
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 laws 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 divorce, annulment, or separation under
12 chapter 580;

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

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

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



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.



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

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

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

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

13 **§ -6 Notice of arbitration.** A party may initiate
14 arbitration by giving notice to arbitrate to the other party in
15 the manner specified in the arbitration agreement or, in the
16 absence of a specified manner, under the law and procedural
17 rules of this State other than this chapter governing
18 contractual arbitration.

19 **§ -7 Motion for judicial relief.** (a) A motion for
20 judicial relief under this chapter shall be made to the court in
21 which a proceeding is pending involving a family law dispute



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

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

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

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

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

20 § -8 Qualification and selection of arbitrator. (a)

21 Except as otherwise provided in subsection (b), unless waived in



1 a record by the parties, an arbitrator shall be trained in
2 identifying domestic violence and child abuse and be:

3 (1) An attorney in good standing admitted to practice or
4 on inactive status; or

5 (2) A judge on retired status,
6 in a state.

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

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

13 **§ -9 Disclosure by arbitrator; disqualification.** (a)
14 Before agreeing to serve as an arbitrator, an individual, after
15 making reasonable inquiry, shall make all disclosures as
16 required by section 658A-12.

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



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

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

8 (1) Upon motion of a party no later than thirty days after
9 the failure to disclose is known or by the exercise of
10 reasonable care should have been known to the party,
11 suspend the arbitration;

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

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

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

21 § -10 Party participation. (a) A party may:



- 1 (1) Be represented in an arbitration by an attorney;
- 2 (2) Be accompanied by an individual who will not be called
- 3 as a witness nor act as an advocate; and
- 4 (3) Participate in the arbitration to the full extent
- 5 permitted under the law and procedural rules of this
- 6 State other than this chapter governing a party's
- 7 participation in contractual arbitration.

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

12 § -11 Temporary order or award. (a) Before an
 13 arbitrator is selected and able to act, upon motion of a party,
 14 the court may enter a temporary order under chapter 580.

- 15 (b) After an arbitrator is selected:
 - 16 (1) The arbitrator may make a temporary award under
 - 17 chapter 580; and
 - 18 (2) If the matter is urgent and the arbitrator is not able
 - 19 to act in a timely manner or provide an adequate
 - 20 remedy, upon motion of a party, the court may enter a
 - 21 temporary order.



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

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

8 § -12 Protection of party or child. (a) As used in
9 this section, "protection order" means an injunction or other
10 order, issued under the domestic violence, family violence,
11 stalking, or harassment laws of the issuing jurisdiction, to
12 prevent an individual from engaging in a violent or threatening
13 act against, harassment of, contact or communication with, or
14 being in physical proximity to another individual who is a party
15 or a child under the custodial responsibility of a party.

16 (b) If a party is subject to a protection order or an
17 arbitrator determines there is a reasonable basis to believe a
18 party's safety or ability to participate effectively in
19 arbitration is at risk, the arbitrator shall stay the
20 arbitration and refer the parties to court. The arbitration



1 shall not proceed unless the party at risk affirms the
2 arbitration agreement in a record and the court determines that:

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

8 (c) If an arbitrator determines that there is a reasonable
9 basis to believe a child who is the subject of a child-related
10 dispute is abused or neglected, the arbitrator shall terminate
11 the arbitration of the child-related dispute and report the
12 abuse or neglect to the child welfare services branch of the
13 department of human services.

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

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

19 (f) This section supplements remedies available under law
20 of this State other than this chapter for the protection of



1 victims of domestic violence, family violence, stalking,
2 harassment, or similar abuse.

3 § -13 Powers and duties of arbitrator. (a) An
4 arbitrator shall conduct an arbitration in a manner the
5 arbitrator considers appropriate for a fair and expeditious
6 disposition of the dispute.

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

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

- 12 (1) Select the rules for conducting the arbitration;
- 13 (2) Hold conferences with the parties before a hearing;
- 14 (3) Determine the date, time, and place of a hearing;
- 15 (4) Require a party to provide:
 - 16 (A) A copy of a relevant court order;
 - 17 (B) Information required to be disclosed in a family
18 law proceeding under law of this State other than
19 this chapter; and
 - 20 (C) A proposed award that addresses each issue in
21 arbitration;



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



1 (15) Impose a sanction on a party for bad faith or
2 misconduct during the arbitration according to
3 standards governing imposition of a sanction for
4 litigant misconduct in a family law proceeding.

