

DRAFT
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FAMILY-LAW ARBITRATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

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February 10, 2014

FAMILY 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) "Arbitrator" means an individual appointed to render an award, alone or with others,
6 in a family-law matter that is subject to an arbitration agreement under this [act].

7 (2) "Arbitration agreement" means an agreement to arbitrate a family-law matter.

8 (3) "Custodial responsibility" includes all powers and duties relating to caretaking
9 authority and decision-making authority for a child. The term includes physical custody, legal
10 custody, parenting time, right to access, and visitation.

11 (4) "Court" means [the family court] [a tribunal] authorized by law of this state other than
12 this [act] to hear a family-law matter.

13 (5) "Family-law matter" means a contested issue within the jurisdiction of the court under
14 law of this state other than this [act], including:

15 (A) [characterization][classification], valuation, and division of real and personal
16 property;

17 (B) determination and allocation of debt;

18 (C) maintenance and spousal support;

19 (D) custodial responsibility;

20 (E) child support;

21 (F) construction and enforcement of premarital, marital, and postmarital
22 agreements; and

23 (G) costs, expenses, and attorney's fees.

1 (6) “Knowledge” means actual knowledge.

2 (7) “Order of protection” means an order, issued by a court under the domestic-violence,
3 family-violence, or anti-stalking laws of the issuing state, to prevent an individual from engaging
4 in a violent or threatening act against, harassing, contacting, communicating with, or being in
5 physical proximity to, another individual who is a party to an arbitration under this [act] or a
6 child under the custodial responsibility of a party.

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

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

10 (A) execute or adopt a tangible symbol; or

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

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

16 **SECTION 3. SCOPE.**

17 (a) Subject to subsections (b) through (d), this [act] governs arbitration in a family-law
18 matter.

19 (b) Arbitration under this [act] does not apply to a determination of child abuse and
20 neglect.

21 (c) If a party is subject to an order of protection before the commencement of arbitration
22 under this [act,] the court may not refer the parties to arbitration unless each party agrees to
23 arbitration after advice of counsel and the court makes a finding that the agreement is informed

1 and voluntary and reasonable procedures are in place to protect the victim from harm,
2 harassment, or intimidation.

3 (d) If, in a pending arbitration under this [act], a party (1) becomes subject to an order of
4 protection, or (2) the arbitrator determines there are reasonable grounds to believe that a party's
5 safety or ability to participate effectively in the arbitration is at risk, the arbitrator shall terminate
6 the arbitration unless each party agrees to continue the arbitration after advice of counsel and the
7 arbitrator makes a finding that the agreement is informed and voluntary and reasonable
8 procedures are in place to protect the victim from harm, harassment, or intimidation.

9 **SECTION 4. ARBITRATION AGREEMENT.**

10 (a) An arbitration agreement consistent with this Section is enforceable except on a
11 ground that exists at law or equity for the revocation of a contract. The court [may][shall] decide
12 whether an enforceable arbitration agreement exists or whether an issue is subject to an
13 arbitration agreement.

14 (b) An arbitration agreement must:

15 (1) be in a record signed by all parties:

16 (A) not earlier than [six months] before the commencement of arbitration;

17 or

18 (B) which is a [marital settlement or separation] agreement and provides
19 for arbitration of disputes arising out of the agreement;

20 (2) identify the arbitrator or a method of selecting an arbitrator;

21 (3) clearly identify the family-law matters that the parties intend to arbitrate; and

22 (4) acknowledge that the parties have been informed in plain language of the

23 following:

1 (A) Arbitration is voluntary.

2 (B) Once the parties agree to arbitration, the arbitration is binding, and an
3 arbitration award is subject only to limited judicial review.

4 (C) In a case involving domestic violence, arbitration might not be
5 appropriate and might place a victim at risk of harm.

6 (D) The arbitrator's powers and duties may be set out in the arbitration
7 agreement.

8 (E) During arbitration, the arbitrator has the power to decide each issue
9 assigned to arbitration under the agreement.

10 (F) Unless agreed to by the parties, the rules of evidence do not apply in
11 arbitration.

