Chapter 36 — Mediation and Arbitration

2001 EDITION

MEDIATION

(Generally)

(Dispute Resolution Commission)

(Program Standards)

(Mediation in Civil Cases)

ARBITRATION AND AWARD

COURT ARBITRATION PROGRAM

OREGON INTERNATIONAL COMMERCIAL ARBITRATION AND CONCILIATION ACT

36.558 Short title

MEDIATION

(Generally)

36.100 Policy for ORS 36.100 to 36.245. It is the policy and purpose of ORS 36.100 to 36.245 that, when two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation. [1989 c.718 §1]

36.105 Declaration of purpose of ORS 36.100 to 36.245. The Legislative Assembly declares that it is the purpose of ORS 36.100 to 36.245 to:

(1) Foster the development of community-based programs that will assist citizens in resolving disputes and developing skills in conflict resolution;

(2) Allow flexible and diverse programs to be developed in this state, to meet specific needs in local areas and to benefit this state as a whole through experiments using a variety of models of peaceful dispute resolution;

(3) Find alternative methods for addressing the needs of crime victims in criminal cases when those cases are either not prosecuted for lack of funds or can be more efficiently handled outside the courts;

(4) Provide a method to evaluate the effect of dispute resolution programs on communities, local governments, the justice system and state agencies;

(5) Encourage the development and use of mediation panels for resolution of civil litigation disputes;

(6) Foster the development or expansion of integrated, flexible and diverse state agency programs that involve state and local agencies and the public and that provide for use of alternative means of dispute resolution pursuant to ORS 183.502; and

(7) Foster efforts to integrate community, judicial and state agency dispute resolution programs. [1989 c.718 §2; 1997 c.706 §3]

36.110 Definitions for ORS 36.100 to 36.245. As used in ORS 36.100 to 36.245:

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

(2) “Commission” means the Dispute Resolution Commission created under ORS 36.115.

(3) “Director” means the director appointed by the Dispute Resolution Commission under ORS 36.130.

(4) “Dispute resolution services” includes but is not limited to mediation, conciliation and arbitration.

(5) “Dispute resolution program” means an entity that receives state funds to provide dispute resolution services.

(6) “Mediation” means a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between a mediator and any party or agent of a party, until such time as a resolution is agreed to by the parties or the mediation process is terminated.

(7) “Mediation agreement” means an agreement arising out of a mediation, including any term or condition of the agreement.

(8) “Mediation communications” means:

(a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

(9) “Mediation program” means a program through which mediation is made available and includes the director, agents and employees of the program.

(10) “Mediator” means a third party who performs mediation. “Mediator” includes agents and employees of the mediator or mediation program and any judge conducting a case settlement conference.

(11) “Public body” means any state agency, county or city governing body, school district, special district, municipal corporation, any board, department, commission, council, or agency thereof, and any other public agency of this state.

(12) “State agency” means any state officer, board, commission, bureau, department, or division thereof, in the executive branch of state government. [1989 c.718 §3; 1997 c.670 §11]

(Dispute Resolution Commission)

36.115 Dispute Resolution Commission; terms; confirmation. (1) There is established a Dispute Resolution Commission consisting of seven members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1, next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of the members of the Dispute Resolution Commission is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565. [1989 c.718 §4; 1991 c.538 §1]

36.120 Members of commission; reimbursement. (1) The members of the Dispute Resolution Commission shall be citizens of this state who are well informed on the principles of dispute resolution. Specific formal education in any field shall not be a prerequisite to serving on the commission.

(2) A member of the Dispute Resolution Commission is not entitled to compensation but may be reimbursed for actual and necessary travel and other expenses as provided in ORS 292.495. [1989 c.718 §5]

36.125 Chairperson and vice chairperson; quorum. (1) The Dispute Resolution Commission shall select one of its members as chairperson and another as vice chairperson for such terms and with duties and powers necessary for the performance of the function of such offices as the commission determines.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business. [1989 c.718 §6]

36.130 Director; duties. (1) The Dispute Resolution Commission shall:

(a) Appoint a director who shall serve at the pleasure of the commission;

(b) Prescribe the duties of the director; and

(c) Fix the salary of the director.

(2) The designation of the director shall be by written order and filed with the Secretary of State.

(3) Subject to any applicable provisions of the State Personnel Relations Law, the director shall appoint all subordinate officers and employees of the commission, prescribe their duties and fix their compensation. [1989 c.718 §7]

36.135 Review of dispute resolution programs for compliance with ORS 36.175; mediation; hearing; suspension of funding. (1) The director of the Dispute Resolution Commission shall periodically review dispute resolution programs in this state. If the director determines that there are reasonable grounds to believe that a program is not in substantial compliance with the standards and guidelines adopted under ORS 36.175, the director shall negotiate with the manager of the program to bring the program into compliance with the standards and guidelines.

(2) If the negotiations under subsection (1) of this section fail, the director shall give written notice to the program and the county requiring the program to be revised to comply with the standards and guidelines within 30 days after the notice. If, after 30 days, the director concludes that the program is not in compliance, the director shall serve the manager of the program with a request for mediation. The director and the program manager shall mutually select a mediator. If a mediator is not selected within 15 days, the director shall request the presiding judge for the judicial district in which the program is located to appoint a mediator.

(3) If mediation under subsection (2) of this section fails, the director shall, after giving the program and county not less than 30 days’ notice, conduct a hearing to ascertain whether there is substantial compliance or satisfactory progress being made toward compliance. After the hearing, the Dispute Resolution Commission may suspend funding of the program until the required compliance occurs. [1989 c.718 §8; 1995 c.781 §31]

36.140 Advisory and technical committees; reimbursement. (1) To aid and advise the Dispute Resolution Commission in the performance of its functions, the commission may establish such advisory and technical committees as it considers necessary. These committees may be continuing or temporary. The commission shall determine the

representation, membership, terms and organization of the committee and shall appoint their members.

(2) Members of these committees are not entitled to compensation but, in the discretion of the commission, may be reimbursed from funds available to the commission for actual and necessary travel and other expenses incurred in the performance of official duties, subject to ORS 292.495. [1989 c.718 §9]

36.145 Dispute Resolution Account. The Dispute Resolution Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Dispute Resolution Commission under ORS 36.150 and 36.170 shall be deposited to the credit of the account. Moneys in the account are continuously appropriated to the commission to carry out the provisions of ORS 36.100 to 36.245. [1989 c.718 §10; 1997 c.801 §44]

36.150 Funding. The Dispute Resolution Commission may accept and expend moneys from any public or private source, including the federal government, made available for the purpose of encouraging, promoting or establishing dispute resolution programs in Oregon or to facilitate and assist the commission in carrying out the commission's function as provided by law. All moneys received by the commission under this section shall be deposited in the Dispute Resolution Account. Notwithstanding the provisions of ORS 291.238, all such moneys are continuously appropriated to the commission for the purposes for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [1989 c.718 §11]

36.155 Allocation of funding. (1) Funds in the Dispute Resolution Account attributable to 30 percent of the amounts generated by the filing fee surcharges imposed under ORS 36.170 may be used by the Dispute Resolution Commission only for the purpose of carrying out the provisions of ORS 36.100 to 36.245. Funds in the Dispute Resolution Account attributable to 20 percent of the amounts generated by the filing fee surcharges imposed under ORS 36.170 may be used by the Dispute Resolution Commission only for the purpose of carrying out the provisions of ORS 183.502 (5) to (7). Funds in the Dispute Resolution Account attributable to 50 percent of the amounts generated by the filing fee surcharges imposed under ORS 36.170 shall be allocated as provided in subsection (2) of this section.

(2) Funds in the Dispute Resolution Account that are attributable to 50 percent of the amounts generated by the filing fee surcharges imposed under ORS 36.170 shall be awarded by the commission for the purpose of providing dispute resolution services in the county from which the funds originated. On or before July 1 of each odd-numbered year, the commission shall advise each county of the county's share of the amount appropriated for the purposes of this subsection. The determination shall be based upon each county's respective share of moneys contributed under ORS 36.170. Before allocating these funds in a county, the county must apply for authority or the commission must proceed under ORS 36.160. If a dispute resolution program is not selected for funding under ORS 36.160 within three fiscal years after the fiscal year in which the filing fee surcharge was collected, then the funds from that fiscal year may be spent by the commission for dispute resolution services as if the funds were moneys governed by subsection (3) of this section.

(3) Moneys received by the commission from any sources other than the filing fee surcharges imposed by ORS 36.170 shall be used as follows:

(a) For overhead and administrative expenses of the commission.

(b) For statewide dispute resolution programs or dispute resolution services in any county in this state including but not limited to providing special grants for pilot projects, start-up costs for dispute resolution programs and training programs and to supplement funds otherwise received by dispute resolution programs. [1989 c.718 §12; 1991 c.538 §2; 1997 c.801 §41; 2001 c.581 §1]

36.160 Participation by counties; notice to commission; contents; effect of failure to give notice. (1) To participate in the expenditure of funds for dispute resolution programs within the county under ORS 36.155, a county shall notify the Dispute Resolution Commission in accordance with the schedule established by rule by the commission. Such notification shall be by resolution of the appropriate board of county commissioners or, if the programs are to serve more than one county, by joint resolution. A county providing notice may select the dispute resolution programs to receive funds under ORS 36.155 for providing dispute resolution services within the county from among qualified dispute resolution programs.

(2) The county's notification to the commission shall include a statement of agreement by the county to engage in a selection process and to select as the recipient of funding an entity capable of and willing to provide dispute resolution services according to the rules of the commission. Actual funding by the commission shall be contingent upon the selection by the county of a qualified entity. The commission shall provide consultation and technical

assistance to a county to identify, develop and implement dispute resolution programs that meet the standards and guidelines adopted by the commission under ORS 36.175.

(3) If a county does not issue a notification according to the schedule established by the commission, the Dispute Resolution Commission may notify a county board of commissioners that the commission intends to fund a dispute resolution program in the county with funds earmarked for the county under ORS 36.155. The Dispute Resolution Commission may, after such notification, assume the county's role under subsection (1) of this section unless the county gives the notice required by subsection (1) of this section. If the commission assumes the county's role, the commission may contract with a qualified program for a two-year period. The county may, 90 days before the expiration of an agreement between a qualified program and the commission, notify the Dispute Resolution Commission under subsection (1) of this section that the county intends to assume its role under subsection (1) of this section.

(4) All dispute resolution programs identified for funding shall comply with the rules adopted under ORS 36.175.

(5) All funded dispute resolution programs shall submit informational reports and statistics as required by the commission. [1989 c.718 §13; 1991 c.538 §3; 1995 c.515 §1; 1997 c.801 §43]

36.165 Termination of county participation. (1) Any county that receives financial aid under ORS 36.155 may terminate its participation at the end of any month by delivering a resolution of its board of commissioners to the director of the Dispute Resolution Commission not less than 180 days before the termination date.

(2) If a county terminates its participation under ORS 36.160, the remaining portion of the financial aid made available to the county under ORS 36.160 shall revert to the Dispute Resolution Account to be used as specified in ORS 36.155. [1989 c.718 §14]

36.170 Surcharge on appearance fees. (1) The clerks of the circuit courts shall collect a dispute resolution surcharge at the time a civil action, suit or proceeding is filed, including appeals. The surcharge shall be collected from a plaintiff or petitioner at the time the proceeding is filed. The surcharge shall be collected from a defendant or respondent upon making appearance. The amount of the surcharge shall be:

(a) $9, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (1), 21.310 or any other filing fee not specifically provided for in this section.

