

HOUSE BILL No. 2496

By Committee on Judiciary

1-19

1 AN ACT concerning family law; relating to arbitration agreements;
2 enacting the uniform family law arbitration act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 28, and amendments thereto, shall be
6 known and may be cited as the uniform family law arbitration act.

7 Sec. 2. As used in the uniform family law arbitration act:

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

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

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

16 (d) "Child-related dispute" means a family law dispute regarding
17 legal custody, residency, parenting time, visitation or financial support
18 regarding a child.

19 (e) "Court" means the district court authorized by state law to hear a
20 family law dispute.

21 (f) "Family law dispute" means a contested issue arising under the
22 Kansas family law code.

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

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

28 (i) "Record," used as a noun, means information that is inscribed on a
29 tangible medium or that is stored in an electronic or other medium and is
30 retrievable in perceivable form.

31 (j) "Sign" means to authenticate or adopt a record with present intent
32 to:

33 (1) Execute or adopt a tangible symbol; or

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

36 (k) "State" means a state of the United States, the District of

1 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
2 insular possession subject to the jurisdiction of the United States. The term
3 includes a federally recognized Indian tribe.

4 Sec. 3. (a) This act governs arbitration of a family law dispute.

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

6 (1) Grants a decree of divorce, annulment or separate maintenance;

7 (2) terminates parental rights;

8 (3) grants an adoption or a guardianship of a child or incapacitated
9 individual;

10 (4) determines the status of a child in need of care; or

11 (5) determines the existence or nonexistence of the parent and child
12 relationship.

13 Sec. 4. (a) Except as otherwise provided in this act, the law applicable
14 to arbitration is article 4 of chapter 5 of the Kansas Statutes Annotated, and
15 amendments thereto.

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

18 Sec. 5. (a) An arbitration agreement shall:

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

20 (2) identify the arbitrator, an arbitration organization or a method of
21 selecting an arbitrator; and

22 (3) identify the family law dispute that the parties intend to arbitrate.

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

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

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

32 (2) the agreement was entered during a family law proceeding and the
33 court approved or incorporated the agreement in an order issued in the
34 proceeding.

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

39 Sec. 6. A party may initiate arbitration by giving notice to arbitrate to
40 the other party in the manner specified in the arbitration agreement or, in
41 the absence of a specified manner, under article 4 of chapter 5 of the
42 Kansas Statutes Annotated, and amendments thereto.

43 Sec. 7. (a) A motion for judicial relief under this act must be made to

1 the court in which a proceeding is pending involving a family law dispute
2 subject to arbitration or, if no proceeding is pending, a court with
3 jurisdiction over the parties and the subject matter.

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

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

11 (1) Agreement to arbitrate is unenforceable;

12 (2) family law dispute is not subject to arbitration; or

13 (3) arbitration should not proceed, pursuant to section 12, and
14 amendments thereto.

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

19 Sec. 8. (a) Except as otherwise provided in subsection (b), unless
20 waived in a record by the parties, an arbitrator shall be:

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

23 (2) trained in identifying domestic violence and child abuse.

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

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

30 Sec. 9. (a) Before agreeing to serve as an arbitrator, an individual,
31 after making reasonable inquiry, shall disclose to all parties any known
32 fact a reasonable person would believe is likely to affect:

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

37 (2) the arbitrator's ability to make a timely award.

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

42 (c) An objection to the selection or continued service of an arbitrator
43 and a motion for a stay of arbitration and disqualification of the arbitrator

1 must be made under the law and procedural rules of this state, other than
2 this act governing arbitrator disqualification.

3 (d) If a disclosure required by subsection (a)(1) or (b) is not made, the
4 court may:

5 (1) On motion of a party within 30 days after the failure to disclose is
6 known or by the exercise of reasonable care should have been known to
7 the party, suspend the arbitration;

8 (2) on timely motion of a party, vacate an award under section 19(a)
9 (2), and amendments thereto; or

10 (3) if an award has been confirmed, grant other appropriate relief
11 under the other laws of this state.

12 (e) If the parties agree to discharge an arbitrator or the arbitrator is
13 disqualified, the parties by agreement may select a new arbitrator or
14 request the court to select another arbitrator as provided in section 8, and
15 amendments thereto.

