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FOR DISCUSSION ONLY

FAMILY LAW ARBITRATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAW

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By

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November 3, 2014

FAMILY LAW ARBITRATION ACT

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FAMILY LAW ARBITRATION ACT

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FAMILY LAW ARBITRATION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Family Law Arbitration Act.

SECTION 2. DEFINITIONS. In this [act]:

- (1) “Arbitration,” used as a noun, means arbitration under this [act];
- (2) “Arbitration agreement” means an agreement to arbitrate a family law dispute.
- (3) “Arbitrator” means one or more individuals selected to make an award, in a family law dispute that is subject to an arbitration agreement under this [act].
- (4) “Award” means a written decision or determination by an arbitrator that is effective when confirmed by a court.
- (5) “Court” means the [family] [domestic relations] [court] [tribunal] authorized by law of this state other than this [act] to hear disputes arising under [insert state statutory chapter, title, or code governing marital separation and dissolution, dissolution of [domestic partnership][civil union] [cohabiting relationship], custodial responsibility, and child support.]
- (6) “Custodial responsibility” includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, and visitation.
- (7) “Family law dispute” means a contested issue, whether arising before or after the entry of a decree, regarding a matter within the authority of the court.
- (8) “Hearing” means a hearing conducted by an arbitrator under this [act].
- (9) “Order of protection” means an order, issued by a court in this state or any other jurisdiction under the domestic-violence, family-violence, or anti-stalking laws of the state that issued the order, to prevent an individual from engaging in a violent or threatening act against,

harassing, contacting, communicating with, or being in physical proximity to, another individual who is a party to an arbitration or a child under the custodial responsibility of a party.

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

(11) “Sign” means, with present intent to authenticate or adopt a record to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

SECTION 3. SCOPE

(a) This [act] governs binding arbitration of any family law dispute between the parties.

(b) Unless pursuant to a [parenting plan][parental separation agreement], [marital settlement] agreement, or an agreement to arbitrate future disputes under Section 21, an arbitration agreement may cover a dispute relating to custodial responsibility or child support only if the dispute exists at the time of the agreement.

(c) This [act] does not provide for arbitration of disputes to [grant a marital separation or divorce], terminate parental rights, grant an adoption or guardianship of a minor or incapacitated individual; determine contested paternity or maternity, or declare [dependency] [child in need of care] or juvenile-offender status.

SECTION 4. PROTECTION OF PARTY OR CHILD.

(a) If, before or during arbitration, a party becomes subject to an order of protection or

the court or arbitrator finds a reasonable basis to believe that a party's safety or ability to participate effectively in the arbitration is at risk, the arbitration may not proceed unless each party affirms the agreement to arbitrate and the court [or arbitrator] finds that:

- (1) the agreement is informed and voluntary, and
- (2) reasonable procedures are in place to protect the party at risk from harm, harassment, or intimidation.

(b) If, in an arbitration, the arbitrator finds a reasonable basis to believe that a child under the custodial responsibility of a party is abused or neglected, the arbitrator shall suspend the arbitration and report the abuse or neglect as required by law of this state other than this [act].

SECTION 5. ARBITRATION AGREEMENT.

(a) An arbitration agreement must:

- (1) be in a record signed by all parties;
- (2) identify the arbitrator or a method of selecting an arbitrator;
- (3) identify the family law disputes that the parties intend to arbitrate; and
- (4) include the following disclosures or the substantial equivalent in plain

language:

(A) Once a party voluntarily signs an agreement to arbitrate, the agreement is binding.

(B) Arbitration does not offer the same protections for victims of domestic violence as does the judicial system.

(C) The arbitrator will decide each issue assigned to arbitration.

(D) A party may choose to be represented by a lawyer before agreeing to arbitrate and throughout the arbitration.

(E) Parties are responsible for the costs of arbitration, including the fees for the arbitrator.

(F) An arbitration award under this [act] may be appealed to a court only on limited grounds and, if confirmed by the court, is enforceable as a judgment.

(b) If in dispute, the court shall decide whether an enforceable arbitration agreement exists and, unless otherwise agreed by the parties, whether an issue is subject to the arbitration agreement.

SECTION 6. QUALIFICATIONS OF ARBITRATOR.

(a) An arbitrator must:

(1) be an attorney admitted to practice [or an attorney or judge on retired status]

in a state:

(A) that has jurisdiction to confirm an award under Section 16;

(B) in which the arbitration is pending; or

(C) the law of which is being applied; and

(2) have training about domestic violence and child abuse [according to standards established under law of this state other than this [act] for judicial officers assigned to hear family law disputes].