(b) $7, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2) or 105.130, or if the action is filed in the small claims department of circuit court and the amount or value claimed exceeds $1,500.

(c) $5, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

(d) $3 if the action is filed in the small claims department of circuit court and the amount or value claimed does not exceed $1,500.

(2) All surcharges collected under this section shall be deposited by the State Court Administrator into the State Treasury to the credit of the Dispute Resolution Account and may only be used as provided in ORS 36.155. [1989 c.718 §15; 1991 c.538 §4; 1991 c.790 §4; 1995 c.664 §77; 1995 c.666 §12; 1997 c.801 §§38,39]

(Program Standards)

36.175 Commission to establish standards for dispute resolution programs. (1) In accordance with the applicable provisions in ORS 183.310 to 183.550, the Dispute Resolution Commission shall adopt by rule:

(a) Standards and guidelines for dispute resolution programs;

(b) Minimum reporting requirements for dispute resolution programs;

(c) Methods for evaluating dispute resolution programs;

(d) Minimum qualifications and training for persons conducting dispute resolution services in dispute resolution programs;

(e) Minimum qualifications and training qualifications for personnel performing mediation services for the circuit courts under ORS 107.755 to 107.785;

(f) Participating funds requirements, if any, for entities receiving funds under ORS 36.155;

(g) Requirements, if any, for the payment by participants for services provided by a program receiving funds under ORS 36.155; and

(h) Any other provisions or procedures necessary for the administration of the laws that the commission is charged with administering.

(2) This section does not apply to state agency dispute resolution programs. [1989 c.718 §16; 1997 c.706 §4]

(Mediation in Civil Cases)

36.180 Proposed rules. The Dispute Resolution Commission shall develop proposed rules consistent with ORS 36.180 to 36.210 to implement and govern the operation and procedures of court mediation and shall submit the proposed rules to the Oregon Supreme Court for its consideration and approval. [1989 c.718 §18]

36.185 Referral of civil dispute to mediation; objection; information to parties. After the appearance by all parties in any civil action, except proceedings under ORS 107.700 to 107.732 or 124.005 to 124.040, a judge of any circuit court may refer a civil dispute to mediation under the terms and conditions set forth in ORS 36.180 to 36.210. When a party to a case files a written objection to mediation with the court, the action shall be removed from mediation and proceed in a normal fashion. All civil disputants shall be provided with written information describing the mediation process, as provided by the Dispute Resolution Commission, along with information on established court mediation opportunities. Filing parties shall be provided with this information at the time of filing a civil action. Responding parties shall be provided with this information by the filing party along with the initial service of filing documents upon the responding party. [1989 c.718 §19; 1993 c.327 §1; 1995 c.666 §13]

36.190 Stipulation to mediation; selection of mediator; stay of proceedings. (1) On written stipulation of all parties at any time prior to trial, the parties may elect to mediate their civil dispute under the terms and conditions of ORS 36.180 to 36.210.

(2) Upon referral or election to mediate, the parties shall select a mediator by written stipulation or shall follow procedures for assignment of a mediator from the court's panel of mediators.

(3) During the period of any referred or elected mediation under ORS 36.180 to 36.210, all trial and discovery timelines and requirements shall be tolled and stayed as to the participants. Such tolling shall commence on the date of the referral or election to mediate and shall end on the date the court is notified in writing of the termination of the mediation by the mediator or one party requests the case be put back on the docket. All time limits and schedules shall be tolled, except that a judge shall have discretion to adhere to preexisting pretrial order dates, trial dates or dates relating to temporary relief. [1989 c.718 §20]

36.195 Presence of attorney; authority and duties of mediator; notice to court at completion of mediation. (1) Unless otherwise agreed to in writing by the parties, the parties' legal counsel shall not be present at any scheduled mediation sessions conducted under the provisions of ORS 36.100 to 36.175.

(2) Attorneys and other persons who are not parties to a mediation may be included in mediation discussions at the mediator's discretion, with the consent of the parties, for mediation held under the provisions of ORS 36.180 to 36.210.

(3) The mediator, with the consent of the parties, may adopt appropriate rules to facilitate the resolution of the dispute and shall have discretion, with the consent of the parties, to suspend or continue mediation. The mediator may propose settlement terms either orally or in writing.

(4) All court mediators shall encourage disputing parties to obtain individual legal advice and individual legal review of any mediated agreement prior to signing the agreement.

(5) Within 10 judicial days of the completion of the mediation, the mediator shall notify the court whether an agreement has been reached by the parties. If the parties do not reach agreement, the mediator shall report that fact only to the court, but shall not make a recommendation as to resolution of the dispute without written consent of all parties or their legal counsel. The action shall then proceed in the normal fashion on either an expedited or regular pretrial list.

(6) The court shall retain jurisdiction over a case selected for mediation and shall issue orders as it deems appropriate. [1989 c.718 §21]

36.200 Mediation panels; qualification; procedure for selecting mediator. (1) A circuit court providing mediation referral under ORS 36.180 to 36.210 shall establish mediation panels. The mediators on such panels shall have such qualifications as set by the Dispute Resolution Commission. Formal education in any particular field shall not be a prerequisite to serving as a mediator.

(2) Unless instructed otherwise by the court, upon referral by the court to mediation, the clerk of the court shall select at least three individuals from the court's panel of mediators and shall send their names to legal counsel for the

parties, or to a party directly if not represented, with a request that each party state preferences within five judicial days. If timely objection is made to all of the individuals named, the court shall select some other individual from the mediator panel. Otherwise, the clerk, under the direction of the court, shall select as mediator one of the three individuals about whom no timely objection was made.

(3) Upon the court's or the parties' own selection of a mediator, the clerk shall:

(a) Notify the designated person of the assignment as mediator.

(b) Provide the mediator with the names and addresses of the parties and their representatives and with copies of the order of assignment.

(4) The parties to a dispute that is referred by the court to mediation may choose, at their option and expense, mediation services other than those suggested by the court, and entering into such private mediation services shall be subject to the same provisions of ORS 36.180 to 36.210.

(5) Disputing parties in mediation shall be free, at their own expense, to retain jointly or individually, experts, attorneys, fact finders, arbitrators and other persons to assist the mediation, and all such dispute resolution efforts shall be subject to the protection of ORS 36.180 to 36.210. [1989 c.718 §22; 1993 c.327 §2]

36.205 [1989 c.718 §23; 1995 c.678 §1; repealed by 1997 c.670 §15]

(Liability of Mediators and Programs)

36.210 Liability of mediators and programs. (1) Mediators, mediation programs and dispute resolution programs providing services under ORS 36.100 to 36.245 and mediators or other community programs providing dispute resolution services that the Dispute Resolution Commission determines comply with the standards established under ORS 36.175 are not civilly liable for any act or omission done or made while engaged in efforts to assist or facilitate a mediation or in providing other dispute resolution services, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.

(2) Mediators, mediation programs and dispute resolution programs are not civilly liable for the disclosure of a confidential mediation communication unless the disclosure was made in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.

(3) The limitations on liability provided by this section apply to the officers, directors, employees and agents of mediation programs and dispute resolution programs. [1989 c.718 §24; 1995 c.678 §2; 1997 c.670 §12; 2001 c.72 §1]

Note: Section 2, chapter 72, Oregon Laws 2001, provides:

Sec. 2. (1) Except as provided in subsection (2) of this section, the amendments to ORS 36.210 by section 1 of this 2001 Act apply to all causes of action, whether arising before, on or after the effective date of this 2001 Act [January 1, 2002].

(2) The amendments to ORS 36.210 by section 1 of this 2001 Act do not apply to any cause of action for which a judgment has been entered in the register of a court before the effective date of this 2001 Act. [2001 c.72 §2]

(Confidentiality of Mediation Communications and Agreements)

36.220 Confidentiality of mediation communications and agreements; exceptions. (1) Except as provided in ORS 36.220 to 36.238:

(a) Mediation communications are confidential and may not be disclosed to any other person.

(b) The parties to a mediation may agree in writing that all or part of the mediation communications are not confidential.

(2) Except as provided in ORS 36.220 to 36.238:

(a) The terms of any mediation agreement are not confidential.

(b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.

(3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.

(4) Any document that, before its use in a mediation, was a public record as defined in ORS 192.410 remains subject to disclosure to the extent provided by ORS 192.410 to 192.505.

(5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of ORS 419B.010 is not confidential to the extent that the person is required to report the

communication under the provisions of ORS 419B.010. Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under the provisions of ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 124.050 to 124.095.

(6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.

(7) A party to a mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS 40.010 to 40.585 or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.

(8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to ORS 36.224, 36.226 and 36.230. [1997 c.670 §1]

36.222 Admissibility and disclosure of mediation communications and agreements in subsequent adjudicatory proceedings. (1) Except as provided in ORS 36.220 to 36.238, mediation communications and mediation agreements that are confidential under ORS 36.220 to 36.238 are not admissible as evidence in any subsequent adjudicatory proceeding, and may not be disclosed by the parties or the mediator in any subsequent adjudicatory proceeding.

(2) A party may disclose confidential mediation communications or agreements in any subsequent adjudicative proceeding if all parties to the mediation agree in writing to the disclosure.

(3) A mediator may disclose confidential mediation communications or confidential mediation agreements in a subsequent adjudicatory proceeding if all parties to the mediation, the mediator, and the mediation program, if any, agree in writing to the disclosure.

(4) In any proceeding to enforce, modify or set aside a mediation agreement, confidential mediation communications and confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(5) In an action for damages or other relief between a party to a mediation and a mediator or mediation program, confidential mediation communications or confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(6) A mediator may disclose confidential mediation communications directly related to child abuse or elder abuse if the mediator is a person who has a duty to report child abuse under ORS 419B.010 or elder abuse under ORS 124.050 to 124.095.

(7) The limitations on admissibility and disclosure in subsequent adjudicatory proceedings imposed by this section apply to any subsequent judicial proceeding, administrative proceeding or arbitration proceeding. The limitations on disclosure imposed by this section include disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding, and no person who is prohibited from disclosing information under the provisions of this section may be compelled to reveal confidential communications or agreements in any discovery proceeding conducted as part of a subsequent adjudicatory proceeding. Any confidential mediation communication or agreement that may be disclosed in a subsequent adjudicatory proceeding under the provisions of this section may be introduced into evidence in the subsequent adjudicatory proceeding. [1997 c.670 §2]

36.224 State agencies; confidentiality of mediation communications; rules. (1) Except as provided in this section, mediation communications in mediations in which a state agency is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, are not confidential and may be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in ORS 36.222 (7).

(2) The Attorney General, in consultation with the Dispute Resolution Commission, shall develop rules that provide for the confidentiality of mediation communications in mediations described in subsection (1) of this section. The rules shall also provide for limitations on admissibility and disclosure in subsequent adjudicatory proceedings, as described in ORS 36.222 (7). The rules shall contain provisions governing mediations of workplace interpersonal disputes.