16 Sec. 10. (a) A party may:

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

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

20 (3) participate in the arbitration to the full extent permitted under the
21 law and procedural rules of this state, other than this act, governing a
22 party's participation in contractual arbitration.

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

26 Sec. 11. (a) Before an arbitrator is selected and able to act, on motion
27 of a party, the court may enter a temporary order under K.S.A. 2021 Supp.
28 23-2224, 23-2707, 23-3103 or 23-3212, and amendments thereto.

29 (b) After an arbitrator is selected:

30 (1) The arbitrator may make a temporary award under K.S.A. 2021
31 Supp. 23-2224, 23-2707, 23-3103 or 23-3212, and amendments thereto;
32 and

33 (2) if the matter is urgent and the arbitrator is not able to act in a
34 timely manner or provide an adequate remedy, on motion of a party, the
35 court may enter a temporary order.

36 (c) On motion of a party, before the court confirms a final award, the
37 court under section 16, 18 or 19, and amendments thereto, may confirm,
38 correct, vacate or amend a temporary award made under subsection (b)(1).

39 (d) On motion of a party, the court may enforce a subpoena or interim
40 award issued by an arbitrator for the fair and expeditious disposition of the
41 arbitration.

42 Sec. 12. (a) In this section, "protection order" means an injunction or
43 other order, issued under the domestic-violence, family-violence or

1 stalking laws of the issuing jurisdiction, to prevent an individual from
2 engaging in a violent or threatening act against, harassment of, contact or
3 communication with or being in physical proximity to another individual
4 who is a party or a child under the custodial responsibility of a party.

5 (b) If a party is subject to a protection order or an arbitrator
6 determines there is a reasonable basis to believe a party's safety or ability
7 to participate effectively in arbitration is at risk, the arbitrator shall stay the
8 arbitration and refer the parties to court. The arbitration may not proceed
9 unless the party at risk affirms the arbitration agreement in a record and
10 the court determines:

11 (1) The affirmation is informed and voluntary;

12 (2) arbitration is not inconsistent with the protection order; and

13 (3) reasonable procedures are in place to protect the party from risk of
14 harm, harassment or intimidation.

15 (c) If an arbitrator determines that there is a reasonable basis to
16 believe a child who is the subject of a child-related dispute is abused or
17 neglected, the arbitrator shall terminate the arbitration of the child-related
18 dispute and report the abuse or neglect to the department of children and
19 families.

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

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

24 (f) This section supplements remedies available under the other laws
25 of this state for the protection of victims of domestic violence, family
26 violence, stalking, harassment or similar abuse.

27 Sec. 13. (a) An arbitrator shall conduct an arbitration in a manner the
28 arbitrator considers appropriate for a fair and expeditious disposition of the
29 dispute.

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

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

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

36 (2) hold conferences with the parties before a hearing;

37 (3) determine the date, time and place of a hearing;

38 (4) require a party to provide:

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

40 (B) information required to be disclosed in a family law proceeding
41 under the other laws of this state; and

42 (C) a proposed award that addresses each issue in arbitration;

43 (5) meet with or interview a child who is the subject of a child-related

1 dispute;

2 (6) appoint a private expert at the expense of the parties;

3 (7) administer an oath or affirmation and issue a subpoena for the
4 attendance of a witness or the production of documents and other evidence
5 at a hearing;

6 (8) compel discovery concerning the family law dispute and
7 determine the date, time and place of discovery;

8 (9) determine the admissibility and weight of evidence;

9 (10) permit deposition of a witness for use as evidence at a hearing;

10 (11) for good cause, prohibit a party from disclosing information;

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

13 (13) impose a procedure to protect a party or child from risk of harm,
14 harassment or intimidation;

15 (14) allocate arbitration fees, attorney's fees, expert-witness fees and
16 other costs to the parties; and

17 (15) impose a sanction on a party for bad faith or misconduct during
18 the arbitration according to standards governing imposition of a sanction
19 for litigant misconduct in a family law proceeding.

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

23 Sec. 14. (a) Except as otherwise provided in subsection (b) or
24 required by the other laws of this state, an arbitration hearing need not be
25 recorded unless required by the arbitrator, provided by the arbitration
26 agreement or requested by a party.

