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Title 12: Court Procedure

Chapter 192: Arbitration Act

Subchapter 1: GENERAL PROVISIONS

§ 5651. Short title

This chapter may be cited as the Vermont Arbitration Act. (Added 1985, No. 95, § 2.)

§ 5652. Validity of arbitration agreements

(a) General rule. Unless otherwise provided in the agreement, a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties creates a duty to arbitrate, and is valid, enforceable, and irrevocable, except upon such grounds as exist for the revocation of a contract.

(b) Required provision. No agreement to arbitrate is enforceable unless accompanied by or containing a written acknowledgment of arbitration signed by each of the parties or their representatives. When contained in the same document as the agreement to arbitrate, that acknowledgment shall be displayed prominently. The acknowledgment shall provide substantially as follows:

“ACKNOWLEDGMENT OF ARBITRATION.

I understand that (this agreement/my agreement with of) contains an agreement to arbitrate. After signing (this/that) document, I understand that I will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, I agree to submit any such dispute to an impartial arbitrator.” (Added 1985, No. 95, § 2.)

§ 5653. Limitations

(a) This chapter applies to all arbitration agreements to the extent not inconsistent with the laws of the United States. However, this chapter does not apply to labor interest arbitration, nor to arbitration agreements contained in a contract of insurance, nor to grievance arbitration under 3 V.S.A. chapter 28. “Labor interest arbitration” means the method of concluding labor negotiations by having a disinterested person determine what will be the terms of an agreement.

(b) No arbitration agreement shall have the effect of preventing a person from seeking or obtaining the assistance of the courts in enforcing his or her constitutional or civil rights. (Added 1985, No. 95 § 2; amended 1997, No. 92 (Adj. Sess.), § 7.)

§ 5654. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it or substantially similar provisions. (Added 1985, No. 95, § 2.)

§ 5655. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this subchapter. A waiver thereof prior to the proceeding or hearing is ineffective. (Added 1985, No. 95, § 2.)

Subchapter 2: ARBITRATION PROCEDURES

§ 5661. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority of them, unless otherwise provided by the agreement or by this chapter. (Added 1985, No. 95, § 2.)

§ 5662. Witnesses; subpoenas; depositions

(a) Arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas so issued shall be served in the manner provided by law for subpoenas in civil actions.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to appear and to testify are applicable to subpoenas issued by arbitrators. Upon application, a court shall enforce or quash such a subpoena in the same manner as a subpoena in a civil action.

(d) Fees for attendance as a witness shall be the same as for a witness in the Superior Courts. (Added 1985, No. 95, § 2.)

§ 5663. Award

(a) An arbitration award shall be in writing and signed by the arbitrators joining in it. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within such time as a court orders. The parties may extend the time in writing either before or after the expiration of an agreed or ordered time. A party waives the objection that an award was not made within the time required unless he or she notifies the arbitrators of his or her objection before the award is delivered to him or her. (Added 1985, No. 95, § 2.)

§ 5664. Modification of award by arbitrators

(a) An award may be modified by the arbitrators:

- (1) on application of a party; or
- (2) following submission to the arbitrators from a court, and under such conditions as the court may order.

(b) Modification may be made for the purpose of clarifying the award or upon the following grounds:

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

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form, not affecting the merits of the controversy.

(c) An application by a party for modification shall be made within 30 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he or she must serve his or her objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to being subsequently confirmed, modified, or vacated by a court. (Added 1985, No. 95, § 2.)

§ 5665. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses incurred in the conduct of the arbitration, shall be paid as provided in the award. An arbitration award may direct the payment of attorney's fees if the parties have explicitly authorized the arbitrator to make such an award or if the award is based in whole or in part upon State or federal law which permits recovery of attorney's fees. (Added 1985, No. 95, § 2.)

§ 5666. Hearing

Unless otherwise provided by the agreement:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives all objections to notice.

(2) The arbitrators may adjourn the hearing from time to time as necessary. On request of a party and for good cause, or upon their own motion, the arbitrators may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date.

(3) The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(4) The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) The hearing shall be conducted by all the arbitrators but the majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy. (Added 1985, No. 95, § 2.)

Subchapter 3: JUDICIAL PROCEEDINGS

§ 5671. Jurisdiction

The making of an agreement to arbitrate which is subject to this chapter confers jurisdiction on the Superior Court for proceedings under this chapter. Except where the context requires a broader reading, the term "court" as used in this chapter means the Superior Court. In relation to any such agreement to arbitrate, the court may enter any one or more orders:

(1) to compel a person to proceed with arbitration;

(2) to stay arbitration;

(3) to appoint arbitrators;

(4) to enforce a subpoena issued by arbitrators;

(5) to direct arbitrators to proceed with hearings or to make an award;

(6) to confirm an award of arbitrators;

(7) to vacate an award;

(8) to modify an award or to submit to arbitrators to consider modifying an award; and

(9) to enter judgment on the award. (Added 1985, No. 95, § 2.)

§ 5672. Venue

(a) An initial application to the Superior Court may be made:

(1) in any county in which the agreement provides that arbitration hearings shall be held; or

(2) if a hearing has been held by arbitrators, in the county in which it was held; or

(3) in other cases, in the county where the party adverse to the moving party resides or has a place of business or, if he or she has neither in Vermont, in Washington County.

