court of common pleas in the county in which the arbitration is to be held shall, within fifteen days after such application is made, appoint an arbitrator or umpire, who shall act under said agreement with the same effect as if he had been specifically named therein. Unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

#### 2711.05 Hearing of application

Any application to the court of common pleas under sections 2711.01 to 2711.15, inclusive, of the Revised Code, shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise expressly provided in such sections.

#### 2711.06 Powers and duties of arbitrators; subpoena of witnesses, failure to obey

When more than one arbitrator is agreed to, all the arbitrators shall sit at the hearing of the controversy unless, by consent in writing, all parties agree to proceed with the hearing with a less number. The arbitrators selected either as prescribed in sections 2711.01 to 2711.15, inclusive, of the Revised Code, or otherwise, or a majority of them, may administer oaths or affirmations to witnesses, fix the time and place of their hearings, adjourn their meetings from day to day or for a longer time, and also from place to place, and may subpoena in writing any person to attend before any of them as a witness and in a proper case to bring with him any book, record, document, or paper which is deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses in the

court of common pleas. The subpoena shall issue in the name of the arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to said person and shall be served in the same manner as subpoenas to appear and testify before such court. If any person so subpoenaed to testify refuses or neglects to obey such subpoena, upon petition, the court of common pleas in the county in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person before said arbitrators, or punish said person for contempt in the same manner provided for securing the attendance of witnesses or their punishment for neglect or refusal to attend in such court.

#### 2711.07 Depositions

Upon petition approved by the arbitrators, or by a majority of them, the court of common pleas in the county in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in such court.

#### **Award**

#### 2711.08 Award must be in writing

The award made in an arbitration proceeding must be in writing and must be signed by a majority of the arbitrators. A true copy of such award without delay shall be delivered to each of the parties in interest. The parties to the arbitration agreement may designate therein the county in which the arbitration shall be held and the award made.

#### 2711.09 Application for order confirming the award

At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof.

#### **Vacating, Modifying, and Correcting Award**

#### 2711.10 Court may vacate award

In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

- (A) The award was procured by corruption, fraud, or undue means.
- (B) There was evident partiality or corruption on the part of the arbitrators, or any of them.
- (C) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may direct a rehearing by the arbitrators.

#### 2711.11 Court may modify award

In any of the following cases, the court of common pleas in the county wherein an award was made in an arbitration proceeding shall make an order modifying or correcting the award upon the application of any party to the arbitration if:

(A) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

(B) The arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted;

(C) The award is imperfect in matter of form not affecting the merits of the controversy.

The order shall modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

#### 2711.12 Judgment to be entered

Upon the granting of an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding, the court must enter judgment in conformity therewith.

#### 2711.13 Motion to vacate, modify, or correct; notice

After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code.

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

#### 2711.14 Papers to be filed with application

Any party to a proceeding for an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding shall, at the time the application is filed with the clerk of the court of common pleas, also file the following papers with the clerk:

(A) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time within which to make the award;

(B) The award;

(C) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment entered in such proceeding shall be docketed as if rendered in an action.

The judgment so entered shall have in all respects the same effect as, and be subject to all laws relating to, a judgment in an action. Such judgment may be enforced as if rendered in an action in the court in which it is entered.

#### 2711.15 Appeal

An appeal may be taken from an order confirming, modifying, correcting, or vacating an award made in an arbitration proceeding or from judgment entered upon an award.

#### 2711.16 Jurisdiction

Jurisdiction of judicial proceedings provided for by sections 2711.01 to 2711.14, inclusive, of the Revised Code, is generally in the courts of common pleas, and actions and proceedings brought under such sections shall be brought either in the court of common pleas of the county designated by the parties to the arbitration agreement as provided in section 2711.08 of the Revised Code, which designation is an irrevocable consent of the parties thereto to such jurisdiction, or, whether or not such designation has been made, in the court of common pleas of any county in which a party in interest resides or may be summoned, or if any party in interest is a corporation, in any county in which such corporation is situated, or has or had its principal office or place of business, or in which such corporation has an office or agent, or in any county in which a summons may be served upon the president chairman or president of the board of directors or trustees or other chief officer.

### **Rules of Superintendence for the Courts of Ohio**

*Current with amendments received through July of 2008*

#### Sup R 15 Arbitration

(A) Arbitration in civil cases

(1) The judge or judges of general divisions of courts of common pleas, of municipal courts, or of county courts shall consider, and may adopt, a plan for the mandatory arbitration of civil cases. The plan shall specify the amount in controversy that will require submission of the case to arbitration and arbitration shall be required in cases where the amount in controversy does not exceed that specified sum. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all parties to the action agree to arbitration. The

court shall determine at an appropriate pre-trial stage whether a case is to be referred to mandatory arbitration.

(2) Every plan for the mandatory arbitration of civil cases adopted pursuant to this rule shall be filed with the Supreme Court and shall include the following basic principles:

(a) Actions Excluded. Actions involving title to real estate, equitable relief and appeals shall be excluded.

(b) Arbitrators. The court shall establish a list of qualified attorneys who have consented to serve as arbitrators. The court shall appoint from the list an arbitrator who has no interest in the determination of the case or relationship with the parties or their counsel that would interfere with an impartial consideration of the case. Upon written request of a party, the court shall appoint a board of three arbitrators in the same manner as a single arbitrator is appointed.

(c) Report and Award. Within thirty days after the hearing, the board or the single arbitrator shall file a report and award with the clerk of the court and forward copies to all parties or their counsel. The report and award, unless appealed, shall be final and have the legal effect of a verdict upon which judgment shall be entered by the court.

(d) Appeals. Any party may appeal the award to the court if, within thirty days after the filing of the award with the clerk of court, the party does both of the following:

(i) Files a notice of appeal with the clerk of courts and serves a copy on the adverse party or parties accompanied by an affidavit that the appeal is not being taken for delay;

(ii) Reimburses the county or municipal corporation for all fees paid to the arbitrator or arbitrators in the case or pays the fees directly to the arbitrator or arbitrators, unless otherwise directed by the court.

All appeals shall be de novo proceedings at which members of the deciding board or the single arbitrator are barred as witnesses.

Exceptions to the decision of the board or single arbitrator based on either misconduct or corruption of the board or single arbitrator may also be filed by any party within thirty days after the filing of the report, and, if sustained, the report shall be vacated.

#### (B) Arbitration in Juvenile and Domestic Relations Cases

(1) The judge or judges of a division of a court of common pleas having domestic relations or juvenile jurisdiction may, at the request of all parties, refer a case or a designated issue to arbitration.

(2) The parties shall propose an arbitrator to the court and identify all issues to be resolved by the arbitrator. The arbitrator shall consent to serve and shall have no interest in the determination of the case or relationship with the parties or their counsel that would interfere with the impartial consideration of the case. An arbitrator selected pursuant to this section is not required to be an attorney.



(3) The request for arbitration submitted by the parties shall provide for the manner of payment of the arbitrator.

(4) The arbitrator shall file a report and award pursuant to division (A)(2)(c) of this rule.

(5) Any party may appeal the report and award pursuant to division (A)(2)(d) of this rule.

### Sup R 16 Mediation

(A) General Provisions. A division of the court of common pleas, municipal court, and county court shall consider, and may adopt, a local rule providing for mediation.