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

29 Sec. 15. (a) An arbitrator shall make an award in a record that is dated
30 and signed by the arbitrator. The arbitrator shall give notice of the award to
31 each party by a method agreed on by the parties or, if the parties have not
32 agreed on a method, under the other laws and procedural rules of this state,
33 governing notice in contractual arbitration.

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

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

40 (d) An award under this act is not enforceable as a judgment until
41 confirmed under section 16, and amendments thereto.

42 Sec. 16. (a) After an arbitrator gives notice of an award under section
43 15(a), and amendments thereto, including an award corrected under

1 section 17, and amendments thereto, a party may move the court for an
 2 order confirming the award.

3 (b) Except as otherwise provided in subsection (c), the court shall
 4 confirm an award under this act if:

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

6 (2) the time has expired for making a motion, and no motion is
 7 pending, under section 18 or 19, and amendments thereto.

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

11 (1) Complies with section 15, and amendments thereto, and the laws
 12 of this state governing a child-related dispute other than this act; and

13 (2) is in the best interests of the child.

14 (d) On confirmation, an award under this act is enforceable as a
 15 judgment.

16 Sec. 17. On motion of a party made within 30 days after an arbitrator
 17 gives notice of an award under section 15(a), and amendments thereto, the
 18 arbitrator may correct the award:

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

21 (b) if the award is imperfect in a matter of form not affecting the
 22 merits on the issues submitted; or

23 (c) to clarify the award.

24 Sec. 18. (a) On motion of a party made within 90 days after an
 25 arbitrator gives notice of an award under section 15(a), and amendments
 26 thereto, including an award corrected under section 17, and amendments
 27 thereto, the court shall correct the award if:

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

30 (2) the award is imperfect in a matter of form not affecting the merits
 31 of the issues submitted; or

32 (3) the arbitrator made an award on a dispute not submitted to the
 33 arbitrator and the award may be corrected without affecting the merits of
 34 the issues submitted.

35 (b) A motion to correct an award under this section may be joined
 36 with a motion to vacate or amend the award under section 19, and
 37 amendments thereto.

38 (c) Unless a motion under section 19, and amendments thereto, is
 39 pending, the court may confirm a corrected award under section 16, and
 40 amendments thereto.

41 Sec. 19. (a) On motion of a party, the court shall vacate an
 42 unconfirmed award if the moving party establishes that:

43 (1) The award was procured by corruption, fraud or other undue

1 means;

2 (2) there was:

3 (A) Evident partiality by the arbitrator;

4 (B) corruption by the arbitrator; or

5 (C) misconduct by the arbitrator substantially prejudicing the rights
6 of a party;

7 (3) the arbitrator refused to postpone a hearing on showing of
8 sufficient cause for postponement, refused to consider evidence material to
9 the controversy or otherwise conducted the hearing contrary to section 13,
10 and amendments thereto, so as to prejudice substantially the rights of a
11 party;

12 (4) the arbitrator exceeded the arbitrator's powers;

13 (5) no arbitration agreement exists, unless the moving party
14 participated in the arbitration without making a motion under section 7,
15 and amendments thereto, not later than the beginning of the first
16 arbitration hearing; or

17 (6) the arbitration was conducted without proper notice of the
18 initiation of arbitration under section 6, and amendments thereto, so as to
19 prejudice substantially the rights of a party.

20 (b) Except as otherwise provided in subsection (c), on motion of a
21 party, the court shall vacate an unconfirmed award that determines a child-
22 related dispute if the moving party establishes that:

23 (1) The award does not comply with section 15, and amendments
24 thereto, the laws of this state other than this act governing a child-related
25 dispute or is contrary to the best interests of the child;

26 (2) the record of the hearing or the statement of reasons in the award
27 is inadequate for the court to review the award; or

28 (3) a ground for vacating the award under subsection (a) exists.

29 (c) If an award is subject to vacation under subsection (b)(1), on
30 motion of a party, the court may amend the award if amending rather than
31 vacating is in the best interests of the child.

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

35 (e) A motion under this section to vacate or amend an award must be
36 filed within 90 days:

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

39 (2) for a motion under subsection (a)(1), after the ground of
40 corruption, fraud or other undue means is known or by the exercise of
41 reasonable care should have been known to the party filing the motion.

