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FOR DISCUSSION ONLY

FAMILY LAW ARBITRATION ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAW

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FAMILY LAW ARBITRATION ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 2, 2014

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,” used as a noun, means arbitration under this [act];

6 (2) “Arbitration agreement” means an agreement to arbitrate a family law dispute.

7 (3) “Arbitrator” means an individual selected to make an award in a family law dispute
8 that is subject to an arbitration agreement under this [act].

9 (4) “Court” means [the family court] [a tribunal] authorized by law of this state other
10 than this [act] to hear a family law dispute.

11 (5) “Custodial responsibility” includes all powers and duties relating to caretaking
12 authority and decision-making authority for a child. The term includes physical custody, legal
13 custody, parenting time, right to access, and visitation.

14 (6) “Family law dispute” means a contested issue within the jurisdiction of the court, pre
15 or post-decree, under law of this state other than this [act], and includes:

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

18 (B) determination and allocation of ~~liability for~~ debt;

19 (C) maintenance, alimony, or spousal support;

20 (D) custodial responsibility;

21 (E) child support;

22 (F) enforcement of a premarital, marital, or [separation][property
23 settlement][marital settlement] agreement;

1 (G) a marital tort;] and

2 [G][H] costs, expenses, and attorney’s fees.

3 (7) “Hearing” means a hearing conducted by an arbitrator under this [act].

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

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

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

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

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

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

18 **SECTION 3. SCOPE.**

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

20 (b) An arbitrator does not have authority to terminate parental rights, declare an adoption
21 or guardianship of a minor or incapacitated individual, or determine [dependency] [child in need
22 of care] or juvenile-offender status.

1 **SECTION 4. PROTECTION OF PARTY OR CHILD.**

2 (a) If a party to an arbitration agreement is subject to an order of protection before
3 commencement of arbitration or the court finds a reasonable basis to believe that a party's safety
4 or ability to participate effectively in the arbitration is at risk, the court may not refer the parties
5 to arbitration unless each party agrees to arbitration after advice of an attorney and the court
6 finds that:

7 (1) the agreement is informed and voluntary, and

8 (2) reasonable procedures are in place to protect the party at risk from harm,
9 harassment, or intimidation.

10 (b) If, in an arbitration, a party becomes subject to an order of protection, or the
11 arbitrator finds a reasonable basis to believe that a party's safety or ability to participate
12 effectively in the arbitration is at risk, the arbitrator shall suspend the arbitration. The arbitration
13 may proceed only if each party agrees to continue the arbitration after advice of an attorney and
14 the arbitrator finds that:

15 (1) the agreement is informed and voluntary, and

16 (2) reasonable procedures are in place to protect the party at risk from harm,
17 harassment, or intimidation.

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

22 **SECTION 5. ARBITRATION AGREEMENT.**

23 (a) An arbitration agreement that complies with this [act] is enforceable except on a

1 ground that exists at law or equity for the revocation of a contract.

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

5 (c) An arbitrator may decide whether a condition precedent to arbitrability has been
6 fulfilled.

7 (d) Parties to an arbitration agreement may agree to arbitrate an existing [or future]
8 family law dispute between the parties, including a dispute arising out of a premarital, marital,
9 or [separation] [property settlement] [marital settlement] agreement between the parties.

10 (e) An arbitration agreement must:

11 (1) be in a record signed by all parties;

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

13 (3) identify the family law disputes that the parties intend to arbitrate; and

14 (4) include the following disclosures or the substantial equivalent in plain

15 language:

16 (A) Participation in arbitration is voluntary.

17 (B) In a relationship involving domestic violence, arbitration might not be
18 appropriate and might place a victim at risk of harm.

19 (C) The arbitrator has power to decide each issue assigned to arbitration
20 under the agreement.

21 (D) A party may consult with an attorney before agreeing to arbitrate and
22 may choose to be represented by an attorney throughout the arbitration.

23 (E) Parties are responsible for costs of arbitration, including the

1 arbitrator's services and any court filing fees.

2 (F) An arbitration award under this [act] is subject only to limited judicial
3 review and, if confirmed by the court, is enforceable as a judgment.

4 **SECTION 6. QUALIFICATIONS OF ARBITRATOR.**

5 (a) An arbitrator must:

6 (1) be an attorney in good standing [or an attorney or judge on retired status] in a
7 state:

8 (A) that has jurisdiction to hear the family law dispute that is the subject
9 of the arbitration;

10 (B) in which the arbitration is pending; or

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

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

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

17 **SECTION 7. SELECTION OR APPOINTMENT OF ARBITRATOR.**

18 (a) Except as provided in subsection (b), parties to an arbitration agreement shall follow
19 the method for selecting an arbitrator that is provided in the agreement.

