
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4743.1/19

ATTY/TYPIST: AF:akl

BRIEF DESCRIPTION: Concerning the uniform family law arbitration
act.

1 AN ACT Relating to the uniform family law arbitration act; adding
2 a new chapter to Title 26 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and
5 cited as the uniform family law arbitration act.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
7 section apply throughout this chapter unless the context clearly
8 requires otherwise.

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

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

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

18 (4) "Child-related dispute" means a family law dispute regarding
19 legal custody, physical custody, custodial responsibility, parental

responsibility or authority, parenting time, right to access, visitation, or financial support regarding a child.

(5) "Court" means the family court.

(6) "Family law dispute" means a contested issue arising under the domestic relations law of this state.

(7) "Party" means an individual who signs an arbitration agreement and whose rights will be determined by an award.

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

(9) "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.

(10) "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.

(11) "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.

NEW SECTION. **Sec. 3.** SCOPE. (1) This chapter governs arbitration of a family law dispute.

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

(a) Grants a legal separation or dissolution of marriage or domestic partnership, or annulment;

(b) Terminates parental rights;

(c) Grants an adoption or a guardianship of a child or incapacitated individual; or

(d) Determines the status of dependency.

(3) This chapter does not apply to any arbitration governed by chapter 7.06 RCW.

NEW SECTION. **Sec. 4.** APPLICABLE LAW. (1) Except as otherwise provided in this chapter, the law applicable to arbitration is chapter 7.04A RCW.

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

NEW SECTION. **Sec. 5.** ARBITRATION AGREEMENT. (1) An arbitration agreement must:

(a) Be in a record signed by the parties;

(b) Identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and

(c) Identify the family law dispute the parties intend to arbitrate.

(2) Except as otherwise provided in subsection (3) of this section, 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.

(3) An agreement to arbitrate a child-related dispute that arises between the parties after the agreement is made is unenforceable unless:

(a) The parties affirm the agreement in a record after the dispute arises; or

(b) The agreement was entered during a family law proceeding and the court approved or incorporated the agreement in an order issued in the proceeding.

(4) 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.

NEW SECTION. **Sec. 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.

NEW SECTION. **Sec. 7.** MOTION FOR JUDICIAL RELIEF. (1) A motion for judicial relief under this chapter must be made to the court in which a proceeding is pending involving a family law dispute subject

1 to arbitration or, if no proceeding is pending, a court with
2 jurisdiction over the parties and the subject matter.

3 (2) On motion of a party, the court may compel arbitration if the
4 parties have entered into an arbitration agreement that complies with
5 section 5 of this act unless the court determines under section 12 of
6 this act that the arbitration should not proceed.

7 (3) On motion of a party, the court shall terminate arbitration
8 if it determines that:

9 (a) The agreement to arbitrate is unenforceable;

10 (b) The family law dispute is not subject to arbitration; or

11 (c) Under section 12 of this act, the arbitration should not
12 proceed.

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

18 NEW SECTION. **Sec. 8.** QUALIFICATION AND SELECTION OF ARBITRATOR.

19 (1) Except as otherwise provided in subsection (2) of this section,
20 unless waived in a record by the parties, an arbitrator must be:

21 (a) An attorney in good standing admitted to practice or on
22 inactive status or a judge on retired status in a state; and

23 (b) Trained in identifying domestic violence and child abuse.

24 (2) The identification of an arbitrator, arbitration
25 organization, or method of selection of the arbitrator in the
26 arbitration agreement controls.

27 (3) If an arbitrator is unable or unwilling to act or if the
28 agreed-on method of selecting an arbitrator fails, on motion of a
29 party, the court shall select an arbitrator.

30 NEW SECTION. **Sec. 9.** DISCLOSURE BY ARBITRATOR;
31 DISQUALIFICATION. (1) Before agreeing to serve as an arbitrator, an
32 individual, after making reasonable inquiry, shall disclose to all
33 parties any known fact a reasonable person would believe is likely to
34 affect:

35 (a) The impartiality of the arbitrator in the arbitration,
36 including bias, a financial or personal interest in the outcome of
37 the arbitration, or an existing or past relationship with a party,
38 attorney representing a party, or witness; or

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

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

(3) 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 chapter governing arbitrator disqualification.

(4) If a disclosure required by subsection (1)(a) or (2) of this section is not made, the court may:

(a) On motion of a party not 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;

(b) On timely motion of a party, vacate an award under section 19(1)(b) of this act; or

(c) If an award has been confirmed, grant other appropriate relief under law of this state other than this chapter.

