

JAN 20 2017

A BILL FOR AN ACT

RELATING TO THE UNIFORM FAMILY LAW ARBITRATION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 **UNIFORM FAMILY LAW ARBITRATION ACT**

6 § -1 **Short title.** This chapter may be cited as the
7 Uniform Family Law Arbitration Act.

8 § -2 **Definitions.** As used in this chapter:

9 "Arbitration agreement" means an agreement that subjects a
10 family law dispute to arbitration.

11 "Arbitration organization" means an association, agency,
12 board, commission, or other entity that is neutral and
13 initiates, sponsors, or administers an arbitration or is
14 involved in the selection of an arbitrator.

15 "Arbitrator" means an individual selected, alone or with
16 others, to make an award in a family law dispute that is subject
17 to an arbitration agreement.



1 "Child-related dispute" means a family law dispute
2 regarding child custody, visitation, or financial support
3 regarding a child, under section 571-46, section 576D-7, or
4 chapter 583A.

5 "Court" means the family court of this State.

6 "Family law dispute" means a contested issue arising under
7 the family and domestic relations law of this State.

8 "Party" means an individual who signs an arbitration
9 agreement and whose rights will be determined by an award.

10 "Person" means an individual, estate, business or nonprofit
11 entity, public corporation, government or governmental
12 subdivision, agency, or instrumentality, or any other legal
13 entity.

14 "Record", used as a noun, means information that is
15 inscribed on a tangible medium or that is stored in an
16 electronic or other medium and is retrievable in perceivable
17 form.

18 "Sign" means, with present intent to authenticate or adopt
19 a record:

20 (1) To execute or adopt a tangible symbol; or



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

3 "State" means a state of the United States, the District of
4 Columbia, Guam, Puerto Rico, the United States Virgin Islands,
5 or any territory or insular possession subject to the
6 jurisdiction of the United States.

7 § -3 **Scope.** (a) This chapter governs arbitration of a
8 family law dispute.

9 (b) This chapter does not authorize an arbitrator to make
10 an award that:

11 (1) Grants a legal separation, divorce, annulment, or
12 separation under chapter 580;

13 (2) Terminates parental rights under section 571-61 and
14 section 587A-33;

15 (3) Grants an adoption under chapter 578 or a guardianship
16 of a child under section 560:5-202 and section
17 560:5-204 or incapacitated individual under section
18 560:5-301 and section 560:5-304;

19 (4) Determines the status of a child in need of protection
20 under chapter 587A; or

21 (5) Determines a child-related dispute.



1 § -4 **Applicable law.** (a) Except as otherwise provided
2 in this chapter, the law applicable to arbitration is chapter
3 658A.

4 (b) In determining the merits of a family law dispute, an
5 arbitrator shall apply the law of this State, including its
6 choice of law rules.

7 § -5 **Arbitration agreement.** (a) An arbitration
8 agreement shall:

- 9 (1) Be in a record signed by the parties;
- 10 (2) Identify the arbitrator, an arbitration organization,
11 or a method of selecting an arbitrator; and
- 12 (3) Identify the family law dispute the parties intend to
13 arbitrate.

14 (b) Except as otherwise provided in subsection (c), an
15 agreement in a record to arbitrate a family law dispute that
16 arises between the parties before, at the time, or after the
17 agreement is made is valid and enforceable as any other contract
18 and irrevocable except on a ground that exists at law or in
19 equity for the revocation of a contract.

20 (c) An agreement to arbitrate a child-related dispute is
21 unenforceable.



1 (d) If a party objects to arbitration on the ground the
2 arbitration agreement is unenforceable or the agreement does not
3 include a family law dispute, the court shall decide whether the
4 agreement is enforceable or includes the family law dispute.

5 § -6 **Notice of arbitration.** A party may initiate
6 arbitration by giving notice to arbitrate to the other party in
7 the manner specified in the arbitration agreement or, in the
8 absence of a specified manner, under the law and procedural
9 rules of this State other than this chapter governing
10 contractual arbitration.

