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FOR DISCUSSION ONLY

FAMILY LAW ARBITRATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAW

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ON UNIFORM STATE LAWS

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April 7, 2015

FAMILY LAW ARBITRATION ACT

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1 **FAMILY LAW ARBITRATION ACT**

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

3 Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Arbitration under this [act]” means the determination of a family law dispute by an
6 arbitrator.

7 (2) “Arbitration agreement” means a voluntary written agreement under this [act] signed
8 by the parties submitting a family law dispute to binding arbitration.

9 (3) “Arbitrator” means one or more neutral individuals selected to make an award in a
10 family law dispute that is subject to an arbitration agreement

11 (4) “Award” means a written decision or determination by an arbitrator.

12 (5) “Confirmation” means a court order affirming an arbitration award or incorporating it
13 in a judgment.

14 (6) “Court” means [the family court] [insert name of a tribunal authorized by law of this
15 state other than this [act] to hear a family law dispute].

16 (7) “Custodial responsibility” includes a power or duty relating to caretaking authority or
17 decision-making authority for a child. The term includes physical custody, legal custody,
18 parenting time, right to access, and visitation.

19 (8) “Family law dispute” means a contested issue arising under the family or domestic
20 relations law of this state regarding:

21 (A) characterization, valuation, or division of property or debt;

22 (B) [maintenance], [alimony], or [spousal support];

23 (C) custodial responsibility;

1 (D) child support;
2 (E) rights or obligations arising from a premarital, marital, [or] [separation] [or]
3 [property settlement][marital settlement] [or] [cohabitation] agreement; [or]

4 (F) attorney’s fees, costs, and expenses[;] [; or]

5 [(G) a marital tort [;] [; or]

6 [H] [rights or obligations arising from [cohabitation] [,] [, or domestic
7 partnership[;] [; or] [civil union.]]

8 (9) “Order of protection” means an order issued by a court in this state or any other
9 jurisdiction under the domestic-violence, family-violence, or anti-stalking laws of the state that
10 issued the order to prevent an individual from engaging in a violent or threatening act against,
11 harassing, contacting, communicating with, or being in physical proximity to, another individual
12 who is a party or a child under the custodial responsibility of a party.

13 (10) “Party” means an individual who signs an arbitration agreement and whose rights
14 will be determined by an award.

15 (11) “Person” means an individual, corporation, business trust, estate, trust, partnership,
16 limited liability company, association, joint venture, government; governmental subdivision,
17 agency, or instrumentality; public corporation; or any other legal or commercial entity.”

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

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

21 (A) to execute or adopt a tangible symbol; or

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

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

4 **SECTION 3. SCOPE.**

5 (a) This [act] governs the arbitration of a family law dispute pursuant to an arbitration
6 agreement between the parties. An arbitration agreement which does not comply with this [act]
7 is unenforceable.

8 (b) In an arbitration under this [act], the arbitrator may not:

- 9 (1) grant an order of protection;
- 10 (2) order a termination of parental rights;
- 11 (3) grant an adoption or guardianship of a minor or incapacitated individual;
- 12 (4) determine the status of [dependency] [child in need of protection];
- 13 (5) determine juvenile-offender status[.] [; or
- 14 [(6) insert other status determination to be excluded from arbitration].

15 **SECTION 4. APPLICABLE LAW.**

16 (a) Unless otherwise provided in this [act], arbitration under this [act] is governed by
17 [insert state statutory reference to Revised Uniform Arbitration Act or Uniform Arbitration Act].

18 (b) The law of this state other than this [act], including its choice-of-law principles,
19 governs the family law dispute subject to arbitration under this [act].

20 **SECTION 5. PROTECTION OF PARTY OR CHILD.**

21 (a) If a party, before or during arbitration under this [act], becomes subject to an order of
22 protection or the arbitrator finds a reasonable basis to believe that a party’s safety or ability to
23 participate effectively in the arbitration is at risk, the arbitration may not proceed unless each
24 party affirms the agreement to arbitrate in a record and the arbitrator or court finds that:

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

4 (b) If an arbitrator finds a reasonable basis to believe that a child under the custodial
5 responsibility of a party is abused or neglected under the law of this state, the arbitrator shall
6 suspend the arbitration and report the abuse or neglect. The arbitration may not proceed unless
7 each party affirms the agreement to arbitrate in a record and the arbitrator finds that:

- 8 (1) the affirmance is informed and voluntary; and
- 9 (2) reasonable procedures are in place to protect the child from risk of harm.

10 (c) An arbitrator may make a temporary award as necessary under subsection (a) or (b)
11 to protect a party or child from harm, harassment, or intimidation.

12 (d) A party may apply to the court for a stay of arbitration and review of any
13 determination or award made by an arbitrator under this section.

