

UNIFORM FAMILY LAW ARBITRATION ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITHOUT PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM FAMILY LAW ARBITRATION ACT

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

SECTION 2. DEFINITIONS. In this [act]:

(1) “Arbitration agreement” means an agreement that subjects a family law dispute to arbitration.

(2) “Arbitrator” means a person selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.

(3) “Child-related dispute” means a family law dispute regarding [legal custody, physical custody, custodial responsibility, parental responsibility or authority], [parenting time, right to access, visitation], or financial support regarding a child.

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

(5) “Family law dispute” means a contested issue arising under the family or domestic relations law of this state.

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

(7) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

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

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

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

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

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

Legislative Note: *In subsection (3), a state should insert the terminology used under state law to refer to disputes over custodial responsibility and parenting time for children.*

SECTION 3. SCOPE.

(a) This [act] governs arbitration of a family law dispute.

(b) This [act] does not authorize an arbitrator to make an award that:

- (1) grants a [separation], [divorce] [dissolution of marriage];
- (2) terminates parental rights;
- (3) grants an adoption or guardianship of a child or incapacitated individual; [or]
- (4) determines the status of [dependency] [a child in need of protection][;or]
- (5) determines a child-related dispute;] [or
- (6) determines [other specified dispute to be excluded from arbitration]].

Legislative Note: *In the bracketed language in subsections (b)(1) and (b)(4), a state should insert the appropriate terminology used under state law.*

If a state wants to exclude child-related disputes from arbitration under this act, it should enact subsection (b)(5). If a state excludes child-related disputes from arbitration, the state should delete the following subsections from the act: Sections (5)(c); 12(c); 13(c)(4) and (c)(11); 14(b); 15(c); 16(c); and 19(b), (c), and (d).

If a state wants to exclude other family law disputes from arbitration, it should enact subsection (b)(6) and identify the category of dispute to be excluded.

SECTION 4. APPLICABLE LAW.

(a) Except as otherwise provided in this [act], the law applicable to the arbitration process

is [cite to this state's statutory law and procedural rules governing contractual arbitration].

(b) In determining the merits of a family law dispute, an arbitrator shall apply the law of this state other than this [act], including its choice of law rules.

SECTION 5. ARBITRATION AGREEMENT.

(a) An arbitration agreement must:

- (1) be in a record signed by the parties;
- (2) identify the arbitrator or a method of selecting an arbitrator; and
- (3) identify the family law dispute the parties intend to arbitrate.

(b) Except as otherwise provided in subsection (c), an agreement in a record to arbitrate an existing or subsequent family law dispute between the parties is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(c) An agreement to arbitrate a subsequent child-related dispute between the parties is unenforceable unless the parties affirm the agreement at the time of the dispute or a court has approved or incorporated the agreement in an order issued in a prior family law proceeding.

(d) If a party objects to arbitration on the ground there is no arbitration agreement or the agreement does not include a family law dispute, the court shall decide whether the parties entered into a valid agreement and whether a family law dispute is subject to the agreement.

SECTION 6. NOTICE OF ARBITRATION. A party may initiate arbitration by giving notice to arbitrate to the other party in the manner specified in the arbitration agreement or, in the absence of a specified manner, under the law and procedural rules of this state other than this [act] governing contractual arbitration.

SECTION 7. MOTION FOR JUDICIAL RELIEF.

(a) A motion for judicial relief under this [act] must be made to the court in which a proceeding is pending involving a family law dispute subject to arbitration or, if no proceeding is pending, to a court with jurisdiction over the parties and the subject matter.

(b) On motion of a party, a court may compel arbitration if the parties have entered into an arbitration agreement that complies with Section 5 of this [act] unless the court determines under Section 12 that the arbitration should not proceed.

(c) On motion of a party, the court shall terminate arbitration if it determines:

- (1) there is no enforceable agreement to arbitrate;
- (2) a family law dispute is not subject to arbitration; or
- (3) under Section 12, that arbitration should not proceed.

(d) Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary for the fair and expeditious resolution of the family law dispute.

SECTION 8. QUALIFICATION AND SELECTION OF ARBITRATOR.

(a) If the parties agree to the selection of an arbitrator or the method of selection of an arbitrator, the agreement controls.

