

HB 1235, HD1

RELATING TO THE UNIFORM FAMILY LAW ARBITRATION ACT

Authorizes the use of arbitration to resolve certain family law and child-related disputes. Specifies law and procedures applicable to family law and child-related arbitrations. (HB1235 HD1)



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

H.B. NO. 1235, H.D. 1, RELATING TO THE UNIFORM FAMILY LAW ARBITRATION ACT.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 17, 2017

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lynette J. Lau, Administrator, Child Support Enforcement Agency

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to authorize the use of arbitration to resolve certain family law and child-related disputes and provides for the procedures for such arbitration actions.

The new section -22(1) of the new Hawaii Revised Statutes (HRS) chapter set forth in section 1 of the bill on page 22, lines 13 and 14, provides that, if a party requests modification of an arbitration award confirmed by the court or a judgment on the award based on a fact occurring after confirmation, the "parties shall proceed under the dispute-resolution method specified in the award or judgment". However, this would be in conflict with section 576E-14(a), HRS, which authorizes the parties to file requests for modification of child support orders with the Child Support Enforcement Agency (CSEA) and requires that the agency proceed administratively pursuant to sections 576E-5 through 576E-9, HRS.

In addition, 45 C.F.R. § 303.8 requires that states review and modify child support orders within 36 months after the establishment of the order or the most recent review when the subject child is receiving Temporary Assistance for Needy Families or upon the request of either parent. If there is a dispute-resolution method specified in

the award or judgment, CSEA would not be able to comply with this federal requirement as the agency cannot initiate an arbitration action under this new act.

To resolve this issue, we respectfully request that the Committee amend section -22(1) on page 22, lines 13 and 14, to include the phrase, “unless otherwise authorized under state or federal law”, at the start of the subsection. The section -22(1) should be amended to read, “Unless otherwise authorized under state or federal law, the parties shall proceed under the dispute-resolution method specified in the award or judgment; or”. This proposed amendment has been discussed with and agreed upon by the Hawaii Commission to Promote Uniform Legislation.

The Department of the Attorney General respectfully requests that the committee consider the above-proposed amendment in passing this bill.

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON H.B. No. 1235, H.D. 1
RELATING TO THE UNIFORM FAMILY LAW ARBITRATION ACT.**

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, March 17, 2017, 9:00 a.m.
Conference Room 016, State Capitol

PERSON(S) TESTIFYING: ELIZABETH KENT or KEN TAKAYAMA
Commission to Promote Uniform Legislation

Chair Keith-Agaran and Members of the Committee:

Thank you for hearing H.B. No.1235, H.D. 1, which enacts the Uniform Family Law Arbitration Act (UFLAA). My name is Elizabeth Kent and I am one of Hawaii's Uniform Law Commissioners. I was on the committee that drafted the UFLAA and support passage of the UFLAA.

Based on my experience in the field of Alternative Dispute Resolution, I believe that people are looking for solutions and options. Currently people who have a family law dispute may go to the Family Court for resolution (litigation), or they may mediate their case (Chapter 658H, Hawaii Revised Statutes), or they may choose to resolve it through Collaborative Law (Chapter 658G, Hawaii Revised Statutes). Family Law Arbitration provides the people of Hawaii with another option to use when they have problems and under this bill they may select an arbitrator, present evidence to the arbitrator, and receive a decision from the arbitrator. Materials from the Uniform Law Commission about the UFLAA are attached to this testimony.

Thank you for the opportunity to present testimony in support of Family Law Arbitration and this bill. I hope it is enacted.