11 § -7 **Motion for judicial relief.** (a) A motion for
12 judicial relief under this chapter shall be made to the court in
13 which a proceeding is pending involving a family law dispute
14 subject to arbitration or, if no proceeding is pending, a court
15 with jurisdiction over the parties and the subject matter.

16 (b) Upon motion of a party, the court may compel
17 arbitration if the parties have entered into an arbitration
18 agreement that complies with section -5 unless the court
19 determines under section -12 that the arbitration should not
20 proceed.



1 (c) Upon motion of a party, the court shall terminate
2 arbitration if it determines that:

- 3 (1) The agreement to arbitrate is unenforceable;
4 (2) The family law dispute is not subject to arbitration;
5 or
6 (3) Under section -12, the arbitration should not
7 proceed.

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

13 § -8 **Qualification and selection of arbitrator.** (a)

14 Except as otherwise provided in subsection (b), unless waived in
15 a record by the parties, an arbitrator shall be trained in
16 identifying domestic violence and child abuse and be:

- 17 (1) An attorney in good standing admitted to practice or
18 on inactive status; or
19 (2) A judge on retired status,
20 in a state.



1 (b) The identification in the arbitration agreement of an
2 arbitrator, arbitration organization, or method of selection of
3 the arbitrator controls.

4 (c) If an arbitrator is unable or unwilling to act or if
5 the agreed-upon method of selecting an arbitrator fails, upon
6 motion of a party, the court shall select an arbitrator.

7 § -9 Disclosure by arbitrator; disqualification. (a)

8 Before agreeing to serve as an arbitrator, an individual, after
9 making reasonable inquiry, shall disclose to all parties any
10 known fact that a reasonable person would believe is likely to
11 affect:

12 (1) The impartiality of the arbitrator in the arbitration,
13 including bias, a financial or personal interest in
14 the outcome of the arbitration, or an existing or past
15 relationship with a party, attorney representing a
16 party, or witness; or

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

18 (b) An arbitrator, the parties, and the attorneys
19 representing the parties have a continuing obligation to
20 disclose to all parties any known fact that a reasonable person



1 would believe is likely to affect the impartiality of the
2 arbitrator or the arbitrator's ability to make a timely award.

3 (c) An objection to the selection or continued service of
4 an arbitrator and a motion for a stay of arbitration and
5 disqualification of the arbitrator shall be made under the law
6 and procedural rules of this State other than this chapter
7 governing arbitrator disqualification.

8 (d) If a disclosure required by subsection (a) or (b) is
9 not made, the court may:

10 (1) Upon motion of a party not later than thirty days
11 after the failure to disclose is known or by the
12 exercise of reasonable care should have been known to
13 the party, suspend the arbitration;

14 (2) Upon timely motion of a party, vacate an award under
15 section -19(a)(2); or

16 (3) If an award has been confirmed, grant other
17 appropriate relief under law of this State other than
18 this chapter.

19 (e) If the parties agree to discharge an arbitrator or the
20 arbitrator is discharged or resigns, the parties by agreement



1 may select a new arbitrator or request the court to select
2 another arbitrator as provided in section -8.

3 § -10 **Party participation.** (a) A party may:

4 (1) Be represented in an arbitration by an attorney;

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

7 (3) Participate in the arbitration to the full extent
8 permitted under the law and procedural rules of this
9 State other than this chapter governing a party's
10 participation in contractual arbitration.

11 (b) A party or representative of a party shall not
12 communicate ex parte with the arbitrator except to the extent
13 allowed in a family law proceeding for communication with a
14 judge.

15 § -11 **Temporary order or award.** (a) Before an
16 arbitrator is selected and able to act, upon motion of a party,
17 the court may enter a temporary order under chapter 580.