(b) Unless waived in a record by the parties, an arbitrator must be:

(1) an attorney in good standing admitted to practice or on inactive status [or a judge on retired status] in a state; and

(2) trained in identifying domestic violence and child abuse [according to standards established under law of this state other than this [act] for a judicial officer assigned to hear a family law proceeding].

(c) If an arbitrator selected under subsection (a) is unable to act or if the agreed on method of selecting an arbitrator fails, on motion of a party the court shall select an arbitrator.

Legislative Note: If a state has judicial education requirements on the topics of domestic violence and child abuse, the state should enact the bracketed language in subsection (b)(2). States that do not have any such requirements should delete the bracketed language.

SECTION 9. DISCLOSURE BY ARBITRATOR; DISQUALIFICATION.

(a) Before agreeing to serve as an arbitrator, the individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable individual would believe is likely to affect:

(1) the impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party, a party's attorney, or a witness; or

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

(b) An arbitrator, the parties, and the parties' attorneys have a continuing obligation to disclose to all parties any known fact a reasonable individual would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.

(c) An objection to the selection or continued service of an arbitrator and a motion for a stay of arbitration and disqualification of the arbitrator must be made under the law and procedural rules of this state other than this [act] governing arbitrator disqualification.

(d) If a disclosure required by subsection (a)(1) or (b) is not made, on motion of a party not later than [30] days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, the court may:

(1) suspend the arbitration;

(2) vacate an award under Section 19; or

(3) if an award has been confirmed, grant other appropriate relief under law of this state other than this [act].

(e) If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement shall select a new arbitrator or may request the court to select another arbitrator as provided in Section 8.

SECTION 10. PARTY PARTICIPATION.

(a) A party may:

(1) be represented in an arbitration by an attorney;

(2) be accompanied by an individual who will not be called as a witness or act as an advocate; and

(3) participate in the arbitration to the full extent permitted under the law and procedural rules of this state other than this [act] governing contractual arbitration.

(b) A party or party's representative may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.

SECTION 11. TEMPORARY ORDER OR AWARD.

(a) Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order under [insert reference to this state's statutes or rules governing issuance of a temporary order in a family law proceeding].

(b) After an arbitrator is selected and able to act:

(1) the arbitrator may make a temporary award under [insert this state's statutes or rules governing a temporary order in a family law proceeding]; and

(2) if the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.

(c) On motion of a party, at any time before the court confirms a final award, the court under Section 16, 18, or 19 may confirm, correct, vacate, or amend a temporary award made under subsection (b)(1).

(d) On motion of a party, the court may enforce a subpoena or other interim award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

SECTION 12. PROTECTION OF PARTY OR CHILD.

(a) “Protection order” means an injunction or other order, issued under the domestic-violence, family-violence, or anti-stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child under the custodial responsibility of a party.

(b) If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party’s safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:

- (1) the affirmation is informed and voluntary;
- (2) arbitration is not inconsistent with a protection order; and
- (3) reasonable procedures are in place to protect the party from risk of harm,

harassment, or intimidation.

(c) If an arbitrator finds a reasonable basis to believe that a child who is the subject of a child-related dispute is abused or neglected, the arbitrator shall terminate the arbitration of the child-related dispute and report the abuse or neglect to the [state child protection authority].

(d) An arbitrator may make a temporary award under Section 11 to protect a party or child from harm, harassment, or intimidation.

(e) On motion of a party, the court may stay arbitration or review a determination or award made by an arbitrator under this section.

(f) This section supplements remedies available under law of this state other than this [act] for the protection of victims of domestic violence, family violence, stalking, harassment, or similar abuse.

SECTION 13. POWERS AND DUTIES OF ARBITRATOR.

(a) An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition and, unless otherwise agreed by the parties, select the rules for conducting the arbitration.

(b). An arbitrator shall provide each party a right to be heard, to present evidence material to the family law dispute, and to cross-examine witnesses.

(c) Unless the parties otherwise agree in a record, the arbitrator's powers include the power to:

(1) hold conferences with the parties before a hearing;

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

(3) require a party to provide:

(A) a copy of a relevant court order;

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

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

(4) meet with or interview a child who is the subject of a child-related dispute;

(5) appoint a private expert;

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

(7) compel discovery concerning the family law dispute being arbitrated and determine the date, time, and place of discovery;

(8) determine the admissibility and weight of evidence;

(9) permit a deposition of a witness for use as evidence at a hearing;

(10) for good cause, prohibit a party from disclosing information;

(11) appoint an attorney, guardian ad litem, or other representative for a child at the expense of the parties;

(12) impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;

(13) allocate arbitration fees, attorney's fees, expert witness fees, and other costs to the parties; and

(14) impose a sanction on a party for bad faith or obstructive conduct during the arbitration according to standards governing sanctions in this state for litigant misconduct in family law proceedings.