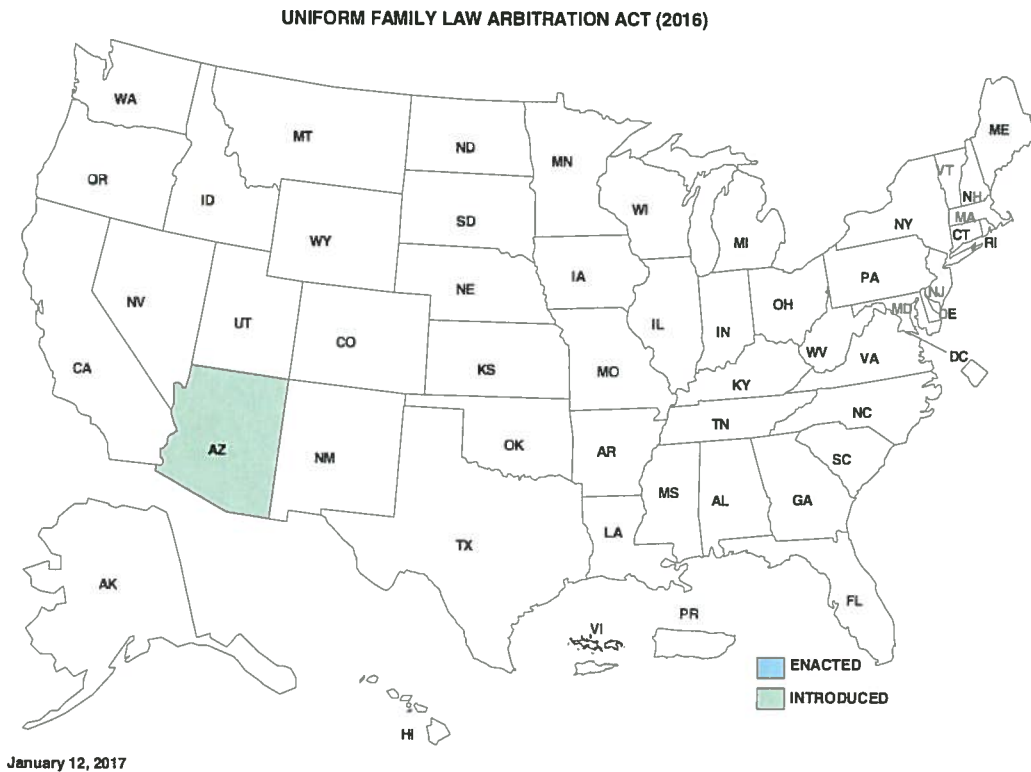


A Few Facts about
THE UNIFORM FAMILY LAW ARBITRATION ACT (2016)

PURPOSE: Arbitration is a method of alternative dispute resolution in which the parties choose a neutral third party to resolve their disputed issue. The Uniform Family Law Arbitration Act (UFLAA) establishes a clear, comprehensive framework for the arbitration of family law matters. Although arbitration has been used for decades to resolve commercial disputes, arbitration of family law issues, such as property, support, and child-related disputes, has recently gained traction. Current state statutes vary widely in this area. The UFLAA is based in part on the widely enacted Uniform Arbitration Act and Revised Uniform Arbitration Act, but includes special standards for the arbitration of child custody and support, protections for victims of domestic violence, and more.

ORIGIN: Completed by the Uniform Law Commission in 2016.

ENACTMENTS: Not yet enacted.



For further information about UFLAA, please contact ULC Legislative Counsel Kaitlin Dohse at (312) 450-6615 or kdohse@uniformlaws.org.



THE UNIFORM FAMILY LAW ARBITRATION ACT

- A Summary -

The Uniform Family Law Arbitration Act (UFLAA) creates a statutory scheme for the arbitration of family law disputes. Arbitration is a private process that parties may use to resolve a dispute rather than going to court. During an arbitration, a neutral third party, the arbitrator, hears arguments from the parties, evaluates evidence, and makes a decision on their dispute. Although arbitration has long been used in the commercial context, it has recently begun to gain popularity in the family law sphere.

Under the UFLAA, a “family law dispute” is a contested issue arising under the state’s family or domestic relations law. Family law disputes typically include disagreements about marital property, spousal support, child custody, and child support.

Under the Act, an arbitrator may not:

- grant a divorce;
- terminate parental rights;
- grant an adoption or guardianship of a child or incapacitated person; or
- determine the status of a child in need of protection.

The Act sets out arbitration procedures chronologically, from defining an arbitration agreement to providing standards for vacating a confirmed award. Many of the provisions of the UFLAA will be familiar to arbitrators and practitioners in the dispute resolution field. This is because the UFLAA is based in part on the Uniform Arbitration Act (1955) and Revised Uniform Arbitration Act (2000). The UFLAA’s provisions for arbitrator disclosure, award, appeals, and arbitrator immunity, among others, are drawn substantially from these earlier uniform acts.