18 (b) After an arbitrator is selected:

19 (1) The arbitrator may make a temporary award under
20 chapter 580; and



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

5 (c) Upon motion of a party, before the court confirms a
6 final award, the court under section -16, -18, or -19
7 may confirm, correct, vacate, or amend a temporary award made
8 under subsection (b)(1).

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

12 § -12 **Protection of party or child.** (a) As used in
13 this section, "protection order" means an injunction or other
14 order, issued under the domestic-violence, family-violence, or
15 stalking laws of the issuing jurisdiction, to prevent an
16 individual from engaging in a violent or threatening act
17 against, harassment of, contact or communication with, or being
18 in physical proximity to another individual who is a party or a
19 child under the custodial responsibility of a party.

20 (b) If a party is subject to a protection order or an
21 arbitrator determines there is a reasonable basis to believe a



1 party's safety or ability to participate effectively in
2 arbitration is at risk, the arbitrator shall stay the
3 arbitration and refer the parties to court. The arbitration
4 shall not proceed unless the party at risk affirms the
5 arbitration agreement in a record and the court determines that:

- 6 (1) The affirmation is informed and voluntary;
- 7 (2) Arbitration is not inconsistent with the protection
8 order; and

- 9 (3) Reasonable procedures are in place to protect the
10 party from risk of harm, harassment, or intimidation.

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

13 (d) Upon motion of a party, the court may stay arbitration
14 and review a determination or temporary award under this
15 section.

16 (e) This section supplements remedies available under law
17 of this State other than this chapter for the protection of
18 victims of domestic violence, family violence, stalking,
19 harassment, or similar abuse.

20 § -13 Powers and duties of arbitrator. (a) An
21 arbitrator shall conduct an arbitration in a manner the



1 arbitrator considers appropriate for a fair and expeditious
2 disposition of the dispute.

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

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

8 (1) Select the rules for conducting the arbitration;

9 (2) Hold conferences with the parties before a hearing;

10 (3) Determine the date, time, and place of a hearing;

11 (4) Require a party to provide:

12 (A) A copy of a relevant court order;

13 (B) Information required to be disclosed in a family
14 law proceeding under law of this State other than
15 this chapter; and

16 (C) A proposed award that addresses each issue in
17 arbitration;

18 (5) Appoint a private expert at the expense of the
19 parties;



- 1 (6) Administer an oath or affirmation and issue a subpoena
- 2 for the attendance of a witness or the production of
- 3 documents and other evidence at a hearing;
- 4 (7) Compel discovery concerning the family law dispute and
- 5 determine the date, time, and place of discovery;
- 6 (8) Determine the admissibility and weight of evidence;
- 7 (9) Permit deposition of a witness for use as evidence at
- 8 a hearing;
- 9 (10) For good cause, prohibit a party from disclosing
- 10 information;
- 11 (11) Appoint an attorney, guardian ad litem, or other
- 12 representative for a child at the expense of the
- 13 parties;
- 14 (12) Impose a procedure to protect a party or child from
- 15 risk of harm, harassment, or intimidation;
- 16 (13) Allocate arbitration fees, attorney's fees, expert-
- 17 witness fees, and other costs to the parties; and
- 18 (14) Impose a sanction on a party for bad faith or
- 19 misconduct during the arbitration according to
- 20 standards governing imposition of a sanction for
- 21 litigant misconduct in a family law proceeding.



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

4 § **-14 Recording of hearing.** An arbitration hearing need
5 not be recorded unless:

6 (1) Otherwise required by law of this State other than
7 this chapter;

8 (2) Required by the arbitrator;

9 (3) Provided by the arbitration agreement; or

10 (4) Requested by a party.

11 § **-15 Award.** (a) An arbitrator shall make an award in
12 a record, dated and signed by the arbitrator. The arbitrator
13 shall give notice of the award to each party by a method agreed
14 upon by the parties or, if the parties have not agreed upon a
15 method, under the law and procedural rules of this State other
16 than this chapter governing notice in contractual arbitration.