(d) An arbitrator may not allow ex parte communication except to the extent allowed in a family law proceeding for communication with a judge.

SECTION 14. RECORD OF HEARING.

(a) Except as otherwise provided in subsection (b) or required by law of this state other than this [act], an arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

(b) An arbitrator shall cause to be made a verbatim record of any part of an arbitration hearing concerning a child-related dispute.

SECTION 15. AWARD.

(a) An arbitrator shall make an award in a record, dated and signed by the arbitrator. The arbitrator shall give notice of the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, under the law and procedural rules of this state other than this [act] governing contractual arbitration.

(b) Except as otherwise provided in subsection (c), the award must state the reasons on which it is based unless otherwise agreed by the parties.

(c) An award determining a child-related dispute must state the reasons on which it is based as required by law of this state other than this [act] for a court order in a family law proceeding.

(d) An award is not enforceable as a judgment or, if applicable, as a decree of separation, divorce, or dissolution until confirmed under Section 16.

SECTION 16. CONFIRMATION OF AWARD.

(a) After an arbitrator gives notice under Section 15(a) of an award, including an award corrected under Section 17, a party may move the court for an order confirming the award.

(b) Except as provided in subsection (c), the court shall confirm an award if:

(1) the parties agree to confirmation in a record; or

(2) the time has expired for making a motion, and no motion is pending, under Section 18 or 19.

(c) If the award determines a child-related dispute, the court shall confirm the award under subsection (b) if the court finds, after a review of the record if necessary, that the award on

its face:

(1) complies with Section 15 and the law of this state other than this [act] governing child-related disputes; and

(2) is in the best interests of the child.

(d) On confirmation, an award is enforceable as a judgment.

SECTION 17. CORRECTION OF UNCONFIRMED AWARD BY ARBITRATOR.

(a) On motion of a party made not later than [30] days after an arbitrator gives notice of an award under Section 15(a), the arbitrator may correct an award:

(1) if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

(2) if the award is imperfect in a matter of form not affecting the merits on the issues submitted; or

(3) to clarify the award.

(b) An arbitrator shall give notice under Section 15(a) of a corrected award.

SECTION 18. CORRECTION OF UNCONFIRMED AWARD BY COURT.

(a) On motion made not later than [90] days after an arbitrator gives notice of an award under Section 15(a), including an award corrected under Section 17, the court shall correct the award if:

(1) the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

(2) the award is imperfect in a matter of form not affecting the merits on the issues submitted; or

(3) the arbitrator made an award on a dispute not submitted to the arbitrator and the award may be corrected without affecting the merits on the issues submitted.

(b) A motion under this section to correct an award may be joined with a motion to vacate or amend the award under Section 19.

(c) Unless a motion under Section 19 is pending, on motion, the court may confirm under Section 16 a corrected award.

SECTION 19. VACATION OR AMENDMENT OF UNCONFIRMED AWARD BY COURT.

(a) On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:

(1) the award was procured by corruption, fraud, or other undue means;

(2) there was:

(A) evident partiality by the arbitrator;

(B) corruption by the arbitrator; or

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

(3) the arbitrator refused to postpone the hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 13, so as to prejudice substantially the rights of a party.

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

(5) no arbitration agreement exists, unless the moving party participated in the arbitration without raising the objection under Section 5(d) not later than the beginning of the first arbitration hearing; [or]

(6) the arbitration was conducted without proper notice of the initiation of arbitration as required under Section 6, so as to prejudice substantially the rights of a party[; or

(7) a ground exists for vacating the award under law of this state other than this [act]].

(b) Except as otherwise provided in subsection (c), on motion of a party, the court shall vacate an unconfirmed award that determines a child-related dispute if the moving party establishes that:

(1) the award does not comply with Section 15 or the law of this state other than this [act] governing child-related disputes or is contrary to the best interests of the child;

(2) the record of the hearing or the statement of reasons in the award is inadequate for the court to review the award; or

(3) a ground for vacating an award under subsection (a) exists.