(3) Rules developed by the Attorney General under this section must include a provision for notice to the parties to

a mediation regarding the extent to which the mediation communications are confidential or subject to disclosure or introduction as evidence in subsequent adjudicatory proceedings.

(4) Subject to the approval of the Governor, a state agency may adopt any or all of the rules developed by the Attorney General under this section.

(5) The commission shall maintain a list of state agencies that have adopted rules under this section.

(6) Except as provided in ORS 36.222, mediation communications in any mediation regarding a claim for workers' compensation benefits conducted pursuant to rules adopted by the Workers' Compensation Board are confidential, are not subject to disclosure under ORS 192.410 to 192.505 and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in ORS 36.222 (7), without regard to whether a state agency or other public body is a party to the mediation or is the mediator in the mediation.

(7) Mediation communications made confidential by a rule adopted by a state agency under this section are not subject to disclosure under ORS 192.410 to 192.505. [1997 c.670 §3]

36.226 Public bodies other than state agencies; confidentiality of mediation communications. (1) Except as provided in subsection (2) of this section, mediation communications in mediations in which a public body other than a state agency is a party are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, as described in ORS 36.222 (7).

(2) A public body other than a state agency may adopt a policy that provides that all or part of mediation communications in mediations in which the public body is a party will not be confidential. If a public body adopts a policy under this subsection, notice of the policy must be provided to all other parties in mediations that are subject to the policy. [1997 c.670 §4]

36.228 Mediations in which two or more public bodies are parties. (1) Notwithstanding any other provision of ORS 36.220 to 36.238, if the only parties to a mediation are public bodies, mediation communications and mediation agreements in the mediation are not confidential except to the extent those communications or agreements are exempt from disclosure under ORS 192.410 to 192.505.

(2) Notwithstanding any other provision of ORS 36.220 to 36.238, if two or more public bodies are parties to a mediation in which a private person is also a party, mediation communications in the mediation are not confidential if the laws, rules or policies governing confidentiality of mediation communications for at least one of the public bodies provide that mediation communications in the mediation are not confidential.

(3) Notwithstanding any other provision of ORS 36.220 to 36.238, if two or more public bodies are parties to a mediation in which a private person is also a party, mediation agreements in the mediation are not confidential if the laws, rules or policies governing confidentiality of mediation agreements for at least one of the public bodies provide that mediation agreements in the mediation are not confidential. [1997 c.670 §4a]

36.230 Public bodies; confidentiality of mediation agreements. (1) Except as provided in this section, mediation agreements are not confidential if a public body is a party to the mediation or if the mediation is one in which a state agency is mediating a dispute as to which the state agency has regulatory authority.

(2) If a public body is a party to a mediation agreement, any provisions of the agreement that are exempt from disclosure as a public record under ORS 192.410 to 192.505 are confidential.

(3) If a public body is a party to a mediation agreement, and the agreement is subject to the provisions of ORS 30.402, the terms of the agreement are confidential to the extent that those terms are ordered by a court to be confidential under ORS 30.402 (2).

(4) If a public body is a party to a mediation agreement arising out of a workplace interpersonal dispute:

(a) The agreement is confidential if the public body is not a state agency, unless the public body adopts a policy that provides otherwise;

(b) The agreement is confidential if the public body is a state agency only to the extent that the state agency has adopted a rule under ORS 36.224 that so provides; and

(c) Any term of an agreement that requires an expenditure of public funds, other than expenditures of $1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the public body, may not be made confidential by a rule or policy of a public body. [1997 c.670 §5]

36.232 Disclosures allowed for reporting, research, training and educational purposes. (1) If a public body conducts or makes available a mediation, ORS 36.220 to 36.238 do not limit the ability of the mediator to report the

disposition of the mediation to that public body at the conclusion of the mediation proceeding. The report made by a mediator to a public body under this subsection may not disclose specific confidential mediation communications made in the mediation.

(2) If a public body conducts or makes available a mediation, ORS 36.220 to 36.238 do not limit the ability of the public body to compile and disclose general statistical information concerning matters that have gone to mediation if the information does not identify specific cases.

(3) In any mediation in a case that has been filed in court, ORS 36.220 to 36.238 do not limit the ability of the court to:

(a) Require the parties or the mediator to report to the court the disposition of the mediation at the conclusion of the mediation proceeding;

(b) Disclose records reflecting which matters have been referred for mediation; or

(c) Disclose the disposition of the matter as reported to the court.

(4) ORS 36.220 to 36.238 do not limit the ability of a mediator or mediation program to use or disclose confidential mediation communications, the disposition of matters referred for mediation and the terms of mediation agreements to another person for use in research, training or educational purposes, subject to the following:

(a) A mediator or mediation program may only use or disclose confidential mediation communications if the communications are used or disclosed in a manner that does not identify individual mediations or parties.

(b) A mediator or mediation program may use or disclose confidential mediation communications that identify individual mediations or parties only if and to the extent allowed by a written agreement with, or written waiver of confidentiality by, the parties. [1997 c.670 §6]

36.234 Parties to mediation. For the purposes of ORS 36.220 to 36.238, a person, state agency or other public body is a party to a mediation if the person or public body participates in a mediation and has a direct interest in the controversy that is the subject of the mediation. A person or public body is not a party to a mediation solely because the person or public body is conducting the mediation, is making the mediation available or is serving as an information resource at the mediation. [1997 c.670 §7]

36.236 Effect on other laws. (1) Nothing in ORS 36.220 to 36.238 affects any confidentiality created by other law, including but not limited to confidentiality created by ORS 107.755 to 107.785.

(2) Nothing in ORS 36.220 to 36.238 relieves a public body from complying with ORS 192.610 to 192.690. [1997 c.670 §9]

36.238 Application of ORS 36.210 and 36.220 to 36.238. The provisions of ORS 36.210 and 36.220 to 36.238 apply to all mediations, whether conducted by a publicly funded program or by a private mediation provider. [1997 c.670 §8]

(State Agency Alternative Dispute Resolution)

36.245 Collaboration to increase use of alternative dispute resolution by state agencies; report to Legislative Assembly. (1) The Dispute Resolution Commission, the Department of Justice, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution;

(c) Identifying, advising and assisting groups of agencies to cooperate in developing alternative means of dispute resolution;

(d) Designating an agency within each group of agencies identified in paragraph (c) of this subsection to coordinate alternative means of dispute resolution among those agencies;

(e) Encouraging the coordination and integration of activities and programs among state and local governments and the public to ensure efficiency of alternative means of dispute resolution; and

(f) Developing a method to evaluate the effectiveness of agencies' alternative dispute resolution programs.

(2) In collaboration with affected public bodies and agencies, the Dispute Resolution Commission shall foster efforts to integrate community, judicial and state agency alternative dispute resolution programs.

(3) The Department of Justice, the Dispute Resolution Commission and the Oregon Department of Administrative Services shall jointly report to the Legislative Assembly on or before January 15 of each odd-numbered year regarding any additional programs implemented under subsection (1) of this section. [1997 c.706 §2]

MEDIATION OF FORECLOSURE OF AGRICULTURAL PROPERTY

36.250 Definitions for ORS 36.250 to 36.270. As used in ORS 36.250 to 36.270:

(1) "Agricultural producer" means a person who owns or is purchasing agricultural property for use in agriculture whose gross sales in agriculture averaged $20,000 or more for the preceding three years.

(2) "Agricultural property" means real property that is principally used for agriculture.

(3) "Agriculture" means the production of livestock, poultry, field crops, fruit, dairy, fur-bearing animals, Christmas trees, food fish or other animal and vegetable matter.

(4) "Coordinator" means the Director of Agriculture or a designee of the Director of Agriculture.

(5) "Creditor" means the holder of a mortgage or trust deed on agricultural property, a vendor of a real estate contract for agricultural property, a person with a perfected security interest in agricultural property or a judgment creditor with a judgment against an agricultural producer.

(6) "Financial analyst" means a person knowledgeable in agriculture and financial matters that can provide financial analysis to aid the agricultural producer in preparing the financial information required under ORS 36.256. Financial analyst may include county extension agents or other persons approved by the coordinator.

(7) "Mediation" means the process by which a mediator assists and facilitates an agricultural producer and a creditor in a controversy relating to the mortgage, trust deed, real estate contract, security interest or judgment that the creditor has in the agricultural property of the agricultural producer in reaching a mutually acceptable resolution of the controversy and includes all contacts between the mediator and the agricultural producer or the creditor, until such time as a resolution is agreed to by the agricultural producer and the creditor or until the agricultural producer or the creditor discharges the mediator.

(8) "Mediation service" means a person selected by the coordinator to provide mediation under ORS 36.250 to 36.270.

(9) "Mediator" means an impartial third party who performs mediations.

(10) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity. [1989 c.967 §2; 2001 c.104 §9]

Note: 36.250 to 36.270 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 36 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

36.252 Director of Agriculture or designee to serve as agricultural mediation service coordinator; rules. The Director of Agriculture or a designee of the Director of Agriculture shall serve as the agricultural mediation service coordinator. The coordinator shall establish rules necessary to implement ORS 36.250 to 36.270. The rules shall include, but need not be limited to:

(1) Reasonable mediator training guidelines for persons providing mediation service under ORS 36.250 to 36.270.

(2) Fees to be charged for mediation services. The fee schedule should be sufficient to cover the costs of providing the mediation service but shall not exceed $30 per hour per participant.

(3) Methods for advertising the availability of mediation services. [1989 c.967 §3]

Note: See note under 36.250.

36.254 Contracts for mediation services. The coordinator shall contract with a person to provide agricultural producer-creditor mediation services. The coordinator may contract with, or use the services of, a private mediation organization, community-based program, state agency or a combination of organizations and agencies. The contract may be terminated by the coordinator upon 30 days' written notice and for good cause. The organization awarded the contract is designated as the agricultural mediation service for the duration of the contract. The agricultural mediation service shall be an independent contractor and shall not be considered a state agency for any purpose. [1989 c.967 §4]

Note: See note under 36.250.

36.256 Request for mediation services; eligibility; form of request; response. (1) Except as provided in subsection (11) of this section, an agricultural producer who is in danger of foreclosure on agricultural property under ORS 86.010 to 86.990, 87.001 to 87.920 or 88.710 to 88.740 or a creditor, before or after beginning foreclosure proceedings, may request mediation of the agricultural producer's indebtedness by filing a request with the mediation service on a form provided by the service. However, an agricultural producer or creditor may not request mediation under this section unless, at the time the request is made, the agricultural producer owes more than $100,000 to one or more creditors, and the debt is either:

(a) Secured by one or more mortgages or trust deeds on the agricultural producer's agricultural property;

(b) Evidenced by a real estate contract covering the agricultural producer's agricultural property; or

(c) The subject of one or more statutory liens that have attached to the agricultural producer's agricultural property.

(2) In filing a mediation request, the agricultural producer shall provide:

(a) The name and address of each creditor;

(b) The amount claimed by each creditor;

(c) The amount of the periodic installment payments made to each creditor;

(d) Any financial statements and projected cash flow statements, including those related to any nonagricultural activities;

(e) The name of the person authorized to enter into a binding mediation agreement; and

(f) Any additional information the mediation service may require.

(3) In filing a mediation request, a creditor shall provide:

(a) Statements regarding the status of the agricultural producer's loan performance;

(b) The name and title of the representative of the creditor authorized to enter into a binding mediation agreement; and

(c) Any additional information the mediation service may require.