(B) Content of Mediation Rule. A local rule providing for mediation shall include the applicable provisions set forth in this division, in addition to such other provisions as the court or division considers necessary and appropriate.

(1) Required provisions for all mediation rules. A local mediation rule shall include all of the following provisions:

(a) Procedures for ensuring that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.

(b) Procedures for screening for domestic violence both before and during mediation.

(c) Procedures for encouraging appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.

(d) Procedures for prohibiting the use of mediation in any of the following:

1) As an alternative to the prosecution or adjudication of domestic violence;

2) In determining whether to grant, modify or terminate a protection order;

3) In determining the terms and conditions of a protection order; and

4) In determining the penalty for violation of a protection order.

Nothing in division (B)(1)(d) of this rule shall prohibit the use of mediation in a subsequent divorce or custody case even though that case may result in the termination of the provisions of a protection order.

(2) Required provisions for domestic relations and juvenile court mediation rules. A local rule for mediation of allocation of parental rights and responsibilities or the care of, or visitation with, minor children or delinquency or status offense cases shall include the provisions of division (B)(1) of this rule. The mediation rule shall include provisions that allow mediation to proceed, when violence or fear of violence is alleged, suspected, or present, only if the mediator has specialized training set forth in division (C)(2) of this rule and all of the following conditions are satisfied:

(a) The person who is or may be the victim of domestic violence is fully informed, both orally and in writing, about the mediation process, his or her right to decline participation in the mediation process, and his or her option to have a support person present at mediation sessions.

(b) The parties have the capacity to mediate without fear of coercion or control.

(c) Appropriate procedures are in place to provide for the safety of the person who is or may be the victim of domestic violence and all other persons present at the mediation.

(d) Procedures are in place for the mediator to terminate mediation if he or she believes there is continued threat of domestic violence or coercion between the parties.

(e) Procedures are in place for issuing written findings of fact, as required by R.C. 3109.052, to refer certain cases involving domestic violence to mediation.

(3) Required provisions for child abuse, neglect, or dependency mediation rules. A local rule for mediation in child abuse, neglect, or dependency cases shall include the provisions of division (B) (1) and (B)(2) of this rule and all of the following:

(a) A provision that allows mediation to proceed only if the mediator has specialized training set forth in division (C)(1), (C)(2), and (C)(3) of this rule.

(b) Procedures for ensuring that parties who are not represented by counsel attend mediation only if they have waived the right to counsel in open court, and that parties represented by counsel attend mediation without counsel only where the right to have counsel present at the mediation has been specifically waived. Waivers can be rescinded at any time.

(c) Procedures for the selection and referral of a case to mediation at any point after the case is filed.

(d) Procedures for notifying the parties and nonparty participants of the mediation.

(C) Qualification and Training for Domestic Relations and Juvenile Mediators. Each domestic relations and juvenile division of the court of common pleas that adopts a local rule providing for mediation shall include the following applicable provisions for the qualification and training of mediators.

(1) General qualifications and training. A mediator employed by the division or to whom the division makes referrals for mediation of allocation of parental rights and responsibilities, the care of, or visitation with, minor children, abuse, neglect, and dependency, or juvenile perpetrated domestic violence cases shall satisfy all of the following:

(a) Possess a bachelor's degree, or equivalent education experience as is satisfactory to the division, and at least two years of professional experience with families. "Professional experience with families" includes mediation, counseling, casework, legal representation in family law matters, or such other equivalent experience satisfactory to the division.

(b) Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the division.

(c) After completing the training required by division (C)(1)(b) of this rule, complete at least forty hours of specialized family or divorce mediation training that is provided by a training program approved by the Dispute Resolution Section in accordance with standards established by the Supreme Court Advisory Committee on Dispute Resolution.

(2) Specific qualifications and training; domestic abuse. A mediator employed by the division or to whom the division makes referrals for mediation of any case shall complete at least fourteen hours of specialized training in domestic abuse and mediation through a training program approved by the Dispute Resolution Section in accordance with standards established by the Supreme Court Advisory Committee on Dispute Resolution. A mediator who has not completed this specialized training may mediate these cases only if he/she co-mediate with a mediator who has completed the specialized training.

(3) Specific qualifications and training; abuse, neglect, and dependency cases. In addition to satisfying the requirements of division (C)(1) and (C)(2) of this rule, a mediator employed by the division or to whom the division makes referrals for mediation of abuse, neglect, or dependency cases shall satisfy both of the following:

(a) Possess significant experience in mediating family disputes;

(b) Complete at least thirty-two hours of specialized child protection mediation training through either a formal training session or through a mentoring program approved by the Dispute Resolution Section in accordance with standards established by the Supreme Court Advisory Committee on Dispute Resolution.

(D) Aspirational Standards. Each division that adopts a local rule providing for mediation of family cases shall encourage mediators to comply with the Model Standards of Practice for Family and Divorce Mediation as set forth in Appendix F and the Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs as set forth in Appendix G to this rule. Wherever a conflict exists between the Model Standards of Practice for Family and Divorce Mediation set forth in Appendix F and the Special Policy Considerations for State Regulation of Family Mediators and Court Affiliated Programs in Appendix G and this rule, this rule shall control.

**International Commercial Arbitration**  
Title XXVII, Chapter 2712.

*Current through 2008*

2712.01 Definitions

As used in this chapter:

(A) “Arbitral award” means any decisions of the arbitral tribunal on the substance of the dispute submitted to it and includes an interim, interlocutory, or partial arbitral award.

(B) “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators.

(C) “Arbitration” means any arbitration, whether or not administered by a permanent arbitral institution.

(D) “Arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them in respect of a defined legal, contractual or other relationship.

(E) “Conciliation” means any conciliation, whether or not administered by a permanent conciliation institution.

(F) “Court” means a body or an organ of the judicial system of a state.

(G) “Court of common pleas” means the court of common pleas of the county of this state described in or selected pursuant to section 2712.11 of the Revised Code.

(H) “Foreign nation” means any nation other than the United States and includes any province, territory, or other political subdivision of that nation.

(I) “Party” means a party to an arbitration or conciliation agreement.

(J) Except as provided in division (L) of this section, “state” means the United States and any foreign nation.

(K) “Supreme court” means the supreme court of this state.

(L) “This state” has the same meaning as in section 1.59 of the Revised Code.

(M) “United States” includes any state, district, commonwealth, territory, or insular possession of the United States and any area subject to the legislative authority of the United States.

#### 2712.02 Applicability of chapter

(A) This chapter applies to international commercial arbitration and conciliation, subject to any agreement that is in force between the United States or any other state or states.

(B) This chapter, except sections 2712.13 to 2712.16 and sections 2712.75 to 2712.79 of the Revised Code, applies only if the place of arbitration or conciliation is in this state.

#### 2712.03 International arbitration or conciliation agreements

(A) An arbitration or conciliation agreement is international if any of the following applies:

(1) The parties to an arbitration or conciliation agreement have, at the time of the conclusion of that agreement, their places of business in different states.

(2) One of the following places is situated outside the state in which the parties have their place of business:

(a) The place of arbitration or conciliation as determined in, or pursuant to, the arbitration or conciliation agreement;

(b) Any place where a substantial part of the obligations of the commercial relationship is to be performed;

(c) The place with which the subject matter of the dispute is involved most closely.

(3) The parties expressly have agreed that the subject matter of the arbitration or conciliation agreement relates to commercial interests in more than one state.