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

8 § -14 Recording of hearing. (a) Except as provided in
9 subsection (b) an arbitration hearing need not be recorded
10 unless:

11 (1) Otherwise required by law of this State other than
12 this chapter;

13 (2) Required by the arbitrator;

14 (3) Provided by the arbitration agreement; or

15 (4) Requested by a party.

16 (b) An arbitrator shall require a verbatim recording be
17 made of any part of an arbitration hearing concerning a child-
18 related dispute.

19 § -15 Award. (a) An arbitrator shall make an award in
20 a record, dated and signed by the arbitrator. The arbitrator
21 shall give notice of the award to each party by a method agreed



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

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

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

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

13 § -16 Confirmation of award. (a) After an arbitrator
14 gives notice under section -15(a) of an award, including an
15 award corrected under section -17, a party may move the court
16 for an order confirming the award.

17 (b) Except as provided by subsection (c), the court shall
18 confirm an award under this chapter if:

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

20 (2) The time has expired for making a motion, and no

21 motion is pending, under section -18 or -19.



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

5 (1) Complies with section -15 and the law of this State
6 other than this chapter governing a child-related
7 dispute; and

8 (2) Is in the best interests of the child.

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

11 § -17 Correction by arbitrator of unconfirmed award.

12 Upon motion of a party made no later than thirty days after an
13 arbitrator gives notice under section -15(a) of an award, the
14 arbitrator may correct the award:

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

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

20 (3) To clarify the award.



1 § -18 Correction by court of unconfirmed award. (a)

2 Upon motion of a party made no later than ninety days after an
3 arbitrator gives notice under section -15(a) of an award,
4 including an award corrected under section -17, the court
5 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 no later than the beginning
21 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) Except as otherwise provided in subsection (c), on
8 motion of a party, the court shall vacate an unconfirmed award
9 that determines a child-related dispute if the moving party
10 establishes that:

11 (1) The award does not comply with section -15 or the
12 law of this State other than this chapter governing a
13 child-related dispute or is contrary to the best
14 interests of the child;

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

18 (3) A ground for vacating the award under subsection (a)
19 exists.

20 (c) If an award is subject to vacation under subsection
21 (b) (1), on motion of a party, the court may amend the award if



1 amending rather than vacating is in the best interests of the
2 child.

3 (d) The court shall determine a motion under subsection
4 (b) or (c) based on the record of the arbitration hearing and
5 facts occurring after the hearing.

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

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

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

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



1 (g) 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) Unless otherwise authorized under state or federal
7 law, the parties shall proceed under the dispute-
8 resolution method specified in the award or judgment;
9 or

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

12 (A) Agree to arbitrate the modification before the
13 original arbitrator or another arbitrator; or

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

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



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

5 § -24 Appeal. (a) An appeal may be taken under this
6 chapter from:

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

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

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



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

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

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

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

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

18 (e) If a person commences a civil action against an
19 arbitrator arising from the services of the arbitrator or seeks
20 to compel the arbitrator to testify or produce records in
21 violation of subsection (d) and the court determines that the



1 arbitrator is immune from civil liability or is not competent to
2 testify or required to produce the records, the court shall
3 award the arbitrator reasonable attorney's fees, costs, and
4 reasonable expenses of litigation.

5 § -26 **Relation to Electronic Signatures in Global and**
6 **National Commerce Act.** This chapter modifies, limits, or
7 supersedes the Electronic Signatures in Global and National
8 Commerce Act, title 15 United States Code section 7001 et seq.,
9 but does not modify, limit, or supersede section 101(c) of that
10 Act, title 15 United States Code section 7001(c), or authorize
11 electronic delivery of any of the notices described in section
12 103(b) of that Act, title 15 United States Code section 7003(b).

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

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



H.B. NO. 1235
H.D. 1
S.D. 1
C.D. 1

Report Title:

Uniform Family Law Arbitration Act; Arbitration; Conditions

Description:

Authorizes the use of arbitration to resolve certain family law disputes and child-related disputes. Specifies law and procedures applicable to arbitrations. (HB1235 CD1)

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