12 (G) The party may consult with an attorney before entering the arbitration
13 process and may choose to be represented by an attorney throughout the process.

14 (H) A party to arbitration is responsible, either solely or jointly with other
15 parties, to pay for costs of arbitration, including the arbitrator's services and any necessary court
16 filing fees.

17 (I) If the court confirms the award, it is enforceable as a judgment.

18 (d) Unless parties to an arbitration agreement designate a choice of law to govern the
19 arbitration, the [substantive family] law of this state governs.

20 **SECTION 5. INITIATION OF ARBITRATION.**

21 (a) A party to an arbitration agreement initiating an arbitration under this [act] shall give
22 notice in a record to the other party in the manner provided in the agreement. If the agreement
23 does not provide the manner of notice, notice must be by certified or registered mail, return

1 receipt requested, or in the manner authorized for the commencement of a civil action. The
2 notice must describe the nature of the controversy and the remedy sought.

3 (b) Unless the other party under subsection (a) objects to the sufficiency of notice before
4 the beginning of the arbitration hearing, the party, by appearing at the hearing, waives any
5 objection to sufficiency of notice.

6 **SECTION 6. MOTION TO COMPEL OR STAY ARBITRATION.**

7 (a) If a judicial proceeding that involves a claim alleged to be subject to an arbitration
8 agreement is pending [in a court of this state], a motion to compel arbitration may be made only
9 in the court in which the proceeding is pending. If no judicial proceeding that involves a claim
10 alleged to be subject to arbitration is pending, a motion to compel arbitration may be made in any
11 court with jurisdiction under law of this state other than this [act].

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

15 (c) On motion of a person to stay arbitration on the ground that the person did not enter
16 into an arbitration agreement, the court shall order the parties to arbitrate if it finds that the
17 parties entered into an arbitration agreement enforceable under this [act].

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

21 (e) If the court orders arbitration under this [act], the court shall stay any judicial
22 proceeding that involves a claim subject to arbitration. If the claim subject to arbitration is
23 severable, the court may limit the stay to the claim.

1 **SECTION 7. APPOINTMENT OF ARBITRATOR; DISQUALIFICATION.**

2 (a) If an appointed arbitrator fails to act or the parties' agreed method for appointing an
3 arbitrator fails, the court on motion of a party to the arbitration agreement, shall appoint an
4 arbitrator.

5 (b) Except as otherwise provided in subsection (c), an arbitrator under this [act] must:

6 (1) be an attorney in good standing [or an attorney or judge on retired status] in a
7 state that has jurisdiction to hear the family-law matter that is the subject of the arbitration; and

8 (2) have training relating to the dynamics and risks of domestic violence and
9 child abuse [according to standards established under law of this state other than this [act] for
10 judicial officers assigned to hear family-law matters].

11 (c) Parties to an arbitration agreement, in a signed record, may waive:

12 (1) the requirement of subsection (b)(1); and

13 (2) with court approval, the requirement of subsection (b)(2).

14 (d) An arbitrator, attorney, or party to an arbitration agreement shall disclose any
15 circumstance that may affect the arbitrator's impartiality, including bias, a financial or personal
16 interest in the outcome of the arbitration, or a past or present personal, business, or professional
17 relationship with a party or attorney. Within [14] days after the disclosure, a party may request
18 disqualification of the arbitrator. If the arbitrator fails to withdraw not later than [14] days after a
19 request for disqualification, the party may file a motion for disqualification with the court.

20 (e) The court shall hear a motion for disqualification under subsection (d) not later than
21 [30] days after the motion is filed. If the court finds that the arbitrator is disqualified, the court
22 may appoint an arbitrator agreed to by the parties or if the parties have not agreed, then upon
23 motion of either party, the court shall appoint an arbitrator.

1 (f) An arbitrator has a continuing obligation to disclose to all parties to the arbitration
2 agreement any fact the arbitrator learns after accepting appointment which a reasonable person
3 would consider likely to affect the impartiality of the arbitrator.

4 (g) If an arbitrator does not disclose a fact as required by this section, on objection by a
5 party, the court may vacate the arbitrator's award.