(4) The subject matter of the arbitration or conciliation agreement otherwise is related to commercial interests in more than one state.

(B) For purposes of this section, the states, districts, commonwealths, territories, and insular possessions of the United States and the areas subject to the legislative authority of the United States shall be considered one state.

(C) For purposes of this section, if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement, and, if a party does

not have a place of business, “place of business” shall be construed to mean his habitual residence.

#### 2712.04 Commercial arbitration or conciliation agreements

An arbitration or conciliation agreement is commercial if it arises out of a relationship of a commercial nature, including any of the following:

- (A) A transaction for the supply or exchange of goods or services;
- (B) A distribution agreement;
- (C) A commercial representation or agency;
- (D) An exploitation agreement or concession;
- (E) A joint venture or other related form of industrial or business cooperation;
- (F) The carriage of goods or passengers by air, sea, rail, or road;
- (G) Construction;
- (H) Insurance;
- (I) Licensing;
- (J) Factoring;
- (K) Leasing;
- (L) Consulting;
- (M) Engineering;
- (N) Financing;
- (O) Banking;
- (P) The transfer of data or technology;
- (Q) Intellectual or industrial property, including trademarks, patents, copyrights, and software programs;
- (R) Professional services.

#### 2712.05 Priority over other arbitration statutes

This chapter supersedes Chapter 2711. of the Revised Code with respect only to international

commercial arbitration and conciliation. This chapter does not affect any other provisions of the Revised Code by virtue of which certain disputes may not be submitted to arbitration or conciliation or may be submitted to arbitration or conciliation only in accordance with provisions other than those of this chapter.

#### 2712.06 Authorization for third-parties to determine issues

If a provision of this chapter, except sections 2712.53 to 2712.55 of the Revised Code, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

#### 2712.07 Agreements to include arbitration or conciliation rules

If a provision of this chapter refers to the fact that the parties have agreed or that they may agree, or in any other way refers to an agreement of the parties, the agreement shall be deemed to include any arbitration or conciliation rules referred to in that agreement.

#### 2712.08 References to claims and defenses applying to counterclaims and defenses

If this chapter, other than division (C) of section 2712.44 and division (A) of section 2712.66 of the Revised Code, refers to a claim or defense, it also applies to a counterclaim or a defense to that counterclaim.

#### 2712.09 Receipt of written communications

(A) Unless otherwise agreed to by the parties, any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence, or mailing address, and the communication is deemed to have been received on the day it is so delivered.

(B) If none of the places referred to in division (A) of this section can be found after making reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence, or mailing address by certified mail, return receipt requested, or by any other means that provides a record of the attempt to deliver it.

(C) This section does not apply to written communications in court proceedings.

#### 2712.10 Waiver of objections to noncompliance

(A) A party who knows that any provision of this chapter, or any requirement under the arbitration agreement, has not been complied with and who proceeds with the arbitration without stating his objection to the noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to object.

(B) As used in this section, "any provision of this chapter" means any provision of this chapter in respect of which the parties otherwise may agree.

#### 2712.11 Court intervention

(A) In matters governed by this chapter, no court shall intervene except as provided in this chapter or in applicable federal law.

(B) The functions of a court referred to in this chapter shall be performed by the court of common pleas of the county in which the arbitration is located, except that the functions referred to in section 2712.13 of the Revised Code shall be performed by the appropriate court of common pleas selected pursuant to the Rules of Civil Procedure.

## **Arbitration Agreements**

### 2712.12 Form of arbitration agreements

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. An arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of telecommunications that provide a record of the agreement, or in an exchange of statements of claims and defenses in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

### 2712.13 Stay of judicial proceedings

(A) When a party to an international commercial arbitration agreement commences judicial proceedings seeking relief with respect to a matter covered by the agreement to arbitrate, any other party to the agreement may apply to the court of common pleas for an order to stay the proceedings and to compel arbitration.

(B) A timely request for a stay of judicial proceedings made under this section shall be granted.

### 2712.14 Interim measures of protection

(A) It is not incompatible with an arbitration agreement for a party to request a court of common pleas, before or during arbitral proceedings, to issue an interim measure of protection, or for the court to grant such a measure.

(B) Any party to an arbitration governed by this chapter may request the court of common pleas to enforce an award of an arbitral tribunal rendered pursuant to section 2712.36 of the Revised Code, which award orders a party to take any interim measure of protection. Enforcement shall be granted pursuant to the law applicable to the granting of the type of interim measure of protection requested.

## **Measures of Protection**

### 2712.15 Order of attachment; preliminary injunction

In connection with a pending arbitration, the court may grant measures of protection, including the following:

(A) An order of attachment issued to assure that the award to which the applicant may be entitled is not rendered ineffectual by the dissipation of party assets;

(B) A preliminary injunction granted to protect trade secrets or to conserve goods that are the subject matter of the arbitral dispute.

#### 2712.16 Requests for interim measures of protection

In considering a request for interim measures of protection, both of the following apply:

(A) The court shall give preclusive effect to any findings of fact of the arbitral tribunal, including the probable validity of the claim that is the subject of the award for interim measures, provided the interim award is consistent with public policy and provided division (B) of this section does not apply.

(B) If the arbitral tribunal has not ruled on an objection to its jurisdiction, the court first shall make an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did have jurisdiction, it shall proceed in accordance with division (A) of this section. If the court rules that the arbitral tribunal did not have jurisdiction, the court shall deny the application for interim measures. A ruling by the court that the arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent judicial proceedings.

### **Arbitral Tribunals**

#### 2712.17 Arbitral tribunal

The arbitral tribunal shall consist of one arbitrator, unless the parties agree to another number of arbitrators. A person of any nationality may be an arbitrator, unless the parties agree otherwise.

#### 2712.18 Appointment of arbitral tribunal

(A) The parties may agree on a procedure for appointing the arbitral tribunal.

(B) If the parties fail to agree on an appointment procedure, the arbitral tribunal shall be appointed as follows:

(1) In an arbitration with a single arbitrator, the appointment shall be made by the court of common pleas upon the request of a party.

(2) In an arbitration with more than one arbitrator and two parties, each party shall appoint one arbitrator, and the two appointed arbitrators jointly shall appoint the remaining arbitrators. However, if either party fails to appoint an arbitrator within thirty days after receipt of a request to do so by the other party, or if the two appointed arbitrators fail to agree on the appointment of the remaining arbitrators within thirty days after their appointments, the appointments shall be made by the court of common pleas upon the request of a party.

### **Arbitrators**



### 2712.19 Appointment of arbitrator

Upon the request of a party, the court of common pleas may take the necessary measures to secure the appointment of an arbitrator, unless the agreement on the appointment procedure provides other means for securing the appointment, where, under an appointment procedure agreed upon by the parties, any of the following occurs:

- (A) A party fails to act as required under that procedure.
- (B) The parties, or two appointed arbitrators, fail to reach an agreement expected of them under that procedure.
- (C) A third party, including an institution, fails to perform any function entrusted to it under that procedure.

### 2712.20 Considerations in appointment of arbitrator

In appointing an arbitrator, the court of common pleas shall consider all of the following:

- (A) Any qualifications required of the arbitrator by the agreement of the parties;
- (B) Other considerations that are likely to secure the appointment of an independent and impartial arbitrator;
- (C) In the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than those of the parties.