Since family law disputes are different from traditional commercial disputes, however, the UFLAA contains some key provisions that do not appear in the Uniform Arbitration Act or Revised Uniform Arbitration Act. Many of these differences have to do with protecting vulnerable individuals during the arbitration process, such as children and victims of domestic violence. For instance, unless waived by the parties, the UFLAA requires arbitrators to be trained in detecting domestic violence and child abuse before arbitrating a family law dispute. If the arbitrator detects abuse, the arbitrator must stay the arbitration and refer the dispute to court. Likewise, if a party is subject to a protection order, the dispute will be referred to court for resolution.

Importantly, the UFLAA requires close judicial review of arbitration awards determining child-related issues. While an award regarding property or spousal support is subject to limited judicial review, a child-related award may not be confirmed by a court unless the court finds that the award complies with applicable law and is in the best interests of the child. Also, *de novo* review of child-related awards is a bracketed alternative that a state can choose to enact. In

addition, some states may want to exclude child-related disputes from arbitration altogether, and the Act provides an opt-out alternative for that purpose.

Another unique provision of the UFLAA relates to agreements to arbitrate a dispute that may arise in the future (often referred to as “pre-dispute agreements”). Pre-dispute agreements are generally permissible under the UFLAA, in accordance with the UAA and the RUAA. If parties agree to arbitrate a future child-related dispute, however, then the parties must affirm the agreement to arbitrate at the time of the dispute before proceeding to arbitration.

After the court confirms an award, a party may request a modification under state law governing post-decree modifications. If the parties agree, modification actions can be resolved by arbitration.

The UFLAA is an overlay statute meant to work together with the state’s existing choice-of-law rules and contractual arbitration law. It provides a comprehensive, clear framework for the arbitration of family law disputes, and should be enacted in every state.

For more information about the UFLAA, please contact ULC Legislative Counsel Kaitlin Dohse at (312) 450-6615 or kdohse@uniformlaws.org.



WHY YOUR STATE SHOULD ADOPT THE UNIFORM FAMILY LAW ARBITRATION ACT (2016)

The Uniform Family Law Arbitration Act (UFLAA) provides necessary guidelines for the arbitration of family law matters. As popularity grows for this form of alternative dispute resolution, enacting the UFLAA ensures predictability and consistency. Some features of the UFLAA include:

- ***The UFLAA offers an efficient alternative for the resolution of family law disputes.*** The Act gives parties a private, efficient method to solve family law problems. The UFLAA also gives parties control over selection of their arbitrator, and thus, more control over the timing of their dispute resolution process.
- ***The UFLAA seamlessly integrates the state's existing contractual arbitration law.*** The Act looks to the state's existing statutory law and procedural rules for contractual arbitration to fill in gaps not covered by the UFLAA.
- ***The UFLAA guards the role of the courts with respect to children.*** Arbitration awards regarding child custody or child support cannot be confirmed unless the court finds that the award complies with applicable law and is in the best interests of the child. If the parties are arbitrating a child-related dispute under the Act and the arbitrator has a reasonable basis to believe the child is subject to abuse or neglect, then the arbitrator ends the arbitration, and the matter will be sent to the court for resolution.
- ***The UFLAA protects victims of domestic violence.*** The Act provides safeguards to ensure that one party to the arbitration will not intimidate or overpower another. For example, a party to the arbitration process may be accompanied by a friend or supporter who will not be called as a witness or act as an advocate. All arbitrators must also be attorneys with domestic violence training. If the arbitrator detects domestic violence, the arbitrator will stay the arbitration and refer the parties to court.
- ***The UFLAA addresses post-decree modifications.*** The Act allows a party to request to modify an award or judgment after it has been confirmed by the court. The modification must be based on facts occurring after confirmation and may be resolved judicially or, if the parties agree, by arbitration.

For more information about the UFLAA, please contact ULC Legislative Counsel Kaitlin Dohse at (312) 450-6615 or kdohse@uniformlaws.org.