17 (b) The award under this chapter shall state the reasons
18 on which it is based unless otherwise agreed by the parties.

19 (c) An award under this chapter is not enforceable as a
20 judgment until confirmed under section -16.



1 § **-16 Confirmation of award.** (a) After an arbitrator
2 gives notice under section -15(a) of an award, including an
3 award corrected under section -17, a party may move the court
4 for an order confirming the award.

5 (b) The court shall confirm an award under this chapter
6 if:

- 7 (1) The parties agree in a record to confirmation; or
8 (2) The time has expired for making a motion, and no
9 motion is pending, under section -18 or. -19.

10 (c) Upon confirmation, an award under this chapter is
11 enforceable as a judgment.

12 § **-17 Correction by arbitrator of unconfirmed award.**

13 Upon motion of a party made not later than thirty days after an
14 arbitrator gives notice under section -15(a) of an award, the
15 arbitrator may correct the award:

- 16 (1) If the award has an evident mathematical
17 miscalculation or an evident mistake in the
18 description of a person, thing, or property;
19 (2) If the award is imperfect in a matter of form not
20 affecting the merits on the issues submitted; or
21 (3) To clarify the award.



1 § -18 **Correction by court of unconfirmed award.**

2 (a) Upon motion of a party made not later than ninety days
3 after an arbitrator gives notice under section -15(a) of an
4 award, including an award corrected under section -17, the
5 court shall correct the award if:

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

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

11 (3) The arbitrator made an award on a dispute not
12 submitted to the arbitrator and the award may be
13 corrected without affecting the merits of the issues
14 submitted.

15 (b) A motion under this section to correct an award may be
16 joined with a motion to vacate or amend the award under section
17 -19.

18 (c) Unless a motion under section -19 is pending, the
19 court may confirm a corrected award under section -16.



1 § -19 **Vacation or amendment by court of unconfirmed**

2 **award.** (a) Upon motion of a party, the court shall vacate an
3 unconfirmed award if the moving party establishes that:

4 (1) The award was procured by corruption, fraud, or other
5 undue means;

6 (2) There was:

7 (A) Evident partiality by the arbitrator;

8 (B) Corruption by the arbitrator; or

9 (C) Misconduct by the arbitrator substantially
10 prejudicing the rights of a party;

11 (3) The arbitrator refused to postpone a hearing on
12 showing of sufficient cause for postponement, refused
13 to consider evidence material to the controversy, or
14 otherwise conducted the hearing contrary to section
15 -13, so as to prejudice substantially the rights of
16 a party;

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

18 (5) No arbitration agreement exists, unless the moving
19 party participated in the arbitration without making a
20 motion under section -7 not later than the
21 beginning of the first arbitration hearing;



1 (6) The arbitration was conducted without proper notice
2 under section -6 of the initiation of arbitration,
3 so as to prejudice substantially the rights of a
4 party; or

5 (7) A ground exists for vacating the award under law of
6 this State other than this chapter.

7 (b) A motion under this section to vacate or amend an
8 award shall be filed not later than ninety days:

9 (1) After an arbitrator gives the party filing the motion
10 notice of the award or a corrected award; or

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

15 (c) If the court under this section vacates an award for a
16 reason other than the absence of an enforceable arbitration
17 agreement, the court may order a rehearing before an arbitrator.
18 If the reason for vacating the award is that the award was
19 procured by corruption, fraud, or other undue means or there was
20 evident partiality, corruption, or misconduct by the arbitrator,
21 the rehearing shall be before another arbitrator.



1 (d) If the court under this section denies a motion to
2 vacate or amend an award, the court may confirm the award under
3 section -16 unless a motion is pending under section -18.

4 § -20 **Clarification of confirmed award.** If the meaning
5 or effect of an award confirmed under section -16 is in
6 dispute, the parties may:

- 7 (1) Agree to arbitrate the dispute before the original
8 arbitrator or another arbitrator; or
9 (2) Proceed in court under law of this State other than
10 this chapter governing clarification of a judgment in
11 a family law proceeding.