### 2712.21 Finality of appointment of arbitrator

A decision by the court of common pleas regarding the appointment of an arbitrator pursuant to sections 2712.18 and 2712.19 of the Revised Code is final and not subject to appeal.

### 2712.22 Disclosure of information affecting impartiality of arbitrators or conciliators

Except as otherwise provided in this chapter, all persons whose names are submitted for consideration for appointment or designation as arbitrators or conciliators, or who are appointed or designated as arbitrators or conciliators, within fifteen days of the submission, designation, or appointment, shall disclose to the parties any information that might cause their impartiality to be questioned, including any of the following circumstances:

- (A) The person has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings.
- (B) The person served as an attorney in the matter in controversy, the person is or was associated with another who has participated in the matter during such association, or the person has been a material witness concerning it.

(C) The person served as an arbitrator or conciliator in another proceeding involving one or more of the parties to the proceedings.

(D) The person, individually or as a fiduciary, or the person's spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings.

(E) The person, his spouse, a person within the third degree of relationship to either of them, or the spouse of such a person meets any of the following conditions:

(1) The person is or has been a party to the proceedings, or an officer, director, or trustee of a party.

(2) The person is acting or has acted as an attorney in the proceedings.

(3) The person is known to have an interest that could be substantially affected by the outcome of the proceedings.

(4) The person is likely to be a material witness in the proceedings.

(F) The person has a close personal or professional relationship with a person who meets any of the following conditions:

(1) The person is or has been a party to the proceedings, or an officer, director, or trustee of a party.

(2) The person is acting or has acted as an attorney or representative in the proceedings.

(3) The person is or expects to be nominated as an arbitrator or conciliator in the proceedings.

(4) The person is known to have an interest that could be substantially affected by the outcome of the proceedings.

(5) The person is likely to be a material witness in the proceedings.

#### 2712.23 Waiver of disclosure requirements

The obligation to disclose information set forth in section 2712.22 of the Revised Code is mandatory and cannot be waived as to the parties with respect to persons serving either as the sole arbitrator or sole conciliator or as the chief or prevailing arbitrator or conciliator. The parties otherwise may agree to waive the disclosure.

#### 2712.24 Disclosure subsequent to appointment

From the time of appointment and throughout the arbitral proceedings, an arbitrator immediately shall disclose to the parties any circumstances referred to in section 2712.22 of the Revised Code that previously were not disclosed.

#### 2712.25 Challenging arbitrators

(A) The parties may agree on a procedure for challenging an arbitrator, and the decision reached pursuant to that procedure shall be final.

(B) Failing any such agreement, a party intending to challenge an arbitrator, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in division (A) or (B) of section 2712.22 of the Revised Code, whichever is later, shall send a written statement of the reasons for the challenge to the arbitral tribunal.

#### 2712.26 Grounds for challenging

(A) Unless otherwise agreed by the parties or pursuant to the rules governing the arbitration, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or as to his possession of the qualifications upon which the parties have agreed.

(B) A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which the party becomes aware after the appointment has been made.

#### 2712.27 Arbitral tribunal to decide challenges

Unless the arbitrator challenged under section 2712.25 of the Revised Code withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

#### 2712.28 Judicial review of unsuccessful challenges

(A) If a challenge following the procedure under section 2712.25 of the Revised Code is not successful, the challenging party may request the court of common pleas, within thirty days after having received notice of the decision rejecting the challenge, to decide on it. If a challenge is based upon the grounds set forth in section 2712.22 of the Revised Code, and the court of common pleas determines that the facts support a finding that any of those grounds fairly exist, then the challenge shall be sustained.

(B) The decision of the court of common pleas under this section is final and is not subject to appeal.

(C) While a request under this section is pending, the arbitral tribunal, including the challenged arbitrator, may continue with the arbitral proceedings and make an arbitral award.

#### 2712.29 Termination of mandate of arbitrator

(A) The mandate of an arbitrator terminates if he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, and if he withdraws from his office or the parties agree to the termination of his mandate. The withdrawal or agreement shall not imply acceptance of the validity of any ground referred to in section 2712.22 of the Revised Code.

(B) If a controversy remains concerning any of the grounds referred to in this section, a party may request the court of common pleas to decide on the termination of the mandate. A decision of the court

of common pleas under this division is not appealable.

(C) The mandate of an arbitrator also terminates upon his withdrawal from office for any reason, or by or pursuant to agreement of the parties.

#### 2712.30 Substitute arbitrators

(A) If the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules applicable to the appointment of the arbitrator being replaced.

(B) Unless otherwise agreed to by the parties, when the substitute arbitrator is appointed:

(1) Any hearings previously held shall be repeated, if the sole or presiding arbitrator is replaced.

(2) Any hearings previously held may be repeated at the discretion of the arbitral tribunal, if an arbitrator other than the sole or presiding arbitrator is replaced.

(C) An order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section is not invalid because there has been a change in the composition of the tribunal.

### **Jurisdiction and Authority of Arbitral Tribunals**

#### 2712.31 Rulings on jurisdiction by arbitral tribunal

The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is void shall not invalidate the arbitration clause.

#### 2712.32 Plea of lack of jurisdiction on part of arbitral tribunal

A plea that the arbitral tribunal lacks jurisdiction shall be raised not later than the date of the submission of the statement of defense. A party is not precluded from raising that plea by the fact that he has appointed, or participated in the appointment of, an arbitrator.

#### 2712.33 Plea of exceeding scope of authority of arbitral tribunal

A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. In either of the cases referred to in sections 2712.32 and 2712.33 of the Revised Code, the arbitral tribunal may admit a later plea if it considers the delay justified. The arbitral tribunal may rule on a later plea either as a preliminary question or in an award on the merits.

#### 2712.35 Judicial review of rulings on jurisdiction

(A) If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party, within thirty days after having received notice of that ruling, shall request the court of common pleas to

decide the matter or shall be deemed to have waived objection to that ruling. The decision of the court of common pleas under this section is final and is not appealable.

(B) While a request under division (A) of this section is pending, the arbitral tribunal may continue with the arbitral proceedings and make an arbitral award.

## **Arbitral Proceedings**

### 2712.36 Measures of protection

(A) Unless otherwise agreed by the parties, the arbitral tribunal, at the request of a party, may order a party to take any measure of protection that the arbitral tribunal considers necessary in respect of the subject matter of the dispute. The arbitral tribunal may require a party to provide appropriate security in connection with a measure of protection ordered under this division.

(B) A party may request an interim measure of protection directly from any court with jurisdiction. However, no measure of protection shall be granted by a court of this state unless the party shows that an application to the arbitral tribunal for the measure of protection would prejudice the party's rights and that an interim measure of protection from the court is necessary to protect those rights. The arbitral tribunal shall be deemed to be a party in interest in any action under this division. Any court of this state that issues an order for an interim measure of protection as provided in this division, upon application of the tribunal, shall modify or terminate its order as appropriate.

### 2712.37 Equal treatment of parties

The parties shall be treated with equality by, and each party shall be given a full opportunity to present his case before, the arbitral tribunal.

### 2712.38 Agreement on procedure to be followed by arbitral tribunal

Subject to the provisions of this chapter, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

### 2712.39 Arbitral tribunal determining procedure

(A) Failing any agreement referred to in section 2712.38 of the Revised Code, the arbitral tribunal may conduct the arbitration in the manner it considers appropriate, subject to the provisions of this chapter.