(4) Nothing in ORS 36.250 to 36.270 shall be construed to require an agricultural producer or creditor to engage or continue in the mediation of any dispute or controversy. Mediation under ORS 36.250 to 36.270 shall be entirely voluntary for all persons who are parties to the dispute or controversy, and if such persons agree to engage in mediation, any one of the persons may at any time withdraw from mediation.

(5) If an agricultural producer or a creditor files a mediation request with the mediation service, the service shall within 10 days after receipt of the request give written notice of the request to any other person who is identified in the request for mediation as parties to the dispute or controversy. The notice shall:

(a) Be accompanied by a copy of the request for mediation;

(b) Generally describe the mediation program created by ORS 36.250 to 36.270;

(c) Explain that participation in mediation is voluntary and that the recipient of the notice is not required to engage in mediation or to continue to mediate if mediation is initiated;

(d) Request that the recipient of the notice advise the mediation service in writing and by certified mail within 10 days as to whether the recipient wishes to engage in mediation; and

(e) Explain that if the written advice required under paragraph (d) of this subsection is not received by the mediation service within the 10-day period, the mediation request will be considered denied.

(6) If the person who receives the notice of request for mediation under subsection (5) of this section wishes to engage in mediation, the person shall advise the mediation service in writing within the 10-day period specified in subsection (5) of this section. The response shall include the appropriate information that the responding person would have been required to include in a request for mediation under subsection (2) or (3) of this section.

(7) If the person who receives notice of request for mediation under subsection (5) of this section does not wish to engage in mediation, the person may but shall not be required to so advise the mediation service.

(8) If the person who receives the notice of request for mediation under subsection (5) of this section does not advise the mediation service in writing within the 10-day period specified in the notice described in subsection (5) of this section that the person desires to mediate, the request for mediation shall be considered denied.

(9) The submission of a request for mediation by an agricultural producer or a creditor shall not operate to stay, impede or delay in any manner whatsoever the commencement, prosecution or defense of any action or proceeding by any person.

(10) If requested by the agricultural producer, the coordinator shall provide the services of a financial analyst to assist the agricultural producer in preparation of financial data for the first mediation session.

(11) ORS 36.250 to 36.270 are not applicable to obligations or foreclosure proceedings with respect to which the

creditor is a financial institution, as defined in ORS 706.008. [1989 c.967 §5; 1995 c.277 §6; 1997 c.631 §566]

Note: See note under 36.250.

36.258 Duties of mediator. (1) A mediator must be an impartial person knowledgeable in agriculture and financial matters.

(2) In carrying out mediation under ORS 36.250 to 36.270, a mediator shall:

(a) Listen to the agricultural producer and any creditor desiring to be heard.

(b) Attempt to facilitate a negotiated agreement that provides for mutual satisfaction. Such an agreement may include mutually agreed upon forbearance from litigation, rescheduled or renegotiated debt, voluntary sale or other liquidation of agricultural property, authorization for the agricultural producer to continue agriculture while providing reasonable security to the creditor or any other mutually agreed upon outcome.

(c) Seek assistance from any public or private agency to effect the goals of ORS 36.250 to 36.270.

(d) Permit any person who is a party to the mediation to be represented in all mediation proceedings by any person selected by the party.

(3) In carrying out a mediation under ORS 36.250 to 36.270, a mediator may invite additional creditors of the agricultural producer to participate in the mediation. A creditor may be invited to participate in a mediation regardless of whether the agricultural producer is in arrears with the creditor. [1989 c.967 §6; 2001 c.104 §10]

Note: See note under 36.250.

36.260 Mediation agreement; effect of agreement. (1) If an agreement is reached between the agricultural producer and a creditor, the mediator shall draft a written mediation agreement to be signed by the agricultural producer and the creditor.

(2) An agricultural producer and any creditor who are parties to a mediation agreement:

(a) Are bound by the terms of the agreement;

(b) May enforce the mediation agreement as a legal contract; and

(c) May use the mediation agreement as a defense against an action contrary to the mediation agreement.

(3) The mediator shall encourage the parties to have the agreement reviewed by independent legal counsel before signing the agreement. [1989 c.967 §7]

Note: See note under 36.250.

36.262 Confidentiality of mediation materials. (1) All memoranda, work products and other materials contained in the case files of a mediator or mediation service are confidential. Any communication made in, or in connection with, the mediation which relates to the controversy being mediated, whether made to the mediator or a party, or to any other person if made at a mediation session, is confidential. However, a mediated agreement shall not be confidential unless the parties otherwise agree in writing.

(2) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(a) When all parties to the mediation agree, in writing, to waive the confidentiality;

(b) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation; or

(c) Statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and actually used in the mediation.

(3) Notwithstanding subsection (2) of this section, a mediator may not be compelled to testify in any proceeding, unless all parties to the mediation and the mediator agree, in writing, to waive the confidentiality. [1989 c.967 §8]

Note: See note under 36.250.

36.264 Civil immunity for mediators and mediation services. Mediators and mediation services shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or facilitate a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. [1989 c.967 §9]

Note: See note under 36.250.

36.266 Suspension of court proceedings during mediation; dismissal of action. (1) During the pendency of any action between a creditor and an agricultural producer, the court may, upon stipulation by all parties requesting mediation under ORS 36.256, enter an order suspending the action.

(2) A suspension order under subsection (1) of this section suspends all orders and proceedings in the action for the time period specified in the suspension order. In specifying the time period, the court shall exercise its discretion for the purpose of permitting the parties to engage in mediation without prejudice to the rights of any person. The suspension order may include other terms and conditions as the court may consider appropriate. The suspension order may be revoked upon motion of any party or upon motion of the court.

(3) If all parties to the action agree, by written stipulation, that all issues before the court are resolved by mediation under ORS 36.250 to 36.270, the court shall dismiss the action. If the parties do not agree that the issues are resolved or if the court revokes the suspension order under subsection (2) of this section, the action shall proceed as if mediation had not been attempted. [1989 c.967 §10]

Note: See note under 36.250.

36.268 Provision of mediation services contingent on funding. The duty of the State Department of Agriculture and the Director of Agriculture to provide mediation services under ORS 36.250 to 36.270 is contingent upon the existence and the level of funding specifically made available to carry out that duty. Should continuation of mediation services be threatened for lack of funding, the department shall proceed with all diligence to secure additional funds, including but not limited to requesting an additional allocation of funds from the Emergency Board. [1993 c.163 §2]

Note: See note under 36.250.

36.270 Utilization of mediation program for other disputes. (1) In addition to other mediation activities authorized by law, the Director of Agriculture and the State Department of Agriculture may utilize the mediation program to facilitate resolution of other disputes directly related to department activities and agricultural issues under the jurisdiction of the department.

(2) Participation in mediation referred to in subsection (1) of this section by parties to a dispute is voluntary, and a party may withdraw from the proceedings at any time.

(3) Notwithstanding the limitation on fees prescribed by ORS 36.252 (2), the director shall recover from the parties to a mediation referred to in subsection (1) of this section the actual cost of the mediation proceedings. [1995 c.277 §5]

Note: See note under 36.250.

ARBITRATION AND AWARD

36.300 Controversies arbitrable. All persons desiring to settle by arbitration any controversy or quarrel, except such as respect the terms or conditions of employment under collective contracts between employers and employees or between employers and associations of employees, may submit their differences to the award or umpirage of any person or persons mutually selected. [Formerly 33.210]

36.305 Written arbitration agreements valid. A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between persons to submit to arbitration any controversy then existing between them, shall, provided the arbitration is held within the State of Oregon, be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. [Formerly 33.220]

36.310 Court order compelling parties to arbitrate as agreed. A party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission providing for arbitration, described in ORS 36.305, shall petition the circuit court, or a judge thereof, for an order directing that the arbitration proceed in the manner provided

for in the contract or submission. Ten days' notice in writing of the application shall be served upon the party in default, in the manner provided for personal service of a summons. The court or judge shall hear the parties, and if satisfied that the making of the contract or submission or the failure to comply therewith is not an issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission. If the making of the contract or submission or the default is an issue, the court or the judge shall proceed summarily to the trial thereof. If no jury trial is demanded by either party, the court or judge shall hear and determine such issue. Where such an issue is raised, any party may, on or before the return day of the notice of application, demand a jury trial of the issue, and if such demand is made, the court or judge shall make an order referring the issue to a jury in the manner provided by ORCP 51 D. If the jury finds that no written contract providing for arbitration was made or submission entered into, as the case may be, or that there is no default, the proceeding shall be dismissed. If the jury finds that a written contract providing for arbitration was made or submission was entered into and there is a default in the performance thereof, the court or judge shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. [Formerly 33.230]

36.315 Abatement of action or suit involving arbitrable issue. If any action, suit or proceeding is brought upon any issue arising out of an agreement which contains a provision for arbitration of the matter in controversy in such action, suit or proceeding, then, upon application, any judge of a circuit court, upon being satisfied that the issue is referable to arbitration, shall abate the action, suit or proceeding so that arbitration may be had in accordance with the terms of the agreement. The application shall be heard similarly to hearings on motions. [Formerly 33.240]

36.320 Appointment of arbitrator; number of arbitrators. If, in the arbitration agreement, no provision is made for the manner of selecting the arbitrators, or if, for any reason, there is a failure to act or a vacancy, and no provision in the agreement for the filling thereof, then, upon application of any party to the agreement, any court of record shall appoint an arbitrator or arbitrators to fill the vacancy, who shall act with the same force and effect as if specifically named in the arbitration agreement. Unless otherwise provided, the arbitration shall be by a single arbitrator. [Formerly 33.250]

36.325 Oath of arbitrators. The arbitrators shall be sworn to try and determine the cause referred to them and to make an award under the hands and seals of a majority of them, agreeable to the terms of the submission. [Formerly 33.260]

36.330 Compensation of arbitrators. The compensation of arbitrators shall be determined by agreement between the parties to the arbitration, or, in case of their inability to agree, then by any judge of the circuit court. [Formerly 33.270]

36.335 Power of arbitrators. Arbitrators or a majority of them, shall have power to:

(1) Compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all books, papers and documents the arbitrators deem material to the cause.

(2) Administer oaths or affirmations to witnesses.

(3) Adjourn their meetings from day to day, or for a longer time, and also from place to place.

(4) Decide both the law and the facts involved in the cause submitted to them. [Formerly 33.280]

36.340 Coercion of witness or party. Whenever, on motion of any arbitrator or party in interest, it appears to the circuit court of the county in which the arbitration proceedings are pending that any witness or party has refused to answer a subpoena or obey any lawful order of the arbitrator, the court may require the witness or party to show cause why the witness or party should not be punished for contempt of court, to the same extent and purpose as if the proceedings were pending before the court. [Formerly 33.290]

36.345 Cost of fees. Unless otherwise agreed upon, the costs of witness fees and other fees in the case shall be taxed against the losing party, and such fees shall be indorsed upon the award. When the award is confirmed as the judgment of a circuit court, execution shall issue therefor as for costs and disbursements in civil actions. [Formerly 33.300]

36.350 Filing and service of award; fee; judgment if no exceptions; execution. (1) The award of the arbitrators,

together with the written agreement to submit, shall be delivered to the clerk of the circuit court selected to render judgment on the award. After charging and collecting a fee of $35 therefor, the clerk shall enter the same of record in the office of the clerk. A copy of the award, signed by the arbitrators, or a majority of them, shall also be served upon or delivered to each of the parties interested in the award, and proof of such service or delivery shall be filed with the clerk. If no exceptions are filed against the same within 20 days after such service, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings may be had upon the award with like effect as upon a verdict in a civil action.