(b) Parties to an arbitration agreement, in a signed record, may waive the requirements of subsection (a) for an arbitrator selected by the parties.

SECTION 7. SELECTION OR APPOINTMENT OF ARBITRATOR.

(a) Parties to an arbitration agreement shall follow the method for selecting an arbitrator that is provided in the agreement.

(b) If the agreed method for selecting an arbitrator fails or an arbitrator is unable to act,

on motion of a party, the court shall appoint an arbitrator.

SECTION 8. APPLICABLE LAW.

(a) Parties to an arbitration agreement may designate the law of a state to govern the family law dispute to be arbitrated if the state has a significant relationship to any party or the agreement and the designated law is not contrary to the public policy of this state.

(b) If no law is designated consistent with subsection (a), the law of this state, including its choice-of-law principles, governs the family law dispute that is the subject of the arbitration.

[(c) Unless displaced by a provision of this [act], principles of law and equity supplement this [act].]

SECTION 9. TEMPORARY AWARD.

(a) On motion of a party to arbitration, the arbitrator may make a temporary award under [insert this state's statutes or rules governing temporary orders in a family law dispute] and any other award necessary to protect the effectiveness of the arbitration and promote the fair and expeditious resolution of the issues, to the same extent as in a civil action.

(b) Before an arbitrator is appointed and authorized to act, the court, on motion of a party to the arbitration may enter a temporary order under [insert this state's statutes or rules governing issuance of a temporary order in a family law dispute] and any other necessary order.

(c) A party may move for confirmation of a temporary award at any time before the court confirms the final award.

SECTION 10. INITIATION OF ARBITRATION.

(a) A party initiates an arbitration by giving notice in a record to the other party in the manner provided in the agreement. If the agreement does not provide the manner of notice, notice must be by certified or registered mail, return receipt requested, or in the manner

authorized for the commencement of a civil action. The notice must describe the nature of the family law dispute and the remedy sought.

(b) Unless a party objects to the sufficiency of notice before the beginning of arbitration, the party, by participating in arbitration, waives any objection to sufficiency of notice given under subsection (a).

SECTION 11. MOTION TO COMPEL OR STAY ARBITRATION.

(a) If a judicial proceeding that involves a family law dispute alleged to be subject to an arbitration agreement is pending in a court of this state, a motion to compel or to stay arbitration may be made only in the court in which the proceeding is pending. If no judicial proceeding is pending, a motion to compel or to stay arbitration must be made in the court with jurisdiction over the subject matter and the parties under law of this state other than this [act].

(b) On motion of a party to an arbitration agreement to compel arbitration, the court shall order the parties to arbitrate if the court finds that the parties entered into an arbitration agreement that complies with this [act].

(c) On motion of a party to stay arbitration on the ground that the party did not enter into an arbitration agreement, the court shall stay arbitration if it if it finds that the parties did not entered into an arbitration agreement that complies with this [act].

(d) If a party to an arbitration agreement moves to compel arbitration, the court may stay any judicial proceeding that involves a claim alleged to be subject to arbitration until the court enters a final decision under this section.

(e) If the court orders arbitration, the court shall stay any judicial proceeding that involves a claim subject to arbitration. If the claim subject to arbitration is severable, the court may limit the stay to the claim.

SECTION 12. DISCLOSURE BY ARBITRATOR AND DISQUALIFICATION.

(a) Before accepting selection or appointment, an arbitrator shall disclose to the parties to the arbitration agreement any circumstance that a reasonable individual would believe is likely to affect the arbitrator's impartiality, including bias, a financial or personal interest in the outcome of the arbitration, or a past or present personal, business, or professional relationship with a party or attorney.

(b) An arbitrator, the parties to the arbitration agreement, and the parties' attorneys have a continuing obligation to disclose to parties any fact that a reasonable individual would believe is likely to affect the arbitrator's impartiality.

(c) Not later than [14] days after disclosure under subsection (a) or (b), a party may object to the arbitrator's selection or continued service and may move the court to disqualify the arbitrator.

(d) The court shall hear a motion for disqualification under subsection (c) not later than [thirty (30)] days after the motion is made. If the court finds that the arbitrator is disqualified based on a circumstance that a reasonable individual would believe is likely to affect the arbitrator's impartiality, the court shall appoint another arbitrator agreed to by the parties or, if the parties have not agreed, on motion of either party, the court shall appoint an arbitrator.