(B) The power of the arbitral tribunal under this section includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

### 2712.40 Agreement on place of arbitration

The parties may agree on the place of arbitration within this state. If the parties do not reach such an agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

#### 2712.41 Arbitral tribunal determining place of arbitration

Notwithstanding section 2712.40 of the Revised Code and unless otherwise agreed by the parties, the arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of documents, goods, or other property.

#### 2712.42 Languages to be used in proceedings

The parties may agree upon the language or languages to be used in the arbitral proceedings. If the parties do not reach such an agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. Unless otherwise specified, the agreement or determination referred to in this section shall apply to any written statement by a party, any hearing, and any arbitral award, decision, or other communication by the tribunal. The tribunal may order that any documentary evidence be accompanied by a translation into the language or languages chosen pursuant to this section.

#### 2712.43 Commencement of proceedings

Unless otherwise agreed by the parties, the arbitral proceedings concerning a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

#### 2712.44 Statements of claims or defenses

(A) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claims, the points at issue, and the relief or remedy sought, and the respondent shall state his defenses regarding these particulars, unless the parties otherwise have agreed as to the required elements of those statements.

(B) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they plan to submit.

(C) Unless otherwise agreed by the parties and unless the claimant shows sufficient cause for not doing so, if the claimant fails to communicate his statement of claim in accordance with this section, the arbitral tribunal shall terminate the proceedings.

(D) Unless otherwise agreed by the parties and unless the respondent shows sufficient cause for not doing so, if the respondent fails to communicate his statement of defense in accordance with this section, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the claimant's allegations.

#### 2712.45 Amendment or supplementation of statements

Unless otherwise agreed by the parties, either party may amend or supplement his statement of claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

#### 2712.46 Oral hearings or meetings

(A) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

(B) Unless the parties have agreed that no oral hearings shall be held, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.

(C) Unless otherwise agreed by the parties, all oral hearings and meetings in the proceedings shall be held in chambers.

#### 2712.47 Notice of hearings or meetings

The arbitral tribunal shall give the parties sufficient advance notice of any hearing and of any meeting of the tribunal for the purpose of inspection of documents, goods, or other property.

#### 2712.48 Communications to other parties

All statements, documents, or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the tribunal may rely in making its decision shall be communicated to the parties.

#### 2712.49 Effect of failure to appear at oral hearing or to produce documentary evidence

Unless otherwise agreed by the parties and unless a party shows sufficient cause for not doing so, if a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue with the proceedings and make the arbitral award on the evidence before it.

#### 2712.50 Appointment of experts

(A) Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to report to it on specific issues to be determined by the tribunal and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for his inspection.

(B) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert, after delivery of his written or oral report, shall participate in an oral hearing at which the parties have the opportunity to question the expert and to present expert witnesses on the points at issue.

#### 2712.51 Subpoena powers

The arbitral tribunal, or a party with the approval of the tribunal, may request from the court of common pleas assistance in taking evidence, including requests for foreign judicial assistance, and the court shall execute the request within its competence and according to its rules on taking evidence. A subpoena may be issued by the court as provided in the Rules of Civil Procedure, in which case witness compensation shall be as provided by the Revised Code.

#### 2712.52 Consolidation of arbitrations

(A) If the parties to two or more arbitration agreements have agreed, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those arbitration agreements, the court of common pleas, on application by one party with the consent of all the other parties to those arbitration agreements, may do one or more of the following:

- (1) Order the arbitrations to be consolidated on terms the court considers just and necessary;
- (2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal in accordance with section 2712.20 of the Revised Code;
- (3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

(B) Nothing in this section shall be construed to prevent the parties to two or more arbitrations from agreeing to consolidate those arbitrations and taking any steps that are necessary to effect that consolidation.

#### 2712.53 Choice of law

(A) The arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute. Any designation by the parties of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

(B) If the parties fail to designate the law applicable to the substance of the dispute, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

#### 2712.54 Equitable powers of arbitral tribunal

The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, only if the parties have expressly authorized it to do so.

#### 2712.55 Terms of contract; trade usages

In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

#### 2712.56 Decisions to be by majority of arbitral tribunal

Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all of its members. However, if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

#### 2712.57 Encouragement of settlement



It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement, and, with the agreement of the parties, the tribunal may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

## **Arbitral Awards**

### 2712.58 Effect of settlement

If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the tribunal, record the settlement in the form of an arbitral award on agreed terms. An arbitral award on agreed terms shall be made in accordance with the provisions of sections 2712.59 to 2712.64 of the Revised Code and shall state that it is an arbitral award. An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

### 2712.59 Arbitral awards

- (A) An arbitral award shall be in writing and signed by the members of the arbitral tribunal. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the tribunal shall be sufficient if the reason for any omitted signature is stated.
- (B) The arbitral award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or unless the award is an arbitral award on agreed terms pursuant to section 2712.58 of the Revised Code.
- (C) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 2712.40 of the Revised Code. The award shall be deemed to have been made at the place so determined.
- (D) After the arbitral award is made, a signed copy shall be delivered to each party.

### 2712.60 Interim arbitral awards

At any time during the arbitral proceedings, the arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award. The interim award may be enforced in the same manner as a final award.

### 2712.61 Award of interest and costs

- (A) Unless otherwise agreed by the parties, the arbitral tribunal may award interest and costs and may allocate costs among the parties as it considers appropriate. In making an order awarding or allocating costs, the tribunal may include as costs any of the following:
- (1) The fees and expenses of the arbitrators and expert witnesses;
  - (2) Legal fees and expenses;

(3) Any administration fees of the institution supervising the arbitration;

(4) Any other expenses incurred in connection with the arbitral proceedings.

(B) In making an order for costs, the arbitral tribunal may specify any of the following:

(1) The party entitled to costs;

(2) The party who is required to pay the costs;

(3) The amount of the costs or the method of determining that amount;

(4) The manner in which the costs are to be paid.

#### 2712.62 Correction of awards

(A) Within thirty days after receipt of the arbitral award, unless another period of time has been agreed upon by the parties, a party may request the arbitral tribunal to correct any computation, clerical, typographical, or other errors of a similar nature. If agreed by the parties, a party may request the tribunal to give an interpretation of a specific point or part of the award.

(B) Within thirty days after the date of the arbitral award, the arbitral tribunal, on its own initiative, may correct any computation, clerical, typographical, or other errors of a similar nature.

(C) Sections 2712.59 to 2712.61 of the Revised Code apply to a correction or interpretation of the arbitral award made pursuant to this section.

(D) If the arbitral tribunal considers any request made under this section to be justified, it shall make the correction or give the interpretation within thirty days after receipt of the request, and the interpretation shall form part of the arbitral award.

#### 2712.63 Additional arbitral awards

(A) Unless otherwise agreed by the parties, a party may request, within thirty days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to the claims presented in the arbitral proceedings but omitted from the arbitral award. If the tribunal considers any request made under this section to be justified, it shall make the additional arbitral award within sixty days after receipt of the request.

(B) Sections 2712.59 to 2712.61 of the Revised Code apply to an additional arbitral award made pursuant to this section.

#### 2712.64 Extension of time regarding awards

The arbitral tribunal may extend the period of time within which it may make a correction, give an interpretation, or make an additional arbitral award under section 2712.62 or 2712.63 of the Revised Code.