(2) If the award of the arbitrators requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments. [Formerly 33.310; 1997 c.801 §53; 1999 c.63 §1]

36.355 Exceptions to award; filing fees. (1) Within the period specified in ORS 36.350, the party against whom an award was made may file with the circuit court exceptions in writing to the award for any of the following causes:

(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 were 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.

(e) 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.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award was imperfect in matter of form not affecting the merits of the controversy.

(2) The clerk of the court shall collect from the party filing exceptions under subsection (1) of this section a filing fee of $35, and from a party filing an appearance in opposition to the exceptions a filing fee of $21. However, if the exceptions relate to an arbitration award made following abatement under ORS 36.315 of an action, suit or proceeding in respect to which the parties have paid filing fees under ORS 21.110, no filing fees shall be collected under this subsection. No exceptions or appearance in opposition thereto shall be deemed filed unless the fee required by this subsection is paid by the filing party. [Formerly 33.320; 1997 c.801 §54]

36.360 Vacation or modification of award on exceptions. If, upon exceptions filed, it appears to the court that the award should be vacated or modified, the court may refer the cause back to the arbitrators with proper instructions for correction or rehearing and, upon failure of the arbitrators to follow said instructions, the court shall have jurisdiction over the case and proceed to its determination. [Formerly 33.330]

36.365 Appeal from judgment on award. Whenever no objection is made to the entering of judgment after award, judgment shall be entered according to the award and shall have the force and effect of a judgment obtained in the circuit court after default. Whenever any judgment is entered after objection on the part of any party by the order of such court, such judgment shall be subject to appeal to the higher courts in the manner provided by law for taking appeals to such courts. The right to except to or review an award or to appeal from a judgment thereon shall not be circumscribed or abridged by any contractual provisions; nor shall any burden or penalty, other than such as are provided by law, be imposed by anyone against any party who excepts or appeals. [Formerly 33.340]

COURT ARBITRATION PROGRAM

36.400 Mandatory arbitration programs. (1) A mandatory arbitration program is established in each circuit court.

(2) Rules consistent with ORS 36.400 to 36.425 to govern the operation and procedure of an arbitration program established under this section may be made in the same manner as other rules applicable to the court and are subject to the approval of the Chief Justice of the Supreme Court.

(3) Each circuit court shall establish whether arbitration under ORS 36.400 to 36.425 is required in matters involving less than $25,000 or in matters involving less than $50,000. The decision shall be made by an affirmative

vote of a majority of the judges of the circuit court, subject to the approval of the Chief Justice of the Supreme Court.

(4) ORS 36.400 to 36.425 do not apply to appeals from a county, justice or municipal court or actions in the small claims department of a circuit court. Actions transferred from the small claims department of a circuit court by reason of a request for a jury trial under ORS 46.455, by reason of the filing of a counterclaim in excess of the jurisdiction of the small claims department under ORS 46.461, or for any other reason, shall be subject to ORS 36.400 to 36.425 to the same extent and subject to the same conditions as a case initially filed in circuit court. The arbitrator shall not allow any party to appear or participate in the arbitration proceeding after the transfer unless the party pays the arbitrator fee established by court rule or the party obtains a waiver or deferral of the fee from the court and provides a copy of the waiver or deferral to the arbitrator. The failure of a party to appear or participate in the arbitration proceeding by reason of failing to pay the arbitrator fee or obtain a waiver or deferral of the fee does not affect the ability of the party to appeal the arbitrator's decision and award in the manner provided by ORS 36.425. [Formerly 33.350; 1993 c.482 §1; 1995 c.618 §10; 1995 c.658 §30a; 1997 c.46 §§3,4]

36.405 Mandatory arbitration; exemptions. (1) In a civil action in a circuit court where all parties have appeared, the court shall refer the action to arbitration under ORS 36.400 to 36.425 if either of the following applies:

(a) The only relief claimed is recovery of money or damages, and no party asserts a claim for money or general and special damages in an amount exceeding the amount established under ORS 36.400 (3), exclusive of attorney fees, costs and disbursements and interest on judgment.

(b) The action is a domestic relations suit, as defined in ORS 107.510, in which the only contested issue is the division or other disposition of property between the parties.

(2) The presiding judge for a judicial district may do either of the following:

(a) Exempt from arbitration under ORS 36.400 to 36.425 a civil action that otherwise would be referred to arbitration under this section.

(b) Remove from further arbitration proceedings a civil action that has been referred to arbitration under this section, when, in the opinion of the judge, good cause exists for that exemption or removal.

(3) If a court has established a mediation program that is available for a civil action that would otherwise be subject to arbitration under ORS 36.400 to 36.425, the court shall not assign the proceeding to arbitration if the proceeding is assigned to mediation pursuant to the agreement of the parties. Notwithstanding any other provision of ORS 36.400 to 36.425, a party who completes a mediation program offered by a court shall not be required to participate in arbitration under ORS 36.400 to 36.425. [Formerly 33.360; 1995 c.455 §2a; 1995 c.618 §11; 1995 c.658 §31a; 1995 c.781 §32]

36.410 Stipulation for arbitration; conditions; relief. (1) In a civil action in a circuit court where all parties have appeared and agreed to arbitration by stipulation, the court shall refer the action to arbitration under ORS 36.400 to 36.425 if:

(a) The relief claimed is more than or other than recovery of money or damages.

(b) The only relief claimed is recovery of money or damages and a party asserts a claim for money or general and special damages in an amount exceeding the amount established under ORS 36.400 (3), exclusive of attorney fees, costs and disbursements and interest on judgment.

(2) If a civil action is referred to arbitration under this section, the arbitrator may grant any relief that could have been granted if the action were determined by a judge of the court. [Formerly 33.370; 1995 c.618 §12; 1995 c.658 §32]

36.415 Arbitration after waiver of amount of claim exceeding minimum arbitration amount; procedure to determine true amount in controversy. (1) In a civil action in a circuit court where all parties have appeared, where the only relief claimed is recovery of money or damages, where a party asserts a claim for money or general and special damages in an amount exceeding the amount established under ORS 36.400 (3), exclusive of attorney fees, costs and disbursements and interest on judgment, and where all parties asserting those claims waive the amounts of those claims that exceed the amount established under ORS 36.400 (3), the court shall refer the action to arbitration under ORS 36.400 to 36.425. A waiver of an amount of a claim under this section shall be for the purpose of arbitration under ORS 36.400 to 36.425 only and shall not restrict assertion of a larger claim in a trial de novo under ORS 36.425.

(2) In a civil action in a circuit court where all parties have appeared, where the only relief claimed is recovery of money or damages and where a party asserts a claim for money or general and special damages in an amount exceeding the amount established under ORS 36.400 (3), exclusive of attorney fees, costs and disbursements and

interest on judgment, any party against whom the claim is made may file a motion with the court requesting that the matter be referred to arbitration. After hearing upon the motion, the court shall refer the matter to arbitration under ORS 36.400 to 36.425 if the defendant establishes by affidavits and other documentation that no objectively reasonable juror could return a verdict in favor of the claimant in excess of the amount established under ORS 36.400 (3), exclusive of attorney fees, costs and disbursements and interest on judgment. [Formerly 33.380; 1995 c.618 §13; 1995 c.658 §33]

36.420 Notice of arbitration hearing; open proceeding; compensation and expenses. (1) At least five days before the date set for an arbitration hearing, the arbitrator shall notify the clerk of the court of the time and place of the hearing. The clerk shall post a notice of the time and place of the hearing in a conspicuous place for trial notices at the principal location for the sitting of the court in the county in which the action was commenced.

(2) The arbitration proceeding and the records thereof shall be open to the public to the same extent as would a trial of the action in the court and the records thereof.

(3) The compensation of the arbitrator and other expenses of the arbitration proceeding shall be the obligation of the parties or any of them as provided by rules made under ORS 36.400. However, if those rules require the parties or any of them to pay any of those expenses in advance, in the form of fees or otherwise, as a condition of arbitration, the rules shall also provide for the waiver in whole or in part, deferral in whole or in part, or both, of that payment by a party whom the court finds is then unable to pay all or any part of those advance expenses. Expenses so waived shall be paid by the state from funds available for the purpose. Expenses so deferred shall be paid, if necessary, by the state from funds available for the purpose, and the state shall be reimbursed according to the terms of the deferral. [Formerly 33.390; 1993 c.482 §2]

36.425 Filing of decision and award; notice of appeal; trial de novo; attorney fees and costs; effect of arbitration decision and award. (1) At the conclusion of arbitration under ORS 36.400 to 36.425 of a civil action, the arbitrator shall file the decision and award with the clerk of the court that referred the action to arbitration, together with proof of service of a copy of the decision and award upon each party. If the decision and award require the payment of money, including payment of costs or attorney fees, the decision and award must contain all of the information required in a money judgment under ORCP 70 A(2)(a) and be substantially in the form prescribed by ORCP 70 A(2)(b).

(2)(a) Within 20 days after the filing of a decision and award with the clerk of the court under subsection (1) of this section, a party against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award, but no other party, may file with the clerk a written notice of appeal and request for a trial de novo of the action in the court on all issues of law and fact. A copy of the notice of appeal and request for a trial de novo must be served on all other parties to the proceeding. After the filing of the written notice a trial de novo of the action shall be held. If the action is triable by right to a jury and a jury is demanded by a party having the right of trial by jury, the trial de novo shall include a jury.

(b) If a party files a written notice under paragraph (a) of this subsection, a trial fee or jury trial fee, as applicable, shall be collected as provided in ORS 21.270.

(c) A party filing a written notice under paragraph (a) of this subsection shall deposit with the clerk of the court the sum of $150. If the position under the arbitration decision and award of the party filing the written notice is not improved as a result of a judgment in the action on the trial de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the sum deposited to the party. If the court finds that the party filing the written notice is then unable to pay all or any part of the sum to be deposited, the court may waive in whole or in part, defer in whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position of the party is not improved as a result of a judgment, the deferred amount shall be paid by the party according to the terms of the deferral.

(3) If a written notice is not filed under subsection (2)(a) of this section within the 20 days prescribed, the clerk of the court shall enter the arbitration decision and award as a final judgment of the court, which shall have the same force and effect as a final judgment of the court in the civil action and may not be appealed.

(4) Notwithstanding any other provision of law or the Oregon Rules of Civil Procedure:

(a) If a party requests a trial de novo under the provisions of this section, the action is subject to arbitration under the provisions of ORS 36.405 (1)(a), the party is entitled to attorney fees by law or contract, and the position of the party is not improved after judgment on the trial de novo, the party shall not be entitled to an award of attorney fees or costs and disbursements incurred by the party before the filing of the decision and award of the arbitrator, and shall be

taxed the reasonable attorney fees and costs and disbursements incurred by the other parties to the action on the trial de novo after the filing of the decision and award of the arbitrator.