(e) If, in an arbitration, the parties agree to discharge the arbitrator, the parties shall notify the arbitrator and select a new arbitrator pursuant to the arbitration agreement. If the discharged arbitrator was selected by the court, the parties may ask the court to appoint an arbitrator.

SECTION 13. POWERS OF ARBITRATOR.

(a) Unless otherwise provided in an arbitration agreement, the arbitrator may:

- (1) hold conferences with the parties to the arbitration;
 - (2) determine the date, time, place, and location of the hearings;
 - (3) appoint experts;
 - (4) administer an oath or affirmation and issue a subpoena for the attendance of a witness and for the production of documents and other evidence at any hearing as in a civil action;
 - (5) order discovery concerning any issue being arbitrated, to the same extent as in a civil action and determine the date, time, and place of discovery;
 - (6) determine the admissibility, relevance, materiality, and weight of evidence;
 - (7) permit a deposition of a witness to be taken for use as evidence at the hearing;
 - (8) prohibit a party from disclosing trade secrets and privileged, confidential, or other information protected from disclosure, to the same extent as in a civil action;
 - (9) appoint an attorney, guardian ad litem, or other representative for a child, to the same extent as in a civil action;
 - (10) allocate arbitration fees, attorneys' fees, and other costs between the parties or to one party according to law other than this [act] governing allocation of expenses in family law disputes; and
 - (11) require each party to provide information, including:
 - (A) a copy of any relevant court order;
 - (B) information required to be disclosed in a family law dispute under law of this state other than this [act]; and
 - (C) a proposed award that addresses each issue in arbitration.
- (b) On motion to the court by a party, a subpoena or other order issued by the arbitrator.

SECTION 14. ARBITRATION PROCESS.

(a) Subject to an arbitration agreement, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. Unless the parties to an arbitration otherwise agree, the arbitrator shall hear each issue submitted and make an award.

(b) Unless the parties to an arbitration otherwise agree, the parties and attorneys shall confer with the arbitrator as soon as practicable after the appointment of the arbitrator to determine the following:

- (1) the scope of the issues submitted;
- (2) the date, time, and place of the first hearing;
- (3) the witnesses, including experts, who may testify;
- (4) a schedule for the production or exchange of an expert report or summary of
- (5) expert testimony, exhibits, documents, or other material information; and

the rules of procedure and evidence governing the arbitration process.

(c) A party to an arbitration may be represented by a lawyer.

(d) Unless otherwise required by law of this state other than this [act], parties to an arbitration may agree that the proceeding, in whole or in part, is confidential.

(e) A party to an arbitration may not communicate ex parte with the arbitrator except to the extent allowed in a civil action for communication with the judge.

SECTION 15. INTERLOCUTORY REVIEW DURING ARBITRATION

PROCESS. A party to an arbitration under this [act] may seek interlocutory judicial review and a stay of arbitration in the court with jurisdiction for any of the following reasons:

- (a) lack of jurisdiction over the subject matter or the parties;

(b) circumstances that would bar arbitration under Section 4 or otherwise require judicial intervention to protect the safety of a party or a child under the custodial responsibility of a party; or

(c) bias or misconduct of the arbitrator sufficient to require disqualification under Section 11.

SECTION 16. RECORD OF HEARING.

(a) A recording, transcript, or summary of evidence must be made of any part of a hearing concerning custodial responsibility or child support, in the manner required by law of this state other than this [act].

(b) Except as otherwise provided by an arbitration agreement or subsection (a), an arbitration hearing need not be recorded, transcribed, or summarized by the arbitrator.

SECTION 17. AWARD.

(a) Unless the parties to an arbitration otherwise agree, the arbitrator shall make an award in a signed record on each contested issue and give a copy of the award to each party in accordance with the law and rules of this state other than this [act] governing voluntary binding arbitration.

(b) An arbitration award under subsection (a) determining custodial responsibility or child support must include findings of fact and conclusions of law and must comply with applicable law other than this [act].

(c) An arbitrator retains jurisdiction to correct an error or omission in an arbitration award under subsection (a) until the court confirms the award. Not later than [20] days after the award is made, a party to the arbitration may request the arbitrator to correct an error or omission or to clarify the award. Another party to the arbitration may respond to the request not later than

[20] days after receipt of the motion.

SECTION 18. CONFIRMATION OF AWARD.