14 **SECTION 6. ARBITRATION AGREEMENT.**

15 (a) Except to the extent authorized in subsection (b), an agreement to arbitrate a family
16 law dispute that is entered into before the dispute arises is unenforceable as against public policy
17 unless each party reaffirms the agreement at the time of the dispute or after the dispute arises.

18 (b) Parties may agree to arbitrate a family law dispute that arises after the parties have
19 entered into a [parenting], [marital settlement], [domestic partnership settlement], [civil union
20 settlement], or [cohabitation settlement] agreement that provides for arbitration of future disputes
21 relating to the subject matter of the agreement.

22 (c) An arbitration agreement must:

- 23 (1) be in a record signed by the parties;

- 1 (2) identify the arbitrator or a method of selecting an arbitrator;
2 (3) identify the family law dispute(s) that the parties intend to arbitrate; and
3 (4) include in a record an acknowledgment by each party that the following
4 disclosures or the substantial equivalent have been made in plain language:

5 (A) Once the parties voluntarily sign a valid agreement to arbitrate, the
6 agreement is binding. An objection to the agreement to arbitrate must be raised before a party
7 participates in the arbitration hearing.

8 (B) Arbitration may not be appropriate for a dispute involving domestic
9 violence because arbitration does not offer the same protections as the judicial system.

10 (C) A party may hire an attorney before agreeing to arbitrate and may be
11 represented by an attorney throughout the arbitration.

12 (D) Parties are responsible for all the costs of arbitration, including the
13 fees of the arbitrator.

14 (E) An arbitration award is effective immediately and is enforceable as a
15 judgment when the court confirms the award.

16 (F) Only a court may grant a divorce.

17 (G) An arbitration award may be vacated only on limited grounds.

18 (d) If there is a dispute as to whether an enforceable agreement to arbitrate exists, the
19 court shall decide the issue.

20 **SECTION 7. QUALIFICATION AND SELECTION OF ARBITRATOR.**

21 (a) If the parties have agreed on an arbitrator or the method of selection of an arbitrator,
22 the agreement controls.

23 (b) If a selected arbitrator is unable to act or if the agreed-upon method for selecting an

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

2 (c) Unless waived by the parties in a record signed at the time of the arbitration, an
3 arbitrator appointed by a court in an arbitration under this [act]:

4 (1) must be either:

5 (A) an attorney in good standing currently admitted to practice [or an
6 attorney or judge on retired status] in a state:

7 (i) that has jurisdiction to confirm an award under Section 18; or

8 (ii) in which the arbitration is pending; or

9 (B) a licensed professional in a field relevant to the family law dispute
10 that is being arbitrated; and

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

14 **SECTION 8. DISCLOSURE BY ARBITRATOR; DISQUALIFICATION.**

15 (a) Before accepting selection or appointment as an arbitrator, the arbitrator shall
16 disclose to the parties any circumstance that a reasonable individual would believe is likely to
17 affect:

18 (1) the arbitrator's impartiality, including bias, a financial or personal interest in the
19 outcome of the arbitration, or a past or present personal, business, or professional relationship
20 with a party or attorney; or

21 (2) the arbitrator's ability to make a timely award.

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

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

3 (d) If the arbitrator refuses to recuse, a party may file a motion with the court for a stay
4 of arbitration and for disqualification of the arbitrator. The court shall hear a motion for
5 disqualification not later than [30] days after the motion is made. If the court, based on a
6 circumstance that a reasonable individual would believe is likely to affect the arbitrator's
7 impartiality, finds that the arbitrator is disqualified, the court shall appoint another arbitrator
8 agreed to by the parties or, if the parties have not agreed, on motion of either party, the court
9 shall appoint another arbitrator.

10 (e) If the parties agree to discharge the arbitrator, the arbitrator recuses, or a court
11 disqualifies the arbitrator, the parties shall notify the arbitrator and select a new arbitrator by
12 agreement or may request the court to appoint another arbitrator.

13 **SECTION 9. IMMUNITY OF ARBITRATOR.**

14 (a) An arbitrator and an arbitrator's employer, partnership or organization, is immune
15 from civil liability to the same extent as a judge acting in a judicial capacity.

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

18 (c) Failure of an arbitrator to make a disclosure required by Section 8 does not cause the
19 arbitrator to lose immunity under this section.

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

24 (1) to the extent disclosure is necessary to determine a claim by the arbitrator

1 against a party to the arbitration; and

2 (2) to a hearing on a motion under Section 20(a)(2) or (3) to vacate an award if
3 there is prima facie evidence that a ground for vacating the award exists.

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

9 **SECTION 10. TEMPORARY AWARD OR COURT ORDER.**

10 (a) On motion of a party, the arbitrator may make a temporary award under [insert this
11 state's statutes or rules governing temporary orders in a family law dispute] to the same extent as
12 the court may order in a family law dispute and any other award necessary to protect the
13 effectiveness of the arbitration.