12 § -21 **Judgment on award.** (a) Upon granting an order
13 confirming, vacating without directing a rehearing, or amending
14 an award under this chapter, the court shall enter judgment in
15 conformity with the order.

16 (b) Upon motion of a party, the court may order that a
17 document or part of the arbitration record be sealed or redacted
18 to prevent public disclosure of all or part of the record or
19 award to the extent permitted under law of this State other than
20 this chapter.



1 § **-22 Modification of confirmed award or judgment.** If a
2 party requests under law of this State other than this chapter a
3 modification of an award confirmed under section -16 or
4 judgment on the award based on a fact occurring after
5 confirmation:

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

8 (2) If the award or judgment does not specify a dispute-
9 resolution method, the parties may:

10 (A) Agree to arbitrate the modification before the
11 original arbitrator or another arbitrator; or

12 (B) Absent agreement proceed under law of this State
13 other than this chapter governing modification of
14 a judgment in a family law proceeding.

15 § **-23 Enforcement of confirmed award.** (a) The court
16 shall enforce an award confirmed under section -16, including
17 a temporary award, in the manner and to the same extent as any
18 other order or judgment of a court.

19 (b) The court shall enforce an arbitration award in a
20 family law dispute confirmed by a court in another state in the



1 manner and to the same extent as any other order or judgment
2 from another state.

3 § **-24 Appeal.** (a) An appeal may be taken under this
4 chapter from:

- 5 (1) An order denying a motion to compel arbitration;
- 6 (2) An order granting a motion to stay arbitration;
- 7 (3) An order confirming or denying confirmation of an
8 award;
- 9 (4) An order correcting an award;
- 10 (5) An order vacating an award without directing a
11 rehearing; or
- 12 (6) A final judgment.

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

15 § **-25 Immunity of arbitrator.** (a) An arbitrator or
16 arbitration organization acting in that capacity in a family law
17 dispute is immune from civil liability to the same extent as a
18 judge of a court of this State acting in a judicial capacity.

19 (b) The immunity provided by this section supplements any
20 immunity under law of this State other than this chapter.



1 (c) An arbitrator's failure to make a disclosure required
2 by section -9 does not cause the arbitrator to lose immunity
3 under this section.

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

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

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

16 (e) If a person commences a civil action against an
17 arbitrator arising from the services of the arbitrator or seeks
18 to compel the arbitrator to testify or produce records in
19 violation of subsection (d) and the court determines that the
20 arbitrator is immune from civil liability or is not competent to
21 testify or required to produce the records, the court shall



1 award the arbitrator reasonable attorney's fees, costs, and
2 reasonable expenses of litigation.

3 § -26 Relation to electronic signatures in global and
4 national commerce act. This chapter modifies, limits, or
5 supersedes the Electronic Signatures in Global and National
6 Commerce Act, 15 U.S.C. section 7001 et seq., but does not
7 modify, limit, or supersede section 101(c) of that act, 15
8 U.S.C. section 7001(c), or authorize electronic delivery of any
9 of the notices described in section 103(b) of that act, 15
10 U.S.C. section 7003(b).

11 § -27 Transitional provision. This chapter applies to
12 arbitration of a family law dispute under an arbitration
13 agreement made on or after the effective date of this chapter.
14 If an arbitration agreement was made before the effective date
15 of this chapter, the parties may agree in a record that this
16 chapter applies to the arbitration."

17 SECTION 2. This Act shall take effect upon its approval.

18

INTRODUCED BY: ~~AND~~ D.C. Eich-
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S.B. NO. 335

Report Title:

Uniform Family Law Arbitration Act; Established; Disputes;
Arbitration; Authorized; Conditions

Description:

Authorizes the use of arbitration to resolve certain family law disputes. Specifies law applicable to arbitrations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