(b) If a party requests a trial de novo under the provisions of this section, the action is subject to arbitration under ORS 36.405 (1)(a), the party is not entitled to attorney fees by law or contract, and the position of the party is not improved after judgment on the trial de novo, pursuant to subsection (5) of this section the party shall be taxed the reasonable attorney fees and costs and disbursements of the other parties to the action on the trial de novo incurred by the other parties after the filing of the decision and award of the arbitrator.

(c) If a party requests a trial de novo under the provisions of this section, the action is subject to arbitration under ORS 36.405 (1)(b), and the position of the party is not improved after judgment on the trial de novo, the party shall not be entitled to an award of attorney fees or costs and disbursements and shall be taxed the costs and disbursements incurred by the other parties after the filing of the decision and award of the arbitrator.

(5) If a party is entitled to an award of attorney fees under subsection (4) of this section, but is also entitled to an award of attorney fees under contract or another provision of law, the court shall award reasonable attorney fees pursuant to the contract or other provision of law. If a party is entitled to an award of attorney fees solely by reason of subsection (4) of this section, the court shall award reasonable attorney fees not to exceed the following amounts:

(a) Twenty percent of the judgment, if the defendant requests the trial de novo but the position of the defendant is not improved after the trial de novo; or

(b) Ten percent of the amount claimed in the complaint, if the plaintiff requests the trial de novo but the position of the plaintiff is not improved after the trial de novo.

(6) Within seven days after the filing of a decision and award under subsection (1) of this section, a party may file with the court and serve on the other parties to the arbitration written exceptions directed solely to the award or denial of attorney fees or costs. Exceptions under this subsection may be directed to the legal grounds for an award or denial of attorney fees or costs, or to the amount of the award. Any party opposing the exceptions must file a written response with the court and serve a copy of the response on the party filing the exceptions. Filing and service of the response must be made within seven days after the service of the exceptions on the responding party. A judge of the court shall decide the issue and enter a decision on the award of attorney fees and costs. If the judge fails to enter a decision on the award within 20 days after the filing of the exceptions, the award of attorney fees and costs shall be considered affirmed. The filing of exceptions under this subsection does not constitute an appeal under subsection (2) of this section and does not affect the finality of the award in any way other than as specifically provided in this subsection.

(7) For the purpose of determining whether the position of a party has improved after a trial de novo under the provisions of this section, the court shall not consider any money judgment or other relief granted on claims asserted by amendments to the pleadings made after the filing of the decision and award of the arbitrator. [Formerly 33.400; 1993 c.482 §3; 1995 c.455 §3; 1995 c.618 §14a; 1995 c.658 §34; 1997 c.756 §§1,2]

OREGON INTERNATIONAL COMMERCIAL ARBITRATION AND CONCILIATION ACT

36.450 Definitions for ORS 36.450 to 36.558. For the purposes of ORS 36.450 to 36.558:

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

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

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

(4) “Arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which may arise between them in respect to a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(5) “Commercial” means matters arising from all relationships of a commercial nature including, but not limited to, any of the following transactions:

(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 forms 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.
(6) “Conciliation” means any conciliation whether or not administered by a permanent conciliation institution.
(7) “Chief Justice” means the Chief Justice of the Supreme Court of Oregon or designee.
(8) “Circuit court” means the circuit court in the county in this state selected as pursuant to ORS 36.464.
(9) “Court” means a body or an organ of the judicial system of a state or country.
(10) “Party” means a party to an arbitration or conciliation agreement.
(11) “Supreme Court” means the Supreme Court of Oregon. [1991 c.405 §4]

36.452 Policy. (1) It is the policy of the Legislative Assembly to encourage the use of arbitration and conciliation to resolve disputes arising out of international relationships and to assure access to the courts of this state for legal proceedings ancillary to or otherwise in aid of such arbitration and conciliation and to encourage the participation and use of Oregon facilities and resources to carry out the purposes of ORS 36.450 to 36.558.

(2) Any person may enter into a written agreement to arbitrate or conciliate any existing dispute or any dispute arising thereafter between that person and another. If the dispute is within the scope of ORS 36.450 to 36.558, the agreement shall be enforced by the courts of this state in accordance with ORS 36.450 to 36.558 without regard to the justiciable character of the dispute. In addition, if the agreement is governed by the law of this state, it shall be valid and enforceable in accordance with ordinary principles of contract law. [1991 c.405 §2; 1993 c.18 §12]

36.454 Application of ORS 36.450 to 36.558; when arbitration or conciliation agreement is international; validity of written agreements. (1) ORS 36.450 to 36.558 applies to international commercial arbitration and conciliation, subject to any agreement in force between the United States of America and any other country or countries.

(2) The provisions of ORS 36.450 to 36.558, except ORS 36.468, 36.470, 36.522 and 36.524, apply only if the place of arbitration or conciliation is within the territory of the State of Oregon.

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

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

(b) One of the following places is situated outside the country in which the parties have their places of business:

(A) The place of arbitration or conciliation if 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 most closely connected.

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

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

(4) For the purposes of subsection (3) of this section:

(a) 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; or

(b) If a party does not have a place of business, reference is to be made to the habitual residence of the party.

(5) If a written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a controversy thereafter arising between the parties qualifies for arbitration pursuant to this section, that written agreement or provision shall be valid, enforceable and irrevocable, save on such grounds as exist at law or in equity for the revocation of any contract.

(6) Except as provided in this subsection, ORS 36.450 to 36.558 shall not affect any other law of the State of

Oregon by virtue of which certain disputes may not be submitted to arbitration or conciliation or may be submitted to arbitration or conciliation only according to provisions other than those of ORS 36.450 to 36.558. ORS 36.450 to 36.558 supersedes ORS 36.100 to 36.425 with respect to international commercial arbitration and conciliation. [1991 c.405 §3]

36.456 Construction of ORS 36.450 to 36.558. (1) Except as specified in ORS 36.508, where a provision of ORS 36.450 to 36.558 leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(2) Where a provision of ORS 36.450 to 36.558 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, such agreement includes any arbitration or conciliation rules referred to in that agreement.

(3) Except as provided in ORS 36.502 (1) and 36.516 (2)(a), where a provision of ORS 36.450 to 36.558 refers to a claim, it also applies to a counterclaim, and where it refers to a defense, it also applies to a defense of a counterclaim. [1991 c.405 §5]

36.458 When written communication considered to have been received. (1) Unless otherwise agreed by the parties:

(a) Any written communication is considered to have been received if it is delivered to the addressee personally or if it is delivered at the place of business, habitual residence or mailing address of the addressee. If none of these can be found after making a reasonable inquiry, a written communication is considered to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it; and

(b) The communication is considered to have been received on the day it is so delivered.

(2) The provisions of this section do not apply to communications in court proceedings. [1991 c.405 §6]

36.460 Waiver of objection to arbitration. (1) A party who knows that any provision of ORS 36.450 to 36.558 or of any requirement under the arbitration agreement that has not been complied with and yet proceeds with the arbitration without stating an objection to such 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 the right to object.

(2) For purposes of subsection (1) of this section, "any provision of ORS 36.450 to 36.558" means any provision of ORS 36.450 to 36.558 in respect of which the parties may otherwise agree. [1991 c.405 §7]

36.462 Prohibition on intervention by court. In matters governed by ORS 36.450 to 36.558, no court shall intervene except where so provided in ORS 36.450 to 36.558 or in applicable federal law. [1991 c.405 §8]

36.464 Venue. (1) The functions referred to in ORS 36.468 and 36.470 shall be performed by the circuit court in:

(a) The county where the arbitration agreement is to be performed or was made.

(b) If the arbitration agreement does not specify a county where the agreement is to be performed and the agreement was not made in any county in the State of Oregon, the county where any party to the court proceeding resides or has a place of business.

(c) In any case not covered by paragraph (a) or (b) of this subsection, in any county in the State of Oregon.

(2) All other functions assigned by ORS 36.450 to 36.558 to the circuit court shall be performed by the circuit court of the county in which the place of arbitration is located. [1991 c.405 §9]

36.466 Arbitration agreements to be in writing. The 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 telecommunication which provides a record of the agreement, or in an exchange of statements of claim and defense 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 a part of the contract. [1991 c.405 §10]

36.468 Application to stay judicial proceedings and compel arbitration. (1) 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, the court shall, if a party so requests not later than when submitting the party's first

statement on the substance of the dispute, stay the proceedings and refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Arbitral proceedings may begin or continue, and an award may be made, while a judicial proceeding described in subsection (1) of this section is pending before the court.

(3) A court may not, without a request from a party made pursuant to subsection (1) of this section, refer the parties to arbitration. [1991 c.405 §11; 1993 c.244 §1]

36.470 Interim judicial relief; factors considered by court; determination of arbitral tribunal's jurisdiction. (1) It is not incompatible with an arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure of protection or for the court to grant such a measure.

(2) Any party to an arbitration governed by ORS 36.450 to 36.558 may request from the circuit court the enforcement of an order of an arbitral tribunal granting an interim measure of protection pursuant to ORS 36.486. Enforcement shall be granted pursuant to the law applicable to the granting of the type of interim relief requested.

(3) Measures which the circuit court may grant in connection with a pending arbitration include, but are not limited to:

(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 in order to protect trade secrets or to conserve goods which are the subject matter of the arbitral dispute.

(4) In considering a request for interim relief, the court, subject to subsection (5) of this section, shall give preclusive effect to any and all findings of fact of the arbitral tribunal, including the probable validity of the claim which is the subject of the award for interim relief that the arbitral tribunal has previously granted in the proceeding in question, provided that such interim award is consistent with public policy.

(5) Where the arbitral tribunal has not ruled on an objection to its jurisdiction, the court shall not grant preclusive effect to the tribunal's findings until the court has made an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did not have jurisdiction, the application for interim measures of relief shall be denied. Such a ruling by the court that the arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent judicial proceedings. [1991 c.405 §12; 1993 c.244 §2]

36.472 Number of arbitrators. The parties may agree on the number of arbitrators. If the parties do not agree, the number of arbitrators shall be one. [1991 c.405 §13]

36.474 Procedure for appointment of arbitrators; appointment by circuit court. (1) No person shall be precluded by reason of nationality from acting as an arbitrator unless otherwise agreed by the parties.

(2) The parties may agree on a procedure for appointing the arbitrator or arbitrators, subject to the provisions of subsections (4), (5) and (6) of this section.

(3) If the parties do not agree on a procedure for appointing the arbitrator or arbitrators:

(a) In an arbitration with two parties and involving three or more arbitrators, each party shall appoint one arbitrator and the appointed arbitrators shall appoint the remaining arbitrators. If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party or parties, or if the two appointed arbitrators fail to agree on the remaining arbitrators within 30 days of their appointment, then, upon the request of any party, the circuit court shall make the appointment.

(b) In an arbitration with more than two parties or in an arbitration with two parties involving fewer than three arbitrators, then, upon the request of any party, the arbitrator or arbitrators shall be appointed by the circuit court.

(4) Unless the parties' agreement on the appointment procedure provides other means for securing the appointment, any party may request the circuit court to make the appointment if there is an appointment procedure agreed upon by the parties and if:

(a) A party fails to act as required under such procedure;

(b) The parties, or the appointed arbitrators, are unable to reach an agreement as expected of them under such procedure; or

(c) A third party, including an institution, fails to perform any function entrusted to it under such procedure.

