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FOR DISCUSSION ONLY

# **FAMILY LAW ARBITRATION ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

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For October 25 – 26, 2013 Drafting Committee Meeting

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October 10, 2013

## **FAMILY LAW ARBITRATION ACT**

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# 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) "Arbitrator" means an individual appointed to render an award, alone or with others,  
6 in a controversy that is subject to an agreement to arbitrate.

7 (2) "Child" means an unemancipated individual who is less than 18 years of age.

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

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

13 (5) "Family law matter" means a claim, defense, or contested issue, other than the  
14 divorce or annulment itself, which is assigned for resolution by the law of this state, other than  
15 this [act], to the [family law court].

16 (6) "Knowledge" means actual knowledge.

17 (7) "Notice" means taking action that is reasonably necessary to inform the other person  
18 in the ordinary course, whether or not the other person acquires knowledge of the notice.

19 (8) "Order of Protection" means an injunction or other order, issued by a court under the  
20 domestic-violence, family violence, or anti-stalking laws of the issuing state, to prevent an  
21 individual from engaging in violent or threatening acts against harassment of, contact, or  
22 communication with, or physical proximity to, another individual.

23 (9) "Record" means information that is inscribed on a tangible medium or that is stored in

1 an electronic or other medium and is retrievable in perceivable form.

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

5 **SECTION 3. SCOPE.**

6 (a) Subject to subsection (b), this [act] governs arbitration in family law matters.

7 (b) The following matters are not subject to arbitration:

8 (1) child abuse and neglect;

9 (2) cases in which either party is subject to a protective order, [unless this  
10 exclusion is waived as provided in section 6(b)].

11 (c) This [act] governs an agreement to arbitrate made on or after [the effective date of this  
12 [act]]. If an agreement to arbitrate was made before [the effective date of this [act]], the parties  
13 may agree in a record to have this [act] govern.

14 (d) Except as otherwise provided in this [act], the law of this state governing arbitration  
15 applies to the arbitration of a family law matter.

16 **SECTION 4. AGREEMENT TO ARBITRATE.**

17 (a) Parties to an action to determine a family law matter or a postjudgment proceeding  
18 relating to the action, may stipulate to binding arbitration in an agreement that specifically  
19 provides for an award with respect to any of the following matters:

20 (1) valuation and division of real and personal property;

21 (2) custodial responsibility;

22 (3) child support, subject to restrictions and requirements in law of this state other  
23 than this [act] and court rule;

- 1 (4) spousal support;
- 2 (5) costs, expenses and attorneys fees;
- 3 (6) enforceability of premarital and postmarital agreements;
- 4 (7) determination and allocation of the parties' responsibility for debt;
- 5 (8) a tort claim arising out of a family law matter that must be joined with the
- 6 family law matter under the law of this state, other than this [act]; and
- 7 (9) other contested family law matters.

8 (b) Before marriage, parties may agree in a record to submit to binding arbitration any

9 issue under subsection (a) except custodial responsibility and child support.

10 **SECTION 5. INFORMED PARTICIPATION IN ARBITRATION.**

11 (a) The court shall not order a party to participate in arbitration of a family law matter

12 unless each party acknowledges in a record, that the party has been informed in plain language of

13 all of the following:

- 14 (1) Arbitration is voluntary.
- 15 (2) Arbitration is binding, and an arbitration award is subject only to limited
- 16 judicial review.
- 17 (3) Arbitration is not recommended for cases involving domestic violence.
- 18 (4) Arbitration may not be appropriate for all cases.
- 19 (5) The arbitrator's powers and duties are set out in an arbitration agreement
- 20 that all parties must sign before arbitration commences.
- 21 (6) During arbitration, the arbitrator has the power to decide each issue assigned
- 22 to arbitration under the agreement.
- 23 (7) Unless agreed to by the parties, the formal rules of evidence do not apply in

1 arbitration.

2 (8) The party may consult with an attorney before entering the arbitration process  
3 and may choose to be represented by an attorney throughout the process.

4 (9) A party to arbitration will be responsible, either solely or jointly with other  
5 parties, to pay for costs of arbitration, including the arbitrator's services. In contrast, other than  
6 the filing fee and the court costs prescribed by statute or court rule, a party does not pay for the  
7 court to hear and decide an issue.

8 (10) The court may enforce the arbitrator's decisions.

9 (b) If either party is subject to an order of protection order, the court will not refer a  
10 family law matter to arbitration.