14 (b) A party may move for confirmation of a temporary award under subsection (a) at any
15 time before the court considers the final award.

16 (c) A party may apply to the court for a stay of arbitration and review of any
17 determination or temporary award made by an arbitrator under this section.

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

21 **SECTION 11. PARTY PARTICIPATION**

22 (a) A party may:

23 (1) be represented by an attorney; and

1 (2) be accompanied by an individual who will not be called as a witness.

2 (b) A party may not communicate ex parte with the arbitrator except to the extent
3 allowed in a family law dispute for communication with a judge.

4 **SECTION 12. CONFIDENTIALITY AND SEALING**

5 (a) Unless otherwise required by law of this state other than this [act], parties may agree
6 that the proceeding, including the record, in whole or in part, is confidential.

7 (b) On agreement of the parties, the arbitrator may seal or redact the arbitration record
8 and award.

9 (c) On motion of a party, the court may order that the arbitration record and award be
10 sealed or redacted under law of this state under than this [act].

11 **SECTION 13. POWERS OF ARBITRATOR.**

12 (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers
13 appropriate for a fair and expeditious disposition of the proceeding.

14 (b) Unless otherwise provided in an agreement to arbitrate, the arbitrator may do any of
15 the following to the same extent as a court in a family law dispute under the law of this state
16 other than this [act]:

17 (1) hold conferences with the parties;

18 (2) determine the date, time, place, and location of a hearing;

19 (3) appoint an expert;

20 (4) administer an oath or affirmation and issue a subpoena for the attendance of a
21 witness and for the production of documents and other evidence at a hearing;

22 (5) order discovery concerning an issue being arbitrated and determine the date,
23 time, and place of discovery;

- 1 (6) determine the admissibility, relevance, materiality, and weight of evidence;
- 2 (7) permit a deposition of a witness for use as evidence at the hearing;
- 3 (8) prohibit a party from disclosing trade secrets and privileged, confidential, or
4 other information protected from disclosure;
- 5 (9) appoint an attorney, guardian ad litem, or other representative for a child;
- 6 (10) allocate arbitration fees, attorney's fees, expert witness fees, and other costs
7 between the parties or to one party; and
- 8 (11) require each party to provide information, including:
- 9 (A) a copy of any relevant court order;
- 10 (B) information required to be disclosed in a family law dispute under law
11 of this state other than this [act]; and
- 12 (C) a proposed award that addresses each issue in arbitration.
- 13 (c) On motion to the court by a party, a subpoena or other award issued by the arbitrator
14 may be enforced as in a family law dispute.

15 **SECTION 14. RECORD OF HEARING.**

- 16 (a) A recording, transcript, or other record must be made of any part of a hearing
17 concerning custodial responsibility, parental status, or child support, in the manner required by
18 law of this state other than this [act].
- 19 (b) Except as otherwise provided by an arbitration agreement or subsection (a), an
20 arbitration hearing need not be recorded or transcribed unless ordered by the arbitrator or
21 requested by a party.

22 **SECTION 15. AWARD.**

- 23 (a) An arbitrator shall make an award in a signed record on each contested issue stating

1 the reasons for the award.

2 (b) Except as provided in subsection (c), the parties may agree in a record that the
3 arbitrator need not provide a statement of reasons for the award.

4 (c) For an award of custodial responsibility, parental status, or child support,
5 the arbitrator shall give reasons as required by law of this state other than this [act] for a court in
6 a family law dispute.

7 (d) The arbitrator shall give a copy of the award to each party.

8 **SECTION 16. REVISION OF AWARD BY ARBITRATOR.**

9 (a) On motion by a party to the arbitrator filed not later than [20] days after receiving a
10 copy of a final award, the arbitrator may revise the award:

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

13 (2) to conform the award to requirements of form not affecting the merits of the
14 decision on the family law dispute; or

15 (3) to clarify the award.

16 (b) A party shall give notice of an objection to the [motion] not later than [ten] days after
17 receipt of copy under subsection (a).

18 (c) If a motion is pending under Section 19 or 20, the court may submit the motion to the
19 arbitrator to consider whether to revise the award.

20 **SECTION 17. CONFIRMATION OF AWARD.**

21 (a) After receiving a copy of an award, a party may move the court for confirmation of
22 the award.

23 (b) Upon motion, the court with jurisdiction to enforce the award shall issue a

1 confirmation unless:

2 (1) the award has been revised under Section 16 or 18;

3 (2) the award is vacated pursuant to Section 19; or

4 (3) the award involves custodial responsibility [, parental status,] or child support

5 and the court finds that the award on its face does not comply with law of this state other than

6 this [act].