(5) A decision by the circuit court on a matter entrusted to it by subsection (3) or (4) of this section shall be final and not subject to appeal.

(6) The circuit court, in appointing an arbitrator, shall have due regard to all of the following:

(a) Any qualifications required of the arbitrator by the agreement of the parties;

(b) Other considerations as are likely to secure the appointment of an independent and impartial arbitrator; and

(c) The advisability of appointing an arbitrator of a nationality other than those of the parties. [1991 c.405 §14; 1993 c.244 §3]

36.476 Disclosure by proposed arbitrators and conciliators; waiver of disclosure; grounds for challenge. (1) Except as otherwise provided in ORS 36.450 to 36.558, all persons whose names have been submitted for consideration for appointment or designation as arbitrators or conciliators, or who have been appointed or designated as such, shall, within 15 days, make a disclosure to the parties of any information which might cause their impartiality to be questioned including, but not limited to, any of the following instances:

(a) The person has a personal bias or prejudice concerning a party or personal knowledge of the disputed evidentiary facts concerning the proceeding.

(b) The person served as a lawyer in the matter in controversy, or the person is or has been 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 proceeding.

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

(e) The person, the person's spouse or minor child, anyone residing in the person's household, any individual within the third degree of relationship to any of them, or the spouse of any of them, meets any of the following conditions:

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

(B) The person is acting or has acted as a lawyer in the proceeding.

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

(D) The person is likely to be a material witness in the proceeding.

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

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

(B) The person is acting or has acted as a lawyer or representative in the proceeding.

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

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

(E) The person is likely to be a material witness in the proceeding.

(2) The obligation to disclose information set forth in subsection (1) of this section is mandatory and cannot be waived by the parties with respect to persons serving either as the sole arbitrator or sole conciliator or as one of two arbitrators or conciliators or as the chief or prevailing arbitrator or conciliator. The parties may otherwise agree to waive such disclosure.

(3) From the time of appointment and throughout the arbitral proceedings, an arbitrator shall, without delay, disclose to the parties any circumstances referred to in subsection (1) of this section which were not previously disclosed.

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

(5) A party may challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made. [1991 c.405 §15]

36.478 Procedure for challenging arbitrator. (1) Subject to subsection (4)(a) of this section, the parties may agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in subsection (1) of this section, a party which intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in ORS 36.476 (4) and (5), whichever shall be later, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under subsection (2) of this section withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide the challenge.

(4)(a) If a challenge under any procedure agreed upon by the parties or under the procedure under subsections (2) and (3) of this section is not successful, the challenging party may request the circuit court, within 30 days after having received notice of the decision rejecting the challenge, to decide on the challenge.

(b) When the request is made, the circuit court may refuse to decide on the challenge if it is satisfied that, under the procedure agreed upon by the parties, the party making the request had an opportunity to have the challenge decided upon by other than the arbitral tribunal.

(c) Notwithstanding paragraph (b) of this subsection, whether the challenge is under any procedure agreed upon by the parties or under the procedure under subsections (2) and (3) of this section, if a challenge is based upon the grounds set forth in ORS 36.476 (1), the circuit court shall hear the challenge and, if it determines that the facts support a finding that such ground or grounds fairly exist, then the challenge shall be sustained.

(5) The decision of the circuit court under subsection (4) of this section is final and not subject to appeal.

(6) While a request under subsection (4) of this section is pending, the arbitral tribunal, including the challenged arbitrator, may continue with the arbitral proceedings and make an arbitral award. [1991 c.405 §16; 1993 c.244 §4]

36.480 Withdrawal of arbitrator; termination of mandate. (1) If an arbitrator withdraws from the case or if the parties agree on termination because the arbitrator becomes unable, de facto or de jure, to perform the functions of the arbitrator or for other reasons fails to act without undue delay, then the arbitrator's mandate terminates.

(2) If a controversy remains concerning any of the grounds referred to in subsection (1) of this section, a party may request the circuit court to decide on the termination of the mandate.

(3) The decision of the circuit court under subsection (2) of this section is not subject to appeal.

(4) If, under this section or ORS 36.478 (3), an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to under this section or under ORS 36.476 (4) and (5). [1991 c.405 §17]

36.482 Substitute arbitrator; effect of substitution. (1) In addition to the circumstances referred to under ORS 36.478 and 36.480, the mandate of an arbitrator terminates upon withdrawal from office for any reason, or by or pursuant to the agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties:

(a) Where the number of arbitrators is less than three and an arbitrator is replaced, any hearings previously held shall be repeated.

(b) Where the presiding arbitrator is replaced, any hearings previously held shall be repeated.

(c) Where the number of arbitrators is three or more and an arbitrator other than the presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, 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. [1991 c.405 §18]

36.484 Arbitral tribunal may rule on own jurisdiction; time for raising issue of jurisdiction; review by circuit court. (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement and, for that purpose, an arbitration clause which 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 null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the submission of the statement of defense. However, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator. 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 case, the arbitral tribunal may admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in subsection (2) of this section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party shall request the circuit court, within 30 days after having received notice of that ruling, to decide the matter or shall be deemed to have waived objection to such finding.

(4) The decision of the circuit court under subsection (3) of this section is not subject to appeal.

(5) While a request under subsection (3) of this section is pending, the arbitral tribunal may continue with the arbitral proceedings and make an arbitral award. [1991 c.405 §19; 1993 c.244 §5]

36.486 Interim measures of protection ordered by arbitral tribunal; security. Unless otherwise agreed by the parties, at the request of a party, the arbitral tribunal may order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect to the subject matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure. [1991 c.405 §20]

36.488 Fairness in proceedings. The parties shall be treated with equality and each party shall be given a full opportunity to present the case of the party. [1991 c.405 §21]

36.490 Procedures subject to agreement by parties; procedure in absence of agreement. (1) Subject to the provisions of ORS 36.450 to 36.558, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) If the parties fail to agree, subject to the provisions of ORS 36.450 to 36.558, the arbitral tribunal may conduct the arbitration in such a manner as it considers appropriate.

(3) The power of the arbitral tribunal under subsection (2) of this section includes the power to determine the admissibility, relevance, materiality and weight of any evidence. [1991 c.405 §22]

36.492 Place of arbitration. (1) The parties are free to agree on the place of arbitration. If the parties do not agree, the place of arbitration shall be determined by the arbitral tribunal or, if any members of the arbitral tribunal are not yet appointed and are to be appointed by the circuit court as pursuant to ORS 36.474 (4), by the Chief Justice, taking into account the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of subsection (1) of this section, 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 the inspection of documents, goods or other property. [1991 c.405 §23]

36.494 Commencement of arbitral proceedings. Unless otherwise agreed by the parties, the arbitral proceedings in respect to a particular dispute commence on the date which a request for referral of that dispute to arbitration is received by the respondent. [1991 c.405 §24]

36.496 Language used in proceedings. (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. If the parties do not agree, the arbitral tribunal shall determine the language or languages to be used in the proceedings. Unless otherwise specified therein, this agreement or determination shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal. [1991 c.405 §25]

36.498 Contents of statements by claimant and respondent; amendment or supplement. (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting the claim of the claimant, the points at issue, and the relief or remedy sought, and the respondent shall state the defense of the respondent in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) 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 will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement the claim or defense of the party 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. [1991 c.405 §26]

36.500 Oral hearing; notice; discovery. (1) 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.

(2) 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.

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

(4) 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. Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(5) Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held in camera. [1991 c.405 §27; 1993 c.244 §6]

36.502 Effect of failure to make required statement or to appear at oral hearing. (1) Unless otherwise agreed by the parties, where, without showing sufficient cause, the claimant fails to communicate the statement of claim of the claimant in accordance with ORS 36.498 (1) and (2), the arbitral tribunal shall terminate the proceedings.

(2) Unless otherwise agreed by the parties, where, without showing sufficient cause, the respondent fails to communicate the statement of defense of the respondent in accordance with ORS 36.498 (1) and (2), the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the claimant's allegations.

(3) Unless otherwise agreed by the parties, where, without showing sufficient cause, 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. [1991 c.405 §28]

36.504 Appointment of experts. (1) 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 arbitral tribunal and 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 the expert's inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of the expert's written or oral report, participate in an oral hearing where the parties have the opportunity to question the expert and to present expert witnesses on the points at issue. [1991 c.405 §29; 1993 c.244 §7]

36.506 Circuit court assistance in taking evidence; circuit court authorized to enter certain orders upon application. (1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request from the circuit court assistance in taking evidence and the court may execute the request within its competence and according to its rules on taking evidence. In addition, a subpoena may be issued as provided in ORCP 55, in which case the witness compensation provisions of ORS chapter 44 shall apply.

(2) When the parties to two or more arbitration agreements have agreed in their respective arbitration agreements or otherwise, the circuit court may, on application by one party with the consent of all other parties to those arbitration agreements, do one or more of the following:

(a) Order the arbitration proceedings arising out of those arbitration agreements to be consolidated on terms the court considers just and necessary.

(b) Where all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal in accordance with ORS 36.474 (6).

(c) Where the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

(d) Order the arbitration proceedings arising out of those arbitration agreements to be held at the same time or one immediately after another.

(e) Order any of the arbitration proceedings arising out of those arbitration agreements to be stayed until the determination of any other of them.

(3) 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. [1991 c.405 §30; 1993 c.244 §8]

36.508 Choice of laws. (1) 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.

(2) Any designation by the parties of the law or legal system of a given country or political subdivision thereof shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its

conflict of laws rules.

(3) Failing any designation of the law under subsection (1) of this section by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

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

(5) 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. [1991 c.405 §31]

36.510 Decision of arbitral tribunal. Unless otherwise agreed by the parties, any decision of the arbitral tribunal in arbitral proceedings with more than one arbitrator shall be made by a majority of all its members. However, the parties or all members of the arbitral tribunal may authorize a presiding arbitrator to decide questions of procedure. [1991 c.405 §32; 1993 c.244 §9]

36.512 Settlement. (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement. If agreed by the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reason of the mediation, conciliation or other procedure.

(2) If, during the 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 arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with ORS 36.514 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute. [1991 c.405 §33; 1993 c.244 §10]

36.514 Arbitral award; contents; interim award; award for costs of arbitration. (1) The arbitral award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall suffice so long as the reason for any omitted signature is stated.

(2) 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 the award is an arbitral award on agreed terms under ORS 36.512.

(3) The arbitral award shall state its date and the place of arbitration as determined in accordance with ORS 36.492 (1) and the award shall be considered to have been made at that place.

(4) After the arbitral award is made, a copy signed by the arbitrators in accordance with subsection (1) of this section shall be delivered to each party.

(5) The arbitral tribunal may, at any time during the arbitral proceedings, 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 arbitral award.

(6) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(7)(a) Unless otherwise agreed by the parties, the costs of an arbitration shall be at the discretion of the arbitral tribunal.

(b) In making an order for costs, the arbitral tribunal may include as costs any of the following:

(A) The fees and expenses of the arbitrators and expert witnesses.

(B) Legal fees and expenses.

(C) Any administration fees of the institution supervising the arbitration, if any.

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

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

(A) The party entitled to costs.

(B) The party who shall pay the costs.