11 [(c) If, in a pending family law matter, there are allegations of violence, the court shall  
12 not refer the matter to arbitration unless each party waives this exclusion after advice of counsel.  
13 A party may voluntarily waive this exclusion if he or she is represented by counsel [at the time of  
14 the waiver] and the court finds on the record that the waiver is informed and voluntary.]

15 **SECTION 6. INITIATION OF ARBITRATION.**

16 (a) A person initiating an arbitration proceeding must give notice in a record to the other  
17 party to the agreement to arbitrate in the manner provided in the agreement. If the agreement  
18 does not provide the manner of notice, notice must be by certified or registered mail, return  
19 receipt requested and obtained, or as authorized for the commencement of a civil action. The  
20 notice must describe the nature of the controversy and the remedy sought.

21 (b) A person has notice if the person has knowledge of the notice or has received notice.

22 (c) Unless a person objects to the sufficiency of notice not later than the beginning of an  
23 arbitration hearing, the person, by appearing at the hearing, waives any objection to sufficiency

1 of notice.

2 **SECTION 7. MOTION TO COMPEL OR STAY ARBITRATION.**

3 (a) On motion of a person showing an agreement to arbitrate and alleging another  
4 person's refusal to arbitrate pursuant to the agreement:

5 (1) if the refusing party does not appear or does not oppose the motion, the court  
6 shall order the parties to arbitrate; and

7 (2) if the refusing party opposes the motion, the court shall proceed summarily to  
8 decide the issue and order the parties to arbitrate unless it finds that there is no enforceable  
9 agreement to arbitrate.

10 (b) On motion of a person alleging that there is no agreement to arbitrate, the court shall  
11 proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to  
12 arbitrate, it shall order the parties to arbitrate. If it finds no enforceable agreement, it shall not  
13 order the parties to arbitrate.

14 (c) If a proceeding involving a claim referable to arbitration under an alleged agreement  
15 to arbitrate is pending in a court, a motion under this section must be made in that court.  
16 Otherwise a motion under this section may be made in any court.

17 (d) If a party makes a motion to the court to order arbitration, the court on just terms shall  
18 stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the  
19 court renders a final decision under this section.

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



1           **SECTION 8. APPOINTMENT OF ARBITRATOR.**

2           (a) If the parties to an agreement to arbitrate a family law matter agree on a method for  
3 appointing an arbitrator, that method must be followed. If the parties have not agreed on a  
4 method or the agreed method fails, or if an arbitrator appointed fails or is unable to act, the court,  
5 on motion of a party to the arbitration proceeding, shall appoint the arbitrator.

6           (b) An arbitrator, attorney, or party to a family law matter shall disclose any circumstance  
7 that may affect an arbitrator's impartiality, including bias, a financial or personal interest in the  
8 outcome of the arbitration, or a past or present personal, business or professional relationship  
9 with a party or attorney. On disclosure of such a circumstance, a party may request  
10 disqualification of the arbitrator. The request must be made as soon as practicable after the  
11 disclosure. If the arbitrator does not withdraw not later than [14] days after a request for  
12 disqualification, the party may file a [motion] for disqualification with the court.

13           (c) The court shall hear a motion for disqualification under subsection (b) not later than  
14 [30] days after the motion is filed. If the court finds that the arbitrator is disqualified, the court  
15 may appoint another arbitrator agreed to by the parties.

16           (d) An arbitrator has a continuing obligation in a family law matter to disclose to all  
17 parties to the arbitration proceedings any fact that the arbitrator learns after accepting  
18 appointment which a reasonable person would consider likely to affect the impartiality of the  
19 arbitrator.

20           (e) If an arbitrator does not disclose a fact as required by this section, on timely objection  
21 by a party, the court may vacate an award.

22           **SECTION 9. PROVISIONAL REMEDIES.**

23           (a) Before an arbitrator is appointed in a family law matter, the court, on motion of a

1 party and for good cause, may order a provisional remedy to protect the effectiveness of the  
2 arbitration proceeding to the same extent and under the same conditions as in a civil action.

3 (b) On motion of a party to an arbitration proceeding for a family law matter, the court  
4 may order a provisional remedy under [insert this state's statutes or rules governing temporary  
5 orders in family law matters] if the arbitrator is not able to act in a timely manner or cannot  
6 provide an adequate remedy.