## **Termination of Arbitral Proceedings**

### 2712.65 Termination of arbitral proceedings

The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under section 2712.66 of the Revised Code. The award is final upon the expiration of the applicable periods set forth in sections 2712.62 to 2712.64 of the Revised Code.

### 2712.66 Order for termination

The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when any of the following occurs:

- (A) The claimant withdraws his claim, unless the respondent objects to the order and the tribunal recognizes a legitimate interest of the respondent in obtaining a final settlement of the dispute.
- (B) The parties agree on the termination of the proceedings.
- (C) The tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

### 2712.67 Termination of mandate of arbitral tribunal

Subject to sections 2712.62 to 2712.65 of the Revised Code, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

## **Immunity**

### 2712.68 Immunity of arbitrators

No person who serves as an arbitrator shall be liable in an action for damages resulting from any act or omission in the performance of his duties as an arbitrator in any proceedings subject to this chapter.

## **Judicial Review**

### 2712.69 Judicial review of awards

(A) Any party to an arbitration within the scope of this chapter may apply to a court of common pleas in order to confirm or vacate any final award of an arbitral tribunal or to declare that the award is not entitled to confirmation by the courts of this state. The court shall dispose of all such applications as provided in division (B) of this section without regard to the law of the place of arbitration, the law governing the award, or whether a court would apply the law or decisional principles applied by the arbitral tribunal or would grant the relief granted in the award.

(B)(1) The court of common pleas shall grant an application to confirm the award without regard to the place of arbitration unless one of the grounds set forth in section 2712.70 of the Revised Code is established as an affirmative defense. If such an affirmative defense is established and the conditions

of division (B)(2) of this section are met, the court shall vacate the award without regard to any time limit contained in this section. If such an affirmative defense is established and the conditions of division (B)(2) of this section are not met, the court shall issue an order declaring the award is not entitled to confirmation by the courts of this state.

(2) The court of common pleas shall grant an application to vacate the award if the applicant establishes one of the grounds set forth in section 2712.70 of the Revised Code and either the place of arbitration was in this state or the arbitration was subject to the laws of this state.

(3) The court of common pleas shall declare that the award is not entitled to confirmation by the courts of this state if the applicant establishes one or more of the grounds set forth in section 2712.70 of the Revised Code, but the place of arbitration was not in this state or the arbitration was not subject to the laws of this state.

(C) In any action under divisions (A) and (B) of this section, the judgment of a court of a foreign nation determining whether one or more of the grounds established in section 2712.70 of the Revised Code is established shall be accorded the effect normally given the judgment of a court of a foreign nation by the courts of this state.

(D) The applications referred to in divisions (A) and (B) of this section shall be brought within the following time limits:

(1) An application to confirm an award shall be brought within the time provided for in the Revised Code for the enforcement of judgments.

(2) An application to vacate an award or for a declaration that the award is not entitled to confirmation by the courts of this state shall be brought within ninety days of receipt of the final award by the applicant or, in the case of an application based on division (A)(4) or (5) of section 2712.70 of the Revised Code, within ninety days of the date when the circumstances giving rise to the application were discovered or, with the exercise of due diligence, should have been discovered by the applicant.

(E) If any party to an arbitration dies or becomes incompetent, a court may extend the time limits set forth in division (D) of this section.

(F) In considering an application filed under divisions (A) and (B) of this section, a court may modify or correct the award for any evident miscalculation or mistake in the description of any person or property or for any imperfection of form not affecting the merits.

(G) A judgment or decree of a court of this state confirming an award, upon application, may be vacated at any time on the ground set forth in division (A)(4) or (5) of section 2712.70 of the Revised Code, provided the application is made within ninety days of the date when the circumstances giving rise to the application were first discovered or, with the exercise of due diligence, should have been discovered by the applicant.

(H) If a final award has been reduced to judgment or made the subject of official action by any court, tribunal, or other governmental authority outside the United States, the courts of this state, except as provided in division (C) of this section, shall confirm, vacate, or declare the award not entitled to

confirmation by the courts of this state without regard to any term of the foreign judgment or official action and without regard to whether the award may be deemed merged into the judgment.

(I)(1) For the purposes of this section and section 2712.70 of the Revised Code, an arbitral award shall be considered a final award unless any of the following applies:

- (a) It expressly is designated an interim or interlocutory award or by its terms is not final.
- (b) An application to vacate, clarify, correct, or amend the award is pending before the arbitral tribunal.
- (c) Under the rules applicable to the arbitration, it is subject to further review by any arbitral authority.

(2) For the purposes of the law of this state, an award that is final as described in division (I)(1) of this section shall be deemed final regardless of whether judicial confirmation or other official action is necessary to render that award final within the contemplation of any foreign law that may be applicable to the arbitration.

#### 2712.70 Grounds for vacation of awards

(A) A final award shall be vacated or declared not entitled to confirmation by the courts of this state only if one or more of the following grounds are established:

(1) There was no written undertaking to arbitrate, there was fraud in the inducement of an undertaking to arbitrate, or an arbitral tribunal impaneled in accordance with the undertaking previously had determined that the dispute was nonarbitrable or that the undertaking was invalid or unenforceable, unless the party challenging the award participated on the merits in the arbitral proceedings leading to the award without first having submitted such questions to the arbitral tribunal.

(2) The party challenging the award was not given notice of the appointment of the arbitral tribunal or of the arbitral proceedings, unless notice proved impossible after efforts reasonably designed to give actual notice or that party waived notice or participated in those proceedings on the merits of the dispute.

(3) The arbitral tribunal conducted its proceedings so unfairly as to substantially prejudice the rights of the party challenging the award.

(4) The award was obtained by corruption, fraud, or undue influence or is contrary to the public policy of the United States or of this state.

(5) Any neutral arbitrator had a material conflict of interest with the party challenging the award, unless that party had timely notice of the conflict and proceeded without objection to arbitrate the dispute.

(6) The award resolves a dispute that the parties did not agree to refer to the arbitral tribunal, unless the party objecting arbitrated the dispute without objection, and the decision of the tribunal that the dispute was referred to it for arbitration clearly was erroneous, provided that a court may determine instead to vacate or declare not entitled to confirmation only that portion of the award dealing with the excluded

dispute.

(7) The arbitral tribunal was not constituted in accordance with the agreement of the parties, unless the party challenging the award waived the irregularity or participated in the arbitral proceedings without first objecting to them.

(B) The courts of this state shall not make an independent factual determination concerning whether the grounds described in division (A)(3), (6), or (7) of this section are present if the arbitration leading to the award was conducted under the rules of, or was subject to supervision by, an arbitral authority and those grounds were submitted to the authority as a basis for challenging the validity of the award or the conduct of the arbitration. In such a case, the determination of the arbitral authority concerning those grounds shall be final. If, under the rules applicable to an arbitration, the grounds described in division (A)(3), (6), or (7) of this section could have been, but were not, submitted to an arbitral authority as a basis for challenging the validity of the award or the conduct of the arbitration, the courts of this state shall not declare an award not entitled to confirmation or vacate that award or deny its confirmation on those grounds.

(C) A court that issues an order to vacate an award or to declare that an award is not entitled to confirmation by the courts of this state also may order that all or part of the dispute between the parties be resubmitted to the same or a new arbitral tribunal as it finds appropriate.