6 (h) If during an arbitration under this [act], the parties agree to discharge the arbitrator,
7 the parties shall notify the arbitrator and select a new arbitrator pursuant to the arbitration
8 agreement. If the discharged arbitrator was selected by the court, the parties may ask the court to
9 appoint an arbitrator.

10 **SECTION 8. TEMPORARY ORDER.**

11 (a) On motion of a party to an arbitration agreement and for good cause shown, the court
12 may make a temporary order under [insert this state's statutes or rules governing issuance of a
13 temporary order in a family-law matter] and any other order that the court finds necessary to
14 protect the effectiveness of the arbitration and to promote the fair and expeditious resolution of
15 the issues, to the same extent and under the same conditions as in a civil action if:

16 (1) an arbitrator has not yet been appointed; or

17 (2) the arbitrator has been appointed but is not able to act in a timely manner or
18 cannot provide an adequate remedy.

19 (b) Except as otherwise provided in subsection (c), on motion of a party to arbitration
20 under this [act], the arbitrator may make a temporary order under [insert this state's statutes or
21 rules governing temporary orders in family-law matters] and any other order that the arbitrator
22 finds necessary to protect the effectiveness of the arbitration and to promote the fair and
23 expeditious resolution of the issues, to the same extent and under the same conditions as a judge

1 in a civil action.

2 (c) An arbitration agreement may limit the availability of temporary orders except for
3 relief pursuant to [insert this state’s statutes or rules for granting emergency relief or protection
4 for a spouse, co-parent, or child], or federal law, the purpose of which is to provide emergency
5 relief or protection for a spouse, co-parent, or child.

6 **SECTION 9. ARBITRATION PROCESS.**

7 (a) An arbitrator may conduct an arbitration in the manner the arbitrator considers
8 appropriate for a fair and expeditious disposition of the proceeding. The arbitrator shall hear and
9 make an award on each issue submitted subject to the arbitration agreement.

10 (b) Unless the parties to an arbitration under this [act] agree otherwise, the parties and
11 attorneys shall meet with the arbitrator as soon as practicable after the appointment of the
12 arbitrator to consider the following:

- 13 (1) the scope of the issues submitted;
- 14 (2) the date, time, and place of the first hearing;
- 15 (3) the witnesses, including experts, who may testify;
- 16 (4) a schedule for the production or exchange of any expert report or summary of
17 expert testimony, exhibits, documents, or other information a party considers material to the
18 case.

19 (c) Unless otherwise provided in an arbitration agreement, the arbitrator has the power
20 and duty to:

- 21 (1) hold conferences with the parties to the arbitration before the hearing;
- 22 (2) administer an oath or issue a subpoena for the attendance of a witness and for
23 the production of documents and other evidence at any hearing as provided by law of this state
24 other than this [act];

1 (3) issue an order compelling discovery concerning any issue being arbitrated to
2 the same extent as in a civil action;

3 (4) determine the admissibility, relevance, materiality, and weight of evidence;

4 (5) permit a deposition of any witness to be taken for use as evidence at the
5 hearing;

6 (6) issue a protective order to prevent disclosure of trade secrets and privileged,
7 confidential, or other information protected from disclosure, to the same extent as in a civil
8 action;

9 (7) appoint an attorney, guardian ad litem, or other representative for a child to the
10 same extent available to a court;

11 (8) issue an order allocating arbitration fees and expenses between the parties or
12 to one party, including imposing a fee or expense on a party or attorney as a sanction; and

13 (9) require each party to provide specified information that the arbitrator requests,
14 including:

15 (A) a copy of any relevant court order;

16 (B) information required to be disclosed in a family-law matter under law
17 of this state other than this [act]; and

18 (C) a proposed award that addresses each issue in arbitration.

19 (d) Unless the parties to an arbitration under this [act] otherwise agree, the arbitrator may
20 not release information provided under subsection (c)(9) until after all parties have submitted the
21 required information. If a party knew or reasonably should have known about the existence of
22 information another party is required to produce, the party waives objection to producing that
23 information if the party does not object before the hearing.