7 (c) An award is enforceable as a judgment on confirmation.

8 **SECTION 18. REVISION OF AWARD BY COURT.**

9 (a) On motion to the court made not later than [30] days after a party receives a copy of
10 an award or of a revised award under Section 16, a party may move the court to revise the award.

11 (b) The court may revise the award on a ground stated in Section 16(a) (1) or (2).

12 **SECTION 19. VACATION OF AWARD.**

13 (a) On motion by a party to a court of competent jurisdiction, the court shall vacate an
14 award only on one or more of the following grounds:

15 (1) the award determines custodial responsibility[, parental status,] or child
16 support and a party demonstrates that the award is clearly erroneous under law of this state other
17 than this [act] based on the record of the arbitration hearing and any facts that have arisen since
18 the hearing;

19 (2) the award was obtained by corruption, fraud, or other undue means;

20 (3) there was:

21 (A) evident partiality by the arbitrator;

22 (B) corruption by the arbitrator; or

23 (C) misconduct by the arbitrator prejudicing the rights of a party or

1 harming the interests of a child;

2 (4) the arbitrator exceeded the arbitrator's powers;

3 (5) the arbitrator refused to postpone a hearing on showing of sufficient cause for
4 postponement, refused to consider evidence material to the controversy, or otherwise conducted
5 the hearing in a manner that substantially prejudiced the rights of a party;

6 (6) there was no agreement to arbitrate, unless the party participated in the
7 arbitration without objecting not later than the beginning of the arbitration hearing; [or]

8 (7) the arbitration was conducted without proper notice of initiation of arbitration
9 so as to prejudice substantially the rights of a party to the arbitration proceeding[.] [; or

10 (8) any other basis for vacating the award under [insert state statutory reference
11 to Revised Uniform Arbitration Act or Uniform Arbitration Act].

12 (b) A motion under this section to vacate an award must be filed not later than [30] days
13 after the party filing the motion receives a copy of the award or a corrected award, or not later
14 than [30] days after the ground of corruption, fraud, or undue means is known or by the exercise
15 of reasonable care could have been known to the party filing the motion.

16 (c) If the court vacates an award on a ground other than under subsection (a)(6), it may
17 order a rehearing. If the award is vacated under subsection (a)(2) or (3), the rehearing must be
18 before a new arbitrator. If the award is vacated on any other ground, the hearing may be before
19 the arbitrator who made the award.

20 (d) If the court denies a motion to vacate an award, it shall confirm the award unless a
21 motion to revise the award is pending.

22 **SECTION 20. DISPUTE ABOUT MEANING OF CONFIRMED AWARD.** If there
23 is a dispute about the meaning of an award confirmed under Section 18, the parties may:

- 1 (a) request a clarification from the arbitrator;
- 2 (b) agree to arbitrate the dispute before the original arbitrator or a new arbitrator; or
- 3 (c) proceed under law of this state other than this [act].

4 **SECTION 21. MODIFICATION OF CONFIRMED AWARD BASED ON**

5 **CHANGE IN CIRCUMSTANCES.** If circumstances arise after confirmation of the
6 award that provide a basis for modification of the award under law of this state other than this
7 [act], the parties may agree to arbitrate before the original arbitrator or a new arbitrator or
8 proceed under law of this state other than this [act].

9 **SECTION 22. LIMITED RIGHT OF APPEAL.** A party may file an appeal from a
10 final judgment entered under this [act], or from a court order:

- 11 (1) denying a motion to compel arbitration;
- 12 (2) granting a motion to stay arbitration;
- 13 (3) confirming or denying confirmation of an award;
- 14 (4) revising the award; or
- 15 (5) vacating the award without directing a rehearing.

16 **SECTION 23. ENFORCEMENT OF AWARD.**

17 (a) The court shall enforce an award, including a temporary award, that has been
18 confirmed by a court in the manner and to the same extent as any other order or judgment
19 entered by a court.

20 (b) The court shall enforce an arbitration award from another state which has been
21 confirmed by a court in the other state to the same extent as any other order or judgment from
22 another state.

23 (c) The court may confirm an arbitration award from another state if the award was

1 entered in an arbitration process consistent with this [act] and confirmation is appropriate under
2 the standards of this [act].

3 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
4 applying and construing this uniform act, consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

6 **SECTION 25. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
7 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
8 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
9 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
10 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
11 Section 7003(b).

12 **SECTION 26. APPLICABILITY.** This [act] applies to an arbitration pursuant to an
13 agreement to arbitrate a family law dispute made on or after [the effective date of this [act]]. If
14 the agreement was made before [the effective date of this [act]], the parties may agree in a record
15 that this [act] applies to the arbitration.

16 **SECTION 27. EFFECTIVE DATE.** This [act] takes effect