(C) The amount of costs or the method of determining that amount.

(D) The manner in which the costs shall be paid. [1991 c.405 §34]

36.516 Termination of arbitral proceedings. (1) The arbitral proceedings are terminated by the final arbitral

award or by an order of the arbitral tribunal in accordance with subsection (2) of this section. The award shall be final upon the expiration of the applicable periods in ORS 36.518.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) The claimant withdraws the claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on the part of the respondent in obtaining a final settlement of the dispute;

(b) The parties agree on the termination of the proceedings; or

(c) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to ORS 36.518 and 36.520 (4), the mandate of the arbitral tribunal terminates with the termination of the arbitral proceeding. [1991 c.405 §35; 1993 c.244 §11]

36.518 Correction of errors in award; interpretation of award; additional award. (1) Within 30 days of receipt of the arbitral award, unless another period of time has been agreed upon by the parties:

(a) A party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, clerical or typographical errors, or errors of similar nature; and

(b) A party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers any request made under subsection (1) of this section to be justified, it shall make the correction or give the interpretation within 30 days of the receipt of the request. The interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) of this section on its own initiative within 30 days of the date of the award.

(4) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.

(5) If necessary, the arbitral tribunal may extend the period of time within which it shall make a correction, interpretation or an additional award under subsection (1) or (4) of this section.

(6) The provisions of ORS 36.514 shall apply to a correction or interpretation of the award or to an additional award. [1991 c.405 §36; 1993 c.244 §12]

36.520 Setting aside award; grounds; time for application; circuit court fees. (1) Recourse to a court against an arbitral award may only be by an application for setting aside in accordance with subsections (2) and (3) of this section.

(2) An arbitral award may be set aside by the circuit court only if:

(a) The party making application furnishes proof that:

(A) A party to the arbitration agreement referred to in ORS 36.466 was under some incapacity or that the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of the State of Oregon or the United States;

(B) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party’s case;

(C) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters not submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(D) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ORS 36.450 to 36.558 from which the parties cannot derogate, or, failing such agreement, was not in accordance with ORS 36.450 to 36.558; or

(b) The circuit court finds that:

(A) The subject matter of the dispute is not capable of settlement by arbitration under the laws of the State of Oregon or of the United States; or

(B) The award is in conflict with the public policy of the State of Oregon or of the United States.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under ORS 36.518, from the date

on which that request had been disposed of by the arbitral tribunal.

(4) The circuit court, when asked to set aside an arbitral award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

(5) The clerk of the circuit court shall collect from the party making application for setting aside under subsection (1) of this section a filing fee of $35 and from a party filing an appearance in opposition to the application a filing fee of $21. However, if the application relates to an arbitral award made following an application or request to a circuit court under any section of ORS 36.450 to 36.558 in respect to which the parties have paid filing fees under ORS 21.110, filing fees shall not be collected under this subsection. An application for setting aside or an appearance in opposition thereto shall not be deemed filed unless the fee required by this subsection is paid by the filing party. [1991 c.405 §37; 1993 c.244 §13; 1997 c.801 §55]

36.522 Enforcement of award; procedure; fee; entry of judgment. (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the circuit court, shall be enforced subject to the provisions of this section and ORS 36.524.

(2) The party relying on an award or applying for its enforcement shall supply the authenticated original or a certified copy of the award and the original or certified copy of the arbitration agreement referred to in ORS 36.466. If the award or agreement is not made in the English language, then the party relying on the award or applying for its enforcement shall supply a duly certified translation thereof into the English language.

(3) The party relying on an arbitral award or applying for its enforcement shall deliver to the clerk of the circuit court the documents specified in subsection (2) of this section along with proof of the delivery of a copy of the arbitral award as required by ORS 36.514 (4). The relying party shall pay to the clerk a filing fee of $25, after which the clerk shall enter the arbitral award of record in the office of the clerk. If no application to set aside is filed against the arbitral award as provided in ORS 36.520 within the time specified in ORS 36.520 (3) or, if such an application is filed, the relying party after the disposition of the application indicates the intention to still rely on the award or to apply for its enforcement, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings may be had upon the award with like effect as upon a verdict in a civil action. [1991 c.405 §38]

36.524 Grounds for refusal to enforce award; fee. (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) At the request of the party against whom it is invoked, if that party pays the clerk of the circuit court a filing fee of $25 and furnishes to the court where recognition or enforcement is sought proof that:

(A) A party to the arbitration agreement referred to in ORS 36.466 was under some incapacity or that the agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made;

(B) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case;

(C) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or the award contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;

(D) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(E) The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) If the court finds that:

(A) The subject matter of the dispute is not capable of settlement by arbitration under the laws of the State of Oregon or of the United States; or

(B) The recognition or enforcement of the arbitral award would be contrary to the public policy of the State of Oregon or of the United States.

(2) If an application for setting aside or suspension of an award has been made to the court referred to in

subsection (1)(a)(E) of this section, and if it considers it proper, the court where recognition or enforcement is sought may adjourn its decision on application of the party claiming recognition or enforcement of the award. The court may also order the other party to provide appropriate security. [1991 c.405 §39]

36.526 Provisions to be interpreted in good faith. In construing ORS 36.454 to 36.524, a court or arbitral tribunal shall interpret those sections in good faith, in accordance with the ordinary meaning to be given to their terms in their context, and in light of their objects and purposes. Recourse may be had for these purposes, in addition to aids in interpretation ordinarily available under the laws of this state, to the documents of the United Nations Commission on International Trade Law and its working group respecting the preparation of the UNCITRAL Model Law on International Commercial Arbitration and shall give those documents the weight that is appropriate in the circumstances. [1991 c.405 §40]

36.528 Policy to encourage conciliation. It is the policy of the State of Oregon to encourage parties to an international commercial agreement or transaction which qualifies for arbitration or conciliation pursuant to ORS 36.454 (3) to resolve disputes arising from such agreements or transactions through conciliation. The parties may select or permit an arbitral tribunal or other third party to select one or more persons to service 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. [1991 c.405 §41]

36.530 Guiding principles of conciliators. 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. [1991 c.405 §42]

36.532 Manner of conducting conciliation proceedings. The conciliator or conciliators may conduct the conciliation proceedings in such a manner as 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 ORS 36.450 to 36.558, no provision of the Oregon Rules of Civil Procedure nor any other provision of the Oregon Revised Statutes governing procedural matters shall apply to any conciliation proceeding brought under ORS 36.450 to 36.558. [1991 c.405 §43]

36.534 Draft conciliation settlement. (1) At any time during the proceedings, the conciliator or conciliators may prepare a draft conciliation settlement which may include the assessment and apportionment of costs between the parties and send copies to the parties, specifying the time within which the parties must signify their approval.

(2) No party may be required to accept any settlement proposed by the conciliator or conciliators. [1991 c.405 §44]

36.536 Prohibition on use of statements, admissions or documents arising out of conciliation proceedings. When the parties agree to participate in conciliation under ORS 36.450 to 36.558:

(1) 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 civil action in which, pursuant to law, testimony may be compelled to be given. However, this subsection does not limit the admissibility of evidence if all parties participating in conciliation consent, in writing, to its disclosure, provided that such consent is given after the statement or admission to be disclosed is made in the conciliation proceeding.

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

(3) Unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the conciliation, or any copy thereof, is admissible in evidence and disclosure of any such document shall not be compelled in any arbitration or civil action in which, pursuant to law, testimony may be compelled to be given. [1991 c.405 §45; 1993 c.244 §14]

36.538 Conciliation to act as stay of other proceedings; tolling of limitation periods during conciliation. (1) 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.

(2) All applicable limitation periods, including periods of prescription, shall be tolled or extended upon the commencement of conciliation proceedings to conciliate a dispute under ORS 36.450 to 36.558 and all limitation periods shall remain tolled and periods of prescription extended as to all parties to the conciliation proceedings until the 10th day following the termination of conciliation proceedings.

(3) For purposes of this section, conciliation proceedings are deemed to have commenced as soon as:

(a) A party has requested conciliation of a particular dispute or disputes; and

(b) The other party or parties agree to participate in the conciliation proceeding. [1991 c.405 §46]

36.540 Termination of conciliation proceedings. (1) The conciliation proceedings may be terminated as to all parties by any of the following:

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

(2) The conciliation proceedings may be terminated as to particular parties by either of the following:

(a) A written declaration of a party to the other party or parties and the conciliator or conciliators, if appointed, to the effect that the conciliation proceedings shall be terminated as to that particular party, on the date of the declaration.

(b) The signing of a settlement agreement by some of the parties, on the date of the agreement. [1991 c.405 §47; 1993 c.244 §15]

36.542 Conciliator not to be arbitrator or take part in arbitral or judicial proceedings. 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 such participation or the rules adopted for conciliation or arbitration otherwise provide. [1991 c.405 §48]

36.544 Submission to conciliation not waiver. By submitting to conciliation, no party shall be deemed to have waived any rights or remedies which that party would have had if conciliation had not been initiated, other than those set forth in any settlement agreement which results from the conciliation. [1991 c.405 §49]

36.546 Conciliation agreement to be 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. [1991 c.405 §50]

36.548 Costs of conciliation proceedings. Upon termination of the conciliation proceedings, the conciliator or conciliators shall fix the costs of the conciliation and give written notice thereof to the parties. As used in this section and in ORS 36.550, “costs” includes only the following:

(1) A reasonable fee to be paid to the conciliator or conciliators.

(2) The travel and other reasonable expenses of the conciliator or conciliators.

(3) The travel and other reasonable expenses of witnesses requested by the conciliator or conciliators with the consent of the parties.

(4) The cost of any expert advice requested by the conciliator or conciliators with the consent of the parties.

(5) The cost of any court. [1991 c.405 §51]

36.550 Payment of costs. The costs fixed by the conciliator or conciliators as pursuant to ORS 36.548 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. [1991 c.405 §52]

36.552 Effect of conciliation on jurisdiction of courts. Neither the request for conciliation, the consent to participate in the conciliation proceeding, the participation in such proceedings, nor the entering into a conciliation agreement or settlement, shall be deemed as consent to the jurisdiction of any court in this state in the event

conciliation fails. [1991 c.405 §53]

36.554 Immunities. (1) Neither the arbitrator or arbitrators, the conciliator or conciliators, the parties, nor their representatives, shall be subject to service of process on any civil matter while they are present in this state for the purpose of arranging for or participating in any arbitration or conciliation proceedings subject to ORS 36.450 to 36.558.

(2) No person who serves as an arbitrator or as a conciliator shall be held liable in an action for damages resulting from any act or omission in the performance of their role as an arbitrator or as a conciliator in any proceeding subject to ORS 36.450 to 36.558. [1991 c.405 §54; 1993 c.244 §16]

36.556 Severability. If any provision of ORS 36.450 to 36.558 or its application to any person or circumstance is held to be invalid, the invalidity does not affect the other provisions or applications of ORS 36.450 to 36.558 which can be given effect without the invalid provision or application and to this end the provisions of ORS 36.450 to 36.558 are severable. [1991 c.405 §55]

36.558 Short title. ORS 36.450 to 36.558 shall be known and may be cited as the “Oregon International Commercial Arbitration and Conciliation Act.” [1991 c.405 §1]

CHAPTERS 37 TO 39

[Reserved for expansion]