

ACT 113

H.B. NO. 1235

A Bill for an Act Relating to the Uniform Family Law Arbitration Act.

Be It Enacted by the Legislature of the State of Hawaii:

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

**“CHAPTER
UNIFORM FAMILY LAW ARBITRATION ACT**

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

§ -2 **Definitions.** As used in this chapter:
“Arbitration agreement” means an agreement that subjects a family law dispute to arbitration.

“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.

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

“Child-related dispute” means a family law dispute regarding child custody, visitation, or financial support regarding a child, under section 571-46, section 576D-7, or chapter 583A.

“Court” means the family court of this State.

“Family law dispute” means a contested issue arising under the family and domestic relations laws of this State.

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

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

“Record”, 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.

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

- (1) To execute or adopt a tangible symbol; or
- (2) To attach to or logically associate with the record an electronic symbol, sound, or process.

“State” means a state of the United States, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

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

- (1) Grants a divorce, annulment, or separation under chapter 580;
- (2) Terminates parental rights under section 571-61 or section 587A-33;
- (3) Grants an adoption under chapter 578, or a guardianship of a child under section 560:5-202 or section 560:5-204, or incapacitated individual under section 560:5-301 or section 560:5-304; or
- (4) Determines the status of a child in need of protection under chapter 587A.

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

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

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

- (1) Be in a record signed by the parties;
- (2) Identify the arbitrator, an arbitration organization, 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 a family law dispute that arises between the parties before, at the time, or after the agreement is made 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 child-related dispute that arises between the parties after the agreement is made is unenforceable unless:

- (1) The parties affirm the agreement in a record after the dispute arises; or
- (2) The agreement was entered during a family law proceeding and the court approved or incorporated the agreement in an order issued in the proceeding.

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

§ -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 chapter governing contractual arbitration.

§ -7 **Motion for judicial relief.** (a) A motion for judicial relief under this chapter shall 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, a court with jurisdiction over the parties and the subject matter.

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

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

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

(d) Unless prohibited by an arbitration agreement, upon 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.

§ -8 **Qualification and selection of arbitrator.** (a) Except as otherwise provided in subsection (b), unless waived in a record by the parties, an arbitrator shall be trained in identifying domestic violence and child abuse and be:

- (1) An attorney in good standing admitted to practice or on inactive status; or
- (2) A judge on retired status,

in a state.

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

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

§ -9 **Disclosure by arbitrator; disqualification.** (a) Before agreeing to serve as an arbitrator, an individual, after making reasonable inquiry, shall make all disclosures as required by section 658A-12.

(b) An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact that a rea-

sonable person 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 shall be made under the law and procedural rules of this State other than this chapter governing arbitrator disqualification.

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

- (1) Upon motion of a party no later than thirty days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, suspend the arbitration;
- (2) Upon timely motion of a party, vacate an award under section -19(a)(2); or
- (3) If an award has been confirmed, grant other appropriate relief under law of this State other than this chapter.

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

§ -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 nor 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 chapter governing a party's participation in contractual arbitration.

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

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

(b) After an arbitrator is selected:

- (1) The arbitrator may make a temporary award under chapter 580; and
- (2) If the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, upon motion of a party, the court may enter a temporary order.

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

§ -12 Protection of party or child. (a) As used in this section, "protection order" means an injunction or other order, issued under the domestic violence, family violence, stalking, or harassment 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 shall not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines that:

- (1) The affirmation is informed and voluntary;
- (2) Arbitration is not inconsistent with the protection order; and
- (3) Reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.

(c) If an arbitrator determines that there is a reasonable basis to believe 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 child welfare services branch of the department of human services.

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

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

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

§ -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 of the dispute.

(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, an arbitrator's powers include the power to:

- (1) Select the rules for conducting the arbitration;
- (2) Hold conferences with the parties before a hearing;
- (3) Determine the date, time, and place of a hearing;
- (4) 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 chapter; and
 - (C) A proposed award that addresses each issue in arbitration;
- (5) Meet with or interview a child who is the subject of a child-related dispute;
- (6) Appoint a private expert at the expense of the parties;
- (7) 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;
- (8) Compel discovery concerning the family law dispute and determine the date, time, and place of discovery;
- (9) Determine the admissibility and weight of evidence;
- (10) Permit deposition of a witness for use as evidence at a hearing;
- (11) For good cause, prohibit a party from disclosing information;
- (12) Appoint an attorney, guardian ad litem, or other representative for a child at the expense of the parties;
- (13) Impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;

- (14) Allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties; and
 - (15) Impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.
- (d) An arbitrator shall not allow ex parte communication except to the extent allowed in a family law proceeding for communication with a judge.

§ -14 **Recording of hearing.** (a) Except as provided in subsection (b) an arbitration hearing need not be recorded unless:

- (1) Otherwise required by law of this State other than this chapter;
 - (2) Required by the arbitrator;
 - (3) Provided by the arbitration agreement; or
 - (4) Requested by a party.
- (b) An arbitrator shall require a verbatim recording be made of any part of an arbitration hearing concerning a child-related dispute.

§ -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 upon by the parties or, if the parties have not agreed upon a method, under the law and procedural rules of this State other than this chapter governing notice in contractual arbitration.

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

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

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

§ -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 by subsection (c), the court shall confirm an award under this chapter if:

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

(c) If an 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 chapter governing a child-related dispute; and
 - (2) Is in the best interests of the child.
- (d) Upon confirmation, an award under this chapter is enforceable as a judgment.

§ -17 **Correction by arbitrator of unconfirmed award.** Upon motion of a party made no later than thirty days after an arbitrator gives notice under section -15(a) of an award, the arbitrator may correct the 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.

§ -18 Correction by court of unconfirmed award. (a) Upon motion of a party made no later than ninety days after an arbitrator gives notice under section -15(a) of an award, 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 of 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 of 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, the court may confirm a corrected award under section -16.

§ -19 Vacation or amendment by court of unconfirmed award. (a) Upon 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 substantially prejudicing the rights of a party;
- (3) The arbitrator refused to postpone a 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 making a motion under section -7 no later than the beginning of the first arbitration hearing;
- (6) The arbitration was conducted without proper notice under section -6 of the initiation of arbitration, 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 chapter.

(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 chapter governing a child-related dispute 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 the 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.

(e) A motion under this section to vacate or amend an award shall be filed no later than ninety days:

- (1) After an 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 other 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 shall be before another arbitrator.

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

§ -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 chapter governing clarification of a judgment in a family law proceeding.

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

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

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

- (1) Unless otherwise authorized under state or federal law, 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 modification before the original arbitrator or another arbitrator; or
 - (B) Absent agreement proceed under law of this State other than this chapter governing modification of a judgment in a family law proceeding.

§ -23 **Enforcement of confirmed award.** (a) The court shall enforce an award confirmed under section -16, 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.

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

- (1) An order denying a motion to compel arbitration;
- (2) An order granting 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.

§ -25 **Immunity of arbitrator.** (a) An arbitrator or 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.

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

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

(d) An arbitrator is not competent to testify, and shall 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 (2) to vacate an award, if there is prima facie evidence that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator arising from the services of the arbitrator or seeks to compel the arbitrator to testify or produce records in violation of subsection (d) 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.

§ -26 **Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code section 7003(b).

§ -27 **Transitional provision.** This chapter applies to arbitration of a family law dispute under an arbitration agreement made on or after the effective date of this chapter. If an arbitration agreement was made before the effective

date of this chapter, the parties may agree in a record that this chapter applies to the arbitration.”

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

(Approved July 10, 2017.)