(a) After receiving notice of an arbitration award under this [act], any party may move for confirmation of the award in the court with jurisdiction over the subject matter and the parties under law other than this [act].

(b) Except as provided in subsection (c), unless a party moves to correct an award under Section 17 or to revise or vacate an award under Section 18, the court shall confirm the award.

(c) An award involving custodial responsibility or child support may be confirmed only if the court finds that the award on its face complies with applicable law other than this [act].

(d) An award is effective on confirmation.

SECTION 19. CORRECTION OF AWARD BY COURT.

(a) Not later than [30] days after receiving notice of an arbitration award, a party may move the court to correct the award.

(b) The court may correct the arbitration award if it finds:

(1) mathematical miscalculation or a mistake in the description of a person, thing, or property referred to in the award; or

(2) the award is imperfect in a matter of form not affecting the merits of the decision on the family law dispute submitted.

SECTION 20. REVISION OR VACATION OF AWARD.

(a) Not later than [30] days after receiving notice of an arbitration award or [30] days after receiving notice of a corrected award, a party may move the court to revise or vacate the award.

(b) The court may revise or vacate an arbitration award under this [act] only for the

following reasons, established by a preponderance of the evidence:

- (1) the award determines custodial responsibility or child support and
 - (A) does not include findings of fact and conclusions of law, or
 - (B) does not comply with law [of this state] other than this [act] applicable to custodial responsibility or child support;
- (2) the award was obtained by corruption, fraud, or other undue means;
- (3) there was partiality or misconduct by the arbitrator or corruption of the arbitrator to the substantial prejudice of a party's rights;
- (4) the arbitrator exceeded the arbitrator's powers under this [act] or the arbitration agreement;
- (5) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights; or
- (6) any other basis for revision or vacation of an arbitration award under law of this state other than this [act] governing voluntary binding arbitration.

SECTION 21. CONTEST OR MODIFICATION OF CONFIRMED AWARD.

(a) Parties to an arbitration may agree to arbitrate, before the original arbitrator or a new arbitrator, a dispute about the meaning or validity of an arbitration award confirmed under this [act] or a subsequent request for modification of a confirmed award under law of this state other than this [act].

(b) Except as provided in subsection (a), a dispute about the meaning or validity of an arbitration award confirmed under this [act] or a subsequent modification of the confirmed award is subject to the standards and procedures provided by law of this state other than this

[act].

SECTION 22. LIMITED RIGHT OF APPEAL.

(a) An appeal may be taken from a judgment or decree entered pursuant to this [act] or from a court order under this [act]:

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

(b) The grounds for appeal of award of custodial responsibility or child support shall be limited to the grounds provided in Section 20.

SECTION 23. ENFORCEMENT OF AWARD.

(a) The court shall enforce an arbitration award, including a temporary order, which has been confirmed under this [act] in the manner and to the same extent as an order or judgment entered by a court.

(b) The court shall enforce an arbitration award from another state which has been confirmed by a court of another state in an arbitration process consistent with this [act].

SECTION 24. IMMUNITY OF ARBITRATOR.

(a) An arbitrator is immune from civil liability to the same extent as a judge acting in a judicial capacity.

(b) Immunity afforded by this section supplements immunity under law of this state other than this [act].

(c) Failure of an arbitrator to make a disclosure required by Section 11 does not cause

loss of immunity under this section.

(d) An arbitrator is not competent to testify, and may not be required to produce records in a judicial, administrative, or similar proceeding, about any statement, conduct, decision, or ruling occurring during the arbitration to the same extent as a judge of a court acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine a claim by the arbitrator against a party to the arbitration;

(2) to a hearing on a motion to revise or vacate an award under Section 18 if there is prima facie evidence that a ground for revising or vacating the award exists;

(3) to the extent required by the law of this state other this [act] regarding testimony in proceedings related to child abuse and neglect.

(e) If an individual commences a civil action against an arbitrator arising from the services of the arbitrator or if a person seeks to compel an arbitrator to testify or produce records in violation of subsection (d), and the court decides that the arbitrator is immune from civil liability or that the arbitrator is not competent to testify, the court shall award to the arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 26. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize

electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 27. APPLICABILITY. This [act] applies to an arbitration pursuant to an arbitration agreement made on or after [the effective date of this [act]]. If the agreement was made before [the effective date of this [act]], the parties may agree in a record that this [act] applies to the arbitration.

SECTION EFFECTIVE DATE. The [act] takes effect ...