20 (b) If the agreed method for selecting an arbitrator fails or an arbitrator is unable to act,
21 on motion of a party, the court shall appoint an arbitrator.

22 **SECTION 8. APPLICABLE LAW.**

23 (a) Parties to an arbitration agreement may designate the law of a jurisdiction to govern

1 the arbitration if the jurisdiction has a significant relationship to any party or the agreement and
2 the designation is not contrary to the public policy of this state.

3 (b) If no law is designated consistent with subsection (a), the [substantive family] law of
4 this state, including its choice-of-law rules, governs an arbitration.

5 **SECTION 9. INITIATION OF ARBITRATION.**

6 (a) A party initiates an arbitration by giving notice in a record to the other party in the
7 manner provided in the agreement. If the agreement does not provide the manner of notice,
8 notice must be by certified or registered mail, return receipt requested, or in the manner
9 authorized for the commencement of a civil action. The notice must describe the nature of the
10 family law dispute and the remedy sought.

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

14 **SECTION 10. MOTION TO COMPEL OR STAY ARBITRATION.**

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

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

23 (c) On motion of a party to stay arbitration on the ground that the party did not enter into

1 an arbitration agreement, the court shall order the parties to arbitrate if it finds that the parties
2 entered into an arbitration agreement that complies with this [act].

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

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

9 **SECTION 11. DISCLOSURE BY ARBITRATOR AND DISQUALIFICATION.**

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

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

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

21 (d) The court shall hear a motion for disqualification under section (c) not later than [30]
22 days after the motion is made. If the court finds that the arbitrator is disqualified based on a
23 circumstance that a reasonable individual would believe is likely to affect the arbitrator's

1 impartiality, the court shall appoint another arbitrator agreed to by the parties or, if the parties
2 have not agreed, on motion of either party, the court shall appoint an arbitrator.

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

7 **SECTION 12. TEMPORARY ORDER.**

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

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

15 (c) A party may move for court confirmation of a temporary order made by an arbitrator.

16 **SECTION 13. ARBITRATION PROCESS.**

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

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

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

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

- 8 (1) hold conferences with the parties to the arbitration;
- 9 (2) determine the date, time, place, and location of the hearings;
- 10 (3) appoint experts;
- 11 (4) administer an oath or affirmation and issue a subpoena for the attendance of a
- 12 witness and for the production of documents and other evidence at any hearing as in a civil
- 13 action;
- 14 (5) order discovery concerning any issue being arbitrated, to the same extent as in
- 15 a civil action and determine the date, time, and place of discovery;
- 16 (6) determine the admissibility, relevance, materiality, and weight of evidence;
- 17 (7) permit a deposition of a witness to be taken for use as evidence at the hearing;
- 18 (8) prohibit a party from disclosing trade secrets and privileged, confidential, or
- 19 other information protected from disclosure, to the same extent as in a civil action;
- 20 (9) appoint an attorney, guardian ad litem, or other representative for a child, to
- 21 the same extent as civil action;
- 22 (10) allocate arbitration fees and expenses between the parties or to one party,
- 23 including imposing a fee or expense on a party or attorney as a sanction; and

1 (11) require each party to provide information, including:

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

3 (B) information required to be disclosed in a family law dispute under law
4 of this state other than this [act]; and

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

6 (d) On motion to the court by a party, a subpoena or other order issued by the arbitrator
7 may be enforced as in a civil action;

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

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

12 **SECTION 14. INTERLOCUTORY JUDICIAL REVIEW DURING**
13 **ARBITRATION PROCESS.** A party to an arbitration may seek interlocutory judicial review
14 and a stay of arbitration for the following:

15 (1) lack of jurisdiction;

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

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

21 **SECTION 15. HEARING.**

22 (a) If the parties to an arbitration and the arbitrator have not agreed on scheduling a
23 hearing, the arbitrator shall set a date, time, and place and give notice of the hearing at least [30]

1 days before the hearing. The arbitrator may hear and decide the controversy on the evidence
2 produced even if a party who was notified does not appear.

3 (b) At a hearing, a party to the arbitration may be represented by an attorney, present
4 evidence, and cross-examine witnesses.

5 (c) An arbitrator may recess a hearing as necessary but may not postpone the hearing to a
6 date later than a date set in the arbitration agreement for making the award unless the parties
7 consent to a later date or the arbitrator has a reasonable basis to postpone the hearing.

8 (d) Attendance at a hearing is limited to parties, their attorneys, necessary personnel, and
9 witnesses, unless the parties otherwise agree or the arbitrator determines that attendance of
10 another individual is necessary.

11 **SECTION 16. RECORD OF HEARING.**

12 (a) Except as otherwise provided by an arbitration agreement or subsection (b), a record
13 is not required of an arbitration hearing.