(b) All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs. (Added 1985, No. 95, § 2.)

§ 5673. Applications to court; service

(a) Except as otherwise provided, an application to the Superior Court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule for the making and hearing of motions.

(b) Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action. (Added 1985, No. 95, § 2.)

§ 5674. Proceedings to compel or stay arbitration

(a) On application of a party showing an agreement subject to this chapter and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement, the court shall determine the issue summarily. If the court finds for the moving party, it shall order the parties to proceed with arbitration. Otherwise, the application shall be denied.

(b) On application to compel or stay arbitration, and on a showing that there is no agreement to arbitrate, the court may stay a commenced or threatened arbitration proceeding. When in substantial and bona fide dispute, the issue of whether there is an agreement to arbitrate shall be forthwith and summarily tried. The court shall order the stay if it finds no enforceable agreement to arbitrate. Otherwise, the court shall order the parties to proceed to arbitration.

(c) When the existence or validity of an agreement to arbitrate or a party's refusal to arbitrate is in substantial and bona fide dispute, the court shall proceed summarily to the determination of the issue.

(d) Notwithstanding section 5672 of this title relating to venue, if an issue referable to arbitration under an alleged agreement is involved in an action or proceeding pending in a Superior Court, applications to compel or to stay arbitration shall be made only to that court.

(e) Any action or civil proceeding involving an issue which is subject to arbitration shall be stayed if an order to compel arbitration or an application therefor has been made. If the issue is severable, the stay may be with respect only to that issue. When application to compel arbitration is made to a court other than the one in which the action or proceeding is pending, any order to compel arbitration shall include that stay.

(f) An order to compel arbitration shall not be refused on the ground that the claim in issue lacks merits or bona fides nor because the applicant has failed to show fault or grounds for the claim sought to be arbitrated. (Added 1985, No. 95, § 2.)

§ 5675. Appointment of arbitrators

(a) On application of a party, a court shall appoint one or more arbitrators if:

(1) the arbitration agreement does not provide for a method of appointment; or

(2) the agreed method fails or for any reason cannot be followed; or

(3) an appointed arbitrator fails or is unable to act and his or her successor has not been duly appointed.

(b) If the arbitration agreement provides a method of appointment of arbitrators, that method shall be followed.

(c) An arbitrator appointed by the court has all of the powers of an arbitrator appointed under an agreement. (Added 1985, No. 95, § 2.)

§ 5676. Confirmation of an award

Upon application of a party to confirm, modify, or vacate an award, the court shall confirm the award unless it finds grounds for vacating or modifying the award. (Added 1985, No. 95, § 2.)

§ 5677. Vacating an award

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

(1) the award was procured by corruption, fraud, or other undue means;

(2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) the arbitrators exceeded their powers;

(4) the arbitrators refused to postpone the hearing after being shown sufficient cause to do so, or refused to hear evidence material to the controversy, or otherwise conducted the hearing, contrary to this chapter so as to prejudice substantially the rights of a party; or

(5) a court has found that there was no arbitration agreement and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that relief granted by the arbitrators could not have been granted by a court is not reason to vacate or refuse to confirm the award.

(c) An application to vacate an award shall be made within 30 days after delivery of a copy of the award to the applicant, except that if predicated upon corruption, fraud, or other undue means, it may be made within 30 days after such grounds are known or should have been known.

(d) If the court vacates the award on grounds other than that there was no arbitration agreement, it may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of such a provision, as appointed by the court. If the court vacates the award because the arbitrators exceeded their powers or improperly conducted the hearing, the court may order a rehearing before the arbitrators who made the award or their successors. Any time within which the agreement requires an award to be made applies to the rehearing, and commences from the date of the order.

(e) If an application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (Added 1985, No. 95, § 2.)

§ 5678. Modification of award

(a) Upon application of a party to confirm, modify, or vacate an award, and made within 30 days after delivery of a copy of an award to the applicant, the court may submit the award to the arbitrators for modification or may consider modification under this section.

(b) If the court considers modification, it shall modify the award where it finds:

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

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form, not affecting the merits of the controversy.

(c) If modification is granted, the court shall modify the award so as to effect its intent and shall confirm the award as so modified and corrected.

(d) An application to modify an award shall be made within 30 days after delivery of a copy of the award to the applicant. It may be joined in the alternative with an application to vacate the award. (Added 1985, No. 95, § 2.)

§ 5679. Judgment or decree on award

Upon the granting of an order confirming or modifying an award, judgment shall be entered in conformity therewith and be enforced as any other judgment. Costs of the application, of the proceedings subsequent thereto, and of disbursements may be awarded by the court. (Added 1985, No. 95, § 2.)

§ 5680. Judgment roll; docketing

(a) On entry of judgment, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (1) the agreement and each written extension of the time within which to make the award;
- (2) the award;
- (3) a copy of the order confirming, modifying, or correcting the award; and
- (4) a copy of the judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action. (Added 1985, No. 95, § 2.)

§ 5681. Appeals

(a) An appeal may be taken from:

- (1) an order denying an application to compel arbitration;
- (2) an order granting an application to stay arbitration;
- (3) an order confirming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgment in a civil action. (Added 1985, No. 95, § 2.)