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

NEW SECTION. **Sec. 10.** PARTY PARTICIPATION. (1) A party may:

(a) Be represented in an arbitration by an attorney;

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

(c) 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.

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

NEW SECTION. **Sec. 11.** TEMPORARY ORDER OR AWARD. (1) Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order granting any of the relief provided in RCW 26.09.060.

(2) After an arbitrator is selected:

(a) The arbitrator may make a temporary award granting any of the relief provided in RCW 26.09.060, except for relief pertaining to a protection order as defined in section 12 of this act, in which case the procedures under section 12 of this act apply; and

(b) 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.

(3) On motion of a party, before the court confirms a final award, the court under section 16, 18, or 19 of this act may confirm, correct, vacate, or amend a temporary award made under subsection (2)(a) of this section.

(4) On 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.

NEW SECTION. **Sec. 12.** PROTECTION OF PARTY OR CHILD. (1) For the purposes of this section, "protection order" means an injunction or other order, issued under the domestic violence, family violence, or 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.

(2) 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:

(a) The affirmation is informed and voluntary;

(b) Arbitration is not inconsistent with the protection order;
and

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

(3) 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 department of children, youth, and families.

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

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

(6) 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.

NEW SECTION. **Sec. 13.** POWERS AND DUTIES OF ARBITRATOR. (1) An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.

(2) 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.

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

(a) Select the rules for conducting the arbitration;

(b) Hold conferences with the parties before a hearing;

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

(d) Require a party to provide:

(i) A copy of a relevant court order;

(ii) Information required to be disclosed in a family law proceeding under law of this state other than this chapter; and

(iii) A proposed award that addresses each issue in arbitration;

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

(f) Appoint a private expert at the expense of the parties;

(g) 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;

(h) Compel discovery concerning the family law dispute and determine the date, time, and place of discovery;

(i) Determine the admissibility and weight of evidence;

(j) Permit deposition of a witness for use as evidence at a hearing;

(k) For good cause, prohibit a party from disclosing information;

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

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

(n) Allocate arbitration fees, attorneys' fees, expert witness fees, and other costs to the parties; and

(o) 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.

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

NEW SECTION. **Sec. 14.** RECORDING OF HEARING. (1) Except as otherwise provided in subsection (2) of this section or required by law of this state other than this chapter, an arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

(2) An arbitrator shall request a verbatim recording be made of any part of an arbitration hearing concerning a child-related dispute.

NEW SECTION. **Sec. 15.** AWARD. (1) 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 chapter governing notice in contractual arbitration.

(2) Except as otherwise provided in subsection (3) of this section, the award under this chapter must state the reasons on which it is based unless otherwise agreed by the parties.

(3) 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 chapter for a court order in a family law proceeding.

(4) An award under this chapter is not enforceable as a judgment until confirmed under section 16 of this act.

NEW SECTION. **Sec. 16.** CONFIRMATION OF AWARD. (1) After an arbitrator gives notice under section 15(1) of this act of an award, including an award corrected under section 17 of this act, a party may move the court for an order confirming the award.

(2) Except as otherwise provided in subsection (3) of this section, the court shall confirm an award under this chapter if:

(a) The parties agree in a record to confirmation; or

(b) The time has expired for making a motion, and no motion is pending, under section 18 or 19 of this act.

(3) If an award determines a child-related dispute, the court shall confirm the award under subsection (2) of this section if the court finds, after a review of the record if necessary, that the award on its face:

(a) Complies with section 15 of this act and law of this state other than this chapter governing a child-related dispute; and

(b) Is in the best interests of the child.

(4) On confirmation, an award under this chapter is enforceable as a judgment.

NEW SECTION. **Sec. 17.** CORRECTION BY ARBITRATOR OF UNCONFIRMED AWARD. On motion of a party made not later than thirty days after an arbitrator gives notice under section 15(1) of this act 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.

NEW SECTION. **Sec. 18.** CORRECTION BY COURT OF UNCONFIRMED AWARD. (1) On motion of a party made not later than ninety days after an arbitrator gives notice under section 15(1) of this act of an award, including an award corrected under section 17 of this act, the court shall correct the award if:

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

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

(c) 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.

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

(3) Unless a motion under section 19 of this act is pending, the court may confirm a corrected award under section 16 of this act.