42 (f) If the court under this section vacates an award for a reason other
43 than the absence of an enforceable arbitration agreement, the court may

1 order a rehearing before an arbitrator. If the reason for vacating the award
2 is that the award was procured by corruption, fraud or other undue means
3 or there was evident partiality, corruption or misconduct by the arbitrator,
4 the rehearing shall be before another arbitrator.

5 (g) If the court under this section denies a motion to vacate or amend
6 an award, the court may confirm the award under section 16, and
7 amendments thereto, unless a motion is pending under section 18, and
8 amendments thereto.

9 Sec. 20. If the meaning or effect of an award confirmed under section
10 16, and amendments thereto, is in dispute, the parties may:

11 (a) Agree to arbitrate the dispute before the original arbitrator or
12 another arbitrator; or

13 (b) proceed in court under the other laws of this state governing
14 clarification of a judgment in a family law proceeding.

15 Sec. 21. (a) On granting an order confirming, vacating without
16 directing a rehearing or amending an award under this act, the court shall
17 enter judgment in conformity with the order.

18 (b) On motion of a party, the court may order that a document or part
19 of the arbitration record be sealed or redacted to prevent public disclosure
20 of all or part of the record or award to the extent permitted under the other
21 laws of this state.

22 Sec. 22. (a) If a party requests a modification of an award
23 confirmed under section 16, and amendments thereto, or judgment on the
24 award based on a fact occurring after confirmation pursuant to the other
25 laws of the state:

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

28 (2) if the award or judgment does not specify a dispute-resolution
29 method, the parties may:

30 (A) Agree to arbitrate the modification before the original arbitrator
31 or another arbitrator; or

32 (B) absent agreement, proceed under the other laws of this state
33 governing modification of a judgment in a family law proceeding.

34 Sec. 23. (a) The court shall enforce an award confirmed under section
35 16, and amendments thereto, including a temporary award, in the same
36 manner and to the same extent as any other order or judgment of a court.

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

40 Sec. 24. (a) An appeal may be taken under this act from:

41 (1) An order denying a motion to compel arbitration;

42 (2) an order granting a motion to stay arbitration;

43 (3) an order confirming or denying confirmation of an award;

- 1 (4) an order correcting an award;
- 2 (5) an order vacating an award without directing a rehearing; or
- 3 (6) a final judgment.
- 4 (b) An appeal under this section may be taken as from an order or a
- 5 judgment in a civil action.

6 Sec. 25. (a) An arbitrator or arbitration organization acting in that
7 capacity in a family law dispute is immune from civil liability to the same
8 extent as a judge of a court of this state acting in a judicial capacity.

9 (b) The immunity provided by this section supplements any immunity
10 under the other laws of this state.

11 (c) An arbitrator's failure to make a disclosure required by section 9,
12 and amendments thereto, shall not cause the arbitrator to lose immunity
13 under this section.

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

19 (1) The extent disclosure is necessary to determine a claim by the
20 arbitrator or arbitration organization against a party to the arbitration; or

21 (2) a hearing on a motion under section 19(a)(1) or (a)(2), and
22 amendments thereto, to vacate an award, if there is prima facie evidence
23 that a ground for vacating the award exists.

24 (e) If a person commences a civil action against an arbitrator arising
25 from the services of the arbitrator or seeks to compel the arbitrator to
26 testify or produce records in violation of subsection (d) and the court
27 determines that the arbitrator is immune from civil liability or is not
28 competent to testify or required to produce the records, the court shall
29 award the arbitrator reasonable attorney fees, costs and reasonable
30 expenses of litigation.

31 Sec. 26. In applying and construing this uniform act, consideration
32 must be given to the need to promote uniformity of the law with respect to
33 its subject matter among states that enact it.

34 Sec. 27. This act modifies, limits or supersedes the electronic
35 signatures in global and national commerce act, 15 U.S.C. § 7001 et seq.,
36 but does not modify, limit or supersede section 101(c) of that act, 15
37 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices
38 described in section 103(b) of that act, 15 U.S.C. § 7003(b).

39 Sec. 28. This act applies to arbitration of a family law dispute under
40 an arbitration agreement made on or after the effective date of this act. If
41 an arbitration agreement was made before the effective date of this act, the
42 parties may agree in a record that this act applies to the arbitration.

43 Sec. 29. This act shall take effect and be in force from and after its

- 1 publication in the statute book.