#### 2712.71 Relief in foreign currency

The courts of this state shall confirm a final award, notwithstanding the fact that it grants relief in a currency other than United States dollars. In such a case, the court, in addition to entering the order in a foreign currency designated by the award, upon application by a party also shall enter that order in United States dollars determined by reference to the market rate of exchange prevailing in this state on the date the award was issued, unless the award itself fixes some other date. If no such market rate of exchange is available, the court shall fix the rate it determines to be appropriate.

#### 2712.72 Judgments or decrees confirming or vacating awards

After an order confirming or vacating an award or declaring that an award is not entitled to confirmation by the courts of this state has been rendered, a judgment or decree shall be entered in conformity with that order to be enforced in the same manner as any other judgment or decree. Upon entry of a judgment or decree, the court, in its discretion, also may award costs and disbursements.

#### 2712.73 Appeals from decisions of courts of common pleas

(A) An appeal may be taken from any of the following decisions rendered by the court of common pleas:

(1) An order granting or denying an application to compel or to stay arbitration;

(2) An order granting or denying an application for assistance in obtaining evidence or an application for interim measure of protection;

(3) An order confirming or vacating a final award or declaring that an award is not entitled to confirmation by the courts of this state.

(B) Appeals shall be taken in the same manner and be subject to the same review as appeals from orders or judgments in civil actions. All appeals shall be confined to questions within the competence conferred by this chapter upon the court from which the appeal is taken or to the question of whether that court exceeded that competence.

## **Conciliation**

### 2712.74 Encouragement of conciliation

It is the policy of this state to encourage parties to an international commercial agreement or transaction that qualifies for arbitration or conciliation pursuant to section 2712.03 of the Revised Code, to resolve disputes arising from the agreement or transaction through conciliation. The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliator or conciliators who shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

### 2712.75 Principles of conciliation

The conciliator or conciliators shall be guided by principles of objectivity, fairness, and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

### 2712.76 Conciliation procedure

The conciliator or conciliators may conduct the conciliation proceedings in a manner that they consider appropriate, taking into account the circumstances of the case, the wishes of the parties, and the desirability of a speedy settlement of the dispute. Except as otherwise provided in this chapter, other provisions of the Revised Code, the Rules of Evidence, and the Ohio rules of court shall not apply to conciliation proceedings brought under this chapter.

### 2712.77 Assistance or representation of parties

The parties may appear in person or be represented or assisted by any person of their choice. A person assisting or representing a party need not be an attorney or licensed to practice law in this state.

### 2712.78 Draft conciliation settlements

At any time during the proceedings, the conciliator or conciliators may prepare a draft conciliation settlement that may include the assessment and apportionment of costs between the parties, and send copies to the parties, specifying the time within which they must signify their approval.

### 2712.79 Acceptance of settlement not required

No party is required to accept any settlement proposed by the conciliator or conciliators.

### 2712.80 Admissibility of evidence

When persons agree to participate in conciliation under this chapter, all of the following apply:

(A) Evidence of anything said or of any admission made in the course of the conciliation is not admissible in evidence, and disclosure of any such evidence shall not be compelled, in any arbitration or civil action in which, pursuant to law, testimony may be compelled to be given. However, this division does not limit the admissibility of evidence if all parties participating in conciliation consent to its disclosure.

(B) If any such evidence is offered in contravention of this section, the arbitral tribunal or the court shall make any order that it considers to be appropriate to deal with the matter, including orders restricting the introduction of evidence, or dismissing the case without prejudice.

(C) Unless the document provides otherwise, no document prepared for the purpose of, in the course of, or pursuant to the conciliation or any copy of it, is admissible in evidence, and disclosure of the document shall not be compelled, in any arbitration or civil action in which, pursuant to law, testimony may be compelled to be given.

#### 2712.81 Agreement to submit to conciliation staying judicial or arbitral proceedings

The agreement of the parties to submit a dispute to conciliation shall be deemed an agreement between or among those parties to stay all judicial or arbitral proceedings from the commencement of conciliation until the termination of conciliation proceedings.

#### 2712.82 Limitations periods tolled upon commencement of conciliation

All applicable limitation periods including periods of prescription shall be tolled or extended upon the commencement of conciliation proceedings to conciliate a dispute under this chapter, and all limitation periods shall remain tolled and periods of prescription extended as to all parties to the conciliation proceedings until the tenth day following the termination of the proceedings. For purposes of this chapter, conciliation proceedings are deemed to have commenced as soon as a party has requested conciliation of a particular dispute or disputes and the other party or parties agree to participate in the proceedings.

#### 2712.83 Termination of conciliation as to all parties

The conciliation proceedings may be terminated as to all parties by any of the following at the time specified:

(A) A written declaration of the conciliator or conciliators, after consultation with the parties, to the effect that further efforts at conciliation no longer are justified, on the date of the declaration;

(B) A written declaration of the parties addressed to the conciliator or conciliators to the effect that the conciliation proceedings are terminated, on the date of the declaration;

(C) The signing of a settlement agreement by all of the parties, on the date of the agreement.

#### 2712.84 Termination of conciliation as to particular parties



The conciliation proceedings may be terminated as to particular parties by a written declaration of a party to the other party and the conciliator or conciliators, if appointed, to the effect that the conciliation proceedings are terminated as to that particular party, on the date of the declaration or by the signing of a settlement agreement by some of the parties, on the date of the agreement.

#### 2712.85 Conciliator serving as arbitrator

No person who has served as conciliator may be appointed as an arbitrator for, or take part in any arbitral or judicial proceedings in, the same dispute, unless all parties manifest their consent to the participation or the rules adopted for conciliation or arbitration otherwise provide.

#### 2712.86 Submission to conciliation not waiver of other rights and remedies

By submitting to conciliation, no party shall be deemed to have waived any rights or remedies that the party would have had if conciliation had not been initiated, other than those set forth in any settlement agreement that results from the conciliation.

#### 2712.87 Successful conciliation treated as arbitral award

If the conciliation succeeds in settling the dispute, and the result of the conciliation is reduced to writing and signed by the conciliator or conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal duly constituted in and pursuant to the laws of this state, and shall have the same force and effect as a final award in arbitration.

#### 2712.88 Costs of conciliation

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice of the costs to the parties. As used in sections 2712.74 to 2712.90 of the Revised Code, "costs" includes only the following:

- (A) A reasonable fee to be paid to the conciliator or conciliators;
- (B) The travel and other reasonable expenses of the conciliator or conciliators;
- (C) The travel and other reasonable expenses of witnesses requested by the conciliator or conciliators with the consent of the parties;
- (D) The cost of any expert advice requested by the conciliator or conciliators with the consent of the parties;
- (E) The cost of any court.

#### 2712.89 Apportionment of costs; immunity of conciliator

- (A) The costs of the conciliation referred to in section 2712.88 of the Revised Code shall be borne

equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

(B) No person who serves as a conciliator shall be held liable in an action for damages resulting from any act or omission in the performance of his duties as a conciliator in any proceedings subject to this chapter.

#### 2712.90 Conciliation not consent to jurisdiction of courts

Neither the request for conciliation, the consent to participate in the conciliation proceedings, the participation in the proceedings, nor the entering into a conciliation agreement or settlement shall be deemed as a consent to the jurisdiction of any court in this state if conciliation fails.