7 (c) Availability of provisional remedies under this section may be limited by the parties'  
8 agreement except for relief pursuant to [insert this state's statutes or rules for granting  
9 immediate, emergency relief or protection for spouses or children], federal law, or treaties to  
10 which the United States is a party, whose purpose is to provide immediate, emergency relief or  
11 protection for spouses or children.

12 **SECTION 10. ARBITRATION PROCESS.**

13 (a) An arbitrator appointed under this [act] may conduct an arbitration in the manner the  
14 arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. An  
15 arbitrator shall hear and make an award on each issue submitted subject to the provisions of the  
16 arbitration agreement.

17 (b) As soon as practicable after the appointment of the arbitrator, the parties and attorneys  
18 shall meet with the arbitrator to consider all of the following:

- 19 (1) scope of the issues submitted;
- 20 (2) date, time, and place of the hearing;
- 21 (3) witnesses, including experts, who may testify;
- 22 (4) schedule for exchange of expert reports or summary of expert testimony;
- 23 (5) exhibits, documents, or other information each party considers material to the  
24 case and a schedule for production or exchange of the information.

1 (c) Unless otherwise provided in the arbitration agreement, an arbitrator appointed under  
2 this [act] has all of the following powers and duties:

3 (1) To issue provisional remedies, including interim awards, the arbitrator finds  
4 necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and  
5 expeditious resolution of the issues, to the same extent and under the same conditions as in a  
6 civil action;

7 (2) To hold conferences with the parties to the arbitration proceeding prior to the  
8 hearing;

9 (3) To administer an oath or issue a subpoena for the attendance of a witness and  
10 for the production of documents and other evidence at any hearing [as provided by court rule];

11 (4) To issue an order regarding discovery relative to an issue being arbitrated;

12 (5) To determine the admissibility, relevance, materiality, and weight of any  
13 evidence;

14 (6) To permit deposition of any witness to be taken for use as evidence at the  
15 hearing;

16 (7) To issue a protective order to prevent disclosure of privileged information,  
17 confidential information, trade secrets and other information protected from disclosure to the  
18 extent a court could in a civil action;

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

21 (9) To require each party to provide in a sworn statement specified information  
22 that the arbitrator considers relevant to an issue subject to the arbitration, including the  
23 following:

- 1 (i) a copy of any existing court orders;
- 2 (ii) all information required to be disclosed as a matter of course in a
- 3 family law matter under the laws of this state other than this [act]; and
- 4 (iii) proposed award for each issue subject to arbitration.

5 (d) The arbitrator shall not release sworn statements until after all parties have filed them.  
6 The arbitrator shall attempt to release the sworn statements to the opposing parties at  
7 approximately the same time. If a party knew or reasonably should have known about the  
8 existence of information the party is required to produce, that party waives objection to  
9 producing that information if the party does not object before the hearing.

10 (e) Arbitrators who reasonably believe that any child is abused or neglected must report  
11 the suspected abuse as required by the law of this state other than this [act].

12 **SECTION 11. HEARINGS.**

13 (a) If an arbitrator orders a hearing under this [act], the arbitrator shall set a time and  
14 place and give notice of the hearing not less than [5] days before the hearing begins. Unless a  
15 party makes an objection to the sufficiency of notice not later than the beginning of the hearing,  
16 the party's appearance at the hearing waives the objection. The arbitrator may hear and decide the  
17 controversy upon the evidence produced although a party who was duly notified did not appear.

18 (b) At a hearing, a party to the arbitration proceeding has a right to be heard, to present  
19 evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

20 (c) Upon request of a party to the arbitration proceeding and for good cause, or on the  
21 arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary  
22 but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for  
23 making the award unless the parties consent to a later date.

1 (d) An arbitrator may decide a request for summary disposition of a matter if:

2 (1) all interested parties agree; or

3 (2) one party requests and gives notice to all other parties who have a reasonable  
4 opportunity to respond.

5 **SECTION 12. RECORD OF ARBITRATION HEARINGS.**

6 (a) A record must be made of that portion of an arbitration hearing which concerns child  
7 support and custodial responsibility in the same manner required by laws of this state for the  
8 record of testimony in a deposition.

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

11 **SECTION 13. ISSUANCE OF AWARDS.**

12 (a) The arbitrator shall issue a reasoned award on each issue in the time set out by the  
13 agreement, or as ordered by the court, or within [60] days after either the end of the hearing or, if  
14 requested by the arbitrator, after receipt of proposed findings of fact and conclusions of law.

15 (b) An arbitrator shall make a record of the award.