14 (b) A record must be made of any part of a hearing concerning custodial responsibility or
15 child support, in the manner required by law of this state other than this [act] for a family law
16 dispute involving a child.

17 **SECTION 17. AWARD.**

18 (a) Unless the parties to an arbitration otherwise agree, the arbitrator shall make an
19 award in a signed record on each contested issue and give a copy of the award to each party not
20 later than:

21 (1) any date set by the arbitration agreement or scheduling order; or

22 (2) if no date is set, [30] days after the hearing or, if applicable, a post-hearing
23 submission requested by the arbitrator.

1 (b) An arbitration award under subsection (a) determining custodial responsibility or
2 child support must include findings of fact and conclusions of law. In determining child support,
3 the arbitrator shall comply with the applicable child-support law.

4 (c) An arbitrator retains jurisdiction to correct an error or omission in an arbitration
5 award under subsection (a) until the court confirms the award. Not later than [14] days after the
6 award is made, a party to the arbitration may move to correct an error or omission. Another party
7 to the arbitration may respond to the motion not later than [14] days after receipt of the motion.

8 (d) After confirmation of an award made under subsection (a), the arbitrator may make a
9 clarifying order arising from a dispute over interpretation of the award.

10 **SECTION 18. CONFIRMATION OF AWARD.**

11 (a) After receiving notice of an arbitration award under this [act], any party may move
12 the court for confirmation of the award in the court with jurisdiction under law other than this
13 [act]. Unless a party moves to correct the award under Section 19 or to revise or vacate the
14 award under Section 20, the court shall confirm the award.

15 (b) The award is effective on confirmation.

16 **SECTION 19. CORRECTION OF AWARD.**

17 (a) Not later than [30] days after a party receives notice of an arbitration award under
18 this [act], the party may move the court to correct the award.

19 (b) The court may correct an arbitration award under this [act] if it finds:

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

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

1 **SECTION 20. REVISION OR VACATION OF AWARD.**

2 (a) Not later than [30] days after a party receives notice of an arbitration award under
3 this [act], the party may move the court to revise or vacate the award.

4 (b) The court may revise or vacate an arbitration award under this [act] only on the
5 following grounds, established by a preponderance of the evidence:

6 (1) the award determines custodial responsibility and does not include findings of
7 fact and conclusions of law or will result in serious emotional or physical harm to a child;

8 (2) the award determines child support and does not include findings of fact and
9 conclusions of law or does not comply with the applicable child support law;

10 (3) the award was obtained by corruption, fraud, or other undue means;

11 (4) there was partiality or misconduct by the arbitrator or corruption of the
12 arbitrator to the substantial prejudice of a party's rights;

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

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

18 (c) Except as otherwise provided in subsection (b)(1) and (2), the fact that relief granted
19 in an arbitration award under this [act] could not be granted by a court is not a ground to revise
20 or vacate the award.

21 (d) If the court revises or vacates an arbitration award under this section, the court may
22 order a rehearing before an arbitrator selected under the arbitration agreement or, if the
23 agreement does not provide a method of selection of an arbitrator for a rehearing, appointed by

1 the court. Unless the award is vacated on a ground stated in subsection (b)(4) or (6), the court
2 may order a rehearing before the arbitrator who made the award.

3 **SECTION 21. CONTEST OR MODIFICATION OF CONFIRMED AWARD.**

4 (a) Parties to an arbitration may agree to arbitrate, before the original arbitrator or a new
5 arbitrator, a dispute about the meaning or validity of an arbitration award confirmed under this
6 [act] or a modification of the award based on a substantial and continuing change in
7 circumstances.

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

11 **SECTION 22. LIMITED RIGHT OF APPEAL.**

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

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

19 (b) Except as otherwise provided in subsection (c), an appeal under subsection (a) must
20 be taken in the same manner and according to the same standard of review as an appeal from an
21 order or judgment in other family law disputes.

22 (c) The grounds for appeal shall be limited to the grounds provided in Section 20 (b).

1 **SECTION 23. ENFORCEMENT OF AWARD.**

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

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

7 **SECTION 24. IMMUNITY OF ARBITRATOR.**

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

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

12 (c) Failure of an arbitrator to make a disclosure required by Section 11 does not cause
13 loss of immunity under this section.

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

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

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

22 (e) If an individual commences a civil action against an arbitrator arising from the
23 services of the arbitrator or if a person seeks to compel an arbitrator to testify or produce records

1 in violation of subsection (d), and the court decides that the arbitrator is immune from civil
2 liability or that the arbitrator is not competent to testify, the court shall award to the arbitrator
3 reasonable attorney’s fees, costs, and reasonable expenses of litigation.

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

7 **SECTION 26. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
8 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
9 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
10 modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
11 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
12 Section 7003(b).

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

17 **SECTION 28. EFFECTIVE DATE.** The [act] takes effect