### **Substantive Law**

#### 2712.91 Laws to be classified as substantive

If, in any arbitral, judicial, or other official proceeding within or without this state, it becomes necessary to classify any provision of this chapter as substantive or procedural within the meanings of those terms in the conflict of laws, all provisions of this chapter relating to the obligation of the parties to arbitrate, to the conduct of arbitral proceedings, and to the validity of arbitral awards shall be classified as substantive.

## **Concentrated Animal Feeding Facilities**

*Current through 2008*

#### Ohio Rev. Code Ann. §903.14 Arbitration in nuisance actions

Prior to filing a private civil action for an alleged nuisance related to agricultural activities conducted at a concentrated animal feeding facility, the parties to the dispute shall submit the dispute to an arbitrator for nonbinding arbitration. The parties shall pay the arbitrator a reasonable compensation based on the extent and duration of actual service rendered. The cost of the arbitrator's services shall be divided proportionately among the parties.

If the decision reached by the arbitrator is not accepted by all parties to the dispute, the complaining parties may file a civil action and the claim shall proceed as if it had not been submitted to nonbinding arbitration. No oral or written statement prepared for or made in the nonbinding arbitration by the arbitrator or any of the parties, including any mental impression, recommendation, or decision by the arbitrator, is subject to discovery or admissible into evidence in any litigation or proceeding for any purpose, including impeachment. The arbitrator shall be disqualified as a witness, consultant, or expert on any subject that is related to the arbitration.

*Current through 2008*

2710.01 Definitions

As used in sections 2710.01 to 2710.10 of the Revised Code:

(A) “Mediation” means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(B) “Mediation communication” means a statement, whether oral, in a record, 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.

(C) “Mediator” means an individual who conducts a mediation.

(D) “Nonparty participant” means a person, other than a party or mediator, that participates in a mediation.

(E) “Mediation party” means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(F) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, agency or instrumentality of the state or of any political subdivision of the state, public corporation, or any other legal or commercial entity.

(G) “Proceeding” means either of the following:

(1) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;

(2) A legislative hearing or similar process.

(H) “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.

(I) “Sign” means either of the following:

(1) To execute or adopt a tangible symbol with the present intent to authenticate a record;

(2) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

2710.02 Applicability

(A) Except as otherwise provided in division (B) or (C) of this section, sections 2710.01 to 2710.10 of the Revised Code apply to a mediation under any of the following circumstances:

(1) 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.

(2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure.

(3) 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.

(B) Sections 2710.01 to 2710.10 of the Revised Code do not apply to a mediation in which any of the following apply:

(1) The mediation relates to the establishment, negotiation, administration, or termination of a collective bargaining relationship.

(2) The mediation relates to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that sections 2710.01 to 2710.10 of the Revised Code apply to a mediation arising out of a dispute that has been filed with an administrative agency or court.

(3) The mediation is conducted by a judge or magistrate who might make a ruling on the case.

(4) The mediation is conducted under the auspices of either of the following:

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

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

(C) 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 sections 2710.03, 2710.04, and 2710.05 of the Revised Code do not apply to the mediation or part agreed upon. However, sections 2710.03, 2710.04, and 2710.05 of the Revised Code do apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

#### 2710.03 Mediation communication privileged

(A) Except as otherwise provided in section 2710.05 of the Revised Code, a mediation communication is privileged as provided in division (B) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in section 2710.04 of the Revised Code.

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

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

(2) A mediator may refuse to disclose a mediation communication. A mediator may prevent any other person from disclosing a mediation communication of the mediator.

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

(C) 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.

#### 2710.04 Waiver of privilege

(A) A privilege under section 2710.03 of the Revised Code may be waived in a record or orally during a proceeding if it is expressly waived by all mediation parties and by whichever of the following is applicable:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator.

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

(B) A person that discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 2710.03 of the Revised Code, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(C) 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 section 2710.03 of the Revised Code.

#### 2710.05 Communications not subject to privilege

(A) There is no privilege under section 2710.03 of the Revised Code for a mediation communication to which any of the following applies:

(1) The mediation communication is contained in a written agreement evidenced by a record signed by all parties to the agreement.

(2) The mediation communication is available to the public under section 149.43 of the Revised Code or made during a session of a mediation that is open, or is required by law to be open, to the public;

(3) The mediation communication is an imminent threat or statement of a plan to inflict bodily injury or commit a crime of violence.

(4) The mediation communication is intentionally used to plan, attempt to commit, or commit a crime or to conceal an ongoing crime or ongoing criminal activity.

(5) The mediation communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.

(6) Except as otherwise provided in division (C) of this section, the mediation communication is 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.

(7) Except as provided in sections 2317.02 and 3109.052 of the Revised Code, the mediation communication is 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 case is referred by a court to mediation and a public agency participates.

(8) The mediation communication is required to be disclosed pursuant to section 2921.22 of the Revised Code.

(9) The mediation communication is sought in connection with or offered in any criminal proceeding involving a felony, a delinquent child proceeding based on what would be a felony if committed by an adult, or a proceeding initiated by the state or a child protection agency in which it is alleged that a child is an abused, neglected, or dependent child.

(B) There is no privilege under section 2710.03 of the Revised Code if a court, administrative agency, or arbitrator 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 the disclosure is necessary in the particular case to prevent a manifest injustice, and that the mediation communication is sought or offered in either of the following:

(1) A court proceeding involving a misdemeanor;

(2) Except as otherwise provided in division (C) 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.

(C) A mediator may not be compelled to provide evidence of a mediation communication referred to in division (A)(6) or (B)(2) of this section.

(D) If a mediation communication is not privileged under division (A) or (B) 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 division (A) or (B) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

#### 2710.06 Disclosure by mediator

(A) Except as provided in division (B) of this section and section 3109.052 of the Revised Code, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject of the mediation.

(B) A mediator may disclose any of the following:

(1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) A mediation communication as permitted by section 2710.07 of the Revised Code;

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

(C) A communication made in violation of division (A) of this section shall not be considered by a court, administrative agency, or arbitrator.

#### 2710.07 Confidentiality

Except as provided in sections 121.22 and 149.43 of the Revised Code, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code.

#### 2710.08 Duties of mediator

(A) Before accepting a mediation, an individual who is requested to serve as a mediator shall do both of the following:

(1) 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;

(2) Disclose any known fact described in division (A)(1) of this section to the mediation parties as soon as is practical before accepting a mediation.

(B) If a mediator learns any fact described in division (A)(1) of this section after accepting a mediation, the mediator shall disclose it to the mediation parties as soon as is practicable.

(C) 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.

(D) A person that violates division (A), (B), (C), or (G) of this section is precluded from asserting a privilege under section 2710.03 of the Revised Code.

(E) Divisions (A), (B), (C), and (G) of this section do not apply when the mediation is conducted by a judge who might make a ruling on the case.

(F) Sections 2710.01 to 2710.10 of the Revised Code do not require that a mediator have a special qualification by background or profession.

(G) A mediator shall be impartial, unless after disclosure of the facts required to be disclosed by

divisions (A) and (B) of this section the parties agree otherwise.

2710.09 Presence of attorney at mediation; withdrawal or waiver of participation by mediator

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded. A mediator may withdraw as mediator at any time.

2710.10 Effect on federal provisions

Sections 2710.01 to 2710.10 of the Revised Code may modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but sections 2710.01 to 2710.10 of the Revised Code shall 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.