16 (c) The arbitrator shall give notice of the award, including a copy of the award, to each  
17 party to the proceeding.

18 (d) An arbitrator's award of custodial responsibility or child support must include  
19 findings of fact and conclusions of law. An arbitrator shall not include a child support amount  
20 that deviates from this state's child support guidelines unless the arbitrator complies with the  
21 requirements for such a deviation prescribed for the court under the law of this state other than  
22 this [act].

23 (e) An arbitrator under this [act] retains jurisdiction to correct errors or omissions in an

1 award until the court confirms the award. A party to the arbitration may file a motion to correct  
2 errors or omissions within [14] days after the award is issued. The other party to the arbitration  
3 may respond to such a motion within [14] days after receipt of the notice. The arbitrator must  
4 issue a decision on the motion within [14] days after receipt of a response or, if a response is not  
5 filed, within [14] days after expiration of the response period.

6 **SECTION 14. CONFIRMATION OF AWARD.** After a party to an arbitration  
7 receives notice of an award, the party may file a motion in the court for an order confirming the  
8 award. The court shall issue a confirming order unless the parties agree otherwise in a record that  
9 part or all of an award shall not be confirmed by the court, the award is modified or corrected, or  
10 the award is vacated.

11 **SECTION 15. VACATION OR MODIFICATION OF ARBITRATOR'S AWARD.**

12 (a) A party may file a motion in the court for vacation of an arbitrator's award issued  
13 under this [act] within [14] days after the [movant] receives notice of the award.

14 (b) The court shall vacate or modify an award concerning child support or custodial  
15 responsibility if the court finds that the award is [contrary to the best interests of the child who is  
16 subject to the award] [will result in serious emotional or physical harm to the child.].

17 (c) If the parties contract in an agreement to arbitrate for judicial review of errors of law  
18 in the award, the court shall vacate the award if the arbitrator has committed an error of law  
19 prejudicing a party's rights.

20 (d) Except as provided in subsections (b) and (c), the court shall not vacate or modify an  
21 arbitration award only on one of the following grounds:

22 (1) The award was procured by corruption, fraud, or other undue means. An  
23 application to vacate on this basis must be made within [14] days after the grounds are known or

1 should have been known.

2 (2) There was evident partiality by an arbitrator appointed as a neutral, corruption  
3 of an arbitrator, or misconduct by the arbitrator prejudicing a party's rights.

4 (3) The arbitrator exceeded his or her powers.

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

8 (e) The fact that the relief granted in an arbitration award could not be granted by a court  
9 of law or equity is not grounds for vacating, modifying, or refusing to confirm the award.

10 (f) If the court vacates an award, the court may order a rehearing before a new arbitrator  
11 chosen as provided in the agreement or, if there is no such provision, by the court. If the award is  
12 vacated on the grounds stated in subsection (d)(1) or (3), the court may order a rehearing before  
13 the arbitrator who made the award.

14 (g) Unless the parties have agreed to submit modification to arbitration, a request for  
15 modification of a child support amount or custodial responsibility after confirmation of the  
16 arbitration award is subject to the standards and procedures provided in the law of this state other  
17 than this [act].

18 **SECTION 16. APPEAL OF ARBITRATION AWARD.** An appeal from an  
19 arbitration award under this [act] that the court has confirmed, vacated, modified, or corrected  
20 shall be taken in the same manner as from an order or judgment in other family law matters.

21 **SECTION 17. ENFORCEMENT OF ARBITRATOR'S AWARD.**

22 (a) The court shall enforce an arbitrator's award or provisional order that has been  
23 confirmed under this [act] in the same manner as an order issued by the court in a family law

1 matter.

2 (b) A party may file a motion in the court to enforce an arbitrator's award or order.

3 (c) A court of this state shall enforce an arbitrator's award from another state that has  
4 been confirmed by a court of another state in an arbitration process consistent with this [act].

5 **SECTION 18. IMMUNITY OF ARBITRATOR.**

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

8 (b) In a judicial, administrative, or similar proceeding, an arbitrator is not competent to  
9 testify, and may not be required to produce records as to any statement, conduct, decision, or  
10 ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this  
11 State acting in a judicial capacity. This subsection does not apply:

12 (1) to the extent necessary to determine the claim of an arbitrator against a  
13 party to the arbitration proceeding; or

14 (2) to a hearing on a motion to vacate an award under Section if the movant  
15 establishes prima facie that a ground for vacating the award exists.

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