NEW SECTION. **Sec. 19.** VACATION OR AMENDMENT BY COURT OF UNCONFIRMED AWARD. (1) On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:

(a) The award was procured by corruption, fraud, or other undue means;

(b) There was:

(i) Evident partiality by the arbitrator;

(ii) Corruption by the arbitrator; or

(iii) Misconduct by the arbitrator substantially prejudicing the rights of a party;

(c) 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 of this act, so as to prejudice substantially the rights of a party;

(d) The arbitrator exceeded the arbitrator's powers;

(e) No arbitration agreement exists, unless the moving party participated in the arbitration without making a motion under section 7 of this act not later than the beginning of the first arbitration hearing; or

(f) The arbitration was conducted without proper notice under section 6 of this act of the initiation of arbitration, so as to prejudice substantially the rights of a party.

(2) Except as otherwise provided in subsection (3) of this section, on motion of a party, the court shall vacate an unconfirmed award that determines a child-related dispute if the moving party establishes that:

(a) The award does not comply with section 15 of this act or law of this state other than this chapter governing a child-related dispute or is contrary to the best interests of the child;

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

(c) A ground for vacating the award under subsection (1) of this section exists.

(3) If an award is subject to vacation under subsection (2)(a) of this section, on motion of a party, the court may amend the award if amending rather than vacating is in the best interests of the child.

(4) The court may determine a motion under subsection (2) or (3) of this section based on the record of the arbitration hearing and facts occurring after the hearing or may exercise de novo review.

(5) A motion under this section to vacate or amend an award must be filed not later than ninety days:

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

(b) For a motion under subsection (1)(a) of this section, 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.

(6) 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.

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

NEW SECTION. **Sec. 20.** CLARIFICATION OF CONFIRMED AWARD. If the meaning or effect of an award confirmed under section 16 of this act 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.

NEW SECTION. **Sec. 21.** JUDGMENT ON AWARD. (1) On 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.

(2) On 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.

1 NEW SECTION. **Sec. 22.** MODIFICATION OF CONFIRMED AWARD OR
2 JUDGMENT. If a party requests under law of this state other than this
3 chapter a modification of an award confirmed under section 16 of this
4 act or judgment on the award based on a fact occurring after
5 confirmation:

6 (1) The parties shall proceed under the dispute resolution method
7 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 original
11 arbitrator or another arbitrator; or

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

15 NEW SECTION. **Sec. 23.** ENFORCEMENT OF CONFIRMED AWARD. (1) The
16 court shall enforce an award confirmed under section 16 of this act,
17 including a temporary award, in the manner and to the same extent as
18 any other order or judgment of a court.

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

22 NEW SECTION. **Sec. 24.** APPEAL. (1) An appeal may be taken under
23 this chapter from:

24 (a) An order denying a motion to compel arbitration;

25 (b) An order granting a motion to stay arbitration;

26 (c) An order confirming or denying confirmation of an award;

27 (d) An order correcting an award;

28 (e) An order vacating an award without directing a rehearing; or

29 (f) A final judgment.

30 (2) An appeal under this section may be taken as from an order or
31 a judgment in a civil action.

32 NEW SECTION. **Sec. 25.** IMMUNITY OF ARBITRATOR. (1) An arbitrator
33 or arbitration organization acting in that capacity in a family law
34 dispute is immune from civil liability to the same extent as a judge
35 of a court of this state acting in a judicial capacity.

36 (2) The immunity provided by this section supplements any
37 immunity under law of this state other than this chapter.

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

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

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

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

16 (5) If a person commences a civil action against an arbitrator
17 arising from the services of the arbitrator or seeks to compel the
18 arbitrator to testify or produce records in violation of subsection
19 (4) of this section and the court determines that the arbitrator is
20 immune from civil liability or is not competent to testify or
21 required to produce the records, the court shall award the arbitrator
22 reasonable attorneys' fees, costs, and reasonable expenses of
23 litigation.

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

28 NEW SECTION. **Sec. 27.** RELATION TO ELECTRONIC SIGNATURES IN
29 GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or
30 supersedes the electronic signatures in global and national commerce
31 act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
32 supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or
33 authorize electronic delivery of any of the notices described in
34 section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

35 NEW SECTION. **Sec. 28.** TRANSITIONAL PROVISION. This chapter
36 applies to arbitration of a family law dispute under an arbitration
37 agreement made on or after the effective date of this section. If an

1 arbitration agreement was made before the effective date of this
2 section, the parties may agree in a record that this chapter applies
3 to the arbitration.

4 NEW SECTION. **Sec. 29.** EFFECTIVE DATE. This act takes effect
5 January 1, 2021.

6 NEW SECTION. **Sec. 30.** Sections 1 through 29 of this act
7 constitute a new chapter in Title 26 RCW.

--- END ---