(c) If an award is subject to vacation under subsection (b)(1), on motion of a party, the court may amend the award if amending rather than vacating is in the best interests of the child.

(d) The court shall determine a motion under subsection (b) or (c) based on the record of the arbitration hearing and facts occurring after the hearing [or may exercise de novo review].

(e) A motion under this section to vacate or amend must be filed not later than [90] days:

(1) after the arbitrator gives the party filing the motion notice of the award or a corrected award; or

(2) for a motion under subsection (a)(1), after the ground of corruption, fraud, or undue means is known or by the exercise of reasonable care should have been known to the party filing the motion.

(f) If the court under this section vacates an award for a reason other than the absence of

an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for vacating the award is that the award was procured by corruption, fraud, or other undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the rehearing must be before another arbitrator.

(g) If the court denies a motion under this section to vacate or amend an award, the court shall confirm the award under Section 16 unless a motion is pending under Section 18.

***Legislative Note:** If a state wishes to authorize discretionary de novo review of an arbitration award in a child-related dispute, it should enact all of subsection (d), including the bracketed language.*

SECTION 20. CLARIFICATION OF CONFIRMED AWARD. If the meaning or effect of an award confirmed under Section 16 is in dispute, the parties may:

- (1) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or
- (2) proceed in court under law of this state other than this [act] governing clarification of a court decree in a family law proceeding.

SECTION 21. JUDGMENT ON AWARD.

(a) On granting an order confirming, vacating without directing a rehearing, or amending an award under this [act], the court shall enter a judgment in conformity with the order.

(b) On motion of a party, the court may order that a document or parts of the record be sealed or redacted to prevent public disclosure of all or part of an arbitration record or award to the extent permitted under law of this state other than this [act].

SECTION 22. MODIFICATION OF CONFIRMED AWARD OR JUDGMENT.

If a party requests under the law of this state other than this [act] a modification of a confirmed award or judgment on the award based on facts occurring after confirmation:

(1) the parties shall proceed under the dispute-resolution method specified in the award or judgment; or

(2) if the award or judgment does not specify a dispute resolution method, the parties may:

(A) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or

(B) absent agreement proceed under the law of this state other than this [act] governing modification of a court decree in a family law proceeding.

SECTION 23. ENFORCEMENT OF CONFIRMED AWARD.

(a) The court shall enforce an award confirmed by the court under this [act], including a temporary award, in the manner and to the same extent as any other order or judgment of a court.

(b) The court shall enforce an arbitration award in a family law dispute confirmed by a court in another state in the manner and to the same extent as any other order or judgment from another state.

SECTION 24. APPEALS.

(a) An appeal may be taken under this [act] from:

(1) an order [granting or] denying a motion to compel arbitration;

(2) an order granting [or denying] a motion to stay arbitration;

(3) an order confirming or denying confirmation of an award;

(4) an order correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a final judgment.

(b) An appeal under this section may be taken as from an order or a judgment in a civil

action.

Legislative Note: If a state wants to authorize an immediate appeal from an order granting a motion to compel arbitration, it should enact the bracketed language in subsection (a)(1). If a state wants to authorize an immediate appeal from an order denying a motion to stay arbitration, it should enact the bracketed language in subsection (a)(2).

SECTION 25. IMMUNITY OF ARBITRATOR.

(a) In this section, “arbitration organization” means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.

(b) An arbitrator or an arbitration organization acting in that capacity in a family law dispute is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(c) The immunity provided by this section supplements any immunity under law of this state other than this [act].

(d) An arbitrator’s failure to make a disclosure required by Section 9 does not cause the arbitrator to lose immunity under this section.

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

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

(2) to a hearing on a motion under Section 19(a)(1) or (a)(2) to vacate an award, if there is prima facie evidence that a ground for vacating the award exists.

(f) If a person commences a civil action against a n arbitrator arising from the services of

the arbitrator or seeks to compel the arbitrator to testify or produce records in violation of subsection (e) and the court determines that the arbitrator is immune from civil liability or is not competent to testify or required to produce the records, the court shall award the arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 27. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 28. TRANSITIONAL PROVISION. This [act] applies to an arbitration of a family law dispute under an arbitration agreement made on or after [the effective date of this [act]]. If the agreement was made before [the effective date of this [act]], the parties may agree in a record that this [act] applies to the arbitration.

SECTION 29. EFFECTIVE DATE. This [act] takes effect