1 (e) If an arbitrator reasonably believes that a child under the custodial responsibility of a
2 party is abused or neglected, the arbitrator must report the suspected abuse as required by law of
3 this state other than this [act].

4 **SECTION 10. HEARING.**

5 (a) If an arbitrator orders a hearing under this [act], the arbitrator shall set a time and
6 place and give notice of the hearing at least [14] days before the hearing begins. Unless a party
7 objects to the sufficiency of notice before the beginning of the hearing, the party, by appearing at
8 the hearing, waives the objection. The arbitrator may hear and decide the controversy on the
9 evidence produced even if a party who was notified does not appear.

10 (b) At a hearing under this [act], a party to the arbitration, with or without an attorney,
11 has a right to present evidence material to the controversy and to cross-examine witnesses.

12 (c) An arbitrator may recess a hearing as necessary but may not postpone the hearing to a
13 date later than any date set in the arbitration agreement for making the award unless the parties
14 consent to a later date.

15 (d) An arbitrator may decide a matter summarily without a hearing if the arbitrator
16 determines that a summary decision is appropriate and:

17 (1) all parties agree; or

18 (2) a party requests a summary decision and no party objects after notice and
19 reasonable opportunity to respond.

20 **SECTION 11. RECORD OF ARBITRATION HEARING.**

21 (a) A record must be made of any part of an arbitration hearing which concerns custodial
22 responsibility or child support, in the manner required by law of this state other than this [act] for
23 the record of testimony in a deposition.

1 (b) Except as otherwise provided by an arbitration agreement or subsection (a), a
2 record is not required of an arbitration hearing under this [act].

3 **SECTION 12. AWARD.**

4 (a) An arbitrator shall make an award in a record on each issue subject to arbitration:

5 (1) not later than any date set out by the arbitration agreement;

6 (2) as ordered by the court; or

7 (3) not later than [60] days after the end of a hearing, or, if requested by the
8 arbitrator, the receipt of proposed findings of fact and conclusions of law.

9 (b) An arbitrator shall give notice of an award under subsection (a), including a copy of
10 the award, to each party to the arbitration.

11 (c) An arbitration award under subsection (a) determining custodial responsibility or
12 child support must include findings of fact and conclusions of law. The arbitrator shall comply
13 with this state's child-support guidelines.

14 (d) An arbitrator retains jurisdiction to correct errors or omissions in an award until the
15 court confirms the award. Not later than [14] days after the award is made, a party to the
16 arbitration may move to correct errors or omissions. Another party to the arbitration may respond
17 to the motion not later than [14] days after receipt of the notice.

18 (e) An arbitration award is effective when made and continues in effect until vacated,
19 modified, or corrected by the arbitrator or by the court.

20 **SECTION 13. INTERLOCUTORY REVIEW.** A party to an arbitration under this
21 [act] may seek interlocutory judicial review and a stay of arbitration in the court with jurisdiction
22 for the following reasons:

23 (1) lack of subject matter jurisdiction;

1 (2) the presence of domestic violence that would bar arbitration under Section 3;

2 (3) bias or misconduct of the arbitrator sufficient to require disqualification under Section

3 7; or

4 (4) circumstances that require judicial intervention to protect the safety of a party or a
5 child under the custodial responsibility of a party.

6 **SECTION 14. CONFIRMATION OF AWARD.** After a party to an arbitration under
7 this [act] receives notice of an award, including any temporary order, the party may file a motion
8 in the court for an order confirming the award. The court shall issue the order unless the parties
9 agree in a record that part or all of an award should not be confirmed, or the court modifies,
10 corrects, or vacates the award.

11 **SECTION 15. VACATION OR MODIFICATON OF AWARD.**

12 (a) Not later than [30] days after a party receives notice of an award under this [act],
13 including any temporary order, the party may file a motion with the court to vacate or modify the
14 arbitrator's award.

