

ARBITRATION - USE OF SUBPOENA

AUTHORIZED

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill authorizes attorneys to issue subpoenas in arbitration cases.

Highlighted Provisions:

This bill:

▶ allows attorneys, upon stipulation of the parties, to issue subpoenas for witnesses and evidence in arbitration cases.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-31a-118, as enacted by Chapter 326, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-31a-118** is amended to read:

78-31a-118. Witnesses -- Subpoenas -- Depositions -- Discovery.

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



28 court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for
29 enforcement of subpoenas in a civil action.

30 (2) In order to make the proceedings fair, expeditious, and cost-effective, upon request
31 of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of
32 any witness to be taken for use as evidence at the hearing, including a witness who cannot be
33 subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions
34 under which the deposition is taken.

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

39 (4) If an arbitrator permits discovery under Subsection (3), the arbitrator may order a
40 party to the arbitration proceeding to comply with the arbitrator's discovery-related orders,
41 issue subpoenas for the attendance of a witness and for the production of records and other
42 evidence at a discovery proceeding, and take action against a noncomplying party to the extent
43 a court could if the controversy were the subject of a civil action in this state.

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

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

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

59 state.

60 (8) Upon stipulation of the parties, or where a statute or the written agreement of the
61 parties provides that discovery shall be conducted in accordance with the Rules of Civil
62 Procedure, an attorney may issue a subpoena for the attendance of a witness and for the
63 production of records and other evidence at any hearing. A subpoena must be served in the
64 manner for service of subpoenas in a civil action and, upon motion to the court by a party to the
65 arbitration proceeding, enforced in the manner for enforcement of subpoenas in a civil action.

Legislative Review Note
as of 1-12-05 3:43 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0116

Arbitration - Use of Subpoena Authorized

24-Jan-05

8:45 AM

State Impact

No fiscal impact

Individual and Business Impact

Provisions of this bill could reduce litigation expenses. The amount cannot be quantified.

Office of the Legislative Fiscal Analyst