15 (b) The court may vacate or modify an arbitration award only for one or more of the
16 following grounds, established by a preponderance of the evidence:

17 (1) the award includes custodial responsibility terms that will result in serious
18 emotional or physical harm to the child;

19 (2) the award includes child support terms that do not comply with [this state's
20 child-support guidelines];

21 (3) the award was procured by corruption, fraud, or other undue means
22 perpetrated by a party to the arbitration;

23 (4) there was evident partiality by the arbitrator, corruption of the arbitrator, or

1 misconduct by the arbitrator prejudicing a party's rights;

2 (5) the arbitrator exceeded the arbitrator's powers under this [act] or the
3 arbitration agreement; or

4 (6) the arbitrator refused to postpone the hearing on a showing of sufficient cause,
5 refused to hear evidence material to the controversy, or otherwise conducted the hearing to
6 prejudice substantially a party's rights.

7 (c) A motion to vacate or modify under subsection (b)(3) must be made not later than
8 [14] days after the moving party knew or reasonably should have known the reasons to vacate or
9 modify.

10 (d) Except as otherwise provided in subsection (b)(1) or (2), the fact that the relief
11 granted in an arbitration award under this [act] could not be granted by a court is not grounds for
12 vacating or modifying the award.

13 (e) If the court vacates or modifies an award under subsection (b), the court may order a
14 rehearing before a new arbitrator selected under the arbitration agreement or, if the agreement
15 does not provide a method of selection, appointed by the court. Unless the award is vacated on a
16 ground stated in subsection (b)(4) or (6), the court may order a rehearing before the arbitrator
17 who made the award.

18 **SECTION 16. CONTEST OR MODIFICATION OF CONFIRMED AWARD.**

19 Unless subject to arbitration by agreement of the parties, any dispute about the terms of a
20 confirmed arbitration award, including a request for modification, is subject to the standards and
21 procedures provided by law of this state other than this [act].

22 **SECTION 17. APPEAL.**

23 (a) An appeal may be taken from:

- 1 (1) an order confirming or denying confirmation of an award under this [act];
- 2 (2) an order modifying or correcting an award under this [act];
- 3 (3) an order vacating an award under this [act] without directing a rehearing; or
- 4 (4) a judgment or decree entered pursuant to this [act].

5 (b) Except as otherwise provided in subsection (c), an appeal under subsection (a) must
6 be taken in the manner and to the same extent as from an order or judgment in other family-law
7 matters.

8 (c) The scope of review on appeal is limited to the scope of judicial review provided in
9 Section 15.

10 **SECTION 18. ENFORCEMENT OF AWARD.**

11 (a) The court shall enforce an arbitrator's award or temporary order that has been
12 confirmed under this [act] in the manner and to the same extent as an order or judgment issued
13 by the court in a family-law matter.

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

16 **SECTION 19. IMMUNITY OF ARBITRATOR.**

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

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

- 23 (1) to the extent necessary to determine a claim by the arbitrator against a

1 party to the arbitration under this [act]; or

2 (2) to a hearing on a motion to vacate or modify an award under Section 15 if
3 the moving party establishes prima facie that a ground for vacating or modifying the award
4 exists.

5 (c) The court shall award an arbitrator reasonable attorney's fees, costs, and reasonable
6 expenses of litigation if:

7 (1) a party to the arbitration commences a civil action against the arbitrator and
8 the court finds under subsection (a) that the arbitrator is immune from civil liability; or

9 (2) a party to the arbitration seeks to compel the arbitrator to testify or produce
10 records and the court finds under subsection (b) that the arbitrator is not competent to testify
11 or required to produce the records.

12 **SECTION 20. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
13 applying and construing this uniform act, consideration must be given to the need to promote
14 uniformity of the law with respect to its subject matter among states that enact it.

15 **SECTION 21. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
16 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
17 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
18 modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
19 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
20 Section 7003(b).

21 **SECTION 22. APPLICABILITY.** This [act] governs an arbitration agreement made on
22 or after [the effective date of this [act]]. If an arbitration agreement was made before [the
23 effective date of this [act]], the parties may agree in a record to have this [act] govern.

1 **SECTION 23. EFFECTIVE DATE.** The [act] takes effect